

MAINE STATE LEGISLATURE

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DATE: *March 26, 1998*

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EDUCATION AND CULTURAL AFFAIRS

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STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" 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:

CHAPTER 417-E

MAINE COLLEGE SAVINGS PROGRAM

§11471. Definitions

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

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

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

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.

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.

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

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

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.

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.

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

10. Participation agreement. "Participation agreement" means an agreement between a participant and the authority providing for the establishment by the participant of one or more accounts within the program fund and for the administration of those accounts for the benefit of the participant and of one or more beneficiaries.

11. Program earnings. "Program earnings" means all interest, dividends, premiums, fees, profits upon disposition of assets and other revenue actually received by or on behalf of the 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.

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

§11472. Maine College Savings Program

The Maine College Savings Program, referred to in this chapter as the "program," is established to encourage the 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.

§11473. Maine College Savings Program Fund

1. Creation. The Maine College Savings Program Fund, referred to in this chapter as the "program fund," is established as a nonlapsing fund to be directed and administered by the authority and held by the Treasurer of State. The Treasurer of State shall keep the program fund segregated from all other funds 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.

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

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

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

C. All money received pursuant to participation agreements;

2 D. Any grants, gifts and other money from the State and
4 from any unit of federal, state or local government or from
6 any person, firm, partnership or corporation for deposit to
the program fund. Contributions may be limited in
application to specified classes of beneficiaries; and

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

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

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

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

38 **§11474. Powers of the authority**

40 The authority, in the capacity as administrator of the
42 program fund, in addition to all of the powers set out in Title
44 10, section 969-A, may:

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

2 2. Invest funds. With the advice of the advisory
4 committee, direct the Treasurer of State to invest and reinvest
6 money in the program fund in any investments determined by the
8 authority to be appropriate, notwithstanding any general
 statutory limitations on investments of public funds specifically
 determined to be inapplicable to the program fund. The authority
 must invest money from the program fund in financial institutions
 located in the State to the extent determined reasonable by the
 authority;

10 3. Participation agreements. Enter into participation
12 agreements with participants in accordance with the requirements
 of section 11475;

14 4. Make payments. Make payments to beneficiaries and to
16 institutions of higher education on behalf of beneficiaries;

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

22 6. Appoint a program administrator. Appoint a program
24 administrator and other employees necessary to carry out the
 duties of this chapter;

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

32 8. Participate in programs. Participate in any federal,
34 state or local governmental program for the benefit of the
36 program or the program fund, including, without limitation,
 soliciting, establishing and participating in a program providing
 limits on future increases in the costs of education at
38 participating institutions of higher education on those terms and
 conditions that the authority may negotiate with the
40 institutions. The authority shall provisionally adopt rules to
 establish and implement a program providing limits on future
42 increases in the costs of education by January 1, 1999. Rules
 adopted pursuant to this subsection are major substantive rules
44 as defined in Title 5, chapter 375, subchapter II-A;

46 9. Procure insurance. Procure insurance against any loss
48 in connection with the property or assets or activities of the
 program or the program fund;

2 10. Administer the program fund. Administer the program
fund;

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

8 12. Transfer investments. Sell, assign, transfer and
10 dispose of any of the securities and investments of the program.
All investments must be clearly marked to indicate designation to
12 the Maine College Savings Program fund and, to the extent
possible, must be registered in the name of the program. All
14 interest derived from investments and any gains from the sale or
exchange of investments must be credited by the authority to the
16 account of the program;

18 13. Employ investment managers and consultants. Contract
for goods and services and engage personnel and consultants,
20 including investment advisors and managers, actuaries, managers,
counsel, marketing consultants, fiduciaries and auditors, and
22 evaluation services or other services as determined by the
authority to be necessary for the effective and efficient
24 operation of the program. Directly or through an investment
consultant, the authority may contract to provide services that
26 are a part of the comprehensive investment plan or as determined
necessary by the authority or the consultant, including, but not
28 limited to, providing consolidated billing, individual and
collective recordkeeping and accounting, and asset purchase,
30 control and safekeeping;

32 14. Fund costs and expenses. Fund all costs and expenses
incurred in connection with the exercise of its powers under this
34 chapter as administrative costs of the program and the program
fund. The authority may not assess the program fund a fee in
36 excess of 1% of the balance in the fund in any year for the
administrative costs and expenses of the program; and

38 15. Marketing costs. Engage in marketing services to
40 promote the program, except that all marketing costs must be
absorbed by the authority.

