

CF 7lr1783

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**By: The President (Administration) and Senators Kasemeyer, Hogan, Currie, Hoffman, Hollinger, Forehand, and Blount** Blount, Amoss, Boozer, Lawlah, McFadden, Middleton, Munson, Neall, Ruben, Van Hollen, Collins, Conway, Craig, Dyson, Frosh, Pinsky, and Sfikas

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Assigned to: Budget and Taxation and Economic and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 1997

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## 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 establishing a Maryland ~~Prepaid Tuition~~ Higher Education Investment Program  
8 Board; specifying the membership, appointment, terms, and removal of members of  
9 the Board; providing that the budget for the Maryland Higher Education  
10 Investment Board and staff must be approved by the General Assembly;  
11 establishing the powers and duties of the Board; establishing administrative rules  
12 for the Board; authorizing the Board to adopt regulations to carry out its  
13 responsibilities; requiring the Board to adopt a certain investment plan for the  
14 Program; establishing the fiduciary responsibilities of the Board; prohibiting certain  
15 transactions involving program assets; exempting the Program from certain laws;  
16 requiring the Board to establish a program of ~~prepaid tuition~~ higher education  
17 investment contracts for the advance payment of tuition at ~~public~~ institutions of  
18 higher education in the State; authorizing the Board to provide for circumstances  
19 under which money may be withdrawn from the Program; specifying certain  
20 requirements concerning ~~prepaid tuition~~ higher education investment contracts;  
21 requiring the Board to provide for certain changes in circumstances of beneficiaries  
22 and purchasers of ~~prepaid tuition~~ higher education investment contracts; providing  
23 for refunds under certain circumstances; prohibiting any legal attachment of  
24 contract benefits or assets of the Program; authorizing certain public agencies to  
25 provide for payroll deductions for employees to purchase ~~prepaid tuition~~ higher

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education investment contracts; requiring an annual audit of the Program; requiring the Board to report to the Governor and General Assembly annually concerning the audit and certain matters concerning the Program; establishing provisions for the discontinuance of the Program; prohibiting inspection of certain records except in certain circumstances; requiring a certain appropriation for a certain fiscal year; establishing the terms of the initial members of the Board; requiring the Board to solicit a certain opinion before entering into a certain contract; and generally relating to establishing a method to provide for the prepayment of tuition at ~~the~~ public institutions of higher education in the State.

10 BY repealing and reenacting, with amendments,

11 Article - Education  
12 Section 11-105(h)(1)  
13 Annotated Code of Maryland  
14 (1997 Replacement Volume)

15 BY adding to

16 Article - Education  
17 Section 18-1901 through ~~18-1914~~ 18-1916, inclusive, to be under the new subtitle  
18 "Subtitle 19. Maryland Prepaid Tuition Program"  
19 Annotated Code of Maryland  
20 (1997 Replacement Volume)

21 BY adding to

22 Article - State Government  
23 Section 10-616(n)  
24 Annotated Code of Maryland  
25 (1995 Replacement Volume and 1996 Supplement)

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

28 **Article - Education**

29 11-105.

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

- 34 (i) The Board of Regents of the University of Maryland System;
- 35 (ii) The Board of Regents of Morgan State University;
- 36 (iii) The Board of Trustees of St. Mary's College of Maryland;
- 37 (iv) The Maryland Higher Education Loan Corporation;

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1 (v) The State Advisory Council for Title I of the Higher Education Act  
2 of 1965; [and]

3 (vi) The Board of Trustees of Baltimore City Community College;  
4 AND

5 (VII) THE BOARD OF THE MARYLAND ~~PREPAID TUITION~~ HIGHER  
6 EDUCATION INVESTMENT PROGRAM.

7 SUBTITLE 19. MARYLAND ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT  
8 PROGRAM.

9 18-1901.

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
11 INDICATED.

12 (B) "BOARD" MEANS THE BOARD OF THE MARYLAND ~~PREPAID TUITION~~  
13 HIGHER EDUCATION INVESTMENT PROGRAM.

14 (C) "PROGRAM" MEANS THE MARYLAND ~~PREPAID TUITION~~ HIGHER  
15 EDUCATION INVESTMENT PROGRAM.

