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SENATE BILL NO. 365

(BY SENATOR JACKSON, ET AL.)

PASSED MARCH 14, 1998
IN EFFECT 90 DAYS FROM PASSAGE
AN ACT to amend and reenact sections two, three, four, five, six and eight, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections six-a and ten, all relating to the West Virginia prepaid tuition trust fund; clarifying name of board; legislative findings; expanding definitions; board of trustees; board powers; authorizing
savings program for fees, room and board; permitting obligation of state general revenue funds if authorized by the Legislature; administrative account; expanding report and audit requirements; requiring an actuarial surplus; confidentiality of certain information; permitting board to promulgate emergency rules when changes in federal tax code or regulations require; and ensuring audit compliance with the state audit.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six and eight, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections six-a and ten, all to read as follows:

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

§18-30-2. Legislative findings and purpose.

1 The Legislature hereby finds and determines that the advancement and improvement of higher education in the state of West Virginia is a proper governmental function and purpose of the state. The Legislature also finds that the creation of a prepaid tuition trust fund, to assist qualified students and their families in financing a portion of the costs of attending an accredited higher education institution or program in the state of West Virginia will increase the number of qualified students who will seek to attend the accredited higher education institutions and programs, which will be of benefit to students, families and to the accredited higher education institutions and programs, and will therefore advance and improve higher education in the state of West Virginia. It is, therefore, the legislative intent of this article to establish a prepaid tuition trust fund to assist qualified students to pay in advance the costs of attending accredited higher education institutions and programs and thereby to encourage the qualified students to attend accredited higher education
institutions and programs in the state of West Virginia. The Legislature finds and declares that prepaid tuition trust fund contracts neither contain nor obligate any general revenue funds.

§18-30-3. Definitions.

For the purpose of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Accredited higher education institution or program" means any accredited higher education institution or accredited higher education program offered through an accredited provider.

(b) "Beneficiary" means any intended or unintended beneficiary of the prepaid tuition contract between the purchaser and the board, including any beneficiary designated by the purchaser, his or her agent or his or her estate in the event that the intended beneficiary is unable or unwilling to benefit under the terms of the trust fund.

(c) "Board" means the board of trustees of the prepaid tuition trust fund as provided in section four of this article.

(d) "Outside tuition fee" means the amount of tuition or fees, or both, payable to an accredited higher education institution or program outside the state or independent state institutions or programs upon the election by a beneficiary to attend those institutions or programs. This fee shall generally be the amount of the average public tuition costs or fees, or both, of state institutions of higher learning as determined by the board of trustees on an annual basis.

(e) "Prepaid tuition contract" means a contract entered into by the board of the trust fund and a purchaser pursuant to this article.

(f) "Purchaser" means an individual, corporation or
other entity who makes or is obligated to make payments
in accordance with a prepaid tuition contract entered into
pursuant to this article.

(g) "Room and board" means the charges for lodging and
food incurred by a beneficiary while attending an accred-
ited higher education institution or program.

(h) "Trust fund" means the prepaid tuition trust fund.

(i) "Tuition" means the quarter, semester or term charges
imposed by an accredited higher education institution or
program and all mandatory fees required as a condition of
enrollment by all students.

§18-30-4. Appointment of board of trustees; terms; compensa-
tion; proceedings generally.

(a) The board of the prepaid tuition trust fund consists
of nine members and shall include the secretary of educa-
tion and the arts and the state treasurer, who shall serve
as ex officio voting members of the board, and seven other
members with knowledge, skill and experience in an
academic, business or financial field. The seven appointed
members shall be residents of the state. One member shall
be a representative of the university of West Virginia
board of trustees selected by the board of trustees from its
members as defined in section one, article two, chapter
eighteen-b of this code and one member shall be a repre-
sentative of the board of directors of the state college
system selected by the board of directors from its members
as defined in section one, article three, chapter eighteen-b
of this code. The governor shall appoint three members
from nominations as follows: One member shall be a
private citizen not employed by, or an officer of, the state
or any political subdivision of the state appointed from
one or more nominees of the speaker of the House of
Delegates; one member shall be a private citizen not
employed by, or an officer of, the state or any political
subdivision of the state appointed from one or more
nominees of the president of the Senate; and one member
shall represent the interests of private institutions of
higher education located in this state who shall be ap-
pointed from one or more nominees of the West Virginia
association of private colleges. The governor also shall
appoint two members who are representatives of the
public. The public members and the member representing
the interests of private institutions of higher education
shall be appointed by the governor with the advice and
consent of the Senate.

(b) Appointed members shall serve a term of five years
and may be reappointed at the expiration of their terms.
In the event of a vacancy among appointed members, the
governor shall appoint a person representing the same
interests to fill the unexpired term. Of the initial appoint-
ments, the governor shall appoint one member to a one-
year term, one member to a two-year term, one member to
a three-year term, one member to a four-year term and
one member to a five-year term. Thereafter, all terms
shall be for five years.

(c) Members of the board of trustees shall serve without
compensation, but for the first twelve months after the
effective date of this section members shall be reimbursed
by the state treasurer's office for expenses, including
travel expenses, actually incurred by a member in the
official conduct of the business of the board at the same
rate as is paid the employees of the state. Thereafter, the
state treasurer may charge back to the trust fund as
administrative expenses all expenses, including travel
expenses, actually incurred and paid to board members for
the conduct of their official duties.

