S T A T E O F N E W Y O R K

6826

2009-2010 Regular Sessions

I N A S S E M B L Y

March 13, 2009

Introduced by M. of A. BALL -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to enacting the "new empire fund act"; and to amend the state finance law, in relation to creating the new empire fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "new empire fund act".

S 2. The education law is amended by adding a new article 14-B to read as follows:

ARTICLE 14-B

PREPAID HIGHER EDUCATION TUITION PROGRAM

SECTION 696. LEGISLATIVE FINDINGS.
696-A. DEFINITIONS.
696-B. ESTABLISHMENT OF BOARD; FUNCTION.
696-C. MEETINGS.
696-D. EXECUTIVE DIRECTOR; STAFF.
696-E. PROGRAM AND FACILITY ACCESSIBILITY.
696-F. PUBLIC INTEREST INFORMATION AND COMPLAINTS.
696-G. POWERS OF BOARD.
696-H. PREPAID HIGHER EDUCATION TUITION PROGRAM.
696-I. PREPAID TUITION CONTRACT.
696-J. BENEFICIARY.
696-K. TYPES OF PLANS.
696-L. CONTRACT PAYMENT.
696-M. CHANGE OF BENEFICIARY.
696-N. CONVERSION TO ANOTHER PLAN.
696-O. VERIFICATION UNDER OATH.
696-P. PROMISE OR GUARANTEE OF ADMISSION.
696-Q. CONTRACT TERMINATION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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696-R. REFUND.
696-S. PREPAID HIGHER EDUCATION TUITION SCHOLARSHIPS FOR NEEDY STUDENTS.
696-T. STATEMENT REGARDING STATUS OF PREPAID TUITION CONTRACT.
696-U. REPORTS.
696-V. CONFIDENTIALITY.

S 696. LEGISLATIVE FINDINGS. AN EDUCATED POPULATION BEING NECESSARY TO THE SOCIAL DEVELOPMENT AND ECONOMIC HEALTH OF THIS STATE, THE LEGISLATURE FINDS AND DECLARES IT TO BE AN URGENT PUBLIC NECESSITY TO ASSIST YOUNG NEW YORKERS IN OBTAINING A HIGHER EDUCATION. BECAUSE THE STATE'S POPULATION IS RAPIDLY GROWING AND IS DIVERSE, THE STATE IS REQUIRED TO USE ALL OF THE HIGHER EDUCATION FACILITIES AND RESOURCES WITHIN THE STATE, BOTH PUBLIC AND PRIVATE, TO PROVIDE A WIDE VARIETY OF EDUCATIONAL ENVIRONMENTS AND INSTRUCTIONAL OPTIONS AND TO PRESERVE THE PARTNERSHIP BETWEEN THE STATE AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION. THEREFORE, THE PREPAID HIGHER EDUCATION TUITION PROGRAM IS ESTABLISHED TO HELP NEW YORK STUDENTS ATTEND THE INSTITUTION THAT BEST MEETS THEIR INDIVIDUAL NEEDS.

S 696-A. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "BENEFICIARY" MEANS A PERSON WHO IS ENTITLED TO RECEIVE BENEFITS UNDER A PREPAID TUITION CONTRACT.

2. "BOARD" MEANS THE PREPAID HIGHER EDUCATION TUITION BOARD.

3. "ESTIMATED AVERAGE PRIVATE TUITION AND REQUIRED FEES" MEANS AN ESTIMATED AVERAGE OF TUITION AND REQUIRED FEES TO BE CHARGED BY PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION AS DETERMINED ANNUALLY BY THE BOARD.

4. "FUND" MEANS THE NEW EMPIRE FUND ESTABLISHED IN SECTION SEVENTY-EIGHT-A OF THE STATE FINANCE LAW.

5. "INSTITUTION OF HIGHER EDUCATION" MEANS AN INSTITUTION IN THE STATE PROVIDING HIGHER EDUCATION.

6. "PREPAID TUITION CONTRACT" MEANS A CONTRACT ENTERED INTO PURSUANT TO THIS ARTICLE BY THE BOARD AND A PURCHASER TO PROVIDE FOR THE PAYMENT OF HIGHER EDUCATION TUITION AND REQUIRED FEES OF A BENEFICIARY.

7. "PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION" SHALL MEAN COLLEGES AND UNIVERSITIES OTHER THAN THOSE INCLUDED WITHIN SUBDIVISION NINE OF THIS SECTION.

8. "PROGRAM" MEANS THE PREPAID HIGHER EDUCATION TUITION PROGRAM.

9. "PUBLIC COLLEGE" SHALL MEAN AND INCLUDE "STATE-OPERATED INSTITUTIONS", "STATUTORY OR CONTRACT COLLEGES" AND "COMMUNITY COLLEGES" AS DEFINED IN SECTION THREE HUNDRED FIFTY OF THIS CHAPTER.

10. "PURCHASER" MEANS A PERSON WHO IS OBLIGATED TO MAKE PAYMENTS UNDER A PREPAID TUITION CONTRACT.

S 696-B. ESTABLISHMENT OF BOARD; FUNCTION. 1. THE PREPAID HIGHER EDUCATION TUITION BOARD IS HEREBY ESTABLISHED IN THE DEPARTMENT OF AUDIT AND CONTROL.

