

REPRINTED

JAN 30 1998

WAYS & MEANS CALENDAR

HOUSE FILE

2119

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 720)

(SUCCESSOR TO HSB 227)

Passed House, Date 2/5/98 Passed Senate, Date <sup>(P. 1169)</sup> 4-9-98  
 Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0  
 Approved May 6, 1998

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:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

HF 2119

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.

HOUSE FILE 2119

H-8013

1 Amend House File 2119 as follows:  
2 1. Page 5, by striking lines 3 and 4, and  
3 inserting the following: "specific beneficiary. A  
4 participant shall not be required to make an annual  
5 contribution on behalf of a beneficiary. The minimum  
6 contribution per beneficiary per year, in a year in  
7 which a participant is making a contribution, shall be  
8 three hundred dollars, and the maximum".

By WEIGEL of Chickasaw

H-8013 FILED FEBRUARY 4, 1998

*Adopted 2/5/98 (p.169)*

HOUSE FILE 2119

H-8015

1 Amend the amendment, H-8013, to House File 2119 as  
2 follows:  
3 1. Page 1, by inserting after line 8 the  
4 following:  
5 "\_\_\_\_\_. Page 5, by striking lines 12 and 13 and  
6 inserting the following: "or changes in educational  
7 plans.""

By WEIGEL of Chickasaw  
DINKLA of Guthrie

H-8015 FILED FEBRUARY 5, 1998

ADOPTED

*(p.168)*

**HOUSE FILE 2119  
FISCAL NOTE**

---

A fiscal note for House File 2119 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

---

House File 2119 establishes the Iowa Educational Savings Plan Trust. Individuals would be allowed to contribute up to \$2,000 annually on behalf of a beneficiary who would be able to utilize the funds to pay for certain college expenses.

The contributions would be an adjustment to income, such that all Iowa taxpayers would be able to deduct the contributions from Iowa taxable income. The interest earned on the contributions would accrue tax free for State tax purposes. Although plan participants would not be able to deduct contributions from federal taxable income, the interest earned would not be taxed until it was withdrawn from the account.

**ASSUMPTIONS**

The target population is all persons below the age of 19 (approximately 720,000 children). Based on experience in other states, this estimate assumes that participants would contribute on behalf of 2.0% of these children (14,400).

The average marginal income tax rate is assumed to be 6.0%.

The average annual contribution is assumed to equal \$1,650.

**FISCAL IMPACT**

House File 2119 is expected to result in a decrease in revenues to the General Fund of approximately \$1.4 million in FY 1999. In subsequent fiscal years, this is expected to increase by the inflation rate.

Additionally, the Bill permits up to \$200,000 annually to be transferred from the Unclaimed Property Trust Fund to the Office of the Treasurer of State to reimburse administrative expenses. Because excess funds from the Unclaimed Property Trust Fund are deposited in the General Fund quarterly, the transfer of up to \$200,000 will result in decreased receipts to the General Fund of the same amount. Therefore, the total impact of HF 2119 is a net decrease in revenues to the General Fund of \$1.6 million.

**SOURCES**

Treasurer of State  
U.S. General Accounting Office  
U.S. Census Bureau

(LSB 1338hz, LCS)

2/19/98 Do Pass

HOUSE FILE 2119  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 720)  
(SUCCESSOR TO HSB 227)

(As Amended and Passed by the House, February 5, 1998)

Passed House, Date \_\_\_\_\_ Passed Senate, Date <sup>(P.1169)</sup> 4-9-98  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 48 Nays 0  
Approved March, 1998

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:

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

New Language \_\_\_\_\_

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. A participant shall not be required to  
4 make an annual contribution on behalf of a beneficiary. The  
5 minimum contribution per beneficiary per year, in a year in  
6 which a participant is making a contribution, shall be three  
7 hundred dollars, and the maximum contribution shall not exceed  
8 two thousand dollars per beneficiary per year adjusted  
9 annually to reflect increases in the consumer price index.  
10 However, the treasurer of state may set a maximum, as  
11 necessary, to maintain compliance with section 529 of the  
12 Internal Revenue Code.

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

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

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

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

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

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

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

34 d. Graduate from the institution of higher education.

35 5. a. A beneficiary under a participation agreement may

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 a. If the participation agreement is canceled by a  
31 participant prior to the expiration of two years from the date  
32 of original execution of the participation agreement, the  
33 participant shall receive one hundred percent of the principal  
34 amount of all contributions made by the participant, but any  
35 program fund investment income or endowment fund investment

1 income which has been credited to the participant's account  
2 shall be retained by the trust to cover administration  
3 expenses.

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

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

15 (1) Death of the beneficiary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 A student loan program, student grant program, or other  
35 program administered by any agency of the state, except as may

1 be otherwise provided by federal law or the provisions of any  
2 specific grant applicable to that law, shall not take into  
3 account and shall not consider amounts available for the  
4 payment of higher education costs pursuant to the Iowa  
5 educational savings plan trust in determining need and  
6 eligibility for student aid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the state.

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

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

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

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

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

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

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

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

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

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

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

35

HOUSE FILE 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. § 1008, 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. a. 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.

---

RON J. CORBETT  
Speaker of the House

---

MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2119, Seventy-seventh General Assembly.

---

ELIZABETH ISAACSON  
Chief Clerk of the House

Approved *Mary G*, 1998

---

TERRY E. BRANSTAD  
Governor