

**SENATE, No. 2054**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED JANUARY 22, 2001

**Sponsored by:**

**Senator JOHN O. BENNETT**

**District 12 (Monmouth)**

**SYNOPSIS**

Establishes New Jersey Prepaid Higher Education Expense Program.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT establishing a Prepaid Higher Education Expense Program,  
2 amending and supplementing Title 18A of the New Jersey Statutes  
3 and making an appropriation.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. (New section) Sections 1 through 16 of this act shall be known  
9 and may be cited as the "New Jersey Prepaid Higher Education  
10 Expense Program Act of 2000."

11

12 2. (New section) The Legislature finds and declares: that  
13 educational opportunity at the college and university level is a critical  
14 State interest which is linked to the needs of the State to ensure a  
15 well-educated work force; that educational opportunity is best ensured  
16 through the provision of institutions of higher education which are  
17 geographically and financially accessible; that it is in the best interests  
18 of this State to adopt and foster mechanisms which will encourage its  
19 citizens to engage in the timely financial planning which is necessary  
20 to guarantee that students will have the financial resources necessary  
21 to pursue a higher education given the annually escalating level of  
22 resources which such attendance requires; and that one such  
23 mechanism which has proven successful in some other states is the  
24 establishment of a program through which many of the costs  
25 associated with attendance at institutions of higher education may be  
26 paid in advance and fixed at a guaranteed level for the duration of  
27 undergraduate enrollment.

28

29 3. (New section) As used in sections 1 through 16 of this act:

30 "Advance payment contract" means a contract entered into by the  
31 board and a purchaser pursuant to the provisions of this act;

32 "Board" means the Prepaid Higher Education Expense Board  
33 established pursuant to section 6 of this act;

34 "Eligible independent institution of higher education" means those  
35 institutions of higher education incorporated and located in this State,  
36 which, by virtue of law or character or license, are nonprofit  
37 educational institutions empowered to grant academic degrees and  
38 which provide a level of education which is equivalent to the education  
39 provided by the State's public institutions of higher education as  
40 attested by the receipt of and continuation of regional accreditation by  
41 the Middle States Association of Colleges and Schools, and which are  
42 eligible to receive State aid under the provisions of the Constitution of  
43 the United States and the Constitution of the State of New Jersey and

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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1 whose students are eligible to receive benefits under section 529 of the  
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.529. "Eligible  
3 independent institution of higher education" does not include any  
4 educational institution dedicated primarily to the preparation or  
5 training of ministers, priests, rabbis, or other professional persons in  
6 the field of religion;

7 "Fund" means the Prepaid Higher Education Expense Trust Fund  
8 established pursuant to section 5 of this act;

9 "Institution of higher education" means an eligible educational  
10 institution as defined in or for purposes of section 529 of the federal  
11 Internal Revenue Code of 1986, 26 U.S.C.s.529. "Institution of higher  
12 education" shall include a proprietary institution if expenses for tuition  
13 at the institution would be considered qualified higher education  
14 expenses under section 529 of the federal Internal Revenue Code of  
15 1986, 26 U.S.C.s.529, but only for degree granting programs licensed  
16 or approved by the Commission on Higher Education or for other  
17 proprietary institutions as determined by the board;

18 "Program" means the New Jersey Prepaid Higher Education  
19 Expense Program established pursuant to section 4 of this act;

20 "Public institution of higher education" means Rutgers, The State  
21 University, the State colleges or universities established pursuant to  
22 chapter 64 of Title 18A of the New Jersey Statutes, the New Jersey  
23 Institute of Technology, the University of Medicine and Dentistry of  
24 New Jersey, the county colleges and any other public university or  
25 college now or hereafter established or authorized by State law. A  
26 public institution of higher education is an institution whose students  
27 are eligible to receive benefits under section 529 of the federal Internal  
28 Revenue Code of 1986, 26 U.S.C. s.529;

29 "Purchaser" means a person who makes or is obligated to make  
30 payments in accordance with an advance payment contract;

31 "Qualified beneficiary" means: a. a resident of this State at the time  
32 a purchaser enters into an advance payment contract on behalf of the  
33 resident; or b. a nonresident who is the child of a noncustodial parent  
34 who is a resident of the State at the time that the noncustodial parent  
35 enters into an advance payment contract on behalf of the child;

36 "Tuition" means the charges imposed by an institution of higher  
37 education for enrollment at the institution.

38

39 4. (New section) a. There is established the New Jersey Prepaid  
40 Higher Education Expense Program to provide a means for payment  
41 of the costs of tuition in advance of enrollment at an institution of  
42 higher education. Moneys remitted in accordance with advance  
43 payment contracts shall be combined and invested in a manner that  
44 yields, at a minimum, sufficient interest to generate the difference  
45 between the prepaid amount and the average in-state tuition costs at  
46 public institutions of higher education in the State at the time that the

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1 benefits are exercised.

2 b. The program shall be administered by the Prepaid Higher  
3 Education Expense Board established pursuant to section 6 of this act.

4

5 5. (New section) a. There is created within the Prepaid Higher  
6 Education Expense Board the Prepaid Higher Education Expense  
7 Trust Fund. The fund shall consist of State appropriations, moneys  
8 acquired from other governmental or private sources, and moneys  
9 remitted in accordance with advance payment contracts. Dividends,  
10 interest, and gains accruing to the fund shall increase the total funds  
11 available for the program.

12 b. Any funds associated with contracts for which refunds are due,  
13 but have not been claimed, shall increase the total funds available for  
14 the program. However, the board shall establish procedures for  
15 notifying purchasers of any unclaimed refund and shall establish a time  
16 period after which a refund may not be claimed.

17 c. Any balance contained in the fund at the end of a fiscal year shall  
18 remain therein and shall be available for carrying out the purposes of  
19 the program.

20 d. The assets of the fund shall be maintained, invested, and  
21 expended solely for the purposes of this act and shall not be loaned,  
22 transferred, or otherwise used by the State for any purpose other than  
23 the purposes of this act. This subsection shall not be construed to  
24 prohibit the board from investing in, by purchase or otherwise, bonds,  
25 notes or other obligations of the State or an agency or instrumentality  
26 of the State.

27 e. Unless otherwise specified by the board, assets of the fund shall  
28 be expended in the following order of priority:

29 (1) to make payments to institutions of higher education on behalf  
30 of qualified beneficiaries;

31 (2) to make refunds upon cancellation of advance payment  
32 contracts; and

33 (3) to pay the costs of program administration and operations.

34 f. The board shall administer the fund in a manner that is  
35 sufficiently actuarially sound to defray the obligations of the program.  
36 The board shall annually evaluate or cause to be evaluated the  
37 actuarial soundness of the fund. If the board determines a need for  
38 additional assets in order to preserve actuarial soundness, the board  
39 may adjust the terms of subsequent advance payment contracts to  
40 ensure soundness.

41 g. If the board finds that a surplus in the fund exists, the board may  
42 compensate purchasers of advance payment contracts in a manner that  
43 the board determines to be appropriate.

