

1999 DRAFTING REQUEST

Bill

Received: **12/02/1999**

Received By: **mlief**

Wanted: **Soon**

Identical to LRB:

For: **Rob Kreibich (608) 266-0660**

By/Representing: **don stitt**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Alt. Drafters: **kuesejt**

Subject: **Higher Education - miscellaneous**

Extra Copies: **PG**
Don Stitt (Fax # 258-7138)
Mary Matthias (Leg. Council-

Pre Topic:

No specific pre topic given

Topic:

Creation of a college savings plan

Instructions:

See Attached.

PC's with Andy Cook and Brian Elliott, 1/3: Ensure that DOA has sole responsibility for selecting the manager, including responsibility for determining the criteria for selection of the manager.

Drafting History:

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PA's

(Rep Kreibich's 86.)

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Please hold for Andy to pick up. Also send Andy (Cook) me draft as PDF file.

Instructions:

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*E-mail as PDF
file to Andy Cook
in Rep. Kreibich's office*

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cmx 12/20/99 *12/1/99* *1/3*

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mlief
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(including D-N)
Don Stitt (Fax # 258-7138)
Mary Matthias (Leg. Council-
By e-mail)

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Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

12/17/1999
mlief

FE Sent For:

<END>

ROB KREIBICH
STATE REPRESENTATIVE
NINETY THIRD ASSEMBLY DISTRICT

MADISON OFFICE
(608) 266-0660



DISTRICT OFFICE
(715) 839-1064

CHAIR: ASSEMBLY COMMITTEE ON COLLEGES AND UNIVERSITIES

November 18, 1999

Madelon Lief, Attorney
Legislative Reference Bureau
100 North Hamilton Street, 5th Floor

Dear Madelon:

Enclosed is a revised redraft submittal for a college savings plan to be administered by the Wisconsin State Treasurer and a college savings plan board. The preliminary draft produced did not contain the exact language I had submitted.

If any questions arise, please contact either the identified individuals on the bill request form, Andy Cook, my Research Assistant, or myself. If any person other than these individuals listed on the bill request form were to contact you, please do not take suggestions or comments from them.

Thank you for your time and attention to this bill request. If you have any questions, feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to be 'Rob Kreibich', written over a circular stamp or mark.

ROB KREIBICH
State Representative
93rd Assembly District

cc: Richard Champagne, Attorney

BILL
REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Rep. Kreibich 266-0660

Date: 9/19/99 Person submitting request (name, phone number): Rep. Kreibich 266-0660

Persons to contact for questions about this draft (names, phone numbers): Brian Elliott, 255-4440
Don Stitt, 255-4440

Describe the problem, including any helpful examples. See attached proposal summary.

How do you want to solve the problem?

Create a college savings plan administered by the Wisconsin State Treasurer and a college savings plan board. The college savings plan under this proposal would be a new program totally separate from the current EdVest program. See attached proposal summary.

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not retyped) copy. See attached.

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67): _____

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you? Yes No
- If yes: Anyone who asks? Yes No Any legislator? Yes No Only the following persons: _____

Do you consider this request urgent? Yes No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? If yes, sign your name here:
Yes No _____

POSSIBLE STATUTE SECTIONS AFFECTED

Wis. Stat. § 16.24 et. seq. renumbered Wis. Stat. § 14.63 by 1999 Wis. Act 9

Wis. Stat. § 20.505 (9), now Wis. Stat. § 20.585 (2) as affected by 1999 Wis. Act 9

Wis. Stat. § 25.80 as amended by 1999 Wis. Act 9

Wis. Stat. § 71.05 (6)(b) 23 as amended by 1999 Wis. Act 9

Wis. Stat. § 815.18 (3)(o) as amended by 1999 Wis. Act 9

**Proposal
For the Creation of
A College Savings Program**

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**Proposal
For the Creation of
A College Savings Program**

I. INTRODUCTION

To obtain a college education, students must face and overcome numerous obstacles, including tuition increases and decreasing federal aid. These obstacles are compounded by the fact that parents do not ordinarily have sufficient savings to help their children attend colleges. This is particularly the case with low- and middle-income families. The following points highlight the challenges that face today's student's.

- An individual's ability to accomplish goals, contribute to society, and achieve success in a chosen career is significantly affected by an individual's level of education.
- On October 14, 1996, the *Washington Post* reported that education makes *the* difference in income levels. Families having at least one member with a college degree or more saw family income rise by 45%.
- The cost of college tuition has risen nationally by 234% during the last 15 years while the median household income increased by only 82% and the cost of consumer goods rose by 74% during the same period.
- Federal assistance during the last 15 years has been dramatically scaled back through limitations on the amount of grant aid for middle-income families. Currently, over 50% of all available college aids take the form of student loans.

The result of these challenges has been a massive increase in debt-straddled graduates. Because of enormous public value inherent through increased access to higher education, many states, like Wisconsin, offer savings assistance programs to assist individuals in meeting their education goals. Higher education promotes increased employment opportunity, higher income employment, and an increased tax base, all of which contribute to the economic well being for both the individual and the state .

A. State-Sponsored Savings Assistance Programs

Many states sponsor savings assistance programs to facilitate saving for the increasing costs of a post-secondary education. There are two general types: (1) prepaid-tuition plans, and (2) college savings plans.

1. Prepaid Tuition Plans

Nineteen states offer “prepaid-tuition” plans, which essentially limit the growth of a person’s account to the rate of public-college tuition increases in one’s state. Some are tuition “contracts” in which a person agrees to prepay a set amount in a lump sum or monthly installments. Others sell “units” or “credits,” each worth a percentage of future tuition and fees.

2. College Savings Plans

College savings plans, which is my proposal, help families save for college expenses, such as room and board, that are not covered by prepaid tuition contracts by allowing participants to save money in a special college savings account. In addition, they also assist those who prefer to go to an independent or out-of-state college.

Typically an individual pays into a college savings account on behalf of a prospective student in the years prior to college. The state (or an investment advisor that the state contracts with) invests those funds. Any investment earnings grow federally tax deferred until the money is withdrawn to pay for higher education costs. At the time of withdrawal, these earnings are taxed at the student’s tax rate, which is typically lower than that of the individual who contributed to the account (“contributor”).

These programs are flexible in addressing a wide variety of student needs:

- Account proceeds can be used to pay for qualified higher education expenses (tuition, books, room and board) at any accredited public or private post-secondary school in the United States.
- If a student delays attending school, the contributor can leave the money in the account for later use, change the beneficiary, or withdraw the money (subject to a federally required penalty on any investment gains).
- A student who receives a scholarship can withdraw funds from the account (up to the scholarship amount) without penalty, or the contributor can change the account beneficiary.

The assets in the program are typically invested in one of two ways: conservative bonds or in a portfolio allocated among stocks, bonds, and cash instrument, such as money market mutual funds that becomes increasingly conservative as the student nears high school graduation. Because investment returns for either option vary, states do not guarantee that the value of any account will exceed the amount invested or that it will be sufficient to pay for all of a student’s higher education costs. This is currently the case with Wisconsin’s EdVest program.

College savings programs offer distinct differences to prepaid tuition plans. Prepayment plans allow one to lock in today's tuition rates, most have residency requirements and some are restricted to a particular state school and only cover tuition and fees. College savings programs typically cover tuition in addition to room and board, books, transportation and fees.

B. EdVest Wisconsin

The 1995 Wisconsin Legislature established a modified college tuition prepayment program, known as "EdVest Wisconsin", (1995 Wisconsin Act 403) allowing parents and grandparents to purchase tuition credits that student can apply in the future at approved public and private institutions of higher education. 1997 Wisconsin Act 158, which took effect May 6, 1998, allows an aunt, uncle or legal guardian or a trust to purchase tuition units for a beneficiary named in the contract. In addition, individuals can contract on their own behalf. When the contract is executed, the beneficiary or the purchaser must be a Wisconsin resident or, if the purchaser is a trust or guardian, have been created or organized under Wisconsin law.

While designed to meet tuition for in-state public institutions, EdVest allows students to use the funds at any accredited public or private institution without penalty. The money can be used to cover only the tuition and fees portion of an education budget. This excludes the costs of books, supplies and equipment required for enrollment or attendance at an eligible education institution, as well as certain room and board expenses.

The Wisconsin Department of Administration (DOA) administers EdVest, while the State of Wisconsin Investment Board (SWIB) manages the investments (under 1999 AB 133, the program would be transferred to the Office of the State Treasurer (OST)). SWIB is directed to invest monies contributed to the program in investments with maturities and liquidity that are appropriate for this type of program. For this reason, the tuition trust fund is invested in conservative investments comprised of U.S. Treasury, agency, municipal, and corporate bonds.

C. College Savings Program Proposal

Throughout the 1970s and 1980s, a dramatic change occurred in people's expectations about the role of government in financing higher education. Few families believed that they and their children should bear the entire burden of paying for a higher education. They viewed higher education as an opportunity that should be available to all and felt that the government had a major responsibility for giving people the opportunity to attend College of their choice.

However, while recognizing the government's responsibility in aiding those who wished to pursue a higher education, the National Commission on the Cost of Higher Education, established in 1997, stated that:

“... institutions, government, and the philanthropic and higher education communities can only do so much. Students and families have a responsibility to do their part as well. Because a major beneficiary of a college education is the individual involved, those with a genuine commitment to their future rightfully shoulder part of the load.

The weight of that loan can be substantially lessened with careful financial planning. Families obviously need better information in order to plan well...”

Under this proposal, the Wisconsin Legislature would enact a separate college savings plan, independent yet complimentary, of EdVest and thus facilitate Wisconsin's ongoing efforts to encourage saving for post-secondary education by providing two savings options: a defined benefit-type program (EdVest) and a defined contribution-type program (this proposal).

Programs such as these are necessary because the State of Wisconsin has limited resources for funding higher education and it can foster the continued operation of Wisconsin's institutions of higher education and its citizens. By providing additional opportunities in this area, the Wisconsin Legislature is carrying on a vital and valid public purpose.

