

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 186(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 2/11/00

Referred: Rules

Sponsor(s): SENATORS TIM KELLY, Wilken, Mackie, Leman, Ellis, Donley, Taylor, Elton

REPRESENTATIVES Murkowski, Bunde, Phillips, Rokeberg, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a University of Alaska postsecondary education savings
2 program, to the Alaska Higher Education Savings Trust, and to the Alaska
3 advance college tuition savings fund; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09.25.120(a)(7) is amended to read:

6 (7) names, addresses, and other information identifying a person as a
7 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or
8 the advance college tuition savings [PAYMENT] program under AS 14.40.803 -
9 14.40.817;

10 * **Sec. 2.** AS 09.38.015(a)(9) is amended to read:

11 (9) tuition credit or savings accounts [CREDITS] under a higher
12 education savings account established under AS 14.40.802 or an advance college
13 tuition savings [PAYMENT] contract authorized under AS 14.40.809(a);

14 * **Sec. 3.** AS 14.40.170(a) is amended by adding a new paragraph to read:

(10) administer, manage, market, and promote a postsecondary education savings program, including the Alaska Higher Education Savings Trust under AS 14.40.802 and the Alaska advance college tuition savings fund under AS 14.40.803 - 14.40.817.

* **Sec. 4.** AS 14.40 is amended by adding a new section to article 6 to read:

Sec. 14.40.802. Alaska Higher Education Savings Trust. (a) The Alaska Higher Education Savings Trust is established in the University of Alaska. The purpose of this trust is to secure obligations to participants and beneficiaries under a postsecondary education savings program operated by the University of Alaska and to provide participants a convenient method of saving for college or other postsecondary education. The Board of Regents of the University of Alaska shall

(1) adopt policies that provide for the administration, management, promotion, and marketing of the trust;

(2) maintain the trust in compliance with requirements of 26 U.S.C. (Internal Revenue Code) for a qualified state tuition program as defined in 26 U.S.C. 529;

(3) coordinate savings options established under the trust and the administration of the trust with the Alaska advance college tuition savings fund (AS 14.40.803), including the creation of common administrative and record-keeping systems, marketing programs, and operating reserves;

(4) establish participation agreements, including application, savings options, and withdrawal procedures;

(5) enter into participation agreements with participants for the

(A) accumulation, investment, and distribution of funds;

(B) payment or reimbursement of qualified higher education expenses; and

(C) benefit of a beneficiary;

(6) enter into contracts with one or more contractors, including investment managers; in determining the persons to act as investment managers, consideration must be given to the qualifications of the contractor, including the contractor's ability to

1 (A) administer financial programs with individual account
2 maintenance and reporting;

3 (B) develop, market, and administer investment options
4 appropriate for the trust; and

5 (C) augment the savings program with other beneficial products
6 and services;

7 (7) allow both residents and nonresidents to participate in the trust;

8 (8) allow the transfer or rollover of funds from the Alaska advance
9 college tuition savings fund and other qualified state tuition programs under 26 U.S.C.
10 529 and the participation agreement;

11 (9) allow withdrawals from the trust to be used for qualified higher
12 education expenses, including room and board as allowed by 26 U.S.C. 529;

13 (10) establish penalties for withdrawals from the trust for nonqualified
14 expenses and other distributions as required under 26 U.S.C. 529 or as provided in the
15 participation agreement;

16 (11) engage an independent firm of certified public accountants to audit
17 the financial position of the trust.

18 (b) The board may

19 (1) divide the trust into multiple investment portfolios;

20 (2) commingle amounts credited to some or all accounts for investment
21 purposes;

22 (3) establish trusts and accounts as the board considers appropriate
23 under 26 U.S.C. 529;

24 (4) require trust participants to pay all administrative fees;

25 (5) establish earnings reserves as provided in the participation
26 agreement, including reserves for the payment of administrative costs.

27 (c) The University of Alaska, the board, the state, or an agency of the state is
28 not liable for a loss of funds that are invested under a participation agreement or for
29 the denial of a perceived tax or other benefit. The board shall provide written notice
30 to each applicant that there is no guarantee of any rate of return or benefit and that any
31 risk of loss in account value or other benefit rests exclusively with the participant and

1 the beneficiary.

2 (d) Notwithstanding any other provision of law, earnings on funds deposited
3 with the trust are not subject to taxation by the state or a municipality.

4 (e) Except for needs-based scholarships, funds on deposit with the trust may
5 not be considered by the University of Alaska or an agency of the state to limit
6 eligibility for a state-funded scholarship.

7 (f) A participant has the right, as provided in the participation agreement, to
8 (1) change the beneficiary of an account to another individual who is
9 a member of the family of the former beneficiary; or

10 (2) direct that all or a portion of an account be transferred to an
11 account with a new beneficiary if the new beneficiary is a member of the family of
12 the former beneficiary.

