

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 977

Short Title: Postsecondary Education Program.

(Public)

Sponsors: Senators Hartsell, Shaw, and Plexico.

Referred to: Education/Higher Education

May 3, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE PREPAID POSTSECONDARY EDUCATION EXPENSE PROGRAM, THE PREPAID POSTSECONDARY EDUCATION EXPENSE TRUST FUND, THE NORTH CAROLINA PREPAID POSTSECONDARY EDUCATION EXPENSE BOARD, AND THE NORTH CAROLINA PREPAID TUITION SCHOLARSHIP PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"NORTH CAROLINA PREPAID POSTSECONDARY EDUCATION EXPENSE PROGRAM.

"§ 116-260. Purpose.

The General Assembly recognizes that educational opportunity at the postsecondary level is a critical State interest. It further recognizes that educational opportunity is best ensured through the provision of postsecondary institutions that are geographically and financially accessible. Accordingly, it is the intent of the General Assembly that a program be established through which many of the costs associated with postsecondary attendance may be paid in advance and fixed at a guaranteed level for the duration of undergraduate enrollment. It is similarly the intent of the General Assembly to provide a

1 program that fosters timely financial planning for postsecondary attendance and to
2 encourage employer participation in such planning through program contributions on
3 behalf of employees and the dependents of employees.

4 **"§ 116-261. Definitions.**

5 The following definitions apply in this Article:

6 (1) Advance payment contract. – A contract entered into by the Board and a
7 purchaser pursuant to this Article.

8 (2) Board. – The Prepaid Postsecondary Education Expense Board.

9 (3) Fund. – The Prepaid Postsecondary Education Expense Trust Fund.

10 (4) Purchaser. – A person who makes or is obligated to make advance
11 registration or dormitory residence payments in accordance with an
12 advance payment contract.

13 (5) Qualified beneficiary. – A resident of this State at the time a purchaser
14 enters into an advance payment contract on behalf of the resident. The
15 term includes the following:

16 a. A resident of this State at the time a purchaser enters into an
17 advance payment contract on behalf of the resident.

18 b. A nonresident who is the child of a noncustodial parent who is a
19 resident of this State at the time that the parent enters into an
20 advance contract on behalf of the child.

21 c. For purposes of advance payment contracts entered into pursuant
22 to this Article, a graduate of an accredited high school in this
23 State who is a resident of this State at the time the graduate is
24 designated to receive the benefits of the advance payment
25 contract.

26 (6) State postsecondary institution. – Any community college identified in
27 G.S. 115D-2 or university identified in G.S. 116-2.

28 (7) Program. – The North Carolina Prepaid Postsecondary Education
29 Expense Program.

30 (8) Registration fee. – Matriculation fee, financial aid fee, building fee, and
31 Capital Improvement Trust Fund fee.

32 **"§ 116-262. North Carolina Prepaid Postsecondary Education Expense Program.**

33 There is created a North Carolina Prepaid Postsecondary Education Expense Program
34 to provide a medium through which the cost of registration and dormitory residence may
35 be paid in advance of enrollment in a State postsecondary institution at a rate lower than
36 the projected corresponding cost at the time of actual enrollment. Such payments shall be
37 combined and invested in a manner that yields, at a minimum, sufficient interest to
38 generate the difference between the prepaid amount and the cost of registration and
39 dormitory residence at the time of actual enrollment. Students who enroll in a State
40 postsecondary institution pursuant to this Article shall be charged no fees in excess of the
41 terms delineated in the advance payment contract.

42 **"§ 116-263. Prepaid Postsecondary Education Expense Trust Fund.**

1 (a) There is created within the Department of the State Treasurer the Prepaid
2 Postsecondary Education Expense Trust Fund. The Fund shall consist of State
3 appropriations, moneys acquired from other governmental or private sources, and moneys
4 remitted in accordance with advance payment contract. All funds deposited into the Fund
5 may be invested pursuant to this Article; however, such investment shall not be
6 mandatory. Dividends, interest, and gains accruing to the Fund shall increase the total
7 funds available for the Program. Any balance contained within the Fund at the end of a
8 fiscal year shall remain therein and shall be available for carrying out the purposes of the
9 Program. In the event that dividends, interest, and gains exceed the amount necessary for
10 program administration and disbursements, the Board may designate an additional
11 percentage of the Fund to serve as a contingency fund. Moneys contained within the
12 Fund shall be exempt from the investment requirements of this Article. Any funds of a
13 direct support organization created pursuant to G.S. 116-267 shall be exempt from the
14 provisions of this section.