44

45 6. (New section) a. The Prepaid Higher Education Expense Board  
46 is established as a body corporate and politic in the Executive Branch

1 of State Government and for the purposes of complying with the  
2 provisions of Article V, Section IV, paragraph 1 of the New Jersey  
3 Constitution, the board is allocated in but not of the Department of  
4 State. Notwithstanding this allocation, the board shall be independent  
5 of any supervision or control by the department or by any board or  
6 officer thereof.

7 b. The board shall consist of 11 members, including the State  
8 Treasurer or a designee, the executive director of the Commission on  
9 Higher Education or a designee, the executive director of the Higher  
10 Education Student Assistance Authority or a designee, the chair of  
11 the New Jersey Presidents' Council or a designee; and seven members  
12 appointed by the Governor without regard for political affiliation, one  
13 upon the recommendation of the Speaker of the General Assembly,  
14 one upon the recommendation of the Minority Leader of the General  
15 Assembly, one upon the recommendation of the President of the  
16 Senate, and one upon the recommendation of the Minority Leader of  
17 the Senate. Each member appointed by the Governor shall possess  
18 knowledge, skill, and experience in the areas of accounting, actuary,  
19 risk management or investment management. Members appointed by  
20 the Governor shall serve terms of three years, except that in making  
21 the initial appointments, the Governor shall appoint two members to  
22 serve for one year, two members to serve for two years, and three  
23 members to serve for three years. Any member appointed to fill a  
24 vacancy on the board shall be appointed in a like manner and shall  
25 serve until a successor qualifies. Members of the board shall serve  
26 without compensation but shall be reimbursed for any necessary  
27 expenses incurred in the performance of their duties.

28 c. The Governor shall appoint a member of the board to serve as  
29 the initial chair of the board. Thereafter, the board shall elect a chair  
30 annually. The board shall annually elect a board member to serve as  
31 vice-chair and shall designate a secretary-treasurer who need not be a  
32 member of the board. The secretary-treasurer shall keep a record of  
33 the proceedings of the board and shall be the custodian of all printed  
34 material filed with or by the board and of its official seal.  
35 Notwithstanding the existence of vacancies on the board, a majority of  
36 the members shall constitute a quorum. The board shall take no  
37 official action in the absence of a quorum. The board shall meet, at a  
38 minimum, on a quarterly basis at the call of the chair.

39 d. Neither the members of the board, nor any officer or employee  
40 of the board shall be liable personally for the debts, liabilities or  
41 obligations of the program established pursuant to this act.

42

43 7. (New section) The board shall have the powers necessary or  
44 proper to carry out the provisions of this act, including, but not limited  
45 to, the power to:

46 a. appoint an executive director to serve as the chief administrative

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- 1 and operational officer of the board and to perform other duties
- 2 assigned by the board;
- 3 b. adopt an official seal and alter the same at pleasure;
- 4 c. sue and be sued in its own name;
- 5 d. make and enter into all contracts and agreements necessary or
- 6 incidental to the performance of its duties and the execution of its
- 7 powers in accordance with the provisions of P.L.1954, c.48 (C.52:34-
- 8 6 et seq.);
- 9 e. purchase, without advertising for bids or after having rejected all
- 10 bids obtained pursuant to advertising therefor, any materials, supplies,
- 11 goods, services or equipment pursuant to a contract or contracts for
- 12 such materials, supplies, goods, services or equipment entered into on
- 13 behalf of the State by the Division of Purchase and Property;
- 14 f. establish agreements or other transactions with federal, State,
- 15 and local agencies, including institutions of higher education;
- 16 g. invest funds not required for immediate disbursement;
- 17 h. hold, buy, and sell any instruments, obligations, securities, and
- 18 property determined appropriate by the board;
- 19 i. employ personnel, including financial and computer experts, legal
- 20 counsel, accountants, managers and auditors, as may be necessary; to
- 21 fix their compensation; and to promote and discharge the employees
- 22 and agents; all without regard to the provisions of Title 11A of the
- 23 New Jersey Statutes;
- 24 j. solicit and accept gifts, grants, loans, and other aids from any
- 25 source or participate in any other way in any government program to
- 26 carry out the purposes of this act;
- 27 k. require a reasonable length of State residence for qualified
- 28 beneficiaries, as appropriate;
- 29 l. reasonably restrict the number of participants in the county
- 30 college plan and the university plan according to criteria developed by
- 31 the board. A person denied participation solely on the basis of this
- 32 restriction shall be granted priority for participation during the
- 33 succeeding year;
- 34 m. segregate contributions and payments to the fund into various
- 35 accounts;
- 36 n. require and collect administrative fees in connection with any
- 37 transaction and impose reasonable penalties, including default, for
- 38 delinquent payments or for entering into an advance payment contract
- 39 on a fraudulent basis;
- 40 o. procure insurance against any loss in connection with the
- 41 property, assets and activities of the fund or the board;
- 42 p. provide for the receipt of contributions in lump sums or
- 43 installment payments;
- 44 q. impose reasonable time limits on use of the tuition benefits
- 45 provided by the program;
- 46 r. delineate the terms under which payments may be withdrawn

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- 1 from the fund and impose reasonable fees and charges for withdrawals;  
2 s. define for the purposes of this act the average number of hours  
3 required for the conferral of an associate degree; the average number  
4 of hours required for the conferral of a baccalaureate degree; the  
5 average current and projected tuition within the county college system  
6 and the average current and projected tuition of the four-year public  
7 institutions of higher education;  
8 t. determine whether the New Jersey Better Educational Savings  
9 Trust (NJBEST) Program established pursuant to N.J.S.18A:71B-35  
10 through N.J.S.18A:71B-46 and the New Jersey Prepaid Higher  
11 Education Expense Program should be marketed by a single private  
12 entity and whether a single private entity should manage both  
13 programs on behalf of the board;  
14 u. adopt rules and regulations to implement this act; and  
15 v. take all actions required so that the program is treated as a  
16 qualified State tuition program under section 529 of the federal  
17 Internal Revenue Code of 1986, 26 U.S.C.s.529.

18

19 8. (New section) a. The board, acting with the approval of the  
20 State Investment Council in the Division of Investment, shall establish  
21 a comprehensive investment plan for the purposes of this act and  
22 annually review the plan to assure that the program remains actuarially  
23 sound. The comprehensive investment plan shall specify the  
24 investment policies to be utilized by the board in its administration of  
25 the fund. The board may place assets of the fund in savings accounts  
26 or use the funds to purchase fixed or variable life insurance or annuity  
27 contracts, securities, evidence of indebtedness or other investment  
28 products, pursuant to the comprehensive investment plan and in such  
29 proportions as may be designated or approved under that plan. The  
30 board shall be subject to the "prudent person" standard of care  
31 applicable to the Division of Investment in the Department of the  
32 Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270  
33 (C.52:18A-89). The insurance, annuity, savings or investment  
34 products shall be underwritten and offered in compliance with the  
35 applicable federal and State laws and regulations and by persons who  
36 are duly authorized by applicable federal and State authorities.

