

CF 7r1372

By: The Speaker (Administration) and Delegates Mossburg, Shriver, Heller, Conway, Fry, Workman, Baldwin, Dembrow, Kopp, Rawlings, Marriott, Cadden, McIntosh, and Rudolph Rudolph, Slade, Holt, Willis, Proctor, and Palumbo

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Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 1997

CHAPTER _____

1 AN ACT concerning

2 **Higher Education - Maryland ~~Prepaid Tuition~~ Higher Education Investment Program**

3 FOR the purpose of establishing a method to provide for the prepayment of tuition at ~~the~~
4 ~~public~~ institutions of higher education in the State; establishing the Maryland
5 ~~Prepaid Tuition~~ Higher Education Investment Program; clarifying the purpose of
6 the Program and the types of funds of which the Program shall be composed;
7 defining certain terms; providing that neither the faith and credit nor the taxing
8 power of the State is pledged to the payment of debts, contracts, and obligations of
9 the Program, institutions of higher education, and other participants in the
10 Program; establishing a Maryland ~~Prepaid Tuition~~ Higher Education Investment
11 Program Board; specifying the membership, appointment, terms, and removal of
12 members of the Board; providing that the budget for the Maryland Higher
13 Education Investment Board and its staff is subject to review by the General
14 Assembly for information purposes; establishing the powers and duties of the
15 Board; establishing administrative rules for the Board; authorizing the Board to
16 adopt regulations to carry out its responsibilities; requiring the Board to adopt a
17 certain investment plan for the Program; establishing the fiduciary responsibilities
18 of the Board; prohibiting certain transactions involving program assets; requiring
19 the Board to purchase certain bonds for fiduciaries; exempting the Program from
20 certain laws; requiring the Board to establish a program of ~~prepaid tuition~~ higher
21 education investment contracts for the advance payment of tuition at ~~public~~
22 institutions of higher education in the State; authorizing the Board to provide for
23 circumstances under which money may be withdrawn from the Program; specifying
24 certain requirements concerning ~~prepaid tuition~~ higher education investment
25 contracts; requiring the Board to provide for certain changes in circumstances of

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1 beneficiaries and purchasers of ~~prepaid-tuition~~ higher education investment
 2 contracts; providing for refunds under certain circumstances; prohibiting any legal
 3 attachment of contract benefits or assets of the Program; authorizing certain public
 4 agencies to provide for payroll deductions for employees to purchase ~~prepaid~~
 5 ~~tuition~~ higher education investment contracts; requiring an annual audit of the
 6 Program; requiring the Board to report to the Governor and General Assembly
 7 annually concerning the audit and certain matters concerning the Program;
 8 establishing provisions for the discontinuance of the Program; prohibiting
 9 inspection of certain records except in certain circumstances; requiring a certain
 10 appropriation for a certain fiscal year; establishing the terms of the initial members
 11 of the Board; requiring the Board to solicit a certain opinion before entering into a
 12 certain contract; requiring the Board to provide full disclosure that a contract is not
 13 a guarantee when undertaking marketing efforts; and generally relating to
 14 establishing a method to provide for the prepayment of tuition at ~~the public~~
 15 institutions of higher education in the State.

16 BY repealing and reenacting, with amendments,

17 Article - Education
 18 Section 11-105(h)(1)
 19 Annotated Code of Maryland
 20 (1997 Replacement Volume)

21 BY adding to

22 Article - Education
 23 Section 18-1901 through ~~18-1914~~ 18-1916, inclusive, to be under the new subtitle
 24 "Subtitle 19. Maryland ~~Prepaid Tuition~~ Higher Education Investment
 25 Program"
 26 Annotated Code of Maryland
 27 (1997 Replacement Volume)

28 BY adding to

29 Article - State Government
 30 Section 10-616(n)
 31 Annotated Code of Maryland
 32 (1995 Replacement Volume and 1996 Supplement)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 34 MARYLAND, That the Laws of Maryland read as follows:

35 **Article - Education**

36 11-105.

37 (h) (1) On or before a date set by the Commission, each of the following
 38 governing boards and agencies shall submit to the Commission its annual operating
 39 budget requests and proposals for capital projects, by constituent institutions for the next
 40 fiscal year:

41 (i) The Board of Regents of the University of Maryland System;

3

- 1 (ii) The Board of Regents of Morgan State University;
- 2 (iii) The Board of Trustees of St. Mary's College of Maryland;
- 3 (iv) The Maryland Higher Education Loan Corporation;
- 4 (v) The State Advisory Council for Title I of the Higher Education Act
- 5 of 1965; [and]
- 6 (vi) The Board of Trustees of Baltimore City Community College;
- 7 AND

8 (VII) THE BOARD OF THE MARYLAND ~~PREPAID-TUITION~~ HIGHER

9 EDUCATION INVESTMENT PROGRAM.

10 SUBTITLE 19. MARYLAND ~~PREPAID-TUITION~~ HIGHER EDUCATION INVESTMENT

11 PROGRAM.

12 18-1901.

