

House Study Bill 227

Bill Text

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1 1 Section 1. NEW SECTION. 12D.1 PURPOSE AND DEFINITIONS.
1 2 The general assembly finds that the general welfare and
1 3 well-being of the state are directly related to educational
1 4 levels and skills of the citizens of the state, and that a
1 5 vital and valid public purpose is served by the creation and
1 6 implementation of programs which encourage and make possible
1 7 the attainment of higher education by the greatest number of
1 8 citizens of the state. The state has limited resources to
1 9 provide additional programs for higher education funding and
1 10 the continued operation and maintenance of the state's public
1 11 institutions of higher education and the general welfare of
1 12 the citizens of the state will be enhanced by establishing a
1 13 program which allows citizens of the state to invest money in
1 14 a public trust for future application to the payment of higher
1 15 education costs. The creation of the means of encouragement
1 16 for citizens to invest in such a program represents the
1 17 carrying out of a vital and valid public purpose. In order to
1 18 make available to the citizens of the state an opportunity to
1 19 fund future higher education needs, it is necessary that a
1 20 public trust be established in which moneys may be invested
1 21 for future educational use. It is also necessary to establish
1 22 an endowment fund which may be funded with public funds, among
1 23 other sources, the income from which will be made available to
1 24 participants in the trust to enhance their savings invested
1 25 for the payment of future higher education costs.
1 26 As used in this chapter, unless the context otherwise
1 27 requires:
1 28 1. "Administrative fund" means the administrative fund
1 29 established under section 12D.4.
1 30 2. "Beneficiary" means the individual designated by a
1 31 participation agreement to benefit from advance payments of
1 32 higher education costs on behalf of the beneficiary.
1 33 3. "Benefits" means the payment of higher education costs
1 34 on behalf of a beneficiary by the trust during the
1 35 beneficiary's attendance at an institution of higher
2 1 education.
2 2 4. "Endowment fund" means the endowment fund established
2 3 under section 12D.4.
2 4 5. "Higher education costs" means the certified costs of
2 5 tuition, fees, books, supplies, and equipment required for
2 6 enrollment or attendance at an institution of higher
2 7 education.
2 8 6. "Institution of higher education" means a two-year or
2 9 four-year public or regionally accredited private-nonprofit
2 10 college or university, community college, and an accredited or
2 11 certified technical training school.
2 12 7. "Internal Revenue Code" means the same as defined in
2 13 section 422.3.
2 14 8. "Iowa educational savings plan trust" or "trust" means
2 15 the trust created under section 12D.2.
2 16 9. "Participant" means an individual, or an individual's
2 17 legal representative, who has entered into a participation
2 18 agreement under this chapter for the advance payment of higher
2 19 education costs on behalf of a beneficiary.
2 20 10. "Participation agreement" means an agreement between a
2 21 participant and the trust entered into under this chapter.

2 22 11. "Program fund" means the program fund established
2 23 under section 12D.4.

2 24 12. "Refund penalty" means the amount assessed by the
2 25 treasurer of state for cancellation of a participation
2 26 agreement which is not considered a de minimus penalty
2 27 pursuant to section 529 of the Internal Revenue Code.

2 28 13. "Tuition and fees" means the quarter or semester
2 29 charges imposed to attend an institution of higher education
2 30 required as a condition of enrollment.

2 31 Sec. 2. NEW SECTION. 12D.2 CREATION OF IOWA EDUCATIONAL
2 32 SAVINGS PLAN TRUST.

2 33 An Iowa educational savings plan trust is created. The
2 34 treasurer of state is the trustee of the trust, and has all
2 35 powers necessary to carry out and effectuate the purposes,
3 1 objectives, and provisions of this chapter pertaining to the
3 2 trust, including the power to do all of the following:

3 3 1. Make and enter into contracts necessary for the
3 4 administration of the trust created under this chapter.

3 5 2. Enter into agreements with any institution of higher
3 6 education, the state, or any federal or other state agency, or
3 7 other entity as required to implement this chapter.

3 8 3. Carry out the duties and obligations of the trust
3 9 pursuant to this chapter.

3 10 4. Accept any grants, gifts, legislative appropriations,
3 11 and other moneys from the state, any unit of federal, state,
3 12 or local government, or any other person, firm, partnership,
3 13 or corporation which the treasurer of state shall deposit into
3 14 the administrative fund, the endowment fund, or the program
3 15 fund.