37 b. The board may delegate responsibility for administration of the  
38 comprehensive investment plan required pursuant to subsection a. of  
39 this section to a person the board determines to be qualified. Directly  
40 or through the person, the board may contract, in accordance with the  
41 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), with a private  
42 corporation or institution to provide such services as may be a part of  
43 the comprehensive investment plan or as may be deemed necessary for  
44 implementation of the comprehensive investment plan, including, but  
45 not limited to, providing consolidated billing, individual and collective  
46 record keeping and accounting, and asset purchase, control and

1 safekeeping.

2 c. The board shall annually prepare or cause to be prepared a  
3 report setting forth in appropriate detail an accounting of the fund and  
4 a description of the financial condition of the program at the close of  
5 each fiscal year. The report shall be submitted to the Governor, the  
6 President of the Senate, the Speaker of the General Assembly, the  
7 State Treasurer, the executive director of the New Jersey Commission  
8 on Higher Education and the executive director of the Higher  
9 Education Student Assistance Authority on or before August 1 each  
10 year. In addition, the board shall make the report available to  
11 purchasers of advance payment contracts. The board shall provide to  
12 the Commission on Higher Education by August 1 each year complete  
13 advance payment contract sales information, including projected  
14 higher education enrollments of qualified beneficiaries.

15 d. The accounts of the funds shall be subject to annual audits by  
16 the State Auditor or a designee. In addition, the board shall  
17 commission an annual independent audit of the program. The results  
18 of the independent audit shall be provided to the Governor, the  
19 President of the Senate, the Speaker of the General Assembly, the  
20 State Treasurer, the executive director of the New Jersey Commission  
21 on Higher Education and the executive director of the Higher  
22 Education Student Assistance Authority. If the board delegates  
23 responsibility for the administration of the comprehensive investment  
24 plan pursuant to subsection b. of this section, the cost of the  
25 independent audit shall be borne by that person.

26 e. The board may make available insurance coverage written  
27 exclusively for the purpose of protecting advance payment contracts,  
28 and the purchasers or beneficiaries thereof, which may be issued in the  
29 form of a group term life policy to purchasers of advance payment  
30 contracts.

31 f. The board may solicit proposals for the marketing of the  
32 program or may delegate this responsibility to the person who is  
33 administering the comprehensive investment plan pursuant to  
34 subsection b. of this section. The entity designated pursuant to this  
35 subsection shall serve as a centralized marketing agent for the program  
36 and shall be solely responsible for the marketing of the program.  
37 Materials produced for the purpose of marketing the program shall be  
38 submitted to the board for review and approval. Marketing materials  
39 shall not be made available or distributed to the public prior to the  
40 materials being approved by the board. An institution of higher  
41 education may distribute marketing materials produced for the  
42 program. The State and the board shall not be liable for  
43 misrepresentation of the program by a marketing agent.

44 A single entity may be selected to market both the New Jersey  
45 Prepaid Higher Education Expense Program and the New Jersey  
46 Better Educational Savings Trust (NJBEST) Program established



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1 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

2 Nothing in this subsection shall preclude the person who is  
3 administering the comprehensive investment plan pursuant to  
4 subsection b. of this section from marketing both the New Jersey  
5 Prepaid Higher Education Expense Program and the New Jersey  
6 Better Educational Savings Trust (NJBEST) Program established  
7 pursuant to N.J.S.18A:71B-35 through N.J.S.18A:71B-46.

8 g. Statements, reports on distributions and information returns  
9 relating to accounts shall be prepared, distributed, and filed to the  
10 extent required by section 529 of the federal Internal Revenue Code  
11 of 1986, 26 U.S.C. s.529.

12

13 9. (New section) a. The board shall develop an advance payment  
14 contract with the assistance of the Office of the Attorney General. An  
15 advance payment contract shall be exempt from the provisions of  
16 Subtitle 3 of Title 17 of the Revised Statutes and Subtitle 3 of Title  
17 17B of the New Jersey Statutes. The contents of the contract shall  
18 include, but not be limited to, the following:

19 (1) the amount of the payments and the number of payments  
20 required from a purchaser;

21 (2) the terms and conditions under which purchasers are required  
22 to remit payments, including, but not limited to, the date or dates upon  
23 which each payment is due;

24 (3) provisions for late payment charges and for default;

25 (4) provisions for penalty fees for withdrawals from the fund;

26 (5) the name and date of birth of the qualified beneficiary on whose  
27 behalf the contract is drawn and the terms and conditions under which  
28 another person may be substituted as the qualified beneficiary;

29 (6) the name of any person who may cancel the contract. The  
30 terms of the contract shall specify whether the contract may be  
31 canceled by the purchaser, the qualified beneficiary, a specific  
32 designated person or any combination of these persons;

33 (7) the terms and conditions under which a contract may be  
34 canceled, the name of the person entitled to any refund due as a result  
35 of the cancellation of the contract pursuant to those terms and  
36 conditions, and the method for determining the amount of refund;

37 (8) the time limitations, if any, within which the qualified  
38 beneficiary is required to claim benefits through the program. If time  
39 limitations are included in the contract, the time expended by a  
40 qualified beneficiary as an active duty member of any of the armed  
41 services of the United States shall be added to the period of time  
42 permitted to exercise the benefits; and

43 (9) other terms and conditions deemed by the board to be  
44 necessary or proper.

45 b. In addition to the provisions of subsection a. of this section an  
46 advance payment contract shall include the following:

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- 1 (1) the number of credit hours contracted by the purchaser;
- 2 (2) the plan toward which the credit hours shall be applied;
- 3 (3) the assumption of a contractual obligation by the board to the
- 4 qualified beneficiary to provide for a specified number of credit hours
- 5 of undergraduate instruction at a public institution of higher education,
- 6 not to exceed the average number of credit hours required for the
- 7 conferral of the degree that corresponds to the plan purchased on
- 8 behalf of the qualified beneficiary.

9  
10 10. (New section) a. At a minimum, the board shall make advance  
11 payment contracts available for two independent plans to be known as  
12 the county college plan and the university plan.

13 (1) Through the county college plan, the advance payment contract  
14 shall provide prepaid tuition for a specified number of undergraduate  
15 credit hours not to exceed the average number of hours required for  
16 the conferral of an associate degree. The cost of participation in the  
17 county college plan shall be based primarily on the average current and  
18 projected tuition within the county college system and the number of  
19 years expected to elapse between the purchase of the plan on behalf of  
20 a qualified beneficiary and the exercise of the benefits provided in the  
21 plan by the qualified beneficiary. Qualified beneficiaries shall bear the  
22 cost of any laboratory fees associated with enrollment in specific  
23 courses. Each qualified beneficiary shall be classified as a resident for  
24 tuition purposes regardless of his actual legal residence.

