WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

House Bill No. 3295

(By Delegate White)

Passed April 11, 2009

In Effect from Passage
AN ACT to amend and reenact §18-30-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §36-8-13 of said code; and to amend and reenact §44-1-28 of said code, all relating to the West Virginia State Treasurer's Office; transferring a one time sum of $8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund; setting $1 million as the amount to be transferred annually from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Fund until the actuary certifies there are sufficient funds to pay out all contracts; authorizing investment of the Unclaimed Property Trust Fund; and facilitating payments by the state where the owner has died.

Be it enacted by the Legislature of West Virginia:

That §18-30-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §36-8-13 of said code be amended and reenacted; and that §44-1-28 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 March 8, 2003, the prepaid tuition plan is closed to new contracts until the Legislature authorizes the plan to reopen. Closing the plan to new contracts does not mean the Prepaid Tuition Plan is closed and does not affect any Prepaid Tuition Plan contracts in effect on March 8, 2003. 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 December 1, 2003, and each year thereafter, the chairperson 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.

(2) The Prepaid Tuition Trust Escrow Fund is continued 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 accrue to the escrow fund and be available for expenditure in accordance with this section.

(A) On July 1, 2009, the unclaimed property administrator shall transfer the amount of $8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(B) On or before December 15 of each fiscal year and continuing until the actuary certifies there are sufficient funds to pay out all contracts, the unclaimed property administrator shall transfer the amount of $1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(3) 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.

(4) 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.

(5) 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.

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

(7) 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 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. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. 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) (1) On July 1, 2009, the unclaimed property administrator shall transfer the amount of $8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(2) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of $1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary certifies there are sufficient funds to pay out all contracts.

(e) On or before June 1, 2007, the unclaimed property administrator shall transfer the amount of $2 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the deferred compensation matching program for state employees. On or before June 1, 2008, the unclaimed property administrator shall transfer the amount of $1 million from the Unclaimed
50 Property Trust Fund to the Deferred Compensation Matching
51 Fund for operation of the matching program.

(f) After transferring any money required by subsections 
52 (d) and (e) of this section, the administrator shall transfer
53 moneys remaining in the Unclaimed Property Trust Fund to
54 the General Revenue Fund.

CHAPTER 44. ADMINISTRATION OF ESTATES AND
TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-28. Payment of small sums due employees to distributees
of decedents upon whose estates there have been no
qualifications.

(a) When the State of West Virginia, any of its political
subdivisions, the United States or any employer owes wages, 
salary, pension payments or money allowed for burial
expenses to a decedent, upon whose estate there has been no
qualification, and the amount owed does not exceed $5,000,
the State of West Virginia, any of its political subdivisions,
the United States or the decedent’s employer, after one
hundred and twenty days from the death of the decedent, may
pay the amount owed to the decedent’s surviving spouse, if
any; and if no spouse survived the decedent, then to the
distributees of the decedent under the laws of the State of
West Virginia.

(b) When the State Treasurer holds property in
accordance with article eight, chapter thirty-six of this code
on behalf of a decedent upon whose estate there has been no
qualification, and the amount of the property is $5,000 or
less, the Treasurer may remit the property to the surviving
spouse of the decedent, if any; and if no spouse survives the
decedent, then to the distributees of the decedent under the
laws of the State of West Virginia. When the State Treasurer
holds property in accordance with article eight, chapter
thirty-six of this code on behalf of a decedent whose estate is
closed or has no present qualification and a valid will or an
affidavit naming the decedent’s distributees has been filed
with the appropriate probate jurisdiction, the Treasurer may
remit the property to the distributees as reflected in the will,
or in the absence of a will, as established by the affidavit, in
accordance with the laws of descent and distribution.

(c) Payment in accordance with this section is in full
discharge and acquittance to all persons whomsoever on
account of the property.
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 day of May, 2009.

Governor