

SB 207

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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Com. Sub. for Com. Sub. for

SENATE BILL NO. 207

*(By Senator Tomblin, Mr. President, and
Sprouse, By Request of the Executive)*

PASSED March 9, 2002

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

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Senate Bill No. 207

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE, *original sponsors*)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to repeal articles twenty-two-a and twenty-two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter eighteen-b of said code by adding thereto a new article, designated article eighteen; and to amend article five, chapter eighteen-c of said code by adding thereto a new section, designated section eight, all relating to higher education; creating an eminent scholars endowment trust fund at each state institution of higher education; providing for administration of such funds by the board of governors at each institution; outlining duties of higher education policy commission, including submission of annual report to

Legislature; providing for solicitation, acceptance, management and disposition of moneys supporting the fund; allowing salary supplements to certain faculty; providing for development of selection criteria for eminent scholars; providing for transfer of funds in abolished accounts; state-funded student financial aid; legislative findings; coordination and combination of certain financial aid sources; limitations; expanding eligibility for certain recipients; requiring legislative rule; and reports.

Be it enacted by the Legislature of West Virginia:

That articles twenty-two-a and twenty-two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter eighteen-b of said code be amended by adding thereto a new article, designated article eighteen; and that article five, chapter eighteen-c of said code be amended by adding thereto a new section, designated section eight, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

§18B-18-1. Legislative findings.

1 (a) The Legislature hereby finds that the essence of
2 excellence in education is the attraction and retention of
3 outstanding faculty; and that, however necessary modern
4 facilities and efficient and effective administration may
5 be, the faculty provides the catalyst by which all the
6 elements of higher education combine to offer a quality
7 education. The Legislature further finds that the attrac-
8 tion and retention of outstanding faculty at all state
9 colleges and universities, particularly those who have
10 attained distinction as scholars, teachers and researchers,
11 requires a long-term and permanent commitment from
12 both public and private sources. Private support will help
13 strengthen the commitment of citizens and organizations
14 to the promotion of excellence in higher education and will
15 provide moneys for salaries competitive with those paid to

16 faculty of similar eminence working for this country's
17 leading colleges and universities.

18 (b) The Legislature further finds that the appropriation
19 of public moneys to attract and retain outstanding faculty
20 and to encourage the commitment of private moneys with
21 a view toward the accumulation of moneys in trust funds
22 for these purposes is a proper annual expense of the state.
23 Therefore, the establishment of an eminent scholars
24 endowment trust fund at each state institution of higher
25 education is a proper means of providing for the advance-
26 ment of public higher education in this state.

§18B-18-2. Definition.

1 Whenever the following term is used in this article, it has
2 the meaning described below:

3 "Board of governors" or "board" means the institutional
4 boards of governors, individually or collectively, created
5 pursuant to subsection (b), section one, article two-a of
6 this chapter.

§18B-18-3. Establishment of funds.

1 There is hereby established at each state institution of
2 higher education an eminent scholars endowment trust
3 fund.

§18B-18-4. Powers and duties of governing boards.

1 (a) Each board of governors is hereby expressly autho-
2 rized to receive private or public grants, gifts or bequests
3 restricted by the donor to the programs set out in this
4 article. The board may hold, invest or reinvest such
5 moneys and expend the income from the moneys as
6 provided in section five of this article.

7 (b) Each board is exempt from liability for any loss or
8 decrease in value of the assets or income of the fund,
9 except as losses or decreases in value are shown to be the
10 result of bad faith, gross negligence or intentional miscon-
11 duct.

12 (c) For the purpose of valuing assets, a board may use
13 any commonly accepted techniques of appraisal or com-
14 monly accepted principles of accounting. No agency of
15 government nor any person, natural or corporate, may
16 charge or collect any fee or receive any part of the princi-
17 pal or income from any appropriation, grant, gift or
18 bequest as a fee for the acquisition or administration of
19 the appropriation, grant, gift or bequest.

20 (d) A board shall at all times adhere to the terms and
21 limitations of any appropriation, grant, gift or bequest
22 received. However, a board may refuse to receive any
23 grant, gift or bequest which incorporates terms and
24 limitations which it considers to be unacceptable.

25 (e) A board may, in its sole discretion, borrow money
26 when necessary in order to avoid the untimely sale of
27 assets. At no time, however, may the board incur any debt
28 obligation for such purpose which exceeds twelve months
29 in duration.