3 16 5. Carry out studies and projections so the treasurer of
3 17 state may advise participants regarding present and estimated
3 18 future higher education costs and levels of financial
3 19 participation in the trust required in order to enable
3 20 participants to achieve their educational funding objectives.

3 21 6. Participate in any federal, state, or local
3 22 governmental program for the benefit of the trust.

3 23 7. Procure insurance against any loss in connection with
3 24 the property, assets, or activities of the trust.

3 25 8. Solicit and accept for the benefit of the endowment
3 26 fund gifts, grants, and other moneys, including legislative
3 27 appropriations and grants from any federal, state, or local
3 28 governmental agency.

3 29 9. Enter into participation agreements with participants.

3 30 10. Make payments to institutions of higher education
3 31 pursuant to participation agreements on behalf of
3 32 beneficiaries.

3 33 11. Make refunds to participants upon the termination of
3 34 participation agreements pursuant to the provisions,
3 35 limitations, and restrictions set forth in this chapter.

4 1 12. Invest moneys within the endowment fund and the
4 2 program fund in any investments which are determined by the
4 3 treasurer of state to be appropriate.

4 4 13. Engage investment advisors, if necessary, to assist in
4 5 the investment of trust assets.

4 6 14. Contract for goods and services and engage personnel
4 7 as necessary, including consultants, actuaries, managers,
4 8 legal counsel, and auditors for the purpose of rendering
4 9 professional, managerial, and technical assistance and advice
4 10 to the treasurer of state regarding trust administration and
4 11 operation.

4 12 15. Establish, impose, and collect administrative fees and
4 13 charges in connection with transactions of the trust, and
4 14 provide for reasonable service charges, including penalties
4 15 for cancellations and late payments with respect to
4 16 participation agreements.

4 17 16. Administer the funds of the trust.

4 18 17. Adopt rules pursuant to chapter 17A for the

4 19 administration of the trust.

4 20 18. Make provision for the payment of costs of operation
4 21 of the trust.

4 22 Sec. 3. NEW SECTION. 12D.3 PARTICIPATION AGREEMENTS FOR
4 23 TRUST.

4 24 The trust may enter into participation agreements with
4 25 participants on behalf of beneficiaries pursuant to the
4 26 following terms and agreements:

4 27 1. a. Each participation agreement shall require a
4 28 participant to agree to invest a specific amount of money in
4 29 the trust for a specific period of time for the benefit of a
4 30 specific beneficiary. The minimum annual contribution per
4 31 beneficiary shall be three hundred dollars, and the maximum
4 32 contribution shall not exceed one thousand two hundred dollars
4 33 per beneficiary per year adjusted annually to reflect
4 34 increases in the consumer price index. However, the treasurer
4 35 of state may set a maximum, as necessary, to maintain
5 1 compliance with section 529 of the Internal Revenue Code.

5 2 b. Participation agreements may be amended to provide for
5 3 adjusted levels of payments based upon changed circumstances
5 4 or changes in educational plans and may contain penalties for
5 5 failure to make payments when scheduled.

5 6 2. Beneficiaries designated in participation agreements
5 7 may be designated from date of birth up to, but not including,
5 8 their seventeenth birthday.

5 9 3. Payment of benefits provided under participation
5 10 agreements must begin not later than the first full fall
5 11 academic quarter or semester of enrollment at an institution
5 12 of higher education following the twenty-second birthday or
5 13 high school graduation of the beneficiary, whichever is later.

5 14 4. The execution of a participation agreement by the trust
5 15 shall not guarantee in any way that higher education costs
5 16 will be equal to projections and estimates provided by the
5 17 trust or that the beneficiary named in any participation
5 18 agreement will attain any of the following:

5 19 a. Be admitted to an institution of higher education.

5 20 b. If admitted, be determined a resident for tuition
5 21 purposes by the institution of higher education.

5 22 c. Be allowed to continue attendance at the institution of
5 23 higher education following admission.

5 24 d. Graduate from the institution of higher education.

5 25 5. a. A beneficiary under a participation agreement may
5 26 be changed as permitted under rules adopted by the treasurer
5 27 of state upon written request of the participant prior to the
5 28 date of admission of the beneficiary to an institution of
5 29 higher education as long as the substitute beneficiary is
5 30 eligible for participation.