15 (b) The Board shall administer the Fund in a manner that is sufficiently actuarially
16 sound to defray the obligations of the Program. The Board shall annually evaluate or
17 cause to be evaluated the actuarial soundness of the Fund. If the Board perceives a need
18 for additional assets in order to preserve actuarial soundness, the Board may adjust the
19 terms of subsequent advance payment contracts to ensure such soundness.

20 (c) The Board, acting with the approval of the Board of Governors of The
21 University of North Carolina, shall establish a comprehensive investment plan for the
22 purposes of this section. The comprehensive investment plan shall specify the
23 investment policies to be utilized by the Board in its administration of the Fund. The
24 Board may place assets of the Fund in savings accounts or use the same to purchase fixed
25 or variable life insurance or annuity contracts, securities, evidence of indebtedness, or
26 other investment products pursuant to the comprehensive investment plan and in such
27 proportions as may be designated or approved under that plan. The insurance, annuity,
28 savings or investment products shall be underwritten and offered in compliance with the
29 applicable federal and State laws, regulations, and rules by persons who are duly
30 authorized by applicable federal and State authorities. Within the comprehensive
31 investment plan, the Board may authorize investment vehicles, or products incident
32 thereto, as may be available or offered by qualified companies or persons.

33 (d) The Board may delegate responsibility for administration of the comprehensive
34 investment plan to a person the Board determines to be qualified. The person shall be
35 compensated by the Board. Directly or through the person, the Board may contract with
36 a private corporation or institution to provide such services as may be a part of the
37 comprehensive investment plan or as may be deemed necessary or proper by the Board or
38 the person, including, but not limited to, providing consolidated billing, individual and
39 collective recordkeeping and accountings, and asset purchase, control, and safekeeping.

40 (e) The Board shall annually prepare or cause to be prepared a report setting forth
41 in appropriate detail an accounting of the Fund and a description of the financial
42 condition of the Program at the close of each fiscal year. The report shall be submitted to
43 the President of the Senate, Speaker of the House of Representatives, and members of the

1 Board of Governors of The University of North Carolina on or before November 15 of
2 each year. In addition, the Board shall make the report available to purchasers of
3 advance payment contracts. The accounts of the Fund shall be subject to annual audits by
4 the State Auditor or the Auditor's designee.

5 (f) The Board shall solicit answers to applicable ruling requests from the Internal
6 Revenue Service regarding the tax status of fees paid pursuant to an advance payment
7 contract to the purchaser or qualified beneficiary and from the Securities and Exchange
8 Commission regarding the application of federal securities laws to the Fund. The Board
9 shall make the status of such requests known before entering into an advance payment
10 contract.

11 **"§ 116-264. North Carolina Prepaid Postsecondary Education Expense Board.**

12 (a) The North Carolina Prepaid Postsecondary Education Expense Program shall
13 be administered by the Prepaid Postsecondary Education Expense Board as an agency of
14 the State. The Prepaid Postsecondary Education Expense Board is created as a body
15 corporate with all the powers of a body corporate for the purposes delineated in this
16 section. For the purposes of Section 11 of Article III of the North Carolina State
17 Constitution, the Board shall be assigned to and administratively housed within the
18 Department of the State Treasurer, but it shall independently exercise the powers and
19 duties specified in this section.

20 (b) The Board shall consist of seven members to be composed of the President of
21 The University of North Carolina, the State Treasurer, the Controller, the President of the
22 Community College System, and three members appointed by the Governor and subject
23 to confirmation by the Senate. Each member appointed by the Governor shall possess the
24 knowledge, skill, and experience in the areas of accounting, actuary, risk management, or
25 investment management. Each member of the Board not appointed by the Governor may
26 name a designee to serve the Board on behalf of the member; however, any designee so
27 named shall meet the qualifications required of gubernatorial appointees to the Board.

