WEST VIRGINIA LEGISLATURE  
SECOND REGULAR SESSION, 2006  

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ENROLLED  

House Bill No. 4049  
(By Delegates Campbell, Williams, Perry, Paxton, Spencer,  
Crosier, Fragale, Eldridge, Wysong, Leggett and Tansill)  

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Passed March 11, 2006  
In Effect July 1, 2006
AN ACT to repeal §18B-14-9 of the Code of West Virginia, 1931, as amended; to repeal §18C-5-8 of said code; to repeal §18C-7-9 of said code; to repeal §18C-8-1, §18C-8-2 and §18C-8-3 of said code; to amend and reenact §18-30-6 of said code; to amend and reenact §18B-1B-2 of said code; to amend and reenact §18B-4-1 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18C-1-1, §18C-1-3 and §18C-1-4 of said code; to amend said code by adding thereto a new section, designated §18C-1-5; to amend and reenact §18C-5-1, §18C-5-2, §18C-5-3, §18C-5-4, §18C-5-5 and §18C-5-6 of said code; and to amend and reenact §18C-7-2, §18C-7-3, §18C-7-4 §18C-7-5, §18C-7-6 and §18C-7-7 of said code, all relating to higher education generally; the Higher Education Policy Commission; student financial aid programs; need-based and merit-based student financial aid programs; West Virginia Prepaid Tuition Trust Program; PROMISE Scholarship Program; Higher Education Grant Program; increasing amount to be transferred annually to Prepaid Tuition Trust Escrow Fund; establishing additional eligibility requirements for Higher Education Policy Commission members; requiring coordination among certain public education
entities; deleting certain requirement relating to supervision of Higher Education Policy Commission staff; establishing conditions limiting tuition and fee increases for certain students at certain state institutions of higher education; providing exceptions to cap on tuition and fee increases; requiring state institutions of higher education to provide certain information; requiring report to Legislative Oversight Commission on Education Accountability annually; expanding certain legislative findings; establishing certain legislative intent; defining purposes of state-supported financial aid programs; expanding eligibility for PROMISE scholarship awards to certain students attending high school outside the state; creating the Student Financial Aid Advisory Board; providing for membership of advisory board; specifying powers, duties and responsibilities of advisory board; providing for reimbursement of member expenses; continuing Higher Education Grant Program; specifying purposes of grant program; requiring consultation among entities for student financial aid administration; creating the “higher education grant fund” special revenue fund; establishing legislative intent regarding increased levels of appropriation to the Higher Education Grant Fund and the PROMISE Scholarship Fund; modifying PROMISE Scholarship eligibility requirements; clarifying flexibility to change PROMISE eligibility requirements; expanding membership of PROMISE Scholarship Board of Control; establishing additional eligibility requirements for members of PROMISE Board; encouraging PROMISE Board to use certain staff for administrative and technical support; specifying additional duties of PROMISE Board; requiring PROMISE Board to report annually to Joint Standing Committee on Education; specifying limits on certain grant awards; defining purposes of PROMISE Scholarship Program; modifying the calculation for determining student financial aid award levels for certain higher education grant recipients; defining terms and clarifying the definitions of certain terms; requiring promulgation of legislative rules and emergency rule; limiting authority of PROMISE Board to require scholarship recipients to repay all or part of scholarship amount; modifying definition of “eligible institution” for purpose of participating in PROMISE scholarship program; making technical corrections; and repealing obsolete provisions.
Be it enacted by the Legislature of West Virginia:

That §18B-14-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18C-5-8 of said code be repealed; that §18C-7-9 of said code be repealed; that §18C-8-1, §18C-8-2 and §18C-8-3 of said code be repealed; that §18-30-6 of said code be amended and reenacted; that §18B-1B-2 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that §18B-10-1 of said code be amended and reenacted; that §18C-1-1, §18C-1-3, §18C-1-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18C-1-5; that §18C-5-1, §18C-5-2, §18C-5-3, §18C-5-4, §18C-5-5 and §18C-5-6 of said code be amended and reenacted; and that §18C-7-2, §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 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 fund, to eliminate the projected unfunded liability over a period the actuary determines is fiscally responsible.

(2) The Prepaid Tuition Trust Escrow Fund is hereby created in the State Treasury to guarantee payment of prepaid tuition plan contracts. The board shall invest the Prepaid
Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income securities, and all earnings of the escrow fund shall remain in the escrow fund.

(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 eliminate the projected unfunded liability pursuant to the provisions of subdivision (1) of this subsection. The certified amount may not exceed one million 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 one million dollars each year, from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(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 Fund 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 office of the Department of Revenue, 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 fund 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.

(l) The provisions of this section may not be construed to interfere with the operation of the savings plan authorized under this article.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.
§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of ten members, all of whom are entitled to vote. The membership of the commission is as follows:

1. The Secretary of Education and the Arts, ex officio.
2. The State Superintendent of Schools, ex officio;
3. The chair of the West Virginia Council for Community and Technical College Education, ex officio.
4. Seven at large members who are citizens of the state, appointed by the Governor, by and with the advice and consent of the Senate: Provided, That prior to appointment, the Governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine to participate in interviewing potential candidates.

(b) Each of the at-large members appointed by the Governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in state law and policy.

