

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1825

S.P. 622

In Senate, April 28, 1997

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**An Act to Authorize a Tuition Savings Plan to Encourage Attendance at  
Institutions of Higher Education.**

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Received by the Secretary of the Senate on April 17, 1997. Referred to the Committee on Education and Cultural Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator PENDLETON of Cumberland.  
Cosponsored by Representative KONTOS of Windham and  
Senators: BENNETT of Oxford, HALL of Piscataquis, Representatives: CAMERON of  
Rumford, CLARK of Millinocket, DESMOND of Mapleton, MURPHY of Kennebunk,  
TUTTLE of Sanford, USHER of Westbrook.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 10 MRSA §1013, sub-§10**, as amended by PL 1995, c. 462,  
Pt. A, §17, is further amended to read:

6 **10. Student financial assistance counseling and outreach**  
7 **program.** The student financial assistance counseling and  
8 outreach program, as established in Title 20-A, chapter 430-B; and

10 **Sec. 2. 10 MRSA §1013, sub-§13**, as amended by PL 1991, c. 824,  
Pt. C, §1, is further amended to read:

12 **13. Higher Education Loan Program.** The Higher Education  
14 Loan Program as established in Title 20-A, chapter 417-C; and

16 **Sec. 3. 10 MRSA §1013, sub-§14** is enacted to read:

18 **14. Maine Tuition Savings Program.** The Maine Tuition  
20 Savings Program as established in Title 20-A, chapter 417-D.

22 **Sec. 4. 20-A MRSA c. 417-D** is enacted to read:

24 **CHAPTER 417-D**

26 **MAINE TUITION SAVINGS PROGRAM**

28 **§11471. Definitions**

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

32 **1. Authority.** "Authority" means the Finance Authority of  
34 Maine.

36 **2. Beneficiary.** "Beneficiary" means any person designated  
38 by a participation agreement to benefit from payments for higher  
education costs at an institution of higher education.

40 **3. Benefits.** "Benefits" means the payment of higher  
42 education costs on behalf of a beneficiary by the tuition savings  
plan trust during the beneficiary's attendance at an institution  
of higher education.

44 **4. Fund.** "Fund" means the Maine Tuition Savings Plan Trust  
46 Fund established in this chapter.

48 **5. Higher education costs.** "Higher education costs" means  
50 the certified costs for attendance at an institution of higher  
education as those costs are defined in 20 United States Code,  
Section 108711, as amended, including tuition and fees, room and

board, transportation, books and supplies and miscellaneous personal expenses.

**6. Institution of higher education.** "Institution of higher education" means an institution of higher education located in this State or in another state with which the authority has entered into an agreement and that meets the requirements of and conforms to definitions contained in 20 United States Code, Sections 1088 and 1141.

**7. Participant.** "Participant" means an individual, firm or corporation, or a legal representative of any of them, who has entered into a participation agreement pursuant to this chapter for the advance payment of higher education costs on behalf of a beneficiary.

**8. Participation agreement.** "Participation agreement" means an agreement between a participant and the trust, pursuant to and conforming with the requirements of this chapter.

**9. Program.** "Program" means the Maine Tuition Savings Program established in section 11472.

**10. Trust.** "Trust" means the Maine Tuition Savings Plan Trust established in this chapter.

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

**12. Vested participation agreement.** "Vested participation agreement" means a participation agreement that has been in full force and effect during the number of years of continuous participation in the savings plan trust program as the authority requires by rule.

#### **§11472. Program established**

The Maine Tuition Savings Program is established to encourage the investment of funds for use for tuition at institutions of higher education. The authority shall administer the program and act as trustee of the Maine Tuition Savings Program Trust Fund, established by this chapter.

#### **§11473. Maine Tuition Savings Plan Trust Fund established**

**1. Established.** The Maine Tuition Savings Plan Trust Fund is established under the jurisdiction and control of the authority.

