

MAINE STATE LEGISLATURE

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DATE: *March 26, 1998*

(Filing No. S- *620*)

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "*A*" to S.P. 622, L.D. 1825, Bill, "An Act to Authorize a Tuition Savings Plan to Encourage Attendance at Institutions of Higher Education"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 5 MRSA §12004-I, sub-§18-B is enacted to read:

<u>18-B.</u>	<u>Advisory</u>	<u>Not</u>	<u>20-A MRSA</u>
<u>Education:</u>	<u>Committee</u>	<u>Authorized</u>	<u>§11484</u>
<u>Financial</u>	<u>on College</u>		
<u>Aid</u>	<u>Savings</u>		

Sec. 2. 10 MRSA §1013, sub-§§14 and 15, as enacted by PL 1997, c. 97, §4, are amended to read:

14. University of Maine System Scholarship Fund. The University of Maine Scholarship Fund, as established in Title 20-A, chapter 419-B; and

15. Scholarships for Maine Fund. The Scholarships for Maine Fund, as established in Title 20-A, chapter 419-C; and

Sec. 3. 10 MRSA §1013, sub-§16 is enacted to read:

16. Maine College Savings Program. The Maine College Savings Program, as established in Title 20-A, chapter 417-E.

Sec. 4. 20-A MRSA c. 417-E is enacted to read:

2

CHAPTER 417-E

4

MAINE COLLEGE SAVINGS PROGRAM

6

§11471. Definitions

8

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

10

1. **Advisory committee.** "Advisory committee" means the Advisory Committee on College Savings established in this chapter.

12

2. **Authority.** "Authority" means the Finance Authority of Maine, which serves as administrator of the Maine College Savings Program.

14

3. **Beneficiary.** "Beneficiary" means any person designated by a participation agreement to benefit from payments for higher education expenses at an institution of higher education.

18

4. **Benefits.** "Benefits" means the payment of higher education expenses on behalf of a beneficiary by the Maine College Savings Program during the beneficiary's attendance at an institution of higher education.

22

5. **Board.** "Board" means the board of directors of the Finance Authority of Maine.

24

6. **Contributions.** "Contributions" means amounts deposited by a participant to an account within the program fund.

26

7. **Higher education expenses.** "Higher education expenses" means the certified expenses for attendance at an institution of higher education as those expenses are defined by rule of the authority consistent with applicable provisions of the Internal Revenue Code and its regulations addressing qualified state tuition programs.

30

8. **Institution of higher education.** "Institution of higher education" means an institution of higher education that meets the requirements established by rule of the authority consistent with applicable provisions of the Internal Revenue Code and its regulations addressing qualified state tuition programs.

34

9. **Participant.** "Participant" means any person who has entered into a participation agreement pursuant to this chapter.

38

10. **Participation agreement.** "Participation agreement" means an agreement between a participant and the authority

42

2 providing for the establishment by the participant of one or more
4 accounts within the program fund and for the administration of
those accounts for the benefit of the participant and of one or
more beneficiaries.

6 11. Program earnings. "Program earnings" means all
8 interest, dividends, premiums, fees, profits upon disposition of
10 assets and other revenue actually received by or on behalf of the
12 program with respect to any assets held within the program fund
to which that asset may be credited, less all administrative
costs of the program and the program fund, as periodically
determined by the authority.

14 12. Tuition. "Tuition" means the charges imposed to attend
16 an institution of higher education and required as a condition of
enrollment.

18 **§11472. Maine College Savings Program**

20 The Maine College Savings Program, referred to in this
22 chapter as the "program," is established to encourage the
24 investment of funds to be used for higher education expenses at
institutions of higher education. The authority shall administer
the program and act as administrator of the program fund.

26 **§11473. Maine College Savings Program Fund**

28 1. Creation. The Maine College Savings Program Fund,
30 referred to in this chapter as the "program fund," is established
32 as a nonlapsing fund to be directed and administered by the
34 authority and held by the Treasurer of State. The Treasurer of
36 State shall keep the program fund segregated from all other funds
38 held by the Treasurer of State and shall invest and reinvest the
program fund for the benefit of the program under the direction
of and with the advice of the advisory committee. The program
fund so administered is a fund held on behalf of participants and
beneficiaries who are deemed specifically named persons for the
purposes of Title 5, section 135-A.

