

4593

2013-2014 Regular Sessions

I N   S E N A T E

April 12, 2013

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Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the creation of the New York state tuition savings program; to amend the state finance law, in relation to establishing the New York state pre-pay tuition fund; and to amend the tax law, in relation to reducing distributions from the New York state pre-pay tuition savings program from adjusted gross income

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

1     Section 1. The education law is amended by adding a new section 355-d  
2     to read as follows:  
3     S 355-D. NEW YORK STATE PRE-PAY TUITION SAVINGS PROGRAM.     1. FOR  
4     PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING  
5     MEANINGS:  
6     A. "PARTICIPANT" SHALL MEAN A NEW YORK STATE RESIDENT WHO ENROLLS AN  
7     ELIGIBLE CHILD AND MAKES PAYMENTS ON BEHALF OF SUCH ELIGIBLE CHILD, AND  
8     SHALL INCLUDE BUT NOT BE LIMITED TO SUCH ELIGIBLE CHILD'S PARENT OR  
9     GUARDIAN.  
10    B. "ELIGIBLE CHILD" SHALL MEAN A CHILD FIVE YEARS OF AGE OR OLDER, WHO  
11    IS ENROLLED IN THE NEW YORK STATE PRE-PAY TUITION PROGRAM BY A PARTIC-  
12    IPANT.  
13    C. "THE FUND" SHALL MEAN THE NEW YORK STATE PRE-PAY TUITION FUND  
14    ESTABLISHED BY SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.  
15    D. "TOTAL COST OF EDUCATION" SHALL MEAN THE AVERAGE SYSTEM-WIDE YEARLY  
16    TOTAL COST OF A FOUR YEAR EDUCATION AT THE STATE UNIVERSITY OF NEW YORK  
17    INCLUDING TUITION, ROOM AND BOARD AND ALL APPLICABLE FEES. DURING EACH  
18    YEAR OF PARTICIPATION, THE TOTAL COST OF EDUCATION SHALL BE CALCULATED  
19    BASED UPON THE CURRENT YEAR'S COST UNTIL THE FINAL PAYMENT IS MADE.  
20    2. THE NEW YORK STATE PRE-PAY TUITION SAVINGS PROGRAM IS HEREBY ESTAB-  
21    LISHED AND SHALL BE CONTROLLED AND ADMINISTERED BY THE NEW YORK STATE

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

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1 COMPTROLLER OR HIS OR HER DESIGNEE IN CONSULTATION WITH THE CHANCELLOR  
2 OF THE STATE UNIVERSITY OF NEW YORK (SUNY) OR HIS OR HER DESIGNEE AND  
3 THE CHANCELLOR OF THE CITY UNIVERSITY OF NEW YORK (CUNY) OR HIS OR HER  
4 DESIGNEE.

5 3. A. A PARTICIPANT MAY ENROLL AN ELIGIBLE CHILD BEGINNING AT FIVE  
6 YEARS OF AGE AND PAY ONE-THIRD OF THE TOTAL COST OF EDUCATION EACH YEAR  
7 FOR THE DURATION OF TWELVE CONSECUTIVE YEARS.

8 B. A PARTICIPANT MAY ENROLL AN ELIGIBLE CHILD BEGINNING AT SIX YEARS  
9 OF AGE AND PAY ONE-THIRD OF THE TOTAL COST OF EDUCATION EACH YEAR FOR  
10 THE DURATION OF TWELVE YEARS.

11 C. IF A PARTICIPANT ENROLLS AN ELIGIBLE CHILD AT AGE SEVEN OR THERE-  
12 AFTER, YEARLY PAYMENTS SHALL BE DETERMINED BY THE SUNY CHANCELLOR OR HIS  
13 OR HER DESIGNEE AND APPROVED BY THE STATE COMPTROLLER OR HIS OR HER  
14 DESIGNEE BASED UPON A FORMULA THAT CONSIDERS THE CHILD'S AGE AT THE TIME  
15 OF ENROLLMENT AND EVENLY DIVIDES THE YEARLY AVERAGE TOTAL COST OF A FOUR  
16 YEAR SUNY EDUCATION BUT ENSURES THAT THE LAST PAYMENT WILL BE RECEIVED  
17 WITHIN THE CALENDAR YEAR WHEN THE ELIGIBLE CHILD GRADUATES OR IS SCHED-  
18 ULED TO GRADUATE HIGH SCHOOL.