25 (2) Through the university plan, the advance payment contract  
26 shall provide prepaid tuition for a specified number of undergraduate  
27 credit hours not to exceed the average number of hours required for  
28 the conferral of a baccalaureate degree. The cost of participation in  
29 the university plan shall be based primarily on the average current and  
30 projected tuition of the four-year public institutions of higher  
31 education and the number of years expected to elapse between the  
32 purchase of the plan on behalf of a qualified beneficiary and the  
33 exercise of the benefits provided in the plan by the beneficiary.  
34 Qualified beneficiaries shall bear the cost of any laboratory fees  
35 associated with enrollment in specific courses. In the event that a  
36 qualified beneficiary fails to be admitted to a four-year public  
37 institution of higher education or chooses to attend a county college,  
38 the qualified beneficiary may convert the average number of credit  
39 hours required for the conferral of an associate degree from a  
40 university plan to a county college plan and may retain the remaining  
41 credit hours in the university plan or may request a refund for prepaid  
42 credit hours in excess of the average number of credit hours required  
43 for the conferral of an associate degree. Each qualified beneficiary  
44 shall be classified as a resident for tuition purposes regardless of his  
45 actual legal residence.

46 b. In addition to the plans required pursuant to subsection a. of this

1 section, the board may make advance payment contracts available for  
2 other plans, such as the county college plus university plan whereby  
3 the advance payment contract would provide tuition that would allow  
4 a qualified beneficiary to attend a county college for an associate  
5 degree and then attend a four-year public institution of higher  
6 education for a baccalaureate degree.

7 c. The board shall establish procedures for conversions between  
8 plans established under the program. The procedures shall include, but  
9 not be limited to, the conditions under which a conversion may occur  
10 and the method for calculating any refund due.

11 d. A qualified beneficiary may apply a county college plan or a  
12 university plan toward any eligible independent institution of higher  
13 education. The board shall transfer or cause to have transferred to the  
14 eligible independent institution of higher education designated by the  
15 qualified beneficiary an amount not to exceed the weighted average  
16 tuition purchased under the advance payment contract. In the event  
17 that the cost of tuition at the eligible independent institution of higher  
18 education is less than the weighted average tuition purchased under  
19 the advance payment contract, the amount transferred shall not exceed  
20 the actual cost of tuition. A transfer authorized pursuant to this  
21 subsection shall not exceed the number of credit hours contracted on  
22 behalf of a qualified beneficiary.

23 e. A qualified beneficiary may apply the benefits of an advance  
24 payment contract toward an eligible out-of-state institution of higher  
25 education. Institutional eligibility for out-of-state institutions of  
26 higher education shall be determined by the board, but in making those  
27 determinations the board shall recognize that the benefits may only be  
28 used at an out-of-state institution of higher education whose students  
29 are eligible to receive benefits under section 529 of the federal Internal  
30 Revenue Code of 1986, 26 U.S.C. s.529. The board shall transfer or  
31 cause to have transferred to the eligible out-of-state institution of  
32 higher education designated by the qualified beneficiary an amount not  
33 to exceed the weighted average tuition purchased under the advance  
34 payment contract. In the event that the cost of tuition at the eligible  
35 out-of-state institution of higher education is less than the weighted  
36 average tuition purchased under the advance payment contract, the  
37 amount transferred shall not exceed the actual cost of tuition. A  
38 transfer authorized pursuant to this subsection shall not exceed the  
39 number of credit hours contracted on behalf of a qualified beneficiary.

40

41 11. (New section) a. The board shall determine the conditions  
42 under which refunds are payable under the program. Unless  
43 authorized by the board or under the provisions of this section, a  
44 refund shall not exceed the amount paid into the fund by the  
45 purchaser. A refund may exceed the amount paid into the fund in the  
46 following circumstances:

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1 (1) if the qualified beneficiary is awarded a scholarship (or  
2 allowance or payment described in subparagraph (B) or (C) of  
3 paragraph (1) of subsection (d) of section 135 of the federal Internal  
4 Revenue Code of 1986, 26 U.S.C. s.135), the terms of which cover  
5 the benefits included in the advance payment contracts, moneys paid  
6 for the purchase of the advance payment contracts shall be returned to  
7 the purchaser in enrollment period installments coinciding with the  
8 matriculation by the qualified beneficiary in amounts equal to the lesser  
9 of the original purchase price plus 5% interest compounded annually,  
10 or the weighted average tuition purchased under the advance payment  
11 contract; and

12 (2) in the event of the death or disability of the qualified  
13 beneficiary, moneys paid for the purchase of advance payment  
14 contracts shall be returned to the purchaser together with 5% interest  
15 compounded annually.

16 b. A refund shall not be authorized through an advance payment  
17 contract for any school year partially attended but not completed. For  
18 purposes of this subsection, a school year partially attended but not  
19 completed means any one enrollment period whereby the student is  
20 still enrolled at the conclusion of the official drop-add period, but  
21 withdraws before the end of the enrollment period.

22 c. If a qualified beneficiary does not complete a county college plan  
23 or university plan, for reasons other than specified in subsection a. of  
24 this section, the purchaser shall receive a refund of the amount paid  
25 into the fund for the remaining unattended years of the advance  
26 payment contract pursuant to rules promulgated by the board and in  
27 accordance with the provisions of section 529 of the federal Internal  
28 Revenue Code of 1986, 26 U.S.C. s.529.

29

30 12. (New section) Moneys paid into or out of the fund by or on  
31 behalf of a purchaser or qualified beneficiary of an advance payment  
32 contract for the purposes of financing the cost of qualified higher  
33 education expenses under the program are exempt from all claims of  
34 creditors of the purchaser or the beneficiary.

35

36 13. (New section) The State or any State agency, county,  
37 municipality, or other political subdivision may, by contract or  
38 collective bargaining agreement, agree with any employee to remit  
39 payments toward advance payment contracts through payroll  
40 deductions made by the appropriate officer or officers of the State,  
41 State agency, county, municipality, or political subdivision. The  
42 payments shall be held and administered in accordance with this act.

43

44 14. (New section) In order to meet the obligations of the board  
45 under this act, there shall be paid to the board for deposit in the fund,  
46 at the time of distribution, subject to appropriation, such sum, if any,

1 as shall be certified by the chair of the board as necessary to provide  
2 that amount at the time of distribution. The chair shall make and  
3 deliver to the Governor, or his designee, the certificate stating the  
4 sums, if any, required to make available in the fund the amount  
5 aforesaid, and the sums so certified shall be appropriated and paid to  
6 the board during the then current State fiscal year.

7  
8 15. (New section) In the event that the State Treasurer determines  
9 the program to be financially infeasible, the State may discontinue the  
10 provision of the program. A qualified beneficiary who has been  
11 accepted by and is enrolled or is within five years of enrollment in an  
12 institution of higher education shall be entitled to exercise the benefits  
13 for which he has contracted. All other contract holders shall receive  
14 a refund of the amount paid into the fund, plus interest at the  
15 prevailing rate.

16  
17 16. (New section) a. A qualified beneficiary who graduates from  
18 high school with a 3.0 cumulative grade point average on a 4.0 scale  
19 in an academic program or a 3.2 cumulative grade point average on a  
20 4.0 scale in a vocational-educational program, based upon grades in  
21 core curriculum content subject areas as determined by the board, or  
22 who graduates in the top 15% of his high school graduating class shall  
23 be admitted to a public institution of higher education. In order to be  
24 admitted to a public institution of higher education pursuant to this  
25 section, the qualified beneficiary shall meet all of the institution's  
26 requirements for admittance. This provision shall not be construed to  
27 promise or guarantee that a qualified beneficiary shall be admitted to  
28 a particular public institution of higher education.