13 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

14 INDICATED.

15 (B) "BOARD" MEANS THE BOARD OF THE MARYLAND ~~PREPAID-TUITION~~

16 HIGHER EDUCATION INVESTMENT PROGRAM.

17 (C) "PROGRAM" MEANS THE MARYLAND ~~PREPAID-TUITION~~ HIGHER

18 EDUCATION INVESTMENT PROGRAM.

19 (D) "~~PREPAID-TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT"

20 MEANS A CONTRACT BETWEEN THE BOARD AND A PURCHASER UNDER THE

21 PROVISIONS OF THIS SUBTITLE FOR THE ADVANCE PAYMENT OF UNDERGRADUATE

22 TUITION AT A FIXED AND GUARANTEED LEVEL BY THE PURCHASER FOR A

23 QUALIFIED BENEFICIARY TO ATTEND ~~A PUBLIC AN~~ AN INSTITUTION OF HIGHER

24 EDUCATION IN THE STATE, IF THE QUALIFIED BENEFICIARY IS ADMITTED TO THE

25 INSTITUTION.

26 (E) "PURCHASER" MEANS AN INDIVIDUAL ~~WHO~~ WHO:

27 (1) MAKES OR UNDERTAKES THE OBLIGATION TO MAKE ADVANCE

28 PAYMENTS OF UNDERGRADUATE TUITION AS PROVIDED UNDER A ~~PREPAID~~

29 ~~TUITION CONTRACT.~~ HIGHER EDUCATION INVESTMENT CONTRACT; AND

30 (2) EXCEPT AS PROVIDED § 18-1909(B) OF THIS SUBTITLE, IS A RESIDENT

31 OF MARYLAND AT THE TIME THAT THE PURCHASER ENTERS INTO A HIGHER

32 EDUCATION INVESTMENT CONTRACT.

33 (F) "QUALIFIED BENEFICIARY" MEANS AN INDIVIDUAL WHO ~~IS~~:

34 (1) IS ELIGIBLE TO APPLY ADVANCE TUITION PAYMENTS TO

35 UNDERGRADUATE TUITION AT ~~A PUBLIC AN~~ AN INSTITUTION OF HIGHER EDUCATION

36 IN THE STATE UNDER THE PROVISIONS OF THIS SUBTITLE; AND

4

1 (2) EXCEPT AS PROVIDED IN § 18-1909(B) OF THIS SUBTITLE, IS A
2 RESIDENT OF THE STATE AT THE TIME THAT THE PURCHASER ENTERS INTO A
3 ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT.

4 (G) "TUITION" MEANS THE CHARGES IMPOSED BY A ~~PUBLIC AN~~ INSTITUTION
5 OF HIGHER EDUCATION IN THE STATE FOR ENROLLMENT AT THE INSTITUTION AND
6 INCLUDES REGISTRATION AND ALL FEES REQUIRED AS A CONDITION OF
7 ENROLLMENT.

8 18-1902.

9 IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ENHANCE THE
10 ACCESSIBILITY AND AFFORDABILITY OF HIGHER EDUCATION FOR ALL CITIZENS OF
11 THE STATE BY ESTABLISHING A METHOD TO PROVIDE FOR THE PREPAYMENT OF
12 TUITION AT ~~THE PUBLIC~~ INSTITUTIONS OF HIGHER EDUCATION IN THE STATE.

13 18-1903.

14 (A) THERE IS A MARYLAND ~~PREPAID TUITION~~ HIGHER EDUCATION
15 INVESTMENT PROGRAM.

16 (B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE:

17 (1) A MEANS FOR PAYMENT OF THE COST OF TUITION IN ADVANCE OF
18 ENROLLMENT AT ANY ~~PUBLIC~~ INSTITUTION OF HIGHER EDUCATION IN THE STATE;
19 AND

20 (2) AN ASSURANCE TO A BENEFICIARY WHO ENROLLS AT A ~~PUBLIC AN~~
21 INSTITUTION OF HIGHER EDUCATION IN THE STATE THAT THE BOARD SHALL MAKE
22 EVERY EFFORT TO INVEST THE ADVANCE PAYMENTS SO THAT THE ~~PREPAID~~
23 TUITION HIGHER EDUCATION INVESTMENT CONTRACT WILL COVER THE COST OF
24 IN-STATE TUITION.