2           2. Sources of money. There must be paid into the fund the  
3 following:

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

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

8           C. All money received pursuant to participation agreements;

10           D. Any grants, gifts and any other money from the State,  
11 any unit of federal, state or local government or any other  
12 person, firm, partnership or corporation for deposit in the  
13 fund. Contributions from other than the General Fund may be  
14 limited in application to definite classes of beneficiaries;  
15 and

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

18           3. Application of fund. Money in the fund may be applied  
19 to carry out any power of the authority under or in connection  
20 with this chapter. Interest and investment income earned on the  
21 fund may be used to pay administrative costs associated with  
22 carrying out the requirements of this chapter.

23           4. Accounts within fund. The authority may divide the fund  
24 into separate accounts as it determines necessary or convenient  
25 for carrying out this section, including without limitation an  
26 account specifically designated to be used to provide  
27 supplemental loans to beneficiaries.

28           §11474. Trustee powers of the authority

29           The authority, in the capacity of trustee and in addition to  
30 the powers set out in Title 10, section 969-A, may:

31           1. Enter into contracts. Make and enter into contracts  
32 necessary for the administration of the trust, including without  
33 limitation agreements with any institution of higher education,  
34 the State or any federal or other state agency or entity;

35           2. Invest funds. Invest money within the fund in any  
36 investments determined by the authority to be appropriate,  
37 notwithstanding any other statutory limitations that are  
38 specifically determined to be inapplicable to the trust;

39           3. Participation agreements. Enter into participation  
40 agreements with participants;

2           4. Make payments. Make payments to institutions of higher  
education pursuant to participation agreements on behalf of  
beneficiaries;

4  
6           5. Make refunds. Make refunds to participants on the  
termination of participation agreements pursuant to the  
provisions, limitations and restrictions set forth in this  
8 chapter;

10           6. Appoint a program administrator. Appoint a program  
administrator and determine the duties of the program  
12 administrator and other staff as necessary;

14           7. Carry out studies. Carry out studies and projections in  
order to advise participants regarding present and future  
16 estimated higher education costs and levels of financial  
participation in the trust required in order to enable  
18 participants to achieve their educational funding objectives;

20           8. Contract for goods and services. Contract for goods and  
services and engage personnel and consultants as necessary,  
22 including investment advisors, actuaries, managers, counsel and  
auditors for the purpose of rendering professional, managerial  
24 and technical assistance and advice, all of which are payable  
from any money of the trust;

26           9. Participate in programs. Participate in any way in any  
28 federal, state or local governmental program for the benefit of  
the trust;

30           10. Procure insurance. Procure insurance against any loss  
32 in connection with the property, assets or activities of the  
trust; and

34           11. Administer funds. Administer the funds of the trust.

36 §11475. Participation agreements for trust

38           The trust may enter into participation agreements with  
40 participants on behalf of beneficiaries pursuant to the following  
terms and agreements.

42           1. Periodic payments. A participation agreement must  
44 require a participant to agree to invest a specific amount of  
money in the trust for a specific period of time for the benefit  
46 of a specific beneficiary. Periodic payments may be made through  
a payroll deduction. A participation agreement may be amended to  
48 provide for adjusted levels of payments based upon changed  
circumstances or changes in educational plans and may contain  
50 penalties for failure to make payments when scheduled. A

2 participation agreement must require that it be amended as  
3 necessary to ensure that a participant does not contribute  
4 payments in excess of the amount necessary to pay the  
5 beneficiary's qualified higher education expenses.

6 2. Lump-sum payments. Notwithstanding subsection 1, a  
7 participant may elect to enter into a lump-sum payment  
8 participation agreement in connection with which a single  
9 lump-sum payment is made by the participant for the benefit of a  
10 beneficiary.

12 3. Designation of beneficiary. A beneficiary designated in  
13 a participation agreement may be designated from date of birth to  
14 such age as the authority may designate by rule.

