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HOUSE BILL 652

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

WILLIAM E. PORTER

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING FOR A TUITION PREPAYMENT PLAN; ENACTING THE NEW MEXICO EDUCATION TRUST ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 8 of this act may be cited as the "New Mexico Education Trust Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the New Mexico Education Trust Act:

A. "advance payment contract" means the contract entered into by the program administrator and a purchaser to provide for the post-secondary education of a beneficiary;

B. "beneficiary" means the individual designated within the advance payment contract to receive tuition at an

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1 institution of higher education;

2 C. "board" means the New Mexico education trust
3 board;

4 D. "fund" means the New Mexico education trust fund;

5 E. "institution of higher education" means the
6 university of New Mexico, New Mexico state university, New
7 Mexico highlands university, western New Mexico university,
8 eastern New Mexico university or New Mexico institute of mining
9 and technology;

10 F. "purchaser" means the individual obligated to
11 make an advance payment of tuition costs on behalf of a
12 beneficiary pursuant to an advance payment contract;

13 G. "selected institution of higher education" means
14 the institution of higher education the beneficiary actually
15 attends; and

16 H. "tuition costs" means the amount assessed upon
17 full-time students, as that term is defined in Subsection B of
18 Section 21-1-4 NMSA 1978, at an institution of higher education,
19 including mandatory fees imposed upon full-time students as a
20 condition of enrollment.

21 Section 3. [NEW MATERIAL] BOARD CREATED. --

22 A. There is created the "New Mexico education trust
23 board". The board shall be composed of nine members, eight of
24 whom shall be appointed by and serve at the pleasure of the
25 governor. The state treasurer shall be the ninth member of the

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1 board, and he shall serve as its chairman.

2 B. Initially, two members of the board shall be
3 appointed for two years, three members shall be appointed for
4 three years and three members shall be appointed for four years.
5 Thereafter, all members shall serve four-year terms.

6 C. Members of the board shall be subject to the
7 provisions of the Per Diem and Mileage Act and shall receive no
8 other compensation, perquisite or allowance for their service on
9 the board.

10 Section 4. [NEW MATERIAL] BOARD POWERS AND DUTIES. -- The
11 board shall:

12 A. employ a program administrator to oversee and
13 manage the New Mexico education trust;

14 B. develop and offer several tuition prepayment
15 plans designed to permit a purchaser to secure advance payment
16 of tuition costs for a beneficiary;

17 C. oversee the implementation of the New Mexico
18 education trust; and

19 D. promulgate all rules and regulations necessary to
20 implement the provisions of the New Mexico Education Trust Act.

21 Section 5. [NEW MATERIAL] ADVANCE PAYMENT OF TUITION
22 COSTS-- CONTRACT WITH PROGRAM ADMINISTRATOR-- PAYMENT OPTIONS--
23 PAYMENT AMOUNT-- NONTRANSFERABILITY. --

24 A. In accordance with the rules and regulations
25 adopted by the board, the program administrator shall enter into

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1 an advance payment contract with a purchaser for the advance
2 payment of tuition costs on behalf of a beneficiary for
3 attendance at an institution of higher education, without
4 further tuition costs to the beneficiary, subject to
5 determination of residency status by the appropriate institution
6 of higher education.

7 B. Based on the type of prepayment plan selected,
8 the program administrator shall determine the total cost of the
9 advance payment contract. The total cost of the contract shall
10 be based on the average resident or nonresident tuition costs at
11 the institution of higher education at the time the contract is
12 entered into. Upon complete payment of the contract, the
13 beneficiary shall be entitled to attend the institution of
14 higher education at no additional tuition costs to the
15 beneficiary.

16 C. Benefits provided under a contract may commence
17 within a period less than seventeen years but not less than
18 seven years following the date of the first payment made under
19 the advance payment contract.

20 D. Purchasers shall select one of the payment plan
21 options offered by the board. The advance payment contract
22 price shall not exceed the average cost of eight academic
23 semesters of resident or nonresident tuition at the institution
24 of higher education.