2. THE BOARD SHALL ADMINISTER THE PROGRAM.

3. THE BOARD SHALL CONSIST OF THE COMPTROLLER AND SIX MEMBERS APPOINTED BY THE GOVERNOR AS FOLLOWS:

(A) TWO MEMBERS UPON RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE;

(B) ONE MEMBER UPON RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE;

(C) TWO MEMBERS UPON RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY; AND

(D) ONE MEMBER UPON RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY.

4. THE APPOINTED MEMBERS MUST POSSESS KNOWLEDGE, SKILL AND EXPERIENCE IN HIGHER EDUCATION, BUSINESS OR FINANCE.

5. THE APPOINTED MEMBERS SHALL SERVE FOR STAGGERED SIX-YEAR TERMS. THE TERMS OF ONE-THIRD OF THE APPOINTED MEMBERS SHALL EXPIRE FEBRUARY FIRST OF EACH ODD-NUMBERED YEAR.

6. IN RECOMMENDING, MAKING OR CONFIRMING APPOINTMENTS TO THE BOARD, THE GOVERNOR, SPEAKER OF THE ASSEMBLY AND TEMPORARY PRESIDENT OF THE SENATE SHALL ENSURE THAT EACH APPOINTEE HAS THE BACKGROUND AND EXPERIENCE SUITABLE FOR PERFORMING THE STATUTORY RESPONSIBILITIES OF A MEMBER OF THE BOARD.

7. APPOINTMENTS TO THE BOARD SHALL BE MADE WITHOUT REGARD TO THE RACE, COLOR, DISABILITY, SEX, RELIGION, AGE OR NATIONAL ORIGIN OF THE APPOINTEES.

8. A PERSON IS NOT ELIGIBLE FOR APPOINTMENT AS A MEMBER OF THE BOARD IF THE PERSON OR THE PERSON'S SPOUSE:

(A) IS EMPLOYED BY OR PARTICIPATES IN THE MANAGEMENT OF A BUSINESS ENTITY RECEIVING FUNDS FROM THE BOARD;

(B) OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY, MORE THAN A TEN PERCENT INTEREST IN A BUSINESS ENTITY RECEIVING FUNDS FROM THE BOARD; OR

(C) USES OR RECEIVES A SUBSTANTIAL AMOUNT OF TANGIBLE GOODS, SERVICES OR FUNDS FROM THE BOARD, OTHER THAN COMPENSATION OR REIMBURSEMENT AUTHORIZED BY LAW FOR BOARD MEMBERSHIP, ATTENDANCE OR EXPENSES.

9. IT IS A GROUND FOR REMOVAL FROM THE BOARD IF A MEMBER:

(A) VIOLATES A PROHIBITION ESTABLISHED BY SUBDIVISION EIGHT OF THIS SECTION;

(B) CANNOT BECAUSE OF ILLNESS OR DISABILITY DISCHARGE THE MEMBER'S DUTIES FOR A SUBSTANTIAL PART OF THE TERM FOR WHICH THE MEMBER IS APPOINTED; OR

(C) IS ABSENT FROM MORE THAN HALF OF THE REGULARLY SCHEDULED BOARD MEETINGS THAT THE MEMBER IS ELIGIBLE TO ATTEND DURING A CALENDAR YEAR UNLESS THE ABSENCE IS EXCUSED BY MAJORITY VOTE OF THE BOARD.

10. THE VALIDITY OF AN ACTION OF THE BOARD SHALL NOT BE AFFECTED BY THE FACT THAT THE ACTION WAS TAKEN WHEN A GROUND FOR REMOVAL OF A BOARD MEMBER EXISTED.

11. BEFORE A MEMBER OF THE BOARD MAY ASSUME HIS OR HER DUTIES, THE MEMBER MUST COMPLETE AT LEAST ONE COURSE OF THE TRAINING PROGRAM ESTABLISHED UNDER SUBDIVISION TWELVE OF THIS SECTION.

12. A TRAINING PROGRAM SHALL BE ESTABLISHED TO PROVIDE INSTRUCTION TO THE MEMBER REGARDING:

(A) THE ENABLING LEGISLATION THAT CREATED THE BOARD;

(B) THE PROGRAMS OPERATED BY THE BOARD;

(C) THE ROLE AND FUNCTIONS OF THE BOARD;

(D) THE RULES OF THE BOARD, WITH AN EMPHASIS ON THE RULES THAT RELATE TO DISCIPLINARY AND INVESTIGATORY AUTHORITY;

(E) THE CURRENT BUDGET FOR THE BOARD; AND

(F) THE RESULTS OF THE MOST RECENT FORMAL AUDIT OF THE BOARD.

13. (A) THE COMPTROLLER SHALL SERVE AS THE CHAIRPERSON OF THE BOARD.

(B) THE BOARD SHALL APPOINT A SECRETARY OF THE BOARD WHOSE DUTIES MAY BE PRESCRIBED BY LAW AND BY THE BOARD.

14. APPOINTED MEMBERS OF THE BOARD SHALL SERVE WITHOUT PAY BUT SHALL BE REIMBURSED FOR THEIR ACTUAL EXPENSES INCURRED IN ATTENDING MEETINGS OF THE BOARD AND IN PERFORMING OTHER WORK OF THE BOARD WHEN THAT WORK IS APPROVED BY THE CHAIRPERSON OF THE BOARD.

S 696-C. MEETINGS. 1. THE BOARD SHALL HOLD REGULAR QUARTERLY MEETINGS AT PLACES AND TIMES SCHEDULED BY THE BOARD IN FORMAL SESSIONS AND CALLED BY THE CHAIRPERSON OF THE BOARD.

