STATE OF NEW YORK

2485

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sens. LAVALLE, AKSHAR, FUNKE, GALLIVAN, LITTLE, RANZENHOFER, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law and the state finance law, in relation to establishing the New York state family tuition investment program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature hereby finds and declares that it is an essential function of state government to foster higher education in order to provide for a well-educated and financially secure population. The legislature further finds that the cost of higher education is becoming less affordable and predictable, adversely affecting the ability of individuals and families to plan for future educational expenses. The legislature further finds that it is in the best interests of the state to provide its citizens with financing assistance for higher education and protection against rising costs, and to encourage savings to enhance the ability of residents of New York to obtain financial access to institutions of higher education. Accordingly, the legislature finds and declares that the creation of the New York state family tuition investment program for the advance purchase of tuition will help to make higher education affordable and accessible to all New York's students, to the ultimate benefit of all citizens of the state.

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

ARTICLE 14-B
NEW YORK STATE FAMILY TUITION INVESTMENT PROGRAM ACT

Section 696. Short title.
696-a. Definitions.
696-b. New York state family tuition investment program; purpose.

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

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696-c. Powers and duties of the higher education services corporation.
696-d. Prepayment agreements; pricing; redemption.
696-e. Disclosure to purchasers.
696-f. Termination of prepayment agreements; refunds.
696-g. State financial aid.
696-h. Scholarship program.
696-i. Annual accounting and actuarial study.
696-j. Exemption from security laws.
696-k. Relief from attachment.

§ 696. Short title. This article shall be known and may be cited as the "New York state family tuition investment program act".

§ 696-a. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Beneficiary" means an individual designated in a prepayment agreement as the individual entitled to apply tuition units purchased under such agreement to the payment of that individual's tuition.

2. "Comptroller" means the state comptroller.

3. "Corporation" means the New York state higher education services corporation.

4. "Owner" means the purchaser or beneficiary of a prepayment agreement designated by the purchaser pursuant to paragraph a of subdivision one of section six hundred ninety-six-d of this article.

5. "Prepayment agreement" means an agreement entered into by the corporation and a purchaser providing for the prepayment of tuition units by the purchaser, at a price determined by the corporation for the year in which the units are purchased, and the redemption of such units at the time of the beneficiary's college matriculation, at a value determined in accordance with section six hundred ninety-six-d of this article.

6. "Program" means the New York state family tuition investment program established by section six hundred ninety-six-b of this article.

7. "Purchaser" means a person, including a natural person, limited liability company, corporation, association, foundation, partnership or other legal entity, who enters into a prepayment agreement with the corporation for the prepayment of tuition.

8. "Trust fund" means the New York state family tuition investment program trust fund established pursuant to section seventy-eight-c of the state finance law.

9. "Tuition" means the charges imposed by colleges for attendance for an academic year as an undergraduate and all fees required as a condition of enrollment as determined by the corporation. Such term shall not include tuition charged to out-of-state residents, laboratory fees, room and board, or other similar fees and charges.

10. "Unit" or "tuition unit" means one percent of the annual weighted average tuition for a group of colleges, as described in and determined pursuant to section six hundred ninety-six-d of this article.

§ 696-b. New York state family tuition investment program; purpose. There is hereby established within the corporation the New York state family tuition investment program for the purpose of improving the higher educational opportunities of beneficiaries through the advance purchase of tuition at public institutions of higher education in this state, which shall be an official state function.

§ 696-c. Powers and duties of the higher education services corporation. 1. The corporation shall:

a. promulgate necessary rules and regulations, within ninety days after the effective date of this article, for the implementation of the program, including but not limited to reasonable time limits for use of tuition units, reasonable limits on the number of program participants, reasonable restrictions on the substitution of beneficiaries, residency requirements for beneficiaries which shall be consistent with residency requirements established by qualified institutions, and reasonable administrative fees and charges in connection with any transaction under this article;

b. employ and fix the compensations of personnel, who shall be in the classified service, but shall not be in the competitive class, as necessary to carry out its responsibilities under this article;

c. engage, on a contract basis, the services of financial consultants, actuaries, auditors and other consultants as necessary to carry out its responsibilities under this article;

d. contract for other services, or for goods, needed by the corporation in the conduct of its business;