19 D. (1) UPON ENROLLMENT OF AN ELIGIBLE CHILD INTO THE PROGRAM, THE  
20 PARTICIPANT SHALL RECEIVE A BILL FROM THE STATE COMPTROLLER OR HIS OR  
21 HER DESIGNEE CLEARLY STATING THE TOTAL COST OF EDUCATION FOR THAT YEAR,  
22 AND THE MONTHLY PAYMENT AMOUNT DUE TO BE DEPOSITED IN THE FUND, PROVIDED  
23 HOWEVER, THAT AT ANY TIME WITHIN SUCH YEAR, THE TOTAL COST OF EDUCATION  
24 FOR THAT YEAR MAY BE PAID IN FULL WITHOUT PENALTY.

25 (2) PROVIDED FURTHER HOWEVER, THAT A PAYMENT PLAN OTHER THAN MONTHLY  
26 BILLING MAY BE ESTABLISHED BASED ON RULES AND REGULATIONS PROMULGATED  
27 PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

28 E. (1) PAYMENTS DEPOSITED INTO THE FUND SHALL NOT BE ELIGIBLE FOR  
29 WITHDRAWAL AT ANY TIME BEFORE THE ELIGIBLE CHILD FOR WHOM THE PARTIC-  
30 IPANT IS PAYING, REACHES THE AGE OF HIGH SCHOOL GRADUATION OR THE AGE  
31 WHEN SUCH CHILD SHOULD HAVE GRADUATED.

32 (2) UPON THE ELIGIBLE CHILD REACHING THE AGE OF HIGH SCHOOL GRADU-  
33 ATION, THE PARTICIPANT MAY CHOOSE TO WITHDRAW THE TOTAL BALANCE THAT  
34 SUCH PARTICIPANT PAID INTO THE FUND AND NO LONGER PARTICIPATE IN THE  
35 PROGRAM.

36 F. (1) UPON SUBMISSION OF THE LAST PAYMENT, THE ACTUAL COST OF WHAT A  
37 TWO YEAR PROGRAM AT SUNY, A TWO YEAR PROGRAM AT CUNY AND A FOUR YEAR  
38 PROGRAM AT CUNY WOULD HAVE COST IN EACH YEAR THAT A PARTICIPANT  
39 COMPLETED PAYMENTS FOR THE FIRST YEAR, THE SECOND YEAR, THE THIRD YEAR  
40 AND THE FOURTH YEAR OF THE TOTAL COST OF EDUCATION, SHALL BE CALCULATED.

41 (2) THE ACTUAL COST SHALL BE CALCULATED IN THE SAME MANNER AS THE  
42 TOTAL COST OF EDUCATION BY THE COMPTROLLER OR HIS OR HER DESIGNEE IN  
43 CONSULTATION WITH THE SUNY CHANCELLOR OR HIS OR HER DESIGNEE AND THE  
44 CUNY CHANCELLOR OR HIS OR HER DESIGNEE.

45 G. ONCE AN ELIGIBLE CHILD HAS GRADUATED HIGH SCHOOL OR HAS REACHED THE  
46 AGE OF SUCH CHILD'S SCHEDULED HIGH SCHOOL GRADUATION, AND IT HAS BEEN  
47 DETERMINED THAT ALL REQUIRED PAYMENTS HAVE BEEN DEPOSITED INTO THE FUND,  
48 THE PARTICIPANTS HAVE THE FOLLOWING OPTIONS:

49 (1) SUNY. (I) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, IS  
50 ACCEPTED TO, AND ENROLLS IN A FOUR YEAR DEGREE PROGRAM AT SUNY, THEN  
51 SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND FOR  
52 THE DURATION OF FOUR CONSECUTIVE YEARS IN SUCH SUNY PROGRAM AND THE  
53 COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE  
54 AND PROVIDE ANY REFUNDS DUE TO THE PARTICIPANT, BASED UPON RULES AND  
55 REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

1 (II) (A) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED  
2 TO, AND ENROLLS IN A TWO YEAR PROGRAM AT SUNY, THEN SUCH ELIGIBLE  
3 CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE COMP-  
4 TROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE AND  
5 SHALL PROVIDE A REFUND TO THE PARTICIPANT FOR THE DIFFERENCE BETWEEN THE  
6 COST OF A TWO YEAR PROGRAM AND THE FOUR YEAR PROGRAM FOR WHICH THEY  
7 PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT, CALCU-  
8 LATED UPON SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT AND BASED UPON  
9 RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS  
10 SECTION.

