

SENATE BILL NO. 2166

Introduced by

Senators Schobinger, O'Connell, Traynor

Representatives Grande, Kunkel, Mahoney

1 A BILL for an Act to provide for the advance purchase of tuition credits and to establish a tuition
2 account program; and to provide a continuing appropriation.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Tuition account program - Establishment.** The Bank of North Dakota
5 shall establish and administer a tuition account program to provide for the advance purchase of
6 tuition credits for a beneficiary attending a participating institution of higher education.

7 **SECTION 2. Tuition account program - Advisory board - Terms - Compensation -**
8 **Duties.**

- 9 1. The tuition account program advisory board consists of the state treasurer, a
10 representative of the Bank of North Dakota, one member appointed by the
11 president pro tempore of the senate, one member appointed by the speaker of the
12 house of representatives, and three members appointed by the governor. All
13 appointed members must have knowledge, skill, and expertise in financial affairs.
14 The president of the state board of higher education and the commissioner of
15 higher education shall serve as ex officio nonvoting members.
- 16 2. The term of each appointed board member is three years, beginning on July first
17 following the appointment; except that the terms of initial board members must be
18 staggered by lot so that one term expires at the end of the first year, one term
19 expires at the end of the second year, and one term expires at the end of the third
20 year. Vacancies must be filled for the unexpired terms of appointed members of
21 the board in the same manner as original appointments.
- 22 3. The representative of the Bank shall call the organizational meeting of the board, at
23 which time a chairman must be selected from among the members to serve a term
24 of one year. Meetings of the board must be held at least quarterly and may be

held more frequently at the call of the chairman. Each appointed member of the board is entitled to receive the same per diem compensation as that provided for members of the legislative council under section 54-35-10, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties on behalf of the board.

4. The board shall review the work of the Bank in relation to the tuition account program and shall provide advice and recommendations. The board shall report annually to the governor and to the legislative council.

5. The Bank shall provide the board with any professional and clerical staff necessary for the fulfillment of the board's duties.

SECTION 3. Tuition payment fund - Composition. The tuition payment fund is a special fund maintained at the Bank of North Dakota. The tuition payment fund consists of:

1. All payments made by purchasers pursuant to tuition account payment contracts and all interest, earnings, and other additions to the fund; and
2. Any other moneys, public or private, appropriated or made available to the Bank for the fund from any source and all interest, earnings, and additions to such moneys.

SECTION 4. Tuition payment fund - Administration.

1. The Bank of North Dakota shall preserve, invest, and expend the assets of the tuition payment fund solely pursuant to and for the purposes set forth in this Act.
2. The Bank shall obtain appropriate actuarial assistance to establish, maintain, and certify that the fund is sufficient to defray the tuition account program's obligations and shall annually evaluate, or cause to be evaluated, the actuarial soundness of the fund. If the Bank finds a need for additional assets in order to preserve actuarial soundness or finds that actuarial soundness can be maintained with fewer assets, the Bank may adjust the purchase price of tuition credits.
3. The Bank, in conjunction with the board, shall make an annual report to the governor and the legislative council showing the fund's condition. This report must contain the findings and recommendations of the Bank and the board and the recommendations of any private consultant under contract or volunteering services to the Bank or board. The report must detail actions taken or needed to modify the tuition account program in order to ensure the fiscal sufficiency of the fund. The

report must address the relationship between existing and projected net investment returns and existing and projected tuition levels and address the advisability or necessity of modifying the authorized investment of fund assets, the purchase price of tuition credits, the amount of administrative fees or charges or the amount of refunds offered upon termination of a tuition account.

SECTION 5. Bank of North Dakota - Tuition account program - Duties. In addition to any other powers granted by this Act, the Bank of North Dakota shall have the powers necessary to carry out this Act, including the powers to:

1. Administer the tuition account program and the fund;
2. Enter into tuition account payment contracts with purchasers;
3. Contract and make necessary arrangements with institutions of higher education;
4. Pay directly to an institution, upon the receipt of appropriate documentation, the funds which the Bank is obligated to transfer to the institution upon a beneficiary's use of tuition credits;
5. Contract for goods and services, and engage and employ personnel, including the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional, managerial, and technical assistance and advice;
6. Solicit and accept gifts, grants, and other aid from any public or private source;
7. Charge and collect administrative fees and charges in connection with any transaction, including continued participation in the tuition account program;
8. Terminate tuition accounts and make refunds;
9. Contract for insurance, letters of credit, and collateral agreements;
10. Restrict the number of participants in the program;
11. Adjust the terms of subsequent tuition account payment contracts;
12. Solicit answers from the appropriate federal agencies regarding the application of security laws to the program;
13. Limit the times and dates during which tuition account payment contracts may be sold;
14. Consider means whereby a purchaser may have installment payments deducted from the purchaser's salary; and
15. Advertise and promote the tuition account program by any reasonable means.