(d) The state treasurer is the trustee chairman and
presiding officer of the board, and may appoint such other
employees as the board considers advisable or necessary.
A majority of the members of the board constitute a
quorum for the transaction of the business of the trust
§18-30-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board has the powers necessary or convenient to carry out the purposes and provisions of this article, the purposes and objectives of the trust and the powers delegated by any other law of the state or any executive order of the state including, but not limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article: Provided, That the board may promulgate emergency rules only when changes in the federal tax code or changes in federal regulations contravene the current rules of the prepaid tuition trust fund board of trustees;

(c) To invest any of its funds at the board's discretion, with the West Virginia investment management board in accordance with the provisions of article six, chapter twelve of this code. Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(d) To execute contracts and other necessary instruments;

(e) To enter into prepaid tuition contracts;

(f) To impose reasonable limits on the number of prepaid tuition contract purchasers participating in the trust fund.
at any given period of time;

(g) To impose reasonable requirements for residency for qualified beneficiaries at the time of purchase of the prepaid tuition contract. However, nothing in this subdivision may be construed to establish residency requirements for matriculation at state institutions of higher education;

(h) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the trust fund;

(i) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aids from any source or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this article;

(j) To define the terms and conditions under which payments may be withdrawn from the trust fund and impose reasonable charges for the withdrawal: Provided, That payments made by employers on behalf of beneficiaries selected by their employees are considered fully vested in the employees from time of receipt of the payments by the board;

(k) To devise and offer to purchasers other educational savings programs, such as the purchase of books, fees, room and board and other educational supplies;

(l) To impose reasonable time limits on the use of the benefits provided by the program;

(m) To provide for the receipt of contributions to the trust fund in lump sums or installment payments; and

(n) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.
§18-30-6. West Virginia prepaid tuition trust created.

(a) There is continued within the accounts held by the state treasurer the prepaid tuition trust fund account to be administered by the board until and unless the Legislature determines otherwise, and titled the "Prepaid Tuition Trust Fund".

(b) The location of the trust fund is the state treasurer's office, and the facilities of the state treasurer shall be used and employed in the administration of the trust fund including, but without limitation thereto, the keeping of records, the management of bank accounts and other investments, the transfer of funds and the safekeeping of securities evidencing investments.

(c) Payments received by the board from purchasers on behalf of beneficiaries or from any other source, public or private, shall be placed in the trust fund.

(d) The corpus, assets and income of the trust fund do not constitute public funds of the state.

(e) The trust fund, through the trustee chairman, is authorized to receive any gift or transfer of property, real or personal of any nature, from any source as may be approved by the board, or any terms and conditions as may be imposed by the board: Provided, That all property received by the trust shall be converted into cash within ninety days of receipt.

(f) The board shall cause an actuarial study to be periodically performed to ensure that sufficient funds are being deposited to the fund to meet the obligations of the trust fund. Specifically, the board shall annually evaluate or cause to be evaluated, the actuarial soundness of the trust fund. If the board finds that additional contributions are needed in order to preserve the actuarial soundness of the fund, it may adjust the terms of preexisting and subsequent prepaid tuition contracts to ensure the fund's soundness: Provided, That any necessary adjust-
ment to preexisting contracts may only be assessed on
future payments and not retroactively upon previous
payments made by the purchaser or donors to the trust
fund. There may be no obligation of state general revenue
funds to the trust fund for any purpose whatsoever, unless
authorized by the Legislature.

(g) The board shall build and maintain in the prepaid
tuition trust fund an actuarial surplus, at a level recom-
mended by the actuaries, to ensure appropriate funding
for the trust fund.

(h) In order to fulfill the charitable and public purposes
of this article, neither the income nor the property of the
trust fund is subject to taxation by the state or any of its
political subdivisions.

(i) The board may propose rules to provide for the
withdrawal and disbursement of contract funds on an
actuarially sound basis. The board may propose rules to
provide a tuition guarantee for beneficiaries attending
state institutions of higher education; Provided, That this
rule may not be promulgated as an emergency rule subject
to oversight by the legislative oversight commission on
education accountability as provided by section eleven,
article three-a, chapter twenty-nine-a of this code.

§18-30-6a. Prepaid tuition trust fund administrative account.

There is hereby created a separate account within the
state treasurer's office to be known as the prepaid tuition
trust fund administrative account for the purposes of
implementing and maintaining the trust fund accounts
pursuant to this article. The board may charge against the
fees collected and interest earned from the trust fund
accounts, amounts as are reasonable and customary for
the state treasurer to fund the administrative costs of
maintaining the trust fund accounts. The charges shall be
deposited into the prepaid tuition trust fund administra-
tive account. The charges shall be disclosed quarterly,

beginning the first day of January, one thousand nine hundred ninety-nine, to the joint committee on govern-
ment and finance and the legislative oversight commission on education accountability. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.

§18-30-8. Report and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Provide annually summary information on the financial condition of the trust fund to all purchasers of prepaid tuition contracts;

(2) Prepare or cause to be prepared a quarterly report on the status of the program and provide a copy of the report to the joint committee on government and finance and the legislative oversight commission on education accountability;

(3) Prepare, or cause to be prepared, an annual accounting and actuarial report of the trust fund and transmit a copy of the report to the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability; and

(4) Make all necessary and appropriate arrangements with accredited higher education institutions and programs in order to fulfill its obligations under the prepaid tuition contracts. The arrangements shall include the satisfaction by the trust fund of current applicable tuition and fee charges on behalf of a beneficiary to the accredited higher education institution or program.

(b) All accounts of the board, including the trust fund accounts, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are
members of the American institute of certified public accountants. The audit shall comply with the requirements of section thirty-three, article two, chapter five-a of this code.

§18-30-10. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, purchaser or donor is exempt from the provisions of chapter twenty-nine-b of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ............... approved this the ............... day of ............... April ............... 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/48
Time 10:40 a.m.