40 2. Sources of money. The following sources of money must
42 be paid into the program fund:

44 A. All money appropriated for inclusion in the program fund;

46 B. All interest, dividends or other pecuniary gains from
investment of money in the program fund;

48 C. All money received pursuant to participation agreements;

50 D. Any grants, gifts and other money from the State and

2 from any unit of federal, state or local government or from
3 any person, firm, partnership or corporation for deposit to
4 the program fund. Contributions may be limited in
5 application to specified classes of beneficiaries; and

6 E. Any other money available to the authority and directed
7 by the authority to be paid into the program fund.

8
9 **3. Application of program fund.** Money in the program fund
10 may be applied to carry out any power of the authority under or
11 in connection with this chapter. All money in the program fund
12 must be continuously applied by the authority to carry out this
13 chapter and for no other purpose. Assets of the program fund
14 must at all times be preserved, invested and expended only for
15 the purposes of the program and must be held for the benefit of
16 the participants and beneficiaries. Assets may not be
17 transferred or used by the State or the authority for any
18 purposes other than the purposes of the program. All amounts in
19 the program fund, except for contributions and program earnings
20 that have been credited to an account, may be used by the
21 authority to pay the administrative costs of the program and
22 program fund, as determined by the authority.

23 **4. Accounts within program fund.** The authority may divide
24 the program fund into separate accounts for any purpose it
25 determines necessary or convenient for carrying out the purposes
26 of this chapter, including, without limitation, the establishment
27 of appropriate reserve funds for investment and operating
28 expenses.

29 **5. Common investment of funds.** The authority may commingle
30 amounts credited to some or all accounts for investment purposes
31 and may provide for the application of program earnings to pay
32 any administrative costs of the program fund prior to crediting
33 program earnings to participants' accounts.

34 **§11474. Powers of the authority**

35 The authority, in the capacity as administrator of the
36 program fund, in addition to all of the powers set out in Title
37 10, section 969-A, may:

38 **1. Enter into contracts.** Make and enter into contracts
39 necessary for the administration of the program fund, including,
40 without limitation, agreements with any financial institution or
41 institution of higher education or with the State or any federal
42 or state agency or any other entity;

43 **2. Invest funds.** With the advice of the advisory
44 committee, direct the Treasurer of State to invest and reinvest
45 and
46 reinvest
47 and
48 reinvest
49 and
50 reinvest

2 money in the program fund in any investments determined by the
4 authority to be appropriate, notwithstanding any general
6 statutory limitations on investments of public funds specifically
8 determined to be inapplicable to the program fund. The authority
10 must invest money from the program fund in financial institutions
12 located in the State to the extent determined reasonable by the
14 authority;

16 3. Participation agreements. Enter into participation
18 agreements with participants in accordance with the requirements
20 of section 11475;

22 4. Make payments. Make payments to beneficiaries and to
24 institutions of higher education on behalf of beneficiaries;

26 5. Make refunds. Make refunds to participants on the
28 termination of participation agreements pursuant to the
30 provisions, limitations and restrictions set forth in this
32 chapter;

34 6. Appoint a program administrator. Appoint a program
36 administrator and other employees necessary to carry out the
38 duties of this chapter;

40 7. Carry out studies. Carry out studies and projections to
42 advise participants regarding present and future estimated higher
44 education expenses and levels of financial participation in the
46 program required to enable participants to achieve their
48 educational funding objectives;

40 8. Participate in programs. Participate in any federal,
42 state or local governmental program for the benefit of the
44 program or the program fund, including, without limitation,
46 soliciting, establishing and participating in a program providing
48 limits on future increases in the costs of education at
50 participating institutions of higher education on those terms and
52 conditions that the authority may negotiate with the institutions;

54 9. Procure insurance. Procure insurance against any loss
56 in connection with the property or assets or activities of the
58 program or the program fund;