28 (c) Members appointed by the Governor shall serve terms of three years except
29 that, in making the initial appointments, the Governor shall appoint one member to serve
30 for one year, one member to serve for two years, and one member to serve for three
31 years. Any person appointed to fill a vacancy on the Board shall be appointed in a like
32 manner and shall serve for only the unexpired term. Any member shall be eligible for
33 reappointment and shall serve until a successor qualifies.

34 (d) Members of the Board shall serve without compensation, but shall be
35 reimbursed for per diem and travel in accordance with G.S. 138-6 and G.S. 138-7. Each
36 member of the Board shall file a full and public disclosure of the member's financial
37 interests.

38 (e) The Governor shall appoint a member of the Board to serve as the initial chair
39 of the Board. Thereafter, the Board shall elect a chair annually. The Board shall
40 annually elect a Board member to serve as vice-chair and shall designate a secretary-
41 treasurer who need not be a member of the Board. The secretary-treasurer shall keep a
42 record of the proceedings of the Board and shall be the custodian of all printed material
43 filed with or by the Board and of its official seal.

1 (f) Notwithstanding the existence of vacancies on the Board, a majority of the
2 members shall constitute a quorum. The Board shall take no official action in the
3 absence of a quorum. The Board shall meet, at a minimum, on a quarterly basis at the
4 call of the chair.

5 (g) The Board shall appoint an executive director to serve as the chief
6 administrative and operational officer of the Board and to perform other duties assigned
7 to the executive director by the Board.

8 **"§ 116-265. Powers and duties of the Board.**

9 (a) The Board shall have the powers necessary or proper to carry out the
10 provisions of this Article, including the power to:

11 (1) Adopt an official seal and rules.

12 (2) Sue or be sued.

13 (3) Make and execute contracts and other necessary instruments.

14 (4) Establish agreements or other transactions with federal, State, and local
15 agencies, including State universities and community colleges.

16 (5) Invest funds not required for immediate disbursement.

17 (6) Appear in its own behalf before boards, commissions, or other
18 governmental agencies.

19 (7) Hold, buy, and sell any instruments, obligations, securities, and property
20 determined appropriate by the Board.

21 (8) Require a reasonable length of State residence for qualified
22 beneficiaries.

23 (9) Restrict the number of participants in the community college plan,
24 university plan, and dormitory residence plan, respectively. However,
25 any person denied participation solely on the basis of such restriction
26 shall be granted priority for participation during the succeeding year.

27 (10) Segregate contributions and payments to the Fund into various accounts
28 and funds.

29 (11) Contract for necessary goods and services, employ necessary personnel,
30 and engage the services of private consultants, actuaries, managers,
31 legal counsel, and auditors for administrative or technical assistance.

32 (12) Solicit and accept gifts, grants, loans, and other aids from any source or
33 participate in any other way in any government program to carry out the
34 purposes of this Article.

35 (13) Require and collect administrative fees and charges in connection with
36 any transaction and impose reasonable penalties, including default, for
37 delinquent payments or for entering into an advance payment contract
38 on a fraudulent basis.

39 (14) Procure insurance against any loss in connection with the property,
40 assets, and activities of the Fund or the Board.

41 (15) Impose reasonable time limits on use of the tuition benefits provided by
42 the Program. However, any such limitation shall be specified within the
43 advance payment contract.

1 (16) Delineate the terms and conditions under which payments may be
2 withdrawn from the Fund and impose reasonable fees and charges for
3 the withdrawal. The terms and conditions shall be specified within the
4 advance payment contract.

5 (17) Provide for the receipt of contributions in lump sums or installment
6 payments.

7 (18) Establish other policies, procedures, and criteria to implement and
8 administer the provisions of this Article.

9 **"§ 116-266. North Carolina Prepaid Postsecondary Education Expense Program;**
10 **marketing.**

11 The Board shall solicit proposals for the marketing of the Program pursuant to G.S.
12 143-52. The entity designated pursuant to this section shall serve as a centralized
13 marketing agent for the Program and shall be solely responsible for the marketing of the
14 Program. Any materials produced for the purpose of marketing the Program shall be
15 submitted to the Board for review. No such materials shall be made available to the
16 public before the materials are approved by the Board. Any educational institution may
17 distribute marketing materials produced for the Program; however, all the materials shall
18 have been approved by the Board prior to distribution. Neither the State nor the Board
19 shall be liable for misrepresentation of the Program by a marketing agent.

