

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 468

Short Title: Postsecondary Education Program.

(Public)

Sponsors: Senators Hartsell; Cochrane, Foxx, Garwood, Lee, Lucas, and Warren.

Referred to: Education/Higher Education.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE PREPAID POSTSECONDARY EDUCATION EXPENSE PROGRAM, THE PREPAID POSTSECONDARY EDUCATION EXPENSE TRUST FUND, THE NORTH CAROLINA PREPAID POSTSECONDARY EDUCATION EXPENSE BOARD, THE NORTH CAROLINA PREPAID TUITION SCHOLARSHIP PROGRAM, AND TO INCREASE THE LEGISLATIVE TUITION GRANTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

**"ARTICLE 32.**

**"NORTH CAROLINA PREPAID**

**POSTSECONDARY EDUCATION EXPENSE PROGRAM.**

**"§ 116-260. Purpose.**

The General Assembly recognizes that educational opportunity at the postsecondary level is a critical State interest. It further recognizes that educational opportunity is best ensured through the provision of postsecondary institutions that are geographically and financially accessible. Accordingly, it is the intent of the General Assembly that a program be established through which many of the costs associated with postsecondary attendance may be paid in advance and fixed at a guaranteed level for the duration of undergraduate enrollment. It is similarly the intent of the General Assembly to provide a program that fosters timely financial planning for postsecondary attendance and to encourage employer participation in the planning through program contributions on behalf of employees and the dependents of employees.

**"§ 116-261. Definitions.**

The following definitions apply in this Article:

- (1) 'Board' means the Prepaid Postsecondary Education Expense Board.
- (2) 'Fund' means the Prepaid Postsecondary Education Expense Trust Fund.
- (3) 'Prepaid tuition contract' means a contract entered into by the Board and a purchaser under this Article for the advance payment of undergraduate tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any State postsecondary institution to which the qualified beneficiary is admitted.
- (4) 'Purchaser' means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract.
- (5) 'Qualified beneficiary or beneficiary' means a resident of the State, determined by the Board, who may apply advance tuition payments to undergraduate tuition under this Article.
- (6) 'State postsecondary institution' means any community college identified in G.S. 115D-2 or university identified in G.S. 116-2.
- (7) 'Tuition' means the semester or term charges imposed by any State postsecondary institution and all mandatory fees required as a condition of enrollment of all students.

**"§ 116-262. North Carolina Prepaid Postsecondary Education Expense Program.**

There is created a North Carolina Prepaid Postsecondary Education Expense Program to provide a medium through which the cost of tuition and mandatory fees charged to all students as a condition of enrollment may be paid in advance of enrollment in a State postsecondary institution at a rate lower than the projected corresponding cost at the time of actual enrollment. Payments shall be combined and invested in a manner that yields, at a minimum, sufficient interest to generate the difference between the prepaid amount and the cost of tuition at the time of actual enrollment. Students who enroll in State postsecondary institutions under this Article shall be charged no fees in excess of the terms delineated in the prepaid tuition contract.

**"§ 116-263. Prepaid Postsecondary Education Expense Trust Fund.**

There is created in the Department of the State Treasurer the Prepaid Postsecondary Education Expense Trust Fund. The Fund shall consist of payments received pursuant to prepaid tuition contracts under this Article, bequests, endowments or grants from the United States government, its agencies and instrumentalities, and any other available sources of funds, public or private. Any balance remaining in the Fund at the end of the fiscal year shall remain there and shall be available for carrying out the purposes of the Program. Interest and income earned from the investment of the funds shall remain in the Fund and be credited to it.

**"§ 116-264. North Carolina Prepaid Postsecondary Education Expense Board.**

(a) The North Carolina Prepaid Postsecondary Education Expense Program shall be administered by the Prepaid Postsecondary Education Expense Board as an agency of the State. The Prepaid Postsecondary Education Expense Board is created as a body corporate with all the powers of a body corporate for the purposes delineated in this

1 section. For the purposes of Section 11 of Article III of the North Carolina State  
2 Constitution, the Board shall be assigned to and administratively housed within the  
3 Department of the State Treasurer, but it shall independently exercise the powers and  
4 duties specified in this section.