60 10. Administer the program fund. Administer the program
62 fund;

64 11. Borrow money. Borrow money the authority determines
66 necessary and prudent to the administration of the program and
68 the program fund. Loans may be obtained from any source,
70 including other funds of the authority;

2 12. Transfer investments. Sell, assign, transfer and
3 dispose of any of the securities and investments of the program.
4 All investments must be clearly marked to indicate designation to
5 the program fund and, to the extent possible, must be registered
6 in the name of the program. All interest derived from
7 investments and any gains from the sale or exchange of
8 investments must be credited by the authority to the account of
9 the program;

10 13. Employ investment managers and consultants. Contract
11 for goods and services and engage personnel and consultants,
12 including investment advisors and managers, actuaries, managers,
13 counsel, marketing consultants, fiduciaries and auditors, and
14 evaluation services or other services as determined necessary by
15 the authority for the effective and efficient operation of the
16 program. Directly or through an investment consultant, the
17 authority may contract to provide services that are a part of the
18 comprehensive investment plan or as determined necessary by the
19 authority or the consultant, including, but not limited to,
20 providing consolidated billing, individual and collective record
21 keeping and accounting and asset purchase, control and
22 safekeeping; and

23 14. Fund costs and expenses. Fund all costs and expenses
24 incurred in connection with the exercise of its powers under this
25 chapter as administrative costs of the program and the program
26 fund. The authority may not assess the program fund a fee in
27 excess of 1% of the balance in the fund in any year for the
28 administrative costs and expenses of the program.

29 **§11475. Participation agreement**

30 The authority may enter into a participation agreement with
31 a participant on behalf of a beneficiary pursuant to the
32 following terms and conditions.

33 1. Periodic payments. A participation agreement may
34 require or permit a participant to invest a specific amount of
35 money in the program fund for a specific period of time for the
36 benefit of a specific beneficiary. Periodic deposits may be made
37 through a payroll deduction plan or an automatic deposit plan or
38 through assignment of state tax refunds. A participation
39 agreement establishing such a periodic deposit plan may include
40 provisions to adjust scheduled deposits on the basis of change in
41 a participant's economic circumstances or a beneficiary's
42 educational plans and may provide for penalties on a
43 participant's failure to make deposits as scheduled. A
44 participation agreement establishing such a plan must provide for
45 the limitation of scheduled deposits by the authority as

2 necessary to ensure that a participant's account does not exceed
3 the amount necessary to pay the beneficiary's projected higher
4 education expenses.

6 2. Lump-sum payments. A participation agreement may permit
7 a participant to make one or more lump-sum deposits to an account
8 for the benefit of a specific beneficiary. Lump-sum deposits may
9 be made through the assignment of state tax refunds.

10 3. Designation of beneficiaries. A participation agreement
11 must designate the name and date of birth of the beneficiary. A
12 beneficiary designated in a participation agreement may be
13 designated from date of birth to an age the authority may require
14 by rule.

16 4. Change of beneficiary. A beneficiary may be changed as
17 permitted by rule of the authority upon written request of the
18 participant, provided that the substitute beneficiary is eligible.

20 5. Amendment. A participation agreement may be freely
21 amended throughout its term to enable a participant to increase
22 or decrease the level of participation, change the designation of
23 a beneficiary and carry out similar matters.

24 6. Enrollment fee. The authority may not charge an
25 enrollment fee for participation in the program.

28 7. Cancellation. A participation agreement must provide
29 that the participation agreement may be canceled upon the terms
30 and conditions of the agreement and upon payment of the fees,
31 expenses and penalties set forth in rules adopted by the
32 authority.

34 8. Separate accounts. A participation agreement must
35 require that the authority maintain each participant's account
36 separately, subject to commingling for investment purposes, and
37 report the status of each participant's account to the
38 participant on a periodic basis, as established by rule of the
39 authority.

42 9. Rights and obligations. A participation agreement must
43 include any other rights and obligations of the participant, the
44 beneficiary and the authority.

46 10. Terms and conditions. A participation agreement may
47 include other terms and conditions the authority determines
48 necessary, including a limitation on liability of the authority
49 to the extent funds are disbursed in good faith.