(c) The Governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university; an officer or member of any political party executive committee; the holder of any other public office or
of public employment under the government of this state or any of
t its political subdivisions; an appointee or employee of any
governing board; or an immediate family member of any
employee under the jurisdiction of the commission, the council
or any governing board.

(d) Of the seven, at-large members appointed by the
Governor:

(1) No more than four may belong to the same political
party;

(2) At least two shall be appointed from each congressional
district; and

(3) Effective the first day of July, two thousand eight, no
more than one member may serve from the same county.

(e) The at-large members appointed by the Governor serve
overlapping terms of four years.

(f) The Governor shall appoint a member to fill any
vacancy among the seven at-large members, by and with the
advice and consent of the Senate. Any member appointed to fill
a vacancy serves for the unexpired term of the vacating
member. The Governor shall fill the vacancy within thirty days
of the occurrence of the vacancy.

(g) An at-large member appointed by the Governor may not
serve more than two consecutive terms.

(h) Before exercising any authority or performing any
duties as a member of the commission, each member shall
qualify as such by taking and subscribing to the oath of office
prescribed by section five, article IV of the Constitution of
West Virginia and the certificate thereof shall be filed with the
secretary of state.
(i) A member of the commission appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.

(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:

(1) Each chancellor serves at the will and pleasure of the hiring body.

(2) Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

(3) Each chancellor is responsible for carrying out the directives of the body by whom employed and shall work with that body in developing policy options.

(4) The commission is responsible to the council and the Chancellor for Community and Technical College Education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal
authority. The services are provided under the general supervision of the Vice Chancellor for Administration.

(5) For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff of the institutions under their respective jurisdictions.

(b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, the Vice Chancellor for Administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.

(c) The Vice Chancellor for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine.

(d) Suitable offices for the vice chancellor of administration and other staff shall be provided in Charleston.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and
(3) Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from such accounts, an institution may expend funds from each such special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student's attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

(d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.
(e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, subject to the prior approval of the Legislative Oversight Commission on Education Accountability.

(f) The schedule of all tuition and fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

1. Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

2. Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(h) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

1. The governing boards shall permit fee payments to be made in installments over the course of the academic term.
fes shall be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student’s finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, defining conditions under which an institution may offer tuition and fee deferred payment plans through the institution or through third parties.

(5) An institution may charge interest or fees for any deferred or installment payment plans.

(i) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government. The fee may not be used to finance litigation against the institution.

(j) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in acor-
dance with the tuition rule proposed by the commission and
council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and
fees;

(2) Allow institutions to charge different tuition and fees for
different programs;

(3) Provide that a board of governors may propose to the
commission, council or both, as appropriate, a mandatory
auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council
or both, as appropriate, and either the students below the senior
level at the institution or the Legislature before becoming
effective;

(B) Increases may not exceed previous state subsidies by
more than ten percent;

(C) The fee may be used only to replace existing state funds
subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy
shall be reduced annually by the amount of money generated
for the institution by the fees. All state subsidies for the
auxiliary services shall cease five years from the date the
mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall
certify to the Legislature by the first day of October in the fiscal
year following implementation of the fee, and annually thereaf-
ter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that,
within the appropriate time period under the compact, commu-
community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(l) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) Subject to the provisions of subdivisions (4) and (8) of this subsection, a governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.

(2) A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up
to four and three quarters percent for undergraduate resident students for any fiscal year. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.

(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.

(4) Subject to the provisions of subdivision (8) of this subsection, the governing boards of Marshall University and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:

(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the commission; and

(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.

(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology, the regional campus known as West Virginia University at Parkersburg and, until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology.

(5) Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West
Virginia University requires the approval of the commission or council, as appropriate. In determining whether to approve or deny the governing board’s request, the commission or council shall determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution has met the following conditions:

(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(F) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(6) This section does not require equal increases among institutions or require any level of increase at an institution.
(7) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (5) of this subsection.

(8) Notwithstanding the provisions of subdivisions (1) and (4) of this subsection, tuition and fee increases at state institutions of higher education which are under the jurisdiction of the commission, including the state institutions of higher education known as Marshall University and West Virginia University, are subject to the following conditions:

(A) Institutions may increase tuition and fees for resident, undergraduate students by no more than an average of seven and one-half percent per year during any period covering four consecutive fiscal years, with the first fiscal year of the first four-fiscal year cycle beginning on the first day of July, two thousand seven;

(B) The seven and one-half percent average cap does not apply to an institution for any fiscal year in which the total state base operating budget appropriations to that institution are less than the total state base operating budget appropriations in the fiscal year immediately preceding;

(C) A new capital fee or an increase in an existing capital fee is excluded from the tuition and fee increase calculation in this subdivision:

(i) If the new fee or fee increase is approved by an institutional governing board or by a referendum of an institution’s undergraduate students, or both, on or before the first day of February, two thousand six; or

(ii) If the following conditions are met:
(I) The new fee or fee increase was approved by an institutional governing board or by a referendum of an institution's undergraduate students, or both, on or before the first day of July, two thousand six;

(II) The institution for which the capital fee is approved has been designated a university pursuant to the provisions of section six, article two-a of this chapter by the effective date of this section; and

(III) The institutional board of governors previously oversaw a community and technical college that achieved independent accreditation and consequently acquired its own board of governors;

(D) Institutions shall provide, in a timely manner, any data on tuition and fee increases requested by the staff of the commission. The commission has the power and the duty to:

(i) Collect such data from any institution under its jurisdiction; and

(ii) Annually by the first day of July, provide a detailed analysis of the institutions' compliance with the provisions of this subdivision to the Legislative Oversight Commission on Education Accountability.