e. make, execute and deliver contracts, conveyances and other instruments necessary to the management and operation of the program;

f. purchase insurance from insurers licensed to do business in this state providing coverage against any loss in connection with the corporation's property, assets or activities, or to further ensure the value of units;

g. promote, advertise and publicize the program through, at a minimum, wide dissemination of informational materials to the public explaining the provisions of the program and specifically, a clear statement in plain language summarizing the provisions of sections six hundred ninety-six-e and six hundred ninety-six-f of this article, regarding disclosure and termination;

h. enter into agreements with any agency of the state, the comptroller, political subdivisions of the state and with private employers under which an employee may agree to have a designated amount deducted in each payroll period from the wages or salary due such employee for the purpose of purchasing tuition units pursuant to a prepayment agreement;

i. enter into an agreement with the comptroller under which the comptroller will receive and credit to the trust fund, from any banking institution authorized to do business in this state, amounts that a depositor of the banking institution authorizes such institution to withdraw periodically from his or her account for the purpose of purchasing units pursuant to a prepayment agreement;

j. solicit and accept gifts, grants or loans from any person, association, board, foundation or governmental agency; and

k. perform all acts necessary and proper to carry out the duties and responsibilities of the corporation pursuant to this article.

2. The comptroller shall act as the sole trustee of the trust fund. The comptroller will have authority to make all investment decisions regarding the trust fund.

3. The corporation shall submit a request to the division of the budget for funds sufficient, as determined by such corporation, to cover the expenses of initial planning, organization and administration of the program. Any appropriations to the corporation shall be repaid to the state from the fees, charges and investment earnings of the trust fund within a five-year period, commencing two years after units have been offered for sale to the public. Commencing one year after units have been offered for sale to the public, expenses incurred by the corpo-

ration shall be paid from the fees, charges and investment earnings of the fund or any other available funds.

4. The program is backed by the full faith and credit of the state. The state pledges to benefactors and designated beneficiaries of the program that the state will not limit or alter the rights which are vested in the program until such obligations are met and discharged. However, this subdivision shall not be deemed to preclude such limitation if adequate provision is made by law for the protection of the benefactors and designated beneficiaries pursuant to the obligations of the corporation.

§ 696-d. Prepayment agreements; pricing; redemption. 1. Election of options. The corporation may enter into prepayment agreements with any person or entity for the purchase of any number of tuition units. A purchaser shall elect one of the following options at the time of entering into a prepayment agreement under this section:

a. One or more specific individuals shall be designated as the beneficiaries of the units. A purchaser selecting this option shall also elect whether to retain ownership of the units or to allocate ownership of the units in the account to one or more of the designated beneficiaries. A purchaser who retains ownership may allocate units among the specified beneficiaries at the time of enrollment in a college. If the purchaser assigns ownership of the units to the beneficiaries, each beneficiary is entitled to use those units. In accordance with rules of the corporation, beneficiaries may be deleted, added or substituted for those originally named in the prepayment agreement and ownership of the assets may be changed during the life of the agreement, provided that no more than five unrelated individuals shall be included under one prepayment agreement at any one time; or

b. A unit account may be established for no more than five unrelated beneficiaries. From time to time, the purchaser may transfer units from such account to one or more specified beneficiaries in accordance with paragraph a of this subdivision, or to a scholarship program established pursuant to this section. The purchaser shall be the owner of the units until they are transferred; or

c. Any number of units of any group may be purchased and donated directly to a scholarship program established pursuant to this section. The person or organization that establishes such scholarship program shall be the owner of units purchased pursuant to this paragraph, and the purchaser shall have no right to the units.

2. Unit pricing. a. In accordance with sound actuarial practices, the corporation shall establish, and re-establish annually, prices for tuition units which shall be redeemable in specific years or periods of years. Tuition unit prices shall be based on in-state tuition, and shall be established for a twelve month period to be determined by the corporation. Annually, the corporation shall have the actuarial soundness of the trust fund evaluated by a nationally recognized actuary and shall determine whether additional assets are necessary to meet the current and projected future obligations of the corporation.

b. Separate tuition unit prices shall be established for each of the following college groups:

(i) colleges for which annual tuition does not exceed five thousand dollars;

(ii) colleges for which annual tuition is greater than five thousand dollars but not more than ten thousand dollars;

(iii) colleges for which annual tuition is greater than ten thousand dollars but not more than fifteen thousand dollars;

(iv) colleges for which annual tuition is greater than fifteen thousand dollars but not more than twenty thousand dollars; and

(v) colleges for which annual tuition exceeds twenty thousand dollars.