11 (B) AT THAT TIME, SUCH PARTICIPANT SHALL HAVE THE OPTION TO WITHDRAW  
12 THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND,  
13 OR MAY CHOOSE TO KEEP THE REMAINDER IN THE FUND TO BE APPLIED TO A FOUR  
14 YEAR PROGRAM IN THE EVENT THAT THE ELIGIBLE CHILD TRANSFERS TO A FOUR  
15 YEAR PROGRAM.

16 (C) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT CUNY,  
17 THE PARTICIPANT SHALL RECEIVE A REFUND FOR THE DIFFERENCE BETWEEN THE  
18 ACTUAL COST OF EDUCATION AT CUNY AND THE FOUR YEAR PROGRAM FOR WHICH  
19 THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT,  
20 CALCULATED AT THE TIME OF THE SUBMISSION OF THE PARTICIPANT'S LAST  
21 PAYMENT.

22 (III) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT A NEW  
23 YORK STATE PRIVATE SCHOOL, THE PARTICIPANT MAY CHOOSE TO HAVE THE  
24 REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND,  
25 APPLIED TO THE COST OF EDUCATION AT SUCH PRIVATE SCHOOL.

26 (IV) IF SUCH ELIGIBLE CHILD TRANSFERS TO AN OUT-OF-STATE COLLEGE, THE  
27 PARTICIPANT SHALL RECEIVE THE REMAINDER OF THE BALANCE THAT SUCH PARTIC-  
28 IPANT PAID INTO THE FUND.

29 (2) CUNY. (I) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS  
30 ACCEPTED TO AND ENROLLS IN A FOUR YEAR DEGREE PROGRAM AT CUNY, THEN SUCH  
31 ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE  
32 COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH  
33 COLLEGE, AND SHALL PROVIDE A REFUND TO THE PARTICIPANT FOR THE DIFFER-  
34 ENCE BETWEEN THE ACTUAL COST OF EDUCATION FOR A FOUR YEAR PROGRAM AT  
35 CUNY AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING ANY ADDI-  
36 TIONAL REFUNDS DUE TO THE PARTICIPANT, CALCULATED AT THE TIME OF THE  
37 SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT BASED UPON RULES AND REGU-  
38 LATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

39 (II) (A) IF A PARTICIPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED  
40 TO AND ENROLLS IN A TWO YEAR PROGRAM AT CUNY, THEN SUCH ELIGIBLE CHILD'S  
41 FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND AND THE COMPTROLLER OR HIS  
42 OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH COLLEGE AND SHALL PROVIDE  
43 A REFUND TO THE PARTICIPANT FOR THE DIFFERENCE BETWEEN THE COST OF A TWO  
44 YEAR PROGRAM AND THE FOUR YEAR PROGRAM FOR WHICH THEY PAID, INCLUDING  
45 ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT, CALCULATED UPON  
46 SUBMISSION OF THE PARTICIPANT'S LAST PAYMENT AND BASED UPON RULES AND  
47 REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

48 (B) AT THAT TIME, SUCH PARTICIPANT SHALL HAVE THE OPTION TO WITHDRAW  
49 THE REMAINDER OF THE BALANCE THAT SUCH PARTICIPANT PAID INTO THE FUND,  
50 OR MAY CHOOSE TO KEEP THE REMAINDER IN THE FUND TO BE APPLIED TO A FOUR  
51 YEAR PROGRAM IN THE EVENT THAT THE ELIGIBLE CHILD TRANSFERS TO A FOUR  
52 YEAR PROGRAM.

53 (C) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT CUNY,  
54 THE PARTICIPANT SHALL RECEIVE A REFUND FOR THE DIFFERENCE BETWEEN THE  
55 ACTUAL COST OF EDUCATION AT CUNY AND THE FOUR YEAR PROGRAM FOR WHICH  
56 THEY PAID, INCLUDING ANY ADDITIONAL REFUNDS DUE TO THE PARTICIPANT,

1 CALCULATED AT THE TIME OF THE SUBMISSION OF THE PARTICIPANT'S LAST  
2 PAYMENT.

3 (D) IF SUCH ELIGIBLE CHILD TRANSFERS TO A FOUR YEAR PROGRAM AT SUNY,  
4 THEN SUCH ELIGIBLE CHILD'S FINANCIAL OBLIGATIONS HAVE BEEN MET TO ATTEND  
5 AND THE COMPTROLLER OR HIS OR HER DESIGNEE SHALL SUBMIT PAYMENTS TO SUCH  
6 COLLEGE, AND PROVIDE ANY REFUNDS DUE TO THE PARTICIPANT, BASED UPON  
7 RULES AND REGULATIONS ESTABLISHED PURSUANT TO SUBDIVISION FOUR OF THIS  
8 SECTION.