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

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Legislative findings; purpose; administration generally.

(a) The Legislature finds:
(1) That although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace there continues to exist an underdevelopment of the state’s human talent and resources because of the inability of many able, but needy, students to finance a higher education program;

(2) That the state can achieve its full economic and social potential only when the following elements are in place:

(A) Every individual has the opportunity to contribute to the full extent of his or her capability; and

(B) The state assists in removing such financial barriers to the individual’s education goals as may remain after he or she has utilized all resources and work opportunities available;

(b) The ultimate state goal in providing student financial aid is to create a culture that values education, to improve the quality of the state’s workforce, and thereby to enhance the quality of life for the citizens of West Virginia.

(c) The Vice Chancellor for Administration jointly employed by the commission and the council has a ministerial duty to administer, oversee or monitor all state and federal student loan, scholarship and state aid programs which are administered at the state level in accordance with established guidelines under the direction of the commission and council and in consultation with the Higher Education Student Financial Aid Advisory Board.

(d) Such programs include, but are not limited to, the following programs pursuant to the provisions of this chapter:

(1) The Guaranteed Student Loan Program, which may be administered by a private nonprofit agency;
(2) The Medical Student Loan Program;
(3) The Underwood-Smith Teacher Scholarship Program;
(4) The Engineering, Science and Technology Scholarship Program;
(5) The West Virginia Higher Education Grant Program;
(6) The Higher Education Adult Part-time Student Grant Program;
(7) The Higher Education Student Assistance Loan Program under article twenty-two-d, chapter eighteen of this code;
(8) The West Virginia College Prepaid Tuition and Savings Program under article thirty, chapter eighteen of this code, which is administered by the State Treasurer;
(9) The state aid programs for students of optometry, pursuant to article three of this chapter;
(10) The state aid programs for students of veterinary medicine pursuant to section six-a, article eleven, chapter eighteen of this code;
(11) Any reciprocal program and contract program for student aid under sections three and four, article four, chapter eighteen-b of this code;
(12) Any other state level student aid program in this code; and
(13) Any federal grant or contract student assistance or support programs administered at the state level.
§18C-1-3. Additional legislative findings; purpose of financial aid programs.

(a) Legislative findings:

(1) Education attainment is inextricably linked to economic development, and, in the current global economy, the state is competing not only with other states, but also with other countries;

(2) The federal government no longer funds student financial aid as generously as it has in the past. Therefore, the state must commit to increase both access and affordability to higher education opportunities for its citizens;

(3) In recent years the state has substantially increased appropriations to both merit-based and need-based student financial aid programs;

(4) The ultimate state goal in providing student financial aid is to create a culture that values education and improves the quality of the state's workforce, thereby enhancing the quality of life for its citizens;

(5) The state can provide a successful system of student financial aid only by balancing the needs of students from all levels of financial need and academic ability;

(6) A comprehensive system of student financial aid will yield the maximum return on the state's investment by increasing the skills, qualifications and education achievement of citizens from all backgrounds; and

(7) Sources of student financial aid can be distinguished as providing either access or affordability to higher education opportunities;
(8) Access refers to a student's financial ability to pursue post-secondary education. Affordability refers to a student's freedom to choose where to attend college based on available resources;

(9) West Virginia is committed to making post-secondary education both accessible and affordable for its citizens. To this end, it is essential that the state provide multiple financial aid programs which accomplish different goals;

(b) Purposes of financial aid programs:

(1) The West Virginia Higher Education Grant Program is a need-based program that provides funding primarily to traditional college-age students who do not have sufficient financial resources to attempt post-secondary education. This grant program is a vitally important source of financial assistance for needy residents of the state and should continue to receive strong financial support.

(2) The HEAPS Grant Program is a need-based program that provides funding primarily to non-traditional college students, including:

(A) Adult students who desire to pursue post-secondary education on a part-time basis and who do not qualify for other forms of financial assistance;

(B) Place-bound students, often parents employed full-time, who require evening and weekend access to college courses; and

(C) Individuals pursuing workforce training or skill development training necessary to enter the job market quickly.

(3) The Underwood-Smith Teacher Scholarship Program is a merit-based program that encourages students who have
demonstrated outstanding academic abilities to pursue teaching careers. This program serves to meet West Virginia’s statewide, geographic and discipline-specific needs for highly qualified teachers.

(4) The West Virginia Engineering, Science and Technology Scholarship Program is a merit-based program that encourages talented students to pursue baccalaureate degrees in engineering, science and technology-related disciplines. This program serves to increase the size and quality of the pool of individuals pursuing careers in engineering, science and technology-related fields.

(5) The PROMISE Scholarship Program is a merit-based program that enhances student achievement by encouraging high school students to work harder to attain the necessary grades and test scores to qualify for a PROMISE scholarship and provides an incentive for the most capable students to attend college in the state. PROMISE provides affordability to traditional college-age students.