SECTION 6. Tuition account fund - Investment.

1. The Bank of North Dakota, together with the tuition account program advisory board, shall develop policies governing the investment of the tuition account fund. The policies must be directed to obtaining sufficient income to meet any obligations created by this Act and to maintaining necessary reserves. The Bank may not engage in any investment practice or activity which entails greater risk than necessary to meet these objectives but shall have the authority to invest and reinvest the fund in all lawful investments.
2. The Bank may contract with one or more persons to serve as investment managers and trustees to create an investment program, develop investment portfolios, and supervise the investments. If the Bank contracts with investment managers and trustees, the Bank may require that the investment managers and trustees agree, based on actuarial projections of program costs and expenses supplied by the Bank, to meet any obligations of the Bank if, as a result of the imprudent selection or supervision of investments or the investment program by the investment managers or trustees, the tuition payment fund is not fiscally sufficient to enable the Bank to fulfill the obligations set forth in this Act.

SECTION 7. Tuition account program - Participating institutions. All colleges and universities under the control of the state board of higher education shall participate in the tuition account program and shall accept tuition credits when presented by or on behalf of a beneficiary.

SECTION 8. Tuition account program - Tuition credits - Residency.

1. a. Each payment made pursuant to a tuition account payment contract purchases tuition credits to be held by the Bank of North Dakota in a beneficiary's account for future use by the beneficiary at a participating institution. The Bank shall pay from the tuition payment fund to the participating institution the lesser of the actual tuition for the number of tuition credits used or the tuition amount charged by the participating institution. Tuition credits are whole or partial units related to an academic year.

- b. The payment for each tuition purchase must be divided by either the tuition at a standard tuition level or the tuition at a specific participating institution designated by the purchaser.
 - c. If the Bank determines that the purchase payment for tuition credits representing a unit of tuition for one academic year at a standard tuition level or at a specific participating institution is to be greater or less than actual tuition for the corresponding year at a standard tuition level or at a specific participating institution, the method of calculating tuition credits must be adjusted accordingly.
 - d. The number of tuition credits calculated at the time of purchase must be reduced in a manner determined by the Bank reasonably to reflect potential investment loss resulting from the time of year when the purchase is made.
 2. On or before July thirty-first of each year a participating institution shall certify to the Bank the tuition to be charged by that institution for the academic year beginning on or after August first of that year and ending on or before July thirty-first of the following year and, at such times as the Bank determines, each participating institution shall certify the tuition charged by that institution for the current or any previous academic year.
 3. Upon request of any purchaser or beneficiary, the Bank shall convert tuition credits purchased at standard tuition levels to actual tuition at a specific participating institution by multiplying the number of tuition credits purchased each year by the ratio of that academic year's standard tuition level divided by the tuition for the same academic year at the designated participating institution. Upon request of the purchaser or beneficiary, the Bank, following the same procedure, shall convert tuition credits purchased at the tuition rate of a participating institution to the tuition at another participating institution designated in the request. The sum of such conversions is the total tuition credits applicable to a specific participating institution.
 4. Upon application, the Bank shall issue to a purchaser or beneficiary a certified statement of accumulated tuition credits for the payment of all or a portion of a student's tuition for a specific academic year at a designated participating

institution. The Bank shall pay to a participating institution upon presentation of a certified statement of tuition credits for a student accepted for enrollment for a specific academic year, the lesser of the actual tuition for the number of tuition credits used as established by the institution for that academic year or the tuition payment for the academic year calculated as specified in subsection 5.

5. Upon presentation of a certified statement of tuition credits by a participating institution or in anticipation thereof, the Bank shall calculate the tuition payment for the academic year specified. The tuition payment under this section consists of the purchase price of each total annual purchase of tuition credits compounded each year from the year of purchase to the year during which such credits are to be utilized by the average annual net earnings rate of the fund. The compounded values of annual purchases of tuition credits must be summed in order of date of purchase until sufficient credits for one academic year are obtained.

6. The Bank shall permit the use of tuition credits for master's degree and other postbaccalaureate programs at participating institutions after an appropriate conversion. The Bank and participating institutions may agree to convert tuition credits remaining in a tuition account after tuition is paid into other educational expense credits to be applied against room, board, and other educational expenses. Other educational expense credits must be determined by an appropriate conversion.

7. A beneficiary attending a participating institution may apply tuition credits to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.

8. A tuition account is not subject to attachment, levy, or execution by any creditor of a purchaser or beneficiary.

9. a. Except as provided in subdivision b, a minimum period of four years must elapse between the time the first tuition account contract is entered into on behalf of the beneficiary and the time that tuition credits may be issued and redeemed.

b. The tuition account program advisory board may prescribe an alternative minimum period of time which must elapse between the time the first tuition

account contract is entered into on behalf of the beneficiary and the time that tuition credits may be issued and redeemed.