25 (C) THE FUNDS OF THE PROGRAM CONSIST OF:

26 (1) PAYMENTS RECEIVED FROM ~~PREPAID TUITION~~ HIGHER EDUCATION
27 INVESTMENT CONTRACTS MADE UNDER THE PROVISIONS OF THIS SUBTITLE;

28 (2) BEQUESTS, ENDOWMENTS, OR FUNDS FROM ANY OTHER
29 AVAILABLE PRIVATE SOURCE;

30 (3) INTEREST AND INCOME EARNED FROM THE INVESTMENTS OF THE
31 PROGRAM; AND

32 (4) FEDERAL, STATE, OR LOCAL FUNDS, OR FUNDS FROM ANY OTHER
33 AVAILABLE PUBLIC SOURCE.

34 (D) MONEY REMAINING IN THE PROGRAM AT THE END OF THE FISCAL YEAR
35 SHALL REMAIN IN THE PROGRAM AND MAY NOT REVERT TO THE GENERAL FUND
36 OF THE STATE.

37 (E) MONEYS OF THE PROGRAM MAY NOT BE CONSIDERED MONEYS OF THE
38 STATE AND MAY NOT BE DEPOSITED INTO THE TREASURY.

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1 ~~(E) THE DEBTS AND OBLIGATIONS OF THE PROGRAM ARE NOT DEBTS OF THE~~
2 ~~STATE OR PLEDGES OF THE CREDIT OF THE STATE.~~

3 (F) (1) THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE PROGRAM ARE
4 NOT THE CONTRACTS, DEBTS, OR OBLIGATIONS OF THE STATE AND NEITHER THE
5 FAITH AND CREDIT NOR TAXING POWER OF THE STATE IS PLEDGED DIRECTLY OR
6 INDIRECTLY OR CONTINGENTLY, MORALLY OR OTHERWISE, TO THE PAYMENT OF
7 THE DEBTS, CONTRACTS, AND OBLIGATIONS.

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

13 18-1904.

14 (A) THERE IS A MARYLAND ~~PREPAID TUITION~~ HIGHER EDUCATION
15 INVESTMENT PROGRAM BOARD.

16 (B) THE BOARD CONSISTS OF THE FOLLOWING SEVEN MEMBERS ~~APPOINTED~~
17 ~~BY THE GOVERNOR:~~

18 (1) THE SECRETARY OF THE MARYLAND HIGHER EDUCATION
19 COMMISSION;

20 (2) ~~A REPRESENTATIVE OF THE OFFICE OF~~ THE STATE TREASURER;

21 (3) ~~A REPRESENTATIVE OF THE OFFICE OF~~ THE STATE COMPTROLLER;
22 AND

23 (4) FOUR MEMBERS OF THE PUBLIC WHO SHALL BE APPOINTED BY THE
24 GOVERNOR AND SHALL HAVE SIGNIFICANT EXPERIENCE IN FINANCE,
25 ACCOUNTING, INVESTMENT MANAGEMENT, OR OTHER AREAS THAT CAN BE OF
26 ASSISTANCE TO THE BOARD.

27 (C) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD SHALL TAKE
28 THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND CONSTITUTION.

29 (D) (1) EXCEPT FOR THE TERMS OF THE INITIAL MEMBERS OF THE BOARD,
30 THE TERM OF A PUBLIC MEMBER OF THE BOARD IS 4 YEARS.

31 (2) THE TERMS OF THE PUBLIC MEMBERS OF THE BOARD ARE
32 STAGGERED AS REQUIRED BY THE TERMS OF THE MEMBERS OF THE BOARD ON
33 OCTOBER 1, 1998.

34 (3) AT THE END OF A TERM, A PUBLIC MEMBER CONTINUES TO SERVE
35 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

36 (4) A PUBLIC MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN
37 SERVES ONLY FOR THE REMAINDER OF THE TERM AND UNTIL A SUCCESSOR IS
38 APPOINTED AND QUALIFIES.

39 (5) A PUBLIC MEMBER IS ELIGIBLE FOR REAPPOINTMENT.

6

1 (E) THE GOVERNOR MAY REMOVE A PUBLIC MEMBER FOR INCOMPETENCE
2 OR MISCONDUCT.

3 18-1905.

4 (A) THE BOARD, FROM AMONG THE MEMBERS OF THE BOARD, SHALL ELECT
5 A CHAIRMAN AND MAY ELECT ADDITIONAL OFFICERS THAT THE BOARD
6 CONSIDERS NECESSARY.

7 (B) THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF MEETINGS.