29 b. In order to effectuate the provisions of subsection a. of this  
30 section, the board, in consultation with the Commission on Higher  
31 Education, shall develop a process to assist qualified beneficiaries in  
32 applying to all public institutions of higher education.

33  
34 17. (New section) Moneys paid into or out of an account by or on  
35 behalf of a contributor or designated beneficiary for the purposes of  
36 financing the cost of qualified higher education expenses under the  
37 New Jersey Better Educational Savings Trust (NJBEST) Program, are  
38 exempt from all claims of creditors of the contributor or the  
39 designated beneficiary.

40  
41 18. N.J.S.18A:71B-36 is amended to read as follows:

42 18A:71B-36. As used in this article:

43 "Account" means an individual trust account or savings account  
44 established in accordance with this article;

45 ["Authority" means the Higher Education Student Assistance  
46 Authority;]

1 "Board" means the Prepaid Higher Education Expense Board  
2 established pursuant to section 6 of P.L. , c. (C. )(now pending  
3 before the Legislature as this bill).

4 "Contributor" means the person or organization contributing to and  
5 maintaining an account and having the right to withdraw funds from  
6 the account before the account is disbursed to or for the benefit of the  
7 designated beneficiary;

8 "Designated beneficiary" means: a. the individual designated at the  
9 time the account is opened as the individual whose higher education  
10 expenses are expected to be paid from the account; b. the replacement  
11 beneficiary if the change in designated beneficiary would not result in  
12 a distribution that is included in federal gross income under section  
13 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;  
14 and c. in the case of an interest in the program purchased by a state or  
15 local government or an organization described in paragraph (3) of  
16 subsection (c) of section 501 of the federal Internal Revenue Code of  
17 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a)  
18 of section 501 of the federal Internal Revenue Code of 1986, 26  
19 U.S.C.s.501, as a part of a scholarship program operated by the  
20 government or organization, the individual receiving the interest as a  
21 scholarship;

22 "Higher education institution" means an eligible educational  
23 institution as defined in or for purposes of section 529 of the federal  
24 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education  
25 institution shall include a proprietary institution if expenses for tuition  
26 at the institution would be considered qualified higher education  
27 expenses under section 529 of the federal Internal Revenue Code of  
28 1986, 26 U.S.C.s.529, but only for degree granting programs licensed  
29 or approved by the Commission on Higher Education or for other  
30 proprietary institutions as determined by the [authority] board;

31 "Investment Manager" means the Division of Investment in the  
32 Department of the Treasury or the private entities authorized to do  
33 business in this State that may be designated by the [authority] board  
34 to invest the funds of the trust pursuant to the terms of this article;

35 "Member of the family" means a member of the family as defined in  
36 or for purposes of section 529 of the federal Internal Revenue Code  
37 of 1986, 26 U.S.C.s.529;

38 "Nonqualified withdrawal" means a withdrawal from an account  
39 other than: a. a qualified withdrawal; b. a withdrawal made as the  
40 result of the death or disability of the designated beneficiary of an  
41 account; c. a withdrawal made on account of a scholarship (or  
42 allowance or payment described in subparagraph (B) or (C) of  
43 paragraph (1) of subsection (d) of section 135 of the federal Internal  
44 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated  
45 beneficiary, but only to the extent of the amount of that scholarship,  
46 allowance or payment; d. a rollover or change in designated

1 beneficiary which would not result in a distribution includible in  
2 federal gross income under section 529 of the federal Internal Revenue  
3 Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure  
4 of the program to impose a more than de minimis penalty on the  
5 withdrawal would cause the program not to be a qualified State tuition  
6 program under section 529 of the federal Internal Revenue Code of  
7 1986, 26 U.S.C.s.529;

8 "Program" means the "New Jersey Better Educational Savings  
9 Trust (NJBEST) Program" established pursuant to this article;

10 "Qualified higher education expenses" means expenses described in  
11 paragraph (3) of subsection (e) of section 529 of the federal Internal  
12 Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with  
13 the enrollment of a designated beneficiary at a higher education  
14 institution;

15 "Qualified withdrawal" means a withdrawal from an account to pay  
16 the qualified higher education expenses of the designated beneficiary  
17 of the account; but a withdrawal shall not be considered a qualified  
18 withdrawal if the failure of the program to impose a more than de  
19 minimis penalty on the withdrawal would cause the program not to  
20 qualify as a qualified State tuition program under section 529 of the  
21 federal Internal Revenue Code of 1986, U.S.C.s.529;

22 "Trust" means the "New Jersey Better Educational Savings Trust"  
23 established pursuant to N.J.S.18A:71B-37.

24 (cf: N.J.S.18A:71B-36)

25

26 19. N.J.S.18A:71B-37 is amended to read as follows:

27 18A:71B-37. There is created within the [Higher Education  
28 Student Assistance Authority] Prepaid Higher Education Expense  
29 Board the New Jersey Better Educational Savings Trust (NJBEST).  
30 The trust shall provide a mechanism through which the [authority]  
31 board, as trustee, holds accounts established and maintained pursuant  
32 to the provisions of this article to finance the cost of qualified higher  
33 education expenses.

34 (cf: N.J.S.18A:71B-37)

35

36 20. N.J.S.18A:71B-38 is amended to read as follows:

37 18A:71B-38. The [Higher Education Student Assistance  
38 Authority] Prepaid Higher Education Expense Board established  
39 pursuant to section 6 of P.L. , c. (C. )(now pending before the  
40 Legislature as this bill) shall administer the NJBEST Program. The  
41 [authority] board shall have the power to:

42 a. serve as trustee of the trust;

43 b. adopt rules and regulations pursuant to the "Administrative  
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to  
45 carry out the provisions of this article;

46 c. prescribe and provide appropriate forms for participation in the  
47 program;

- 1 d. select an investment manager and any other contractors needed  
2 to manage and market the program;  
3 e. monitor the investment manager and any other contractors by  
4 audits and other reports;  
5 f. collect reasonable administrative fees in connection with any  
6 contract or transaction relating to the program;  
7 g. impose penalties for nonqualified withdrawals;  
8 h. take all actions required so that the program is treated as a  
9 qualified State tuition program under section 529 of the federal  
10 Internal Revenue Code of 1986, 26 U.S.C.s.529; and  
11 i. perform any other acts which may be deemed necessary or  
12 appropriate to carry out the objects and purposes of this article.  
13 (cf: N.J.S.18A:71B-38)

14

15 21. N.J.S.18A:71B-39 is amended to read as follows:

16 18A:71B-39. Neither the members of the [authority] board, nor  
17 any officer or employee of the [authority] board shall be liable  
18 personally for the debts, liabilities or obligations of the program  
19 established pursuant to this article.  
20 (cf: N.J.S.18A:71B-39)

21

22 22. N.J.S.18A:71B-40 is amended to read as follows:

23 18A:71B-40. a. The [authority] board shall select an investment  
24 manager or managers to invest the funds of the trust or the funds in  
25 accounts. In making this selection, any investment manager shall be  
26 subject to the "prudent person" standard of care applicable to the  
27 Division of Investment in the Department of the Treasury pursuant to  
28 subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the  
29 [authority] board shall consider the impact of fees and costs imposed  
30 by the manager or managers on yield to contributors.