20 **"§ 116-267. North Carolina Prepaid Postsecondary Education Expense Program;**
21 **direct-support organization.**

22 The Board may establish a direct-support organization that is:

23 (1) A North Carolina corporation, not-for-profit, incorporated under the
24 provisions of Chapter 55A of the General Statutes.

25 (2) Organized and operated exclusively to receive, hold, invest, and
26 administer property and to make expenditures to or for the benefit of the
27 Program.

28 (3) An organization that the Board, after review, has certified to be
29 operating in a manner consistent with the goals of the Program and in
30 the best interests of the State. Unless so certified, the organization may
31 not use the name of the Program.

32 (4) Subject to an annual postaudit by an independent certified public
33 accountant in accordance with rules adopted by the Board, the annual
34 audit shall be submitted to the State Treasurer and the State Auditor for
35 review. The State Treasurer and State Auditor shall have the authority
36 to require and receive from the organization or its independent auditor
37 any detail or supplemental data relative to the operation of the
38 organization. The identity of donors who desire to remain anonymous
39 shall be confidential and are not public records within the meaning of
40 G.S. 132-1 and such anonymity shall be maintained in the auditor's
41 report. All records of the organization other than the auditor's report
42 and the supplemental data requested by the State Treasurer or the State
43 Auditor shall be confidential and are not public records within the

1 meaning of G.S. 132-1. The Chair of the Board and the executive
2 director shall be directors of the direct support organization and shall
3 jointly name three other individuals to serve as directors of the
4 organization.

5 **"§ 116-268. Insurance coverage.**

6 The Board may endorse insurance coverage written exclusively for the purpose of
7 protecting advance payment contracts, and the purchasers or beneficiaries thereof, which
8 may be issued in the form of a group life policy.

9 **"§ 116-269. Advance payment contracts and contract plans.**

10 (a) The Board shall prepare advance payment contracts for registration and
11 advance payment contracts for dormitory residence in accordance with the provisions of
12 this section. Advance payment contracts prepared for the purposes of this Article shall be
13 exempt from the provisions of the North Carolina Insurance Code. The Board may
14 request assistance from the Attorney General in the development of the advance payment
15 contracts. The contents of both contracts shall include the following:

- 16 (1) The amount of the payment and the number of payments required from
17 a purchaser on behalf of a qualified beneficiary.
- 18 (2) The terms and conditions under which purchasers shall remit payments,
19 including the date upon which each payment shall be due.
- 20 (3) Provisions for late payment charges and for default.
- 21 (4) Provisions for penalty fees for withdrawals from the Fund.
- 22 (5) The name and date of birth of the qualified beneficiary on whose behalf
23 the contract is drawn and the terms and conditions under which another
24 person may be substituted as the qualified beneficiary.
- 25 (6) The name of any person who may terminate the contract. The terms of
26 the contract shall specify whether the contract may be terminated by the
27 purchaser, the qualified beneficiary, a specific designated person, or any
28 combination of these persons.
- 29 (7) The terms and conditions under which a contract may be terminated, the
30 name of the person entitled to any refund due as a result of termination
31 of the contract pursuant to the terms and conditions, and the amount of
32 refund, if any, due to the person so named.
- 33 (8) The time limitations, if any, within which the qualified beneficiary must
34 claim his or her benefits through the Program.
- 35 (9) Other terms and conditions deemed by the Board to be necessary or
36 proper.

37 (b) In addition to the provisions of subsection (a) of this section, an advance
38 payment contract for registration shall include the following:

- 39 (1) The number of semester credit hours contracted by the purchaser.
- 40 (2) The State postsecondary system toward which the contracted credit
41 hours will be applied.
- 42 (3) The assumption of a contractual obligation by the Board to the qualified
43 beneficiary to provide for a specified number of semester credit hours of

1 undergraduate instruction at a State postsecondary institution, not to
2 exceed the average number of credit hours required for the conference
3 of the degree that corresponds to the plan purchased on behalf of the
4 qualified beneficiary.

