

FILED FEB 10 1968

WAYS&MEANS

SENATE FILE 2172

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*(Formerly SF 554
SSB 270)*

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the creation of an Iowa educational savings
2 plan trust, addressing tax aspects, and containing
3 applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2172

1 Section 1. NEW SECTION. 12D.1 PURPOSE AND DEFINITIONS.

2 The general assembly finds that the general welfare and
3 well-being of the state are directly related to educational
4 levels and skills of the citizens of the state, and that a
5 vital and valid public purpose is served by the creation and
6 implementation of programs which encourage and make possible
7 the attainment of higher education by the greatest number of
8 citizens of the state. The state has limited resources to
9 provide additional programs for higher education funding and
10 the continued operation and maintenance of the state's public
11 institutions of higher education and the general welfare of
12 the citizens of the state will be enhanced by establishing a
13 program which allows citizens of the state to invest money in
14 a public trust for future application to the payment of higher
15 education costs. The creation of the means of encouragement
16 for citizens to invest in such a program represents the
17 carrying out of a vital and valid public purpose. In order to
18 make available to the citizens of the state an opportunity to
19 fund future higher education needs, it is necessary that a
20 public trust be established in which moneys may be invested
21 for future educational use. It is also necessary to establish
22 an endowment fund which may be funded with public funds, among
23 other sources, the income from which will be made available to
24 participants in the trust to enhance their savings invested
25 for the payment of future higher education costs.

26 As used in this chapter, unless the context otherwise
27 requires:

28 1. "Administrative fund" means the administrative fund
29 established under section 12D.4.

30 2. "Beneficiary" means the individual designated by a
31 participation agreement to benefit from advance payments of
32 higher education costs on behalf of the beneficiary.

33 3. "Benefits" means the payment of higher education costs
34 on behalf of a beneficiary by the trust during the
35 beneficiary's attendance at an institution of higher

1 education.

2 4. "Endowment fund" means the endowment fund established
3 under section 12D.4.

4 5. "Higher education costs" means the certified costs of
5 tuition, fees, books, supplies, and equipment required for
6 enrollment or attendance at an institution of higher
7 education. Reasonable room and board expenses, based on the
8 minimum amount applicable for the institution of higher
9 education during the period of enrollment, shall be included
10 as a higher education cost for those students enrolled on at
11 least a half-time basis.

12 6. "Institution of higher education" means an institution
13 described in section 481 of the federal Higher Education Act
14 of 1965, 20 U.S.C. § 1088, which is eligible to participate in
15 the United States department of education's student aid
16 programs.

17 7. "Internal Revenue Code" means the same as defined in
18 section 422.3.

19 8. "Iowa educational savings plan trust" or "trust" means
20 the trust created under section 12D.2.

21 9. "Participant" means an individual, or an individual's
22 legal representative, who has entered into a participation
23 agreement under this chapter for the advance payment of higher
24 education costs on behalf of a beneficiary.

25 10. "Participation agreement" means an agreement between a
26 participant and the trust entered into under this chapter.

27 11. "Program fund" means the program fund established
28 under section 12D.4.

29 12. "Refund penalty" means the amount assessed by the
30 treasurer of state for cancellation of a participation
31 agreement which is not considered a de minimus penalty
32 pursuant to section 529 of the Internal Revenue Code.

33 13. "Tuition and fees" means the quarter or semester
34 charges imposed to attend an institution of higher education
35 required as a condition of enrollment.

1 Sec. 2. NEW SECTION. 12D.2 CREATION OF IOWA EDUCATIONAL
2 SAVINGS PLAN TRUST.

3 An Iowa educational savings plan trust is created. The
4 treasurer of state is the trustee of the trust, and has all
5 powers necessary to carry out and effectuate the purposes,
6 objectives, and provisions of this chapter pertaining to the
7 trust, including the power to do all of the following:

8 1. Make and enter into contracts necessary for the
9 administration of the trust created under this chapter.

10 2. Enter into agreements with any institution of higher
11 education, the state, or any federal or other state agency, or
12 other entity as required to implement this chapter.

13 3. Carry out the duties and obligations of the trust
14 pursuant to this chapter.

15 4. Accept any grants, gifts, legislative appropriations,
16 and other moneys from the state, any unit of federal, state,
17 or local government, or any other person, firm, partnership,
18 or corporation which the treasurer of state shall deposit into
19 the administrative fund, the endowment fund, or the program
20 fund.