II. DESCRIPTION OF PROPOSAL

This college savings plan would create an additional vehicle in Wisconsin to assist parents and others to save for a child's undergraduate and/or graduate level expenses. The plan's distributions could be applied toward any approved institution of higher education in Wisconsin and other states. The program would be administered by the OST. *Then why have a board?*

A. Tuition Savings Accounts

A tuition savings account under this proposal may be opened by any individual and used for any qualified institution of higher education in Wisconsin and other states (public, private, two or four year institutions).

The maximum balance of a tuition savings account may not exceed the amount determined by actuarial estimates that is necessary to pay tuition, required fees, and room and board expenses of the designated beneficiary for five years of undergraduate enrollment at the highest cost institution allowed by the program (Qualified State Tuition Programs 63 Fed. Reg. 45019 (1998) (to be codified at 26 C.F.R. pt. 1)(proposed August 24, 1998)). For example, in 1999 the ~~maximum account balance would equal~~ approximately \$150,000.

An account beneficiary may be the beneficiary of more than one account. (*See* Indiana, Education Finance, Ch. 7, 21-9-7-1(6)(B)). An account beneficiary may also be an account owner, if qualified. (*See* Indiana, Education Finance, CH. 7, 21-9-7-1(5)(B)).

Contributions to and interest earnings from an account are federally tax deferred. Earnings in an account and distributions to a beneficiary for qualified educational expenses are exempt from state tax for contributors who are subject to Wisconsin income tax. Distributions to a beneficiary for qualified educational expenses are to be exempt from Wisconsin income tax.

An account owner may change the designated beneficiary of an account to an individual who is a family member of the prior designated beneficiary. A member of the family would include:

- (1) A lineal descendant of the designated beneficiary.
- (2) A lineal ancestor of the designated beneficiary.
- (3) A brother, sister, stepbrother, stepsister of the designated beneficiary.
- (4) A stepparent of the designated beneficiary.
- (5) A stepchild of the designated beneficiary.
- (6) A niece or nephew of the designated beneficiary.
- (7) An aunt or uncle of the designated beneficiary.
- (8) An individual related to the designated beneficiary as follows:
 - (A) A daughter-in-law
 - (B) A son-in-law
 - (C) A mother-in-law
 - (D) A father-in-law
 - (E) A sister-in-law
 - (F) A brother-in-law
- (9) The spouse to the designated beneficiary or the spouse of an individual described in 1 through 8.

(2)
An adopted child would be treated as a natural child and the terms brother and sister would include a brother or sister by half blood for purposes of this program. To avoid placing this lengthy listing within the state statute, it may be appropriate to define the term "member of the family" as having the same meaning as contained in § 529(e) of Title 26 of the United States Code (26 U.S.C § 526(e) or successor section (See Delaware 14 § 348596)).

Only the account owner can make contributions and all contributions must be made in cash. Non-qualified withdrawals will be treated as taxable income and will be subject to a federally required penalty and the percentage of the penalty may be changed as necessary to meet federal requirements. Additionally, no account owner or designated beneficiary will be permitted to direct the investment of any contributions to an account or the earnings from the account.

"qualified higher ed. expenses"

defined

in 26 USC 529

(3)

eligible educ invest
(5)

Distributions from an account will be reported to the Internal Revenue Service, the account owner and the designated beneficiary to the extent required by federal law or other regulation. Any balance at the time of the designated beneficiary's graduation can be applied to the designated beneficiary's post-graduate education, be transferred into the tuition savings account of another family member of the designated beneficiary, or can be withdrawn as a non-qualified withdrawal subject to penalty.

Money in a tuition savings account can be used for any qualified educational expense, which would consist of the following expenses required for enrollment or attendance of a designated beneficiary at a higher education institution:

- (1) Tuition.
- (2) Fees.
- (3) Cost of books, supplies and equipment.
- (4) Room and board.

The amount of room and board treated as a qualified higher education expense may not exceed that amount set forth in applicable federal regulations. (See Federal Title IV financial aid programs.)

Funds may be used for post-secondary, undergraduate, and graduate education. (See New Hampshire 195-H:6 II).

As provided for in the State of New York statute (See Education Law, Art 14-A, 695-e 6a, 6b) account owners may:

- (1) Change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary.
- (2) Transfer all or a portion of an account to another tuition account, the subsequent designated beneficiary of which a member of the family.

Changes in designated beneficiaries and transfers shall not be permitted to the extent that they would constitute excess contributions.

Additionally, account owners may make periodic deposits through a payroll deduction plan or an automatic deposit plan. A tuition account established by means of periodic deposits may allow for the adjustment of scheduled deposits on the basis of a change in an account owner's economic circumstances or a beneficiary's educational plans. If such a periodic deposit plan is established with an account owner, such plan must provide for the limitation of scheduled deposits by the program manager as necessary to insure that an account owner's account does not exceed the maximum account balance per beneficiary.

Under this college savings program, there are no residency requirements for either a beneficiary or an account owner.

B. Administration of The College Savings Program

~~This proposal creates a college savings plan board to ensure the proper administration and management of the savings plan.~~ ^{not OST?} The Board shall have oversight authority regarding the college savings plan and EdVest. This authority would include, but not be limited to: (a) directing the State Treasurer take specific actions regarding the operation of EdVest and the college savings plan that are in keeping with the conditions established by this legislation; and (b) directing the development and promulgation of rules, policies, guidelines and procedures deemed necessary by the board to carry out the college savings plan. The board will annually provide a report to the Governor and the appropriate standing committees of each house of the Legislature regarding the operation of the college savings plan and EdVest.

The board shall consist of seven members, one of which must be the current chairperson of SWIB or their designee. Board members, other than the SWIB chairperson, shall be appointed by the Governor to three-year staggered terms. The Board shall be attached to the Office of the State Treasurer for administrative purposes only.

This college savings program is to be established as a trust declared by the State Treasurer. This trust may be divided into multiple investment portfolios. If so divided, and if distinct records are maintained for any such portfolio and the assets associated with any such portfolio are accounted for separately from the other assets of the trust, then the debts, liabilities, obligations, and expenses incurred, contracted for or otherwise existing with respect to a particular portfolio shall be enforceable against the assets of such portfolio only, and not against the assets of the trust generally.

Under this proposal, the State Treasurer would be named the trustee of the college savings program, and have all the powers necessary to carry out and effectuate the purposes, objectives and provisions of this legislation. OST would have rule making authority and be charged with the following responsibilities:

- (1) Develop and implement the program under the terms and conditions established by this legislation.
- (2) OST **shall** engage the services of a program manager, which shall be a non-government entity, to invest the trust assets and manage the program. (See Iowa H.F. 2119 s. 12D.212).
- (3) OST may engage the services of other consultants as deemed necessary for professional and technical assistance and advice.

- (4) Seek rulings and guidance, if necessary, from the United States Department of Treasury and the Internal Revenue Service to ensure the program meets federal requirements.
- (5) Establish methods similar to those provided in Wis. Stat. § 14.63(6) (as affected by 1999 Wis. Act 9) by which funds will be disbursed from accounts for, or in reimbursement of, allowable expenditures upon the death or disability of an account beneficiary or the denial of admission or acceptance by a higher education institution of an account beneficiary. } Add as sub
- (6) Carry out studies and projections so the State Treasurer may advise participants regarding the present and estimated future higher education costs, levels of financial participation in the trust required in order enable participants to achieve their educational funding objectives, the availability of financial aid and the financial aid process.

(See Iowa H.F. 2119,s. 12D.2).

- (7) Conform the college savings program, notwithstanding any provision contained within this college savings program statute, with the purposes and objectives of the statute, to the requirements of a qualified state tuition program established in § 529 of the IRS Code and all applicable federal regulations.
- (8) Report to the board established under this proposal on a quarterly basis on the status of EdVest and the college savings plan.

DOA shall issue requests for proposals to evaluate and determine the program manager (which shall be a non-government entity), which shall act as the manager of the program. }
Specifically, DOA is to consider the following:

- A. Ability to administer investment programs with individual account maintenance and reporting.
- B. Ability to develop and administer an investment program of a nature similar to the objectives of the program.
- C. The applicant's promotion plans and the investment it is willing to make to promote the program.
- D. The fee, if any, proposed to be charged to persons opening accounts.

- E. The minimum initial deposit or minimum contributions that the program manger will require.
- F. Ability of the program manager to accept electronic contributions, including payroll deduction plans.
- G. Ability to augment the program with other programs or informational services considered beneficial by DOA.

(See New York, Education Law Art. 14-A § 695-d).

A management contract between the selected program manager and the State of Wisconsin, at a minium, should require the program manager to:

1. Take any action required to keep the program in compliance with requirement established for the program and any actions not contrary to its contract to manage the program to qualify as a “qualified state tuition plan” under section 529 of the Internal Revenue Code of 1986, as amended.
2. Keep adequate records of each account and keep each account segregated from each other account.
3. Hold all accounts for the benefit of the account owner.
4. Have the program audited at least annually by a firm of certified public accountants selected by the program manager and that the results of such audit be provided to the OST.
5. Provide statements to each account owner on quarterly basis (at minimum) which identify the contributions made during the preceding three months, the total contributions made to the account through the end of the period, the value of the account at the end of such period and distributions made during period.

(See New York, Education Law, Art. 14-A § 695-e 15b).

C. Definitions

Within the heading of definitions include the following:

“Account” means a savings account established in accordance with this college savings program.

“Account beneficiary” means the individual who is (1) designated as the beneficiary of an account at the time the account is established; and (2) designated as the new beneficiary when beneficiaries are changed. (See Indiana 21-9-2-3, 1999 HB 1980).

“Account owner” means the individual or individuals designated at the time an account is opened as having the right to do the following: (1) Select or change the designated beneficiary of an account; (2) Designate a person other than the designated beneficiary as a person to whom funds may be paid from the account; (3) Receive distributions from the account if no other person is designated. (See Indiana 21-92-4, 199 HB 1980).

“Contribution” means a payment directly allocated to an account for the benefit of an account beneficiary or used to pay administrative fees associated with the account. (See Indiana introduced bill 1999 HB 1980).