5 (b) The Board shall consist of seven members to be composed of the President of  
6 The University of North Carolina, the State Treasurer, the State Controller, the  
7 President of the Community College System, and three members appointed by the  
8 Governor and subject to confirmation by the Senate. Each member appointed by the  
9 Governor shall possess the knowledge, skill, and experience in the areas of accounting,  
10 actuary, risk management, or investment management. Each member of the Board not  
11 appointed by the Governor may name a designee to serve the Board on behalf of the  
12 member; however, any designee so named shall meet the qualifications required of  
13 gubernatorial appointees to the Board.

14 (c) Members appointed by the Governor shall serve terms of three years except  
15 that, in making the initial appointments, the Governor shall appoint one member to  
16 serve for one year, one member to serve for two years, and one member to serve for  
17 three years. Any person appointed to fill a vacancy on the Board shall be appointed in a  
18 like manner and shall serve for only the unexpired term. Any member shall be eligible  
19 for reappointment and shall serve until a successor qualifies.

20 (d) Members of the Board shall serve without compensation, but shall be  
21 reimbursed for per diem and travel in accordance with G.S. 138-6 and G.S. 138-7. Each  
22 member of the Board shall file a full and public disclosure of the member's financial  
23 interests.

24 (e) The Governor shall appoint a member of the Board to serve as the initial chair  
25 of the Board. Thereafter, the Board shall elect a chair annually. The Board shall  
26 annually elect a Board member to serve as vice-chair and shall designate a secretary-  
27 treasurer who need not be a member of the Board. The secretary-treasurer shall keep a  
28 record of the proceedings of the Board and shall be the custodian of all printed material  
29 filed with or by the Board and of its official seal.

30 (f) Notwithstanding the existence of vacancies on the Board, a majority of the  
31 members shall constitute a quorum. The Board shall take no official action in the  
32 absence of a quorum. The Board shall meet, at a minimum, on a quarterly basis at the  
33 call of the chair.

34 **"§ 116-265. Powers and duties of the Board.**

35 The Board shall administer the Fund established by this Article and shall develop  
36 and implement a program for the prepayment of undergraduate tuition at a fixed,  
37 guaranteed level for application at State postsecondary institutions. The Board shall  
38 have the powers necessary or proper to carry out the provisions of this Article, including  
39 the power to:

- 40 (1) Invest moneys in the Fund in any instruments, obligation, securities or  
41 property deemed appropriate by the Board.
- 42 (2) Develop requirements, procedures, and guidelines regarding prepaid  
43 tuition contracts including residency requirements; the number of  
44 participants in the Fund; the termination, withdrawal, or transfer of

1           payments under a prepaid tuition contract; time limitations for the use  
2           of tuition benefits; and payment schedules.

3           (3) Enter into contractual agreements, including contracts for legal,  
4           actuarial, financial, and consulting services.

5           (4) Procure insurance against any loss in connection with the Fund's  
6           property; assets, or activities and indemnifying Board members from  
7           personal loss or accountability from liability arising from any action or  
8           inaction as a Board member.

9           (5) Make arrangements with State postsecondary institutions to fulfill  
10           obligations under prepaid tuition contracts including payment from the  
11           Fund of the then actual in-State undergraduate tuition cost on behalf of  
12           a qualified beneficiary to the institution in which the beneficiary is  
13           admitted and enrolled.

14           (6) Apply for, accept, and expend gifts, grants, or donations from public or  
15           private sources to enable it to carry out its objectives.

16           (7) Adopt rules, policies, and procedures and to perform any act or  
17           function consistent with the purposes of this Article.