31 b. The [authority] board may select more than one investment  
32 manager and investment instrument for the program if it is in the best  
33 interest of contributors and will not interfere with the administration  
34 of the program.

35 c. The [authority] board may provide a contributor with a choice  
36 of investment managers or investment instruments or both for the  
37 program if both of the following conditions exist:

38 (1) the federal Internal Revenue Service has provided guidance that  
39 providing a contributor with a choice of investment managers or  
40 instruments under a State tuition program will not cause the program  
41 to fail to qualify for favorable tax treatment under section 529 of the  
42 federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

43 (2) the [authority] board concludes that a choice of investment  
44 managers or of investment instruments is in the best interest of  
45 contributors and will not interfere with the administration of the  
46 program.



1 d. If the [authority] board terminates the designation of an  
2 investment manager to hold accounts, and accounts must be moved  
3 from that investment manager to another investment manager, the  
4 [authority] board shall select the investment manager and type of  
5 investment instrument to which the balance of the account is moved,  
6 unless the federal Internal Revenue Service provides guidance that  
7 allowing the contributor to select among several investment managers  
8 or investment instruments that have been selected by the [authority]  
9 board would not cause a program to cease to be a qualified State  
10 tuition program for the purposes of section 529 of the federal Internal  
11 Revenue Code, 26 U.S.C.s.529.

12 e. The board, upon the effective date of P.L. , c. (C. )(now  
13 pending before the Legislature as this bill) and in accordance with the  
14 provisions of P.L.1954, c.48 (C.52:34-6 et seq.), shall select an  
15 investment manager or managers for the program. If the selection  
16 process provided for in this subsection results in an investment  
17 manager other than the Division of Investment, the board shall provide  
18 for the orderly transfer of accounts and shall ensure that all the rights  
19 of the contributors and designated beneficiaries participating in the  
20 program as of the effective date of P.L. , c. (C. )(now pending  
21 before the Legislature as this bill), are protected.

22 (cf: N.J.S.18A:71B-40)

23

24 23. N.J.S.18A:71B-41 is amended to read as follows:

25 18A:71B-41. a. The program shall be operated as a trust through  
26 the use of accounts for designated beneficiaries. An account may be  
27 opened by any person who desires to save to pay the qualified higher  
28 education expenses of an individual by satisfying each of the following  
29 requirements:

30 (1) completing an application in the form prescribed by the  
31 [authority] board;

32 (2) paying the one-time application fee established by the  
33 [authority] board;

34 (3) making the minimum contribution required by the [authority]  
35 board for opening an account;

36 (4) designating the account or accounts to be opened; and

37 (5) in the case of an account to which subsection a. of  
38 N.J.S.A.18A:71B-44 would apply, demonstrating to the satisfaction  
39 of the [authority] board that either the contributor, if an individual, or  
40 the designated beneficiary is a New Jersey resident. The requirement  
41 of New Jersey residency for either the contributor or the designated  
42 beneficiary would not apply to an account to which subsection b. of  
43 N.J.S.18A:71B-44 would apply unless otherwise determined by the  
44 [authority] board.

45 b. Except as provided under N.J.S.18A:71B-42, only the  
46 contributor may make contributions to an account after the account is

1 opened.

2 c. Contributions to accounts shall be made only in cash, as defined  
3 by the [authority] board pursuant to regulations, in accordance with  
4 section 529 of the federal Internal Revenue Code of 1986, 26  
5 U.S.C.s.529.

6 d. Contributors may withdraw all or part of the balance from an  
7 account on sixty days' notice or a shorter period, as may be authorized  
8 by the [authority] board pursuant to regulations.

9 e. A contributor may change the designated beneficiary of an  
10 account or rollover all or a portion of an account to another account  
11 if the change or rollover would not result in a distribution includible  
12 in gross income under section 529 of the federal Internal Revenue  
13 Code of 1986, 26 U.S.C.s.529, in accordance with procedures  
14 established by the [authority] board.

15 f. In the case of any nonqualified withdrawal, a penalty at a level  
16 established by the [authority] board and sufficient to be considered a  
17 more than de minimis penalty for purposes of section 529 of the  
18 federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be  
19 withheld and paid to the [authority] board for use in operating and  
20 marketing the program. The [authority] board may elect not to  
21 impose a penalty if that section ceases to include a provision requiring  
22 more than de minimis penalties for a program to qualify as a qualified  
23 State tuition program.

24 g. If a contributor makes a nonqualified withdrawal and a penalty  
25 amount is not withheld pursuant to subsection f. of this section or the  
26 amount withheld is less than the amount required to be withheld under  
27 that subsection, the contributor shall pay the unpaid portion of the  
28 penalty to the [authority] board at the same time that the contributor  
29 files a State income tax return for the taxable year of the withdrawal,  
30 or if the contributor does not file a return, the unpaid portion of the  
31 penalty shall be paid on or before the due date for the filing of that  
32 income tax return.

33 h. Each account shall be maintained separately from each other  
34 account under the program.

35 i. Separate records and accounting shall be maintained for each  
36 account for each designated beneficiary.

37 j. A contributor to or designated beneficiary of any account shall  
38 not direct the investment of any contributions to an account or the  
39 earnings from the account, except as permitted under section 529 of  
40 the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

41 k. A contributor or a designated beneficiary shall not use an  
42 interest in an account as security for a loan. Any pledge of an interest  
43 in an account is of no force and effect.

44 l. The maximum contribution for any designated beneficiary shall  
45 be determined by the [authority] board pursuant to regulations, in  
46 accordance with section 529 of the federal Internal Revenue Code of

1 1986, 26 U.S.C.s.529.

2 m. Statements, reports on distributions and information returns  
3 relating to accounts shall be prepared, distributed, and filed to the  
4 extent required by section 529 of the federal Internal Revenue Code  
5 of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

6 n. The [authority] board may charge, impose and collect  
7 reasonable administrative fees and service charges in connection with  
8 any agreement, contract or transaction relating to the program. These  
9 fees and charges may be imposed directly on contributors or may be  
10 taken as a percentage of the investment earnings on accounts.

11 o. The State or any State agency, municipality, or other political  
12 subdivision may, by contract or collective bargaining agreement, agree  
13 with any employee to remit contributions to accounts through payroll  
14 deductions made by the appropriate officer or officers of the State,  
15 State agency, county, municipality, or political subdivision. The  
16 contributions shall be held and administered in accordance with this  
17 act.