10. The value of tuition credits may not be used in calculating personal asset contribution for determining eligibility and need for student loan programs, student grant programs, or other student aid programs administered by any agency of the state, except as may otherwise be provided by federal law.

11. The purchase payment for tuition credits must be determined with reference to the residency of the beneficiary at the time of purchase. If the residency of the beneficiary changes, there must be an appropriate conversion of tuition credits to reflect the differential in tuition caused by the change of residency, if any.

SECTION 9. Payments on account of tuition shortfalls. If tuition shortfalls on account of beneficiaries attending a participating institution remain after payments are made to that institution, the total shortfall with respect to that institution must be paid from the fund as a separate payment. The amount of shortfall payments must be considered in determining the actuarial soundness of the fund.

SECTION 10. Tuition account payment contracts. Purchasers buying tuition credits for the use of beneficiaries shall enter into tuition account payment contracts with the Bank of North Dakota. These contracts must be in such form as is determined by the Bank and must reflect that the purchase price of tuition credits may be adjusted annually in accordance with this Act.

SECTION 11. Eligible beneficiaries.

1. A person qualifies as an eligible beneficiary under this Act if the person is a resident of this state at the time the tuition account payment contract is entered into or if the tuition account payment contract entered into on the person's behalf is purchased by a resident of this state or any legal entity having its principal place of business in this state.

2. The purchaser shall designate a beneficiary at the time the purchaser enters into a tuition account payment contract.

3. The purchaser may, with the approval of the tuition account program advisory board, substitute for the designated beneficiary the purchaser's spouse, parent, sibling, child, stepchild, or any person for whom the purchaser is a legal guardian,

or the beneficiary's spouse, parent, sibling, child, stepchild, or any person for whom the beneficiary is a legal guardian.

SECTION 12. Termination and refund.

1. The Bank of North Dakota shall terminate a tuition account and shall return to the purchaser or the purchaser's designee the value of the account if:
 - a. The beneficiary is dead;
 - b. The beneficiary is, in the opinion of the Bank, unable or unwilling to attend a participating institution because of a disability;
 - c. The beneficiary has, in the opinion of the Bank, made a good faith effort and failed to be admitted to a participating or nonparticipating institution of higher education within the time limits set by the Bank; or
 - d. The beneficiary submits to the Bank proof of the beneficiary's acceptance by a nonparticipating institution.
2. Except as provided in subsection 1, the Bank shall terminate a tuition account and shall return to the purchaser or the purchaser's designee ninety percent of the value of the account if the beneficiary does not enroll at a participating institution within the time limits set by the Bank.
3. The Bank shall by rule set forth provisions for the refund of up to ninety percent of the value of the account in circumstances not covered by this section.
4. The Bank may impose a fee to cover administrative costs incurred in connection with a termination. The fee, which may not exceed twenty-five dollars, may be deducted from the amount to be refunded.
5. The value of the account must be calculated by compounding annually each separate payment from the time of payment to the time the account is terminated at the actual annual net earnings rate of the fund.
6. In the event of a refund upon the termination of a tuition account, to the extent the amount of the refund exceeds the sum of the payments, it is subject to taxation as income under the laws of this state, except when the refund is made pursuant to subdivision d of subsection 1.
7. The substitution of the beneficiary of an account may not be deemed a termination of the account for purposes of this section.

1 8. If a beneficiary is awarded a scholarship, the terms of which cover the benefits
2 included in a tuition account payment contract purchased on behalf of the
3 beneficiary, the purchaser is entitled to a refund consisting of the tuition for the
4 number of tuition credits purchased as designated in the tuition account payment
5 contract or an amount equal to the value of the account, whichever is less. The
6 refund under this subsection for any one academic year may not exceed the
7 scholarship for that year.

8 **SECTION 13. Admission - Graduation - Construction of Act.** Nothing in this Act or
9 in a tuition account payment contract entered into pursuant to this Act may be construed as a
10 promise or guarantee by the Bank of North Dakota that a beneficiary will be admitted to an
11 institution of higher education, will be allowed to continue to attend an institution of higher
12 education after having been admitted, or will be graduated from an institution of higher
13 education.

14 **SECTION 14. Exemption from security laws.** Tuition account payment contracts are
15 exempt from any statute regulating securities.

16 **SECTION 15. State tax exemption.** The purchase and retention of tuition credits and
17 their use are not transactions subject to income taxation by the state or by any of its political
18 subdivisions.

19 **SECTION 16. Special fund - Creation - Continuing appropriation.** All money in the
20 tuition payment fund is hereby appropriated to the Bank of North Dakota on a continuing basis
21 for the purpose of carrying out the provisions of this Act.