42 §11475. Participation agreement

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

48 1. Periodic payments. A participation agreement may
50 require or permit a participant to invest a specific amount of

2 money in the program fund for a specific period of time for the
3 benefit of a specific beneficiary. Periodic deposits may be made
4 through a payroll deduction plan or an automatic deposit plan or
5 through assignment of state tax refunds. A participation
6 agreement establishing such a periodic deposit plan may include
7 provisions to adjust scheduled deposits on the basis of change in
8 a participant's economic circumstances or a beneficiary's
9 educational plans and may provide for penalties on a
10 participant's failure to make deposits as scheduled. A
11 participation agreement establishing such a plan must provide for
12 the limitation of scheduled deposits by the authority as
13 necessary to ensure that a participant's account does not exceed
14 the amount necessary to pay the beneficiary's projected higher
15 education expenses.

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

20 3. Designation of beneficiaries. A participation agreement
21 must designate the name and date of birth of the beneficiary. A
22 beneficiary designated in a participation agreement may be
23 designated from date of birth to an age the authority may require
24 by rule.

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

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

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

34 7. Cancellation. A participation agreement must provide
35 that the participation agreement may be canceled upon the terms
36 and conditions of the agreement and upon payment of the fees,
37 expenses and penalties set forth in rules adopted by the
38 authority.

39 8. Separate accounts. A participation agreement must
40 require that the authority maintain each participant's account
41 separately, subject to commingling for investment purposes, and
42 report the status of each participant's account to the
43 participant on a periodic basis, as established by rule of the
44 authority.

2 9. Rights and obligations. A participation agreement must
4 include any other rights and obligations of the participant, the
 beneficiary and the authority.

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

10 11. No guaranty of admission. The execution of a
12 participation agreement by the authority does not guarantee in
14 any way that higher education expenses will be equal to
 projections and estimates provided by the authority or that the
 beneficiary named in any participation agreement will:

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

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

22 C. Graduate from the institution of higher education.

24 §11476. Investment options and parameters

26 The authority, with the advice of the advisory committee,
28 may provide investment options for a participant within the
30 program fund to the extent permitted by Internal Revenue Code
32 provisions addressing qualified state tuition programs. The
34 authority, with the advice of the advisory committee, shall
36 invest the amounts on deposit in the program fund in a reasonable
38 manner to achieve the objectives of each fund, exercising the
40 discretion and care of a prudent person in similar circumstances
42 with similar objectives. A participant or designated beneficiary
 may not direct the investment of any amounts on deposit in the
 program fund, except to the extent allowed pursuant to provisions
 of the Internal Revenue Code addressing qualified state tuition
 programs. The authority shall give due consideration to rate of
 return, term or maturity, diversification and liquidity of
 investments within the program fund or any account in the program
 fund pertaining to the projected disbursements and expenditures
 from the program fund and the expected payments, deposits,
 contributions and gifts to be received.

44 §11477. Early termination or overfunding of participation
46 agreement

48 1. Cancellation. The authority may by rule establish fees
 and penalties applicable to early termination, overfunding of

2 accounts or failure to use the program fund for an eligible
3 purpose.

4 2. Death or disability. The authority may not levy or
5 assess an administration refund fee or penalty upon a
6 participant's termination of a participation agreement under the
7 following circumstances:

8 A. Death of the beneficiary:

10 B. Permanent disability or mental incapacity of the
11 beneficiary; or

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

18 **§11478. Ownership of account; transfer of ownership rights**

20 For all purposes of the laws of the State, the following
21 provisions apply.

24 1. Participant retains ownership. The participant retains
25 ownership of all contributions and all program earnings credited
26 to a participant's account under a participation agreement up to
27 the date of utilization for payment of higher education expenses
28 for the beneficiary and, notwithstanding any other provision of
29 law, an amount credited to any account is not susceptible to
30 levy, execution, judgment or other operation of law, garnishment
31 or other judicial enforcement and the amount is not an asset or
32 property of either the participant or the beneficiary for
33 purposes of any state insolvency laws. Notwithstanding this
34 subsection, an amount credited to the participant's account may
35 not be included in any gross estate of the participant for
36 purposes of state tax law, except to the extent that the amount
37 may be includable in any gross estate for purposes of federal tax
38 law.

40 2. Institution of higher education is owner upon payment.
41 The institution of higher education obtains ownership of the
42 amounts disbursed from an account to the institution of higher
43 education with respect to the higher education expenses paid to
44 the institution at the time each disbursement is made to the
45 institution, subject to any applicable refund policy or other
46 policies of the institution.

48 3. Transfer of ownership. A participant may transfer
49 ownership rights to another eligible participant, including, but
50 not limited to, a gift of the ownership rights to a minor

2 beneficiary pursuant to Title 33, chapter 32; except that,
3 notwithstanding any provision of Title 33, chapter 32, the
4 transfer must be effected and the property distributed in
5 accordance with rules adopted by the authority or the terms of
6 the participation agreement.