“Financial organization” means an organization authorized to do business in the State of Wisconsin and which is subject to the jurisdiction and regulation of the Securities and Exchange Commission of the federal government.

“Institution of Higher Education” means a public or private institute of higher education that is accredited by a accrediting association recognized by the Department, and a proprietary school approved by the Educational Approval Board under s. 39.51. (See Wis. Stat. § 16.24(1)(b)).

“Program Manager” means a financial organization selected to act as manager of the program.

“Qualified educational expenses” means the following expenses required for the enrollment and attendance of a designated beneficiary at a higher education institution.

- (1) Tuition.
- (2) Fees.
- (3) Costs of books, supplies, and equipment.
- (4) Room and Board.

The amount of room and board treated as qualified higher education expense may not exceed the amount set forth in the applicable regulations. (See Indiana, 1999 HB 1980)

D. Financial Aid

In order to insure that students and families are not penalized for saving, monies in a tuition savings account shall not be used toward the calculation of Wisconsin state financial aid under any of the financial aid programs administered by the state.

E. Deferred Use of Tuition Savings Account Funds

Beneficiaries in the program may defer use of the funds in a tuition savings account for up to 10 years after the anticipated academic year of the beneficiary's initial enrollment in an institution of higher education so long as the beneficiary notifies the OST of such a deferral in such a manner as determined by OST. (See Wis. Stat. § 14.63 (6) (as affected by 1999 Wis. Act 9), New Hampshire Education, Ch. 195-H:7).

F. Limitations of Statute/Program

Neither the State nor the eligible educational institution are liable for any shortage of funds in the event that the accruals from the tuition savings plan are insufficient to meet the tuition requirements of such institution chosen by the student for which the plan was intended.

G. Penalties

In case of a non-qualified withdrawal from an account, an amount equal to ten percent of the portion of the withdrawal constituting income as determined in accordance with § 529 of the Internal Revenue code of 1986, as amended, shall be withheld as a penalty and paid to the college saving program trust fund.

This penalty may be increased if OST determines that the amount of such penalty must be increased to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program under § 529 of the Internal Revenue Code. The penalty may also be decreased by OST if it determines the penalty is greater than the de minimis penalty for purposes of qualifying the program as a qualified state tuition program. (See New York, Education Law, Art. 14-A, s. 695-e 7, 8 and 9).

26
45C
529
529
(5)

No penalty shall be levied by the trust in the event of termination of an account because of:

- A. The death or disability of an account beneficiary.
- B. The beneficiary is awarded a scholarship as defined in § 529 of the Internal Revenue Code of 1986, as amended, but only to the extent the refund of earnings does not exceed the scholarship amount.

In the event of cancellation of an account for any of the above causes, the account owner shall be entitled to receive the remaining principal amount of all contributions made by the account owner plus any investment income earned on the contributions. (See Iowa, H.F. 2119, 12D.5.2.a. and b.).

H. Prohibitions

No account nor any interest in an account shall be assignable or pledged, subject to creditor action, or otherwise used to secure a loan or other advancement. No refund of a qualified educational expense payment may be paid by a higher education institution directly to a designated beneficiary or to the account owner. Any refund of qualified tuition expenses owned by a higher education institution on account of an overpayment of educational expenses must be refunded to the college savings program for credit to the designated beneficiary's account.

Nothing within the statutes providing for the college savings program shall be construed as a guarantee by the state or any college that a beneficiary will be admitted to a college or upon admission to a college or upon admission to a college will be permitted to continue to attend or will receive a degree from a college.

Participation in the college savings program will not create state residency for any individual because the individual is a designated beneficiary.

Additionally, nothing within the college savings program statute shall be construed as guaranteeing that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary. Accounts not insured by the State and neither the principal deposited nor the investment return is guaranteed by the State.

I. Annual Report

Under this proposal the college savings plan board would be required to submit reports to the Governor and to the appropriate standing committees of the Legislature regarding EdVest and the college savings program established under this proposal.

12/2 - Meeting w/ Don Stitt, Brian Elliott, Andy Cooke, Lisa Moen, PAC + JTC

- Board would have power + be attributed to OST for ~~admission~~ administrative purposes.

- 11 member board

- OST - 1

- Bd of regents - 1

- private colleges - 1 - Have governor appt

- SQAIB - 1 Chairperson or designee

governor - 6 members - Senate confirmation

Staggered 4 year terms

Bd would elect chairperson + vice.

Will get back to me re: bd + EdVest

Bd to decide appropriate considerations for awarding k.

Tel from Andy Cooke 12/8

- Have bd report annually on EdVest

Tel w/ Don Cooke - Have state hold contrib in trust.
Do not create SEG fund - too many admin costs.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522
REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

November 26, 1999

MEMORANDUM

College savings [sic] plan

To: Don Stitt, Brian Elliott
From: Lonnie Lief, Marc Shovers
Subject: College savings plan proposal

We thought it might be helpful to provide before our meeting on November 30 our questions and concerns stemming from an initial review of your second college savings plan proposal, which we received from Representative Kreibich on November 19.

1. The proposal says that the college savings plan is to be administered by OST (p.6) and that the treasurer is to be the trustee of the plan (p. 9), yet the proposal calls for the creation of a board to ensure the proper administration and management of the college savings plan and EdVest. The lines of authority are not clear in the proposal. (We will provide more specific examples of overlapping authority in the meeting, but we wanted you to be alerted to this problem generally.)
2. What should be the board's role in administering EdVest?
3. Do you want senate confirmation of board members? Also, what person should choose the chairperson of the board? (The statutory default is the board.)
4. It is not clear to whom the contributions are paid. If contributions are paid to the state and then transferred to the program manager, which is what we assume you envision, then a trust needs to be established in chapter 25. If, however, you want the contributions paid directly to the program manager, a trust need not be created.
5. What kinds of investments may the program manager make with the contributions?
6. The proposal calls for a maximum balance not to exceed the actuarial estimates to pay tuition and related expenses for five years of undergraduate enrollment at the highest cost institution allowed under the program. You touch upon this issue again on the bottom of p. 8 of the proposal when you say that a periodic deposit plan must limit deposits to insure that the account

No - state must actually participate.

total contributions - See p. 9 of proposed reg.

balance does not exceed the maximum balance. But what if investment gains are such that the account balance exceeds this amount? Does the board return the difference to the participant? Should there be some minimum and maximum annual contribution limit? Also, is the maximum account balance the maximum for each account or for all accounts that have the same account beneficiary?

7. When you say that contributions must be in cash, does that include money orders and certified checks? The proposal also states that contributions may be made by way of a payroll deduction or automatic deduction plan, but neither is, technically speaking, "cash." Please provide clarification. *See p. 8 PR2*

8. What is meant by "non-qualified withdrawals" (p. 7)? *- Is it 26 USC § 29 (B) →*

9. It appears that a number of the definitions and proposed statutory provisions were based upon Indiana law, which defines account owner and account beneficiary as the proposal does. However, Indiana law also provides that the Indiana Education Savings Authority (the board that administers Indiana's college savings program) is responsible for establishing qualifications for savings accounts and financial institutions participating in the program (Indiana Code 21-9-9-1). Do you want the board created by your proposal to determine the qualifications of account owners and beneficiaries? If not, we will need to know the qualifications you have in mind. *broad as possible*

But can't be one or same as a minimum

acct benef being an account owner, as well

10. What is meant by an account beneficiary being "qualified" as an account owner (p.6)?

Should be at least 18

11. We do not understand the sentence, "Additionally, no account owner or designated beneficiary will be permitted to direct the investment of any contribution to an account or the earnings from the account" (p. 7). Does this mean that if a mutual fund manager has the contract for the program and wishes to offer a variety of investment options to account owners (large caps, small caps, bonds, etc.) that account owners may not select from these options? *See PR p. 8*

12. Who is entitled to refunds of unused contributions and earnings?

13. Can an account be transferred from one beneficiary or owner to another?

14. Can you provide the specific USC or CFR cites for the room and board expenses that are eligible under the program? *PR*

15. We will need a more specific description of what schools are covered under the program. (We are not sure what you mean by a "qualified institution of higher education in Wisconsin and other states.")

16. We do not know what is meant by an "excess contribution" in the sentence, "Changes in designated beneficiaries and transfers shall not be permitted to the extent that they would constitute excess contributions" (p. 8).

17. The proposal states that a "tuition account established by means of periodic deposits may allow for the adjustment of scheduled deposits on the basis of a change in an account owner's economic circumstances or a beneficiary's educational plans." Does this mean that once an

Definitions begin on p. 14 PR

account owner sets up a periodic deposit plan, he or she may not adjust the plan except for these reasons?

18. Are any of the definitions based upon federal regulations? If so, please provide the CFR citations.
19. The definition of account owner empowers the account owner to select or change the beneficiary of the account and to designate a person other than the designated beneficiary to receive payment. How is this second power different from the power to change the designated beneficiary?
20. Section D on p. 13 is problematic. It is not clear that the state can compel a private institution not to take into account certain assets in determining an individual's financial aid. A related issue is the extent to which this provision can be harmonized with federal financial aid programs used by private and public colleges in Wisconsin.
21. Do you want to include the program manager under the limitations section on p. 13?
22. What are the penalty monies to be used for in the fund? Administrative expenses?
23. How do you want to fund the administration of the program? (EdVest segregated monies may not be used for the college savings program.)
24. The instructions state that "Contributions to and interest earnings from an account are federally tax deferred. Earnings in an account and distributions to a beneficiary for qualified education expenses are exempt from state tax for contributors who are subject to WI income tax. Distributions to a beneficiary for qualified educational expenses are to be exempt from WI income tax." Does this mean that contributions and gain aren't "income" to the *beneficiary* until he or she uses the money for a qualified expense, or that the contributor may claim a tax exemption for amounts placed in the account, and any gain generated, until the beneficiary starts paying for qualified expenses? Do you mean that gain is not income to a beneficiary or taxable to a contributor? The second sentence is stated as a fact. Are you saying that this is so because these amounts are not part of federal adjusted gross income and therefore are already out of the base that is used to determine Wisconsin AGI? Please explain in greater detail and with more clarity your understanding of current law, with citations to the IRC, and what goal you hope to achieve.
25. With regard to penalties (see the last paragraph on page 7), do you want a state penalty that is the same as the federal penalty? Do you mean that the 10% penalty is only assessed on the unqualified amount withdrawn and only in that year? If so, it seems that the penalty amount could result in the account being used as a vehicle to amass gain in the account, tax-free, with only a relatively small penalty being paid following an unqualified withdrawal? Is this your intent?

cc:Andy Cook

DISCUSSION ITEM 4

The contributions would be paid to the administrator of the program that WI chose to run the program. The administrator will process the contribution and put the money in the trust. A trust will always be needed in every case. For a college savings plan to get federal tax deferral, it needs to meet the requirements of Section 529 of the Internal Revenue Code.

