WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 373
(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed April 11, 2009; to take effect July 1, 2009.]
AN ACT to repeal §18C-7-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18B-1D-9; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18C-1-1, §18C-1-4 and §18C-1-5 of said code; to amend and reenact §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code; and to amend and reenact §29-22-18a of said code, all relating to higher education in West Virginia generally; requiring training and development opportunities for members of the Higher Education Policy Commission, the Council for Community and Technical College Education and the institutional governing boards; revising...
criteria for membership of certain institutional governing board and designating the manner in which the membership is determined; requiring the governor to consider certain factors and seek a certain balance when appointing members; reconstituting the Higher Education Student Financial Aid Advisory Board; providing for member appointments; setting forth member qualifications and terms of office; setting forth duties of the advisory board; modifying conditions upon which students who attended high school outside the state may be eligible for certain financial aid; dissolving the PROMISE Scholarship Board and transferring its powers and duties to the Higher Education Policy Commission and under the administration of the Vice Chancellor for Administration; requiring the Vice Chancellor for Administration to submit an annual report; defining terms; authorizing investment of certain funds with the West Virginia Investment Management Board; increasing the aggregate and excess lottery amounts the Legislature intends to allocate to PROMISE scholarship program for certain fiscal years; setting a minimum amount for the PROMISE scholarship annual award and authorizing the Higher Education Policy Commission to provide annual awards greater than the minimum under certain circumstances if funds are available; increasing flexibility for adjusting requirements to receive a PROMISE scholarship; providing conditions under which PROMISE scholarship annual awards are continued to certain students under certain circumstances; establishing citizenship and legal immigrant conditions of eligibility for a PROMISE scholarship; clarifying that a PROMISE scholarship may supplement certain tuition and fee waivers; and authorizing the Higher Education Policy Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That §18C-7-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18B-1D-9; that §18B-2A-1 of
said code be amended and reenacted; that §18C-1-1, §18C-1-4 and §18C-1-5 of said code be amended and reenacted; that §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code be amended and reenacted; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-9. Commission, council and institutional governing board training and development; training and development requirements, applicability and exceptions.

(a) The commission and council, either jointly or separately, shall coordinate periodic training and development opportunities for members of the commission, council and institutional governing boards as provided in this section.

(b) Within six months of beginning service on the commission, council or a governing board, each new member shall complete at least three hours of training and development. The training and development shall address the following topics:

(1) State goals, objectives and priorities for higher education;

(2) The accountability system for higher education set forth in this article;

(3) The general powers and duties of members; and

(4) Ethical considerations arising from board membership.

(c) With the exception of the ex officio members of the commission and the council and the student member of a
20 governing board, each member shall complete at least six
21 hours of training and development related to his or her
22 duties within two years of beginning service and within
23 every two years of service thereafter.

24 (d) By July 31 each year, the chair of the commission,
25 council and each governing board shall certify to the
26 commission or council, as appropriate, the number of
27 hours of training and development that each member
28 received during the preceding fiscal year.

29 (e) If the certification indicates that a board member
30 has not completed the training and development required
31 by this section, the commission or council, as appropriate,
32 shall send a notice to the Governor and the Secretary of
33 State or to the institutional appointing entity that the
34 board member is disqualified from continued service
35 notwithstanding the provisions of sections five and six,
36 article six, chapter six of this code. The commission or
37 council, as appropriate, shall request the Governor or
38 appointing entity to appoint a replacement for that board
39 member.

40 (f) By September 30 each year, the commission and
41 council shall report to the Legislative Oversight Commis-
42 sion on Education Accountability on the training and
43 development that members of the commission and the
44 council and the governing boards under their respective
45 jurisdictions have received during the preceding fiscal
46 year and shall include this information in the institutional
47 and statewide report cards provided in section eight of this
48 article.

49 (g) As used in this section, “member” means all mem-
50 bers of the commission, council and the governing boards
51 unless a specific exception is provided in this section.
ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) Findings. —

The Legislature finds that the State of West Virginia is served best when the membership of each governing board includes the following:

1. The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;
2. The technical or professional expertise and institutional experience of a classified employee of the institution governed by the board;
3. An awareness and understanding of the issues facing the institution governed by the board; and
4. The diverse perspectives that arise from a membership that is balanced in terms of gender and varied in terms of race and ethnic heritage.