9 (III) IF AN ELIGIBLE STUDENT TRANSFERS TO A NEW YORK STATE PRIVATE  
10 SCHOOL, THE PARTICIPANT MAY CHOOSE TO HAVE THE REMAINDER OF THE BALANCE  
11 THAT SUCH PARTICIPANT PAID INTO THE FUND, APPLIED TO THE COST OF EDUCA-  
12 TION AT SUCH PRIVATE SCHOOL.

13 (IV) IF SUCH ELIGIBLE CHILD TRANSFERS TO AN OUT-OF-STATE COLLEGE, THE  
14 PARTICIPANT SHALL RECEIVE THE REMAINDER OF THE BALANCE THAT SUCH PARTIC-  
15 IPANT PAID INTO THE FUND.

16 (3) NEW YORK STATE PRIVATE SCHOOL. IF A PARTICIPANT'S ELIGIBLE CHILD  
17 APPLIES TO, GETS ACCEPTED TO AND ENROLLS IN A FOUR YEAR DEGREE PROGRAM  
18 OR A TWO YEAR DEGREE PROGRAM AT A NEW YORK STATE PRIVATE SCHOOL, A  
19 PARTICIPANT MAY CHOOSE TO HAVE THE BALANCE THAT SUCH PARTICIPANT PAID  
20 INTO THE FUND APPLIED TO THE COST OF EDUCATION AT SUCH PRIVATE SCHOOL OR  
21 SUCH PARTICIPANT MAY CHOOSE TO WITHDRAW THE TOTAL CONTRIBUTION THAT SUCH  
22 PARTICIPANT PAID INTO THE FUND BASED UPON RULES AND REGULATIONS PROMUL-  
23 GATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

24 (4) OUT-OF-STATE SCHOOL OR NON-ACCEPTANCE INTO A NEW YORK STATE  
25 COLLEGE, OR IF AN ELIGIBLE CHILD DOES NOT APPLY TO COLLEGE. IF A PARTIC-  
26 IPANT'S ELIGIBLE CHILD APPLIES TO, GETS ACCEPTED TO AND ENROLLS IN AN  
27 OUT-OF-STATE SCHOOL OR IF A PARTICIPANT'S ELIGIBLE CHILD DOES NOT GET  
28 ACCEPTED INTO A NEW YORK STATE COLLEGE, OR CHOOSES NOT TO ATTEND  
29 COLLEGE, THEN SUCH PARTICIPANT SHALL WITHDRAW THE TOTAL CONTRIBUTION  
30 THAT SUCH PARTICIPANT PAID INTO THE FUND BASED UPON RULES AND REGU-  
31 LATIONS PROMULGATED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

32 (5) NON-PAYMENT. (I) IF A PARTICIPANT CANNOT MAKE THE REQUIRED  
33 PAYMENTS AT ANY TIME AFTER ENROLLMENT OF AN ELIGIBLE CHILD, THEN SUCH  
34 PARTICIPANT MAY WITHDRAW THE BALANCE THAT SUCH PARTICIPANT HAS PAID INTO  
35 THE FUND AT SUCH TIME THAT THE ELIGIBLE CHILD GRADUATES HIGH SCHOOL OR  
36 REACHES THE AGE OF SCHEDULED GRADUATION.

37 (II) IF SUCH PARTICIPANT CANNOT MAKE PAYMENT BUT WISHES TO CONTINUE  
38 PAYING INTO THE PROGRAM, SUCH PARTICIPANT MAY RESUME PAYMENTS CALCULATED  
39 UNDER A NEW SCHEDULE BASED UPON THE ELIGIBLE CHILD'S CURRENT AGE AND THE  
40 CURRENT TOTAL COST OF EDUCATION.