16 4. Payment of benefits. Payment of benefits provided under  
17 a participation agreement must begin no later than the  
18 beneficiary's first full academic semester at an institution of  
19 higher education following the 18th birthday of the beneficiary  
20 unless the participant notifies the program administrator to  
21 delay payment of benefits for a designated period of time. At  
22 the end of that designated period of time, the payment of  
23 benefits must begin unless the participant again notifies the  
24 program administrator to delay payment of benefits.

26 5. No guarantee of admission. The execution of a  
27 participation agreement by the trust does not guarantee in any  
28 way that higher education costs will be equal to projections and  
29 estimates provided by the trust or that the beneficiary named in  
30 the participation agreement will:

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

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

36 C. Graduate from the institution of higher education.

38 6. Change of beneficiary. A beneficiary may be changed as  
39 permitted by rule of the authority upon written request of the  
40 participant prior to the date of admission of the beneficiary  
41 under a participation agreement by an institution of higher  
42 education if the substitute beneficiary is eligible.

44 7. Amendment. A participation agreement may be freely  
45 amended throughout its term in order to enable a participant to  
46 increase or decrease the level of participation, change the  
47 designation of beneficiary and carry out similar matters.  
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2           8. Cancellation. A participation agreement must provide  
4           that the participation agreement may be cancelled upon the terms  
            and conditions and upon payments of the fees, costs and penalties  
            set forth in the rules of the authority.

6           9. Separate accounts. A participation agreement must  
8           require that the authority maintain each participant's account  
10          separately and report the status of the account to the  
            participant on a periodic basis as established by rule of the  
            authority.

12          §11476. Program and administrative funds for trust; investment  
14                                   and payments from fund

16           All money paid by participants in connection with  
18           participation agreements must be deposited as received into the  
20           fund and must be promptly invested and accounted for separately.  
22           A participant or beneficiary may not direct investments.  
24           Deposits and interest accumulated on behalf of participants in  
            the fund may be used for payments to any institution of higher  
            education.

26          §11477. Cancellation of participation agreement

28           1. Cancellation before 2 years. A participant may cancel a  
30           participation agreement at will. When a participant cancels the  
32           participation agreement before 2 years from the date of original  
34           execution of the participation agreement, 100% of the principal  
36           amount of all contributions made by the participant must be  
            refunded to the participant. In order to reasonably compensate  
            the trust for its administrative costs incident to the  
            participation agreement, the participant must pay an  
            administrative refund fee equal to all interest that has been  
            credited to the participant's account, plus a penalty fee to be  
            determined by the authority.

38           2. Cancellation after 2 years. When a participant cancels  
40           a participation agreement after 2 years from the date of original  
42           execution of the participation agreement, the participant is  
44           entitled to the return of the principal amount of all  
            contributions made by the participant, plus interest on the  
            amount of all contributions at the rate of interest applicable as  
            determined by the authority, less reasonable administrative costs  
            incident to the participation agreement and a monetary penalty to  
            be determined by the authority.

46           3. Death or disability. The trust may not levy an  
48           administrative refund fee or penalty upon a participant's  
50           termination of a participation agreement under the following  
            circumstances:



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- A. Death of the beneficiary;
- B. Permanent disability or mental incapacity of the beneficiary; or
- C. The beneficiary receives a qualifying scholarship or educational allowance, such that there are funds in the account not necessary to pay higher education costs.

When a participant cancels a participation agreement due to a circumstance under paragraph A, B or C, the participant may receive the principal amount of all payments made by the participant under the participation agreement and the actual interest earned on the payments.

4. Failure to be admitted. Upon the termination of a participation agreement because the beneficiary fails to be admitted to an institution of higher education after filing a proper application for admission, 100% of the principal amount of all contributions made by the participant must be refunded to the participant. A reasonable administrative refund fee and penalty must be levied by the trust.