50 11. No guaranty of admission. The execution of a
51 participation agreement by the authority does not guarantee in

2 any way that higher education expenses will be equal to
3 projections and estimates provided by the authority or that the
4 beneficiary named in any participation agreement will:

5 A. Be admitted to an institution of higher education;

6 B. Be allowed to continue attendance at the institution of
7 higher education following admission; or

8 C. Graduate from the institution of higher education.

9 **§11476. Investment options and parameters**

10 The authority, with the advice of the advisory committee,
11 may provide investment options for a participant within the
12 program fund to the extent permitted by Internal Revenue Code
13 provisions addressing qualified state tuition programs. The
14 authority, with the advice of the advisory committee, shall
15 invest the amounts on deposit in the program fund in a reasonable
16 manner to achieve the objectives of each fund, exercising the
17 discretion and care of a prudent person in similar circumstances
18 with similar objectives. A participant or designated beneficiary
19 may not direct the investment of any amounts on deposit in the
20 program fund, except to the extent allowed pursuant to provisions
21 of the Internal Revenue Code addressing qualified state tuition
22 programs. The authority shall give due consideration to rate of
23 return, term or maturity, diversification and liquidity of
24 investments within the program fund or any account in the program
25 fund pertaining to the projected disbursements and expenditures
26 from the program fund and the expected payments, deposits,
27 contributions and gifts to be received.

28 **§11477. Early termination or overfunding of participation**
29 **agreement**

30 1. Cancellation. The authority may by rule establish fees
31 and penalties applicable to early termination, overfunding of
32 accounts or failure to use the program fund for an eligible
33 purpose.

34 2. Death or disability. The authority may not levy or
35 assess an administration refund fee or penalty upon a
36 participant's termination of a participation agreement under the
37 following circumstances:

38 A. Death of the beneficiary;

39 B. Permanent disability or mental incapacity of the
40 beneficiary; or

2 C. Receipt by the beneficiary of a scholarship or
4 educational funding, identified by rule of the authority,
resulting in an excess of funds in the account not needed to
pay higher education expenses.

6 **§11478. Ownership of account; transfer of ownership rights**

8 For all purposes of the laws of the State, the following
10 provisions apply.

12 1. Participant retains ownership. The participant retains
14 ownership of all contributions and all program earnings credited
16 to a participant's account under a participation agreement up to
18 the date of utilization for payment of higher education expenses
20 for the beneficiary and, notwithstanding any other provision of
22 law, an amount credited to any account is not susceptible to
24 levy, execution, judgment or other operation of law, garnishment
26 or other judicial enforcement and the amount is not an asset or
property of either the participant or the beneficiary for
purposes of any state insolvency laws. Notwithstanding this
subsection, an amount credited to the participant's account may
not be included in any gross estate of the participant for
purposes of state tax law, except to the extent that the amount
may be includable in any gross estate for purposes of federal tax
law.

28 2. Institution of higher education is owner upon payment.
30 The institution of higher education obtains ownership of the
32 amounts disbursed from an account to the institution of higher
34 education with respect to the higher education expenses paid to
the institution at the time each disbursement is made to the
institution, subject to any applicable refund policy or other
policies of the institution.

36 3. Transfer of ownership. A participant may transfer
38 ownership rights to another eligible participant, including, but
40 not limited to, a gift of the ownership rights to a minor
42 beneficiary pursuant to Title 33, chapter 32; except that,
notwithstanding any provision of Title 33, chapter 32, the
transfer must be effected and the property distributed in
accordance with rules adopted by the authority or the terms of
the participation agreement.

44 4. Jurisdictional effect. A person may not be deemed a
46 resident of the State or be deemed as present in the State for
48 jurisdictional purposes solely by reason of being a beneficiary
or participant of an account.

50 5. Not security. A person may not pledge any interest in
an account as security for a loan or other debt.

