

BY: Appropriations Committee

AMENDMENTS TO HOUSE BILL NO. 492

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Rudolph” and substitute “Rudolph, Slade, Holt, Willis, Proctor, and Palumbo”; in lines 2, 5, and 6 and 7, in each instance, strike “Prepaid Tuition” and substitute “Higher Education Investment”; in line 3, strike the third “the”; in lines 4 and 13, in each instance, strike “public”; in line 6, after “composed;” insert “defining certain terms; providing that neither the faith and credit nor the taxing power of the State is pledged to the payment of debts, contracts, and obligations of the Program, institutions of higher education, and other participants in the Program;”; in line 8, after the first “Board;” insert “providing that the budget for the Maryland Higher Education Investment Board and its staff is subject to review by the General Assembly for information purposes;”; in line 11, after “Program;” insert “establishing the fiduciary responsibilities of the Board; prohibiting certain transactions involving program assets; requiring the Board to purchase certain bonds for fiduciaries;”; in lines 12, 15, 17, and 19, in each instance, strike “prepaid tuition” and substitute “higher education investment”; in line 12, after “for” insert “the advance payment of”; in line 17, after “contracts;” insert “providing for refunds under certain circumstances;”; in line 26, after “contract;” insert “requiring the Board to provide full disclosure that a contract is not a guarantee when undertaking marketing efforts;”; and in line 27, strike “the public”.

On page 2, in line 3, strike “18-1914” and substitute “18-1916”; and in line 4, strike “Prepaid Tuition” and substitute “Higher Education Investment”.

AMENDMENT NO. 2

On page 2, in lines 28, 29, 33, and 35, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

On page 3, in lines 1, 15, 26, 32, and 35, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

(Over)

On page 4, in line 11, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

On page 6, in lines 2 and 7, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

On page 7, in lines 6, 7 and 8, 29, and 34, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

On page 8, in lines 2 and 6, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

On page 9, in lines 6, 19 and 20, 23, 30, and 33, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”.

On page 10, in lines 4, 16, 19, 29, 34, and 35, in each instance, strike “PREPAID TUITION” and substitute “HIGHER EDUCATION INVESTMENT”; and in line 37, strike “Prepaid”.

On page 11, strike beginning with “Tuition” in line 1 down through “Program.” in line 2, and substitute “Higher Education Investment Program for the administrative and start-up costs for the Maryland Higher Education Investment Program.”; in lines 4, 10, and 12, in each instance, strike “Prepaid Tuition” and substitute “Higher Education Investment”; and in line 10, strike “prepaid tuition” and substitute “higher education investment”.

AMENDMENT NO. 3

On page 3, in line 7, strike “WHO” and substitute “WHO:”

(1) “;

in line 9, strike “PREPAID TUITION CONTRACT.” and substitute “HIGHER EDUCATION INVESTMENT CONTRACT; AND”

(2) EXCEPT AS PROVIDED § 18-1909(B) OF THIS SUBTITLE, IS A RESIDENT OF MARYLAND AT THE TIME THAT THE PURCHASER ENTERS INTO A HIGHER EDUCATION INVESTMENT CONTRACT.”;

in line 10, strike “IS”; in line 11, after “(1)” insert “IS”; in line 14, after “(2)” insert “EXCEPT AS PROVIDED IN § 18-1909(B) OF THIS SUBTITLE, IS”; and in line 32, after the second “THE” insert “BOARD SHALL MAKE EVERY EFFORT TO INVEST THE ADVANCE PAYMENTS SO THAT THE”.

On page 7, after line 33, insert:

“(B) (1) FOR THE PURPOSE OF ENTERING INTO A HIGHER EDUCATION INVESTMENT CONTRACT, EITHER THE PURCHASER OR THE QUALIFIED BENEFICIARY MUST BE A RESIDENT OF MARYLAND AT THE TIME THAT THE PURCHASER ENTERS INTO THE CONTRACT.

“(2) FOR THE PURPOSES OF DETERMINING RESIDENCY FOR THE PURCHASE OF A HIGHER EDUCATION INVESTMENT CONTRACT, “RESIDENT” HAS THE MEANING STATED IN § 10-101(H) OF THE TAX - GENERAL ARTICLE.”.

AMENDMENT NO. 4

On page 3, in lines 4, 12, 16, and 31, in each instance, strike “A PUBLIC” and substitute “AN”; in line 24, strike “THE PUBLIC”; and in line 29, strike “PUBLIC”.

