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Date: (Filing No. S-)

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
SENATE
129TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 701, L.D. 1999, Bill, “An Act To Amend the Maine Education Savings Program”

Amend the bill by inserting after the title and before the enacting clause the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature established the Maine Education Savings Program, also known as NextGen 529, as Maine's Section 529 plan, so-called after Section 529 of the federal Internal Revenue Code of 1986, to be administered by the Finance Authority of Maine; and

Whereas, the Maine Education Savings Program provides account owners and beneficiaries the opportunity to realize potential tax advantages if assets are used for qualified higher education expenses; and

Whereas, the United States Congress has recently expanded the federal definition of qualified higher education expenses to include certain expenses related to registered and certified apprenticeship programs and limited repayments of qualified education loans; and

Whereas, under the Maine Revised Statutes, Title 20-A, section 11483, the authority is authorized to take necessary action to ensure that the Maine Education Savings Program complies with federal law, and the authority considers it prudent to make statutory changes to conform with the expanded federal definition and to make certain other amendments to the law; and

Whereas, in order to avoid confusion in the application and use of the program, it is necessary that these conforming changes take effect as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as

COMMITTEE AMENDMENT

1 immediately necessary for the preservation of the public peace, health and safety; now,
2 therefore,'

3 Amend the bill by inserting after the enacting clause and before section 1 the
4 following:

5 **'Sec. 1. 20-A MRSA §11471**, as amended by PL 2017, c. 474, Pt. F, §§2, 3 and 9,
6 is further amended to read:

7 **§11471. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 **1. Advisory committee.** "Advisory committee" means the Advisory Committee on
11 Education Savings established in this chapter.

12 **2. Authority.** "Authority" means the Finance Authority of Maine, which serves as
13 administrator of the Maine Education Savings Program.

14 **3. Beneficiary.** "Beneficiary" means any person designated by a participation
15 agreement to benefit from payments for higher education expenses ~~at an institution of~~
16 ~~higher education.~~

17 ~~**4. Benefits.** "Benefits" means the payment of higher education expenses on behalf~~
18 ~~of a beneficiary by the Maine Education Savings Program during the beneficiary's~~
19 ~~attendance at an institution of higher education.~~

20 **5. Board.** "Board" means the board of directors of the Finance Authority of Maine.

21 **6. Contributions.** "Contributions" means amounts deposited by a participant to an
22 account within the program fund.

23 **7. Higher education expenses.** "Higher education expenses" means the certified
24 expenses for attendance at an institution of higher education as those expenses are
25 defined by rule of the authority consistent with applicable provisions of the federal
26 Internal Revenue Code of 1986 and its regulations addressing qualified state tuition
27 programs. Beginning January 1, 2018, "higher education expenses" has the same
28 meaning as "qualified higher education expenses" as defined in Section 529 of the federal
29 Internal Revenue Code of 1986 and amendments to that Code and its regulations
30 addressing qualified state tuition programs.

31 **8. Institution of higher education.** "Institution of higher education" means an
32 institution of higher education that meets the requirements established by rule of the
33 authority consistent with applicable provisions of the Internal Revenue Code and its
34 regulations addressing qualified state tuition programs.

35 **9. Participant.** "Participant" means any person who has entered into a participation
36 agreement pursuant to this chapter.

37 **10. Participation agreement.** "Participation agreement" means an agreement
38 between a participant and the authority providing for the establishment by the participant
39 of one or more accounts within the program fund and for the administration of those
40 accounts for the benefit of the participant and of one or more beneficiaries.

1 **11. Program earnings.** "Program earnings" means all interest, dividends,
2 premiums, fees, profits upon disposition of assets and other revenue actually received by
3 or on behalf of the program with respect to any assets held within the program fund to
4 which that asset may be credited, less all administrative costs of the program and the
5 program fund, as periodically determined by the authority.

6 ~~**12. Tuition.** "Tuition" means the charges imposed to attend an institution of higher~~
7 ~~education and required as a condition of enrollment.~~

8 **Sec. 2. 20-A MRSA §11472**, as amended by PL 2017, c. 474, Pt. F, §4, is further
9 amended to read:

10 **§11472. Maine Education Savings Program**

11 The Maine Education Savings Program, referred to in this chapter as the "program,"
12 is established to encourage the investment of funds to be used for higher education
13 expenses at institutions of higher education and, beginning January 1, 2018, and as long
14 as permitted by provisions of Section 529 of the federal Internal Revenue Code of 1986,
15 expenses for tuition in connection with enrollment or attendance at an elementary or
16 secondary public, private or religious school. The authority shall administer the program
17 and act as administrator of the program fund.'

18 Amend the bill by inserting after section 1 the following:

19 '**Sec. 2. 20-A MRSA §11475, sub-§11**, as enacted by PL 1997, c. 732, §4, is
20 amended to read:

21 **11. No guaranty of admission.** The execution of a participation agreement by the
22 authority does not guarantee in any way that higher education expenses will be equal to
23 projections and estimates provided by the authority or that the beneficiary named in any
24 participation agreement will:

25 A. Be admitted to ~~an~~ any elementary or secondary school, apprenticeship program or
26 institution of higher education;

27 B. Be allowed to continue attendance at ~~the~~ any elementary or secondary school,
28 apprenticeship program or institution of higher education following admission; or

29 C. Graduate from ~~the~~ any elementary or secondary school, apprenticeship program
30 or institution of higher education.