The corporation may, by regulation, adjust the dollar parameters of the groups set forth in this paragraph, and any such adjustment shall operate only prospectively.

c. Tuition unit prices shall be based on an amount which approximates one percent of the weighted average tuition for each group of colleges. The term "weighted average tuition," as used in this section, means the tuition cost resulting from the following calculation:

(i) add the products of the annual tuition for each college within a group, multiplied by total undergraduate fiscal year enrollment at each college; and

(ii) divide the gross total of the products from subparagraph (i) of this paragraph by the total undergraduate academic year enrollment for each group of colleges.

d. On an annual basis, the corporation shall compile information sufficient to calculate the price of units at each group of colleges. On or before July thirty-first of each year, each college shall certify to the corporation the tuition to be charged by such college for the academic year beginning on or after August first of that year and ending on or before July thirty-first of the following year. At such time as the corporation shall determine, each college shall certify to the corporation the tuition charged by the college for the current or any previous academic year.

e. Each tuition unit price shall include an amount deemed necessary by the corporation to defray the costs of administering the program.

f. To promote the purchase of units and in accordance with actuarially sound principles, the corporation, in consultation with the comptroller may adjust the sales price as part of incentive programs, such as discounting for lump sum purchases and multi-year installment plans at a fixed rate of purchase.

3. Redemption of units. In accordance with such terms and conditions as set forth in this section, in the prepayment agreement or by rules of the corporation, the beneficiary may redeem the value of tuition units, as follows:

a. One percent of the weighted average tuition for the academic year in which units are redeemed, charged by the college group selected by the purchaser under the prepayment agreement, multiplied by the number of tuition units to be redeemed in the academic term in which the beneficiary matriculates at a college.

b. The corporation will pay directly to the college in which a beneficiary is enrolled during an academic term the amount represented by the units being redeemed that term. The beneficiary shall be responsible for the payment of all charges required by such college in which the beneficiary is enrolled in excess of the value of units which are redeemed.

c. If, at any time after units are purchased on behalf of a beneficiary or awarded to a beneficiary pursuant to a scholarship program, the beneficiary chooses to attend a college within a group other than the one for which units were purchased, the value of units purchased or awarded to the beneficiary may be redeemed by the beneficiary and applied toward the payment of any tuition, fees or charges of the college the beneficiary attends. The corporation shall pay directly to the college the value of units which are redeemed.

d. A minimum period of four years must elapse between the time a prepayment agreement is entered into and the time that units may be

redeemed. The corporation may prescribe an alternative period of time, but no shorter than four years, which must elapse between the time a prepayment agreement is entered into and the time that tuition units may be redeemed.

e. The corporation shall permit the redemption of units for master's degree and other post baccalaureate programs. The corporation may also permit units remaining in an account after tuition is fully paid to be applied for other educational expenses and fees directly charged to the beneficiary by the college.

4. No guarantee. Nothing in this article or in any prepayment agreement entered into pursuant to this article shall be construed as a guarantee by the state, the corporation or any college, that a beneficiary will be admitted to a college, or, upon admission to a college will be permitted to continue to attend or will receive a degree from a college.

§ 696-e. Disclosure to purchasers. 1. The following information shall be disclosed by the corporation in writing to each purchaser and prospective purchaser of tuition units and to each school district, public high school, nonpublic high school, or other person or organization maintaining a scholarship program:

a. the terms and conditions for purchasing tuition units;

b. any restrictions on the substitution of beneficiaries and any restrictions on the transfer of ownership of tuition units in the payment account;

c. the person or entity entitled to terminate the prepayment agreement;

d. the terms and conditions under which the prepayment agreement may be terminated and the amount of the refund and penalty, if any, to which the person or entity terminating the agreement, or that person's or entity's designee, is entitled or responsible for, upon termination;