(c) An appropriate blend of student financial aid programs provides the state with the necessary tools to educate its citizenry for a broad range of economic opportunities:

(1) Without proper funding for need-based programs, lower income students may not be able to realize their full potential;

(2) Adults may not obtain the training they need to compete in the current and future job market;

(3) High-achieving students may not pursue rigorous courses in high school or attend college in West Virginia, all of which contribute to devaluing post-secondary education and perpetuating the culture of educational underachievement; and

(4) The state must continue to strive to support equally the need-based and merit-based student financial aid programs.
§18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.

(a) Notwithstanding any other provision of this code or rule to the contrary, a student who attended a public or private high school outside the state is eligible for state funded student financial aid, grants and scholarships if:

(1) The student meets all other eligibility requirements for the aid, grant or scholarship; and either

(2) The student resided in West Virginia while attending high school in another state, and:

(A) The student resided with his or her parent or legal guardian who:

(i) Was a resident of this state; and

(ii) Had been a resident of this state for at least two years immediately preceding the student’s attendance at the school;

(B) The student commuted during the school term on a daily basis from this state to the school;

(C) The student is a dependent of the parent or legal guardian upon which eligibility is based;

(D) The student has not established domicile outside the state; and

(E) At the discretion of the State Superintendent of Schools, as defined in section one, article one, chapter eighteen of this code:

(i) The school is fully accredited in that state to the degree acceptable to the State Superintendent of Schools; and
(ii) The school’s curriculum requirements for graduation are equivalent to the curriculum requirements for graduation in this state, or sufficiently similar to those requirements, as determined by the State Superintendent of Schools; or

(3) The student resided and attended high school in another state or a United States territory, United States possession or foreign country and:

(A) The student resided with his or her parent or legal guardian; and

(B) The student’s parent or legal guardian:

(i) Served in the United States armed forces while the student attended high school in such state, territory, possession or country;

(ii) Was stationed for military purposes in such state, territory, possession or country; and

(iii) Maintained legal residence in West Virginia while stationed in such state, territory, possession or country.

(b) This section may not be construed to alter, amend or extend any application deadlines or other requirements established by law or policy.

(c) The provisions of this section expire on the thirtieth day of June, two thousand ten.

§18C-1-5. Higher Education Student Financial Aid Advisory Board.

(a) The Higher Education Student Financial Aid Advisory Board is established.
(b) The purpose of the board is to provide financial aid expertise and policy guidance to the commission, the council, the PROMISE Scholarship Board, the Vice Chancellor for Administration and the Executive Director of the PROMISE Scholarship Program on all matters related to federal, state and private student financial aid resources and programs.

(c) It is the intent of the Legislature that the advisory board have the following responsibilities:

1. Recommend methods to balance the needs of state students from all levels of financial need and academic ability by focusing attention on multiple financial aid programs which meet a variety of state objectives;

2. Recommend methods for achieving a comprehensive system of student financial aid:
   (A) To maximize the return on the state’s investment in such programs by increasing the skills, qualifications and education achievement of the citizens receiving the benefits; and
   (B) To establish methods for coordinating administration among state-funded student financial aid programs so that the state achieves the appropriate blend of student financial aid programs to expand the range of economic opportunities available to state citizens;

(d) The advisory board consists of twelve members as follows:

1. The chair of the Higher Education Policy Commission or a designee who is a member of the commission;

2. The chair of the West Virginia Council for Community and Technical College Education or a designee who is a member of the council;
(3) The State Superintendent of Schools or a designee;

(4) The Secretary of Education and the Arts or a designee;

(5) The State Treasurer or a designee;

(6) A member of the PROMISE Scholarship Board selected by that board;

(7) Three financial aid administrators, excluding the president of the West Virginia Association of Student Financial Aid Administrators.

(A) All financial aid administrators are appointed by the Vice Chancellor for Administration in consultation with the commission and the council, as appropriate. Of the initial appointments, the vice chancellor shall appoint one member to a two-year term, one member to a three-year term and one member to a four-year term. Thereafter, all terms are for four years.

(B) It is the duty of the Vice Chancellor for Administration to select financial aid administrators so that the following types of institutions have representatives serving on the board on a rotating basis:

(i) State institutions of higher education which are doctoral-degree granting research universities;

(ii) State institutions of higher education which primarily grant baccalaureate degrees;

(iii) State institutions of higher education which are free-standing community and technical colleges;

(iv) State institutions of higher education which are administratively linked community and technical colleges; and
(v) Private institutions of higher education which are regionally accredited and located within the state.

(8) Three at-large private sector members who are appointed jointly by the commission and the council. Of the initial appointments, the commission and the council jointly shall appoint one member to a two-year term, one member to a three-year term and one member to a four-year term. Thereafter, all terms are for four years.

(A) At-large members shall:

(i) Be representative of the state's business and economic community;

(ii) Demonstrate knowledge, skill and experience in an academic, business or financial field; and

(iii) Reside within this state.

(B) An at-large member may not be:

(i) A member of a governing board or institutional board of advisors of any public or private institution of higher education; nor

(ii) A publicly elected official or an employee of any state, county or municipal agency.

(e) No more than two of the at-large members may be from the same political party and no more than one may reside in any congressional district.

(1) After the initial appointments, each appointed member serves a term of four years and may be reappointed upon expiration of the term.
(2) In the event of a vacancy among appointed members, the commission and the council shall appoint a person for the remainder of the unexpired term to represent the same interests as those of the original appointee. A person appointed to fill a vacancy is eligible for reappointment. Unless a vacancy occurs due to death or resignation, an appointed member continues to serve until a successor has been appointed and qualified as provided in this section.