§18B-18-5. Administration of fund.

1 (a) Each eminent scholars endowment trust fund estab-
2 lished at a state institution of higher education pursuant
3 to section three of this article is to be administered by the
4 appropriate board of governors. The fund at each institu-
5 tion shall consist of new gifts or bequests of private
6 moneys specifically restricted and designated for the uses
7 set out in this article.

8 (b) Gifts and bequests received after the first day of July,
9 two thousand two, and restricted by the donor for use
10 consistent with the purposes of this article constitute the
11 principal in these accounts. The principal in each account
12 may not be expended for any purpose. Each board of
13 governors shall adopt a spending policy to protect the
14 principal and the purchasing power of the original gift.

15 (c) Investment earnings accruing in each account during
16 the previous fiscal year may be expended for the purposes
17 set out in this article.

18 (d) The investment earnings accrued and any matching
19 funds appropriated by the Legislature shall be used solely
20 to supplement the base salaries of faculty who are ap-
21 pointed as eminent scholars after the first day of July, two
22 thousand two, and who are selected as set out in this
23 article.

24 (e) Gifts and bequests constituting the principal in these
25 accounts may not consist of institutional funds or funds or
26 assets received from the institution's affiliated foundation.

27 (f) For the purpose of encouraging the donation of
28 private moneys to the fund, each board may designate
29 specific chairs or specific areas of academic study or
30 research as subjects of challenge grants. A specific chair,
31 or a chair in a designated academic or research area, shall
32 be established whenever the total amount of principal and
33 accumulated investment earnings dedicated to it reaches
34 an amount considered sufficient by the board to support
35 the anticipated salary supplement for the chair.

36 (g) Salary supplements awarded under this article shall
37 be in addition to the base contract salary of the faculty
38 member. The base contract salary of the faculty member
39 shall be consistent with that of other similarly situated
40 faculty at the institution with the same rank, experience
41 and field of study and shall be paid from funds other than
42 those constituting the endowment accounts established
43 pursuant to this article, investment earnings authorized
44 for expenditure by the institutions spending policy, or the
45 state appropriation to match the eligible investment
46 earnings.

47 (h) Nothing in this article may be construed to require
48 any specific level of funding by the Legislature.

§18B-18-6. Duties of higher education policy commission.

1 The higher education policy commission shall:

2 (a) Establish documentation standards and review
3 procedures to determine the eligibility of donor gifts to

4 participate in the eminent scholars program when the gift
5 is initially received or whenever the terms are significantly
6 changed;

7 (b) Require that each participating institution report on
8 total gifts received, investment earnings realized and
9 anticipated expenditures in its annual operating budget
10 request;

11 (c) Annually develop and submit a consolidated budget
12 request for the eminent scholars program to the governor
13 for the fiscal year beginning on the first day of July, two
14 thousand three. The budget request shall include a request
15 for an appropriation by the Legislature to each institu-
16 tional account each fiscal year in an amount equal to the
17 investment earnings in the previous fiscal year which are
18 intended for use in the fiscal year to supplement the
19 salaries of eminent scholars;

20 (d) Allocate any funds appropriated by the Legislature
21 among the participating institutions in equal installments
22 at the beginning of each quarter; and

23 (e) Submit to the Legislature no later than the first day
24 of December of each year an annual report on the status of
25 the programs, the qualifications and accomplishments of
26 the eminent scholars, the value of endowment holdings,
27 the investment earnings realized and salary supplements
28 paid.

§18B-18-7. Process for preparation of executive budget.

1 (a) The governor shall consider for inclusion in the
2 appropriate account the budget request of the policy
3 commission for the eminent scholars program.

4 (b) Whether or not the governor includes the budget
5 request of the policy commission as described in subsec-
6 tion (a) of this section, the Legislature may include an
7 appropriation in the appropriate account.

8 (c) Nothing in this section shall be construed to require
9 any specific level of funding by the Legislature.

§18B-18-8. Selection of eminent scholars.

1 (a) Each institution shall establish criteria for the
2 selection of persons to be appointed as eminent scholars
3 pursuant to this article. The criteria shall include, but not
4 be limited to:

5 (1) The prospective appointees' record of distinguished
6 academic or professional work in an appropriate field as
7 judged in national terms and verified by the department or
8 college benefitting from the salary supplement;

9 (2) The prospective appointees' record of increasing the
10 quality and reputation of academic programs and eco-
11 nomic development through new research centers; and

12 (3) The relevance of prospective appointees' academic or
13 professional work to the economic development goals of
14 the state as defined by the West Virginia council for
15 community and economic development.