25 E. The program administrator shall make necessary

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1 arrangements with the appropriate institutions of higher
2 education to fulfill his obligations under an advance payment
3 contract. An institution of higher education shall admit the
4 beneficiary of a contract if he otherwise qualifies for
5 admission. Neither this section nor any advance payment
6 contract entered into pursuant to the New Mexico Education Trust
7 Act shall guarantee that the beneficiary shall:

8 (1) be admitted to the appropriate institution
9 of higher education;

10 (2) if admitted, be determined a resident for
11 tuition costs purposes by the appropriate institution of higher
12 education;

13 (3) be allowed to continue attendance at the
14 selected institution of higher education following admission; or

15 (4) graduate from the selected institution of
16 higher education.

17 F. An advance payment contract shall not be sold or
18 otherwise transferred by the beneficiary. An advance payment
19 contract shall not be sold by the purchaser; however, subject to
20 rules and regulations adopted pursuant to the New Mexico
21 Education Trust Act, the purchaser may substitute another
22 individual for the beneficiary originally named in the contract.

23 G. The board shall prescribe the form of the advance
24 payment contract.

25 H. The purchaser may deduct from his net income the

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1 amount of any payment made pursuant to the advance payment
2 contract when calculating his net income in accordance with the
3 Income Tax Act in the taxable year in which any payment is made.
4 If the purchaser terminates the advance payment contract
5 pursuant to the New Mexico Education Trust Act, the purchaser
6 shall include the amount refunded in his net income when
7 calculating his net income in accordance with the Income Tax Act
8 in the taxable year in which the refund is made.

9 Section 6. [NEW MATERIAL] DISPOSITION AND INVESTMENT OF
10 ADVANCE PAYMENTS--PAYMENTS TO INSTITUTIONS OF HIGHER
11 EDUCATION--CREATING A FUND--ADMINISTRATIVE COSTS.--

12 A. The "New Mexico education trust fund" is created
13 in the state treasury. The program administrator shall deposit
14 into the fund advance tuition costs payments received. All
15 money deposited into the fund is appropriated to the board.
16 Money in the fund shall not revert to the general fund at the
17 end of the fiscal year. The program administrator shall account
18 for each payment required from a purchaser on behalf of a
19 beneficiary pursuant to an advance payment contract. All money
20 deposited in the fund shall be invested by the state treasurer
21 in the manner provided for investment of other state funds. The
22 state treasurer, the program administrator and the board shall
23 review investments made pursuant to this subsection quarterly
24 and shall report annually to the legislature on the financial
25 condition of the fund and the investment portfolio.

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1 B. Expenditures from the fund shall be for payments
2 to institutions of higher education on behalf of beneficiaries
3 pursuant to the advance payment contract, payments of refunds
4 and direct payment of benefits in accordance with the New Mexico
5 Education Trust Act, and for costs of administering that act.
6 Administration fees shall be specified in the advanced payment
7 contract and shall not exceed two percent of investment earnings
8 accruing to the fund.

9 C. The program administrator shall establish a
10 schedule for payment to the selected institution of higher
11 education of the tuition costs on behalf of beneficiaries.
12 Payment pursuant to this subsection shall not begin until the
13 beneficiary applies to and is accepted by the institution of
14 higher education. Upon completion or termination of an advance
15 payment contract, the balance of the principal and investment
16 earnings accruing under the provisions of the contract shall be
17 credited to the fund.

18 Section 7. [NEW MATERIAL] REFUND OF ADVANCE PAYMENT--
19 CONDITIONS--DIRECT PAYMENT OF BENEFITS. --

20 A. The advance payment contract may be terminated or
21 modified:

- 22 (1) by the purchaser at any time; or
23 (2) if the beneficiary dies, is not admitted to
24 the institution of higher education following proper
25 application, elects not to attend the institution of higher

1 education or, if attending, elects to discontinue higher
2 education or, for any other circumstance approved by the program
3 administrator, does not exercise his rights under the advance
4 payment contract.