(b) Boards of governors established. —

A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, The Community and Technical College at West Virginia University Institute of Technology, Concord University, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, Fairmont State University, Glenville State College, Marshall Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty State University, West Virginia Northern Commu-
(c) Board Membership. —

(1) An appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(2) The board of governors for Marshall University consists of sixteen persons. The board of governors for West Virginia University consists of seventeen persons. The boards of governors of the other state institutions of higher education consist of twelve persons.

(3) Each board of governors includes the following members:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(B) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; and

(C) A member from the institutional classified employees duly elected by the classified employees of the respective institution;

(4) For the board of governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;

(5) For the board of governors at West Virginia University, twelve lay members appointed by the Governor, by
and with the advice and consent of the Senate, pursuant to this section, and additionally:

(A) The chairperson of the board of Visitors of West Virginia University Institute of Technology;

(B) A full-time faculty member representing the extension service at the institution or a full-time faculty member representing the health sciences, selected by the faculty senate.

(6) For each board of governors of the other state institutions of higher education, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(A) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the thirteen members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the twelve members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party.

(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least seven shall be residents of the state.

(7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:

(A) The need for individual skills, knowledge and experience relevant to governing the institution;
(B) The need for awareness and understanding of institutional problems and priorities, including those related to research, teaching and outreach;

(C) The value of gender, racial and ethnic diversity; and

(D) The value of achieving balance in gender and diversity in the racial and ethnic characteristics of the lay membership of each board.

(d) Board member terms. –

(1) The student member serves for a term of one year. Each term begins on the first day of July.

(2) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(3) The member representing classified employees serves for a term of two years. Each term begins on the first day of July. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(4) The appointed lay citizen members serve terms of up to four years each and are eligible to succeed themselves for no more than one additional term.

(5) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections are held and all appointments are made no later than June 30 preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than four consecutive years.
(6) The appointed members of the boards of governors serve staggered terms of up to four years except that four of the initial appointments to the governing boards of community and technical colleges that became independent July 1, 2008, are for terms of two years and five of the initial appointments are for terms of four years.

(e) Board member eligibility, expenses. –

(1) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or the superintendent of a county board of education from being members of the governing boards.

(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office,
other than an elected county office, or public employment,
other than employment by the county board of education,
under the government of this state or any of its political
subdivisions; an employee of any affiliated research
corporation created pursuant to article twelve of this
chapter; an employee of any affiliated foundation orga-
nized and operated in support of one or more state institu-
tions of higher education; or a member of the council or
commission. This subsection does not prevent the repre-
sentative from the faculty, classified employees or stu-
dents from being members of the governing boards.

Before exercising any authority or performing any
duties as a member of a governing board, 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.

(3) A member of a governing board 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.

(4) The members of the board of governors serve
without compensation, but are reimbursed for all reason-
able and necessary expenses actually incurred in the
performance of official duties under this article upon
presentation of an itemized sworn statement of expenses.

(5) The president of the institution shall make available
resources of the institution for conducting the business of
its board of governors. All expenses incurred by the board
of governors and the institution under this section are paid
from funds allocated to the institution for that purpose.
CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

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

(a) The Legislature makes the following findings:

(1) Although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace, West Virginia has not developed sufficiently the state's human talent and resources because many able, but needy, students are not able to finance a higher education program;

(2) 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 financial barriers to the individual's education goals that remain after he or she has used 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 workforce and to enhance the quality of life for the citizens of West Virginia.

(c) The Vice Chancellor for Administration has a ministerial duty to administer, oversee and monitor all state and federal student financial aid programs administered at the state level in accordance with established rules under the direction of the commission and council and in consultation with the Higher Education Student Financial Aid Advisory Board.
(d) These programs include, but are not limited to, the following programs:

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 West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program;
8. The Higher Education Student Assistance Loan Program established pursuant to article twenty-two-d, chapter eighteen of this code;
9. The West Virginia College Prepaid Tuition and Savings Program established pursuant to article thirty, chapter eighteen of this code, which is administered by the State Treasurer;
10. The state aid programs for students of optometry, pursuant to article three of this chapter;
11. The state aid programs for students of veterinary medicine pursuant to section six-a, article eleven, chapter eighteen of this code;
12. Any reciprocal program and contract program for student aid established pursuant to sections three and four, article four, chapter eighteen-b of this code;
(13) Any other state-level student aid programs in this code; and

(14) Any federal grant or contract student assistance or support programs administered at the state level.

