

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1663

By: Davis

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 1991, Sections 6001, 6002, 6003, 6004, 6006, 6009, 6010 and 6011, which relate to the Oklahoma Tuition Trust Act; modifying legislative intent; modifying definitions; providing for tuition payments to certain private institutions; eliminating authorization to create an investment committee; requiring Regents to designate State Treasurer as agent; specifying powers and duties of State Treasurer regarding trust; modifying powers and duties of Regents; requiring Regents to adopt rules; providing for transfer of benefits between beneficiaries; providing for substitution of beneficiaries; providing for transfer of institutions; modifying the receipt of certain contributions; modifying certain plan requirements; requiring certain payments to be based upon tuition and housing of state institutions; providing that plans may include certain programs; stating legislative intent; modifying certain payment requirements; modifying certain programs; modifying certain credit hour requirements; authorizing contracts to include payment for college housing; specifying procedures related thereto; requiring annual evaluation; prohibiting refund of certain income; requiring the Regents and the State Treasurer to contract for certain study;

authorizing appropriations for implementation costs of act; authorizing State Treasurer to determine appropriateness and terms of investment of Trust assets; prohibiting certain use of Fund; changing the date certain contracts may be entered into; deleting certain exclusions from certain tax liability; providing for enforcement of Oklahoma Tuition Trust Act by certain private institutions; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 1991, Section 6001, is amended to read as follows:

Section 6001. A. The Legislature finds and declares the following:

1. It is an essential function of state government to forever encourage schools and the means of education;
2. It is a responsibility of state government to maintain state institutions of higher education;
3. It is an essential function of state government to encourage attendance at state institutions of higher education;

4. Tuition and housing costs at public institutions of higher education are difficult for many to afford and are difficult to predict in order to enable individuals and families to plan;

5. It is in the best interest of the people of this state to foster _{public} higher education in order to provide well-educated citizens;

6. It is in the best interest of the people of this state to encourage state residents desiring higher education to enroll in state institutions of higher learning;

7. Students in elementary and secondary schools tend to achieve a higher standard of performance when the payment of tuition for their higher education is secured; and

8. Providing assistance to assure the higher education of the citizens of this state is necessary and desirable for the public health, safety and welfare.

B. It is therefore the _{intention} intent of the Legislature that the purposes of the Oklahoma Tuition Trust Act and of the Oklahoma Tuition Trust Fund created by the Oklahoma Tuition Trust Act shall be to:

1. Encourage education and the means of education;

2. Maintain state institutions of higher education by helping to provide a stable financial base to these institutions;

3. Provide wide and affordable access to state institutions of higher education for the residents of this state;

4. Encourage attendance at state institutions of higher education;

5. Provide students and their parents reasonable economic protection against rising tuition and housing costs;

6. Provide students and their parents assistance in financing post-secondary education;

7. Help provide the benefits of higher education to the people of this state; and

8. Encourage elementary and secondary students in this state to achieve high standards of performance.

SECTION 2. AMENDATORY 70 O.S. 1991, Section 6002, is amended to read as follows:

Section 6002. As used in the Oklahoma Tuition Trust Act:

1. "Advance tuition payment contract" means a contract entered into by the Trust and a purchaser to provide for the higher education of a qualified beneficiary;

2. "Regents" means the Oklahoma State Regents for Higher Education;

3. "Purchaser" means a person, whether a resident of this state or not, who makes or is obligated to make advance tuition payments pursuant to an advance tuition payment contract;

4. "Qualified beneficiary" means any resident of this state at the time of execution of the advance tuition payment contract, eligible and entitled to attend ^{a state} an institution of higher education without further in-state tuition payment pursuant to an advance tuition payment contract;

5. "Institution of higher education" means a state-supported institution of higher education or an independent, not-for-profit institution of higher education which has received approval from the Regents to participate in the program created pursuant to this act within this state, which is designated by the Regents as an institution of higher education for purposes of the Oklahoma Tuition Trust Act;

6. "Trust" means the Oklahoma Tuition Trust;

7. "Tuition" means the general enrollment fees imposed each semester or quarter upon residents of this state to attend a state institution of higher education including all mandatory special fees required as a condition of enrollment as determined by the State Regents for Higher Education;

8. "Nonresident tuition" means the semester or quarter charges imposed upon nonresidents of this state to attend a state institution of higher education including all general enrollment fees, nonresident tuition payments and mandatory special fees as determined by the State Regents for Higher Education; and

9. "Eligibility period" means the period of time in which a qualified beneficiary may exercise the rights granted in an advance payment contract.