DISCUSSION ITEM 5

The program manager will invest the contributions per its program design. Currently, there are two prevalent models. In model 1, there are a series of fund of funds that have asset allocations ranging from aggressive (more equity funds) to conservative (more income and money funds). The contributions then move across the spectrum of fund of funds by the numbers of estimated years to college. For instance, a 1 year old beneficiary will have contributions made on his/her behalf put in an aggressive portfolio.

Three years later, the assets would move to a more conservative fund. When the beneficiary is 17 years old, the contributions with any investment gains would be in the most conservative portfolio.

Model 2 is very similar. In model 2, a fund of funds is created and is invested based on the beneficiaries in the program. For instance, all contributions for beneficiaries that have 15-18 years to college will go into the 2018 Portfolio. The manager of the 2018 portfolio will initially, through asset allocation, have a very aggressive fund with equity mutual funds. When the 2018 Portfolio ages, the asset allocation mix will become more conservative - so when 2018 arrives, the fund of funds will hold mostly income and money market funds. The point is, the program manager will invest the funds in mutual funds in accordance with an asset allocation strategy based on time to college or estimated time to college. The early years will concentrate on capital gains. The middle years will concentrate on income and capital gains. The later years will concentrate on conservation of principal and income.

DISCUSSION ITEM 6

Investment gains are not counted against the contribution limit. Only contributions are counted against the contribution limit. The administrator will return any monies in excess of the contribution limit to the contributor. There should be no minimum or maximum annual contribution limit. There should be a minimum initial contribution limit, which can be waived if the contributor signs up for an automatic monthly contribution program. The maximum account balance applies to the beneficiary. So, if Joe is the beneficiary of 5 college savings plan accounts, the contributions of all the accounts (cost basis) cannot exceed the contribution maximum.

DISCUSSION ITEM 7

Contributions must be made in cash, and cash instruments such as checks, money orders, certified checks, etc. They cannot be contributions of valuable objects, antiques, securities, etc.

DISCUSSION ITEM 8

Non-qualified withdrawals are withdrawals that are not going to be used for tuition, room & board, books, etc. Section 529 lists those expenses that are qualified. Those withdrawals which are made for items not listed in Section 529 (and the proposed rule thereunder), would be subject to the 10% penalty.

Other states have used language such as the following:

A "non-qualified" withdrawal" means a withdrawal from an account that is not:

- a. A qualified withdrawal;
- b. A withdrawal made as a result of death or disability of the designated beneficiary;
- c. A withdrawal made as a result of a scholarship (or allowance or payment described in §135 (d)(B) or (C) of Title 26, USC) received by the designated beneficiary, but only to the extent of the amount of such scholarship, allowance or payment; or
- d. A change in the designated beneficiary described in section II A of the proposal summary.

DISCUSSION ITEM 9

The qualifications of account owners and beneficiaries should be consistent with Section 529 and the proposed rule thereunder, and as broad as possible.

DISCUSSION ITEM 10

An account beneficiary can also be the account owner or contributor. A divorcee can be using a college savings plan and contribute to it (she is the account owner or contributor) for her own college dreams (she is also the beneficiary). A qualified account owner must be the age of majority because the account owner is entering into an agreement.

DISCUSSION ITEM 11

Under Section 529, the account owner or contributor may make the initial investment choice, but then must surrender control until the assets are withdrawn for college expenses. The beneficiary cannot control the assets and where they are invested after the initial choice. That is why most programs have an asset allocation feature (more fully described in 5 above) so that the college savings account can benefit from equity mutual funds in the early years when the time horizon is long and move to fixed income and money funds when the time is short to preserve the beneficiaries college assets.

DISCUSSION ITEM 12

The contributor or account owner is entitled to use the unused contributions or earnings. The contributor or account owner can do two things. One, the account owner can change the beneficiary and have the assets used for the new beneficiary's college expenses. Or, two, the he/she can withdraw the assets and take the 10% penalty.

DISCUSSION ITEM 13

The beneficiary can be changed (a change in the beneficiary designation) but the account owner may not change.

DISCUSSION ITEM 14

Section 529 of the Internal Revenue Code, and the proposed regulations thereunder found at 26 C.F.R. Part 1 or 63 F.R. 45019.

DISCUSSION ITEM 15

Section 529 defines qualified institutions.

DISCUSSION ITEM 16

If a change is made in a designated beneficiary, but the designated beneficiary already has a college savings plan, the contributions of both college savings accounts could exceed the maximum limit per beneficiary.

DISCUSSION ITEM 17

Yes, at least until the minimum initial investment has been met (probably \$2,500). Once that is met, there should be great flexibility to change it.



DISCUSSION ITEM 18

See Section 529 of the Internal Revenue Code, and the proposed regulations thereunder found at 26 C.F.R. Part 1 or 63 F.R. 45019.

DISCUSSION ITEM 19

This refers to not changing the beneficiary but the designation of a person or college to accept the disbursements, a school bursar for example. This could be the case if the account owner does not completely trust the account beneficiary.

DISCUSSION ITEM 20

To the extent that the state legislature can, they should move as far as they can on this because, people will not save for college if it hurts their chances at financial aid. This should be able to be done for state-based aid at least, and for private institutions if possible. There should not be a financial disincentive to save for college. In fact, there should be an incentive to save, so the state and the federal gov't don't have to support the entire load.

only public colleges or only take into account state (grants)

DISCUSSION ITEM 21

Yes. - Include program manager under 11 members.

DISCUSSION ITEM 22

To offset costs to the administration of the program. This could go to defray state costs associated with the program, or to offset the fees to the administrator of the program.

DISCUSSION ITEM 23

The administrator and manager are paid by an asset based fee from the assets in the trust. The state can be paid from a piece of that and from the 10% tax penalty.

DISCUSSION ITEM 24

Contributions are not federally or state tax deductible to the contributor or account owner. The state could, if it wanted to, make contributions tax deductible, to provide a further incentive to use the program. The investment income from the contributions would be federally and state tax deferred to both the contributor and the account beneficiary. Qualified withdrawals (see 8 above) are taxed at the beneficiary's level on the federal return, but not the state. Unqualified withdrawals would be taxed at the contributors level via the 10% tax penalty (and any penalty WI would like to have). The federal side of the equation is explained by Section 529 and the proposed rule thereunder. The WI side of the equation could be anything really, state tax deduction, state tax deferral, state tax credit for qualified withdrawals, or any combination of the above.

DISCUSSION ITEM 25

Yes. The administrator of the program has to do due diligence on the account owners to ensure that they are not using the account as a tax dodge. If this is not monitored, the whole program's tax status could be jeopardized. The account agreement will have representations by the account owner that the state and program administrator could sue on to prevent this.

Lief, Madelon

From: ELLIOTT, Brian J BJE [BJE@madison.whdlaw.com]
Sent: Monday, December 06, 1999 4:16 PM
To: 'madelon.lief@legis.state.wi.us'
Cc: STITT, Donald K DKS
Subject: QSTP Start-Up Costs and Cash Flow

Start-Up Costs: The objective is for the state to out-source all of the marketing, all of the operational back office, and all of the investment management from a start-up cost standpoint. This would be the responsibility of the firm that wins the award and becomes the program manager. It is assumed that that firm will absorb those start-up costs.

With respect to the state, the state's role is really a monitoring one. The asset-based fee would flow back to the state and recompense it for any costs.

Cash Flow: The way this is structured is that the state creates a trust, the trust will have a custodian, and what will happen is the board will authorize the program manager to be the administrator for that trust and the manager will accept the cash. It will forward the cash to a custodian, and the custodian will hold those assets in trust for the trust. The money logically would come to the manager. The money would then be deposited into a custodian account in the name of the trust, and the state would have the authority to authorize the program manager to do that. If any cash needs to be dispersed from the account, the program manager would redeem the appropriate number of units or shares from the trust, then cut a check from the trust to the person receiving the college educational expenses.

Lief, Madelon

From: Matthias, Mary
Sent: Wednesday, December 15, 1999 3:28 PM
To: Shovers, Marc; Lief, Madelon
Cc: Kreibich, Robin; Cook, Andrew; Pirlot, R.J.
Subject: Edvest draft

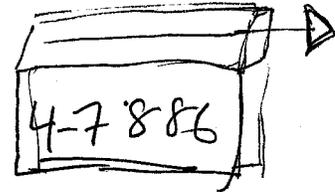
Marc and Lonnie:

Set forth below are four changes to the Edvest draft, which you are currently working on, which were agreed to by Rep. Kreibich, the Speaker and the State Treasurer at a meeting they had this morning

- may change an enrollment fee*
1. Delete the requirement that the purchaser of a tuition prepayment contract pay a \$50 non-refundable enrollment fee. Marty Olle said they would like the flexibility to waive the fee or to offer a reduced fee at certain times as a marketing effort to increase enrollment.
 2. Delete all residency requirements for the current program and do not place any residency restrictions on the new portions of the program.
 3. Delete all references in the current program to "tuition units".
 4. To the extent permitted under federal law, authorize investment in any portion of the program for the purpose of creating a scholarship fund. See 26 U.S. code section 529 (e) (1) (C).

Rep. Kreibich and the Speaker are hoping to get a preliminary draft from you sometime next week. If you have any questions or if there is anything I can do to help, please give me a call at 6-0932.

