

Sec. 22. SEX OFFENDER TREATMENT INTERIM STUDY COMMITTEE. The legislative council is requested to authorize an interim study committee to issue a report to the general assembly which convenes in 1999, concerning the treatments available and used in the United States and other countries to rehabilitate juvenile and adult sex offenders and deter those persons from engaging in criminal sexual acts or activities in the future.

Approved May 6, 1998

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## CHAPTER 1172

### IOWA EDUCATIONAL SAVINGS PLAN TRUST

*H.F. 2119*

AN ACT providing for the creation of an Iowa educational savings plan trust, addressing tax aspects, and containing applicability provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

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

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

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

1. "Administrative fund" means the administrative fund established under section 12D.4.
2. "Beneficiary" means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary.
3. "Benefits" means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education.
4. "Endowment fund" means the endowment fund established under section 12D.4.
5. "Higher education costs" means the certified costs of tuition, fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis.
6. "Institution of higher education" means an institution described in section 481 of the federal Higher Education Act of 1965, 20 U.S.C. § 1088, which is eligible to participate in the United States department of education's student aid programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Enter into participation agreements with participants.

10. Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

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

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

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

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

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

16. Administer the funds of the trust.

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

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

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

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

1. Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be three hundred dollars, and the maximum contribution shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. However, the treasurer of state may set a maximum, as necessary, to maintain compliance with section 529 of the Internal Revenue Code.

b. Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

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

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

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

a. Be admitted to an institution of higher education.

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

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

d. Graduate from the institution of higher education.

5. a. A beneficiary under a participation agreement may be changed as permitted under rules adopted by the treasurer of state upon written request of the participant prior to the date of admission of the beneficiary to an institution of higher education as long as the substitute beneficiary is eligible for participation.

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

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

Sec. 4. NEW SECTION. 12D.4 PROGRAM, ENDOWMENT, AND ADMINISTRATIVE FUNDS — INVESTMENT AND PAYMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Death of the beneficiary.

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

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

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

Sec. 6. NEW SECTION. 12D.6 REPAYMENT AND OWNERSHIP OF PAYMENTS AND INVESTMENT INCOME — TRANSFER OF OWNERSHIP RIGHTS.

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

b. All income derived from the investment of the payments made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

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

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

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

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

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

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

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

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

A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to that law, shall not take into account and shall not consider amounts available for the payment of higher education costs pursuant to the Iowa educational savings plan trust in determining need and eligibility for student aid.

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

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

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

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

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

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

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

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

1. For federal income tax purposes, the Iowa educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of

the Internal Revenue Code. The Iowa educational savings plan trust meets the requirements of section 529(b), of the Internal Revenue Code, as follows:

a. Pursuant to section 12D.3, subsection 1, paragraph "a", a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

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

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

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

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

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

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

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

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

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

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

3. The assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

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

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

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

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

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

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

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

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

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

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

Approved May 6, 1998

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## CHAPTER 1173

### COMPLIANCE WITH REQUIREMENTS FOR AGRICULTURAL DRAINAGE WELLS

H.F. 2136

**AN ACT** relating to agricultural drainage wells, by extending the date for complying with certain requirements.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 455I.2, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Not later than December 31, ~~1998~~ 2001, all of the following shall apply:

Approved May 6, 1998

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## CHAPTER 1174

### STATE TAX STATUS OF CERTAIN PUBLIC RETIREMENT SYSTEM CONTRIBUTIONS

H.F. 2153

**AN ACT** providing that member contributions under certain public retirement systems are considered employer contributions for state income tax purposes, and providing effective and applicability date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 97A.8, subsection 1, paragraph i, Code 1997, is amended to read as follows:

i. (1) Notwithstanding paragraph "g" or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under paragraph "f" or "h" which are picked up by the department shall be considered employer contributions for federal and state income tax purposes, and the department shall pick up the member contributions to be made under paragraph "f" or "h" by its employees. The department shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each employee is required to contribute under paragraph "f" or "h" and shall certify the amount picked up in lieu of the member contributions to the department of revenue and finance. The department of revenue and finance shall forward the amount of the contributions picked up to the board of trustees for recording and deposit in the pension accumulation fund.