(f) Members of the advisory board serve without compensation, but are entitled to reimbursement by the commission for expenses, including travel expenses, which are actually incurred by the member in the official conduct of the business of the advisory board. Members are reimbursed in a manner consistent with rules of the Higher Education Policy Commission.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-1. Grant program established; legislative purpose and intent; rule required.

(a) The Higher Education Grant Program is continued.

(b) It is the policy of the Legislature and the purpose of this article to continue the Higher Education Grant Program within the limits of appropriations made therefor from time to time for such purpose by the Legislature.

(1) The Grant Program is designed to guarantee that the most able and needy students from all sectors of the state are given the opportunity to continue their program of self-improvement in an approved institution of higher education of their choice located in this state.

(2) The Grant Program is a vitally important source of financial assistance for needy residents of the state; and
(3) The Grant Program aids lower income students to realize their full academic potential;

(c) Therefore, in recent years the state has substantially increased appropriations to need-based student financial aid programs.

(d) The commission, in consultation with the council and the advisory board, shall propose a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, to implement the provisions of this article. The commission shall file the rule with the Legislative Oversight Commission on Education Accountability no later than the first day of September, two thousand six. The rule shall address administration of the grant program, including, but not limited to, the following:

(1) Eligibility criteria for awards;

(2) Coordination with other student financial aid programs;

and

(3) Appeal procedures.

§18C-5-2. Definitions.

(a) "Approved institution of higher education" means:

(1) A state institution of higher education as defined in section two, article one, chapter eighteen-b of this code; Alderson-Broaddus College, Appalachian Bible College, Bethany College, Mountain State University, Davis and Elkins College, Ohio Valley University, Salem International University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University, all in West Virginia; and
Any other regionally or nationally accredited institution of higher education in this state, public or private, approved by the vice chancellor if the institution has been licensed for a minimum of fifteen years subject to the provisions of section nine, article two-b, chapter eighteen-b of this code and section six, article two-b of said chapter.

"Grant" or "grant program" means a higher education grant or the higher education grant program authorized and established by the provisions of this article.

"Senior administrator" and "vice chancellor" mean the Vice Chancellor for Administration, as provided in section two, article four, chapter eighteen-b of this code.

§18C-5-3. Grant program administered by Vice Chancellor for Administration; Higher Education Grant Fund created.

(a) The grant program established in this article is administered by the Vice Chancellor for Administration.

(b) There is hereby created a special revenue fund in the state treasury which is designated and known as the "Higher Education Grant Fund".

(1) The fund consists of:

(A) All appropriations by the Legislature for the higher education grant program;

(B) Any gifts, grants or contributions received for the higher education grant program; and

(C) All interest or other income earned from investment of the fund.
(2) The fund does not consist of federal funds received nor higher education resource assessment funds received pursuant to section two, article ten, chapter eighteen-b of this code.

(3) Any moneys remaining in the fund at the close of the fiscal year are carried forward for use in the next fiscal year.

(4) The allocations to the fund are subject to appropriation by the Legislature.

(5) Nothing in this article requires any specific level of funding by the Legislature nor guarantees nor entitles any individual to any benefit or grant of funds.

(c) For the fiscal year beginning the first day of July, two thousand six, it is the intent of the Legislature to appropriate twenty-five million dollars for the grant program. For each fiscal year thereafter until and including the fiscal year ending the thirtieth day of June, two thousand eleven, it is the intent of the Legislature to appropriate two percent more than each prior year’s appropriation for the grant program. For the fiscal year beginning the first day of July, two thousand eleven, and in each fiscal year thereafter, it is the intent of the Legislature to appropriate an amount for the grant program equal to the amount appropriated for the fiscal year beginning the first day of July, two thousand eleven.

(d) The vice chancellor may expend the moneys in the fund to implement the provisions of this article.

§18C-5-4. Powers and duties of Vice Chancellor for Administration.

Subject to the provisions of this article and within the limits of appropriations made by the Legislature, the vice chancellor may:
Prepare and supervise the issuance of public information concerning the grant program;

(2) Prescribe the form and regulate the submission of applications for grants;

(3) Select qualified recipients of grants;

(4) Award grants;

(5) Accept grants, gifts, bequests and devises of real and personal property for the purposes of the grant program;

(6) Administer federal and state financial loan programs;

(7) Cooperate with approved institutions of higher education in the state and their governing boards in the administration of the grant program;

(8) Make the final decision pertaining to residency of an applicant for grant or renewal of grant;

(9) Employ, fix the duties of and compensate such employees as may be necessary to assist the vice chancellor in the performance of his or her duties; and

(10) Administer the higher education adult part-time student grant program established in section seven of this article.

§18C-5-5. Eligibility for a grant.

A person is eligible for consideration for a grant if the person:

(1) Is a citizen of the United States;
(2) Has been a resident of the state for one year immediately preceding the date of application for a grant;

(3) Meets the admission requirements of, and is admitted into, the approved institution of higher education to which admission is sought; and

(4) Satisfactorily meets the qualifications of financial need, academic promise and academic achievement established by the vice chancellor.