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

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

13 **§11479. Tax exemption**

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

30
31 **§11480. Rights of participants and beneficiaries to assets of**
32 **the authority**

33
34 Participants and beneficiaries do not have access or rights
35 to any assets of the authority other than program fund assets
36 credited to the account of that participant or beneficiary. An
37 account may not be deemed a debt or obligation of the authority
38 or of the State.

39 **§11481. Release of information**

40
41 Notwithstanding any other provision of law, including,
42 without limitation, Title 1, chapter 13, subchapter I and Title
43 10, section 975-A, the authority may provide information
44 regarding individual participation accounts as required by
45

2 federal law and laws of the state of residence of any participant
3 or beneficiary.

4 **§11482. Exemption from registration**

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

14 **§11483. Compliance with federal law**

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

24 **§11484. Advisory Committee on College Savings**

26 The Advisory Committee on College Savings, referred to in
27 this chapter as the "advisory committee," is created to provide
28 advice to the authority on the operation of the program and
29 investment of the program fund.

30 **1. Membership.** The advisory committee consists of 7
31 members as follows:

32 A. The Treasurer of State, who serves as the chair of the
33 advisory committee;

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

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

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

2 appointed to represent private institutions of higher
3 education.

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

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

9 B. Two of the remaining members appointed by the Governor
10 under subsection 1, paragraphs C and D must be appointed for
11 initial terms of 2 years and the other 2 members must be
12 appointed for initial terms of 4 years. Thereafter, members
13 must be appointed for terms of 4 years. Members may be
14 removed for cause.

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

17 **§11485. Rulemaking**

18 The authority must establish rules for the implementation of
19 the program established by this chapter, including rules
20 establishing fees and penalties and rules necessary to ensure
21 treatment as a qualified state tuition program for federal tax
22 purposes. Rules adopted pursuant to this section, including
23 those setting fees and penalties, except for rules adopted
24 pursuant to section 11475, subsection 8, are routine technical
25 rules as defined by Title 5, chapter 375, subchapter II-A.

26 **§11486. Liberal construction**

27 This chapter must be construed liberally in order to
28 effectuate its legislative intent.

29 **Sec. 5. 36 MRSA §5122, sub-§2, ¶H,** as amended by PL 1995, c.
30 639, §16, is further amended to read:

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

- 39 (1) Maine taxable income is not reduced below zero;

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(2) The taxable year is within the allowable federal period for carry-over; and

(3) The amount has not been previously used as a modification pursuant to this subsection; and

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

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

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

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

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

FISCAL NOTE

1998-99

REVENUES

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

The bill establishes the Maine College Savings Program Fund to be administered by the Finance Authority of Maine. The authority is allowed to assess a fee of up to 1% of the balance of the fund in any year for the authority's administrative costs and expenses excluding the costs related to marketing, which the authority is required to absorb. Absorbing those marketing costs, estimated by the authority to be \$250,000 annually, could reduce funding available for other student financial assistance programs administered by the authority.

The assets of the Maine College Savings Program Fund as well as the interest earned on the funds that are paid to participants are exempt from all state taxes. The additional tax exemption 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

2 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.'

6 **SUMMARY**

8 This amendment is the minority report and replaces the
bill. The minority report differs from the majority report in 2
ways.

12 1. The minority report requires that the Finance Authority
of Maine adopt rules to implement the tuition lock-in component
14 of the Maine College Savings Program by January 1, 1999 and
designates those rules as major substantive. The majority report
16 designates the rules as routine technical and requires the
Finance Authority of Maine to report to the joint standing
18 committee of the Legislature having jurisdiction over education
matters on the outcome of the rule-making process by January 1,
20 1999.

22 2. The minority report requires the Finance Authority of
Maine to absorb the marketing costs for the program.

24 Like the majority report, this amendment creates the Maine
26 College Savings Program to assist Maine residents in meeting the
expenses of higher education. Under the program, participants
28 may establish college savings accounts and use contributions and
earnings on the accounts for higher education expenses.

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

36 The amendment designates the Finance Authority of Maine as
38 the administrator of the Maine College Savings Program and the
program fund is required to be held by the Treasurer of State.
40 The Treasurer of State is required to keep the program funds
segregated from other funds held by the Treasurer of State and to
42 invest the money as directed by the Finance Authority of Maine,
which must make investment decisions with the assistance of the
44 Advisory Committee on College Savings.

46 The Finance Authority of Maine is also authorized to
implement a program limiting future increases to participants on
48 the costs of education through the negotiation of agreements with
institutions of higher education. Before implementing this
50 tuition lock-in component of the Maine College Savings Program,

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2 the Finance Authority of Maine is required to provisionally adopt
rules for the component and submit the rules for legislative
review by January 1, 1999.

4
6 The amendment clarifies the tax treatment under state law
for amounts withdrawn from accounts established under the Maine
College Savings Program and used for higher education expenses.

8
The amendment also adds a fiscal note to the bill.