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HB 4049

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

## House Bill No. 4049

(By Delegates Campbell, Williams, Perry, Paxton, Spencer,  
Crosier, Fragale, Eldridge, Wysong, Leggett and Tansill)



Passed March 11, 2006

In Effect July 1, 2006

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**E N R O L L E D**

**H. B. 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.]

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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.**

1       (a) The "Prepaid Tuition Trust Fund" is continued within  
2 the accounts held by the State Treasurer for administration by  
3 the board.

4       (b) the Prepaid Tuition Trust Fund shall continue to receive  
5 all payments from account owners on behalf of beneficiaries of  
6 prepaid tuition contracts or from any other source, public or  
7 private. Earnings derived from the investment of moneys in the  
8 Prepaid Tuition Trust Fund shall remain in the Prepaid Tuition  
9 Trust Fund held in trust in the same manner as payments,  
10 except as refunded, applied for purposes of the beneficiaries,  
11 and applied for purposes of maintaining and administering the  
12 prepaid tuition plan.

13 (c) The corpus, assets and earnings of the Prepaid Tuition  
14 Trust Fund do not constitute public funds of the state and are  
15 available solely for carrying out the purposes of this article.  
16 Any contract entered into by or any obligation of the board on  
17 behalf of and for the benefit of the prepaid tuition plan does not  
18 constitute a debt of the state, but is solely an obligation of the  
19 Prepaid Tuition Trust Fund. The state has no obligation to any  
20 designated beneficiary or any other person as a result of the  
21 prepaid tuition plan. All amounts payable from the Prepaid  
22 Tuition Trust Fund are limited to amounts available in the  
23 Prepaid Tuition Trust Fund.

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

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

30 (f) The prepaid tuition plan and the Prepaid Tuition Trust  
31 Fund shall continue in existence until terminated by the  
32 Legislature as it determines or by the board upon determining  
33 that continued operation is infeasible. Upon termination of the  
34 plan and after payment of all fees, charges, expenses and  
35 penalties, the assets of the Prepaid Tuition Trust Fund are paid  
36 to current account owners, to the extent possible, on a pro rata  
37 basis as their interests may appear, and any assets presumed  
38 abandoned are reported and remitted to the unclaimed property  
39 administrator in accordance with the Uniform Unclaimed  
40 Property Act in article eight, chapter thirty-six of this code. Any  
41 assets then remaining in the Prepaid Tuition Trust Fund shall  
42 revert to the state General Revenue Fund.

43 (g) Effective the eighth day of March, two thousand three,  
44 the prepaid tuition plan is closed to new contracts until the

45 Legislature authorizes the plan to reopen. Closing the plan to  
46 new contracts shall not mean the prepaid tuition plan is closed  
47 and shall not affect any prepaid tuition plan contracts in effect  
48 on the eighth day of March, two thousand three. All contract  
49 owners shall continue to pay any amounts due, including  
50 without limitation monthly installments, penalties and fees.  
51 Earnings derived from the investment of moneys in the Prepaid  
52 Tuition Trust Fund shall continue to accrue to the fund until the  
53 fund is closed in accordance with this article.

54 (h) The board shall continue to have the actuarial soundness  
55 of the Prepaid Tuition Trust Fund evaluated annually.

56 (i)(1) On or before the first day of December, two thousand  
57 three, and each year thereafter, the chairman of the board shall  
58 submit to the Governor, the President of the Senate, the Speaker  
59 of the House of Delegates, Joint Committee on Government and  
60 Finance and the unclaimed property administrator a report  
61 certified by an actuary of the actuarial status of the Prepaid  
62 Tuition Trust Fund at the end of the fiscal year immediately  
63 preceding the date of the report. In the event the report for fiscal  
64 year two thousand three states there is a projected unfunded  
65 liability in the Prepaid Tuition Trust Fund, the report shall also  
66 state the amount needed for the next fiscal year to eliminate the  
67 projected unfunded liability in equal payments over a period of  
68 ten fiscal years, concluding the thirtieth day of June, two  
69 thousand thirteen. In the event the projected unfunded liability  
70 of the Prepaid Tuition Trust Fund increases in subsequent  
71 reports, the actuary shall calculate the amount needed, less any  
72 amount in the prepaid tuition trust escrow fund, to eliminate the  
73 projected unfunded liability over a period the actuary deter-  
74 mines is fiscally responsible.

75 (2) The Prepaid Tuition Trust Escrow Fund is hereby  
76 created in the State Treasury to guarantee payment of prepaid  
77 tuition plan contracts. The board shall invest the Prepaid

78 Tuition Trust Escrow Fund in accordance with the provisions  
79 of this article in fixed income securities, and all earnings of the  
80 escrow fund shall remain in the escrow fund.