8 (C) A MEMBER OF THE BOARD:

9 (1) MAY NOT RECEIVE COMPENSATION;

10 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
11 STANDARD STATE TRAVEL REGULATIONS; AND

12 (3) SHALL FILE A PUBLIC DISCLOSURE OF FINANCIAL INTERESTS AS
13 REQUIRE UNDER THE MARYLAND PUBLIC ETHICS LAW.

14 (D) (1) THE BOARD:

15 (I) SHALL APPOINT AN EXECUTIVE DIRECTOR WHO IS IN THE
16 EXECUTIVE SERVICE OF THE STATE PERSONNEL MANAGEMENT SYSTEM; AND

17 (II) MAY EMPLOY ADDITIONAL STAFF IN ACCORDANCE WITH THE
18 BUDGET.

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

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

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

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

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

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

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

7

1 3. IS NOT IN THE EXECUTIVE SERVICE.

2 ~~(2)~~ (3) THE BOARD MAY RETAIN THE SERVICES OF CONSULTANTS,
3 ADMINISTRATORS, AND OTHER PERSONNEL, AS NECESSARY, TO ADMINISTER THE
4 PROGRAM.

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

8 (E) THE BOARD MAY ADOPT ANY REGULATIONS THAT THE BOARD
9 CONSIDERS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

10 (F) IN ADDITION, THE BOARD MAY:

11 (1) ADOPT AN OFFICIAL SEAL;

12 (2) SUE AND BE SUED;

13 (3) EXECUTE CONTRACTS AND OTHER NECESSARY INSTRUMENTS;

14 (4) HOLD, BUY, AND SELL INSTRUMENTS, OBLIGATIONS, SECURITIES,
15 AND OTHER INVESTMENTS CONSISTENT WITH ITS COMPREHENSIVE INVESTMENT
16 PLAN;

17 (5) ENTER INTO AGREEMENTS WITH ELIGIBLE INSTITUTIONS OF
18 HIGHER EDUCATION AND OTHER PUBLIC OR PRIVATE ENTITIES FOR THE
19 PROMOTION, ADMINISTRATION, OR MARKETING OF THE PROGRAM;

20 (6) INVEST FUNDS NOT REQUIRED FOR IMMEDIATE DISBURSEMENT;

21 (7) SOLICIT AND ACCEPT GIFTS, GRANTS, LOANS, OR OTHER AID FROM
22 ANY SOURCE OR PARTICIPATE IN ANY GOVERNMENT PROGRAM FOR PURPOSES
23 CONSISTENT WITH THIS SUBTITLE;

24 (8) IMPOSE AND COLLECT REASONABLE ADMINISTRATIVE FEES FOR
25 ANY TRANSACTIONS INVOLVING ~~PREPAID TUITION~~ HIGHER EDUCATION
26 INVESTMENT CONTRACTS OR TRANSACTIONS AFFECTING THE PROGRAM;

27 (9) PROCURE INSURANCE AGAINST ANY LOSS OF ASSETS OF THE
28 PROGRAM;

29 (10) ENDORSE INSURANCE COVERAGE WRITTEN EXCLUSIVELY FOR THE
30 PURPOSE OF PROTECTING A ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT
31 CONTRACT AND THE PURCHASER AND QUALIFIED BENEFICIARY OF THE
32 CONTRACT;

33 (11) DESIGNATE TERMS UNDER WHICH MONEY MAY BE WITHDRAWN
34 FROM THE PROGRAM;

35 (12) ESTABLISH ADDITIONAL PROCEDURAL AND SUBSTANTIVE
36 REQUIREMENTS FOR PARTICIPATION IN AND THE ADMINISTRATION OR
37 MARKETING OF THE PROGRAM;

8

1 (13) APPEAR ON THE BOARD'S OWN BEHALF BEFORE OTHER BOARDS,
2 COMMISSIONS, OR OTHER GOVERNMENTAL AGENCIES; AND

3 (14) TAKE ANY OTHER ACTION THAT THE BOARD CONSIDERS
4 APPROPRIATE TO IMPLEMENT AND ADMINISTER THE PROGRAM.

5 18-1906.

6 (A) THE BOARD SHALL ADOPT A COMPREHENSIVE INVESTMENT PLAN FOR
7 THE ADMINISTRATION OF THE PROGRAM.

8 (B) THE PLAN SHALL SPECIFY THE INVESTMENT POLICIES USED BY THE
9 BOARD IN THE ADMINISTRATION OF THE PROGRAM.

10 (C) ASSETS OF THE PROGRAM SHALL BE INVESTED IN ACCORDANCE WITH
11 THE COMPREHENSIVE INVESTMENT PLAN.