(e) Notwithstanding any provision of this chapter to the contrary, the Vice Chancellor for Administration shall prepare a single, comprehensive report regarding the implementation of the financial aid programs identified in subsection (d) of this section which are administered under his or her supervision. The report shall be provided to the commission and the council and shall be presented to the Legislative Oversight Commission on Education Accountability no later than November 30, 2009, and annually thereafter. The report shall address all financial aid issues for which reports are required in this code, as well as any findings and recommendations.

§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

(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 does not alter, amend or extend any application deadlines or other requirements established by law or policy.

§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 and the Vice Chancellor for Administration 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:

(1) Recommend methods to balance the needs of state students from all levels of financial need and academic ability;

(2) Recommend methods for achieving a comprehensive system of student financial aid to maximize the return on the state's investment in student financial aid programs by increasing the skills, qualifications and education achievement of the citizens receiving the benefits;

(3) Recommend methods to coordinate state-funded student financial aid programs so that the state achieves the appropriate blend of programs to expand the range of economic opportunities available to state citizens;
(4) Recommend ways to improve state-level administration of financial aid programs for the benefit of students and institutions;

(5) Recommend ways to improve financial aid outreach activities;

(6) Make recommendations, consistent with the nature of the PROMISE scholarship program as a merit-based student financial aid program;

(7) Study feasibility of including for-profit institutions as eligible institutions for PROMISE scholarship awards and requirements, if any, for inclusion; and

(8) Recommend rules that align with the goals, objectives and priorities set forth in section one-a, article one, chapter eighteen-b of this code and article one-d of said chapter and with other state and system public policy goals, objectives and priorities.

(d) Advisory board membership.

(1) The advisory board shall consist of seven members selected as follows:

(A) Three members appointed by the commission;

(B) Two members appointed by the council;

(C) One member appointed by the West Virginia Independent Colleges and Universities; and

(D) One member appointed by the West Virginia School Counselor Association.

(2) Members appointed by the commission and the council shall possess a broad knowledge of state and federal higher education student financial aid programs and have experience in administering these programs, preferably at the campus or system level.
(3) The initial appointments of members shall be made as follows:

(A) The commission shall appoint one member to a one-year term, one member to a two-year term and one member to a three-year term;

(B) The council shall appoint one member to a one-year term and one member to a three-year term;

(C) The West Virginia Independent Colleges and Universities shall appoint one member to a one-year term; and

(D) The West Virginia School Counselor Association shall appoint one member to a two-year term.

(4) After the initial terms are completed, appointments shall be made as follows:

(A) Members shall be appointed for three-year terms; and

(B) Members are eligible to succeed themselves for one additional consecutive term.

(5) The term of each member begins on July 1 of the year in which the appointment is made and ends on June 30 of the year in which the appointment expires.

(e) The first meeting of the advisory board shall be called by the Vice Chancellor for Administration, at which time the members shall elect a chairperson for an initial term ending on July 31, 2010. The chairperson may succeed himself or herself for an additional one-year term as chairperson. Thereafter, the term of the chairperson is for one year beginning on August 1 of the year in which elected and ending on July 31 of the following year. A member may not serve more than two consecutive terms as chairperson.
(f) In the event of a vacancy, a successor shall be appointed by the entity which appointed the vacating member for the unexpired term of the vacating member. A person appointed to fill a vacancy is eligible for reappointment for one additional consecutive term unless the time remaining in the unexpired term is less than six months in which case the person filling the vacancy is eligible for reappointment for two additional terms.

(g) 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.

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

§18C-7-3. Definitions.