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
ph.: (608)266-0932; fax: (608)266-3830
mary.matthias@legis.state.wi.us





State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4017/1

MJLB/JTK

cm H

1999 BILL

D-N

To editing 4 PM 12/17 ✓
Due by 5 PM 12/20

auto-rfs

Gen cat

1 AN ACT ...; relating to: the college tuition prepayment program, creating a
2 college savings program board and college savings program, granting ✓
3 rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the state treasurer administers a college tuition prepayment program that allows a Wisconsin resident, trust or legal guardian to purchase tuition units from the state treasurer that may be redeemed in the future to pay tuition and mandatory student fees at any accredited institution of higher education in the United States on behalf of a beneficiary who is a Wisconsin resident. The college tuition prepayment program is a qualified state tuition plan under federal law; federal tax is deferred until funds are withdrawn, after which the distributions are taxable as ordinary income at the beneficiary's federal tax rate. State tax is also deferred until funds are withdrawn. A person who wishes to purchase tuition units must pay a \$50 nonrefundable enrollment fee.

This bill repeals the residency requirements for purchasers and beneficiaries of tuition units; permits, but does not require, the state treasurer to charge an enrollment fee; and permits tuition units to be redeemed to cover tuition, fees and the costs of room and board, books, supplies and equipment required for college enrollment.

The bill also creates a college savings ✓ program, administered by an eleven-member college savings program board (board) that is attached to the office of the state treasurer. The college savings program allows an individual, trust or

BILL

legal guardian to establish and contribute money to a college savings account to cover tuition, fees and the costs of room and board, books, supplies and equipment required for enrollment or attendance of a beneficiary at any accredited institution of higher education in the United States. (A tax-exempt nonprofit corporation and a state or local governmental unit may also open a college savings account as part of a scholarship program.) The board must ensure that the college savings program meets federal requirements for a qualified state tuition plan and must contract with a private entity to serve as a manager, invest the contributions to college savings accounts and pay distributions to beneficiaries and institutions of higher education. The contract between the board and the manager must, among other things, require the manager to reimburse the state for all administrative costs that the state incurs for the college savings program. The bill also prohibits a state agency, a University of Wisconsin System institution or a technical college from including the balance of a college savings account in the calculation of a beneficiary's eligibility for state financial aid for higher education.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 14.57 of the statutes is created to read:
- 2 **14.57 Same; attached boards.** There is created a college savings[✓] program
- 3 board that is attached to the office of the state treasurer under s. 15.03[✓] and that
- 4 consists of all of the following members:
- 5 (1) The state treasurer or his or her designee.
- 6 (2) The president of the board of regents of the University of Wisconsin System
- 7 or his or her designee.
- 8 (3) A representative of private colleges in this state, appointed for a 4-year
- 9 term.
- 10 (4) The chairperson of the investment board or his or her designee.
- 11 (5) The president of the technical college system board or his or her designee.
- 12 (6) Six other members, appointed for 4-year terms.

BILL

1 **SECTION 2.** 14.63 (3) (a) 1. and 3. of the statutes, as affected by 1999 Wisconsin
2 Act 9, are repealed.

3 **SECTION 3.** 14.63 (3) (c) of the statutes is created to read:

4 14.63 (3) (c) The state treasurer may charge a purchaser an enrollment fee.

INS 3-5
5

5 **SECTION 4.** 14.63 (5) (a) of the statutes, as affected by 1999 Wisconsin Act 9, is
6 amended to read:

7 14.63 (5) (a) Except as provided in sub. (7m), if an individual named as
8 beneficiary in a contract under sub. (3) attends an institution of higher education in
9 the United States, each tuition unit purchased on his or her behalf entitles that
10 beneficiary to apply toward the payment of tuition and ~~mandatory student~~ fees and
11 the costs of room and board, books, supplies and equipment required for enrollment
12 or attendance at the institution an amount equal to 1% of the anticipated weighted
13 average tuition of bachelor's degree-granting institutions within the University of
14 Wisconsin System for the year of attendance, as estimated under sub. (2) in the year
15 in which the tuition unit was purchased.

INS 3-16
16

History: 1999 a. 9.

16 **SECTION 5.** 14.63 (11) (b) of the statutes, as affected by 1999 Wisconsin Act 9,
17 is amended to read:

18 14.63 (11) (b) The requirements to pay tuition and ~~mandatory student~~ fees and the
19 costs of room and board, books, supplies and equipment under sub. (5) and to make
20 refunds under sub. (7) are subject to the availability of sufficient assets in the tuition
21 trust fund.

History: 1999 a. 9.

22 **SECTION 6.** 14.64 of the statutes is created to read:

23 14.64 **College savings program.** (1) DEFINITIONS. In this section:

BILL

SECTION 6

1 (a) "Account owner" means an individual who establishes a college savings
2 account under this section.

3 (b) "Board" means the college savings program board.

4 (2) DUTIES OF THE COLLEGE SAVINGS PROGRAM BOARD. The board shall do all of the
5 following:

6 (a) Establish and administer a college savings program that allows an
7 individual, trust, legal guardian or entity described under 29 USC 529 (e) (1) (C) to
8 establish a college savings account to cover tuition, fees and the costs of room and
9 board, books, supplies and equipment required for the enrollment or attendance of
10 a beneficiary at an eligible educational institution, as defined under 26 USC 529.

11 (b) Ensure that the college savings program meets the requirements of a
12 qualified state tuition plan under 26 USC 529.

13 (c) Contract with a private entity to serve as manager, invest the contributions
14 to college savings accounts and pay distributions to beneficiaries and eligible
15 educational institutions.

16 (d) Provide to each account owner, and to persons who are interested in
17 establishing a college savings account, information about current and estimated
18 future higher education costs, levels of participation in the college savings program
19 that will help achieve educational funding objectives and availability of and access
20 to financial aid.

21 (e) Promulgate rules to implement and administer this section, including rules
22 that determine whether a withdrawal from a college savings account is a qualified
23 or nonqualified withdrawal, as defined under 26 USC 529, and that impose more
24 than a de minimis penalty, as defined under 26 USC 529, for nonqualified
25 withdrawals.

no spell
5 - U.S.

BILL



1

(f) Seek rulings and guidance from the United States department of the treasury, the internal revenue service and the securities and exchange commission to ensure the proper implementation and administration of the college savings program.

5

(g) Ensure that if the board changes managers, the balances of college savings accounts are promptly transferred into investment instruments as similar to the original investment instruments as possible.

8

(h) Keep personal and financial information pertaining to an account owner or a beneficiary closed to the public.

10

(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF SAVINGS ACCOUNTS. (a) An account owner may do all of the following:

12

1. Contribute to a college savings account

13

2. Select a beneficiary of a college savings account.

14

3. Change the beneficiary of a college savings account to a family member, as defined under 26 USC 529, of the previous beneficiary.

16

4. Transfer all or a portion of a college savings account to another college savings account whose beneficiary is a member of the family.

18

5. Designate an individual other than the beneficiary as an individual to whom funds may be paid from a college savings account.

20

6. Receive distributions from a college savings account if no other individual is designated.

22

(b) An individual may be the beneficiary of more than one college savings account, and an account owner may be the beneficiary of a college savings account that the account owner has established.

24

BILL

SECTION 6

1 (c) The board shall establish a minimum initial contribution to a college savings
2 account that may be waived if the account owner agrees to contribute to a college
3 savings account through a payroll deduction or automatic deposit plan. The board
4 shall ensure that any such plan permits the adjustment of scheduled deposits
5 because of a change in the account owner's economic circumstances or a beneficiary's
6 educational plans.

7 (d) An account owner under this section may terminate his or her college
8 savings account if any of the following occurs:

9 1. The beneficiary dies or is permanently disabled.

10 2. The beneficiary graduates from high school but is unable to gain admission
11 to an institution of higher education after a good faith effort.

12 3. The beneficiary attended an institution of higher education but involuntarily
13 failed to complete the program in which he or she was enrolled.

14 4. The beneficiary is at least 18 years old and one of the following applies:

15 a. The beneficiary has not graduated from high school.

16 b. The beneficiary has decided not to attend an institution of higher education.

17 c. The beneficiary attended an institution of higher education but voluntarily
18 withdrew without completing the program in which he or she was enrolled.

19 5. Other circumstances determined by the board to be grounds for termination.

20 (e) The board shall terminate a college savings account if any portion of the
21 college savings account balance remains unused 10 years after the anticipated
22 academic year of the beneficiary's initial enrollment in an eligible educational
23 institution.

24 (4) SELECTION OF AND CONTRACT WITH MANAGER. (a) The board shall select a

25 person as manager ^{of the program} based upon ~~all of the following~~ factors: ^{determined by the}
board, which shall include

BILL

1. The person's ability to satisfy record[✓]keeping and reporting requirements.
2. The fees, if any, that the person proposes to charge account owners.
3. The person's plan for promoting the college savings program and the investment that the person is willing to make to promote the program.
4. The minimum initial contribution or minimum contributions that the person will require and the ability and willingness of the person to accept electronic contributions.
5. The ability of the person to augment the college savings program with additional, beneficial services[✓] related to the program
- (9) (b) The contract between the board and the manager shall ensure all of the following:
1. That the manager reimburse the state for all administrative costs that the state incurs for the college savings program.
2. That a firm of certified public accountants selected by the manager annually audit the college savings program and provide a copy of the audit to the board.
3. That each account owner receive a quarterly statement that identifies the contributions to the college savings account during the preceding quarter, the total contributions to and the value of the college savings account through the end of the preceding quarter and any distributions made during the preceding quarter.
- (5) CONTRACTS WITH PROFESSIONALS. The board may enter into a contract for the services of accountants, attorneys, consultants and other professionals to assist in the administration and evaluation of the college savings[✓] program.
- (23) REPORT. Annually, the board shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the

BILL

SECTION 6

1 performance of the college savings program and the college tuition prepayment
2 program under s. 14.63, including any recommended changes to either program.

