WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

SECOND ENROLLMENT

House Bill No. 2953
(By Delegates Michael, Mezzatesta and Doyle)

Amended and Again Passed March 16, 2003

In Effect from Passage
SECOND ENROLLMENT

H. B. 2953

(By Delegates Michael, Mezzatesta and Doyle)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect From Passage.]

AN ACT to amend and reenact section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article eight, chapter thirty-six of said code, all relating to the administration of the prepaid tuition plan of the West Virginia college prepaid tuition and savings program; clarifying how moneys in the prepaid tuition trust fund are processed when the plan is terminated; closing the prepaid tuition plan to new contracts until further legislative authorization; continuing the plan as to current contract owners; providing for accrual of investment earnings; continuing annual evaluation of actuarial soundness of the prepaid tuition trust fund; requiring annual reports by the chairman of the prepaid tuition trust fund; establishing a mechanism to eliminate any actuarially projected unfunded liability in the prepaid tuition trust fund over a fixed period with funds from the unclaimed property trust fund in an amount not to exceed five hundred thousand dollars annually;
creating the prepaid tuition trust escrow account and establishing purposes therefor; providing for the investment and use of the money in the prepaid tuition trust escrow account; providing for the transfer of funds in the unclaimed property trust fund to the prepaid tuition trust escrow account and to the general revenue fund; and providing for the disposition of funds in the prepaid tuition trust escrow account upon closure of the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

That section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article eight, chapter thirty-six of said code, be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-6. West Virginia prepaid tuition trust.

(a) The “Prepaid Tuition Trust Fund” is continued within the accounts held by the state treasurer for administration by the board.

(b) The prepaid tuition trust fund shall continue to receive all payments from account owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or private. Earnings derived from the investment of moneys in the prepaid tuition trust fund shall remain in the prepaid tuition trust fund held in trust in the same manner as payments, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the prepaid tuition plan.
(c) The corpus, assets and earnings of the prepaid tuition trust fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the prepaid tuition plan does not constitute a debt of the state, but is solely an obligation of the prepaid tuition trust fund. The state has no obligation to any designated beneficiary or any other person as a result of the prepaid tuition plan. All amounts payable from the prepaid tuition trust fund are limited to amounts available in the prepaid tuition trust fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.

(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a prepaid tuition contract by the board, its employees and agents.

(f) The prepaid tuition plan and the prepaid tuition trust fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan and after payment of all fees, charges, expenses and penalties, the assets of the prepaid tuition trust fund are paid to current account owners, to the extent possible, on a pro rata basis as their interests may appear, and any assets presumed abandoned are reported and remitted to the unclaimed property administrator in accordance with the uniform unclaimed property act in article eight, chapter thirty-six of this code. Any assets then remaining in the prepaid tuition trust fund shall revert to the state general revenue fund.

(g) Effective the eighth day of March, two thousand three, the prepaid tuition plan is closed to new contracts until the
Legislature authorizes the plan to reopen. Closing the plan to
new contracts shall not mean the prepaid tuition plan is closed
and shall not affect any prepaid tuition plan contracts in effect
on the eighth day of March, two thousand three. All contract
owners shall continue to pay any amounts due, including
without limitation monthly installments, penalties and fees.
Earnings derived from the investment of moneys in the prepaid
tuition trust fund shall continue to accrue to the fund until the
fund is closed in accordance with this article.

(h) The board shall continue to have the actuarial soundness
of the prepaid tuition trust fund evaluated annually.

(i)(1) On or before the first day of December, two thousand
three, and each year thereafter, the chairman of the board shall
submit to the governor, the president of the Senate, the speaker
of the House of Delegates, joint committee on government and
finance and the unclaimed property administrator a report
certified by an actuary of the actuarial status of the prepaid
tuition trust fund at the end of the fiscal year immediately
preceding the date of the report. In the event the report for fiscal
year two thousand three states there is a projected unfunded
liability in the prepaid tuition trust fund, the report shall also
state the amount needed for the next fiscal year to eliminate the
projected unfunded liability in equal payments over a period of
ten fiscal years, concluding the thirtieth day of June, two
thousand thirteen. In the event the projected unfunded liability
of the prepaid tuition trust fund increases in subsequent reports,
the actuary shall calculate the amount needed, less any amount
in the prepaid tuition trust escrow account, to eliminate the
projected unfunded liability over a period the actuary deter-
mines is fiscally responsible.