(a) General. — For the purposes of this article, terms have the meaning ascribed to them in section two, article one of this chapter, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions. —

(1) "Eligible institution" means:

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

(B) 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 meets either of the following conditions:
17 (i) It loses regional accreditation; or
18 (ii) It changes its status as a private, not-for-profit institution;
20 (C) Any other public or private regionally accredited institution in this state approved by the commission.
22 (2) "Tuition" means the quarter, semester or term charges imposed by an eligible state institution of higher education and, additionally, all mandatory fees required as a condition of enrollment by all students. For the purposes of this article, the following conditions apply:
27 (A) West Virginia University, Potomac State College and West Virginia University Institute of Technology are considered separate institutions for purposes of determining tuition rates; and
31 (B) The tuition amount paid by undergraduate health sciences students at West Virginia University is considered to be the same as the amount of tuition paid by all other West Virginia University undergraduate students.
35 (3) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

§18C-7-4. Dissolution of the PROMISE Scholarship Board; transfer of funds.
1 (a) The West Virginia PROMISE Scholarship Board is hereby dissolved.
3 (b) All funds administered by the former PROMISE Scholarship Board shall be administered by the Higher Education Policy Commission.

§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission regarding the PROMISE Scholarship.
(a) **Powers of commission.** – In addition to the powers granted by any other provision of this code, the commission 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 promulgate legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

2. To invest any of the funds of the West Virginia PROMISE Scholarship Fund established in section seven of this article with the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code. Any investments made pursuant to 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 conducting an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

3. To execute contracts and other necessary instruments;

4. To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, a student shall have met the following requirements to be eligible:

   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 subsection (c), section one, article eight,
chapter eighteen of this code for the two years immediately preceding application;

(C) This subsection does not establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(5) 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. Any services provided or secured to implement or administer the provisions of this section remain under the direction and authority of the Vice Chancellor for Administration;

(6) 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;

(7) 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

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

(b) Duties of commission. – In addition to any duty required by any other provision of this code, the commission 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 program as a merit-based program;
(3) To adjust academic eligibility requirements 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 notifying them that acceptance of the scholarship entails a responsibility to supply the following:

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

(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;

(B) For PROMISE scholars who enroll in post-graduate education programs, the name of the state in which each post-graduate institution is located; and

(C) Any other relevant information the commission reasonably requests to implement the provisions of this subdivision;

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

(A) Report the findings annually to the Legislative Oversight Commission on Education Accountability; and

(B) Make annual recommendations to the Legislative Oversight Commission on Education Accountability regarding any actions the commission 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.

1 (a) A PROMISE scholarship annual award shall meet
2 the following conditions:
3
4 (1) For a student enrolled in a state institution of higher
5 education, the annual award is equal to the lesser of the
6 cost of tuition or $4,750, except that a student who was
7 awarded and used a PROMISE scholarship annual award
8 prior to January 1, 2010, shall continue to receive the
9 annual award calculated under the same terms and
10 conditions that applied on the day before the effective
11 date of this article;
12
13 (2) For a student enrolled in an eligible institution other
14 than a state institution of higher education, the annual
15 award is equal to, but may not exceed, the lesser of the
16 cost of tuition or $4,750, except that a student who was
17 awarded and used a PROMISE scholarship annual award
18 prior to January 1, 2010, shall continue to receive the
19 annual award calculated under the same terms and
20 conditions that applied on the day before the effective
21 date of this article;
22
23 (3) The annual award may exceed $4,750, if the com-
24 mission determines that adequate funds are available, but
25 in any case, may not be greater than the actual cost of
26 tuition;
27
28 (4) The annual award shall be used by an eligible
29 institution to supplement, but may not supplant, a tuition
30 and fee waiver for which the individual is eligible pursu-
31 ant to section five, six-a, seven or seven-b, article ten,
32 chapter eighteen-b of this code.
33
34 (b) The total cost of all scholarships awarded by the
35 commission in any year may not exceed the amount of
36 funds available to the commission during that fiscal year.
In order to be eligible to receive a PROMISE scholarship award an individual shall:

1. Submit a scholarship award application to the commission:
   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 subsection (c), 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 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 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 commission, 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 commission 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) Be a United States citizen or legal immigrant to the United States;

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

(7) Enroll in an eligible institution. A 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 under the following circumstances:

(A) The institution at which the student is enrolled loses its status as an eligible institution pursuant to the provisions of subdivision (1), subsection (b), section three of this article; and

(B) The student meets all other renewal requirements of this code and of commission rules.

(d) It is the intent of the Legislature that the commission 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-secondary education. The community service may include, but is not limited to, participation with nonprofit, governmental or community-based organizations designed with any or all of the following purposes:

(1) Improving the quality of life for community residents;

(2) Meeting the needs of community residents; or

(3) Fostering civic responsibility.
(e) 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 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;

(B) Additional objective standards the commission 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.