21 5. Carry out studies and projections so the treasurer of
22 state may advise participants regarding present and estimated
23 future higher education costs and levels of financial
24 participation in the trust required in order to enable
25 participants to achieve their educational funding objectives.

26 6. Participate in any federal, state, or local
27 governmental program for the benefit of the trust.

28 7. Procure insurance against any loss in connection with
29 the property, assets, or activities of the trust.

30 8. Solicit and accept for the benefit of the endowment
31 fund gifts, grants, and other moneys, including legislative
32 appropriations and grants from any federal, state, or local
33 governmental agency.

34 9. Enter into participation agreements with participants.

35 10. Make payments to institutions of higher education

1 pursuant to participation agreements on behalf of
2 beneficiaries.

3 11. Make refunds to participants upon the termination of
4 participation agreements pursuant to the provisions,
5 limitations, and restrictions set forth in this chapter.

6 12. Invest moneys within the endowment fund and the
7 program fund in any investments which are determined by the
8 treasurer of state to be appropriate.

9 13. Engage investment advisors, if necessary, to assist in
10 the investment of trust assets.

11 14. Contract for goods and services and engage personnel
12 as necessary, including consultants, actuaries, managers,
13 legal counsel, and auditors for the purpose of rendering
14 professional, managerial, and technical assistance and advice
15 to the treasurer of state regarding trust administration and
16 operation.

17 15. Establish, impose, and collect administrative fees and
18 charges in connection with transactions of the trust, and
19 provide for reasonable service charges, including penalties
20 for cancellations and late payments with respect to
21 participation agreements.

22 16. Administer the funds of the trust.

23 17. Adopt rules pursuant to chapter 17A for the
24 administration of the trust.

25 An amount, not to exceed two hundred thousand dollars
26 annually, shall be transferred from the unclaimed property
27 trust fund established in section 556.18 to the administrative
28 fund for the payment of costs of administration and operation
29 of the trust.

30 Sec. 3. NEW SECTION. 12D.3 PARTICIPATION AGREEMENTS FOR
31 TRUST.

32 The trust may enter into participation agreements with
33 participants on behalf of beneficiaries pursuant to the
34 following terms and agreements:

35 1. a. Each participation agreement shall require a

1 participant to agree to invest a specific amount of money in
2 the trust for a specific period of time for the benefit of a
3 specific beneficiary. The minimum annual contribution per
4 beneficiary shall be three hundred dollars, and the maximum
5 contribution shall not exceed two thousand dollars per
6 beneficiary per year adjusted annually to reflect increases in
7 the consumer price index. However, the treasurer of state may
8 set a maximum, as necessary, to maintain compliance with
9 section 529 of the Internal Revenue Code.

10 b. Participation agreements may be amended to provide for
11 adjusted levels of payments based upon changed circumstances
12 or changes in educational plans and may contain penalties for
13 failure to make payments when scheduled.

14 2. Beneficiaries designated in participation agreements
15 may be designated from date of birth up to, but not including,
16 their seventeenth birthday.

17 3. Payment of benefits provided under participation
18 agreements must begin not later than the first full fall
19 academic quarter or semester of enrollment at an institution
20 of higher education following the twenty-second birthday or
21 high school graduation of the beneficiary, whichever is later.

22 4. The execution of a participation agreement by the trust
23 shall not guarantee in any way that higher education costs
24 will be equal to projections and estimates provided by the
25 trust or that the beneficiary named in any participation
26 agreement will attain any of the following:

27 a. Be admitted to an institution of higher education.

28 b. If admitted, be determined a resident for tuition
29 purposes by the institution of higher education.

30 c. Be allowed to continue attendance at the institution of
31 higher education following admission.

32 d. Graduate from the institution of higher education.

33 5. a. A beneficiary under a participation agreement may
34 be changed as permitted under rules adopted by the treasurer
35 of state upon written request of the participant prior to the

1 date of admission of the beneficiary to an institution of
2 higher education as long as the substitute beneficiary is
3 eligible for participation.

4 b. Participation agreements may otherwise be freely
5 amended throughout their terms in order to enable participants
6 to increase or decrease the level of participation, change the
7 designation of beneficiaries, and carry out similar matters as
8 authorized by rule.