§18C-5-6. Recipients, awards and distribution of grant awards; authority of vice chancellor to enter into reciprocal agreements with other states concerning grants.

(a) A grant recipient may attend any approved institution of higher education. An institution is not required to accept a grant recipient for enrollment, but may exact compliance with its own admission requirements, standards and policies.

(b) Grants may only be awarded to undergraduate students.

(c) Each grant is renewable until the course of study is completed, but not to exceed an additional three academic years beyond the first year of the award. The academic years are not required to be consecutive years, and the grant will be terminated if the student receives a bachelor’s degree in a shorter period of time.

(d) Qualifications for renewal include the following, as determined by the vice chancellor:

(1) Maintaining satisfactory academic standing;

(2) Making normal progress toward completion of the course of study; and
(3) Continued eligibility.

(e) Grants are awarded:

(1) Without regard to the applicant’s race, creed, color, sex, national origin or ancestry; and

(2) In accordance with the provisions of this article.

(f) The vice chancellor shall treat all approved institutions of higher education in a fair and equitable manner when awarding grants.

(g) The vice chancellor periodically shall identify areas of professional, vocational and technical expertise that are, or will become, of critical need in this state. To the extent feasible the vice chancellor may direct grants to students who are pursuing instruction in those areas.

(h) The vice chancellor may enter into reciprocal agreements with state grant and grant program agencies in other states which provide financial assistance to their residents attending institutions of higher education located in West Virginia. In connection therewith, the vice chancellor may authorize residents of West Virginia to use financial assistance under this article to attend institutions of higher education in such other states. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such state must meet all of the eligibility standards set forth in section five of this article.

(I) Grant awards may not exceed the cost of the tuition and those related compulsory fees charged by an institution to all West Virginia undergraduate students.

(j) Grant payments are made directly to the institution.
(k) In the event that a grant recipient transfers from one approved institution of higher education to another, the grant is transferable only with the approval of the vice chancellor.

(l) If a recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the commission in accordance with the commission’s policy for issuing refunds. The commission shall transfer such funds to the appropriate account for allocation and expenditure pursuant to the provisions of this article.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-2. Legislative findings and purpose.

(a) The Legislature finds and declares that:

1. (1) West Virginia must have an educated work force in order to attract and retain the high wage, high skill jobs of the twenty-first century;

2. (2) A large percentage of West Virginia residents who graduate from the state’s colleges and universities do not work in the state following graduation;

3. (3) The percentage of West Virginia’s adult population over the age of twenty-five with at least a baccalaureate degree is less than fifteen percent and does not compare favorably with the member states of the Southern Regional Education Board average nor with the national average of twenty-five percent;

4. (4) Higher levels of education attainment result in higher levels of personal income over a lifetime;
(5) Students who acquire a baccalaureate degree will earn an estimated one million dollars more over their lifetimes than those who attain only a high school diploma. This translates into an increased tax base and economic development for West Virginia and more discretionary income for its citizens;

(6) Students at all education levels should have an incentive to perform at a high academic level;

(7) There is a need to provide parents with all tools possible to aid them in helping their children understand the importance of high academic achievement in high school and college;

(8) The PROMISE Scholarship Program is highly successful and should be maintained with merit as its strongest component. The merit component:

(A) Provides an incentive for students to set high academic standards in high school;

(B) Encourages students to increase their high school achievement levels;

(C) Encourages students to enroll in more rigorous courses;

(D) Effects a culture change in West Virginia towards increased education attainment;

(E) Results in improved ACT scores in the state since the inception of the program; and

(F) Influences increased numbers of students, including those students who are the highest academic achievers, to remain in West Virginia to attend college.

(b) It is the purpose of this article to continue the West Virginia PROMISE Scholarship Program to deal effectively with the findings set forth in this section.
Nothing in this article guarantees:

(1) A PROMISE scholarship award or any specific amount of a PROMISE scholarship award to any student; or

(2) That the requirements necessary for a student to qualify for a PROMISE scholarship will not be changed by legislation or rule before the student is eligible to receive an award.

§18C-7-3. Definitions.

(a) “Eligible institution” means:

(1) A state institution of higher education as defined in section two, article one, chapter eighteen-b of this code;

(2) Alderson-Broaddus College, Appalachian Bible College, Bethany College, Davis and Elkins College, Mountain State University, Ohio Valley University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University, all in West Virginia. Any institution listed in this subdivision ceases to be an eligible institution if it:

(A) Loses regional accreditation; or

(B) Changes its status as a private, not for profit institution.

(3) Any other regionally accredited institution in this state, public or private, approved by the board.

(b) “Board” means the West Virginia PROMISE Scholarship Board of the West Virginia PROMISE Scholarship Program as provided for in section four of this article.

(c) “Tuition” means the quarter, semester or term charges imposed by a state institution of higher education and all mandatory fees required as a condition of enrollment by all students.
(d) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

§18C-7-4. Appointment of the PROMISE Scholarship Board; compensation; proceedings generally.