**§11478. Ownership of payment and interest; transfer of ownership rights**

1. Participant retains ownership. The participant retains ownership of all payments made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the payments made by the participant is held in trust for the benefit of the beneficiary and, notwithstanding any other provision of law, payments made under a participation agreement are not susceptible to levy, execution, judgment or other operation of law, garnishment or other judicial enforcement, nor are they an asset or property of either the participant or the beneficiary for purposes of any state insolvency laws.

2. Ownership upon termination. If a participation agreement is terminated prior to payment of higher education costs for the beneficiary, the participant retains ownership of all payments made under the participation agreement and a reversionary right to receive interest on all of the payments at the rate of interest at which the payments were invested, except that a right to receive interest does not exist in cases of voluntary participant termination except as provided in section 11475.

2           3. Balance paid to participant. If the beneficiary  
3 graduates from an institution of higher education and a balance  
4 remains in the participant's account, then the program  
5 administrator shall pay the balance to the participant.

6           4. Institution of higher education is owner upon payment.  
7 The institution of higher education obtains ownership of the  
8 payments made for the higher education costs paid to the  
9 institution at the time each payment is made to the institution.

10           5. Unaccounted for amounts owned by trust. Any amounts  
11 paid pursuant to the program that are not listed in this section  
12 are owned by the trust.

13           6. Transfer of ownership. A participant may transfer  
14 ownership rights to another eligible participant, including, but  
15 not limited to, a gift of the ownership rights to a minor  
16 beneficiary pursuant to Title 33, chapter 32, except that,  
17 notwithstanding any provision of law, the transfer must be  
18 affected and the property distributed in accordance with rules of  
19 the authority or the terms of the participation agreement.

20           §11479. Effect of payment on termination of need and eligibility  
21           for student aid

22           A student loan program, student grant program or other  
23 program administered by any agency of the State, except as  
24 otherwise provided by federal law or the provision of any  
25 specific grant applicable to federal law, may not take into  
26 account and consider amounts available for the payment of higher  
27 education costs pursuant to the program in determining need and  
28 eligibility for student aid.

29           §11480. Borrowing from trust

30           In connection with a participation agreement as to which  
31 benefits for payment of higher education costs have accrued and  
32 are being paid or are eligible to be paid, the participant may  
33 borrow from the trust, but only for the purpose of paying higher  
34 education costs to an institution of higher education. The  
35 interest rate payable by a participant for any such borrowing  
36 must be a rate established by the authority. Any contribution to  
37 a loan program from trust funds or any loan made with trust funds  
38 must be insured.

39           §11481. Tax exemption

40           The property of the trust and its income from operations are  
41 exempt from all taxation by the State or any of its political  
42 subdivisions. Interest earned on money paid by a participant is  
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2 not subject to state income tax for either a participant or a  
4 beneficiary of a participation agreement if the money is used for  
6 an educational purpose. Any money not used for an educational  
8 purpose must be taxed as current income in the year received by  
10 the participant or the beneficiary.

12 **§11482. Property rights to assets in trust**

14 The assets of the trust must be preserved, invested and  
16 expended solely for the purposes of the trust and must be held in  
18 trust for participants and beneficiaries. The State has no  
20 property rights in the assets of the trust. The assets may not  
22 be transferred or used by the State for any purposes other than  
24 the purposes of the trust.

26 **§11483. Release of information**

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

40 **§11484. Rulemaking**

42 The authority shall adopt rules for the implementation of  
44 the program established by this chapter, including, but not  
46 limited to, the establishment of fees that may be charged for the  
48 administration of the program. Rules adopted pursuant to this  
section are routine technical rules as defined by Title 5,  
chapter 375, subchapter II-A.

**§11484. Liberal construction**

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

**SUMMARY**

This bill creates the Maine Tuition Savings Program to assist residents of the State in meeting the costs of higher education. The bill provides a mechanism for people to save for education, including favorable tax considerations. This bill is designed to allow a participant to benefit from recently enacted federal tax law providing favorable treatment to tuition savings plans.