SECTION 3. AMENDATORY 70 O.S. 1991, Section 6003, is amended to read as follows:

Section 6003. A. There is hereby created the "Oklahoma Tuition Trust". ^{The} Except as otherwise provided by law, the purposes, powers, and duties of the Oklahoma Tuition Trust are vested in and shall be exercised by the Oklahoma State Regents for Higher Education who shall be trustees of the Trust.

B. The Regents may delegate to its chairperson or any other person such functions and authority as the Regents consider necessary or appropriate. These functions may include, but are not limited to, the oversight and supervision of employees of the Regents which implement the Oklahoma Tuition Trust Act.

C. The Regents may create an investment advisory committee. The committee shall be composed of five (5) members appointed by the Regents. The members shall have skill and experience in the business and

financial fields. The members shall serve at the pleasure of the Regents. The committee shall make recommendations to the Regents concerning the investment of the monies of the Trust shall designate the State Treasurer as the agent of the Trust for the limited purposes as provided by the Oklahoma Tuition Trust Act. As an agent of the Trust, the State Treasurer shall have the power and duty to invest the funds in the Oklahoma College Tuition Trust Fund, at the State Treasurer's discretion, in any instruments, obligations, securities or property deemed proper by the State Treasurer and shall invest, manage and administer the assets of the Trust. The State Treasurer shall be charged with the duty of establishing and maintaining a comprehensive investment plan for such funds to ensure maximum future viability of the programs created pursuant to the Oklahoma Tuition Trust Act.

SECTION 4. AMENDATORY 70 O.S. 1991, Section 6004, is amended to read as follows:

Section 6004. A. For the purpose of implementing and administering the Oklahoma Tuition Trust Act, the Regents shall have the power and duty to:

1. invest any money of the Trust, at the discretion of the Regents, in any instruments, obligations, securities or property deemed proper by the Regents, and name and use depositories for its money;
2. Pay money to state institutions of higher education from the fund for the purposes specified in the Oklahoma Tuition Trust Act;

3. 2. Impose reasonable residency requirements for qualified beneficiaries consistent with the policies of the institution of higher education which the qualified beneficiary attends;

4. 3. Impose reasonable limits on the number of participants in the Trust if necessary to maintain the financial and actuarial soundness of the Trust. Any ^{refused} purchaser refused participation pursuant to the provisions of this paragraph shall receive a priority over prospective new purchasers when additional contracts are let;

5. 4. Contract for goods and services and engage personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional management, and technical assistance and advice;

6. 5. Solicit and accept gifts, donations, grants, loans, and other aids from any person, firm or corporation or the federal, state, or local government or any agency of the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program;

7. 6. Charge, impose, and collect administrative fees and charges in connection with any transaction and provide for reasonable penalties, including default, for delinquent payment of fees or charges or for fraud. In addition, the Regents shall

adopt rules regarding the penalties for and procedures relating to default of an advance tuition payment contract;

8. 7. Procure insurance against any loss in connection with the Trust's property, assets, or activities;

9. 8. Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers;

10. 9. Enter into contracts on behalf of the state;

11. invest, 10. Manage and, administer and provide for the investment of the assets of the Trust;

12. 11. Indemnify or procure insurance indemnifying the Regents from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Regents;

12. Provide for the transfer of benefits of an advance tuition payment contract from one beneficiary to another beneficiary and from one institution to another institution. Provided, however, the total benefits payable pursuant to a contract for tuition and fees at a private institution of higher education shall not exceed the amount of the highest general enrollment fees of its type institution in The Oklahoma State

System of Higher Education as determined annually by the Oklahoma State Regents for Higher Education;

13. Impose reasonable time limits on use of the tuition benefits provided by the Trust, if the limits are made a part of the contract;

14. Provide for receiving contributions in lump sums or periodic sums as follows:

- a. a lump-sum payment which allows a purchaser to pay the entire contract amount at one time at least one (1) year prior to enrollment of the beneficiary, or
- b. a monthly payment plan by which payments are scheduled according to the projected year of enrollment of the beneficiary; and

15. Promulgate reasonable rules and regulations and establish policies, procedures, and eligibility criteria to implement the Oklahoma Tuition Trust Act pursuant to the Administrative Procedures Act.

B. The Regents shall make any arrangements that are necessary or appropriate with institutions of higher education in order to fulfill its obligations under advance tuition payment contracts, which arrangements may include, but need not be limited to, the

payment by the Regents of the then actual tuition cost on behalf of a qualified beneficiary to the institution of higher education.

C. The Trust may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the Trust.

SECTION 5. AMENDATORY 70 O.S. 1991, Section 6006, is amended to read as follows:

Section 6006. A. At a minimum, the Trust shall offer advance tuition payment contracts of the two types set forth in paragraphs 1 and 2 of this subsection to be known as Plan A and Plan B, respectively.