(2) The prepaid tuition trust escrow account is hereby
created in the state treasury to guarantee payment of prepaid
tuition plan contracts. The board shall invest the prepaid tuition
trust escrow account in accordance with the provisions of this
article in fixed income securities, and all earnings of the escrow
account shall remain in the escrow account.

(3) In the event the actuary determines an unfunded liability
exists in the prepaid tuition trust fund, the report shall certify
the amount of money needed for the next fiscal year to elimi-
nate the projected unfunded liability pursuant to the provisions
of subdivision (1) of this subsection. The certified amount may
not exceed five hundred thousand dollars each year. On or
before the fifteenth day of December in which the chairman
submitted a report stating the amount needed for the next fiscal
year to eliminate a projected unfunded liability, the unclaimed
property administrator shall transfer the amount requested, not
to exceed five hundred thousand dollars each year, from the
unclaimed property trust fund to the prepaid tuition trust escrow
account.

(4) In the event the money in the prepaid tuition trust fund
is insufficient to cover the amount of money needed to meet the
current obligations of the prepaid tuition trust fund, the board
may withdraw from the prepaid tuition trust escrow account the
amount of money needed to meet current obligations of the
prepaid tuition trust fund.

(5) Notwithstanding any provision of this code to the
contrary, the governor, after consultation with the budget
section of the finance division of the department of administra-
tion, may request an appropriation to the board in the amount
of the deficiency to meet the current obligations of the prepaid
tuition trust fund, in the budget presented to the next session of
the Legislature for its consideration. The Legislature is not
required to make any appropriation pursuant to this subsection,
and the amount of the deficiency is not a debt or a liability of
the state.
(6) As used in this section, "current obligations of the prepaid tuition trust fund" means amounts required for the payment of contract distributions or other obligations of the prepaid tuition trust fund, the maintenance of the fund, and operating expenses for the current fiscal year.

(7) Nothing in this subsection creates an obligation of state general revenue funds or requires any level of funding by the Legislature.

(8) After the prepaid tuition trust fund has been closed and all moneys paid in accordance with this section, any moneys remaining in the prepaid tuition trust escrow account shall be transferred to the general revenue fund and the account closed.

(j) To fulfill the charitable and public purpose of this article, neither the earnings nor the corpus of the prepaid tuition trust fund is subject to taxation by the state or any of its political subdivisions.

(k) Notwithstanding any provision of this code to the contrary, money in the prepaid tuition trust fund is exempt from creditor process and not subject to attachment, garnishment or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking, appropriation or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

(1) No provision of this section may be construed to interfere with the operation of the savings plan authorized under this article.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.
§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The unclaimed property fund is continued. The administrator shall deposit all funds received pursuant to this article in the unclaimed property fund, including the proceeds from the sale of abandoned property under section twelve of this article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the unclaimed property fund:

1. Expenses of the sale of abandoned property;

2. Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

3. Reasonable service charge; and

4. Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The unclaimed property trust fund is continued within the state treasury. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the unclaimed property fund to the unclaimed property trust fund.
(d) On or before the fifteenth day of December of each year and after receipt of a report from the chairman of the board of trustees of the West Virginia college prepaid tuition and savings program stating the amount certified by an actuary in accordance with the provisions of section six, article thirty, chapter eighteen of this code, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of money certified by the actuary from the unclaimed property trust fund to the prepaid tuition trust escrow account, the amount transferred not to exceed five hundred thousand dollars annually.

(e) After transferring any money required by subsection (d) of this section, the administrator shall transfer moneys remaining in the unclaimed property trust fund to the general revenue fund.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 2nd day of April, 2003.

Governor