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

18 ~~(D)~~ (E) (1) NOTWITHSTANDING ANY LAW RESTRICTING THE DEPOSIT OR
19 INVESTMENT OF STATE MONEY, THE BOARD MAY PLACE ASSETS OF THE PROGRAM
20 IN SAVINGS ACCOUNTS OR MAY USE THE ASSETS TO PURCHASE FIXED OR VARIABLE
21 LIFE INSURANCE OR ANNUITY CONTRACTS, SECURITIES, EVIDENCE OF
22 INDEBTEDNESS, OR OTHER INVESTMENT PRODUCTS PURSUANT TO THE
23 COMPREHENSIVE INVESTMENT PLAN.

24 (2) ANY INSURANCE, ANNUITY CONTRACTS, SAVINGS, OR OTHER
25 INVESTMENT PRODUCTS PROCURED BY THE BOARD SHALL BE UNDERWRITTEN
26 AND OFFERED IN COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS.

27 ~~(E)~~ (F) THE BOARD SHALL MAKE EVERY EFFORT TO INVEST THE ASSETS OF
28 THE PROGRAM IN A MANNER THAT EARNS, AT A MINIMUM, SUFFICIENT EARNINGS
29 TO GENERATE THE DIFFERENCE BETWEEN THE PREPAID AMOUNT UNDER
30 ADVANCE PAYMENT CONTRACTS AND ~~ACTUAL COSTS AT THE TIME OF~~
31 ~~ENROLLMENT.~~ THE AVERAGE IN-STATE TUITION COSTS AT PUBLIC INSTITUTIONS
32 OF HIGHER EDUCATION IN THE STATE AT THE TIME THAT THE BENEFITS ARE
33 EXERCISED.

34 ~~(F)~~ (G) THE PLAN SHALL PROVIDE FOR THE PROGRAM TO BE
35 ADMINISTERED IN AN ACTUARIALLY SOUND MANNER TO ASSURE THAT THE BOARD
36 MAY DEFRAY OBLIGATIONS OF THE PROGRAM.

37 ~~(G)~~ (H) THE BOARD SHALL REVIEW THE COMPREHENSIVE INVESTMENT
38 PLAN AT LEAST ANNUALLY TO ASSURE THAT THE PROGRAM REMAINS
39 ACTUARIALLY SOUND.

40 ~~(H)~~ (I) AFTER EACH ANNUAL REVIEW OF THE COMPREHENSIVE
41 INVESTMENT PLAN FOR ACTUARIAL SOUNDNESS, THE BOARD MAY ADJUST THE

9

1 TERMS OF SUBSEQUENT ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT
2 CONTRACTS TO ENSURE CONTINUED ACTUARIAL SOUNDNESS OR, IF NECESSARY,
3 MAY ADJUST THE TERMS OF CURRENT ~~PREPAID TUITION~~ HIGHER EDUCATION
4 INVESTMENT CONTRACTS.

5 ~~(H)~~ (J) THE BOARD MAY CONTRACT WITH AN INVESTMENT ADVISORY OR
6 MANAGEMENT COMPANY FOR THE INVESTMENT AND MANAGEMENT OF THE
7 PROGRAM AS LONG AS THE PROGRAM IS ADMINISTERED IN ACCORDANCE WITH
8 THE COMPREHENSIVE INVESTMENT PLAN.

9 ~~(H)~~ (K) THE BOARD:

10 (1) SHALL PRESERVE, INVEST, AND EXPEND THE ASSETS OF THE
11 PROGRAM SOLELY FOR THE PURPOSES OF THIS SUBTITLE; AND

12 (2) MAY NOT LOAN, TRANSFER, OR USE THE ASSETS FOR ANY OTHER
13 PURPOSE OF THE STATE.

14 ~~(K)~~ (L) THE PROGRAM IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE
15 AND PROCUREMENT ARTICLE.

16 ~~(L)~~ (M) UNLESS THE BOARD PROVIDES OTHERWISE BY REGULATION, THE
17 BOARD SHALL USE THE PROCEEDS IN THE PROGRAM IN THE FOLLOWING ORDER:

18 (1) TO PAY ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION IN
19 ACCORDANCE WITH THE BOARD'S OBLIGATIONS UNDER ADVANCE PAYMENT
20 CONTRACTS;

21 (2) TO REFUND MONEY ON THE TERMINATION OF ADVANCE PAYMENT
22 CONTRACTS; AND

23 (3) TO PAY THE OPERATING EXPENSES OF THE BOARD.

24 18-1907.