2. THE BOARD SHALL DEVELOP AND IMPLEMENT POLICIES THAT PROVIDE THE PUBLIC WITH A REASONABLE OPPORTUNITY TO APPEAR BEFORE THE BOARD AND TO SPEAK ON ANY ISSUE UNDER THE JURISDICTION OF THE BOARD.

3. MINUTES OF ALL MEETINGS SHALL BE AVAILABLE IN THE BOARD'S OFFICE FOR PUBLIC INSPECTION.

S 696-D. EXECUTIVE DIRECTOR; STAFF. 1. THE COMPTROLLER SHALL SERVE AS THE EXECUTIVE DIRECTOR OF THE PROGRAM.

2. THE EMPLOYEES OF THE DEPARTMENT OF AUDIT AND CONTROL SELECTED BY THE COMPTROLLER FOR THAT PURPOSE SHALL SERVE AS THE STAFF OF THE PROGRAM.

3. THE COMPTROLLER SHALL SELECT AND SUPERVISE THE STAFF OF THE PROGRAM AND PERFORM OTHER DUTIES DELEGATED TO THE COMPTROLLER BY THE BOARD.

4. THE COMPTROLLER SHALL PROVIDE TO MEMBERS OF THE BOARD AND TO PROGRAM STAFF, AS OFTEN AS NECESSARY, INFORMATION REGARDING THEIR QUALIFICATIONS FOR OFFICE OR EMPLOYMENT UNDER THIS ARTICLE AND THEIR RESPONSIBILITIES UNDER APPLICABLE LAWS RELATING TO STANDARDS OF CONDUCT FOR STATE OFFICERS OR EMPLOYEES.

5. THE BOARD SHALL DEVELOP AND IMPLEMENT POLICIES THAT CLEARLY SEPARATE THE POLICY-MAKING RESPONSIBILITIES OF THE BOARD AND THE MANAGEMENT RESPONSIBILITIES OF THE COMPTROLLER AND THE STAFF OF THE PROGRAM.

S 696-E. PROGRAM AND FACILITY ACCESSIBILITY. 1. THE BOARD SHALL COMPLY WITH FEDERAL AND STATE LAWS RELATED TO PROGRAM AND FACILITY ACCESSIBILITY.

2. THE BOARD SHALL PREPARE AND MAINTAIN A WRITTEN PLAN THAT DESCRIBES HOW A PERSON WHO DOES NOT SPEAK ENGLISH CAN BE PROVIDED REASONABLE ACCESS TO THE BOARD'S PROGRAMS AND SERVICES.

S 696-F. PUBLIC INTEREST INFORMATION AND COMPLAINTS. 1. THE BOARD SHALL PREPARE INFORMATION OF PUBLIC INTEREST DESCRIBING THE FUNCTIONS OF THE BOARD AND THE BOARD'S PROCEDURES BY WHICH COMPLAINTS ARE FILED WITH AND RESOLVED BY THE BOARD. THE BOARD SHALL MAKE THE INFORMATION AVAILABLE TO THE PUBLIC AND APPROPRIATE STATE AGENCIES.

2. THE BOARD BY RULE SHALL ESTABLISH METHODS BY WHICH CONSUMERS AND SERVICE RECIPIENTS ARE NOTIFIED OF THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER OF THE BOARD FOR THE PURPOSE OF DIRECTING COMPLAINTS TO THE BOARD.

3. THE BOARD SHALL KEEP INFORMATION ABOUT EACH COMPLAINT FILED WITH THE BOARD. THE INFORMATION SHALL INCLUDE:

(A) THE DATE THE COMPLAINT IS RECEIVED;

(B) THE NAME OF THE COMPLAINANT;

(C) THE SUBJECT MATTER OF THE COMPLAINT;

(D) A RECORD OF ALL PERSONS CONTACTED IN RELATION TO THE COMPLAINT;

(E) A SUMMARY OF THE RESULTS OF THE REVIEW OR INVESTIGATION OF THE COMPLAINT; AND

(F) FOR COMPLAINTS FOR WHICH THE BOARD TOOK NO ACTION, AN EXPLANATION OF THE REASON THE COMPLAINT WAS CLOSED WITHOUT ACTION.

4. THE BOARD SHALL KEEP A FILE FOR EACH WRITTEN COMPLAINT FILED WITH THE BOARD THAT THE BOARD HAS AUTHORITY TO RESOLVE. THE BOARD SHALL PROVIDE TO THE PERSON FILING THE COMPLAINT AND THE PERSONS OR ENTITIES COMPLAINED ABOUT THE BOARD'S POLICIES AND PROCEDURES PERTAINING TO COMPLAINT INVESTIGATION AND RESOLUTION. THE BOARD, AT LEAST QUARTERLY AND UNTIL FINAL DISPOSITION OF THE COMPLAINT, SHALL NOTIFY THE PERSON FILING THE COMPLAINT AND THE PERSONS OR ENTITIES COMPLAINED ABOUT OF THE STATUS OF THE COMPLAINT UNLESS THE NOTICE WOULD JEOPARDIZE AN UNDERCOVER INVESTIGATION.