On page 9, in lines 8, 12, and 35, strike “A PUBLIC” and substitute “AN”.

AMENDMENT NO. 5

On page 4, after line 7, insert:

“(E) MONEYS OF THE PROGRAM MAY NOT BE CONSIDERED MONEYS OF THE STATE AND MAY NOT BE DEPOSITED INTO THE TREASURY.”;

and strike in their entirety lines 8 and 9 and substitute:

“(F) (1) THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE PROGRAM ARE NOT THE CONTRACTS, DEBTS, OR OBLIGATIONS OF THE STATE AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE IS PLEDGED DIRECTLY OR

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INDIRECTLY OR CONTINGENTLY, MORALLY OR OTHERWISE, TO THE PAYMENT OF THE DEBTS, CONTRACTS, AND OBLIGATIONS.

(2) THE BOARD CANNOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE, MORALLY OR OTHERWISE, THE STATE TO LEVY OR PLEDGE ANY FORM OF TAXATION WHATSOEVER FOR THE DEBTS AND OBLIGATIONS OF THE PROGRAM OR TO MAKE ANY APPROPRIATION FOR THE PAYMENT OF THE DEBTS AND OBLIGATIONS OF THE PROGRAM.”.

AMENDMENT NO. 6

On page 4, in lines 12 and 13, strike “APPOINTED BY THE GOVERNOR”; in lines 16 and 17, in each instance, strike “A REPRESENTATIVE OF THE OFFICE OF”; in line 19, after “SHALL” insert “BE APPOINTED BY THE GOVERNOR AND SHALL”; in lines 29, 31, 34, and 35, in each instance, before “MEMBER” insert “PUBLIC”.

AMENDMENT NO. 7

On page 5, after line 16 insert:

“(2) (I) EXCEPT FOR EMPLOYEES DESCRIBED IN SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH, THE EMPLOYEES SHALL BE SKILLED SERVICE EMPLOYEES SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND PENSIONS ARTICLE THAT GOVERN SKILLED SERVICE EMPLOYEES.

(II) AN EMPLOYEE IS IN THE PROFESSIONAL SERVICE AND SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND PENSIONS ARTICLE THAT GOVERN PROFESSIONAL SERVICE EMPLOYEES IF THE POSITION:

1. REQUIRES KNOWLEDGE OF AN ADVANCED TYPE IN A FIELD OF SCIENCE OR LEARNING CUSTOMARILY ACQUIRED BY A COURSE OF SPECIALIZED INTELLECTUAL INSTRUCTION AND STUDY; AND

2. NORMALLY REQUIRES A PROFESSIONAL LICENSE, AN ADVANCED DEGREE, OR BOTH.

(III) AN EMPLOYEE IS IN THE MANAGEMENT SERVICE AND SUBJECT TO THE PROVISIONS OF THE STATE PERSONNEL AND PENSIONS ARTICLE THAT GOVERN MANAGEMENT SERVICE EMPLOYEES IF THE POSITION:

1. PRIMARILY INVOLVES DIRECT RESPONSIBILITY FOR THE OVERSIGHT AND MANAGEMENT OF PERSONNEL AND FINANCIAL RESOURCES;

2. REQUIRES THE EXERCISE OF DISCRETION AND INDEPENDENT JUDGMENT; AND

3. IS NOT IN THE EXECUTIVE SERVICE.”;

in line 17, strike “(2)” and substitute “(3)”; and after line 19, insert:

“(4) THE BUDGET FOR THE BOARD AND ITS STAFF IS SUBJECT TO REVIEW BY THE GENERAL ASSEMBLY FOR INFORMATION PURPOSES. THE GENERAL ASSEMBLY MAY NOT APPROVE OR DISAPPROVE THE BUDGET.”.

AMENDMENT NO. 8

On page 3, in line 33, after “OF” insert “IN-STATE”.

On page 6, in line 37, strike “ACTUAL COSTS AT THE TIME OF ENROLLMENT.” and substitute “THE AVERAGE IN-STATE TUITION COSTS AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE AT THE TIME THAT THE BENEFITS ARE EXERCISED.”.

On page 7, in line 35, after “CURRENT” insert “IN-STATE”.