2 **§11479. Tax exemption**

4 The assets of the program fund, all program earnings and any
6 income from operations are exempt from all taxation by the State
8 or any of its political subdivisions. A deposit to any account,
10 transfer of that account to a successor participant, designation
12 of a successor beneficiary of that account, credit of program
14 earnings to that account or distribution from that account used
16 for the purpose of paying higher education expenses of the
18 designated beneficiary of that account pursuant to this chapter
does not subject that participant, the estate of that participant
or any beneficiary to any state income or estate tax liability.
In the event of cancellation or termination of a participation
agreement and distribution of funds to a participant, the
increase in value over the amount deposited in the program fund
by that participant may be taxable to that participant in the
year distributed.

20 **§11480. Rights of participants and beneficiaries to assets of**
22 **the authority**

24 Participants and beneficiaries do not have access or rights
26 to any assets of the authority other than program fund assets
28 credited to the account of that participant or beneficiary. An
account may not be deemed a debt or obligation of the authority
or of the State.

30 **§11481. Release of information**

32 Notwithstanding any other provision of law, including,
34 without limitation, Title 1, chapter 13, subchapter I and Title
36 10, section 975-A, the authority may provide information
regarding individual participation accounts as required by
federal law and laws of the state of residence of any participant
or beneficiary.

38 **§11482. Exemption from registration**

40 A participation agreement offered pursuant to this chapter
42 is not a security as defined in Title 32, section 10501,
44 subsection 18. The authority may obtain written advice of legal
46 counsel or written advice from the United States Securities and
Exchange Commission, or both, that the offering of a
participation agreement is not subject to federal securities laws
but is in compliance with those laws and is not in violation of
other applicable laws.

2 **§11483. Compliance with federal law**

4 The authority may take any action necessary to ensure that
6 the program complies with the federal Internal Revenue Code of
8 1986, Section 529, as amended, and any successor provisions and
10 other applicable laws, rules and regulations adopted pursuant to
12 that provision to the extent necessary for the program fund to
14 constitute a qualified state tuition program with the benefits of
16 eligibility under provisions of the federal Internal Revenue Code
18 addressing qualified state tuition programs.

14 **§11484. Advisory Committee on College Savings**

16 The Advisory Committee on College Savings, referred to in
18 this chapter as the "advisory committee," is created to provide
20 advice to the authority on the operation of the program and
22 investment of the program fund.

24 **1. Membership.** The advisory committee consists of 7
26 members as follows:

28 A. The Treasurer of State, who serves as the chair of the
30 advisory committee;

32 B. Two members appointed by the Governor from the members
34 of the Maine Education Assistance Board;

36 C. Two members appointed by the Governor with experience in
38 and knowledge of institutional investment of funds; and

40 D. Two members appointed by the Governor representing
42 institutions of higher education with experience in and
44 knowledge of higher education financial and investment
46 matters. One member must be appointed to represent public
48 institutions of higher education and one member must be
50 appointed to represent private institutions of higher
 education.

2. Terms. Members of the advisory committee are appointed
 for terms as follows:

A. Members representing the Maine Education Assistance
 Board serve a term coterminous with their appointment to the
 Maine Education Assistance Board; and

B. Two of the remaining members appointed by the Governor
 under subsection 1, paragraphs C and D must be appointed for
 initial terms of 2 years and the other 2 members must be
 appointed for initial terms of 4 years. Thereafter, members

2 must be appointed for terms of 4 years. Members may be
3 removed for cause.

4 3. Compensation. Members of the advisory committee are
5 compensated in accordance with Title 5, chapter 379.

6 **§11485. Rulemaking**

7 The authority must establish rules for the implementation of
8 the program established by this chapter, including rules
9 establishing fees and penalties and rules necessary to ensure
10 treatment as a qualified state tuition program for federal tax
11 purposes. Rules adopted pursuant to this section, including
12 those setting fees and penalties, are routine technical rules as
13 defined by Title 5, chapter 375, subchapter II-A. The authority
14 shall submit a report to the joint standing committee of the
15 Legislature having jurisdiction over education and cultural
16 affairs by January 30, 1999 on the rules and rule-making process
17 to implement a program providing limits on future increases in
18 the costs of education of participating institutions of higher
19 education pursuant to section 11474, subsection 8.