(C) Provisions for making the highest and best use of the PROMISE Scholarship Program in conjunction with the West Virginia College Prepaid Tuition and Savings Program Act set forth in article thirty, chapter eighteen of this code;

(D) 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;

(E) 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 commission may not use any of the following methods:

(i) Providing for an annual PROMISE scholarship award that is less than the amounts provided for in this section; or

(ii) Eliminating any current recipient from eligibility;

and

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

(2) The rule may provide for or require the following at the commission'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. 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 
commission.

(3) The Legislature finds that an emergency exists and, 
therefore, the commission 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 Account-
ability.

(4) Any rule promulgated by the commission pursuant 
to previous enactments of this article in effect on the 
effective date of the amendment and reenactment of this 
article in the year 2009 remains in effect until amended, 
modified, repealed or replaced by the commission.

§18C-7-7. West Virginia PROMISE Scholarship Fund contin-
ued.

(a) The special revenue fund in the State Treasury 
designated and known as the PROMISE Scholarship Fund 
is continued. The fund consists of moneys from the 
following sources:

(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 PROM-
ISE 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 approipa-
tion by the Legislature. Nothing in this article requires 
any specific level of funding by the Legislature nor
Chapter 29. Miscellaneous Boards and Officers.


(a) The State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under subdivision (1), subsection (a), section one thousand four hundred eight, article twenty-two-b of this chapter, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the State Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) $65 million into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State Treasury to be known as the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $10 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said
For the fiscal year beginning July 1, 2003, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $17 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $7 million into the State Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $27 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the School Building Debt Service Fund
created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds: Provided, That for the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead $19 million shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) $40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $29 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Schol-
arship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the Excess Lottery School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code; (5) $40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(e) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the eco-
nomic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia Economic Development Authority created and provided for in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the Governor, issue revenue bonds of the Economic Development Authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) The special revenue fund named the Economic Development Project Fund into which shall be is deposited the amounts to be deposited in the fund as specified in subsections (b), (c) and (d) of this section is continued. The Economic Development Project Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding,
redemption or defeasance of the bonds. The West Virginia
Economic Development Authority may further provide in
the resolution and in the trust agreement for priorities on
the revenues paid into the Economic Development Project
Fund that are necessary for the protection of the prior
erights of the holders of bonds issued at different times
under the provisions of this section. The bonds issued
pursuant to this subsection shall be separate from all other
bonds which may be or have been issued, from time to
time, under the provisions of this article.

(3) After the West Virginia Economic Development
Authority has issued bonds authorized by this section and
after the requirements of all funds have been satisfied,
including any coverage and reserve funds established in
connection with the bonds issued pursuant to this subsec-
tion, any balance remaining in the Economic Development
Project Fund may be used for the redemption of any of the
outstanding bonds issued under this subsection which, by
their terms, are then redeemable or for the purchase of the
outstanding bonds at the market price, but not to exceed
the price, if any, at which redeemable, and all bonds
redeemed or purchased shall be immediately canceled and
shall not again be issued.

(4) Bonds issued under this subsection shall state on
their face that the bonds do not constitute a debt of the
State of West Virginia; that payment of the bonds, interest
and charges thereon cannot become an obligation of the
State of West Virginia; and that the bondholders’ remedies
are limited in all respects to the Special Revenue Fund
established in this subsection for the liquidation of the
bonds.

(5) The West Virginia Economic Development Authority
shall expend the bond proceeds from the revenue bond
issues authorized and directed by this section for projects
certified under the provision of this subsection: Provided,

216 That the bond proceeds shall be expended in accordance
217 with the requirements and provisions of article five-a,
218 chapter twenty-one of this code and either article
219 twenty-two or twenty-two-a, chapter five of this code, as
220 the case may be: Provided, however, That if the bond
221 proceeds are expended pursuant to article twenty-two-a,
222 chapter five of this code and if the Design-Build Board
223 created under said article determines that the execution of
224 a design-build contract in connection with a project is
225 appropriate pursuant to the criteria set forth in said
226 article and that a competitive bidding process was used in
227 selecting the design builder and awarding the contract, the
228 determination shall be conclusive for all purposes and
229 shall be considered to satisfy all the requirements of said
230 article.