25 (A) IN THIS SECTION, "FIDUCIARY" MEANS:

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

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

31 (I) THE MANAGEMENT OR ADMINISTRATION OF THE PROGRAM;
32 OR

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

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

37 (1) SOLELY IN THE INTEREST OF THE PARTICIPANTS;

10

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

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

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

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

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

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

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

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

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

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

28 18-1908.

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

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

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

35 18-1909.

36 (A) THE BOARD SHALL ESTABLISH A PROGRAM OF ~~PREPAID TUITION~~ HIGHER
37 EDUCATION INVESTMENT CONTRACTS TO BE KNOWN AS:

38 (1) THE COMMUNITY COLLEGE PLAN;

11

1 (2) THE UNIVERSITY PLAN; AND

2 (3) THE TWO PLUS TWO PLAN.

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

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

10 ~~(B)~~ (C) THE COST OF A PREPAID TUITION HIGHER EDUCATION
11 INVESTMENT CONTRACT SHALL BE BASED ON:

12 (1) THE AVERAGE CURRENT IN-STATE TUITION COSTS AT THE TIME
13 THE CONTRACT IS PURCHASED AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN
14 THE STATE;

15 (2) THE NUMBER OF YEARS EXPECTED TO ELAPSE BETWEEN THE
16 PURCHASE OF A ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT
17 AND THE USE OF THE BENEFITS OF THE CONTRACT; AND

18 (3) THE PROJECTED TUITION COSTS AT THE TIME THAT THE BENEFITS
19 WILL BE EXERCISED.

20 ~~(C)~~ (D) EACH PREPAID TUITION HIGHER EDUCATION INVESTMENT
21 CONTRACT MADE UNDER THE PROVISIONS OF THIS SUBTITLE SHALL INCLUDE THE
22 FOLLOWING PROVISIONS:

23 (1) THE AMOUNT OF EACH PAYMENT AND THE NUMBER OF PAYMENTS
24 REQUIRED FROM A PURCHASER;

25 (2) THE TERMS AND CONDITIONS UNDER WHICH PURCHASERS SHALL
26 REMIT PAYMENTS, INCLUDING THE DATES OF THE PAYMENTS;

27 (3) PROVISIONS FOR LATE PAYMENT CHARGES AND DEFAULTS;

28 (4) PENALTIES FOR EARLY WITHDRAWAL FROM THE PROGRAM;

29 (5) THE NAME AND DATE OF BIRTH OF THE QUALIFIED BENEFICIARY
30 ON WHOSE BEHALF THE CONTRACT IS MADE;

31 (6) TERMS AND CONDITIONS FOR A SUBSTITUTION FOR THE QUALIFIED
32 BENEFICIARY ORIGINALLY NAMED;

33 (7) TERMS AND CONDITIONS FOR THE TERMINATION OF THE
34 CONTRACT;

35 (8) THE TIME PERIOD DURING WHICH THE QUALIFIED BENEFICIARY
36 MAY CLAIM BENEFITS FROM THE PROGRAM;

12

1 (9) THE MAXIMUM NUMBER OF UNDERGRADUATE SEMESTER HOURS
2 THAT ARE PREPAID UNDER THE ~~CONTRACT~~; CONTRACT, BASED ON IN-STATE
3 TUITION AT A PUBLIC INSTITUTION OF HIGHER EDUCATION IN THE STATE;

4 (10) ALL OTHER RIGHTS AND OBLIGATIONS OF THE PURCHASER AND
5 THE PROGRAM; ~~AND~~

6 (11) THE FOLLOWING NOTICE SHALL BE PRINTED ON EACH CONTRACT
7 IN AT LEAST 10-POINT TYPE: THIS CONTRACT IS NOT AN OBLIGATION OF THE STATE
8 AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE IS
9 PLEGGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY, MORALLY OR
10 OTHERWISE, TO THE PAYMENT OF THIS CONTRACT. THE BOARD CANNOT DIRECTLY
11 OR INDIRECTLY OR CONTINGENTLY OBLIGATE, MORALLY OR OTHERWISE, THE
12 STATE TO LEVY OR PLEDGE ANY FORM OF TAXATION WHATSOEVER OR TO MAKE
13 ANY APPROPRIATION FOR THE PAYMENT OF THIS CONTRACT; AND

14 ~~(11)~~ (12) ANY OTHER TERMS AND CONDITIONS THAT THE BOARD
15 CONSIDERS NECESSARY OR APPROPRIATE.

16 ~~(D)~~ (E) THE BOARD SHALL ALLOW THE CONVERSION OF AN ADVANCE
17 PAYMENT CONTRACT PLAN FROM A COMMUNITY COLLEGE PLAN TO A TWO PLUS
18 TWO PLAN OR A UNIVERSITY PLAN; FROM A UNIVERSITY PLAN TO A COMMUNITY
19 COLLEGE PLAN OR A TWO PLUS TWO PLAN; OR FROM A TWO PLUS TWO PLAN TO A
20 COMMUNITY COLLEGE PLAN OR A UNIVERSITY PLAN.