5 (c) In addition to the provisions of subsection (a) of this section, an advance
6 payment contract for dormitory residence shall include the following:

7 (1) The number of semesters of dormitory residence contracted by the
8 purchaser.

9 (2) The assumption of a contractual obligation by the Board to the qualified
10 beneficiary to provide for a specified number of semesters of dormitory
11 residence at a State university, not to exceed the maximum number of
12 semesters of full-time enrollment required for the conference of a
13 baccalaureate degree.

14 (d) An advance payment contract may provide that contracts that have not been
15 terminated or the benefits exercised within a specified period of time shall be considered
16 terminated. Time expended by a qualified beneficiary as an active duty member of any
17 of the armed services of the United States shall be added to the period of time specified
18 pursuant to this section. No purchaser or qualified beneficiary whose advance payment
19 contract is terminated pursuant to this section shall be entitled to a refund. The Board
20 shall retain any moneys paid by the purchaser for an advance payment contract that has
21 been terminated in accordance with this section. Such moneys retained by the Board are
22 exempt from Chapter 116B of the General Statutes, and the retained moneys must be
23 used by the board to further the purposes of this Article.

24 (e) No refund provided pursuant to subsection (a)(7) of this section shall exceed
25 the amount paid into the Fund by the purchaser. In the event that an advance payment
26 contract is converted from a university to a community college registration plan, the
27 refund amount shall be reduced by the amount transferred to a community college on
28 behalf of the qualified beneficiary. However, refunds may exceed the amount paid into
29 the Fund in the following circumstances:

30 (1) If the beneficiary is awarded a scholarship, the terms of which cover the
31 benefits included in the advance payment contracts, then moneys paid
32 for the purchase of the advance payment contracts shall be returned to
33 the purchaser in semester installments coinciding with the matriculation
34 by the beneficiary in amounts of either the original purchase price plus
35 five percent (5%) compounded interest, or the current rates at State
36 postsecondary institutions, whichever is less.

37 (2) In the event of the death or total disability of the beneficiary, moneys
38 paid for the purchase of advance payment contracts shall be returned to
39 the purchaser together with five percent (5%) compounded interest, or
40 the current rates at State postsecondary institutions, whichever is less.

41 (3) If an advance payment contract is converted from a university plan to a
42 community college plan or a community college plus university plan,

1 the amount refunded shall be the value of the original advance payment
2 contract minus the value of the contract after the conversion.

- 3 (4) No refund shall be authorized through an advance payment contract for
4 any school year partially attended but not completed. For purposes of
5 this section, a school year partially attended but not completed shall
6 mean any one semester whereby the student is still enrolled at the
7 conclusion of the official drop-add period, but withdraws before the end
8 of the semester. If a beneficiary does not complete a community college
9 plan or university plan for reasons other than that the advance contract
10 is converted into a different plan, the purchaser shall receive a refund of
11 the amount paid into the Fund for the remaining unattended years of the
12 advance payment contract pursuant to rules adopted by the Board.

13 **"§ 116-270. Advance payment contract plans.**

14 (a) At a minimum, the Board shall make advance payment contracts available for
15 the independent plans to be known as the community college plan, the university plan,
16 and the dormitory residence plan, respectively.

17 (b) Through the community college plan, the advance payment contract shall
18 provide prepaid registration fees for a specified number of undergraduate semester credit
19 hours not to exceed the average number of hours required for the conference of an
20 associate degree. The cost of participation in the community college plan shall be based
21 primarily on the average current and projected registration fees within the State
22 Community College System and the number of years expected to elapse between the
23 purchase of the plan on behalf of a qualified beneficiary and the exercise of the benefits
24 provided in the plan by the beneficiary. Qualified beneficiaries shall bear the cost of any
25 laboratory fees associated with enrollment in specific courses. Each qualified beneficiary
26 shall be classified as a resident for tuition purposes pursuant to G.S. 116-143.1 regardless
27 of the qualified beneficiary's actual legal residence.