5 31 b. Participation agreements may otherwise be freely
5 32 amended throughout their terms in order to enable participants
5 33 to increase or decrease the level of participation, change the
5 34 designation of beneficiaries, and carry out similar matters as
5 35 authorized by rule.

6 1 6. Each participation agreement shall provide that the
6 2 participation agreement may be canceled upon the terms and
6 3 conditions, and upon payment of applicable fees and costs set
6 4 forth and contained in the rules adopted by the treasurer of
6 5 state.

6 6 Sec. 4. NEW SECTION. 12D.4 PROGRAM, ENDOWMENT, AND
6 7 ADMINISTRATIVE FUNDS - INVESTMENT AND PAYMENTS.

6 8 1. a. The treasurer of state shall segregate moneys
6 9 received by the trust into three funds: the program fund, the
6 10 endowment fund, and the administrative fund.

6 11 b. No more than two percentage points of the interest
6 12 earned annually by the endowment fund may be transferred to
6 13 the administrative fund for the purpose of paying operating
6 14 costs associated with the trust and as required under section
6 15 12D.2.

6 16 c. No more than one-half of one percentage point of the
6 17 interest earned annually by the program fund may be
6 18 transferred to the administrative fund for the purpose of
6 19 paying operating costs associated with the trust and as
6 20 required under section 12D.2.

6 21 d. All moneys paid by participants in connection with
6 22 participation agreements shall be deposited as received into
6 23 separate accounts within the program fund.

6 24 e. All moneys received by the trust from the proceeds of
6 25 gifts and other endowments for the purposes of the trust shall
6 26 be deposited as received into the endowment fund.

6 27 f. The program fund and the endowment fund shall be
6 28 separately administered.

6 29 g. Any gifts, grants, or donations made by any
6 30 governmental entity or any person, firm, partnership, or
6 31 corporation to the trust for deposit to the endowment fund
6 32 shall be a grant, gift, or donation to the state for the
6 33 accomplishment of a valid public eleemosynary, charitable, and
6 34 educational purpose and shall not be included in the income of
6 35 the donor for Iowa tax purposes.

7 1 h. Contributions to the trust made by participants or
7 2 received in the form of gifts, grants, or donations may only
7 3 be made in the form of cash.

7 4 i. A participant or beneficiary shall not provide
7 5 investment direction regarding program contributions or
7 6 earnings held by the trust.

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

7 11 b. The amount of interest received from the endowment fund
7 12 shall be in the ratio that the principal amount paid by the
7 13 participant under the participation agreement and investment
7 14 income earned to date under the agreement bears to the
7 15 principal amount of all moneys, funds, and securities then
7 16 held in the program fund, but not to exceed the amount which,
7 17 in combination with the current payment due from the program
7 18 fund, equals the beneficiary's higher education costs for the
7 19 current period of enrollment.

7 20 c. Moneys accrued by participants in the program fund of
7 21 the trust may be used for payments to any institution of
7 22 higher education.

7 23 d. No rights to any moneys derived from the endowment fund
7 24 shall exist if moneys payable under the participation
7 25 agreement are paid to an educational institution which is not
7 26 an institution of higher education.

7 27 Sec. 5. NEW SECTION. 12D.5 CANCELLATION OF AGREEMENTS.

7 28 1. A participant may cancel a participation agreement at
7 29 will.

7 30 a. If the participation agreement is canceled by a
7 31 participant prior to the expiration of two years from the date
7 32 of original execution of the participation agreement, the
7 33 participant shall receive one hundred percent of the principal
7 34 amount of all contributions made by the participant, but any
7 35 program fund investment income or endowment fund investment
8 1 income which has been credited to the participant's account
8 2 shall be retained by the trust to cover administration
8 3 expenses.

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

8 12 2. a. Upon the occurrence of any of the following

8 13 circumstances, no refund penalty shall be levied by the trust
8 14 in the event of termination of a participation agreement:

8 15 (1) Death of the beneficiary.

8 16 (2) Permanent disability or mental incapacity of the
8 17 beneficiary.

8 18 (3) The beneficiary is awarded a scholarship, as defined
8 19 in section 529 of the Internal Revenue Code, but only to the
8 20 extent the refund of earnings does not exceed the scholarship
8 21 amount.

8 22 b. In the event of cancellation of a participation
8 23 agreement for any of the causes listed in paragraph "a", the
8 24 participant shall be entitled to receive the principal amount
8 25 of all payments made by the participant under the
8 26 participation agreement plus the actual program fund
8 27 investment income earned on the payments, but not endowment
8 28 fund investment income.