e. the obligation of the corporation to make payments to a college on behalf of a beneficiary, based upon the number of units purchased on behalf of the beneficiary or awarded to the beneficiary pursuant to a scholarship program and reciting in any promotional materials and in the prepayment agreement, in at least sixteen point, bold type: "The beneficiary shall be responsible for the payment of all charges required by such college in which the beneficiary is enrolled in excess of the value of units which are redeemed";

f. the method by which tuition units shall be applied toward payment of tuition if in any academic term the beneficiary is a part-time student;

g. the method by which tuition units shall be applied toward payment of tuition if during any academic term a tuition change occurs;

h. the period of time during which a beneficiary may receive benefits under the prepayment agreement;

i. the terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

j. the probable state and federal tax consequences associated with purchasing and redeeming units; and

k. all other rights and obligations of the purchaser and the corporation and any other terms, conditions, and provisions the corporation considers necessary and appropriate.

2. Prepayment agreements shall be subject to section fourteen-c of the banking law and the "truth-in-savings" regulations promulgated thereunder.

§ 696-f. Termination of prepayment agreements; refunds. 1. A prepayment agreement may be terminated by the purchaser, the beneficiary, or by any person or combination of persons, as provided in the prepayment agreement, and the corporation shall issue a refund as provided in this subdivision.

a. Unless otherwise provided for in the prepayment agreement, a prepayment agreement may be terminated by the owner under any of the following circumstances:

(i) upon the death or permanent disability of the beneficiary;

(ii) upon certification by the owner of units under a prepayment agreement, not more than four years prior to the earliest redemption date provided by the prepayment agreement, that the principal and accrued interest in such owner's account will be transferred to another prepaid tuition program offered by a college or another state;

(iii) upon notification to the board in writing that the beneficiary is age eighteen or older, and has decided not to attend a college;

(iv) upon completion of the degree requirements at a college;

(v) upon a decision by the beneficiary to attend a college or university located outside of the state; and

(vi) upon the occurrence of other circumstances determined by the corporation to be grounds for termination.

b. In the case of a termination under subparagraph (i) of paragraph a of this subdivision, the owner shall be entitled to and receive the full value of units, without penalty, for the year in which such termination occurs or shall be entitled to substitute a new beneficiary under the existing prepayment agreement.

c. For each category of terminations under paragraph a of this subdivision, other than under subparagraph (i) of such paragraph, the corporation shall prescribe, by rule, the percentage of value of units, the method and the schedule for payment of refunds upon termination of a prepayment agreement.

d. If a beneficiary is awarded a scholarship other than under a scholarship program established under this article, a tuition waiver, grant, or the like, that the corporation determines cannot be converted into money by the beneficiary, the corporation shall, during each academic term that the beneficiary furnishes the corporation such information about such scholarship, waiver, or grant, as the corporation requires, refund to the beneficiary, without penalty, an amount equal to the value of the tuition units that would have been directly paid to a college if the scholarship, waiver, or grant had not been available to the beneficiary for that purpose.

2. If a prepayment agreement has not been terminated or a beneficiary designated in the prepayment agreement has not used tuition units within the time specified in such agreement, the rights and procedures prescribed by the abandoned property law shall apply.

3. If, in any academic term for which units have been used to pay all or part of a beneficiary's tuition, the beneficiary withdraws from a college prior to the end of the academic term, any refund of tuition as a result of the withdrawal which is attributable to the redemption of units for such term shall be made to the corporation, unless the corporation designates a different procedure. The corporation shall credit any refund received, less any reasonable charges and fees provided for by the corporation, to the beneficiary's account.

§ 696-g. State financial aid. Ownership of credits shall not penalize purchasers or beneficiaries in any determination of eligibility for

state funded general awards, academic performance awards or fellowships, including tuition assistance program awards.

§ 696-h. Scholarship program. 1. The board of education of any school district, or the governing board of any nonprofit educational, religious or charitable organization may establish a scholarship program to award scholarships consisting of units purchased pursuant to prepayment agreements. Any scholarship program established under this section shall be registered with the corporation. The corporation shall be notified of the name and address of each scholarship beneficiary under the scholarship program, the number of tuition units awarded, and the college in which the beneficiary shall be enrolled. Scholarship beneficiaries shall be selected by the governing body of the organization that established the scholarship program in accordance with criteria established by such governing body. In the case of a scholarship program established by a board of education, scholarships shall be awarded only to students enrolled in the school district. No beneficiary may receive more than the minimum number of units necessary to fund four academic years at the selected college.

