

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 818

Short Title: Postsecondary Education Program.

(Public)

Sponsors: Senators Hartsell; Clodfelter, Cochrane, and Lucas.

Referred to: Education/Higher Education.

April 12, 1999

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE PREPAID POSTSECONDARY EDUCATION
2 EXPENSE PROGRAM, THE PREPAID POSTSECONDARY EDUCATION
3 EXPENSE TRUST FUND, THE NORTH CAROLINA PREPAID
4 POSTSECONDARY EDUCATION EXPENSE BOARD, AND THE NORTH
5 CAROLINA PREPAID TUITION SCHOLARSHIP PROGRAM.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 116 of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 32.**

11 **"NORTH CAROLINA PREPAID**

12 **POSTSECONDARY EDUCATION EXPENSE PROGRAM.**

13 **"§ 116-260. Purpose.**

14 The General Assembly recognizes that educational opportunity at the postsecondary
15 level is a critical State interest. It further recognizes that educational opportunity is best
16 ensured through the provision of postsecondary institutions that are geographically and
17 financially accessible. Accordingly, it is the intent of the General Assembly that a
18 program be established through which many of the costs associated with postsecondary
19 attendance may be paid in advance and fixed at a guaranteed level for the duration of
20 undergraduate enrollment. It is similarly the intent of the General Assembly to provide a

1 program that fosters timely financial planning for postsecondary attendance and to
2 encourage employer participation in the planning through program contributions on
3 behalf of employees and the dependents of employees.

4 **"§ 116-261. Definitions.**

5 The following definitions apply in this Article:

- 6 (1) 'Board' means the Prepaid Postsecondary Education Expense Board.
7 (2) 'Fund' means the Prepaid Postsecondary Education Expense Trust Fund.
8 (3) 'Prepaid tuition contract' means a contract entered into by the Board and
9 a purchaser under this Article for the advance payment of undergraduate
10 tuition at a fixed, guaranteed level by the purchaser for a qualified
11 beneficiary to attend any State postsecondary institution to which the
12 qualified beneficiary is admitted.
13 (4) 'Purchaser' means a person who makes or is obligated to make advance
14 payments in accordance with a prepaid tuition contract.
15 (5) 'Qualified beneficiary or beneficiary' means a resident of the State,
16 determined by the Board, who may apply advance tuition payments to
17 undergraduate tuition under this Article.
18 (6) 'State postsecondary institution' means any community college
19 identified in G.S. 115D-2 or university identified in G.S. 116-2.
20 (7) 'Tuition' means the semester or term charges imposed by any State
21 postsecondary institution and all mandatory fees required as a condition
22 of enrollment of all students.

23 **"§ 116-262. North Carolina Prepaid Postsecondary Education Expense Program.**

24 There is created a North Carolina Prepaid Postsecondary Education Expense Program
25 to provide a medium through which the cost of tuition and mandatory fees charged to all
26 students as a condition of enrollment may be paid in advance of enrollment in a State
27 postsecondary institution at a rate lower than the projected corresponding cost at the time
28 of actual enrollment. Payments shall be combined and invested in a manner that yields,
29 at a minimum, sufficient interest to generate the difference between the prepaid amount
30 and the cost of tuition at the time of actual enrollment. Students who enroll in State
31 postsecondary institutions under this Article shall be charged no fees in excess of the
32 terms delineated in the prepaid tuition contract.

33 **"§ 116-263. Prepaid Postsecondary Education Expense Trust Fund.**

34 There is created in the Department of the State Treasurer the Prepaid Postsecondary
35 Education Expense Trust Fund. The Fund shall consist of payments received pursuant to
36 prepaid tuition contracts under this Article, bequests, endowments or grants from the
37 United States government, its agencies and instrumentalities, and any other available
38 sources of funds, public or private. Any balance remaining in the Fund at the end of the
39 fiscal year shall remain there and shall be available for carrying out the purposes of the
40 Program. Interest and income earned from the investment of the funds shall remain in the
41 Fund and be credited to it.

42 **"§ 116-264. North Carolina Prepaid Postsecondary Education Expense Board.**

1 (a) The North Carolina Prepaid Postsecondary Education Expense Program shall
2 be administered by the Prepaid Postsecondary Education Expense Board as an agency of
3 the State. The Prepaid Postsecondary Education Expense Board is created as a body
4 corporate with all the powers of a body corporate for the purposes delineated in this
5 section. For the purposes of Section 11 of Article III of the North Carolina State
6 Constitution, the Board shall be assigned to and administratively housed within the
7 Department of the State Treasurer, but it shall independently exercise the powers and
8 duties specified in this section.