1. Under Plan A:

- a. a payment or series of payments shall be required from the purchaser on behalf of a qualified beneficiary,
- b. if an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to Section , 6008 of this _{act} title, the Trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, but

shall not refund any investment income attributable to the payments,

- c. except as provided in subparagraph d of this paragraph, the Trust shall provide for the qualified beneficiary to attend ^{an} a named institution of higher education which the qualified beneficiary may attend for the number of credit hours required by the institution for the awarding of a bachelor's degree, without further tuition cost to the qualified beneficiary, except as provided in Section ⁶ 6005 of this ^{act} title for a qualified beneficiary who is required to pay nonresident tuition rates, and
- d. as an alternative to subparagraph c of this paragraph, the Trust shall provide for the qualified beneficiary to attend an institution of higher education which the qualified beneficiary may attend for a fixed number of credit hours, as ^{permitted by the Trust,} less than the total number of credit hours required by the institution for the awarding of a bachelor's degree provided in Section 6 of this act, without further tuition cost to the qualified beneficiary for that fixed number of credit hours,

except as provided in Section 6 6005 of this act title for a qualified beneficiary who is required to pay nonresident tuition rates.

2. Under Plan B:

- a. a payment or series of payments shall be required on behalf of a qualified beneficiary,
- b. if an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to Section 9 6008 of this act title, the Trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, together with all or a specified portion of accrued investment income attributable to the tuition payment or payments only, as may be agreed to in the contract,
- c. except as provided in subparagraph d of this paragraph, the Trust shall provide for the qualified beneficiary to attend an a named institution of higher education which the qualified beneficiary may attend for the number of credit hours required by

the institution for the awarding of a bachelor's degree, without further tuition cost to the qualified beneficiary, except as provided in Section 6 6005 of this act title for a qualified beneficiary who is required to pay nonresident tuition rates, and

- d. as an alternative to subparagraph c of this paragraph, the Trust shall provide for the qualified beneficiary to attend an a named institution of higher education which the qualified beneficiary may attend for a fixed number of credit hours, as permitted by the Trust, less than the total number of credit hours required by the institution for the awarding of a bachelor's degree, or as provided for in Section 6 of this act, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in Section 6 6005 of this act title for a qualified beneficiary who is required to pay nonresident tuition rates.

B. Contracts required to be offered by this section may require that payment or payments from a purchaser, on behalf of a

qualified beneficiary who may attend a state institution of higher education in less than four (4) years after the date the contract is entered into by the purchaser, be based upon attendance at a certain institution of higher education or at that institution of higher education with the highest prevailing tuition cost for the number of credit hours covered by the contract in this state. If the beneficiary attends an institution of higher education which is not such beneficiary's designated choice and has a higher tuition cost, the purchaser or beneficiary may make payments to offset the increased cost of the tuition required by such institution.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6006.1 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In addition to the provisions of Section 6006 of this title, Plan A and Plan B may include, but shall not be limited to, the provision of the following programs for beneficiaries:

1. Attendance at an institution of higher education sufficient to enable the beneficiary to complete approximately two (2) years or sixty-five (65) semester credit hours or equivalent of undergraduate education at a two-year institution of higher education; or

2. Attendance at an institution of higher education sufficient to enable the beneficiary to complete approximately

sixty-five (65) semester credit hours or equivalent of undergraduate education at a two-year institution of higher education plus transfer to a four-year institution of higher education for an additional approximate two (2) years or sixty-five (65) semester credit hours or equivalent of undergraduate education.

It is the intent of the Legislature that the plans authorized by this section shall enable a qualified beneficiary to attend an institution of higher education for the amount of time sufficient to enable the beneficiary to complete the requirements for the awarding of a baccalaureate degree.

B. Any advance tuition payment contract may include payment for prepaid fees for college-provided housing. The amount of any such fees shall be determined by the Oklahoma State Regents for Higher Education. Housing costs may be contracted for in annual increments for one (1) to five (5) years at any institution of higher education in the state. If the beneficiary attends an institution of higher education which is not such beneficiary's designated choice and has a higher housing cost, the purchaser or beneficiary may make payments to offset the increased cost of the housing required by such institution.

C. Both tuition and fees for college-provided housing upon which advance payment contracts are based shall be evaluated annually by the Regents according to current rate of return and projected tuition increases.

D. In the event that a Plan B contract is terminated, the Trust shall not be authorized to refund any of the accrued investment income attributable to the payment by a purchaser for college-provided housing.