3 (7) CONSTRUCTION. Nothing in this section guarantees an individual's
4 admission to, retention by or graduation from any institution of higher education; a
5 rate of interest or return on a college savings account; or the payment of principal,
6 interest or return on a college savings account.

7 (8) EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION; SECURITY FOR
8 LOAN. (a) A beneficiary's right to qualified withdrawals under this section is not
9 subject to garnishment, attachment, execution or other process of law.

10 (b) No interest in a college savings account may be pledged as security for a loan.

11 (9) FINANCIAL AID CALCULATIONS. No state agency, University of Wisconsin
12 System institution or college campus or technical college may include the balance of
13 a college savings account in the calculation of a beneficiary's eligibility for state
14 financial aid for higher education.

15 SECTION 7. 15.07 (1) (b) 2. of the statutes is created to read:

16 15.07 (1) (b) 2. College savings program board.

JNS
8-1/16

17 SECTION 8. 20.585 (1) (gm) of the statutes is created to read:

18 20.585 (1) (gm) *General program operations; reimbursement.* All moneys
19 received from the manager of the college savings program under s. 14.64 (4) (f) 1. for
20 general programs operations. No moneys may be encumbered under this paragraph
21 on or after the first day of the 25th month beginning after the effective date of this
22 paragraph [revisor inserts date].

(4) (b)

23 SECTION 9. 815.18 (3) (p) of the statutes is created to read:

24 815.18 (3) (p) *College savings accounts* An interest in a college savings account under s. 14.64.

25 SECTION 10. Nonstatutory provisions.

wpo -
please
create
auto-reference
"b" - -
use on
page 10

BILL

WPO create auto-reference "a" -- use on this page twice

of the statutes

1 (1) (a) Notwithstanding section 15.07 (1) (b) 2. of the statutes, as created by
2 this act, the governor may provisionally appoint initial members of the college
3 savings program board under section 14.57, as created by this act. Those provisional
4 appointments are in force until the governor withdraws them or the senate acts upon
5 them, and if the senate confirms them, they continue for the remainder of the
6 unexpired terms, if any, of the members and until successors are chosen and qualify.
7 A provisional appointee may exercise all the powers and duties of board membership
8 to which the person is appointed during the time in which the appointee qualifies.

9 (b) A provisional appointment under paragraph (a) that the governor
10 withdraws lapses upon withdrawal and creates a vacancy for the provisional
11 appointment of another initial member of the college savings program board. A
12 provisional appointment that the governor makes under paragraph (a) and that the
13 senate rejects lapses upon rejection and creates a vacancy for nomination and
14 appointment under section 15.07 (1) (b) 2. of the statutes, as created by this act, of
15 another initial board member.

WPO: use auto-reference "a"

16 (2) Notwithstanding the length of the terms specified in section 14.57 (3) and
17 (6) of the statutes, as created by this act, the initial terms of the member appointed
18 under section 14.57 (3) of the statutes, as created by this act, and of 2 of the members
19 appointed under section 14.57 (6) of the statutes, as created by this act, expire on May
20 1, 2003, and the initial terms of 4 of the members appointed under section 14.57 (6)
21 of the statutes, as created by this act, expire on May 1, 2005.

22 SECTION 11. Effective dates. This act takes effect on the 1st day of the 10th
23 month following publication, except as follows:

BILL

SECTION 11

1
2
3

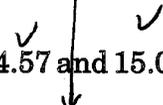
(1) The treatment of sections 14.57 and 15.01 (1) (b) 2. of the statutes ~~as created~~
~~by this act~~ and SECTION 6 of this act, take effect the day after publication.

(END)

STBT

*use
auto-reference
"b" --
created on
page 8*

take



1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB 4017/jins
.....

INS ✓
3-5

1 SECTION 1. 14.63 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
2 amended to read:

3 14.63 (4) NUMBER OF TUITION UNITS PURCHASED. A person who enters into a
4 contract under sub. (3) may purchase tuition units at any time and in any number,
5 except that the total number of tuition units purchased on behalf of a single
6 beneficiary may not exceed the number necessary to pay for 4 years of full-time
7 attendance, including ~~mandatory student tuition, fees and the costs described in sub.~~ ✓
8 (5) (a), as a resident undergraduate at the institution within the University of
9 Wisconsin System that has the highest resident undergraduate tuition, as
10 determined by the state treasurer, in the anticipated academic years of their use.

History: 1999 a. 9.

11 SECTION 2. 14.63 (5) (b) 2. of the statutes, as affected by 1999 Wisconsin Act 9,
12 is amended to read:

13 14.63 (5) 2. An amount equal to the sum of the institution's tuition and ~~mandatory~~
14 ~~student~~ fees and the costs described in ~~sub. (a)~~ (a) for that semester.

History: 1999 a. 9.

15 SECTION 3. 14.63 (8) of the statutes, as affected by 1999 Wisconsin Act 9, is
16 amended to read:

17 14.63 (8) EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION. Moneys
18 deposited in the tuition trust fund and a beneficiary's right to the payment of tuition
19 and ~~mandatory student~~ fees and the costs described in sub. (5) (a) under this section
20 are not subject to garnishment, attachment, execution or any other process of law.

History: 1999 a. 9.

(END OF INSERT)

INS

3-16

(14)

14.63 (5)

par.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4017/linsJTK
JTK.....

JWS 8-16

✓
SECTION 1. 16.71 (5) of the statutes is created to read:

16.71 (5) The department shall solicit competitive sealed proposals under s. 16.75 (2m) from nongovernmental persons to serve as manager of the college savings program under s. 14.64. The department shall delegate to the college savings program board the responsibility to select the manager under s. 14.64 (4), based upon the proposals submitted.

✓
SECTION 2. 16.75 (2m) (a) of the statutes is amended to read:

w/o please make sure that this space is plain
16.75 (2m) (a) ~~If~~ Except as otherwise required by law, if the secretary or his or her designee determines that the use of competitive sealed bidding is not practicable or not advantageous to this state, the department may solicit competitive sealed proposals. Each request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-40177-1dn

~~MEMORANDUM~~
M.J.L. *[Signature]*

✓
Representative Kreibich:

At your request, I have created a separate college savings program, based upon the second proposal prepared by Don Stitt and Brian Elliott and our discussion of that proposal. Shortly before completing the draft, I received an e-mail from Mary Matthias containing new instructions that pertained to amending the EdVest program. As I discussed with Marty Olle, for administrative reasons the EdVest program cannot be changed to allow nonprofit corporations to purchase tuition units for scholarship programs. I did, however, make the other changes to EdVest that Mary included in her e-mail.

The comments below pertain to the portion of the bill dealing with the college savings program:

1. This bill requires the college savings program board to hire a private entity to invest contributions and manage the college savings program. I am not aware of any state college savings program that *requires* the state or a state board to contract for the investment of contributions. Requiring the state to hire a private entity to manage the program may threaten the tax-exempt status of the college savings plan because the IRS rules require that the state be "actively involved" in running a college savings program. The IRS looks at a number of factors in determining whether a state is actively involved, including:

- a. Whether the state acts as a trustee or holds program assets directly or for the benefit of the account owners or designated beneficiaries.
- b. Whether the state holds private contractors to the same standards and requirements that apply when private contractors handle funds that belong to the state or provide services to the state.
- c. Whether the state provides funding for the program.

At Don Stitt's request, the contributions to the accounts are not deposited in a segregated fund but instead are sent directly to the manager. Therefore, it would be prudent to ensure that the contract between the board and the manager hold the manager to the standards and requirements in 1.b., above.

In light of 1.c. and the ^{on}going administrative costs of the college savings program, you may wish to consider creating an appropriation to fund those costs. This draft

creates a two-year appropriation, funded with reimbursement payments from the manager, to cover only the initial administrative costs.

2. I did not include Item A on page 10 of the proposal because the program manager is not permitted to administer or develop the college savings program.

3. The proposal and this draft provide that the board determine the minimum initial contribution to a college savings account and that the manager be chosen, in part, on what minimum contribution the manager would require. It is not clear, however, who actually determines the initial minimum contribution. Do you want to delete the requirement that the manager be chosen, in part, upon what minimum contribution the manager would require?

↳ 4. At your request, this draft requires the board to report on the EdVest program. Please note, however, that under current law, the state treasurer also reports annually on the EdVest program. Do you want to eliminate one of these reporting requirements? Because the board would not be administering the EdVest program, it might be difficult for the board to prepare a report on that program.

5. The draft prevents a state agency from using the balance in a college savings account in the calculation of state aid for higher education. Should the state be prohibited from using a college savings account balance in the calculation of other state aid, such as public assistance?

6. This draft has a delayed effective date to allow the board time to promulgate rules for administering the program. *would please check spacing* The draft also provides for the provisional appointment of board members to serve pending senate confirmation.

Madelon J. Lief
Legislative Attorney
Phone: (608) 267-7380

Transmission Report

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608 264 6948
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Wis. Assembly

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State of Wisconsin

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EC: Error Correct
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MP: Multi-Poll
RM: Receive to Memory
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PD: Polled by Remote
PG: Polling a Remote
DR: Document Removed
FO: Forced Output

MB: Receive to Mailbox
PI: Power Interruption
TM: Terminated by user
WT: Waiting Transfer

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4017/1dn
MJL:cmh:jf

December 20, 1999

Representative Kreibich:

At your request, I have created a separate college savings program, based upon the second proposal prepared by Don Stitt and Brian Elliott and our discussion of that proposal. Shortly before completing the draft, I received an e-mail from Mary Matthias containing new instructions that pertained to amending the EdVest program. As I discussed with Marty Olle, for administrative reasons the EdVest program cannot be changed to allow nonprofit corporations to purchase tuition units for scholarship programs. I did, however, make the other changes to EdVest that Mary included in her e-mail.

The comments below pertain to the portion of the bill dealing with the college savings program:

1. This bill requires the college savings program board to hire a private entity to invest contributions and manage the college savings program. I am not aware of any state college savings program that *requires* the state or a state board to contract for the investment of contributions. Requiring the state to hire a private entity to manage the program may threaten the tax-exempt status of the college savings plan because the IRS rules require that the state be "actively involved" in running a college savings program. The IRS looks at a number of factors in determining whether a state is actively involved, including:

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c. Whether the state provides funding for the program.