18 **"§ 116-266. Board actions not a debt of North Carolina.**

19           No act or undertaking of the Board shall be deemed to constitute a debt of the State  
20           or any political subdivision thereof, or a pledge of the full faith and credit of the State or  
21           of any political subdivision, but shall be payable solely from the Fund.

22 **"§ 116-267. Executive director; staff support.**

23           The Board shall employ an executive director, who shall be authorized to employ  
24           staff as necessary to enable the Board to perform its duties as set forth in this Article,  
25           and an actuary to serve as its technical advisor. The Board is authorized to determine  
26           the duties and to fix the salaries and compensation of the staff from the funds that may  
27           be appropriated or received.

28 **"§ 116-268. Investment of Fund assets.**

29           The assets of the Fund shall be maintained, invested, and expended solely for the  
30           purposes of this Article and shall not be loaned, transferred, or otherwise used by the  
31           State for any purpose other than the purposes of this Article. This section shall not be  
32           construed to prohibit the Board from investing in, by purchase or otherwise, bonds,  
33           notes, or other obligations of the State or an agency or instrumentality of the State.  
34           Unless otherwise specified by the Board, assets of the Fund shall be expended in the  
35           following order of priority:

36           (1) To make payments to State postsecondary institutions on behalf of  
37           qualified beneficiaries.

38           (2) To make refunds upon termination of prepaid tuition contracts.

39           (3) To pay the costs of Program administration and operations.

40 **"§ 116-269. Prepaid tuition contracts; terms; termination.**

41           Each prepaid tuition contract made under this Article shall include the following  
42           terms and provisions:

43           (1) The amount of payment or payments and the number of payments  
44           required from a purchaser on behalf of a qualified beneficiary;

- 1           (2) The terms and conditions under which purchasers shall remit  
 2 payments, including the dates of the payments;  
 3           (3) Provisions for late payment charges, defaults, withdrawals, refunds,  
 4 and any penalties;  
 5           (4) The name and date of birth of the qualified beneficiary on whose  
 6 behalf the contract is made;  
 7           (5) Terms and conditions for a substitution for the qualified beneficiary  
 8 originally named;  
 9           (6) Terms and conditions for termination of the contract, including any  
 10 refunds, withdrawals, or transfers of tuition prepayments, and the  
 11 name of the person or persons entitled to terminate the contract;  
 12           (7) The time period during which the qualified beneficiary must claim  
 13 benefits from the Fund;  
 14           (8) The number of credit hours, semesters, or terms contracted for by the  
 15 purchaser;  
 16           (9) All other rights and obligations of the purchaser and the trust; and  
 17           (10) Any other terms and conditions which the Board deems necessary or  
 18 appropriate.  
 19           (11) Provisions for the application of tuition prepayments at:  
 20                a. Accredited, nonprofit, independent institutions of higher  
 21 education located in North Carolina, including actual interest  
 22 and income earned on the prepayments; and  
 23                b. Public and accredited, nonprofit, independent institutions of  
 24 higher education located in other states.

25 The provisions shall include principal and reasonable return on the principal as  
 26 determined by the Board. Payments authorized for accredited, nonprofit, independent  
 27 institutions located in North Carolina may not exceed the projected highest payments  
 28 made under a prepaid tuition contract at a public institution of higher education in North  
 29 Carolina in the same academic year, less a fee to be determined by the Board. Payments  
 30 authorized for accredited, nonprofit, independent, and public institutions of higher  
 31 education located in other states may not exceed the projected average payment made  
 32 under a prepaid tuition contract tuition at a public institution of higher education in  
 33 North Carolina in the same academic year, less a fee to be determined by the Board.

34 **"§ 116-270. Federal securities opinions required.**

35 No prepaid tuition contract shall be made until the State Treasurer obtains either:

- 36           (1) A no-action letter or an opinion from the Securities and Exchange  
 37 Commission in connection with the application of federal securities  
 38 laws to the Fund; or  
 39           (2) An opinion of independent legal counsel substantially to the effect that  
 40 the proposed method of structuring and offering the Fund is in  
 41 compliance with federal securities laws.