8 29 Sec. 6. NEW SECTION. 12D.6 REPAYMENT AND OWNERSHIP OF
8 30 PAYMENTS AND INVESTMENT INCOME - TRANSFER OF OWNERSHIP
8 31 RIGHTS.

8 32 1. a. A participant retains ownership of all payments
8 33 made under a participation agreement up to the date of
8 34 utilization for payment of higher education costs for the
8 35 beneficiary.

9 1 b. All income derived from the investment of the payments
9 2 made by the participant shall be considered to be held in
9 3 trust for the benefit of the beneficiary.

9 4 2. In the event the program is terminated prior to payment
9 5 of higher education costs for the beneficiary, the participant
9 6 is entitled to a full refund of all payments made under the
9 7 participation agreement and all investment income credited on
9 8 all the payments.

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

9 12 3. If the beneficiary graduates from an institution of
9 13 higher education, and a balance remains in the participant's
9 14 account, the treasurer of state shall pay the balance to the
9 15 participant.

9 16 4. The institution of higher education shall obtain
9 17 ownership of the payments made for the higher education costs
9 18 paid to the institution at the time each payment is made to
9 19 the institution.

9 20 5. Any amounts which may be paid to any person or persons
9 21 pursuant to the Iowa educational savings plan trust but which
9 22 are not listed in this section are owned by the trust.

9 23 6. A participant may transfer ownership rights to another
9 24 eligible participant, including a gift of the ownership rights
9 25 to a minor beneficiary. The transfer shall be made and the
9 26 property distributed in accordance with rules adopted by the
9 27 treasurer of state or with the terms of the participation
9 28 agreement.

9 29 7. A participant shall not be entitled to utilize any
9 30 interest in the trust as security for a loan.

9 31 Sec. 7. NEW SECTION. 12D.7 EFFECT OF PAYMENTS ON
9 32 DETERMINATION OF NEED AND ELIGIBILITY FOR STUDENT FINANCIAL
9 33 AID.

9 34 A student loan program, student grant program, or other
9 35 program administered by any agency of the state, except as may
10 1 be otherwise provided by federal law or the provisions of any
10 2 specific grant applicable to that law, shall not into account
10 3 and shall not consider amounts available for the payment of
10 4 higher education costs pursuant to the Iowa educational
10 5 savings plan trust in determining need and eligibility for
10 6 student aid.

10 7 Sec. 8. NEW SECTION. 12D.8 ANNUAL AUDITED FINANCIAL
10 8 REPORT TO GOVERNOR AND GENERAL ASSEMBLY.

10 9 1. The treasurer of state shall submit an annual audited

10 10 financial report, prepared in accordance with generally
10 11 accepted accounting principles, on the operations of the trust
10 12 by November 1 to the governor and the general assembly.

10 13 The annual audit shall be made either by the auditor of
10 14 state or by an independent certified public accountant
10 15 designated by the auditor of state and shall include direct
10 16 and indirect costs attributable to the use of outside
10 17 consultants, independent contractors, and any other persons
10 18 who are not state employees.

10 19 2. The annual audit shall be supplemented by all of the
10 20 following information prepared by the treasurer of state:

10 21 a. Any related studies or evaluations prepared in the
10 22 preceding year.

10 23 b. A summary of the benefits provided by the trust
10 24 including the number of participants and beneficiaries in the
10 25 trust.

10 26 c. Any other information which is relevant in order to
10 27 make a full, fair, and effective disclosure of the operations
10 28 of the trust.

10 29 Sec. 9. NEW SECTION. 12D.9 TAX CONSIDERATIONS.

10 30 1. For federal income tax purposes, the Iowa educational
10 31 savings plan trust shall be considered a qualified state
10 32 tuition program exempt from taxation pursuant to section 529
10 33 of the Internal Revenue Code. The Iowa educational savings
10 34 plan trust meets the requirements of section 529(b), of the
10 35 Internal Revenue Code, as follows:

11 1 a. Pursuant to section 12D.3, subsection 1, paragraph "a",
11 2 a participant may make contributions to an account which is
11 3 established for the purpose of meeting the qualified higher
11 4 education expenses of the designated beneficiary of the
11 5 account.