81 (3) In the event the actuary determines an unfunded liability  
82 exists in the Prepaid Tuition Trust Fund, the report shall certify  
83 the amount of money needed for the next fiscal year to elimi-  
84 nate the projected unfunded liability pursuant to the provisions  
85 of subdivision (1) of this subsection. The certified amount may  
86 not exceed one million dollars each year. On or before the  
87 fifteenth day of December in which the chairman submitted a  
88 report stating the amount needed for the next fiscal year to  
89 eliminate a projected unfunded liability, the unclaimed property  
90 administrator shall transfer the amount requested, not to exceed  
91 one million dollars each year, from the Unclaimed Property  
92 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

93 (4) In the event the money in the Prepaid Tuition Trust  
94 Fund is insufficient to cover the amount of money needed to  
95 meet the current obligations of the Prepaid Tuition Trust Fund,  
96 the board may withdraw from the Prepaid Tuition Trust Escrow  
97 Fund the amount of money needed to meet current obligations  
98 of the Prepaid Tuition Trust Fund.

99 (5) Notwithstanding any provision of this code to the  
100 contrary, the Governor, after consultation with the budget office  
101 of the Department of Revenue, may request an appropriation to  
102 the board in the amount of the deficiency to meet the current  
103 obligations of the Prepaid Tuition Trust Fund, in the budget  
104 presented to the next session of the Legislature for its consider-  
105 ation. The Legislature is not required to make any appropriation  
106 pursuant to this subsection, and the amount of the deficiency is  
107 not a debt or a liability of the state.

108 (6) As used in this section, "current obligations of the  
109 Prepaid Tuition Trust Fund" means amounts required for the

110 payment of contract distributions or other obligations of the  
111 Prepaid Tuition Trust Fund, the maintenance of the fund, and  
112 operating expenses for the current fiscal year.

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

116 (8) After the Prepaid Tuition Trust Fund has been closed  
117 and all moneys paid in accordance with this section, any  
118 moneys remaining in the prepaid tuition trust escrow fund shall  
119 be transferred to the General Revenue Fund and the account  
120 closed.

121 (j) To fulfill the charitable and public purpose of this  
122 article, neither the earnings nor the corpus of the Prepaid  
123 Tuition Trust Fund is subject to taxation by the state or any of  
124 its political subdivisions.

125 (k) Notwithstanding any provision of this code to the  
126 contrary, money in the Prepaid Tuition Trust Fund is exempt  
127 from creditor process and not subject to attachment, garnish-  
128 ment or other process; is not available as security or collateral  
129 for any loan, or otherwise subject to alienation, sale, transfer,  
130 assignment, pledge, encumbrance or charge; and is not subject  
131 to seizure, taking, appropriation or application by any legal or  
132 equitable process or operation of law to pay any debt or liability  
133 of any account owner, beneficiary or successor in interest.

134 (l) The provisions of this section may not be construed to  
135 interfere with the operation of the savings plan authorized under  
136 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.**

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

4 (1) The Secretary of Education and the Arts, ex officio.

5 (2) The State Superintendent of Schools, ex officio;

6 (3) The chair of the West Virginia Council for Community  
7 and Technical College Education, ex officio.

8 (4) Seven at large members who are citizens of the state,  
9 appointed by the Governor, by and with the advice and consent  
10 of the Senate: *Provided*, That prior to appointment, the Gover-  
11 nor shall interview each candidate to assure that the person  
12 selected understands and is committed to achieving the goals  
13 and objectives as set forth in the institutional compacts and in  
14 section one-a, article one of this chapter. The governor shall  
15 invite the president of the Senate, the speaker of the House of  
16 Delegates, the chairs of the Senate and House of Delegates  
17 committees on finance and education and such other legislative  
18 leaders as the governor may determine to participate in inter-  
19 viewing potential candidates.

20 (b) Each of the at-large members appointed by the Gover-  
21 nor shall represent the public interest and shall be committed to  
22 the legislative intent and goals set forth in state law and policy.

23 (c) The Governor may not appoint any person to be a  
24 member of the commission who is an officer, employee or  
25 member of the council or an advisory board of any state college  
26 or university; an officer or member of any political party  
27 executive committee; the holder of any other public office or

28 public employment under the government of this state or any of  
29 its political subdivisions; an appointee or employee of any  
30 governing board; or an immediate family member of any  
31 employee under the jurisdiction of the commission, the council  
32 or any governing board.

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

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

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

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

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

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

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

51 (h) Before exercising any authority or performing any  
52 duties as a member of the commission, each member shall  
53 qualify as such by taking and subscribing to the oath of office  
54 prescribed by section five, article IV of the Constitution of  
55 West Virginia and the certificate thereof shall be filed with the  
56 secretary of state.

57 (i) A member of the commission appointed by the Governor  
58 may not be removed from office by the Governor except for  
59 official misconduct, incompetence, neglect of duty or gross  
60 immorality and then only in the manner prescribed by law for  
61 the removal of the state elective officers by the Governor.