21 ~~48-4908. 18-1910.~~

22 (A) (1) THE BOARD SHALL ISSUE REFUNDS AS SPECIFIED IN THIS SECTION.

23 (2) UNLESS AUTHORIZED UNDER REGULATIONS OF THE BOARD OR
24 UNDER SUBSECTION (B) OF THIS SECTION, A REFUND MAY NOT EXCEED THE
25 AMOUNT PAID INTO THE PROGRAM BY THE PURCHASER.

26 (B) A REFUND EQUAL TO THE SAME BENEFITS AS PROVIDED BY THE
27 CONTRACT, MINUS ANY AMOUNT PAID OUT OF THE FUNDS OF THE PROGRAM ON
28 BEHALF OF THE QUALIFIED BENEFICIARY AND FOR REASONABLE ADMINISTRATIVE
29 CHARGES, SHALL BE MADE IF THE BENEFICIARY:

30 (1) IS AWARDED A SCHOLARSHIP THAT COVERS BENEFITS PROVIDED
31 UNDER THE ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT; OR

32 (2) DIES OR SUFFERS FROM A DISABILITY WHICH PREVENTS THE
33 BENEFICIARY FROM ATTENDING A ~~PUBLIC AN~~ INSTITUTION OF HIGHER EDUCATION
34 WITHIN THE TIME ALLOWED BY THIS SUBTITLE-; OR

35 (3) ATTENDS AN INSTITUTION OF HIGHER EDUCATION NOT IN THE
36 STATE OF MARYLAND.

37 (C) (1) A DISCOUNTED REFUND OF THE CONTRIBUTIONS MADE TO THE
38 PROGRAM, AS DETERMINED BY THE BOARD, SHALL BE MADE IF:

39 (I) THE BENEFICIARY DOES NOT ATTEND A ~~PUBLIC AN~~
40 INSTITUTION OF HIGHER EDUCATION;

13

1 (II) BENEFITS ARE NOT EXERCISED UNDER THE CONTRACT
2 WITHIN A TIME SPECIFIED IN THE CONTRACT; OR

3 (III) THE CONTRACT IS CANCELED BY THE PURCHASER.

4 (2) THE TIME THAT A QUALIFIED BENEFICIARY SPENDS IN ACTIVE
5 DUTY AS A MEMBER OF THE UNITED STATES ARMED FORCES SHALL BE ADDED TO
6 THE TIME PERIOD ALLOWED TO EXERCISE THE BENEFITS UNDER A ~~PREPAID~~
7 ~~TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT BEFORE A TERMINATION
8 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

9 ~~18-1909.~~ 18-1911.

10 THE BOARD, PROGRAM, AND ~~PREPAID-TUITION~~ HIGHER EDUCATION
11 INVESTMENT CONTRACTS ISSUED UNDER THIS SUBTITLE ARE NOT SUBJECT TO THE
12 PROVISIONS OF THE INSURANCE ARTICLE.

13 ~~18-1910.~~ 18-1912.

14 THE ASSETS AND INCOME OF THE PROGRAM ARE EXEMPT FROM STATE AND
15 LOCAL TAXATION.

16 ~~18-1911.~~ 18-1913.

17 A PERSON MAY NOT ATTACH, EXECUTE, GARNISH, OR OTHERWISE SEIZE ANY
18 CURRENT OR FUTURE BENEFIT UNDER A ~~PREPAID-TUITION~~ HIGHER EDUCATION
19 INVESTMENT CONTRACT OR ANY ASSET OF THE PROGRAM.

20 ~~18-1912.~~ 18-1914.

21 (A) NOTHING IN THIS SUBTITLE OR IN ANY ~~PREPAID-TUITION~~ HIGHER
22 EDUCATION INVESTMENT CONTRACT MAY BE CONSTRUED AS A PROMISE OR
23 GUARANTEE BY THE BOARD OF ADMISSION TO, CONTINUED ENROLLMENT AT, OR
24 GRADUATION FROM A ~~PUBLIC~~ AN INSTITUTION OF HIGHER EDUCATION IN THE
25 STATE.

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

30 ~~18-1913.~~ 18-1915.

31 THE STATE AND ITS AGENCIES OR ANY LOCAL GOVERNMENT IN THE STATE
32 MAY AGREE, BY CONTRACT OR OTHERWISE, TO REMIT PAYMENTS ON BEHALF OF
33 AN EMPLOYEE TOWARD A ~~PREPAID-TUITION~~ HIGHER EDUCATION INVESTMENT
34 CONTRACT THROUGH PAYROLL DEDUCTIONS.