13 (g) The right to change the beneficiary or to transfer between accounts
14 described in (f) of this section may be denied or limited as provided in the
15 participation agreement, including transfers that would result in contributions or
16 account balances in excess of allowable limits under the participation agreement.

17 (h) Except as provided under AS 34.40.110(b)(4), an account established under
18 this section

19 (1) is exempt from a claim by the creditors of a participant or of a
20 beneficiary;

21 (2) is conclusively presumed to be a spendthrift trust;

22 (3) is not an asset or property of either the participant or the
23 beneficiary;

24 (4) may not be assigned, pledged, or otherwise used to secure a loan
25 or other advancement;

26 (5) is not subject to involuntary transfer or alienation.

27 (i) Except as permitted in 26 U.S.C. 529, a participant or beneficiary may not
28 directly or indirectly direct the investment of an account or earnings on the account.

29 (j) A participant may, as provided in the participation agreement, designate a
30 person other than the participant as a successor participant. The designation of a
31 successor participant does not take effect until the participant dies or is declared legally

1 incompetent. If a participant dies or is declared legally incompetent without having
 2 effectively designated a successor participant, the beneficiary may designate a
 3 successor participant in the manner prescribed above if the beneficiary is not the same
 4 person as the successor participant.

5 (k) The trust, a participation agreement, and this section are intended to
 6 comply with the requirements of 26 U.S.C. 529 and shall be interpreted in that manner
 7 to the extent permitted by law.

8 (l) The trust and participation agreements may be modified or amended on a
 9 retroactive basis in order to maintain compliance with 26 U.S.C. (Internal Revenue
 10 Code) and to maintain efficient operation of the trust as determined by the board.

11 (m) A name, address, or other information identifying a person as a participant
 12 or beneficiary in the trust is confidential.

13 (n) In this section,

14 (1) "account" means an individual trust account established under this
 15 section;

16 (2) "beneficiary" means any person designated by a participation
 17 agreement, or by another method of designation authorized in this section, to benefit
 18 from payments for qualified higher education expenses at an eligible educational
 19 institution;

20 (3) "board" means the Board of Regents of the University of Alaska;

21 (4) "member of the family" has the meaning given in 26 U.S.C. 529(e);

22 (5) "participant" means a person who has entered into a participation
 23 agreement or has been appointed as a participant as provided in this section and in the
 24 participation agreement;

25 (6) "participation agreement" means an agreement between a participant
 26 and the board providing for the establishment by the participant of one or more
 27 accounts under this section and for the administration of those accounts for the benefit
 28 of the participant and the beneficiary;

29 (7) "qualified higher education expenses" has the meaning given in
 30 26 U.S.C. 529(e);

31 (8) "trust" means the Alaska Higher Education Savings Trust.

* **Sec. 5.** AS 14.40.803 is amended to read:

Sec. 14.40.803. Alaska advance college tuition savings [PAYMENT] fund [ESTABLISHED]. (a) The Alaska advance college tuition savings [PAYMENT] fund is established as a nonlapsing fund of the University of Alaska. The [FUND IS ESTABLISHED FOR THE] purpose of the fund is to secure obligations to participants under a postsecondary education savings program operated by the University of Alaska and to enhance [ENHANCING] the ability of the university to provide (1) higher education for the people of the state; (2) wide and affordable access to higher education for residents and their children; (3) an incentive for residents to achieve higher academic standards in grades 7 - 12; and (4) an incentive for residents to continue and complete secondary and postsecondary education. The fund may be divided into separate accounts for accounting purposes.

(b) The fund consists of

(1) permanent fund dividend and cash contributions made under AS 14.40.807 under the terms of an advance college tuition savings [PAYMENT] contract;

(2) appropriations, gifts, bequests, and contributions; and

(3) income and earnings of the fund.

(c) Assets of the fund shall be expended to make payments to the university and other eligible educational institutions, including payments for refunds, redemptions, and awards under a savings [AN ADVANCE TUITION PAYMENT] contract or scholarships, [A PREPAID TUITION SCHOLARSHIP, AND] costs of administration, and other obligations of the fund.

* **Sec. 6.** AS 14.40.807(a) is amended to read:

(a) Contributions to the fund under the terms of an advance college tuition savings [PAYMENT] contract may be made by direct cash payments or by contributions from the permanent fund dividend. The Department of Revenue shall

(1) prepare the permanent fund dividend application to allow an applicant or a parent, legal guardian, or other authorized representative of an applicant who is an unemancipated minor to contribute 50 percent of a dividend to the fund [UNDER THE TERMS OF AN ADVANCE TUITION PAYMENT CONTRACT]; and

(2) include with each application for a permanent fund dividend an explanation of the advance college [ADVANCED] tuition savings [PAYMENT] program, including the right to receive a refund, a disclosure of the potential tax liability of the fund, and disclosure of the possible general effect of the tax liability on the advance college tuition savings [PAYMENT] program.