31 **Sec. 3. 20-A MRSA §11476**, as amended by PL 2011, c. 150, §4 and affected by
32 §9, is further amended to read:

33 **§11476. Investment options and parameters**

34 The authority, with the advice of the advisory committee, may provide investment
35 options for a participant within the program fund to the extent permitted by Internal
36 Revenue Code provisions addressing qualified state tuition programs. The authority, with
37 the advice of the advisory committee, shall invest, or cause to be invested, the amounts on
38 deposit in the program fund in a reasonable manner to achieve the objectives of each
39 fund, exercising the discretion and care of a prudent person in similar circumstances with
40 similar objectives. A participant or designated beneficiary may not direct the investment

1 of any amounts on deposit in the program fund, except to the extent allowed pursuant to
2 provisions of the Internal Revenue Code addressing qualified state tuition programs. The
3 authority shall give due consideration to rate of return, term or maturity, diversification
4 and liquidity of investments within the program fund or any account in the program fund
5 pertaining to the projected disbursements and expenditures from the program fund and
6 the expected payments, deposits, contributions and gifts to be received.

7 **Sec. 4. 20-A MRSA §11478, sub-§1**, as enacted by PL 1997, c. 732, §4, is
8 amended to read:

9 **1. Participant retains ownership.** The participant retains ownership of all
10 contributions and all program earnings credited to a participant's account under a
11 participation agreement up to the date of utilization for payment of higher education
12 expenses ~~for the beneficiary~~ and, notwithstanding any other provision of law, an amount
13 credited to any account is not susceptible to levy, execution, judgment or other operation
14 of law, garnishment or other judicial enforcement and the amount is not an asset or
15 property of either the participant or the beneficiary for purposes of any state insolvency
16 laws. Notwithstanding this subsection, an amount credited to the participant's account
17 may not be included in any gross estate of the participant for purposes of state tax law,
18 except to the extent that the amount may be includable in any gross estate for purposes of
19 federal tax law.

20 **Sec. 5. 20-A MRSA §11479**, as amended by PL 2017, c. 474, Pt. F, §6, is further
21 amended to read:

22 **§11479. Tax exemption**

23 The assets of the program fund, all program earnings and any income from operations
24 are exempt from all taxation by the State or any of its political subdivisions. A deposit to
25 any account, transfer of that account to a successor participant, designation of a successor
26 beneficiary of that account, credit of program earnings to that account or qualified
27 distribution from that account used for the purpose of paying higher education expenses
28 ~~of the designated beneficiary of that account~~ pursuant to this chapter, as long as that
29 distribution does not exceed the limits established in Section 529 of the federal Internal
30 Revenue Code of 1986, as amended, or rollover distributions permitted under Section 529
31 of the federal Internal Revenue Code of 1986, as amended, does not subject that
32 participant, the estate of that participant or any beneficiary to any state income or estate
33 tax liability. In the event of cancellation or termination of a participation agreement and
34 distribution of funds to a participant, the increase in value over the amount deposited in
35 the program fund by that participant may be taxable to that participant in the year
36 distributed.

37 **Sec. 6. 20-A MRSA §11483**, as enacted by PL 1997, c. 732, §4, is amended to
38 read:

39 **§11483. Compliance with federal law**

40 The authority may take any action necessary to ensure that the program complies
41 with the federal Internal Revenue Code of 1986, Section 529, as amended, and any
42 successor provisions and other applicable laws, rules and regulations adopted pursuant to
43 that provision to the extent necessary for the program fund to constitute a qualified state

1 tuition program with the benefits of eligibility under provisions of the federal Internal
2 Revenue Code addressing qualified state tuition programs.

3 **Sec. 7. 20-A MRSA §11485**, as enacted by PL 1997, c. 732, §4, is amended to
4 read:

5 **§11485. Rulemaking**

6 The authority ~~must~~ shall establish rules for the implementation of the program
7 established by this chapter, including rules establishing fees and penalties and rules
8 necessary to ensure treatment as a qualified state tuition program for federal tax purposes.
9 Rules adopted pursuant to this section, including those setting fees and penalties, are
10 routine technical rules as defined by Title 5, chapter 375, subchapter ~~H-A 2-A~~. The
11 authority ~~shall submit a report to the joint standing committee of the Legislature having~~
12 ~~jurisdiction over education and cultural affairs by January 30, 1999 on the rules and rule-~~
13 ~~making process to implement a program providing limits on future increases in the costs~~
14 ~~of education of participating institutions of higher education pursuant to section 11474,~~
15 ~~subsection 8.~~

16 **Emergency clause.** In view of the emergency cited in the preamble, this
17 legislation takes effect when approved.'

18 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
19 section number to read consecutively.

20 **SUMMARY**

21 This amendment, which is the majority report of the committee, retains the change
22 from mandatory to permissive the investment of fund dollars by the Finance Authority of
23 Maine in state-based financial institutions. This amendment also amends certain
24 provisions of the law in order to conform elements of the Maine Education Savings
25 Program to recent changes to federal law affecting so-called Section 529 programs. This
26 amendment also adds an emergency preamble and emergency clause to the bill.

27 **FISCAL NOTE REQUIRED**

28 **(See attached)**