16 (D) "~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT"  
17 MEANS A CONTRACT BETWEEN THE BOARD AND A PURCHASER UNDER THE  
18 PROVISIONS OF THIS SUBTITLE FOR THE ADVANCE PAYMENT OF UNDERGRADUATE  
19 TUITION AT A FIXED AND GUARANTEED LEVEL BY THE PURCHASER FOR A  
20 QUALIFIED BENEFICIARY TO ATTEND ~~A PUBLIC~~ AN INSTITUTION OF HIGHER  
21 EDUCATION IN THE STATE, IF THE QUALIFIED BENEFICIARY IS ADMITTED TO THE  
22 INSTITUTION.

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

24 (1) MAKES OR UNDERTAKES THE OBLIGATION TO MAKE ADVANCE  
25 PAYMENTS OF UNDERGRADUATE TUITION AS PROVIDED UNDER A ~~PREPAID~~  
26 ~~TUITION CONTRACT~~; HIGHER EDUCATION INVESTMENT CONTRACT; AND

27 (2) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, IS A  
28 RESIDENT OF MARYLAND AT THE TIME THAT THE PURCHASER ENTERS INTO A  
29 HIGHER EDUCATION INVESTMENT CONTRACT.

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

31 (1) IS ELIGIBLE TO APPLY ADVANCE TUITION PAYMENTS TO  
32 UNDERGRADUATE TUITION AT ~~A PUBLIC~~ AN INSTITUTION OF HIGHER EDUCATION  
33 IN THE STATE UNDER THE PROVISIONS OF THIS SUBTITLE; AND

34 (2) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, IS A  
35 RESIDENT OF THE STATE AT THE TIME THAT THE PURCHASER ENTERS INTO A  
36 PREPAID TUITION CONTRACT.

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1 (G) EITHER THE PURCHASER OR THE BENEFICIARY MUST BE A RESIDENT OF  
 2 MARYLAND AT THE TIME THAT THE PURCHASER ENTERS INTO A HIGHER  
 3 EDUCATION INVESTMENT CONTRACT.

4 ~~(G)~~ (H) "TUITION" MEANS THE CHARGES IMPOSED BY ~~A PUBLIC AN~~  
 5 INSTITUTION OF HIGHER EDUCATION IN THE STATE FOR ENROLLMENT AT THE  
 6 INSTITUTION AND INCLUDES REGISTRATION AND ALL FEES REQUIRED AS A  
 7 CONDITION OF 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  
 21 INSTITUTION OF HIGHER EDUCATION IN THE STATE THAT THE ~~PREPAID-TUITION~~  
 22 HIGHER EDUCATION INVESTMENT CONTRACT WILL COVER THE COST OF IN-STATE  
 23 TUITION.

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

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

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

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

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

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

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

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

3 18-1904.

4       (A) THERE IS A MARYLAND ~~PREPAID-TUITION~~ HIGHER EDUCATION  
5 INVESTMENT PROGRAM BOARD.

6       (B) THE BOARD CONSISTS OF THE FOLLOWING SEVEN MEMBERS APPOINTED  
7 BY THE GOVERNOR:

8               (1) THE SECRETARY OF THE MARYLAND HIGHER EDUCATION  
9 COMMISSION;

10              (2) A REPRESENTATIVE OF THE OFFICE OF THE STATE TREASURER;

11              (3) A REPRESENTATIVE OF THE OFFICE OF THE STATE COMPTROLLER;  
12 AND

13              (4) FOUR MEMBERS OF THE PUBLIC WHO SHALL HAVE SIGNIFICANT  
14 EXPERIENCE IN FINANCE, ACCOUNTING, INVESTMENT MANAGEMENT, OR OTHER  
15 AREAS THAT CAN BE OF ASSISTANCE TO THE BOARD.

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

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

20              (2) THE TERMS OF THE PUBLIC MEMBERS OF THE BOARD ARE  
21 STAGGERED AS REQUIRED BY THE TERMS OF THE MEMBERS OF THE BOARD ON  
22 OCTOBER 1, 1998.

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

25              (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES  
26 ONLY FOR THE REMAINDER OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED  
27 AND QUALIFIES.

28              (5) A MEMBER IS ELIGIBLE FOR REAPPOINTMENT.

29       (E) THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR  
30 MISCONDUCT.

31 18-1905.

32       (A) THE BOARD, FROM AMONG THE MEMBERS OF THE BOARD, SHALL ELECT  
33 A CHAIRMAN AND MAY ELECT ADDITIONAL OFFICERS THAT THE BOARD  
34 CONSIDERS NECESSARY.