At Don Stitt's request, the contributions to the accounts are not deposited in a segregated fund but instead are sent directly to the manager. Therefore, it would be prudent to ensure that the contract between the board and the manager hold the manager to the standards and requirements in 1.b., above.

In light of 1.c. and the ongoing administrative costs of the college savings program, you may wish to consider creating an appropriation to fund those costs. This draft

creates a two-year appropriation, funded with reimbursement payments from the manager, to cover only the initial administrative costs.

2. I did not include Item A on page 10 of the proposal because the program manager is not permitted to administer or develop the college savings program.

3. The proposal and this draft provide that the board determine the minimum initial contribution to a college savings account and that the manager be chosen, in part, on what minimum contribution the manager would require. It is not clear, however, who actually determines the initial minimum contribution. Do you want to delete the requirement that the manager be chosen, in part, upon what minimum contribution the manager would require?

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6. This draft has a delayed effective date to allow the board time to promulgate rules for administering the program. The draft also provides for the provisional appointment of board members to serve pending senate confirmation.

Madelon J. Lief
Legislative Attorney
Phone: (608) 267-7380

madelon.lief@legis.state.wi.us
608-267-7380

-----Original Message-----

From: ELLIOTT, Brian J BJE [mailto:BJE@madison.whdlaw.com]
Sent: Wednesday, December 22, 1999 9:33 AM
To: 'madelon.lief@legis.state.wi.us'
Cc: STITT, Donald K DKS
Subject: QSTP Draft

Madelon: After reviewing LRB-4017/1, a number of questions came up. Following are those questions:

1. On page 2, line 2, the board is attached to the office of the Wisconsin State Treasurer. The intent is to have the board attached only for administrative purposes. Does this need to be explicitly stated in the bill language?
2. On page 2, lines 2 thru 10 and on page 3, lines 1 thru 2, a roster of appointees to the board is provided. The intent was to have board members serve staggered terms. Why is this not provided for?
3. On page 5, line 8, the board has the duty to contract with a private entity to serve as program manager. Does the remaining language provide the board with the power to "... invest the contributions to college savings accounts and pay distributions to beneficiaries and eligible educational institutions ..."? If yes, why? If no, does this responsibility fall to the program manager?
4. On page 7, line 16, the board is given the ability to terminate an account if any portion of the account remains unused for 10 years after the anticipated academic year of the beneficiary's initial enrollment. What is the rationale for inclusion of this language?
5. On page 7, line 21, the board is directed to select the program manager. The intent was to have the Wisconsin Department of Administration be responsible for issuing an RFP and selecting the program manager.
6. On page 7, beginning on line 21, references are made to a "person" being selected as program manager. What is the definition of a "person."
7. On page 9, line 19, the Wisconsin Department of Administration is to delegate to the college savings board the responsibility for selecting the program manager. Again, the intent was to have the Wisconsin Department of Administration select the program manager. What is the rationale for inclusion of this language?
8. On page 11, line 12, reference is made to section 15.01 (1) (b) 2 of the statutes. Should this be section 15.07 (1) (b) 2 of the statutes?

Thanks for taking the time to review these items. Should you have any questions, or wish to discuss this information in more detail, please do not hesitate to contact me (258-7127).

6. On page 5, line 2 of the draft, language is included that states that a trust may establish an account. Does the IRS allow for this? It does not appear to be clearly provided for under section 529.

Lonnie, thanks again for all your help.

BJE

-----Original Message-----

From: Lief, Madelon [mailto:Madelon.Lief@legis.state.wi.us]

Sent: Wednesday, December 22, 1999 10:42 AM

To: 'ELLIOTT, Brian J BJE'

Cc: Cook, Andrew

Subject: RE: QSTP Draft

Brian:

1. The board is attached for administrative purposes only. That's what the language "under s. 15.03" means on p.2, line 3. If you read s. 15.03, you will see that this language has the effect of attaching the board for administrative purposes to the treasurer's office. (This is one of our drafting conventions.)

2. Another one of our drafting conventions provides that we do not state the members of boards are attached for "staggered" terms. Instead, we provide for staggering in a nonstatutory provision. That's what I have done in Section 15 (2) of the bill.

3. No, the remaining language allows the manager to invest the contributions. That is, the private entity is to serve as manager, invest the contributions and pay distributions.

4. This language was included as part of your (your and Don's) request that I include termination provisions that were identical to those in s. 14.63 (6). If you look at paragraph (b) of that subsection (6), you will see that the language in the bill draft is identical to this language.

5. & 7. You will need to contact Jeff Kuesel about these questions, but, I believe that he understood your intention to be for DOA to solicit proposals under s. 16.75 (2m) for the program manager (the rfp) and to allow the board to actually select the manager from among the proposals. See Section 11 of the draft. If this is not what you want, you will need to talk to Jeff and he will redraft accordingly. Jeff is out of the office until the 30th.

6. "Person" is defined in s. 990.01 (26).

8. Yes, you are right. I will have this typo corrected on the next draft. I understand from Mary Matthias, who has spoken to Andy, that there may be some minor, substantive changes that will require a redraft. If that is the case, I will wait to correct this typo. If not, I will send it through today with this change.

I have copied Andy on this and also forwarded to him a copy of your e-mail to me.

Lonnie

Madelon J. Lief
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

Lief, Madelon

From: ELLIOTT, Brian J BJE [BJE@madison.whdlaw.com]
Sent: Tuesday, December 28, 1999 11:59 AM
To: 'Lief, Madelon'
Cc: STITT, Donald K DKS; 'Cook, Andrew'
Subject: RE: QSTP Draft

Lonnie: Again, thanks for getting back to me on these questions. A couple of other questions and comments have cropped up and I am hoping you can take a look at them. They are as follows:

1. The board as provided for has 11 members. Do we, or can we, or is it necessary to revise the draft to insure that the board will consist of at least five, but no more than eleven members, five members of which shall always consist of the president of the Board of Regents of the UW system or his designee, a representative of private colleges in WI, the chairperson of the investment board or his designee, the president of the technical college system board or his designee, and the state treasurer or his designee? We would like to have this line up written in stone, as well as the number of board members (of course it is recognized that future legislature's could change the number).
2. In your drafter's note, you asked if the requirement that the program manager be chosen, in part, upon what minimum contribution the manager would require, should be deleted. Do not delete the requirement that the manager be selected, in part, based on the minimum contribution the manager would require. I don't think the board would look at setting the minimum investment requirement as a step separate from selecting the manager. I envisioned that DOA would look at the proposals and would consider the minimums that different managers require (for example, one firm may want accounts to be opened with only \$250 while another firm may want a minimum of \$1000). The state could consider this factor in deciding which firm to choose and would be exercising its ability to set the minimum requirement by selecting the firm that best meets the minimum it requires. The board could also work together with the firm from that point forward to change the minimum as necessary.
3. You can eliminate the board's reporting requirement on EdVest. ✓
4. Your drafter's note raised the concern about the tax-exempt status of the program should the state be required to hire a private entity to manage the program. Given the proposed IRS regulations (1.529-2(b)(3)), it is believed the considerations for what is considered "actively involved" can be easily be met by using an outside firm. These include whether the state or its agency:
 - provides tax, student aid, or other benefits to account owners or beneficiaries
 - establishes operating rules for administering the program
 - plays a substantial role in selecting/supervising/monitoring/auditing/terminating private entities that provide services
 - holds private contractors to the same standards that apply when private contractors handle funds that belong to the state, or provide services to the state
 - provides funding for the program
 - acts as trustee
5. On page 5, line 2, should the provision read 26 USC 529(e)(1)(C) rather than 29 USC? ✓

6. On page 5, line 2 of the draft, language is included that states that a trust may establish an account. Does the IRS allow for this? It does not appear to be clearly provided for under section 529.

Lonnie, thanks again for all your help.

BJE

-----Original Message-----

From: Lief, Madelon [mailto:Madelon.Lief@legis.state.wi.us]

Sent: Wednesday, December 22, 1999 10:42 AM

To: 'ELLIOTT, Brian J BJE'

Cc: Cook, Andrew

Subject: RE: QSTP Draft

Brian:

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I have copied Andy on this and also forwarded to him a copy of your e-mail to me.

Lonnie

Madelon J. Lief
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

Lief, Madelon

From: Lief, Madelon
Sent: Tuesday, December 28, 1999 4:09 PM
To: 'ELLIOTT, Brian J BJE'
Cc: Cook, Andrew
Subject: RE: QSTP Draft

Brian:

1. I'm not sure I understand the concern about the membership of the board. The bill provides that the board must consist of 11 members, five of whom must be the persons whom you mention in your e-mail. The governor does not have the discretion to replace these categories of members with members of his own. He does, however, have the discretion as to the "six other members," but he must nominate six, not five or four. These six members are subject to senate confirmation.

2. I won't delete the requirement, but it does seem odd to say that the board shall establish a minimum initial contribution (page 6, line 21) and then to say that the manager will be chosen, in part, on the "minimum contributions that the person will require."

3. OK, I will do this on the redraft.

4. I don't necessarily disagree with you, but I felt obligated to point out to Rep. Kreibich that the IRS may scrutinize this program more carefully than other state programs that do not require a private entity to manage the program. I still believe that it would be prudent to create an appropriation for on-going administrative expenses of the board, for the reasons I detailed in my drafter's note.

5. Yes. I will correct this on the redraft.

6. This language mirrors that of the EdVest program because it was my understanding that you wanted the basic requirements of the program to be as similar to the EdVest program as possible. Although it is true that 26 USC 529 does not specifically allow a trust to establish an account (the IRC speaks in terms of a "person" opening an account and purchasing tuition units or opening a savings account), the EdVest program, which is a qualified state tuition program under 26 USC 529, permits a trust to enter into a contract for the sale of tuition units. Thus, it appears that this is OK, although you may want to ask a tax attorney at your firm his or her opinion. (We could find no definition of "person" that would shed light on how that term is used in 26 USC 529.)