9 6. Each participation agreement shall provide that the
10 participation agreement may be canceled upon the terms and
11 conditions, and upon payment of applicable fees and costs set
12 forth and contained in the rules adopted by the treasurer of
13 state.

14 Sec. 4. NEW SECTION. 12D.4 PROGRAM, ENDOWMENT, AND
15 ADMINISTRATIVE FUNDS -- INVESTMENT AND PAYMENTS.

16 1. a. The treasurer of state shall segregate moneys
17 received by the trust into three funds: the program fund, the
18 endowment fund, and the administrative fund.

19 b. All moneys paid by participants in connection with
20 participation agreements shall be deposited as received into
21 separate accounts within the program fund.

22 c. All moneys received by the trust from the proceeds of
23 gifts and other endowments for the purposes of the trust shall
24 be deposited as received into the endowment fund.

25 d. The program fund and the endowment fund shall be
26 separately administered.

27 e. Any gifts, grants, or donations made by any
28 governmental entity or any person, firm, partnership, or
29 corporation to the trust for deposit to the endowment fund
30 shall be a grant, gift, or donation to the state for the
31 accomplishment of a valid public eleemosynary, charitable, and
32 educational purpose and shall not be included in the income of
33 the donor for Iowa tax purposes.

34 f. Contributions to the trust made by participants or
35 received in the form of gifts, grants, or donations may only

1 be made in the form of cash.

2 g. A participant or beneficiary shall not provide
3 investment direction regarding program contributions or
4 earnings held by the trust.

5 2. a. Each beneficiary under a participation agreement
6 shall receive a pro rata interest in the investment income
7 derived by the endowment fund each year after any transfers to
8 the administrative fund have been made.

9 b. The amount of interest received from the endowment fund
10 shall be in the ratio that the principal amount paid by the
11 participant under the participation agreement and investment
12 income earned to date under the agreement bears to the
13 principal amount of all moneys, funds, and securities then
14 held in the program fund, but not to exceed the amount which,
15 in combination with the current payment due from the program
16 fund, equals the beneficiary's higher education costs for the
17 current period of enrollment.

18 c. Moneys accrued by participants in the program fund of
19 the trust may be used for payments to any institution of
20 higher education.

21 d. No rights to any moneys derived from the endowment fund
22 shall exist if moneys payable under the participation
23 agreement are paid to an educational institution which is not
24 an institution of higher education.

25 Sec. 5. NEW SECTION. 12D.5 CANCELLATION OF AGREEMENTS.

26 1. A participant may cancel a participation agreement at
27 will.

28 a. If the participation agreement is canceled by a
29 participant prior to the expiration of two years from the date
30 of original execution of the participation agreement, the
31 participant shall receive one hundred percent of the principal
32 amount of all contributions made by the participant, but any
33 program fund investment income or endowment fund investment
34 income which has been credited to the participant's account
35 shall be retained by the trust to cover administration

1 expenses.

2 b. After a participation agreement has been in effect for
3 two years, participants shall be entitled to the return upon
4 cancellation of the agreement of the principal amount of all
5 contributions made by participants plus actual program fund
6 investment income on the contributions, but not endowment fund
7 investment income, less a refund penalty to be levied by the
8 trust. The penalty shall be deposited into the administrative
9 fund.

10 2. a. Upon the occurrence of any of the following
11 circumstances, no refund penalty shall be levied by the trust
12 in the event of termination of a participation agreement:

13 (1) Death of the beneficiary.

14 (2) Permanent disability or mental incapacity of the
15 beneficiary.

16 (3) The beneficiary is awarded a scholarship, as defined
17 in section 529 of the Internal Revenue Code, but only to the
18 extent the refund of earnings does not exceed the scholarship
19 amount.

20 b. In the event of cancellation of a participation
21 agreement for any of the causes listed in paragraph "a", the
22 participant shall be entitled to receive the principal amount
23 of all payments made by the participant under the
24 participation agreement plus the actual program fund
25 investment income earned on the payments, but not endowment
26 fund investment income.

27 Sec. 6. NEW SECTION. 12D.6 REPAYMENT AND OWNERSHIP OF
28 PAYMENTS AND INVESTMENT INCOME -- TRANSFER OF OWNERSHIP
29 RIGHTS.

30 1. a. A participant retains ownership of all payments
31 made under a participation agreement up to the date of
32 utilization for payment of higher education costs for the
33 beneficiary.