SECTION 7. AMENDATORY 70 O.S. 1991, Section 6009, is amended to read as follows:

Section 6009. A. There is hereby created in the State Treasury an "Oklahoma College Tuition Trust Fund" into which shall be deposited all assets accruing to the Trust including payments received by the Trust from purchasers on behalf of qualified beneficiaries, and from which, upon appropriation, shall be paid all expenditures of the Trust. The fund may be divided into separate accounts. Any unexpended balance in the fund at the end of any fiscal year shall not be transferred into the General Revenue Fund. All interest or other increase earned from the investment of money in the Oklahoma Tuition Trust Fund shall be credited to and deposited to the fund. Monies in the fund shall not be commingled with any other monies of the Regents or the

state nor may the Regents, the state or state agencies borrow from the Trust Fund.

B. The Regents shall annually prepare or cause to be prepared an accounting of the Trust and shall transmit a copy of the accounting to the Governor and to each ^{house} House of the Legislature. The accounts of the ^{Regents} fund shall be subject to annual audits by the State Auditor and Inspector.

C. 1. The fund shall be administered by the Regents in a manner reasonably designed to be actuarially sound such that the assets of the fund will be sufficient to defray the obligations of the fund. The actuarial assumptions shall take into consideration the age of each qualified beneficiary, the projected earnings of the fund investments and the estimated cost of tuition payments for qualified beneficiaries to institutions of higher education. The Regents, in cooperation with the State Treasurer, shall contract annually for an independent actuarial study of the fund; and

2. In the accounting of the Trust made pursuant to this section, the Regents shall annually evaluate or cause to be evaluated the ^{actual} actuarial soundness of the Trust and determine the additional assets needed, if any, to defray the obligations of the Trust. If there are not sufficient funds to ensure the ^{actual}

actuarial soundness of the Trust, the Regents shall adjust payments of subsequent purchases to ensure its actuarial soundness. In no case shall there be an Annual adjustments may be made in subsequent contract prices to ensure that Trust assets continue sufficient to fund actuarial projections. Any new contract prices will be announced each August or September. Except for the initial costs to implement the provisions of the Oklahoma Tuition Trust Act, there shall be no appropriation of monies from general revenue to the Regents for purposes of the Oklahoma Tuition Trust Act; however, nothing in this subsection shall prevent state agencies from providing assistance to the Regents. The assets and earnings of the Trust shall be the sole source for payment of the liabilities incurred by the Trust pursuant to the Oklahoma Tuition Trust Act.

D. Unless otherwise provided by resolution of the Regents, assets of the Trust shall be expended in the following order of priority:

1. To make payments to institutions of higher education on behalf of qualified beneficiaries;

2. To make refunds upon termination of an advance tuition payment contract; and

3. To pay the costs of administration and organization of the Trust and the fund.

E. Assets of the Trust may be invested in any instrument, obligation, security, or property considered appropriate by the Trust State Treasurer and may be pooled for investment purposes with investments of the state, including, but not limited to, state pension funds, on such terms and conditions as are agreeable to the Trust Regents and the State Treasurer.

SECTION 8. AMENDATORY 70 O.S. 1991, Section 6010, is amended to read as follows:

Section 6010. A. The Regents shall solicit answers to appropriate ruling requests from the United States Internal Revenue Service regarding the tax status of the value received under the contract to the purchaser or qualified beneficiary. The Regents shall attempt to ensure that purchasers and qualified beneficiaries receive the maximum federal and state tax benefits under this program. No contracts shall be entered into with any purchaser prior to June 1, 1990 or until receipt of an Internal Revenue Service private letter ruling determining that:

1. the income of the Trust is excludable from gross income as income earned by an integral part of the state or as income derived from the exercise of an essential governmental function that accrues to the state under Section 115 of the Internal Revenue Code; and

2. the purchase price of such a contract either is excludable from the application of the federal gift tax or qualifies as a gift of a present interest in property eligible for the ten-thousand-dollar annual exclusion, whichever occurs later July 1, 1996. Beginning July 1, 1996, such contracts shall be made available to any purchaser.

B. The Regents may solicit answers to appropriate ruling requests from the United States Securities and Exchange Commission regarding the application of federal security laws to the fund.

SECTION 9. AMENDATORY 70 O.S. 1991, Section 6011, is amended to read as follows:

Section 6011. state institutions Institutions of higher education, purchasers and qualified beneficiaries may enforce the Oklahoma Tuition Trust Act and any contract entered into pursuant to the Oklahoma Tuition Trust Act in the district court for Oklahoma County.

SECTION 10. This act shall become effective November 1, 1995.

45-1-6335 MCD