231 (6) For the purpose of certifying the projects that will
232 receive funds from the bond proceeds, a committee is
233 hereby established and comprised of the Governor, or his
234 or her designee, the Secretary of the Department of
235 Revenue, the Executive Director of the West Virginia
236 Development Office and six persons appointed by the
237 Governor: Provided, That at least one citizen member
238 must be from each of the state's three congressional
239 districts. The committee shall meet as often as necessary
240 and make certifications from bond proceeds in accordance
241 with this subsection. The committee shall meet within
242 thirty days of the effective date of this section.

243 (7) Applications for grants submitted on or before July
244 1, 2002, shall be considered refiled with the committee.
245 Within ten days from the effective date of this section as
246 amended in the year 2003, the lead applicant shall file
247 with the committee any amendments to the original
248 application that may be necessary to properly reflect
249 changes in facts and circumstances since the application
250 was originally filed with the committee.
(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) A grant may not be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by
the Economic Development Authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;
Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

State-owned buildings that are registered on the National Register of Historic Places;

Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

Prior to the issuance of bonds under this subsection, the committee shall certify to the Economic Development Authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account in the State Treasury known as the Economic Development Project Bridge Loan Fund administered by the Economic Development Authority created in article fifteen, chapter thirty-one of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts, including the portion
attributable to interest, shall be paid into the fund created in this subdivision.

(f) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c), (d) and (i) of this section, the commission shall first make the distribution to the Economic Development Project Fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund; and fourth, make the distribution to the General Purpose Account: Provided, That, subject to the provisions of this subsection, to the extent the revenues are not pledged in support of revenue bonds which are or may be issued, from time to time, under this section, the revenues shall be distributed on a pro rata basis.

(g) Each fiscal year, the commission shall, after meeting the requirements of subsections (b), (c), (d) and (i) of this section and after transferring to the State Lottery Fund created under section eighteen of this article an amount equal to any transfer from the State Lottery Fund to the Excess Lottery Fund pursuant to subsection (f), section eighteen of this article, deposit fifty percent of the amount by which annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds $225 million in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation by the Legislature.

(h) When bonds are issued for projects under subsection (d) (e) of this section or for the School Building Authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the State Excess Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development Project Fund an amount equal
to one tenth of the projected annual principal, interest and
coverage requirements on any and all revenue bonds
issued, or to be issued as certified to the Lottery Director;
and second, to the fund or funds from which debt service
is paid on bonds issued under this section for the School
Building Authority, infrastructure, higher education and
park improvements an amount equal to one tenth of the
projected annual principal, interest and coverage require-
ments on any and all revenue bonds issued, or to be issued
as certified to the Lottery Director. In the event there are
insufficient funds available in any month to transfer the
amounts required pursuant to this subsection, the defi-
ciency shall be added to the amount transferred in the
next succeeding month in which revenues are available to
transfer the deficiency.

(i) Prior to the distributions provided in subsection (d)
of this section, the Lottery Commission shall deposit into
the General Revenue Fund amounts necessary to provide
reimbursement for the refundable credit allowable under
section twenty-one, article twenty-one, chapter eleven of
this code.

(j) (1) The Legislature considers the following as
priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for
professional educators and public employees;

(B) Providing adequate funding for the Public Employ-
ees Insurance Agency; and

(C) Providing funding to help address the shortage of
qualified teachers and substitutes in areas of need, both in
number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be con-
strued by any court to require any appropriation or any

specific appropriation or level of funding for the purposes
set forth in this subsection.

(k) The Legislature further directs the Governor to
focus resources on the creation of a prescription drug
program for senior citizens by pursuing a Medicaid waiver
to offer prescription drug services to senior citizens; by
investigating the establishment of purchasing agreements
with other entities to reduce costs; by providing discount
prices or rebate programs for seniors; by coordinating
programs offered by pharmaceutical manufacturers that
provide reduced cost or free drugs; by coordinating a
collaborative effort among all state agencies to ensure the
most efficient and cost-effective program possible for the
senior citizens of this state; and by working closely with
the state's congressional delegation to ensure that a
national program is implemented. The Legislature further
directs that the Governor report his or her progress back
to the Joint Committee on Government and Finance on an
annual basis until a comprehensive program has been fully
implemented.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2009.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ... this the ... 11th Day of ... 2009.

Governor