(a) The West Virginia PROMISE Scholarship Board is comprised of fifteen members. Any member appointed by the Governor prior to the effective date of this section may continue to serve the term for which the member has been appointed: Provided, That by the first day of April, two thousand seven, and thereafter, the membership of the board is comprised as follows:

(1) The chairperson of the commission or a designee who is a member of the commission;

(2) The chancellor of the commission or his or her designee;

(3) The State Superintendent of Schools or his or her designee;

(4) The Secretary of Education and the Arts;

(5) The State Treasurer or his or her designee;

(6) The president of the West Virginia Association of Student Financial Aid Administrators;

(7) The executive director of the Governor's Workforce Investment Division;

(8) Eight at large members, appointed by the Governor with the advice and consent of the Senate:
(A) One of the eight at-large members has knowledge, skill and expertise in state and federal student financial aid policy and management;

(B) Seven of the eight at-large members represent the state's business and economic community and have knowledge, skill and experience in an academic, business or financial field.

(C) The eight at-large members shall be residents of the state. No more than five of the eight at-large members may be from the same political party. No more than three of the eight at-large members may be from the same congressional district.

(b) At-large members serve a term of four years and may be reappointed at the expiration of their terms. In the event of a vacancy among at-large members, the Governor shall appoint a person representing the same interests to fill the unexpired term. A person appointed to fill a vacancy shall be appointed only for the remainder of that term and is eligible for reappointment. Unless a vacancy occurs due to death, resignation or removal pursuant to subsection (e) of this section, an at-large member of the board shall continue to serve until a successor has been appointed and qualified as provided in subsection (a) of this section. All terms are for four years.

(c) Members of the board shall serve without compensation, but shall be reimbursed by the Office of the Secretary of Education and the Arts 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.

(d) The Secretary of Education and the Arts is the chairperson and presiding officer of the board. A majority of the members of the board constitute a quorum for the transaction of business.
(e) The at-large members appointed by the Governor may be removed by the Governor for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the Governor of the state elective officers in accordance with section five, article six, chapter six of this code.

§18C-7-5. Powers and duties of the West Virginia PROMISE Scholarship Board.

(a) Powers of 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 including, but not limited to, the following express powers:

(1) To adopt and amend bylaws;

(2) To propose legislative rules to the commission 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;

(3) 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;

(4) To execute contracts and other necessary instruments;
(5) To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, the requirements shall include that an eligible student must have met the following requirements:

(A) Completed at least one half of the credits required for high school graduation in a public or private high school in this state; or

(B) Received instruction in the home or other approved place pursuant to Exemption B, section one, article eight, chapter eighteen of this code for the two years immediately preceding application.

(C) This subdivision may not be construed to establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(6) 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 scholarship program;

(A) The board is encouraged to utilize the employees of the Vice Chancellor for Administration to provide administrative and technical assistance.

(B) Any services provided for the board by such employees remain under the direction and authority of the vice chancellor.

(7) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aid from any source and to participate in any federal, state or local governmental programs in carrying out the purposes of this article;
(8) To define the terms and conditions under which scholarships are awarded with the minimum requirements being set forth in section six of this article; and

(9) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

(b) Duties of board —

In addition to any duty required by any other provision of this article, the board has the following responsibilities:

(1) To operate the program in a fiscally responsible manner and within the limits of available funds;

(2) To operate the PROMISE Scholarship Program as a merit-based program;

(3) To raise academic eligibility requirements before taking any other steps to limit student awards should projections indicate that available funds will not be sufficient to cover future costs, and

(4) To maintain contact with graduates who have received PROMISE scholarships and to provide a written statement of intent to recipients who are selected to receive a PROMISE scholarship after the effective date of this section notifying them that acceptance of the scholarship entails a responsibility to supply:

(A) Information requested by the board to determine the number and percentage of recipients who:

(i) Continue to live in West Virginia after graduation;
(ii) Obtain employment in West Virginia after graduation; and

(iii) Enroll in post-graduate education programs and the name of the state in which each post-graduate institution is located; and

(B) Such other relevant information as the board may reasonably request to implement the provisions of this subdivision.

(5) To analyze the data collected pursuant to subdivision (4) of this subsection, and:

(A) Report the findings to the Joint Standing Committee on Education by the tenth day of January, two thousand seven, and annually thereafter; and

(B) Make recommendations annually to the Joint Standing Committee on Education regarding any actions the board considers necessary or expedient to encourage PROMISE recipients to live and work in the state after graduation.

§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.

(a) A PROMISE scholarship annual award meets the following conditions:

(1) Equals but does not exceed the cost of tuition for a student enrolled in a state institution of higher education;

(2) Equals an amount determined by the board, but not to exceed the cost of tuition at state institutions of higher education, for a student enrolled in an eligible institution that is not a state institution of higher education; and
(3) Is used by an eligible institution to supplement, but not to supplant, a tuition and fee waiver for which the individual is eligible pursuant to sections five, six-a or seven, article ten, chapter eighteen-b of this code.

(b) The total cost of all scholarships awarded by the board in any year may not exceed the amount of funds available to the board during that fiscal year.