Lonnie

Andy: I will be making the changes I mention above in the next draft. You should, therefore, make sure that you do NOT introduce the /1. I will wait to hear from you and Brian about any more changes before I submit the /2 to your office. Do you want to establish a deadline for making changes to the draft so that I know when I should stop redrafting and have the draft edited and submitted? (Marc tells me that you are not going to be adding the state tax exemption provision to the bill but are instead thinking about an amendment.)

Madelon J. Lief
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

madelon.lief@legis.state.wi.us
608-267-7380

-----Original Message-----

From: ELLIOTT, Brian J BJE [mailto:BJE@madison.whdlaw.com]
Sent: Tuesday, December 28, 1999 11:59 AM
To: 'Lief, Madelon'
Cc: STITT, Donald K DKS; 'Cook, Andrew'
Subject: RE: QSTP Draft

Lonnie: Again, thanks for getting back to me on these questions. A couple of other questions and comments have cropped up and I am hoping you can take a look at them. They are as follows:

1. The board as provided for has 11 members. Do we, or can we, or is it necessary to revise the draft to insure that the board will consist of at least five, but no more than eleven members, five members of which shall always consist of the president of the Board of Regents of the UW system or his designee, a representative of private colleges in WI, the chairperson of the investment board or his designee, the president of the technical college system board or his designee, and the state treasurer or his designee? We would like to have this line up written in stone, as well as the number of board members (of course it is recognized that future legislature's could change the number).
2. In your drafter's note, you asked if the requirement that the program manager be chosen, in part, upon what minimum contribution the manager would require, should be deleted. Do not delete the requirement that the manager be selected, in part, based on the minimum contribution the manager would require. I don't think the board would look at setting the minimum investment requirement as a step separate from selecting the manager. I envisioned that DOA would look at the proposals and would consider the minimums that different managers require (for example, one firm may want accounts to be opened with only \$250 while another firm may want a minimum of \$1000). The state could consider this factor in deciding which firm to choose and would be exercising its ability to set the minimum requirement by selecting the firm that best meets the minimum it requires. The board could also work together with the firm from that point forward to change the minimum as necessary.
3. You can eliminate the board's reporting requirement on EdVest.
4. Your drafter's note raised the concern about the tax-exempt status of the program should the state be required to hire a private entity to manage the program. Given the proposed IRS regulations (1.529-2(b)(3)), it is believed the considerations for what is considered "actively involved" can be easily be met by using an outside firm. These include whether the state or its agency:
 - provides tax, student aid, or other benefits to account owners or beneficiaries
 - establishes operating rules for administering the program
 - plays a substantial role in selecting/supervising/monitoring/auditing/terminating private entities that provide services
 - holds private contractors to the same standards that apply when private contractors handle funds that belong to the state, or provide services to the state
 - provides funding for the program
 - acts as trustee
5. On page 5, line 2, should the provision read 26 USC 529(e)(1)(C) rather than 29 USC?
6. On page 5, line 2 of the draft, language is included that states that a trust may establish an account. Does the IRS allow for this? It does not appear to be clearly provided for under section 529.

Lonnie, thanks again for all your help.

BJE

-----Original Message-----

From: Lief, Madelon [mailto:Madelon.Lief@legis.state.wi.us]

Lief, Madelon

From: Lief, Madelon
Sent: Wednesday, December 29, 1999 12:08 PM
To: 'ELLIOTT, Brian J BJE'
Cc: Cook, Andrew
Subject: RE: QSTP Draft

If I do that, the board may NOT allow a trust to open an account. I would recommend leaving the reference in, because, as a legal matter, the board can always limit who can be an account owner because it is charged to comply with section 529 (and if 529 or rulings under that section preclude a trust from being an account owner, then the board can act accordingly). However, if the bill does not permit a trust to be an account owner, and the bill is enacted, the board would not have the legal authority to override the statutory directive (that is, that only individuals and legal guardians can open accounts).

I think that best thing is to leave the reference in and have one of your tax people look at the draft and call the IRS. You can always draft an amendment to remove the reference if the IRS says its problematic. (But I can't imagine that will be the case, given that trusts can have EdVest accounts.)

Madelon J. Lief
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

madelon.lief@legis.state.wi.us
608-267-7380

-----Original Message-----

From: ELLIOTT, Brian J BJE [mailto:BJE@madison.whdlaw.com]
Sent: Wednesday, December 29, 1999 11:52 AM
To: 'Lief, Madelon'
Subject: RE: QSTP Draft

Lonnie: Upon further reflection, let's just take the reference to "trusts" out of the draft for now. If the board wants to address the matter as part of its responsibility to maintain 529 compliance, it can do so.

BJE

-----Original Message-----

From: Lief, Madelon [mailto:Madelon.Lief@legis.state.wi.us]
Sent: Wednesday, December 29, 1999 10:45 AM
To: 'ELLIOTT, Brian J BJE'
Subject: RE: QSTP Draft

Brian:

Unfortunately, I have no clout with the IRS. Although Marc Shovers drafts in the tax area, he does not know the answer to the question, although he concurs with me that if the EdVest program can have trusts buy tuition units, there should be no problem with having a trust open a college savings account. I have no idea of whom to call at the IRS, which is why I suggested that you have one of your tax people look at the issue. For one thing, a tax attorney in private practice is likely to know whom to call at the IRS and/or can do or has done the kind of research into IRS rulings that could resolve the issue. The other thing you could do is try calling some of the program directors in other states. I understand your concern, but I really am not the person who is qualified to look into this issue, given my

unfamiliarity with the IRC. Marc is terribly strapped for time because he is on paternity leave and only works on two and a half days a week. Given the time constraints, I'm afraid this is the best we can do.

Lonnie

Madelon J. Lief
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

madelon.lief@legis.state.wi.us
608-267-7380

-----Original Message-----

From: ELLIOTT, Brian J BJE [mailto:BJE@madison.whdlaw.com]
Sent: Wednesday, December 29, 1999 10:25 AM
To: 'Lief, Madelon'
Cc: STITT, Donald K DKS; 'andrew.cook@legis.state.wi.us'
Subject: RE: QSTP Draft

Lonnie: Just a follow up to my earlier e-mail. Regarding the trust issue, is there any way you can get some idea from the IRS if this is in fact "ok"? The area where 529 speaks of trusts is under the definition of beneficiary and in that section it specifically identifies the trusts as those that are 501(c)(3)'s or governmental units, not all types of trusts. Is it at all possible to get some confirmation from the IRS that these type of trusts are allowed to be account owners and inquire whether others may be as well? By not defining eligible trusts in the bill there is a fear that individuals may get the impression that family trusts or other types of trusts can become account owners, which is not clear from the language of 529. I don't want you to have to spend a lot of time on this question, but it is a concern and I think if a drafting attorney from the State of Wisconsin contacts the IRS, they may be more responsive than if I called them.

BJE

-----Original Message-----

From: Lief, Madelon [mailto:Madelon.Lief@legis.state.wi.us]
Sent: Tuesday, December 28, 1999 4:09 PM
To: 'ELLIOTT, Brian J BJE'
Cc: Cook, Andrew
Subject: RE: QSTP Draft

Brian:

1. I'm not sure I understand the concern about the membership of the board. The bill provides that the board must consist of 11 members, five of whom must be the persons whom you mention in your e-mail. The governor does not have the discretion to replace these categories of members with members of his own. He does, however, have the discretion as to the "six other members," but he must nominate six, not five or four. These six members are subject to senate confirmation.

2. I won't delete the requirement, but it does seem odd to say that the board shall establish a minimum initial contribution (page 6, line 21) and then to say that the manager will be chosen, in part, on the "minimum contributions that the person will require."

3. OK, I will do this on the redraft.

Kuesel, Jeffery

From: ELLIOTT, Brian J BJE [BJE@madison.whdlaw.com]
Sent: Wednesday, December 22, 1999 1:40 PM
To: 'jeffery.kuesel@legis.state.wi.us'
Subject: LRB 4017-1 QSTP Draft

Lonnie suggested that I contact you regarding the above mentioned draft and two provisions within it that I have a question about.

1. On page 7, line 21, the board is directed to select the program manager. The intent was to have the Wisconsin Department of Administration be responsible for issuing an RFP and selecting the program manager.
2. On page 9, line 19, the Wisconsin Department of Administration is to delegate to the college savings board the responsibility for selecting the program manager. Again, the intent was to have the Wisconsin Department of Administration select the program manager. What is the rationale for inclusion of this language?

Thanks for looking at these. Should you wish to discuss these questions further, as always, feel free to contact me.

Brian Elliott
258-7127

Kuesel, Jeffery

From: ELLIOTT, Brian J BJE [BJE@madison.whdlaw.com]
Sent: Tuesday, December 28, 1999 10:54 AM
To: 'jeffery.kuesel@legis.state.wi.us'
Cc: 'Cook, Andrew'; STITT, Donald K DKS
Subject: LRB 4017/1 QSTP Draft

Jeff: This is a follow up to my message of Dec. 22. Please go ahead and make the changes in the draft so that DOA has responsibility for issuing an RFP and choosing the program manager. I have checked this out with Rep. Kreibich's office and all is well.

BJE

Kuesel, Jeffery

From: Kuesel, Jeffery
Sent: Thursday, December 30, 1999 3:00 PM
To: 'BJE@madison.whdlaw.com'
Cc: Cook, Andrew; Lief, Madelon
Subject: LRB-4017

Brian, I have changed the draft so that DOA determines who will be the program manager. (The original instructions called for OST to exercise this responsibility, but I understood that the responsibility was to be shifted to the Board at our meeting). I should note that with a Request For Proposal process, the entity that awards the contract necessarily has a policy-making role in selecting the features and capabilities offered by the proposed contractors that will be of the greatest value to the program, and in selecting and weighing the factors that determine whether an incumbent's performance merits renewal of a contract. This change therefore narrows somewhat the Board's supervisory role over the program.

*Jeffery Kuesel
Managing Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison WI 53701-2037
(608)266-6778
jeffery.kuesel@legis.state.wi.us*