18 (cf: N.J.S.18A:71B-41)

19

20 24. N.J.S.18A:71B-42 is amended to read as follows:

21 18A:71B-42. a. An amount of no less than \$500 shall be provided  
22 by the State for the qualified higher education expenses of a  
23 designated beneficiary at the time of a qualified withdrawal provided  
24 that:

25 (1) the contributor demonstrates, to the satisfaction of the  
26 [authority] board, that the contributor participated in the program for  
27 at least four years by making a qualifying minimum initial deposit or  
28 qualifying minimum annual contributions, or both, as shall be  
29 determined by the [authority] board, for a designated beneficiary;

30 (2) the designated beneficiary demonstrates, to the satisfaction of  
31 the [authority] board, attendance or enrollment in a higher education  
32 institution in this State, at the time of initial attendance or enrollment  
33 in the higher education institution; and

34 (3) either the contributor, if an individual, or the designated  
35 beneficiary demonstrates, to the satisfaction of the [authority] board,  
36 that the contributor or designated beneficiary is a New Jersey resident.

37 b. The amount provided under subsection a. of this section shall  
38 meet the requirements of a qualified scholarship within the meaning of  
39 section 117 of the federal Internal Revenue Code of 1986, 26  
40 U.S.C.s.117, for a designated beneficiary satisfying the requirements  
41 of subsection a. of this section.

42 c. A designated beneficiary shall not receive more than one State  
43 scholarship provided pursuant to subsection a. of this section.

44 (cf: N.J.S.18A:71B-42)

45

46 25. N.J.S.18A:71B-43 is amended to read as follows:

47 18A:71B-43. Annually, the [authority] board shall determine a

1 dollar amount of an account, which shall not be less than \$25,000,  
2 which shall not be considered in evaluating the financial needs of a  
3 student enrolled in an institution of higher education located in the  
4 State of New Jersey, or be deemed a financial resource or a form of  
5 financial aid or assistance to a student, for purposes of determining the  
6 eligibility of a student for any scholarship, grant, or monetary  
7 assistance awarded by the State; nor shall the amount of any account  
8 as determined by the [authority] board provided for a designated  
9 beneficiary under this article reduce the amount of any scholarship  
10 grant or monetary assistance which the student is entitled to be  
11 awarded by the State.

12 (cf: N.J.S.18A:71B-43)

13

14 26. N.J.S.18A:71B-44 is amended to read as follows:

15 18A:71B-44. a. If the investment manager is the Division of  
16 Investment in the Department of the Treasury, in order to assure the  
17 availability of principal of any amount contributed under this article,  
18 there shall be paid to the [authority] board for deposit in the trust, at  
19 the time of distribution, subject to appropriation, such sum, if any, as  
20 shall be certified by the [chairperson] chair of the [authority] board  
21 as necessary to provide that amount at the time of distribution. The  
22 [chairperson] chair shall make and deliver to the Governor, or his  
23 designee, the certificate stating the sums, if any, required to make  
24 available in the trust the amount aforesaid, and the sums so certified  
25 shall be appropriated and paid to the [authority] board during the then  
26 current State fiscal year.

27 b. If the investment manager is a private entity, the investment of  
28 the principal and interest of any amount contributed under this article  
29 shall be backed by the full faith and credit of the United States or be  
30 fully insured by the Federal Deposit Insurance Corporation or other  
31 similar insurer backed by the full faith and credit of the United States.  
32 No account balance shall exceed the maximum amount of insurance  
33 provided by the insurer. No investment is permitted in derivatives of  
34 eligible securities, and any investment must be designed to balance  
35 prospective payments according to the guidelines established.

36 (cf: N.J.S.18A:71B-44)

37

38 27. N.J.S.18A:71B-45 is amended to read as follows:

39 18A:71B-45. a. Nothing in this article shall be construed to:

40 (1) guarantee that a designated beneficiary will be admitted to a  
41 higher education institution or be allowed to continue enrollment at or  
42 graduate from a higher education institution after admission;

43 (2) establish State residency for a person merely because the  
44 person is a designated beneficiary; or

45 (3) guarantee that amounts saved pursuant to the program will be  
46 sufficient to cover the qualified higher education expenses of a

1 designated beneficiary.

2 b. Nothing in this article establishes any obligation of this State or  
3 any agency or instrumentality of this State to guarantee for the benefit  
4 of any contributor or designated beneficiary any of the following:

5 (1) the rate of interest or other return on any account; or

6 (2) the payment of interest or other return on any account.

7 c. Nothing in this article establishes any obligation or liability of  
8 this State or any agency or instrumentality of this State with respect  
9 to any federal or State tax liability of any contributor or designated  
10 beneficiary in this program.

11 d. Under regulations promulgated by the [authority] board, every  
12 contract and application that may be used in connection with a  
13 contribution to an account shall clearly indicate that the account is not  
14 insured by this State nor is the investment return guaranteed by this  
15 State.

16 (cf: N.J.S.18A:71B-45)

17

18 28. N.J.S.18A:71B-46 is amended to read as follows:

19 18A:71B-46. If the Congress of the United States enacts legislation  
20 that exempts educational savings accounts from federal income  
21 taxation, sections N.J.S.18A:71B-42 and N.J.S.18A:71B-43 shall  
22 apply with respect to such educational savings accounts as if they were  
23 accounts established under this act and the beneficiaries of the  
24 accounts were designated beneficiaries subject to the approval of the  
25 [New Jersey Higher Education Assistance Authority] board.

26 (cf: N.J.S.18A:71B-46)

27

28 29. (New section) Regulations adopted by the New Jersey Higher  
29 Education Student Assistance Authority pertaining to the New Jersey  
30 Better Educational Savings Trust (NJBEST) Program shall continue  
31 with full force and effect under the board for a period of one year from  
32 the effective date of this act or until amended, continued or repealed  
33 by the board pursuant to law.

34

35 30. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to  
36 read as follows:

37 13. a. Gross income shall not include earnings on an education  
38 individual retirement account or a qualified State tuition program  
39 account until the earnings are distributed from the account, at which  
40 time they shall be includible in the gross income of the distributee  
41 except as provided in this section.

42 b. Gross income shall not include qualified distributions as defined  
43 in paragraph (3) of subsection c. of this section.

44 c. For purposes of this section:

45 (1) "Education individual retirement account" means an education  
46 retirement account as defined pursuant to paragraph (1) of subsection

1 (b) of section 530 of the federal Internal Revenue Code of 1986, 26  
2 U.S.C. s.530.

3 (2) "Qualified State tuition program account" means an account  
4 established pursuant to the "New Jersey Better Educational Savings  
5 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) , an account  
6 established pursuant to the "New Jersey Prepaid Higher Education  
7 Expense Program,"(P.L. , c. (C. ))(now pending before the  
8 Legislature as this bill) or an account established pursuant to any  
9 qualified State tuition program, as defined pursuant to subsection (b)  
10 of section 529 of the federal Internal Revenue Code of 1986,  
11 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to  
12 any such program.