On page 8, in line 23, strike “CONTRACT;” and substitute “CONTRACT, BASED ON IN-STATE TUITION AT A PUBLIC INSTITUTION OF HIGHER EDUCATION IN THE STATE;”; after line 25, insert:

“(11) THE FOLLOWING NOTICE SHALL BE PRINTED ON EACH CONTRACT

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IN AT LEAST 10-POINT TYPE : THIS CONTRACT IS NOT AN OBLIGATION OF THE STATE AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE IS PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY, MORALLY OR OTHERWISE, TO THE PAYMENT OF THIS CONTRACT. THE BOARD CANNOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE, MORALLY OR OTHERWISE, THE STATE TO LEVY OR PLEDGE ANY FORM OF TAXATION WHATSOEVER OR TO MAKE ANY APPROPRIATION FOR THE PAYMENT OF THIS CONTRACT; AND”;

in line 25, strike “AND”; and in line 26, strike “(11)” and substitute “(12)”.

AMENDMENT NO. 9

On page 6, after line 24, insert:

“(D) THE COMPREHENSIVE INVESTMENT PLAN MUST INDICATE THE PERCENTAGE OF ASSETS THAT SHALL BE HELD IN EACH CLASS OF INVESTMENT, THE AMOUNT OF FUNDS HELD IN ANY CASH POOL, THE AMOUNT OF FUNDS HELD IN FIXED ASSETS INVESTMENTS, THE AMOUNT OF FUNDS HELD IN EQUITY INVESTMENTS, AND THE PERCENTAGE AND DOLLAR VALUE OF ASSETS PLACED WITH OUTSIDE MANAGERS.”.

AMENDMENT NO. 10

On page 7, after line 28, insert:

“(A) IN THIS SECTION, “FIDUCIARY” MEANS:

(1) A MEMBER OF THE MARYLAND HIGHER EDUCATION INVESTMENT PROGRAM BOARD; OR

(2) AN EMPLOYEE OF THE MARYLAND HIGHER EDUCATION INVESTMENT PROGRAM WHO EXERCISES ANY DISCRETIONARY AUTHORITY OR CONTROL OVER:

(I) THE MANAGEMENT OR ADMINISTRATION OF THE PROGRAM;

OR

(II) THE MANAGEMENT OR DISPOSITION OF THE ASSETS OF THE PROGRAM.

(B) A FIDUCIARY SHALL DISCHARGE THE FIDUCIARY'S DUTIES WITH RESPECT TO THE PROGRAM:

(1) SOLELY IN THE INTEREST OF THE PARTICIPANTS;

(2) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO THE PARTICIPANTS AND PROVIDING REASONABLE EXPENSES OF ADMINISTERING THE PROGRAM;

(3) WITH THE CARE, SKILL, PRUDENCE, AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING, THAT A PRUDENT PERSON ACTING IN A LIKE CAPACITY AND FAMILIAR WITH SUCH MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE CHARACTER WITH LIKE AIMS;

(4) BY DIVERSIFYING THE INVESTMENTS OF THE PROGRAM SO AS TO MINIMIZE THE RISK OF LARGE LOSSES, UNLESS UNDER THE CIRCUMSTANCES IT IS CLEARLY PRUDENT NOT TO DO SO;

(5) IN ACCORDANCE WITH THE LAWS GOVERNING THE PROGRAM; AND

(6) IN ACCORDANCE WITH THE DOCUMENTS AND INSTRUMENTS GOVERNING THE PROGRAM TO THE EXTENT THAT THE DOCUMENTS AND INSTRUMENTS ARE CONSISTENT WITH THIS SUBTITLE.

(C) IN EXERCISING AUTHORITY, CONTROL, OR DISCRETION WITH RESPECT TO THE PROGRAM, A FIDUCIARY MAY NOT:

(1) USE THE ASSETS OF THE PROGRAM FOR THE FIDUCIARY'S OWN INTEREST OR ACCOUNT;

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(2) ACT IN A TRANSACTION INVOLVING THE PROGRAM ON BEHALF OF A PERSON, OR REPRESENT A PERSON, IF THE INTERESTS OF THE PERSON ARE ADVERSE TO THE INTERESTS OF THE PROGRAM OR THE INTERESTS OF PARTICIPANTS;

(3) RECEIVE ANY CONSIDERATION FOR THE FIDUCIARY'S OWN ACCOUNT FROM A PERSON DEALING WITH THE PROGRAM IN CONNECTION WITH A TRANSACTION INVOLVING THE ASSETS OF THE PROGRAM; OR

(4) BECOME AN ENDORSER OR SURETY OR, IN ANY MANNER, AN OBLIGOR, FOR MONEY LENT TO OR BORROWED FROM THE BOARD.