34 b. All income derived from the investment of the payments
35 made by the participant shall be considered to be held in

1 trust for the benefit of the beneficiary.

2 2. In the event the program is terminated prior to payment
3 of higher education costs for the beneficiary, the participant
4 is entitled to a full refund of all payments made under the
5 participation agreement and all investment income credited on
6 all the payments.

7 No right to receive investment income shall exist in cases
8 of voluntary participant termination except as provided in
9 section 12D.5.

10 3. If the beneficiary graduates from an institution of
11 higher education, and a balance remains in the participant's
12 account, the treasurer of state shall pay the balance to the
13 participant.

14 4. The institution of higher education shall obtain
15 ownership of the payments made for the higher education costs
16 paid to the institution at the time each payment is made to
17 the institution.

18 5. Any amounts which may be paid to any person or persons
19 pursuant to the Iowa educational savings plan trust but which
20 are not listed in this section are owned by the trust.

21 6. A participant may transfer ownership rights to another
22 eligible participant, including a gift of the ownership rights
23 to a minor beneficiary. The transfer shall be made and the
24 property distributed in accordance with rules adopted by the
25 treasurer of state or with the terms of the participation
26 agreement.

27 7. A participant shall not be entitled to utilize any
28 interest in the trust as security for a loan.

29 Sec. 7. NEW SECTION. 12D.7 EFFECT OF PAYMENTS ON
30 DETERMINATION OF NEED AND ELIGIBILITY FOR STUDENT FINANCIAL
31 AID.

32 A student loan program, student grant program, or other
33 program administered by any agency of the state, except as may
34 be otherwise provided by federal law or the provisions of any
35 specific grant applicable to that law, shall not take into

1 account and shall not consider amounts available for the
2 payment of higher education costs pursuant to the Iowa
3 educational savings plan trust in determining need and
4 eligibility for student aid.

5 Sec. 8. NEW SECTION. 12D.8 ANNUAL AUDITED FINANCIAL
6 REPORT TO GOVERNOR AND GENERAL ASSEMBLY.

7 1. The treasurer of state shall submit an annual audited
8 financial report, prepared in accordance with generally
9 accepted accounting principles, on the operations of the trust
10 by November 1 to the governor and the general assembly.

11 The annual audit shall be made either by the auditor of
12 state or by an independent certified public accountant
13 designated by the auditor of state and shall include direct
14 and indirect costs attributable to the use of outside
15 consultants, independent contractors, and any other persons
16 who are not state employees.

17 2. The annual audit shall be supplemented by all of the
18 following information prepared by the treasurer of state:

19 a. Any related studies or evaluations prepared in the
20 preceding year.

21 b. A summary of the benefits provided by the trust
22 including the number of participants and beneficiaries in the
23 trust.

24 c. Any other information which is relevant in order to
25 make a full, fair, and effective disclosure of the operations
26 of the trust.

27 Sec. 9. NEW SECTION. 12D.9 TAX CONSIDERATIONS.

28 1. For federal income tax purposes, the Iowa educational
29 savings plan trust shall be considered a qualified state
30 tuition program exempt from taxation pursuant to section 529
31 of the Internal Revenue Code. The Iowa educational savings
32 plan trust meets the requirements of section 529(b), of the
33 Internal Revenue Code, as follows:

34 a. Pursuant to section 12D.3, subsection 1, paragraph "a",
35 a participant may make contributions to an account which is

1 established for the purpose of meeting the qualified higher
2 education expenses of the designated beneficiary of the
3 account.

4 b. Pursuant to section 12D.4, subsection 1, paragraph "f",
5 contributions may only be made in the form of cash.

6 c. Pursuant to section 12D.5, subsection 1, paragraphs "a"
7 and "b", penalties are provided on refunds of earnings which
8 are not used for qualified higher education expenses of the
9 beneficiary, made on account of the death or disability of the
10 designated beneficiary, or made due to scholarship, allowance,
11 or payment receipt as provided in section 529(b)(3) of the
12 Internal Revenue Code.

13 d. Pursuant to section 12D.4, subsection 1, paragraph "b",
14 a separate account is established for each beneficiary.

15 e. Pursuant to section 12D.4, subsection 1, paragraph "g",
16 a participant or beneficiary shall not provide investment
17 direction regarding program contributions or earnings held by
18 the trust.