5 B. If the advance payment contract is terminated or
6 modified pursuant to Subsection A of this section, the program
7 administrator shall refund to the purchaser, to any person
8 designated by the purchaser pursuant to the contract or to the
9 legal representative of the purchaser an amount equal to all the
10 principal plus four percent interest. The balance of the
11 contract price less the administrative fee shall go to the
12 institution of higher education named in the contract or to the
13 selected institution of higher education to be used solely for
14 scholarships.

15 C. A purchaser or other qualified person may request
16 a refund in accordance with this section at any time. The
17 amount of refund payable under this subsection shall be
18 proportionately reduced for each academic semester the
19 beneficiary attends the selected institution of higher
20 education.

21 D. If the beneficiary qualifies for benefit
22 entitlement under provisions of an advance payment contract, is
23 admitted to an institution of higher education and receives
24 additional financial or other assistance for tuition costs, the
25 parties to the contract may provide for the direct payment of

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1 tuition costs to the beneficiary. The manner and amount of
2 direct payment under this subsection shall be determined in
3 accordance with rules and regulations adopted by the board.

4 Section 8. [NEW MATERIAL] RULES AND REGULATIONS. --

5 A. The board is authorized to adopt all rules and
6 regulations necessary to implement the provisions of the New
7 Mexico Education Trust Act.

8 B. Rules and regulations adopted shall include
9 policies and procedures governing the:

10 (1) payment plan options available to the
11 purchaser, which options shall include provisions for monthly
12 installments and lump-sum payments made at any time during the
13 advance payment contract period;

14 (2) receipt of payments from purchasers on
15 behalf of beneficiaries;

16 (3) accounting and reporting to purchasers of
17 payments deposited and invested in accordance with the New
18 Mexico Education Trust Act;

19 (4) period of time during which the beneficiary
20 may receive benefits under an advance payment contract;

21 (5) terms and conditions under which an advance
22 payment contract may be terminated or modified, refunds may be
23 granted and direct payment of benefits may be made;

24 (6) provision of advance payment contract
25 benefits at institutions of higher education;

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1 (7) payment to selected institutions of higher
2 education on behalf of beneficiaries;

3 (8) imposition of fees to cover costs incurred
4 for the administration of the New Mexico Education Trust Act;
5 and

6 (9) other terms, conditions and provisions
7 necessary for the implementation of the New Mexico Education
8 Trust Act.

9 Section 9. Section 7-2-2 NMSA 1978 (being Laws 1986,
10 Chapter 20, Section 26, as amended) is amended to read:

11 "7-2-2. DEFINITIONS. -- For the purpose of the Income Tax
12 Act and unless the context requires otherwise:

13 A. "adjusted gross income" means adjusted gross
14 income as defined in Section 62 of the Internal Revenue Code, as
15 that section may be amended or renumbered;

16 B. "base income":

17 (1) means, for estates and trusts, that part of
18 the estate's or trust's income defined as taxable income and
19 upon which the federal income tax is calculated in the Internal
20 Revenue Code for income tax purposes plus, for taxable years
21 beginning on or after January 1, 1991, the amount of the net
22 operating loss deduction allowed by Section 172(a) of the
23 Internal Revenue Code, as that section may be amended or
24 renumbered, and taken by the taxpayer for that year;

25 (2) means, for taxpayers other than estates or

1 trusts, that part of the taxpayer's income defined as adjusted
2 gross income plus, for taxable years beginning on or after
3 January 1, 1991, the amount of the net operating loss deduction
4 allowed by Section 172(a) of the Internal Revenue Code, as that
5 section may be amended or renumbered, and taken by the taxpayer
6 for that year; and

7 (3) includes, for all taxpayers, any other
8 income of the taxpayer not included in adjusted gross income but
9 upon which a federal tax is calculated pursuant to the Internal
10 Revenue Code for income tax purposes, except amounts for which a
11 calculation of tax is made pursuant to Section 55 of the
12 Internal Revenue Code, as that section may be amended or
13 renumbered; "base income" also includes interest received on a
14 state or local bond;