S 696-G. POWERS OF BOARD. 1. THE BOARD HAS THE POWERS NECESSARY OR PROPER TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

2. THE BOARD MAY:
(A) ADOPT AN OFFICIAL SEAL;
(B) ADOPT RULES TO IMPLEMENT THIS ARTICLE;
(C) SUE AND BE SUED;
(D) ENTER INTO CONTRACTS AND OTHER NECESSARY INSTRUMENTS;
(E) ENTER INTO AGREEMENTS OR OTHER TRANSACTIONS WITH THE UNITED STATES, STATE AGENCIES, INCLUDING INSTITUTIONS OF HIGHER EDUCATION, PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION, AND LOCAL GOVERNMENTS;
(F) APPEAR IN ITS OWN BEHALF BEFORE GOVERNMENTAL AGENCIES;
(G) CONTRACT FOR NECESSARY GOODS AND SERVICES AND ENGAGE THE SERVICES OF PRIVATE CONSULTANTS, ACTUARIES, TRUSTEES, RECORDS ADMINISTRATORS, MANAGERS, LEGAL COUNSEL AND AUDITORS FOR ADMINISTRATIVE OR TECHNICAL ASSISTANCE;
(H) SOLICIT AND ACCEPT GIFTS, GRANTS, LOANS, AND OTHER AID FROM ANY SOURCE OR PARTICIPATE IN ANY OTHER WAY IN ANY GOVERNMENT PROGRAM TO CARRY OUT THIS ARTICLE;
(I) IMPOSE ADMINISTRATIVE FEES;
(J) CONTRACT WITH A PERSON TO MARKET THE PROGRAM;
(K) PURCHASE LIABILITY INSURANCE COVERING THE BOARD AND EMPLOYEES AND AGENTS OF THE PROGRAM; AND
(L) ESTABLISH OTHER POLICIES, PROCEDURES AND ELIGIBILITY CRITERIA TO IMPLEMENT THIS ARTICLE.

S 696-H. PREPAID HIGHER EDUCATION TUITION PROGRAM. 1. UNDER THE PROGRAM, A PURCHASER MAY ENTER INTO A PREPAID TUITION CONTRACT WITH THE BOARD UNDER WHICH THE PURCHASER AGREES TO PREPAY THE TUITION AND REQUIRED FEES FOR A BENEFICIARY TO ATTEND AN INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION.

2. THE BOARD SHALL DEPOSIT THE MONEY PAID UNDER A PREPAID TUITION CONTRACT IN THE FUND, INVEST THE MONEY AND CREDIT THE INCOME EARNED TO THE FUND, AND APPLY MONEY IN THE FUND TO THE TUITION AND REQUIRED FEES OF THE INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION IN WHICH THE BENEFICIARY ENROLLS AS PROVIDED BY THE PREPAID TUITION CONTRACT.

3. IF THE BENEFICIARY OF A PLAN DESCRIBED IN SECTION SIX HUNDRED NINETY-SIX-J OF THIS ARTICLE ENROLLS IN A PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION, THE BOARD SHALL PAY THE INSTITUTION THE TUITION AND REQUIRED FEES THE BOARD WOULD HAVE PAID HAD THE BENEFICIARY ENROLLED IN AN INSTITUTION OF HIGHER EDUCATION COVERED BY THE PLAN SELECTED IN THE PREPAID TUITION CONTRACT. THE BENEFICIARY SHALL BE RESPONSIBLE FOR PAYING THE PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION THE AMOUNT BY WHICH THE TUITION AND REQUIRED FEES OF THE INSTITUTION EXCEED THE TUITION AND REQUIRED FEES PAID BY THE BOARD.

4. IF THERE IS NOT ENOUGH MONEY IN THE FUND TO PAY THE TUITION AND REQUIRED FEES OF THE INSTITUTION OF HIGHER EDUCATION IN WHICH A BENEFICIARY ENROLLS OR THE APPROPRIATE PORTION OF THE TUITION AND REQUIRED FEES OF THE PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION IN WHICH THE BENEFICIARY ENROLLS AS PROVIDED BY THE PREPAID TUITION CONTRACT, THE LEGISLATURE MAY APPROPRIATE TO THE FUND THE AMOUNT NECESSARY FOR THE BOARD TO PAY THE APPLICABLE AMOUNT OF TUITION AND REQUIRED FEES OF THE INSTITUTION.

S 696-I. PREPAID TUITION CONTRACT. 1. THE BOARD MAY CONTRACT WITH A PURCHASER FOR THE PURCHASER TO PREPAY THE TUITION AND REQUIRED FEES FOR A BENEFICIARY TO ATTEND AN INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION TO WHICH THE BENEFICIARY IS ADMITTED AS A STUDENT.