28 (c) Through the university plan, the advance payment contract shall provide
29 prepaid registration fees for a specified number of undergraduate semester credit hours
30 not to exceed the average number of hours required for the conference of a baccalaureate
31 degree. The cost of participation in the university plan shall be based primarily on the
32 current and projected registration fees within the State University System and the number
33 of years expected to elapse between the purchase of the plan on behalf of a qualified
34 beneficiary and the exercise of the benefits provided in the plan by such beneficiary.
35 Qualified beneficiaries shall bear the cost of any laboratory fees associated with
36 enrollment in specific courses. In the event that a qualified beneficiary fails to be
37 admitted to a State university or chooses to attend a community college, the qualified
38 beneficiary may convert the average number of semester credit hours required for the
39 conference of an associate degree from a university plan to a community college plan and
40 may retain the remaining semester credit hours in the university plan or may request a
41 refund for prepaid credit hours in excess of the average number of semester credit hours
42 required for the conference of an associate degree pursuant to G.S. 116-269(a)(7). Each

1 qualified beneficiary shall be classified as a resident for tuition purposes pursuant to G.S.
2 116-143.1 regardless of the qualified beneficiary's actual legal residence.

3 (d) Through the dormitory residence plan, the advance payment contract shall
4 provide prepaid housing fees for a maximum of 10 semesters of full-time undergraduate
5 enrollment in a State university. Dormitory residence plans are optional and may be
6 purchased only in conjunction with a university plan. Dormitory residence plans shall be
7 purchased in increments of two semesters. The cost of participation in the dormitory
8 residence plan shall be based primarily on the average current and projected housing fees
9 within the State University System and the number of years expected to elapse between
10 the purchase of the plan by the beneficiary. Qualified beneficiaries shall bear the cost of
11 any additional elective charges such as laundry service or long-distance telephone
12 service. Each State university may specify the residence halls eligible for inclusion in the
13 plan. In addition, any State university may request immediate termination of a dormitory
14 residence contract based on a violation or multiple violations of rules of the residence
15 hall. Qualified beneficiaries shall have the highest priority in the assignment of housing
16 within the university residence halls. In the event that sufficient housing is not available
17 for all qualified beneficiaries, the Board shall refund the purchaser or qualified
18 beneficiary an amount equal to the fees charged for dormitory residence during that
19 semester.

20 (e) A qualified beneficiary may apply a community college plan, university plan,
21 or dormitory residence plan toward any eligible independent college or university. An
22 independent college or university which is located and chartered in North Carolina, is
23 not-for-profit, is accredited by the Commission on Colleges of the Southern Association
24 of Colleges and Schools or the Accrediting Commission of the Association of
25 Independent Colleges and Schools, and which confers postsecondary degrees as defined
26 in G.S. 116-15 shall be eligible for such application. In order to be eligible for
27 participation in the dormitory residence plan, an eligible independent college or
28 university shall provide written certification to the Board that it complies with the
29 provisions of this section. The Board shall transfer or cause to have transferred to the
30 eligible independent college or university designated by the qualified beneficiary an
31 amount not to exceed the redemption value of the plan within a State postsecondary
32 institution. In the event that the cost of registration or housing fees at the independent
33 college or university is less than the corresponding fees at a State postsecondary
34 institution, the amount transferred shall not exceed the actual cost of registration or
35 housing fees. No transfer authorized pursuant to this section shall exceed the number of
36 semester credit hours or semesters of dormitory residence contracted on behalf of a
37 qualified beneficiary.

38 **"§ 116-271. North Carolina Prepaid Postsecondary Education Expense Program;**
39 **operations.**

40 (a) The Board shall solicit proposals for the operations of the Program pursuant to
41 G.S. 143-52, through which the Board shall contract for the services of a records
42 administrator, a trustee services firm, and one or more product providers.