19 f. Pursuant to section 12D.6, subsection 7, a participant
20 shall not pledge any interest in the trust as security for a
21 loan.

22 g. Pursuant to section 12D.3, subsection 1, a maximum
23 contribution level is established.

24 2. State income tax treatment of the Iowa educational
25 savings plan trust shall be as provided in section 422.7,
26 subsections 35, 36, and 37, and section 422.35, subsection 14.

27 Sec. 10. NEW SECTION. 12D.10 PROPERTY RIGHTS TO ASSETS
28 IN TRUST.

29 1. The assets of the trust, including the program fund and
30 the endowment fund, shall at all times be preserved, invested,
31 and expended solely and only for the purposes of the trust and
32 shall be held in trust for the participants and beneficiaries.

33 2. No property rights in the trust shall exist in favor of
34 the state.

35 3. The assets of the trust shall not be transferred or

1 used by the state for any purposes other than the purposes of
2 the trust.

3 Sec. 11. NEW SECTION. 12D.11 CONSTRUCTION.

4 This chapter shall be construed liberally in order to
5 effectuate its purpose.

6 Sec. 12. Section 422.7, Code Supplement 1997, is amended
7 by adding the following new subsections:

8 NEW SUBSECTION. 35. a. Subtract the amount, not to
9 exceed two thousand dollars per beneficiary, contributed as a
10 participant in the Iowa educational savings plan trust created
11 in chapter 12D.

12 b. Add the amount resulting from the cancellation of a
13 participation agreement refunded to the taxpayer as a
14 participant in the Iowa educational savings plan trust to the
15 extent previously deducted as a contribution to the trust.

16 NEW SUBSECTION. 36. Subtract, to the extent included,
17 income from interest and earnings received from the Iowa
18 educational savings plan trust created in chapter 12D.

19 NEW SUBSECTION. 37. Subtract, to the extent not deducted
20 for federal income tax purposes, the amount of any gift,
21 grant, or donation made to the Iowa educational savings plan
22 trust for deposit in the endowment fund of that trust.

23 Sec. 13. Section 422.35, Code Supplement 1997, is amended
24 by adding the following new subsection:

25 NEW SUBSECTION. 14. Subtract, to the extent not deducted
26 for federal income tax purposes, the amount of any gift,
27 grant, or donation made to the Iowa educational savings plan
28 trust, as created in chapter 12D, for deposit in the endowment
29 fund of that trust.

30 Sec. 14. Sections 12 and 13 of this Act apply to
31 contributions, gifts, grants, and donations made on or after
32 July 1, 1998, for tax years ending on or after that date.

33 EXPLANATION

34 This bill provides for the establishment of an Iowa
35 educational savings plan trust. The purpose of the trust is

1 to provide a means whereby participants may invest money in a
2 public trust for future application to the payment of the
3 higher education costs of the participant's designated
4 beneficiary or beneficiaries. The bill provides that amounts
5 of up to \$2,000 annually may be contributed to the trust on
6 behalf of each designated beneficiary. Payment of benefits
7 must commence not later than the first full fall academic
8 quarter or semester following the 22nd birthday, or high
9 school graduation of a beneficiary. The bill provides that
10 the trust does not guarantee that higher education costs will
11 be equal to projections made at the time a participation
12 agreement is entered into, nor are guarantees made relating to
13 admission to or graduation from an institution of higher
14 education. The bill contains provisions relating to creation
15 of the trust, the authority of the treasurer of state
16 concerning trust administration, transfer of funds from the
17 unclaimed property trust contained in Code section 556.18 for
18 payment of administration and operation costs, the content of
19 trust participation agreements, component funds within the
20 trust and their investment and payment features, participation
21 agreement cancellation procedures, ownership rights,
22 integration of trust payments with student financial aid
23 programs, reporting requirements, and federal and state tax
24 treatment. The bill provides that the Iowa educational
25 savings plan trust shall be considered a qualified state
26 tuition program exempt from federal income taxation pursuant
27 to section 529 of the Internal Revenue Code. The bill adds
28 provisions concerning state income taxation, providing a
29 deduction for the amount of the annual contribution to the
30 trust, and investment income earned on contributions, and
31 increased by proceeds received due to cancellation of a
32 participation agreement which were previously deducted as
33 contributions. In addition, gifts, grants, and donations made
34 to the endowment fund may be deducted from income for both
35 individuals and corporations.