2. THE TERMS OF A PREPAID TUITION CONTRACT SHALL BE BASED ON AN ACTUARIAL ANALYSIS OF:
(A) THE RATES OF INCREASE OF:
(I) TUITION AND REQUIRED FEES AT INSTITUTIONS OF HIGHER EDUCATION; OR
(II) ESTIMATED AVERAGE PRIVATE TUITION AND REQUIRED FEES;
(B) EXPECTED INVESTMENT RETURNS;
(C) ESTIMATED ADMINISTRATIVE COSTS; AND
(D) THE PERIOD BETWEEN THE DATE THE CONTRACT IS ENTERED INTO AND THE DATE THE BENEFICIARY IS PROJECTED TO GRADUATE FROM HIGH SCHOOL.
3. THE BOARD SHALL ADOPT A FORM FOR PREPAID TUITION CONTRACTS TO BE USED BY THE BOARD AND PURCHASERS.
4. A PREPAID TUITION CONTRACT SHALL:
(A) SPECIFY THE AMOUNT AND NUMBER OF PAYMENTS REQUIRED FROM THE PURCHASER ON BEHALF OF THE BENEFICIARY;
(B) SPECIFY THE TERMS UNDER WHICH THE PURCHASER SHALL MAKE PAYMENTS, INCLUDING THE DATE ON WHICH EACH PAYMENT IS DUE;
(C) SPECIFY THE CONSEQUENCES OF DEFAULT;
(D) SPECIFY THE NAME AND DATE OF BIRTH OF THE BENEFICIARY OF THE CONTRACT AND THE TERMS UNDER WHICH ANOTHER PERSON MAY BE SUBSTITUTED AS THE BENEFICIARY;
(E) SPECIFY THE NUMBER OF CREDIT HOURS CONTRACTED BY THE PURCHASER;
(F) SPECIFY THE TYPE OF PLAN TOWARD WHICH THE CONTRACTED CREDIT HOURS SHALL BE APPLIED;
(G) CONTAIN AN ASSUMPTION OF A CONTRACTUAL OBLIGATION BY THE BOARD TO THE BENEFICIARY TO PROVIDE FOR A SPECIFIED NUMBER OF CREDIT HOURS OF UNDERGRADUATE INSTRUCTION AT AN INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION, NOT TO EXCEED THE TYPICAL NUMBER OF CREDIT HOURS REQUIRED FOR THE DEGREE THAT CORRESPONDS TO THE PLAN PURCHASED ON BEHALF OF THE BENEFICIARY;
(H) SPECIFY THE DATE THE BENEFICIARY IS PROJECTED TO GRADUATE FROM HIGH SCHOOL; AND
(I) CONTAIN ANY OTHER PROVISIONS THE BOARD CONSIDERS NECESSARY OR APPROPRIATE.
5. A PREPAID TUITION CONTRACT SHALL NOT COVER THE COST OF LABORATORY FEES CHARGED FOR SPECIFIC COURSES.
S 696-J. BENEFICIARY. 1. THE BENEFICIARY OF A PREPAID TUITION CONTRACT MUST BE YOUNGER THAN EIGHTEEN YEARS OF AGE AT THE TIME THE PURCHASER ENTERS INTO THE CONTRACT AND MUST BE:
(A) A RESIDENT OF THIS STATE AT THE TIME THE PURCHASER ENTERS INTO THE CONTRACT; OR
(B) A NONRESIDENT WHO IS THE CHILD OF A PARENT WHO IS A RESIDENT OF THIS STATE AT THE TIME THAT PARENT ENTERS INTO THE CONTRACT.
2. THE BOARD MAY REQUIRE A REASONABLE PERIOD OF RESIDENCE IN THIS STATE FOR A BENEFICIARY OR THE PARENT OF A BENEFICIARY.
3. A BENEFICIARY IS CONSIDERED A RESIDENT FOR PURPOSES OF TUITION REGARDLESS OF THE BENEFICIARY'S RESIDENCE ON THE DATE OF ENROLLMENT.
S 696-K. TYPES OF PLANS. 1. THE BOARD SHALL MAKE PREPAID TUITION CONTRACTS AVAILABLE FOR THE:
(A) PUBLIC COLLEGE PLAN; AND
(B) PRIVATE COLLEGE PLAN.
2. THROUGH THE PUBLIC COLLEGE PLAN, A PREPAID TUITION CONTRACT SHALL PROVIDE PREPAID TUITION AND REQUIRED FEES FOR THE BENEFICIARY TO ATTEND A PUBLIC COLLEGE FOR A SPECIFIED NUMBER OF UNDERGRADUATE CREDIT HOURS NOT TO EXCEED THE TYPICAL NUMBER OF HOURS REQUIRED FOR A CERTIFICATE OR AN ASSOCIATE DEGREE OR A BACHELORS DEGREE AWARDED BY A PUBLIC COLLEGE.

3. THROUGH THE PRIVATE COLLEGE PLAN, A PREPAID TUITION CONTRACT SHALL PROVIDE PREPAID ESTIMATED AVERAGE PRIVATE TUITION AND REQUIRED FEES FOR THE BENEFICIARY TO ATTEND A PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION FOR A SPECIFIED NUMBER OF UNDERGRADUATE CREDIT HOURS NOT TO EXCEED THE TYPICAL NUMBER OF HOURS REQUIRED FOR A BACHELORS DEGREE AWARDED BY A PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION.

S 696-L. CONTRACT PAYMENT. 1. THE BOARD MAY PROVIDE FOR THE RECEIPT OF PAYMENTS UNDER PREPAID TUITION CONTRACTS IN LUMP SUMS OR INSTALLMENT PAYMENTS.

2. A PURCHASER MAY MAKE PAYMENTS UNDER A PREPAID TUITION CONTRACT BY ELECTRONIC FUNDS TRANSFER.

3. AN EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE MAY MAKE PAYMENTS UNDER A PREPAID TUITION CONTRACT BY PAYROLL DEDUCTIONS MADE BY THE APPROPRIATE OFFICER OF THE STATE OR POLITICAL SUBDIVISION.