(c) An individual shall meet the following conditions in order to be eligible to receive a PROMISE scholarship award:

(1) Submit a scholarship award application to the board:

(A) Within two years of graduating from high school or within two years of acquiring a General Equivalency Degree if provided instruction in the home or other approved place pursuant to Exemption B, section one, article eight, chapter eighteen of this code; or

(B) Within seven years of initially entering military service, and within one year of discharge from such military service, if the individual has entered the United States armed services within two years after graduating from high school;

(2) Apply for and submit to the board a Free Application for Federal Student Aid;

(3) Maintain a grade point average of at least 3.0 on a 4.0 grading scale in the required core and elective course work necessary to prepare students for success in post-secondary education at the associate and baccalaureate degree levels as determined by the board, if the individual has completed not more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school;
(4) Maintain appropriate academic progress toward the completion of a degree at the undergraduate education level as determined by the board if the individual has completed more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school;

(5) Meet additional objective standards as the board considers necessary to promote academic excellence and to maintain the financial stability of the fund;

(6) Enroll in an eligible institution. Any student enrolled at an eligible institution who receives a PROMISE scholarship award may retain and renew the scholarship to complete his or her undergraduate education at that institution, or any other eligible institution:

(A) If the institution at which the student is enrolled loses its status as an eligible institution pursuant to the provisions of subdivision (2), subsection (a), section three of this article; and

(B) If the student meets all other renewal requirements of this code and of board rules.

(7) It is the intent of the Legislature that the board shall strongly encourage prospective candidates for the PROMISE scholarship to perform at least twenty hours of unpaid community service while in high school to help prepare them for success in post-graduate education. The community service may include, but is not limited to, participation with nonprofit, governmental or community-based organizations designed to:

(A) Improve the quality of life for community residents;

(B) Meet the needs of community residents; or
(C) Foster civic responsibility.

(d) The board shall recommend a legislative rule to the commission to implement the provisions of this article. The commission shall promulgate a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) The rule shall include at least the following provisions:

(A) The amount of a PROMISE scholarship award may not exceed the cost of tuition at state institutions of higher education;

(B) The amount of a PROMISE scholarship award in combination with aid from all other sources may not exceed the cost of education at the institution the recipient is attending. This provision does not apply to members of the West Virginia National Guard, recipients of an Underwood-Smith teacher scholarship, and recipients of a West Virginia engineering, science and technology scholarship;

(C) Additional objective standards as the board considers necessary:

(i) To promote academic excellence;

(ii) To maintain the financial stability of the fund; and

(iii) To operate the program within the limits of available funds.

(D) Provisions for making the highest and best use of the PROMISE Scholarship Program in conjunction with the West Virginia Prepaid Tuition Trust Act set forth in article thirty, chapter eighteen of this code;
(E) A provision defining the relationship of PROMISE scholarship awards to all other sources of student financial aid to ensure maximum coordination. The provision shall include the following:

(i) Methods to maximize student eligibility for federal student financial aid;

(ii) A requirement that PROMISE scholarship awards not supplant tuition and fee waivers; and

(iii) Clarification of the relationship between the PROMISE Scholarship Program, tuition savings plans and other state funded student financial aid programs;

(F) A method for awarding scholarships within the limits of available appropriations, including circumstances when program funds are not sufficient to provide awards to all eligible applicants. The board may not utilize any of the following methods:

(i) Making a scholarship award for an amount less than the cost of full tuition for a student enrolled in a state institution of higher education; or

(ii) Eliminating any current recipient from eligibility;

(G) A method for applicants to appeal determinations of eligibility and renewal.

(2) The rule may provide for or require the following at the board’s discretion:

(A) Requiring repayment of the amount of the scholarship, in whole or in part, if a scholarship recipient chooses to work outside the state after graduation: Provided, The rule may not require a recipient to repay a scholarship in whole or in part
unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the PROMISE scholarship award.

(B) Targeting a portion of the scholarship funds to be used for applicants enrolled in an engineering, science, technology or other designated program;

(C) Determining what other sources of funding for higher education are to be deducted from the PROMISE scholarship award; and

(D) Providing additional criteria as determined by the board.

(3) The Legislature finds that an emergency exists and, therefore, the board shall file a rule to implement the provisions of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code. The rule is subject to the prior approval of the Legislative Oversight Commission on Education Accountability.

§18C-7-7. West Virginia PROMISE Scholarship Fund created.

(a) The special revenue fund in the state treasury designated and known as the “PROMISE Scholarship Fund” is continued. The fund consists of:

(1) All appropriations to the fund from the West Virginia lottery, video lottery and taxes on amusement devices;

(2) All appropriations by the Legislature for the PROMISE Scholarship Fund;

(3) Any gifts, grants or contributions received for the PROMISE Scholarship Program; and
(4) All interest or other income earned from investment of the fund.

(b) The allocations to the fund are subject to appropriation by the Legislature. Nothing in this article requires any specific level of funding by the Legislature nor guarantees nor entitles any individual to any benefit or grant of funds.

(c) For the fiscal year beginning the first day of July, two thousand six, it is the intent of the Legislature that the aggregate of the amount of moneys transferred to the fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code, and such other amounts of public moneys that may be transferred to the fund by appropriation of the Legislature, shall equal but may not exceed forty million dollars. For each fiscal year thereafter until and including the fiscal year ending the thirtieth day of June, two thousand eleven, it is the intent of the Legislature that this aggregate be an amount two percent greater than the aggregate established by this subsection for the prior fiscal year. For the fiscal year beginning the first day of July, two thousand eleven, and in each fiscal year thereafter, it is the intent of the Legislature that this aggregate not exceed the aggregate established by this subsection for the fiscal year beginning the first day of July, two thousand eleven.

(d) The board may expend the moneys in the fund to implement the provisions of this article.
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 July 1, 2006.

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 31st day of ___, 2006.

Governor