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

36       (C) A MEMBER OF THE BOARD:

6

1 (1) MAY NOT RECEIVE COMPENSATION;

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

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

6 (D) (1) THE BOARD:

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

9 (II) MAY EMPLOY ADDITIONAL STAFF IN ACCORDANCE WITH THE  
10 ~~BUDGET~~; BUDGET.

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

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

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

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

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

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

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

30 3. IS NOT IN THE EXECUTIVE SERVICE.

31 ~~(2)~~ (3) THE BOARD MAY RETAIN THE SERVICES OF CONSULTANTS,  
32 ADMINISTRATORS, AND OTHER PERSONNEL, AS NECESSARY, TO ADMINISTER THE  
33 PROGRAM.

34 (4) THE BUDGET FOR THE BOARD AND ITS STAFF IS SUBJECT TO THE  
35 APPROVAL OF THE GENERAL ASSEMBLY.

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

7

1 (F) IN ADDITION, THE BOARD MAY:

2 (1) ADOPT AN OFFICIAL SEAL;

3 (2) SUE AND BE SUED;

4 (3) EXECUTE CONTRACTS AND OTHER NECESSARY INSTRUMENTS;

5 (4) HOLD, BUY, AND SELL INSTRUMENTS, OBLIGATIONS, SECURITIES,  
6 AND OTHER INVESTMENTS CONSISTENT WITH ITS COMPREHENSIVE INVESTMENT  
7 PLAN;

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

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

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

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

18 (9) PROCURE INSURANCE AGAINST ANY LOSS OF ASSETS OF THE  
19 PROGRAM;

20 (10) ENDORSE INSURANCE COVERAGE WRITTEN EXCLUSIVELY FOR THE  
21 PURPOSE OF PROTECTING A ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT  
22 CONTRACT AND THE PURCHASER AND QUALIFIED BENEFICIARY OF THE  
23 CONTRACT;

24 (11) DESIGNATE TERMS UNDER WHICH MONEY MAY BE WITHDRAWN  
25 FROM THE PROGRAM;

26 (12) ESTABLISH ADDITIONAL PROCEDURAL AND SUBSTANTIVE  
27 REQUIREMENTS FOR PARTICIPATION IN AND THE ADMINISTRATION OR  
28 MARKETING OF THE PROGRAM;

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

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

33 18-1906.

34 (A) THE BOARD SHALL ADOPT A COMPREHENSIVE INVESTMENT PLAN FOR  
35 THE ADMINISTRATION OF THE PROGRAM.

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

8

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

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

9 ~~(D)~~ (E) (1) NOTWITHSTANDING ANY LAW RESTRICTING THE DEPOSIT OR  
10 INVESTMENT OF STATE MONEY, THE BOARD MAY PLACE ASSETS OF THE PROGRAM  
11 IN SAVINGS ACCOUNTS OR MAY USE THE ASSETS TO PURCHASE FIXED OR VARIABLE  
12 LIFE INSURANCE OR ANNUITY CONTRACTS, SECURITIES, EVIDENCE OF  
13 INDEBTEDNESS, OR OTHER INVESTMENT PRODUCTS PURSUANT TO THE  
14 COMPREHENSIVE INVESTMENT PLAN.

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

18 ~~(E)~~ (F) THE BOARD SHALL MAKE EVERY EFFORT TO INVEST THE ASSETS OF  
19 THE PROGRAM IN A MANNER THAT EARNS, AT A MINIMUM, SUFFICIENT EARNINGS  
20 TO GENERATE THE DIFFERENCE BETWEEN THE PREPAID AMOUNT UNDER  
21 ADVANCE PAYMENT CONTRACTS AND ~~ACTUAL COSTS AT THE TIME OF~~  
22 ~~ENROLLMENT.~~ THE AVERAGE IN-STATE TUITION COSTS AT PUBLIC INSTITUTIONS  
23 OF HIGHER EDUCATION IN THE STATE AT THE TIME THAT THE BENEFITS ARE  
24 EXERCISED.

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

28 ~~(G)~~ (H) THE BOARD SHALL REVIEW THE COMPREHENSIVE INVESTMENT  
29 PLAN AT LEAST ANNUALLY TO ASSURE THAT THE PROGRAM REMAINS  
30 ACTUARIALLY SOUND.