4. THE BOARD MAY IMPOSE A FEE FOR A LATE PAYMENT UNDER A PREPAID TUITION CONTRACT.

S 696-M. CHANGE OF BENEFICIARY. 1. THE PURCHASER OF A PREPAID TUITION CONTRACT MAY DESIGNATE A NEW BENEFICIARY INSTEAD OF THE ORIGINAL BENEFICIARY IF THE NEW BENEFICIARY MEETS THE REQUIREMENTS OF A BENEFICIARY ON THE DATE THE DESIGNATION IS CHANGED. IF THE PURCHASER IS AN INDIVIDUAL, THE NEW BENEFICIARY MUST BE A SIBLING, STEP-SIBLING OR HALF-SIBLING OF THE ORIGINAL BENEFICIARY.

2. THE BOARD MAY ADJUST THE TERMS OF A PREPAID TUITION CONTRACT SO THAT THE PURCHASER IS REQUIRED TO PAY THE AMOUNT THE PURCHASER WOULD HAVE BEEN REQUIRED TO PAY HAD THE PURCHASER ORIGINALLY DESIGNATED THE NEW BENEFICIARY AS THE BENEFICIARY, TAKING INTO ACCOUNT ANY PAYMENTS MADE BEFORE THE DATE THE DESIGNATION IS CHANGED.

3. THE PURCHASER OF A PREPAID TUITION CONTRACT SHALL NOT SELL THE CONTRACT.

S 696-N. CONVERSION TO ANOTHER PLAN. 1. A PURCHASER MAY CONVERT A PREPAID TUITION CONTRACT FROM ONE PLAN TO ANOTHER PLAN.

2. THE BOARD MAY ADJUST THE TERMS OF THE CONTRACT SO THAT THE PURCHASER IS REQUIRED TO PAY THE AMOUNT REQUIRED UNDER THE PLAN TO WHICH THE CONTRACT IS CONVERTED, TAKING INTO ACCOUNT ANY PAYMENTS MADE BEFORE THE DATE THE CONTRACT IS CONVERTED.

S 696-O. VERIFICATION UNDER OATH. THE BOARD MAY REQUIRE A PURCHASER TO VERIFY UNDER OATH A REQUEST TO:

1. CHANGE A BENEFICIARY;

2. CONVERT A CONTRACT TO ANOTHER PLAN; OR

3. TERMINATE A CONTRACT.

S 696-P. PROMISE OR GUARANTEE OF ADMISSION. THIS ARTICLE SHALL NOT CONSTITUTE A PROMISE OR GUARANTEE THAT A BENEFICIARY WILL BE:

1. ADMITTED TO ANY INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION;

2. ADMITTED TO A PARTICULAR INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION;

3. ALLOWED TO CONTINUE ENROLLMENT AT AN INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION AFTER ADMISSION; OR

4. GRADUATED FROM AN INSTITUTION OF HIGHER EDUCATION OR PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION.

S 696-Q. CONTRACT TERMINATION. 1. A PREPAID TUITION CONTRACT SHALL SPECIFY:

(A) THE NAME OF ANY PERSON WHO MAY TERMINATE THE CONTRACT; AND

(B) THE TERMS UNDER WHICH THE CONTRACT MAY BE TERMINATED.

2. A PREPAID TUITION CONTRACT TERMINATES ON THE TENTH ANNIVERSARY OF THE DATE THE BENEFICIARY IS PROJECTED TO GRADUATE FROM HIGH SCHOOL, NOT COUNTING TIME SPENT BY THE BENEFICIARY AS AN ACTIVE DUTY MEMBER OF THE ARMED FORCES OF THE UNITED STATES.

S 696-R. REFUND. 1. A PREPAID TUITION CONTRACT SHALL SPECIFY:

(A) THE NAME OF THE PERSON ENTITLED TO ANY REFUND IF THE CONTRACT IS TERMINATED;

(B) THE TERMS UNDER WHICH A PERSON IS ENTITLED TO A REFUND; AND

(C) THE METHOD BY WHICH THE AMOUNT OF THE REFUND IS CALCULATED.

2. THE PERSON NAMED IN THE CONTRACT IS ENTITLED TO A REFUND FOLLOWING TERMINATION OF A PREPAID TUITION CONTRACT.

3. THE BOARD SHALL DETERMINE THE METHOD BY WHICH THE AMOUNT OF THE REFUND IS CALCULATED.

S 696-S. PREPAID HIGHER EDUCATION TUITION SCHOLARSHIPS FOR NEEDY STUDENTS. 1. TO THE EXTENT MONEY IS AVAILABLE, THE BOARD MAY AWARD A PREPAID HIGHER EDUCATION TUITION SCHOLARSHIP TO A STUDENT WHO MEETS ECONOMIC AND ACADEMIC REQUIREMENTS ADOPTED BY THE BOARD BY RULE.

2. A SCHOLARSHIP AWARDED UNDER THIS SECTION TERMINATES IF THE STUDENT TO WHOM THE SCHOLARSHIP IS AWARDED IS CONVICTED OF OR ADJUDICATED AS HAVING ENGAGED IN DELINQUENT CONDUCT CONSTITUTING A FELONY OR CLASS A MISDEMEANOR.

3. THE BOARD SHALL ENSURE THAT EACH REGION OF THE STATE IS EQUITABLY REPRESENTED IN THE AWARDING OF SCHOLARSHIPS UNDER THIS SECTION.

4. SCHOLARSHIPS UNDER THIS SECTION SHALL BE FUNDED BY THE PRIVATE SECTOR.

5. THE BOARD MAY ESTABLISH A DIRECT-SUPPORT ORGANIZATION TO:

(A) RECEIVE, HOLD, INVEST AND ADMINISTER MONEY, GIFTS, GRANTS, LOANS AND OTHER PROPERTY FOR OR ON BEHALF OF THE PROGRAM; AND

(B) PURCHASE SCHOLARSHIPS UNDER THIS SECTION.