35 ~~18-1914.~~ 18-1916.

36 (A) (1) THE LEGISLATIVE AUDITOR SHALL AUDIT THE PROGRAM
37 ANNUALLY.

38 (2) THE BOARD SHALL PAY FOR THE AUDIT.

14

1 (B) (1) WITHIN 90 DAYS AFTER THE CLOSE OF EACH FISCAL YEAR, THE
2 BOARD SHALL SUBMIT TO THE GOVERNOR AND, SUBJECT TO § 2-1312 OF THE STATE
3 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY A REPORT INCLUDING:

4 (I) THE LEGISLATIVE AUDIT;

5 (II) A FINANCIAL ACCOUNTING OF THE PROGRAM, INCLUDING
6 THE ANNUAL REVIEW OF THE COMPREHENSIVE INVESTMENT ~~PLAN~~; PLAN WHICH
7 SHALL INCLUDE:

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

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

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

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

19 5. THE INCOME PRODUCED BY EACH INVESTMENT
20 MANAGER;

21 (III) THE NUMBER OF ~~PREPAID-TUITION~~ HIGHER EDUCATION
22 INVESTMENT CONTRACTS ENTERED INTO DURING THE PREVIOUS FISCAL YEAR;

23 (IV) EFFORTS BY THE BOARD IN MARKETING THE PROGRAM OF
24 ~~PREPAID-TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACTS; AND

25 (V) ANY RECOMMENDATIONS OF THE BOARD CONCERNING THE
26 OPERATION OF THE PROGRAM.

27 (2) THE BOARD SHALL MAKE AVAILABLE TO EACH PURCHASER A COPY
28 OF A SUMMARY OF THE REPORT AND THE OPTION TO PURCHASE THE FULL REPORT
29 AT A NOMINAL CHARGE.

30 **Article - State Government**

31 10-616.

32 (N) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CUSTODIAN
33 SHALL DENY INSPECTION OF ANY RECORD DISCLOSING THE NAME OF A
34 PURCHASER OR QUALIFIED BENEFICIARY OF A ~~PREPAID-TUITION~~ HIGHER
35 EDUCATION INVESTMENT CONTRACT UNDER TITLE 18, SUBTITLE 19 OF THE
36 EDUCATION ARTICLE.

37 (2) A CUSTODIAN:

38 (I) SHALL PERMIT INSPECTION BY A PERSON IN INTEREST; AND

15

1 (II) MAY RELEASE INFORMATION TO AN ELIGIBLE INSTITUTION
 2 DESIGNATED IN A ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT
 3 IN ACCORDANCE WITH REGULATIONS OF THE MARYLAND ~~PREPAID TUITION~~
 4 HIGHER EDUCATION INVESTMENT PROGRAM BOARD.

5 SECTION 2. AND BE IT FURTHER ENACTED, That, for Fiscal Year 1998,
 6 the Governor shall include in the State budget an appropriation for the Maryland ~~Prepaid~~
 7 ~~Tuition Program for the administrative and start-up costs for the Maryland Prepaid~~
 8 ~~Tuition Program.~~ Higher Education Investment Program for the administrative and
 9 start-up costs for the Maryland Higher Education Investment Program.

10 SECTION 3. AND BE IT FURTHER ENACTED, That the terms of the initial
 11 public members of the Maryland ~~Prepaid Tuition~~ Higher Education Investment Program
 12 Board shall expire as follows:

13 (1) one member in 2000;

14 (2) one member in 2001;

15 (3) one member in 2002; and

16 (4) one member in 2003.

17 SECTION 4. AND BE IT FURTHER ENACTED, That, before establishing the
 18 program of ~~prepaid tuition~~ higher education investment contracts, the Maryland ~~Prepaid~~
 19 ~~Tuition~~ Higher Education Investment Program Board shall solicit an opinion letter from
 20 the United States Securities Exchange Commission, concerning the application of federal
 21 security laws to the Maryland ~~Prepaid Tuition~~ Higher Education Investment Program.

22 SECTION 5. AND BE IT FURTHER ENACTED, That any efforts undertaken by
 23 the Maryland Higher Education Investment Program Board to market the Maryland
 24 Higher Education Investment Program must include full disclosure that the contract
 25 entered into under the provisions of this Act does not guarantee that the earnings of the
 26 assets invested in the Program will generate the difference between the projected costs of
 27 tuition under the contract and the actual costs at the time of enrollment.

28 SECTION ~~5.~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take
 29 effect October 1, 1997.