31 ~~(H)~~ (I) AFTER EACH ANNUAL REVIEW OF THE COMPREHENSIVE  
32 INVESTMENT PLAN FOR ACTUARIAL SOUNDNESS, THE BOARD MAY ADJUST THE  
33 TERMS OF SUBSEQUENT ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT  
34 CONTRACTS TO ENSURE CONTINUED ACTUARIAL SOUNDNESS OR, IF NECESSARY,  
35 MAY ADJUST THE TERMS OF CURRENT ~~PREPAID TUITION~~ HIGHER EDUCATION  
36 INVESTMENT CONTRACTS.

37 ~~(I)~~ (J) THE BOARD MAY CONTRACT WITH AN INVESTMENT ADVISORY OR  
38 MANAGEMENT COMPANY FOR THE INVESTMENT AND MANAGEMENT OF THE  
39 PROGRAM AS LONG AS THE PROGRAM IS ADMINISTERED IN ACCORDANCE WITH  
40 THE COMPREHENSIVE INVESTMENT PLAN.

41 ~~(J)~~ (K) THE BOARD:



9

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

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

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

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

9 (1) TO PAY ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION IN  
10 ACCORDANCE WITH THE BOARD'S OBLIGATIONS UNDER ADVANCE PAYMENT  
11 CONTRACTS;

12 (2) TO REFUND MONEY ON THE TERMINATION OF ADVANCE PAYMENT  
13 CONTRACTS; AND

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

15 18-1907.

16 THE BOARD MUST REPORT NOT LESS THAN ANNUALLY TO THE BUDGET  
17 COMMITTEES OF THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1312 OF THE  
18 STATE GOVERNMENT ARTICLE, ON:

19 (1) THE STATUS OF THE INVESTMENT PROGRAM, INCLUDING  
20 INVESTMENT INCOME MATCHED TO PROJECTED ENROLLMENT COSTS UNDER THE  
21 EXISTING CONTRACT;

22 (2) THE ASSETS HELD IN EACH CLASS OF INVESTMENT, THE AMOUNT OF  
23 FUNDS HELD IN ANY CASH POOL, THE AMOUNT OF FUNDS HELD IN FIXED ASSETS  
24 INVESTMENTS, AND THE AMOUNT OF FUNDS HELD IN EQUITY INVESTMENTS;

25 (3) THE PERCENTAGE AND DOLLAR VALUE OF ASSETS PLACED WITH  
26 OUTSIDE MANAGERS;

27 (4) THE INCOME PRODUCED BY EACH CLASS OF INVESTMENT; AND

28 (5) THE INCOME PRODUCED BY EACH INVESTMENT MANAGER.

29 18-1908.

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

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

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

36 (I) THE MANAGEMENT OR ADMINISTRATION OF THE PROGRAM;  
37 OR

10

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

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

5 (1) SOLELY IN THE INTEREST OF THE PARTICIPANTS:

6 (2) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO THE  
7 PARTICIPANTS AND PROVIDING REASONABLE EXPENSES OF ADMINISTERING THE  
8 PROGRAM:

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

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

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

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

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

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

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

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

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

33 18-1909.

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

36 (1) THE COMMUNITY COLLEGE PLAN;

37 (2) THE UNIVERSITY PLAN; AND

38 (3) THE TWO PLUS TWO PLAN.

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1 (B) THE COST OF A ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT  
2 CONTRACT SHALL BE BASED ON:

3 (1) THE AVERAGE CURRENT IN-STATE TUITION COSTS AT THE TIME  
4 THE CONTRACT IS PURCHASED AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN  
5 THE STATE;

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

9 (3) THE PROJECTED TUITION COSTS AT THE TIME THAT THE BENEFITS  
10 WILL BE EXERCISED.

11 (C) EACH ~~PREPAID TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT  
12 MADE UNDER THE PROVISIONS OF THIS SUBTITLE SHALL INCLUDE THE FOLLOWING  
13 PROVISIONS:

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

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

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

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

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

22 (6) TERMS AND CONDITIONS FOR A SUBSTITUTION FOR THE QUALIFIED  
23 BENEFICIARY ORIGINALLY NAMED;

24 (7) TERMS AND CONDITIONS FOR THE TERMINATION OF THE  
25 CONTRACT;

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

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

31 (10) ALL OTHER RIGHTS AND OBLIGATIONS OF THE PURCHASER AND  
32 THE PROGRAM; AND

33 (11) ANY OTHER TERMS AND CONDITIONS THAT THE BOARD CONSIDERS  
34 NECESSARY OR APPROPRIATE.