15 C. "compensation" means wages, salaries, commissions
16 and any other form of remuneration paid to employees for
17 personal services;

18 D. "department" means the taxation and revenue
19 department, the secretary of taxation and revenue or any
20 employee of the department exercising authority lawfully
21 delegated to that employee by the secretary;

22 E. "fiduciary" means a guardian, trustee, executor,
23 administrator, committee, conservator, receiver, individual or
24 corporation acting in any fiduciary capacity;

25 F. "filing status" means "married filing joint

1 returns", "married filing separate returns", "head of
2 household", "surviving spouse" and "single", as those terms are
3 generally defined for federal tax purposes;

4 G. "fiscal year" means any accounting period of
5 twelve months ending on the last day of any month other than
6 December;

7 H. "head of household" means "head of household" as
8 generally defined for federal income tax purposes;

9 I. "individual" means a natural person, an estate, a
10 trust or a fiduciary acting for a natural person, trust or
11 estate;

12 J. "Internal Revenue Code" means the United States
13 Internal Revenue Code of 1986, as amended;

14 K. "lump-sum amount" means an amount that, for the
15 purpose of determining liability for federal income tax, was not
16 included in adjusted gross income but upon which the five-year-
17 averaging or the ten-year-averaging method of tax computation
18 provided in Section 402 of the Internal Revenue Code, as that
19 section may be amended or renumbered, was applied;

20 L. "modified gross income" means all income of the
21 taxpayer and, if any, the taxpayer's spouse and dependents,
22 undiminished by losses and from whatever source derived,
23 including:

- 24 (1) compensation;
- 25 (2) net profit derived from business;

- 1 (3) gains derived from dealings in property;
- 2 (4) interest;
- 3 (5) net rents;
- 4 (6) royalties;
- 5 (7) dividends;
- 6 (8) alimony and separate maintenance payments;
- 7 (9) annuities;
- 8 (10) income from life insurance and endowment
- 9 contracts;
- 10 (11) pensions;
- 11 (12) discharge of indebtedness;
- 12 (13) distributive share of partnership income;
- 13 (14) income in respect of a decedent;
- 14 (15) income from an interest in an estate or
- 15 trust;
- 16 (16) social security benefits;
- 17 (17) unemployment compensation benefits;
- 18 (18) workers' compensation benefits;
- 19 (19) public assistance and welfare benefits;
- 20 (20) cost-of-living allowances; and
- 21 (21) gifts;

M "modified gross income" does not include:

- 23 (1) payments for hospital, dental, medical or
- 24 drug expenses whether made to or on behalf of the taxpayer;
- 25 (2) the value of room and board provided by

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1 federal, state or local governments or by private individuals or
2 agencies based upon financial need and not as a form of
3 compensation;

4 (3) payments made pursuant to a federal, state
5 or local government program directly or indirectly to a third
6 party on behalf of the taxpayer when identified to a particular
7 use or invoice by the payer; or

8 (4) payments made pursuant to Sections
9 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

10 N. "net income" means, for estates and trusts, base
11 income adjusted to exclude amounts that the state is prohibited
12 from taxing because of the laws or constitution of this state or
13 the United States and means, for taxpayers other than estates or
14 trusts, base income adjusted to exclude:

15 (1) an amount equal to the standard deduction
16 allowed the taxpayer for the taxpayer's taxable year by Section
17 63 of the Internal Revenue Code, as that section may be amended
18 or renumbered;

19 (2) an amount equal to the itemized deductions,
20 as defined in Section 63 of the Internal Revenue Code, as that
21 section may be amended or renumbered, allowed the taxpayer for
22 the taxpayer's taxable year less the amount excluded pursuant to
23 Paragraph (1) of this subsection;

24 (3) an amount equal to the product of the
25 exemption amount allowed for the taxpayer's taxable year by

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1 Section 151 of the Internal Revenue Code, as that section may be
2 amended or renumbered, multiplied by the number of personal
3 exemptions allowed for federal income tax purposes;