16 (b) Appointees shall submit to peer review at the depart-
17 ment or college and any other review procedures that are
18 established by the institution.

**§18B-18-9. Authorization to solicit private moneys; terms of
grants; reports; handling of moneys.**

1 Each institution, and each dean and department chair
2 within each institution, may solicit moneys for the endow-
3 ment of eminent scholars pursuant to this article. All
4 persons and institutions engaged in soliciting moneys shall
5 apprise the board of their actions and provide periodic
6 reports, at least once each fiscal year, regarding the
7 amounts secured and, upon receipt of any moneys, shall
8 forward them immediately to the board for deposit.

§18B-18-10. Other funds.

1 Effective the first day of July, two thousand two, all
2 funds existing in accounts established in the eminent
3 scholars endowment trust fund act and the distinguished
4 professors endowment trust fund act as previously set out
5 in articles twenty-two-a and article twenty-two-e, respec-
6 tively, of chapter eighteen of this code are hereby trans-
7 ferred to the institution for which they were previously
8 designated. Moneys used to fund chairs or professorships
9 established under these two articles shall continue to be
10 used for the purposes and in the manner previously
11 designated. Funds accrued under these two articles may
12 not be transferred to the trust funds established by this
13 article.

**CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.**

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-8. Temporary program coordination.

1 (a) The Legislature finds that a need exists to expand the
2 pool of recipients eligible for state-funded financial aid.
3 The Legislature further finds that in the first year of
4 implementation of the PROMISE scholarship program
5 established in article seven of this chapter, it is premature
6 to determine the effects of combining state-funded student
7 financial aid resources for students eligible for multiple
8 sources.

9 (b) For the fiscal year ending on the thirtieth day of
10 June, two thousand three only, students with the greatest
11 level of financial need as defined by this section, are
12 eligible for both a PROMISE scholarship and a higher
13 education grant award.

14 (c) Under the terms set forth in subsection (b) of this
15 section, a student is eligible to receive an award for both
16 the higher education grant program and the PROMISE
17 scholarship program if he or she meets the following
18 criteria:

19 (1) Expected family contribution requirements provided
20 in subsection (d) of this section; and

21 (2) Eligibility requirements of both the higher education
22 grant program and the PROMISE scholarship program.

23 (d) The provisions of subsection (c) of this section are
24 restricted to the least affluent students in the higher
25 education grant program recipient pool, as measured by
26 the student's expected family contribution. A student's
27 expected family contribution meets the requirement of
28 subdivision (1), subsection (c) of this section if the contri-
29 bution expectation is equal to or less than two thirds of the
30 maximum expected family contribution level in the
31 recipient pool of the prior fall term.

32 (e) For the fiscal year ending on the thirtieth day of June,
33 two thousand three only, the policy commission shall make
34 awards from the higher education grant program based on
35 the provisions of this subsection as a means of increasing
36 the number of potential recipients of higher education
37 grant awards. The academic standard for the grant
38 program shall be modified to be at least ten percent more
39 accessible, and up to a maximum of twenty percent more
40 accessible if funds are available: *Provided*, That the
41 recipient's grade point average is at least 2.0 on a 4.0 scale.

42 (f) The policy commission shall report the following data
43 to the legislative oversight commission on education
44 accountability by the first day of December, two thousand
45 two:

46 (1) The number of students receiving a higher education
47 grant award;

48 (2) The financial resources and academic characteristics
49 of the recipients;

50 (3) The number of students receiving aid from more than
51 one state-funded program; and

52 (4) An analysis of any recommendations issued by the
53 West Virginia financial aid coordinating council estab-
54 lished pursuant to article eight of this chapter, including
55 draft legislation if necessary, to implement the provisions
56 of the recommendations.

57 (g) The policy commission shall file a legislative rule
58 subject to the provisions of article three-a, chapter twenty-
59 nine-a of this code providing for the following:

60 (1) Implementation of the higher education grant
61 program;

62 (2) A determination of whether to allow a student to
63 receive financial aid from multiple state-funded sources
64 when the student is eligible for aid from more than one
65 state-funded source.

66 The rule shall be filed with the legislative oversight
67 commission on education accountability on or before the
68 fifteenth day of December, two thousand two.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *3*
Day of *April*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/02

Time 3:05 pm