* **Sec. 7.** AS 14.40.809 is amended to read:

Sec. 14.40.809. Powers and duties of the University of Alaska. (a) The Board of Regents of the University of Alaska may contract with a purchaser for the purchase of advance college tuition credits for the payment of tuition and other qualified higher education expenses [BY THE PURCHASER] for a beneficiary of any age to attend a branch of the university or other eligible educational institution to which the beneficiary is admitted. A purchaser and a beneficiary may be the same person.

(b) The board shall

(1) make appropriate arrangements as necessary to fulfill the board's obligations under an advance college tuition savings [PAYMENT] contract;

(2) establish and adopt a formal plan for administration of the advance college tuition savings [PAYMENT PROGRAM AND PREPAID TUITION SCHOLARSHIP] program; the terms and conditions of the plan shall be considered a part of an advance college tuition savings [PAYMENT] contract;

(3) establish investment objectives, criteria, and asset allocation guidelines for the fund based on prudent institutional investor guidelines and actuarial analysis of the earnings requirements for the advance college tuition savings [PAYMENT] plan; and

(4) enter into contracts or agreements considered necessary for the investment of the fund, including contracts or agreements with investment managers, consultants, and other custodians of the fund;

(5) engage a financial advisor to annually report on the investment performance of the fund;

(6) engage an independent firm of certified public accountants to audit the financial position of the fund;

(7) do all acts, whether or not expressly authorized, that the board considers necessary or proper in administering the assets of the fund;

(8) enter into reciprocal agreements with Sheldon Jackson College, Alaska Pacific University, and other eligible educational institutions or state tuition programs that the board determines to be beneficial to the advance college tuition savings [PAYMENT] program;

(9) coordinate savings options established under the Alaska advance college tuition savings program and the administration of the fund with the Alaska Higher Education Savings Trust (AS 14.40.802) including the creation of common administrative and record-keeping systems, marketing programs, and operating reserves.

* Sec. 8. AS 14.40.811 is amended to read:

Sec. 14.40.811. Advance college tuition savings [PAYMENT] contracts. (a)

An advance college tuition savings [PAYMENT] contract must set out or include by reference to the plan

(1) the name and date of birth of the purchaser and the beneficiary under the contract;

(2) the number of advance college [PREPAID] tuition credits purchased under the contract;

(3) the terms and conditions under which the contract may be terminated and refunds made;

(4) the assumption of a contractual obligation by the board to provide funding for specified education benefits for [TO] the beneficiary in accordance with the terms of the plan;

(5) the period of time during which the beneficiary may receive the benefits of the contract; and

(6) other terms and conditions the board determines to be appropriate or that are required under 26 U.S.C. [BY THE UNITED STATES] [Internal Revenue Code].

(b) An advance college tuition savings [PAYMENT] contract may be terminated

(1) if the board determines that the number of purchasers is insufficient to maintain the fund on an actuarially sound basis; or

(2) under other circumstances determined by the board and set out in the advance tuition savings [PAYMENT] contract or in the plan.

* **Sec. 9.** AS 14.40.817(1) is amended to read:

(1) "advance college tuition savings [PAYMENT] contract" or "contract" means a contract entered into by the board and a purchaser to provide for the qualified higher education expenses of a beneficiary;

* **Sec. 10.** AS 14.40.817(5) is amended to read:

(5) "fund" means the Alaska advance college tuition savings [PAYMENT] fund established under AS 14.40.803;

* **Sec. 11.** AS 14.40.817(6) is amended to read:

(6) "plan" means the formal plan for administration of an advance college tuition savings [PAYMENT] program [AND PREPAID TUITION SCHOLARSHIP PROGRAM] adopted by the board under AS 14.40.809(b);

* **Sec. 12.** AS 14.40.817(7) is amended to read:

(7) "purchaser" means the person who is named in the contract and has the rights conferred upon a purchaser under an advance college tuition savings [PAYMENT] contract;

* **Sec. 13.** AS 45.55.990(32) is amended to read:

(32) "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; limited liability company interest under AS 10.50, notwithstanding the limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land; an option on a contract for the future delivery of agricultural or mineral commodities or any other commodity offered or sold to the public and not regulated by the Commodity Futures Trading Commission; however, the contract or option is not

1 subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a
2 bona fide exchange or board of trade and offered or sold to the public by a broker-
3 dealer or agent registered under this chapter; investment of money or money's worth
4 including goods furnished or services performed in the risk capital of a venture with
5 the expectation of some benefit to the investor where the investor has no direct control
6 over the investment or policy decision of the venture; or, in general, any interest or
7 instrument commonly known as a "security," or any certificate of interest or
8 participation in, temporary or interim certificate for, receipt for, guarantee of, or
9 warrant or right to subscribe to or purchase, any of the foregoing; "security" does not
10 include **a participation agreement entered into under AS 14.40.802 or** an insurance
11 or endowment policy or annuity contract under which an insurance company promises
12 to pay a fixed or variable sum of money either in a lump sum or periodically for life
13 or for some other specified period;

14 * **Sec. 14.** AS 14.40.805 is repealed.

15 * **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).