9 (b) The Board shall consist of seven members to be composed of the President of
10 The University of North Carolina, the State Treasurer, the State Controller, the President
11 of the Community College System, and three members appointed by the Governor and
12 subject to confirmation by the Senate. Each member appointed by the Governor shall
13 possess the knowledge, skill, and experience in the areas of accounting, actuary, risk
14 management, or investment management. Each member of the Board not appointed by
15 the Governor may name a designee to serve the Board on behalf of the member; however,
16 any designee so named shall meet the qualifications required of gubernatorial appointees
17 to the Board.

18 (c) Members appointed by the Governor shall serve terms of three years except
19 that, in making the initial appointments, the Governor shall appoint one member to serve
20 for one year, one member to serve for two years, and one member to serve for three
21 years. Any person appointed to fill a vacancy on the Board shall be appointed in a like
22 manner and shall serve for only the unexpired term. Any member shall be eligible for
23 reappointment and shall serve until a successor qualifies.

24 (d) Members of the Board shall serve without compensation, but shall be
25 reimbursed for per diem and travel in accordance with G.S. 138-6 and G.S. 138-7. Each
26 member of the Board shall file a full and public disclosure of the member's financial
27 interests.

28 (e) The Governor shall appoint a member of the Board to serve as the initial chair
29 of the Board. Thereafter, the Board shall elect a chair annually. The Board shall
30 annually elect a Board member to serve as vice-chair and shall designate a secretary-
31 treasurer who need not be a member of the Board. The secretary-treasurer shall keep a
32 record of the proceedings of the Board and shall be the custodian of all printed material
33 filed with or by the Board and of its official seal.

34 (f) Notwithstanding the existence of vacancies on the Board, a majority of the
35 members shall constitute a quorum. The Board shall take no official action in the
36 absence of a quorum. The Board shall meet, at a minimum, on a quarterly basis at the
37 call of the chair.

38 **"§ 116-265. Powers and duties of the Board.**

39 The Board shall administer the Fund established by this Article and shall develop and
40 implement a program for the prepayment of undergraduate tuition at a fixed, guaranteed
41 level for application at State postsecondary institutions. The Board shall have the powers
42 necessary or proper to carry out the provisions of this Article, including the power to:

- 1 (1) Invest moneys in the Fund in any instruments, obligations, securities, or
2 properties deemed appropriate by the Board.
- 3 (2) Develop requirements, procedures, and guidelines regarding prepaid
4 tuition contracts including residency requirements; the number of
5 participants in the Fund; the termination, withdrawal, or transfer of
6 payments under a prepaid tuition contract; time limitations for the use of
7 tuition benefits; and payment schedules.
- 8 (3) Enter into contractual agreements, including contracts for legal,
9 actuarial, financial, and consulting services.
- 10 (4) Procure insurance against any loss in connection with the Fund's
11 property, assets, or activities and indemnifying Board members from
12 personal loss or accountability from liability arising from any action or
13 inaction as a Board member.
- 14 (5) Make arrangements with State postsecondary institutions to fulfill
15 obligations under prepaid tuition contracts including payment from the
16 Fund of the then actual in-State undergraduate tuition cost on behalf of a
17 qualified beneficiary to the institution in which the beneficiary is
18 admitted and enrolled.
- 19 (6) Apply for, accept, and expend gifts, grants, or donations from public or
20 private sources to enable it to carry out its objectives.
- 21 (7) Adopt rules, policies, and procedures and to perform any act or function
22 consistent with the purposes of this Article.

23 **"§ 116-266. Board actions not a debt of North Carolina.**

24 No act or undertaking of the Board shall be deemed to constitute a debt of the State or
25 any political subdivision thereof, or a pledge of the full faith and credit of the State or of
26 any political subdivision, but shall be payable solely from the Fund.

27 **"§ 116-267. Executive director; staff support.**

28 The Board shall employ an executive director, who shall be authorized to employ staff
29 as necessary to enable the Board to perform its duties as set forth in this Article, and an
30 actuary to serve as its technical advisor. The Board may determine the duties and the
31 funds that may be appropriated or received.

32 **"§ 116-268. Investment of Fund assets.**

33 The assets of the Fund shall be maintained, invested, and expended solely for the
34 purposes of this Article and shall not be loaned, transferred, or otherwise used by the
35 State for any purpose other than the purposes of this Article. This section shall not be
36 construed to prohibit the Board from investing in, by purchase or otherwise, bonds, notes,
37 or other obligations of the State or an agency or instrumentality of the State. Unless
38 otherwise specified by the Board, assets of the Fund shall be expended in the following
39 order of priority:

- 40 (1) To make payments to State postsecondary institutions on behalf of
41 qualified beneficiaries.
- 42 (2) To make refunds upon termination of prepaid tuition contracts.
- 43 (3) To pay the costs of Program administration and operations.

"§ 116-269. Prepaid tuition contracts; terms; termination.