6. THE BOARD OF DIRECTORS OF THE DIRECT-SUPPORT ORGANIZATION CONSISTS OF:

(A) THE COMPTROLLER;

(B) A MEMBER APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE TEMPORARY PRESIDENT OF THE SENATE; AND

(C) THREE MEMBERS APPOINTED JOINTLY BY THE COMPTROLLER AND THE MEMBER APPOINTED BY THE GOVERNOR.

7. THE BOARD MUST CERTIFY THAT THE DIRECT-SUPPORT ORGANIZATION OPERATES IN A MANNER CONSISTENT WITH THE GOALS OF THIS STATE AND IN THE BEST INTERESTS OF THIS STATE.

8. THE BOARD MAY CONTRACT WITH AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT TO ANNUALLY AUDIT THE DIRECT-SUPPORT ORGANIZATION UNDER RULES ADOPTED BY THE BOARD. THE BOARD SHALL SUBMIT THE AUDIT TO THE COMPTROLLER, GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE AND MINORITY LEADER OF THE ASSEMBLY. THE COMPTROLLER MAY REQUIRE THE DIRECT-SUPPORT ORGANIZATION OR INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT TO PROVIDE ADDITIONAL INFORMATION RELATING TO THE OPERATION OF THE ORGANIZATION.

9. THE IDENTITY OF A DONOR UNDER THIS SECTION WHO DESIRES TO REMAIN ANONYMOUS AND THE RECORDS OF THE DIRECT-SUPPORT ORGANIZATION, OTHER THAN THE RECORDS DISCLOSED UNDER SUBDIVISION EIGHT OF THIS SECTION, SHALL BE CONFIDENTIAL.

S 696-T. STATEMENT REGARDING STATUS OF PREPAID TUITION CONTRACT. 1. NOT LATER THAN DECEMBER FIRST OF EACH YEAR, THE BOARD SHALL FURNISH WITHOUT CHARGE TO EACH PURCHASER A STATEMENT OF:

(A) THE AMOUNT PAID BY THE PURCHASER UNDER THE PREPAID TUITION CONTRACT;

(B) THE NUMBER OF CREDIT HOURS ORIGINALLY COVERED BY THE CONTRACT;
(C) THE NUMBER OF CREDIT HOURS REMAINING UNDER THE CONTRACT; AND
(D) ANY OTHER INFORMATION THE BOARD DETERMINES BY RULE IS NECESSARY OR APPROPRIATE.
2. THE BOARD SHALL FURNISH A STATEMENT COMPLYING WITH SUBDIVISION ONE OF THIS SECTION TO A PURCHASER OR BENEFICIARY UPON WRITTEN REQUEST. THE BOARD MAY CHARGE A REASONABLE FEE FOR EACH STATEMENT FURNISHED UNDER THIS SUBDIVISION.
S 696-U. REPORTS. 1. NOT LATER THAN DECEMBER FIRST OF EACH YEAR, THE BOARD SHALL SUBMIT TO THE GOVERNOR, LIEUTENANT GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY, A REPORT INCLUDING:
(A) THE BOARD'S FISCAL TRANSACTIONS DURING THE PRECEDING FISCAL YEAR;
(B) THE MARKET AND BOOK VALUE OF THE FUND AS OF THE END OF THE PRECEDING FISCAL YEAR;
(C) THE ASSET ALLOCATIONS OF THE FUND EXPRESSED IN PERCENTAGES OF STOCKS, FIXED INCOME, CASH OR OTHER FINANCIAL INVESTMENTS;
(D) THE RATE OF RETURN ON THE INVESTMENT OF THE FUND'S ASSETS DURING THE PRECEDING FISCAL YEAR; AND
(E) AN ACTUARIAL VALUATION OF THE ASSETS AND LIABILITIES OF THE PROGRAM, INCLUDING THE EXTENT TO WHICH THE PROGRAM'S LIABILITIES ARE UNFUNDED.
2. THE BOARD SHALL MAKE THE REPORT DESCRIBED BY SUBDIVISION ONE OF THIS SECTION AVAILABLE TO PURCHASERS OF PREPAID TUITION CONTRACTS.
3. NOT LATER THAN DECEMBER FIRST OF EACH YEAR, THE BOARD SHALL PROVIDE TO THE DEPARTMENT COMPLETE PREPAID TUITION CONTRACT SALES INFORMATION, INCLUDING PROJECTED ENROLLMENTS OF BENEFICIARIES AT INSTITUTIONS OF HIGHER EDUCATION.
S 696-V. CONFIDENTIALITY. 1. RECORDS IN THE CUSTODY OF THE BOARD RELATING TO THE PARTICIPATION OF SPECIFIC PURCHASERS AND BENEFICIARIES IN THE PROGRAM ARE CONFIDENTIAL.
2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, THE BOARD MAY RELEASE INFORMATION DESCRIBED BY SUCH SUBDIVISION TO AN INSTITUTION OF HIGHER EDUCATION IN WHICH A BENEFICIARY MAY ENROLL OR IS ENROLLED. THE INSTITUTION OF HIGHER EDUCATION SHALL KEEP THE INFORMATION CONFIDENTIAL.
S 3. The state finance law is amended by adding a new section 78-a to read as follows:
S 78-A. NEW EMPIRE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE SOLE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "NEW EMPIRE FUND". ALL PAYMENTS FROM SUCH FUND SHALL BE MADE IN ACCORDANCE WITH ARTICLE FOURTEEN-B OF THE EDUCATION LAW.
2. THE FUND SHALL CONSIST OF:
(A) STATE APPROPRIATIONS FOR PURPOSES OF THE FUND;
(B) MONEY ACQUIRED FROM OTHER GOVERNMENTAL OR PRIVATE SOURCES;
(C) MONEY PAID UNDER PREPAID TUITION CONTRACTS; AND
(D) THE INCOME FROM MONEY DEPOSITED IN THE FUND.
3. THE PREPAID HIGHER EDUCATION TUITION BOARD ESTABLISHED BY SECTION SIX HUNDRED NINETY-SIX-B OF THE EDUCATION LAW, HEREINAFTER REFERRED TO IN THIS SECTION AS THE "BOARD", SHALL ADMINISTER THE ASSETS OF THE FUND. THE BOARD IS THE TRUSTEE OF THE FUND'S ASSETS.
4. THE BOARD MAY:
(A) SEGREGATE CONTRIBUTIONS AND PAYMENTS TO THE FUND INTO VARIOUS ACCOUNTS; AND
(B) ACQUIRE, HOLD, MANAGE, PURCHASE, SELL, ASSIGN, TRADE, TRANSFER AND DISPOSE OF ANY SECURITY, EVIDENCE OF INDEBTEDNESS OR OTHER INVESTMENT IN WHICH THE FUND'S ASSETS MAY BE INVESTED.