20 **§11486. Liberal construction**

21 This chapter must be construed liberally in order to
22 effectuate its legislative intent.

23 Sec. 5. 36 MRSA §5122, sub-§2, ¶H, as amended by PL 1995, c.
24 639, §16, is further amended to read:

25 H. For each taxable year subsequent to the year of the
26 loss, an amount equal to the absolute value of the net
27 operating loss arising from tax years beginning on or after
28 January 1, 1989, but before January 1, 1993, for which
29 federal adjusted gross income was increased in accordance
30 with subsection 1, paragraph H and that pursuant to the
31 Code, Section 172 was carried back for federal income tax
32 purposes, but only to the extent that:

- 33 (1) Maine taxable income is not reduced below zero;
- 34 (2) The taxable year is within the allowable federal
35 period for carry-over; and
- 36 (3) The amount has not been previously used as a
37 modification pursuant to this subsection; and

38 Sec. 6. 36 MRSA §5122, sub-§2, ¶I, as amended by PL 1995, c.
39 639, §17, is further amended to read:

2 I. For income tax years beginning on or after January 1,
4 1991, an amount equal to the amount by which federal taxable
6 income was reduced because of vessel earnings from fishing
8 operations that were contributed to a capital construction
10 fund; and

12 **Sec. 7. 36 MRSA §5122, sub-§2, ¶J** is enacted to read:

14 J. Any amount constituting a qualified withdrawal from an
16 account established pursuant to Title 20-A, chapter 417-E
18 and used for paying higher education expenses.'

20 Further amend the bill by inserting at the end before the
22 summary the following:

24 **FISCAL NOTE**

26 **1998-99**

28 **REVENUES**

30 General Fund (\$8,223)
32 Other Funds (442)

34 The bill establishes the Maine College Savings Program Fund
36 to be administered by the Finance Authority of Maine. The
38 authority is allowed to assess a fee of up to 1% of the balance
40 of the fund in any year for the authority's administrative costs
42 and expenses.

44 The assets of the Maine College Savings Program Fund as well
46 as the interest earned on the funds that are paid to participants
48 are exempt from all state taxes. The additional tax exemption
50 will decrease General Fund revenue by \$8,223 in fiscal year
1998-99, \$33,049 in fiscal year 1999-2000 and \$62,092 in fiscal
year 2000-01. The corresponding decreases in dedicated revenue
to the Local Government Fund for state-municipal revenue sharing
will be \$442, \$1,776 and \$3,337, respectively.

52 **SUMMARY**

54 This amendment is the majority report and replaces the
56 bill. The amendment creates the Maine College Savings Program
58 to assist Maine residents in meeting the expenses of higher
60 education. Under the program, participants may establish college
savings accounts and use contributions and earnings on the
accounts for higher education expenses.

COMMITTEE AMENDMENT "A" to S.P. 622, L.D. 1825

2 The Maine College Savings Program is designed to benefit
4 from recently enacted federal tax laws providing favorable income
6 tax treatment to savings programs for the expenses of higher
education. The amendment provides that earnings on an eligible
account are exempt from state tax.

8 The Maine College Savings Program is administered by the
10 Finance Authority of Maine and the Maine College Savings Program
12 Fund is held by the Treasurer of State. The Treasurer of State
14 is required to keep the program fund segregated from other funds
held by the Treasurer of State and to invest the money as
16 directed by the Finance Authority of Maine, which must make
investment decisions with the assistance of the Advisory
Committee on College Savings.

18 The Finance Authority of Maine is also authorized to
20 implement a program limiting future increases on the costs of
education to participants through the negotiation of agreements
22 with institutions of higher education. The Finance Authority of
Maine is required to report to the joint standing committee of
24 the Legislature having jurisdiction over education and cultural
affairs by January 30, 1999 on the rules and rule-making process
relating to implementing this component of the Maine College
Savings Program.

26 The amendment clarifies the tax treatment under state law
28 for amounts withdrawn from accounts established under the Maine
College Savings Program and used for higher education expenses.

30 The amendment also adds a fiscal note to the bill.