18-1908.

(A) THE BOARD SHALL PURCHASE A BOND FOR EACH FIDUCIARY IN ACCORDANCE WITH ARTICLE 78A, §§ 46 THROUGH 50 OF THE CODE;

(B) UNLESS A FIDUCIARY IS BONDED, THE FIDUCIARY MAY NOT EXERCISE CUSTODY OR CONTROL OF ANY ASSETS OF THE PROGRAM; AND

(C) A FIDUCIARY MAY NOT ALLOW ANOTHER FIDUCIARY TO ACT IN VIOLATION OF THIS SECTION.

18-1909.”.

AMENDMENT NO. 11

On page 9, in line 6, strike “OR”; in line 9, strike the period and substitute “; OR”; after line 9, insert:

“(3) ATTENDS AN INSTITUTION OF HIGHER EDUCATION NOT IN THE STATE OF MARYLAND.”;

in line 33, before “NOTHING” insert “(A)”; and after line 36, insert:

“(B) THE ACTUAL TUITION RATE CHARGED TO A QUALIFIED BENEFICIARY SHALL BE DETERMINED AT THE TIME OF ENROLLMENT IN ACCORDANCE WITH THE RESIDENCY POLICY ADOPTED BY THE GOVERNING BOARD OF THE INSTITUTION OF HIGHER EDUCATION AT WHICH THE QUALIFIED BENEFICIARY ENROLLS.”.

AMENDMENT NO. 12

On page 10, in line 15, strike “PLAN;” and substitute “PLAN WHICH SHALL INCLUDE:

1. THE STATUS OF THE INVESTMENT PROGRAM, INCLUDING INVESTMENT INCOME MATCHED TO PROJECTED ENROLLMENT COSTS UNDER THE EXISTING CONTRACT;

2. THE ASSETS HELD IN EACH CLASS OF INVESTMENT, THE AMOUNT OF FUNDS HELD IN ANY CASH POOL, THE AMOUNT OF FUNDS HELD IN FIXED ASSETS INVESTMENTS, AND THE AMOUNT OF FUNDS HELD IN EQUITY INVESTMENTS;

3. THE PERCENTAGE AND DOLLAR VALUE OF ASSETS PLACED WITH OUTSIDE MANAGERS;

4. THE INCOME PRODUCED BY EACH CLASS OF INVESTMENT; AND

5. THE INCOME PRODUCED BY EACH INVESTMENT MANAGER;”.

On page 11, after line 13, insert:

“SECTION 5. AND BE IT FURTHER ENACTED, That any efforts undertaken by the Maryland Higher Education Investment Program Board to market the Maryland Higher Education Investment Program must include full disclosure that the contract entered into under the provisions of this Act does not guarantee that the earnings of the assets invested in the Program will generate

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the difference between the projected costs of tuition under the contract and the actual costs at the time of enrollment.”.

AMENDMENT NO. 13

On page 6, in lines 25, 34, and 38, strike “(D)”, “(E)”, and “(F)”, respectively, and substitute “(E)”, “(F)”, and “(G)”, respectively.

On page 7, in lines 1, 4, 9, 13, 18, and 20, strike “(G)”, “(H)”, “(I)”, “(J)”, “(K)”, and “(L)”, respectively, and substitute “(H)”, “(I)”, “(J)”, “(K)”, “(L)”, and “(M)”, respectively; and in line 34, strike “(B)” and substitute “(C)”.

On page 8, in line 33, strike “18-1908.” and substitute “18-1910.”; and in lines 6 and 28, strike “(C)” and “(D)”, respectively, and substitute “(D)” and “(E)”, respectively.

On page 9, in lines 22, 25, 28, and 32, strike “18-1909.”, “18-1910.”, “18-1911.”, and “18-1912.”, respectively, and substitute “18-1911.”, “18-1912.”, “18-1913.”, and “18-1914.”, respectively.

On page 10, in lines 1 and 6, strike “18-1913.” and “18-1914.”, respectively, and substitute “18-1915.” and “18-1916.”, respectively.

On page 11, in line 14, strike “5.” and substitute “6.”.