1 (b) The records administrator shall be the entity designated by the Board to
2 conduct the daily operations of the Program on behalf of the Board. The goals of the
3 Board in selecting a records administrator shall be to provide all purchasers with the most
4 secure, well-diversified, and beneficially administered postsecondary education expense
5 plan possible, to allow all qualified firms interested in providing such services equal
6 consideration, and to provide the services to the State at no cost and to the purchasers at
7 the lowest cost possible. Evaluations of proposals submitted pursuant to this section shall
8 include the following criteria:

- 9 (1) Fees and other costs charged to purchasers that affect account values or
10 operational costs related to the Program.
11 (2) Past experience in records administration and current ability to provide
12 timely and accurate service in the areas of records administration, audit
13 and reconciliation, plan communication, participant service, and
14 complaint resolution.
15 (3) Sufficient staff and computer capability for the scope and level of
16 service expected by the Board.
17 (4) Financial history and current financial strength and capital adequacy to
18 provide administrative services required by the Board.

19 (c) The trustee services firm shall be the entity designated by the Board to select
20 and supervise investment programs on behalf of the Board. The goals of the Board in
21 selecting a trustee services firm shall be to obtain the highest standards of professional
22 trustee services, to allow all qualified firms interested in providing such services equal
23 consideration, and to provide the services to the State at no cost and to the purchasers at
24 the lowest cost possible. The trustee services firm shall agree to meet the obligations of
25 the Board to qualified beneficiaries if moneys in the Fund fail to offset the obligations of
26 the Board as a result of imprudent selection or supervision of investment programs by the
27 firm. Evaluations of proposals submitted pursuant to this section shall include the
28 following criteria:

- 29 (1) Adequacy of trustee services for supervision and management of the
30 Program, including current operations and staff organization and
31 commitment of management to the proposal.
32 (2) Capability to execute Program responsibilities within time and
33 regulatory constraints.
34 (3) Past experience in trustee services and current ability to maintain
35 regular and continuous interactions with the Board, records
36 administrator, and product provider.
37 (4) The minimum purchaser participation assumed within the proposal and
38 any additional requirements of purchasers.
39 (5) Adequacy of technical assistance and services proposed for staff.
40 (6) Adequacy of a management system for evaluating and improving
41 overall trustee services to the Program.
42 (7) Adequacy of facilities, equipment, and electronic data processing
43 services.

1 (8) Detailed projections of administrative costs, including the amount and
2 type of insurance coverage, and detailed projections of total costs.

3 (d) The product providers shall be the entities designated by the Board to develop
4 investment portfolios on behalf of the Board to achieve the purposes of this section.
5 Product providers shall be limited to insurers who have a certificate of authority issued by
6 the Commissioner of Insurance, as defined in G.S. 53-1, savings and loan associations as
7 defined in Chapter 54B of the General Statutes, authorized Securities and Exchange
8 Commission investment advisers, and investment companies. All product providers shall
9 have their principal place of business and corporate charter located and registered in the
10 United States. In addition, each product provider shall agree to meet the obligations of
11 the Board to qualified beneficiaries if moneys in the Fund fail to offset the obligations of
12 the Board as a result of imprudent investing by such provider. Each authorized insurer
13 shall evidence superior performance overall on an acceptable level of surety in meeting
14 its obligations to its policyholders and other contractual obligations. Only qualified
15 public depositories approved by the State Treasurer shall provide investment plans as
16 specified within the request for proposals.

17 The goals of the Board in selecting a product provider company shall be to provide all
18 purchasers with the most secure, well-diversified, and beneficially administered
19 postsecondary education expense plan possible, to allow all qualified firms interested in
20 providing such services equal consideration, and to provide the services to the State at no
21 cost and to the purchasers at the lowest cost possible. Evaluations of proposals submitted
22 pursuant to this section shall include the following criteria:

23 (1) Fees and other costs charged to purchasers that affect account values or
24 operation costs related to the Program.

25 (2) Past and current investment performance, including investment and
26 interest rate history, guaranteed minimum rates of interest, consistency
27 of investment performance, and any terms and conditions under which
28 moneys are held.

29 (3) Past experience and ability to provide timely and accurate service in the
30 areas of records administration, benefit payments investment
31 management, and complaint resolution.

32 (4) Financial history and current financial strength and capital adequacy to
33 provide products, including operating procedures and other methods of
34 protecting Program assets.