42 **"§ 116-271. Fund property tax exempt.**

43 The assets of the Fund and its income shall be exempt from State and local taxation.

44 **"§ 116-272. Annual report.**

1        The Board shall submit an annual statement of the receipts, disbursements, and  
2 current investments of the Fund for the preceding year to the Governor, the General  
3 Assembly, and the Joint Legislative Education Oversight Committee. The report shall  
4 set forth a complete operating and financial statement covering the operation of the  
5 Fund during the year and shall include a statement of projected receipts, disbursements,  
6 investments, and costs for the further operation of the Fund.

7 **"§ 116-273. Admission to institutions not guaranteed.**

8        Nothing in this Article nor in any prepaid tuition contract shall be construed as a  
9 promise or guarantee by the Board or the State of any admission, continued enrollment,  
10 or graduation at any State postsecondary institution. Nothing in this Article or in any  
11 prepaid tuition contract entered into under this Chapter shall be construed as a promise  
12 or guarantee that the beneficiary's cost of tuition at an institution of higher education  
13 other than a State postsecondary institution will be covered in full by the proceeds of the  
14 beneficiary's tuition credits.

15 **"§ 116-274. Payroll deductions.**

16        The State and its agencies and municipalities and any employer in the State are  
17 authorized to agree, by contract or otherwise, to remit payments on behalf of an  
18 employee toward prepaid tuition contracts through payroll deductions.

19 **"§ 116-275. Discontinuance of Fund.**

20        In the event that the Board determines the Program to be financially infeasible, the  
21 Board may discontinue the provision of the Program. All contract holders shall receive  
22 a refund of the amount paid in and an additional amount in the nature of interest at a rate  
23 that corresponds, at a minimum, to the prevailing interest rates for savings accounts  
24 provided by banks and savings and loan associations.

25 **"§ 116-276. North Carolina Prepaid Tuition Scholarship Program.**

26        The North Carolina Prepaid Tuition Scholarship Program is established with the  
27 intent to provide economically disadvantaged youth with prepaid postsecondary tuition  
28 scholarships. The Board shall administer the Program with the assistance and  
29 cooperation of the school districts to achieve the following objectives:

- 30        (1) Provide an incentive for economically disadvantaged youth to improve  
31 school attendance and academic performance in order to graduate and  
32 pursue a postsecondary education.
- 33        (2) Obtain the commitment and involvement of private sector entities by  
34 virtue of funding matches with a ratio of fifty percent (50%) provided  
35 by the private sector and fifty percent (50%) provided by the State.
- 36        (3) Purchase prepaid tuition scholarships for students designated and  
37 certified by the school districts to the direct-support organization who  
38 meet minimum economic and school requirements and remain drug  
39 free and crime free. For the purpose of this subdivision, 'drug free'  
40 means not being convicted of, or adjudicated delinquent for, any  
41 violation of Chapter 90 of the General Statutes after being designated a  
42 recipient of a North Carolina prepaid tuition scholarship; and 'crime  
43 free' means not being convicted of, or adjudicated delinquent for, any

1 felony or Class 1 misdemeanor after being designated a recipient of a  
2 North Carolina prepaid tuition scholarship."

3 Section 2. Part 1 of Article 1 of Chapter 116 of the General Statutes is  
4 amended by adding a new section to read:

5 **"§ 116-21.1. Legislative Tuition Grants.**

6 (a) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition  
7 to all other financial assistance made available to private educational institutions located  
8 within the State, or to students attending these institutions, there is granted to each full-  
9 time North Carolina undergraduate student attending an approved institution as defined  
10 in G.S. 116-22, a sum to be determined by the General Assembly for each academic  
11 year, which shall be distributed to the student in accordance with this section.