11 6 b. Pursuant to section 12D.4, subsection 1, paragraph "h",
11 7 contributions may only be made in the form of cash.

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

11 15 d. Pursuant to section 12D.4, subsection 1, paragraph "d",
11 16 a separate account is established for each beneficiary.

11 17 e. Pursuant to section 12D.4, subsection 1, paragraph "i",
11 18 a participant or beneficiary shall not provide investment
11 19 direction regarding program contributions or earnings held by
11 20 the trust.

11 21 f. Pursuant to section 12D.6, subsection 7, a participant
11 22 shall not pledge interest in the trust as security for a loan.

11 23 g. Pursuant to section 12D.3, subsection 1, a maximum
11 24 contribution level is established.

11 25 2. State income tax treatment of the Iowa educational
11 26 savings plan trust shall be as provided in section 422.7,
11 27 subsections 35, 36, and 37, and section 422.35, subsection
11 28 14.1.

11 29 Sec. 10. NEW SECTION. 12D.10 PROPERTY RIGHTS TO ASSETS
11 30 IN TRUST.

11 31 1. The assets of the trust, including the program fund and
11 32 the endowment fund, shall at all times be preserved, invested,
11 33 and expended solely and only for the purposes of the trust and
11 34 shall be held in trust for the participants and beneficiaries.

11 35 2. No property rights in the trust shall exist in favor of
12 1 the state.

12 2 3. The assets of the trust shall not be transferred or
12 3 used by the state for any purposes other than the purposes of
12 4 the trust.

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

12 6 This chapter shall be construed liberally in order to

12 7 effectuate its purpose.

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

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

12 14 b. Add the amount resulting from the cancellation of a
12 15 participation agreement refunded to the taxpayer as a
12 16 participant in the Iowa educational savings plan trust to the
12 17 extent previously deducted as a contribution to the trust.

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

12 21 NEW SUBSECTION. 37. Subtract the amount of any gift,
12 22 grant, or donation made to the Iowa educational savings plan
12 23 trust for deposit in the endowment fund of that trust.

12 24 Sec. 13. Section 422.35, Code 1997, is amended by adding
12 25 the following new subsection:

12 26 NEW SUBSECTION. 14. Subtract the amount of any gift,
12 27 grant, or donation made to the Iowa educational savings plan
12 28 trust, as created in chapter 12D, for deposit in the endowment
12 29 fund of that trust.

12 30 Sec. 14. Sections 12 and 13 of this Act apply to
12 31 contributions, gifts, grants, and donations made on or after
12 32 July 1, 1997, for tax years ending on or after that date.

12 33 EXPLANATION

12 34 This bill provides for the establishment of an Iowa
12 35 educational savings plan trust. The purpose of the trust is
13 1 to provide a means whereby participants may invest money in a
13 2 public trust for future application to the payment of the
13 3 higher education costs of the participant's designated
13 4 beneficiary or beneficiaries. The bill provides that amounts
13 5 of up to \$1,200 annually may be contributed to the trust on
13 6 behalf of each designated beneficiary. Payment of benefits
13 7 must commence not later than the first full fall academic
13 8 quarter or semester following the 22nd birthday, or high
13 9 school graduation of a beneficiary. The bill provides that
13 10 the trust does not guarantee that higher education costs will
13 11 be equal to projections made at the time a participation
13 12 agreement is entered into, nor are guarantees made relating to
13 13 admission to or graduation from an institution of higher
13 14 education. The bill contains provisions relating to creation
13 15 of the trust, the authority of the treasurer of state
13 16 concerning trust administration, the content of trust
13 17 participation agreements, component funds within the trust and
13 18 their investment and payment features, participation agreement
13 19 cancellation procedures, ownership rights, integration of
13 20 trust payments with student financial aid programs, reporting
13 21 requirements, and federal and state tax treatment. The bill
13 22 provides that the Iowa educational savings plan trust shall be
13 23 considered a qualified state tuition program exempt from
13 24 federal income taxation pursuant to section 529 of the
13 25 Internal Revenue Code. The bill adds provisions concerning
13 26 state income taxation, providing a deduction for the amount of
13 27 the annual contribution to the trust, and investment income
13 28 earned on contributions, and increased by proceeds received
13 29 due to cancellation of a participation agreement which were
13 30 previously deducted as contributions. In addition, gifts,
13 31 grants, and donations made to the endowment fund may be
13 32 deducted from income for both individuals and corporations.

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