35 **"§ 116-272. State liable for Fund obligations.**

36 The State shall agree to meet the obligations of the Board to qualified beneficiaries if
37 moneys in the Fund fail to offset the obligations of the Board. The General Assembly
38 shall appropriate to the Fund the amount necessary to meet the obligations of the Board
39 to qualified beneficiaries.

40 **"§ 116-273. Investment of Fund assets.**

41 The assets of the Fund shall be maintained, invested, and expended solely for the
42 purposes of this Article and shall not be loaned, transferred, or otherwise used by the
43 State for any purpose other than the purposes of this Article. This section shall not be

1 construed to prohibit the Board from investing in, by purchase or otherwise, bonds, notes,
2 or other obligations of the State or an agency or instrumentality of the State. Unless
3 otherwise specified by the Board, assets of the Fund shall be expended in the following
4 order of priority:

5 (1) To make payments to State postsecondary institutions on behalf of
6 qualified beneficiaries.

7 (2) To make refunds upon termination of advance payment contracts.

8 (3) To pay the costs of Program administration and operations.

9 **"§ 116-274. Fund exempt from creditor claims of purchaser or beneficiary.**

10 Moneys paid into or out of the Fund by or on behalf of a purchaser or qualified
11 beneficiary of an advance payment contract made under this Article, which contract has
12 not been terminated, are exempt from all claims of creditors of the purchaser or the
13 beneficiary.

14 **"§ 116-275. Payroll deductions.**

15 The State or any State agency, county, municipality, or other political subdivision
16 may, by contract, agree with any employee to remit payments toward advance payment
17 contracts through payroll deductions made by the appropriate officer of the State, State
18 agency, county, municipality, or political subdivision. Such payments shall be held and
19 administered in accordance with this Article.

20 **"§ 116-276. Admission to State postsecondary institution not guaranteed.**

21 Nothing in this Article shall be construed as a promise or guarantee that a qualified
22 beneficiary: (i) will be admitted to a State postsecondary institution, (ii) will be
23 admitted to a particular State postsecondary institution, (iii) will be allowed to continue
24 enrollment at a State postsecondary institution after admission, or (iv) will be graduated
25 from a State postsecondary institution.

26 **"§ 116-277. Discontinuance of Fund.**

27 In the event that the State determines the Program to be financially infeasible, the
28 State may discontinue the provision of the Program. Any qualified beneficiary who has
29 been accepted by and is enrolled or is within five years of enrollment in an eligible
30 independent college or university or State postsecondary institution shall be entitled to
31 exercise the complete benefits for which the qualified beneficiary has contracted. All
32 other contract holders shall receive a refund, pursuant to G.S. 116-269(a)(7), of the
33 amount paid in and an additional amount in the nature of interest at a rate that
34 corresponds, at a minimum, to the prevailing interest rates for savings accounts provided
35 by banks and savings and loan associations.

36 **"§ 116-278. North Carolina Prepaid Tuition Scholarship Program.**

37 The North Carolina Prepaid Tuition Scholarship Program is established with the
38 intent to provide economically disadvantaged youth with prepaid postsecondary tuition
39 scholarships. The direct-support organization established pursuant to G.S. 116-267 shall
40 administer the program with the assistance and cooperation of the school districts to
41 achieve the following objectives:

- 1 (1) Provide an incentive for economically disadvantaged youth to improve
2 school attendance and academic performance in order to graduate and
3 pursue a postsecondary education.
- 4 (2) Obtain the commitment and involvement of private sector entities by
5 virtue of funding matches with a ratio of fifty percent (50%) provided
6 by the private sector and fifty percent (50%) provided by the State.
- 7 (3) Purchase prepaid tuition scholarships for students designated and
8 certified by the school districts to the direct-support organization who
9 meet minimum economic and school requirements and remain drug free
10 and crime free. For the purpose of this subdivision, 'drug free' means
11 not being convicted of, or adjudicated delinquent for, any violation of
12 Chapter 90 of the General Statutes after being designated a recipient of
13 a North Carolina prepaid tuition scholarship; and 'crime free' means not
14 being convicted of, or adjudicated delinquent for, any felony or Class 1
15 misdemeanor after being designated a recipient of a North Carolina
16 prepaid tuition scholarship."

17 Sec. 2. This act becomes effective July 1, 1995.