35 (D) THE BOARD SHALL ALLOW THE CONVERSION OF AN ADVANCE PAYMENT  
36 CONTRACT PLAN FROM A COMMUNITY COLLEGE PLAN TO A TWO PLUS TWO PLAN  
37 OR A UNIVERSITY PLAN; FROM A UNIVERSITY PLAN TO A COMMUNITY COLLEGE

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1 PLAN OR A TWO PLUS TWO PLAN; OR FROM A TWO PLUS TWO PLAN TO A  
2 COMMUNITY COLLEGE PLAN OR A UNIVERSITY PLAN.

3 ~~18-1908.~~ 18-1910.

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

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

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

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

14 (2) DIES OR SUFFERS FROM A DISABILITY WHICH PREVENTS THE  
15 BENEFICIARY FROM ATTENDING A ~~PUBLIC~~ AN INSTITUTION OF HIGHER EDUCATION  
16 WITHIN THE TIME ALLOWED BY THIS SUBTITLE.

17 (3) ATTENDS AN INSTITUTION OF HIGHER EDUCATION NOT IN THE  
18 STATE OF MARYLAND.

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

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

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

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

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

31 ~~18-1909.~~ 18-1911.

32 THE BOARD, PROGRAM, AND ~~PREPAID TUITION~~ HIGHER EDUCATION  
33 INVESTMENT CONTRACTS ISSUED UNDER THIS SUBTITLE ARE NOT SUBJECT TO THE  
34 PROVISIONS OF THE INSURANCE ARTICLE.

35 ~~18-1910.~~ 18-1912.

36 THE ASSETS AND INCOME OF THE PROGRAM ARE EXEMPT FROM STATE AND  
37 LOCAL TAXATION.

13

1 ~~18-1911.~~ 18-1913.

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

5 ~~18-1912.~~ 18-1914.

6 NOTHING IN THIS SUBTITLE OR IN ANY ~~PREPAID-TUITION~~ HIGHER EDUCATION  
7 INVESTMENT CONTRACT MAY BE CONSTRUED AS A PROMISE OR GUARANTEE BY  
8 THE BOARD OF ADMISSION TO, CONTINUED ENROLLMENT AT, OR GRADUATION  
9 FROM A ~~PUBLIC~~ AN INSTITUTION OF HIGHER EDUCATION IN THE STATE.

10 ~~18-1913.~~ 18-1915.

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

15 ~~18-1914.~~ 18-1916.

16 (A) (1) THE LEGISLATIVE AUDITOR SHALL AUDIT THE PROGRAM  
17 ANNUALLY.

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

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

22 (I) THE LEGISLATIVE AUDIT;

23 (II) A FINANCIAL ACCOUNTING OF THE PROGRAM, INCLUDING  
24 THE ANNUAL REVIEW OF THE COMPREHENSIVE INVESTMENT PLAN;

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

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

29 (V) ANY RECOMMENDATIONS OF THE BOARD CONCERNING THE  
30 OPERATION OF THE PROGRAM.

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

34 **Article - State Government**

35 10-616.

36 (N) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CUSTODIAN  
37 SHALL DENY INSPECTION OF ANY RECORD DISCLOSING THE NAME OF A

14

1 PURCHASER OR QUALIFIED BENEFICIARY OF A ~~PREPAID-TUITION~~ HIGHER  
2 EDUCATION INVESTMENT CONTRACT UNDER TITLE 18, SUBTITLE 19 OF THE  
3 EDUCATION ARTICLE.

4

(2) A CUSTODIAN:

5

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

6

(II) MAY RELEASE INFORMATION TO AN ELIGIBLE INSTITUTION  
7 DESIGNATED IN A ~~PREPAID-TUITION~~ HIGHER EDUCATION INVESTMENT CONTRACT  
8 IN ACCORDANCE WITH REGULATIONS OF THE MARYLAND ~~PREPAID-TUITION~~  
9 HIGHER EDUCATION INVESTMENT PROGRAM BOARD.

10

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

15

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

18

(1) one member in 2000;

19

(2) one member in 2001;

20

(3) one member in 2002; and

21

(4) one member in 2003.

22

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

27

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