Each prepaid tuition contract made under this Article shall include the following terms and provisions:

- (1) The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary.
- (2) The terms and conditions under which purchasers shall remit payments, including the dates of the payments.
- (3) Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties.
- (4) The name and date of birth of the qualified beneficiary on whose behalf the contract is made.
- (5) Terms and conditions for a substitution for the qualified beneficiary originally named.
- (6) Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person or persons entitled to terminate the contract.
- (7) The time period during which the qualified beneficiary must claim benefits from the Fund.
- (8) The number of credit hours, semesters, or terms contracted for by the purchaser.
- (9) All other rights and obligations of the purchaser and the trust.
- (10) Any other terms and conditions that the Board deems necessary or appropriate.
- (11) Provisions for the application of tuition prepayments at:
 - a. Accredited, nonprofit, independent institutions of higher education located in North Carolina, including actual interest and income earned on the prepayments; and
 - b. Public and accredited, nonprofit, independent institutions of higher education located in other states.

The provisions shall include principal and reasonable return on the principal as determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located in North Carolina may not exceed the projected highest payments made under a prepaid tuition contract at a public institution of higher education in North Carolina in the same academic year, less a fee to be determined by the Board. Payments authorized for accredited, nonprofit, independent, and public institutions of higher education located in other states may not exceed the projected average payment made under a prepaid tuition contract at a public institution of higher education in North Carolina in the same academic year, less a fee to be determined by the Board.

"§ 116-270. Federal securities opinions required.

No prepaid tuition contract shall be made until the State Treasurer obtains either:

- (1) A no-action letter or an opinion from the Securities and Exchange Commission in connection with the application of federal securities laws to the Fund; or

- 1 (2) An opinion of independent legal counsel substantially to the effect that
2 the proposed method of structuring and offering the Fund is in
3 compliance with federal securities laws.

4 **"§ 116-271. Fund property tax-exempt.**

5 The assets of the Fund and its income shall be exempt from State and local taxation.

6 **"§ 116-272. Annual report.**

7 The Board shall submit an annual statement of the receipts, disbursements, and
8 current investments of the Fund for the preceding year to the Governor, the General
9 Assembly, and the Joint Legislative Education Oversight Committee. The report shall set
10 forth a complete operating and financial statement covering the operation of the Fund
11 during the year and shall include a statement of projected receipts, disbursements,
12 investments, and costs for the further operation of the Fund.

13 **"§ 116-273. Admission to institutions not guaranteed.**

14 Nothing in this Article nor in any prepaid tuition contract shall be construed as a
15 promise or guarantee by the Board or the State of any admission, continued enrollment,
16 or graduation at any State postsecondary institution. Nothing in this Article or in any
17 prepaid tuition contract entered into under this Article shall be construed as a promise or
18 guarantee that the beneficiary's cost of tuition at an institution of higher education other
19 than a State postsecondary institution will be covered in full by the proceeds of the
20 beneficiary's tuition credits.

21 **"§ 116-274. Payroll deductions.**

22 The State and its agencies and municipalities and any employer in the State may
23 agree, by contract or otherwise, to remit payments on behalf of an employee toward
24 prepaid tuition contracts through payroll deductions.

25 **"§ 116-275. Discontinuance of Fund.**

26 In the event that the Board determines the Program to be financially infeasible, the
27 Board may discontinue the provision of the Program. All contract holders shall receive a
28 refund of the amount paid in and an additional amount in the nature of interest at a rate
29 that corresponds, at a minimum, to the prevailing interest rates for savings accounts
30 provided by banks and savings and loan associations.

31 **"§ 116-276. North Carolina Prepaid Tuition Scholarship Program.**

32 The North Carolina Prepaid Tuition Scholarship Program is established with the
33 intent to provide economically disadvantaged youth with prepaid postsecondary tuition
34 scholarships. The Board shall administer the Program with the assistance and
35 cooperation of the school districts to achieve the following objectives:

- 36 (1) Provide an incentive for economically disadvantaged youth to improve
37 school attendance and academic performance in order to graduate and
38 pursue a postsecondary education.
39 (2) Obtain the commitment and involvement of private sector entities by
40 virtue of funding matches with a ratio of fifty percent (50%) provided
41 by the private sector and fifty percent (50%) provided by the State.
42 (3) Purchase prepaid tuition scholarships for students designated and
43 certified by the school districts to the direct-support organization who

1 meet minimum economic and school requirements and remain drug free
2 and crime free. For the purpose of this subdivision, 'drug free' means
3 not being convicted of, or adjudicated delinquent for, any violation of
4 Chapter 90 of the General Statutes after being designated a recipient of
5 a North Carolina prepaid tuition scholarship; and 'crime free' means not
6 being convicted of, or adjudicated delinquent for, any felony or Class
7 A1 or Class 1 misdemeanor after being designated a recipient of a North
8 Carolina prepaid tuition scholarship."

9 Section 2. This act is effective when it becomes law.