2. Any person or entity may purchase units on behalf of a scholarship program established under this section and registered with the corporation at the same price as charged for the purchase of units for named beneficiaries pursuant to this article, as provided in subdivision three of this section. Such units shall have the same value to the beneficiary of a scholarship awarded pursuant to this section as they would have to any other beneficiary.

3. If a scholarship beneficiary does not use units awarded within a length of time specified under the scholarship program, the governing board of the scholarship program may award the units to another beneficiary.

§ 696-i. Annual accounting and actuarial study. 1. The corporation shall prepare, in consultation with the comptroller, and cause to have audited an annual financial report on all financial activity of the trust fund, within ninety days of the end of the fiscal year. Biennially, the corporation shall contract with a nationally recognized firm to perform a management audit of the program, which shall include a compliance audit of the program's compliance with the "truth-in-savings" regulations, as required by section six hundred ninety-six-e of this article. The corporation and the comptroller shall transmit the audited financial report and the management audit, within thirty days of completion, to the governor and to the chairperson and ranking minority member of the assembly ways and means committee, the chairperson and ranking minority member of the senate finance committee, and the chairpersons and ranking minority members of the assembly and senate higher education committees. Copies of the audited financial report and the management audit also shall be made available, upon request, to the public.

2. The comptroller or his or her legally authorized representative, from time to time may examine the books and accounts of the corporation including its receipts, disbursements, contracts, administrative expenses and any other matters relating to the financial standing of the trust fund.

§ 696-j. Exemption from security laws. Prepayment agreements and units are exempt from any state statute regulating securities, including article twenty-three of the general business law.

§ 696-k. Relief from attachment. The right of a person to a credit or a payment under this article pursuant to a prepayment agreement or scho-

larship program shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other process of law.

§ 3. The state finance law is amended by adding a new section 78-c to read as follows:

§ 78-c. New York state family tuition investment program trust fund. a. There is hereby established in the sole custody of the state comptroller a special fund to be known as the "New York state family tuition investment program trust fund", which shall be outside the state treasury. Notwithstanding the provisions of subdivision one of section six hundred ninety-six-c of the education law, or any other law, moneys may be paid out of such fund without an appropriation by law. All payments of moneys from such fund shall be made only in accordance with the rules and regulations of the New York state higher education services corporation and the comptroller.

b. The trust fund shall consist of a trust account and an operating account. The trust account shall consist of moneys received by the New York state higher education services corporation pursuant to prepayment agreements, all interest and investment income earned by the trust fund, administrative charges and fees received by the program and all receipts of the program from any other source. Upon certification of the chairperson of the New York state higher education services corporation, the comptroller shall, from time to time, transfer moneys from the trust account to the operating account to be used for the immediate payment of obligations of the New York state higher education services corporation under prepayment agreements, and the cost of administering the New York state family tuition investment program.

c. Moneys in the trust fund shall be kept separate and shall not be commingled with other funds. The comptroller shall invest the moneys in the trust fund, on behalf of the New York state higher education services corporation, pursuant to the standards set forth in paragraph (b) of subdivision nine of section one hundred seventy-seven of the retirement and social security law. The comptroller may enter into written agreements with one or more financial organizations for the investment and custody of trust funds. All investment fees and other costs incurred in connection with the investment of the trust fund moneys and reasonable expenses of administering the trust fund shall be paid from the assets of the fund.

d. Moneys in the trust fund not required for the immediate payment of obligations of the New York state higher education services corporation under prepayment agreements and the cost of administering the New York state family tuition program may be contractually loaned to the state university of New York and the city university of New York to be utilized for educational purposes as detailed within said loans. Any contracts entered into by the comptroller under this section shall provide for a repayment schedule with interest which ensures the trust fund's ability to meet its obligations under the New York state family tuition investment program. The total of all amounts loaned to the state university of New York and the city university of New York shall be in the same proportion as the proportion of the average state funds provided to each system during the last five years.

§ 4. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.