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2011-2012 Regular Sessions

I N   A S S E M B L Y

March 2, 2011

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Introduced by M. of A. HAYES, FINCH, FITZPATRICK, HAWLEY, RABBITT, TEDISCO -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, GIGLIO, KOLB, McDONOUGH, J. MILLER, MOLINARO, OAKS, RAIA, REILICH, SALADINO, SAYWARD, THIELE -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to providing that the college choice savings program be administered by no less than two financial organizations

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

1     Section 1. Subdivisions 2, 3, 4 and 5 of section 695-d of the educa-  
2     tion law, subdivisions 2 and 5 as added by chapter 546 of the laws of  
3     1997 and subdivisions 3 and 4 as amended by chapter 535 of the laws of  
4     2000, are amended to read as follows:  
5     2. The comptroller may solicit proposals from financial organizations  
6     to act as depositories and managers of the program. Financial organiza-  
7     tions submitting proposals shall describe the investment instrument  
8     which will be held in accounts. The comptroller shall select AT LEAST  
9     TWO FINANCIAL ORGANIZATIONS as program depositories and managers [the  
10    financial organization], from among the bidding financial organizations  
11    that demonstrates [the most] AN advantageous combination, both to poten-  
12    tial program participants and this state, of the following factors:  
13    a. Financial stability and integrity of the financial organization;  
14    b. The safety of the investment instrument being offered;  
15    c. The ability of the investment instrument to track increasing costs  
16    of higher education;  
17    d. The ability of the financial organization to satisfy recordkeeping  
18    and reporting requirements;  
19    e. The financial organization's plan for promoting the program and the  
20    investment it is willing to make to promote the program;

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

LBD09712-01-1

1 f. The fees, if any, proposed to be charged to persons for opening  
2 accounts;  
3 g. The minimum initial deposit and minimum contributions that the  
4 financial organization will require;  
5 h. The ability of banking organizations to accept electronic with-  
6 draws, including payroll deduction plans; [and]  
7 i. Other benefits to the state or its residents included in the  
8 proposal, including fees payable to the state to cover expenses of oper-  
9 ation of the program[.]; AND  
10 J. AT THE CONCLUSION OF SUCH CONTRACTS ENTERED INTO PURSUANT TO SUBDI-  
11 VISION THREE OF THIS SECTION, THE COMPTROLLER SHALL ANALYZE ALL OTHER  
12 COLLEGE CHOICE SAVINGS PROGRAMS AUTHORIZED PURSUANT TO THE INTERNAL  
13 REVENUE CODE AND ENSURE THAT NEW YORK STATE OFFERS THE MAXIMUM AMOUNT OF  
14 INVESTMENT OPTIONS AUTHORIZED BY FEDERAL LAW.  
15 3. The comptroller [may] SHALL enter into [a contract] CONTRACTS with  
16 [a] financial [organization] ORGANIZATIONS. Such financial [organiza-  
17 tion] ORGANIZATIONS management may provide one or more types of invest-  
18 ment instrument.  
19 4. The comptroller [may] SHALL select [more than one] financial  
20 [organization] ORGANIZATIONS for the program, SO LONG AS THEY MEET THE  
21 CRITERIA OF SUBDIVISION TWO OF THIS SECTION.  
22 5. A management contract shall include, at a minimum, terms requiring  
23 the financial organization to:  
24 a. Take any action required to keep the program in compliance with  
25 requirements of section six hundred ninety-five-e of this article and  
26 any actions not contrary to its contract to manage the program to quali-  
27 fy as a "qualified state tuition plan" under section 529 of the Internal  
28 Revenue Code of 1986, as amended;  
29 b. Keep adequate records of each account, keep each account segregated  
30 from each other account, and provide the comptroller with the informa-  
31 tion necessary to prepare the statements required by section six hundred  
32 ninety-five-e of this article;  
33 c. Compile and total information contained in statements required to  
34 be prepared under section six hundred ninety-five-e of this article and  
35 provide such compilations to the comptroller;  
36 d. [If there is more than one program manager, provide] PROVIDE the  
37 comptroller with such information necessary to determine compliance with  
38 section six hundred ninety-five-e of this article;  
39 e. Provide the comptroller or his OR HER designee access to the books  
40 and records of the program manager to the extent needed to determine  
41 compliance with the contract;  
42 f. Hold all accounts for the benefit of the account owner;  
43 g. Be audited at least annually by a firm of certified public account-  
44 ants selected by the program manager and that the results of such audit  
45 be provided to the comptroller;  
46 h. Provide the comptroller with copies of all regulatory filings and  
47 reports made by it during the term of the management contract or while  
48 it is holding any accounts, other than confidential filings or reports  
49 that will not become part of the program. The program manager shall make  
50 available for review by the comptroller the results of any periodic  
51 examination of such manager by any state or federal banking, insurance,  
52 or securities commission, except to the extent that such report or  
53 reports may not be disclosed under applicable law or the rules of such  
54 commission; and  
55 i. Ensure that any description of the program, whether in writing or  
56 through the use of any media, is consistent with the marketing plan

1 developed in the memorandum of understanding pursuant to the provisions  
2 of section six hundred ninety-five-c of this article.  
3 S 2. This act shall take effect on the ninetieth day after it shall  
4 have become a law; provided, however, that any rules and regulations  
5 necessary for the timely implementation of this act on its effective  
6 date shall be promulgated on or before such date.