41 (6) DEATH OF ELIGIBLE CHILD. IN THE EVENT OF THE DEATH OF AN ENROLLED  
42 ELIGIBLE CHILD, THE PARTICIPANT MAY WITHDRAW THE TOTAL BALANCE THAT SUCH  
43 PARTICIPANT PAID INTO THE FUND OR MAY ELECT TO HAVE A SCHOLARSHIP IN THE  
44 AMOUNT OF SUCH TOTAL BALANCE AWARDED TO ANOTHER STUDENT IN THE NAME OF  
45 SUCH DECEASED ELIGIBLE CHILD, UPON SUBMISSION OF A DEATH CERTIFICATE AND  
46 BASED UPON RULES AND REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION  
47 FOUR OF THIS SECTION.

48 4. THE COMPTROLLER OR HIS OR HER DESIGNEE, IN CONSULTATION WITH THE  
49 SUNY CHANCELLOR OR HIS OR HER DESIGNEE AND THE CUNY CHANCELLOR OR HIS OR  
50 HER DESIGNEE, SHALL PROMULGATE ALL NECESSARY RULES AND REGULATIONS FOR  
51 THE SUCCESSFUL IMPLEMENTATION OF THIS SECTION. SUCH RULES AND REGU-  
52 LATIONS SHALL INCLUDE PROVISIONS TO ADDRESS AN ELIGIBLE CHILD'S ELIGI-  
53 BILITY FOR TUITION ASSISTANCE PROGRAM AWARDS OR ANY OTHER SCHOLARSHIPS,  
54 GRANTS OR AWARDS, TO ENSURE THAT THE VALUE OF SUCH AWARDS ARE REFUNDED  
55 TO THAT PARTICIPANT OR ELIGIBLE CHILD.

1 S 2. The state finance law is amended by adding a new section 99-v to  
2 read as follows:

3 S 99-V. NEW YORK STATE PRE-PAY TUITION FUND. 1. THERE IS HEREBY  
4 ESTABLISHED WITHIN THE CUSTODY OF THE STATE COMPTROLLER, OR HIS OR HER  
5 DESIGNEE, IN CONSULTATION WITH THE SUNY CHANCELLOR OR HIS OR HER DESIG-  
6 NEE AND THE CUNY CHANCELLOR OR HIS OR HER DESIGNEE, A NEW FUND TO BE  
7 KNOWN AS THE NEW YORK STATE PRE-PAY TUITION FUND.

8 2. ALL MONIES RECEIVED PURSUANT TO THE NEW YORK STATE PRE-PAY TUITION  
9 PROGRAM SHALL BE DEPOSITED INTO THIS FUND AND SHALL BE MANAGED PURSUANT  
10 TO SECTION THREE HUNDRED FIFTY-FIVE-D OF THE EDUCATION LAW.

11 3. ALL NECESSARY RULES AND REGULATIONS FOR THE SUCCESSFUL ADMINIS-  
12 TRATION, INVESTMENT AND MANAGEMENT OF SUCH FUND SHALL BE PROMULGATED BY  
13 THE STATE COMPTROLLER OR HIS OR HER DESIGNEE IN CONSULTATION WITH THE  
14 SUNY CHANCELLOR OR HIS OR HER DESIGNEE OR THE CUNY CHANCELLOR OR HIS OR  
15 HER DESIGNEE.

16 S 3. Paragraph 33 of subsection (c) of section 612 of the tax law, as  
17 added by chapter 546 of the laws of 1997, is amended to read as follows:

18 (33) Distributions from a family tuition account established under the  
19 New York state college choice tuition savings program provided for under  
20 article fourteen-A of the education law OR DISTRIBUTIONS FROM THE NEW  
21 YORK STATE PRE-PAY TUITION SAVINGS PROGRAM PROVIDED FOR UNDER SECTION  
22 THREE HUNDRED FIFTY-FIVE-D OF THE EDUCATION LAW, to the extent includi-  
23 ble in gross income for federal income tax purposes.

24 S 4. Nothing in this act shall be construed to guarantee acceptance  
25 into any New York state college.

26 S 5. This act shall take effect one year after it shall have become a  
27 law; provided however that effective immediately the New York state  
28 comptroller or his or her designee, in consultation with the chancellor  
29 of the state university of New York or his or her designee and the chan-  
30 cellor of the city university of New York or his or her designee, shall  
31 promulgate all necessary rules and regulations for the timely implemen-  
32 tation of this act on or before such effective date.