12 (b) The tuition grants provided for in this section shall be administered by the  
13 State Education Assistance Authority pursuant to rules adopted by the State Education  
14 Assistance Authority not inconsistent with this section. The State Education Assistance  
15 Authority shall not approve any grant until it receives proper certification from an  
16 approved institution that the student applying for the grant is an eligible student. Upon  
17 receipt of the certification, the State Education Assistance Authority shall remit at such  
18 times as it shall prescribe the grant to the approved institution on behalf, and to the  
19 credit, of the student.

20 (c) In the event a student on whose behalf a grant has been paid is not enrolled  
21 and carrying a minimum academic load as of the tenth classroom day following the  
22 beginning of the school term for which the grant was paid, the institution shall refund  
23 the full amount of the grant to the State Education Assistance Authority. Each approved  
24 institution shall be subject to examination by the State Auditor for the purpose of  
25 determining whether the institution has properly certified eligibility and enrollment of  
26 students and credited grants paid on behalf of the students.

27 In the event there are not sufficient funds to provide each eligible student with a full  
28 grant:

29 (1) The Board of Governors of The University of North Carolina, with the  
30 approval of the Office of State Budget and Management, may transfer  
31 available funds to meet the needs of the programs provided by G.S.  
32 116-19 and G.S. 116-21.1; and

33 (2) Each eligible student shall receive a pro rata share of funds then  
34 available for the remainder of the academic year within the fiscal  
35 period covered by the current appropriation.

36 Any remaining funds shall revert to the General Fund.

37 (d) Expenditures made pursuant to this section may be used only for secular  
38 educational purposes at nonprofit institutions of higher learning.

39 (e) It is the intent of the General Assembly that the total amount of the  
40 Legislative Tuition Grants per student authorized by this section and by G.S. 116-19  
41 equal fifty percent (50%) of the average General Fund subsidy for in-State students  
42 attending The University of North Carolina by July 1, 2001."

43 Section 3. G.S. 116-19 reads as rewritten:

44 **"§ 116-19. Contracts with private institutions to aid North Carolina students.**

1 (a) In order to encourage and assist private institutions to continue to educate  
2 North Carolina students, the State Education Assistance Authority may enter into  
3 contracts with the institutions under the terms of which an institution receiving any  
4 funds that may be appropriated pursuant to this section would agree that, during any  
5 fiscal year in which such funds were received, the institution would provide and  
6 administer scholarship funds for needy North Carolina students in an amount at least  
7 equal to the amount paid to the institution, pursuant to this section, during the fiscal  
8 year. Under the terms of the contracts the State Education Assistance Authority would  
9 agree to pay to the institutions, subject to the availability of funds, a fixed sum of money  
10 for each North Carolina student enrolled at the institutions for the regular academic  
11 year, said sum to be determined by appropriations that might be made from time to time  
12 by the General Assembly pursuant to this section. Funds appropriated pursuant to this  
13 section shall be paid by the State Education Assistance Authority to an institution on  
14 certification of the institution showing the number of North Carolina students enrolled  
15 at the institution as of October 1 of any year for which funds may be appropriated.

16 (b) The State Education Assistance Authority shall document the number of full-  
17 time equivalent North Carolina undergraduate students that are enrolled in off-campus  
18 programs and the State funds collected by each institution pursuant to this section for  
19 those students. The State Education Assistance Authority shall also document the  
20 number of scholarships and the amount of the scholarships that are awarded under this  
21 section to students enrolled in off-campus programs.

22 (c) The State Education Assistance Authority shall report annually to the Joint  
23 Legislative Commission on Governmental Operations by March 1, regarding its  
24 findings."

25 Section 4. G.S. 116-22 is amended by adding a new subdivision to read:

26 "(1a) 'Off-campus program' shall mean any program offered for degree  
27 credit away from the institution's main permanent campus."

28 Section 5. This act is effective when it becomes law.