5. (A) THE COMPTROLLER SHALL INVEST THE ASSETS OF THE FUND IN INVESTMENTS AUTHORIZED BY ARTICLE FOUR-A OF THE RETIREMENT AND SOCIAL SECURITY LAW, PROVIDED HOWEVER, THAT:

(I) THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW SHALL NOT APPLY EXCEPT FOR SUBPARAGRAPH (II) OF SUCH PARAGRAPH; AND

(II) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION SEVEN OF SECTION ONE HUNDRED SEVENTY-SEVEN OF THE RETIREMENT AND SOCIAL SECURITY LAW OR ANY OTHER LAW TO THE CONTRARY, THE ASSETS OF THE TRUST FUND MAY BE INVESTED IN ANY FUNDING AGREEMENT ISSUED IN ACCORDANCE WITH SECTION THREE THOUSAND TWO HUNDRED TWENTY-TWO OF THE INSURANCE LAW BY A DOMESTIC LIFE INSURANCE COMPANY OR A FOREIGN LIFE INSURANCE COMPANY DOING BUSINESS IN THIS STATE, SUBJECT TO THE FOLLOWING:

(1) SUCH A FUNDING AGREEMENT MAY PROVIDE FOR A GUARANTEED MINIMUM RATE OF RETURN;

(2) SUCH A FUNDING AGREEMENT MAY BE ALLOCATED AS EITHER A SEPARATE ACCOUNT OR A GENERAL ACCOUNT OF THE ISSUER, AS THE COMPTROLLER MAY DECIDE;

(3) TOTAL INVESTMENTS OF THE TRUST FUND PURSUANT TO THIS PARAGRAPH IN ANY FUNDING AGREEMENTS ISSUED BY A SINGLE LIFE INSURANCE COMPANY WHICH ARE ALLOCATED AS A GENERAL ACCOUNT OF THE ISSUER SHALL NOT, IN THE AGGREGATE, EXCEED THREE HUNDRED FIFTY MILLION DOLLARS; AND

(4) NO ASSETS OF THE TRUST FUND SHALL BE INVESTED IN ANY SUCH FUNDING AGREEMENT UNLESS, AT THE TIME OF SUCH INVESTMENT, THE GENERAL OBLIGATIONS OR FINANCIAL STRENGTH OF THE ISSUER HAVE RECEIVED EITHER THE HIGHEST OR SECOND HIGHEST RATING BY TWO NATIONALLY RECOGNIZED RATING SERVICES OR BY ONE NATIONALLY RECOGNIZED RATING SERVICE IN THE EVENT THAT ONLY ONE SUCH SERVICE RATES SUCH OBLIGATIONS.

(B) TRUST FUND ASSETS SHALL BE KEPT SEPARATE AND SHALL NOT BE COMMINGLED WITH OTHER ASSETS, EXCEPT AS PROVIDED IN THIS SECTION. THE COMPTROLLER MAY ENTER INTO CONTRACTS TO PROVIDE FOR INVESTMENT ADVICE AND MANAGEMENT, CUSTODIAL SERVICES, AND OTHER PROFESSIONAL SERVICES FOR THE ADMINISTRATION AND INVESTMENT OF THE PROGRAM. ADMINISTRATIVE FEES, COSTS AND EXPENSES, INCLUDING INVESTMENT FEES AND EXPENSES, SHALL BE PAID FROM THE ASSETS OF THE FUND.

S 4. (a) As soon as possible on or after the effective date of this act, the governor shall appoint the members of the prepaid higher education tuition board. In making the appointments, the governor shall designate two members for terms expiring February 1, 2011, two members for terms expiring February 1, 2013 and two members for terms expiring February 1, 2015.

(b) Such board shall be prepared to enter into prepaid tuition contracts not later than the ninetieth day after the date all the members are appointed or January 1, 2010, whichever occurs later.

S 5. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.