13 (3) "Qualified distribution" means any of the following:

14 (a) a distribution from a qualified State tuition program account  
15 that is used for qualified higher education expenses as defined pursuant  
16 to paragraph (3) of subsection (e) of section 529 of the federal Internal  
17 Revenue Code of 1986, 26 U.S.C. s.529;

18 (b) a rollover from one account to another account as described in  
19 clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of  
20 section 529 or paragraph (5) of subsection (d) of section 530 of the  
21 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

22 (c) a change in designated beneficiaries of an account as described  
23 in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of  
24 section 529 or paragraph (6) of subsection (d) of section 530 of the  
25 federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or 530;

26 d. The portion of a distribution from an education individual  
27 retirement account or a qualified State tuition program account that is  
28 attributable to earnings shall be determined in accordance with the  
29 principles of section 72 of the federal Internal Revenue Code of 1986,  
30 26 U.S.C. s.72, as applied for purposes of sections 529 and 530 of the  
31 federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 and 530.

32 (cf: P.L.1999, c.116, s.1)

33

34 31. There is appropriated from the General Fund to the Prepaid  
35 Higher Education Expense Board in, but not of, the Department of  
36 State \$250,000 to effectuate the provisions of this act.

37

38 32. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill is entitled the "New Jersey Prepaid Higher Education  
44 Expense Program Act of 2000." It establishes the New Jersey Prepaid  
45 Higher Education Expense Program to provide a mechanism through  
46 which the cost of tuition may be paid in advance of enrollment in an

1 institution of higher education at a rate lower than the cost at the time  
2 of actual enrollment. The bill provides for the creation of the Prepaid  
3 Higher Education Expense Board in, but not of, the Department of  
4 State. The board will consist of the State Treasurer, the executive  
5 director of the Commission on Higher Education, the executive  
6 director of the Higher Education Student Assistance Authority, the  
7 chair of the New Jersey Presidents' Council, or their designees, and  
8 seven members appointed by the Governor who will possess  
9 knowledge, skill and experience in the areas of accounting, actuary,  
10 risk management or investment management. The board will be  
11 responsible for administering the New Jersey Prepaid Higher  
12 Education Expense Program.

13 The board, with the assistance of the Office of the Attorney  
14 General, will develop an advance payment contract. The bill sets  
15 forth the following provisions that must be included in an advance  
16 payment contract:

- 17 - the amount of the payment and the number of payments required;
- 18 - the terms and conditions under which a purchaser will remit  
19 payments, including, but not limited to, the dates upon which each  
20 payment will be due;
- 21 - provisions for late payment charges and for default;
- 22 - provisions for penalty fees for withdrawals from the fund;
- 23 - the name and date of birth of the qualified beneficiary on whose  
24 behalf the contract is drawn and the terms and conditions under which  
25 another person may be substituted as the qualified beneficiary;
- 26 - the name of any person who may cancel the contract;
- 27 - the terms and conditions under which a contract may be canceled,  
28 the name of the person entitled to any refund due as a result of the  
29 cancellation, and the amount of refund, if any, due to the person  
30 named;
- 31 - the time limitations, if any, within which the qualified beneficiary  
32 must claim benefits through the program; and
- 33 - other terms and conditions deemed by the board to be necessary  
34 or proper.

35 In addition to these general provisions, the bill also requires that  
36 the advance payment contract include specific provisions, including the  
37 number of credit hours contracted by the purchaser and whether the  
38 credit hours will be applied toward a four-year public institution of  
39 higher education or a county college. The advance payment contract  
40 will also include a provision obligating the board to provide to the  
41 qualified beneficiary the specified number of credit hours of  
42 undergraduate instruction at a public institution of higher education,  
43 not to exceed the average number of credit hours required for the  
44 conferral of the degree that corresponds to the plan purchased on  
45 behalf of the qualified beneficiary.

46 Under the bill, the board will be required to make advance payment

1 contracts available for two independent plans, at a minimum, to be  
2 known as the county college plan and the university plan. Through a  
3 county college plan, the advance payment contract will provide  
4 prepaid tuition for a specified number of undergraduate credit hours  
5 not to exceed the average number of hours required for the conferral  
6 of an associate degree. Through a university plan, the advance  
7 payment contract will provide prepaid tuition for a specified number  
8 of undergraduate credit hours not to exceed the average number of  
9 hours required for the conferral of a baccalaureate degree. The cost of  
10 participating in each of these plans will be based primarily on the  
11 average current and projected tuition within the county college system  
12 or the four-year public institutions of higher education system,  
13 respectively, and the number of years expected to elapse between the  
14 purchase of the plan and the exercise of the benefits by the qualified  
15 beneficiary.

16 The bill permits a county college plan or a university plan to be  
17 applied toward any independent institution of higher education. Under  
18 these circumstances, the board will transfer to these institutions an  
19 amount not to exceed the weighted average tuition purchased under  
20 the advance payment contract. If the costs at the independent  
21 institution of higher education are less than the weighted average  
22 tuition purchased under the advance payment contract, then the  
23 amount transferred may not exceed the actual cost of tuition.

24 The bill also permits the benefits of an advance payment contract to  
25 be applied toward an eligible out-of-state institution of higher  
26 education. Under these circumstances, the board will transfer to these  
27 institutions an amount not to exceed the weighted average tuition  
28 purchased under the advance payment contract. If the costs at the  
29 out-of-state institution are less than the weighted average tuition  
30 purchased under the advance payment contract, then the amount  
31 transferred may not exceed the actual cost of tuition.

32 The bill guarantees that in the event that the moneys in the fund are  
33 insufficient to offset the obligations of the board, then the State will  
34 meet those obligations. As a measure of protection for the State, the  
35 State Treasurer may discontinue the program if it is determined that  
36 the program is financially infeasible. Under these conditions, a  
37 qualified beneficiary who has been accepted by and is enrolled, or is  
38 within five years of enrollment, in an institution of higher education  
39 will be entitled to exercise the benefits for which he has contracted.  
40 All other contract holders will receive a refund of the amount paid into  
41 the fund, plus interest at the prevailing rate.

42 The bill provides that a qualified beneficiary who graduates from  
43 high school with a 3.0 cumulative grade point average on a 4.0 scale  
44 in an academic program or a 3.2 cumulative grade point average on a  
45 4.0 scale in a vocational-educational program, based upon grades in  
46 core curriculum content subject areas, or who graduates in the top



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1 15% of his high school graduating class will be admitted to a public  
2 institution of higher education. The qualified beneficiary must,  
3 however, meet all of the institution's requirements for admittance.

4 The bill also amends the law establishing the New Jersey Better  
5 Educational Savings Trust (NJBEST) Program. The responsibility for  
6 the program's administration is shifted from the Higher Education  
7 Student Assistance Authority to the Prepaid Higher Education  
8 Expense Board, which is also administering the New Jersey Prepaid  
9 Higher Education Expense Program. The bill also provides that the  
10 board must, after the effective date of the act, select an investment  
11 manager for the program pursuant to the provisions of the State public  
12 contracting law. In the event that the investment manager changes due  
13 to this provision, the board must provide for the orderly transfer of  
14 accounts and must ensure that all the rights of the contributors and  
15 designated beneficiaries are protected.

16 The bill also amends the State tax code to specifically include the  
17 New Jersey Prepaid Higher Education Expense Program as a qualified  
18 State tuition program under which the earnings are not included in  
19 gross income until they are distributed from the account.