4 (4) income from obligations of the United
5 States of America less expenses incurred to earn that income;

6 (5) other amounts that the state is prohibited
7 from taxing because of the laws or constitution of this state or
8 the United States;

9 (6) for taxable years that began prior to
10 January 1, 1991, an amount equal to the sum of:

11 (a) net operating loss carryback
12 deductions to that year from taxable years beginning prior to
13 January 1, 1991 claimed and allowed, as provided by the Internal
14 Revenue Code; and

15 (b) net operating loss carryover
16 deductions to that year claimed and allowed; ~~and~~

17 (7) for taxable years beginning on or after
18 January 1, 1991, an amount equal to the sum of any net operating
19 loss carryover deductions to that year claimed and allowed,
20 provided that the amount of any net operating loss carryover
21 from a taxable year beginning on or after January 1, 1991 may be
22 excluded only as follows:

23 (a) in the case of a timely filed return,
24 in the taxable year immediately following the taxable year for
25 which the return is filed; or

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1 (b) in the case of amended returns or
2 original returns not timely filed, in the first taxable year
3 beginning after the date on which the return or amended return
4 establishing the net operating loss is filed; and

5 (c) in either case, if the net operating
6 loss carryover exceeds the amount of net income exclusive of the
7 net operating loss carryover for the taxable year to which the
8 exclusion first applies, in the next four succeeding taxable
9 years in turn until the net operating loss carryover is
10 exhausted; in no event shall a net operating loss carryover be
11 excluded in any taxable year after the fourth taxable year
12 beginning after the taxable year to which the exclusion first
13 applies; and

14 (8) an amount equal to the total payments made
15 by the purchaser pursuant to the New Mexico Education Trust Act;

16 0. "net operating loss" means any net operating
17 loss, as defined by Section 172(c) of the Internal Revenue Code,
18 as that section may be amended or renumbered, for a taxable year
19 as further increased by the income, if any, from obligations of
20 the United States for that year less related expenses;

21 P. "net operating loss carryover" means the amount,
22 or any portion of the amount, of a net operating loss for any
23 taxable year that, pursuant to Paragraph (6) or (7) of
24 Subsection N of this section, may be excluded from base income;

25 Q. "nonresident" means every individual not a

1 resident of this state;

2 R. "person" means any individual, estate, trust,
3 receiver, cooperative association, club, corporation, company,
4 firm, partnership, limited liability company, joint venture,
5 syndicate or other association; "person" also means, to the
6 extent permitted by law, any federal, state or other
7 governmental unit or subdivision or agency, department or
8 instrumentality thereof;

9 S. "resident" means an individual who is domiciled
10 in this state during any part of the taxable year; but any
11 individual who, on or before the last day of the taxable year,
12 changed his place of abode to a place without this state with
13 the bona fide intention of continuing actually to abide
14 permanently without this state is not a resident for the
15 purposes of the Income Tax Act;

16 T. "secretary" means the secretary of taxation and
17 revenue or the secretary's delegate;

18 U. "state" means any state of the United States, the
19 District of Columbia, the commonwealth of Puerto Rico, any
20 territory or possession of the United States or any political
21 subdivision of a foreign country;

22 V. "state or local bond" means a bond issued by a
23 state other than New Mexico or by a local government other than
24 one of New Mexico's political subdivisions, the interest from
25 which is excluded from income for federal income tax purposes

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1 under Section 103 of the Internal Revenue Code, as that section
2 may be amended or renumbered;

3 W. "surviving spouse" means "surviving spouse" as
4 generally defined for federal income tax purposes;

5 X. "taxable income" means net income less any lump-
6 sum amount;

7 Y. "taxable year" means the calendar year or fiscal
8 year upon the basis of which the net income is computed under
9 the Income Tax Act and includes, in the case of the return made
10 for a fractional part of a year under the provisions of the
11 Income Tax Act, the period for which the return is made; and

12 Z. "taxpayer" means any individual subject to the
13 tax imposed by the Income Tax Act. "