**ARTICLE 4. GENERAL ADMINISTRATION.**

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

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

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

6 (2) Neither chancellor may hold or retain any other admin-  
7 istrative position within the system of higher education while  
8 employed as chancellor.

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

12 (4) The commission is responsible to the council and the  
13 Chancellor for Community and Technical College Education  
14 for providing services in areas essential to exercising the  
15 powers and duties assigned to the council by law. The commis-  
16 sion may not charge the council any fee for the provision of  
17 these essential services. The service areas include, but are not  
18 limited to, legal services, research, technology, computing,  
19 finance and facilities, academic affairs, telecommunications,  
20 human resources, student services and any other general areas  
21 the council considers to be essential to the exercise of its legal

22 authority. The services are provided under the general supervi-  
23 sion of the Vice Chancellor for Administration.

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

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

33 (c) The Vice Chancellor for Health Sciences shall coordi-  
34 nate the West Virginia University School of Medicine, the  
35 Marshall University School of Medicine and the West Virginia  
36 School of Osteopathic Medicine.

37 (d) Suitable offices for the vice chancellor of administration  
38 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 insti-  
tutions; refund of fees.**

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

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

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

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

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

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

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

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

35 (d) The commission and council jointly shall propose a rule  
36 for legislative approval in accordance with the provisions of  
37 article three-a, chapter twenty-nine-a of this code to govern the  
38 fixing, collection and expenditure of tuition and other fees.

39 (e) The Legislature finds that an emergency exists and,  
40 therefore, the commission and council jointly shall file the rule  
41 required by subsection (d) of this section as an emergency rule  
42 pursuant to the provisions of article three-a, chapter  
43 twenty-nine-a of this code, subject to the prior approval of the  
44 Legislative Oversight Commission on Education Accountabil-  
45 ity.

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

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

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

60 (2) Fees for students enrolled in summer terms or other  
61 nontraditional time periods shall be prorated based upon the  
62 number of credit hours for which the student enrolls in accor-  
63 dance with the above provisions.

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

67 (1) The governing boards shall permit fee payments to be  
68 made in installments over the course of the academic term. All

69 fees shall be paid prior to the awarding of course credit at the  
70 end of the academic term.

71 (2) The governing boards also shall authorize the accep-  
72 tance of credit cards or other payment methods which may be  
73 generally available to students for the payment of fees. The  
74 governing boards may charge the students for the reasonable  
75 and customary charges incurred in accepting credit cards and  
76 other methods of payment.

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

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

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

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

98 (j) Institutions shall retain tuition and fee revenues not  
99 pledged for bonded indebtedness or other purposes in accor-

100 dance with the tuition rule proposed by the commission and  
101 council jointly pursuant to this section. The tuition rule shall:

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

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

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

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

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

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

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

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

126 (4) Establish methodology, where applicable, to ensure that,  
127 within the appropriate time period under the compact, commu-



128 nity and technical college tuition rates for community and  
129 technical college students in all independently accredited  
130 community and technical colleges will be commensurate with  
131 the tuition and fees charged by their peer institutions.

132 (k) A penalty may not be imposed by the commission or  
133 council upon any institution based upon the number of nonresi-  
134 dents who attend the institution unless the commission or  
135 council determines that admission of nonresidents to any  
136 institution or program of study within the institution is imped-  
137 ing unreasonably the ability of resident students to attend the  
138 institution or participate in the programs of the institution. The  
139 institutions shall report annually to the commission or council  
140 on the numbers of nonresidents and such other enrollment  
141 information as the commission or council may request.

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

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

158 (2) A governing board of an institution under the jurisdic-  
159 tion of the council may propose tuition and fee increases of up

160 to four and three quarters percent for undergraduate resident  
161 students for any fiscal year. The four and three-quarters percent  
162 total includes the amount of increase over existing tuition and  
163 fees, combined with the amount of any newly established,  
164 specialized fee which may be proposed by a governing board.

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

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

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

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

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

188 (5) Any proposed tuition and fee increase for state institu-  
189 tions of higher education other than the state institutions of  
190 higher education known as Marshall University and West

191 Virginia University requires the approval of the commission or  
192 council, as appropriate. In determining whether to approve or  
193 deny the governing board's request, the commission or council  
194 shall determine the progress the institution has made toward  
195 meeting the conditions outlined in this subdivision and shall  
196 make this determination the predominate factor in its decision.  
197 The commission or council shall consider the degree to which  
198 each institution has met the following conditions:

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

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

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

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

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

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

218 (6) This section does not require equal increases among  
219 institutions or require any level of increase at an institution.

220 (7) The commission and council shall report to the Legisla-  
221 tive Oversight Commission on Education Accountability  
222 regarding the basis for each approval or denial as determined  
223 using the criteria established in subdivision (5) of this subsec-  
224 tion.

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

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

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

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

245 (i) If the new fee or fee increase is approved by an institu-  
246 tional governing board or by a referendum of an institution's  
247 undergraduate students, or both, on or before the first day of  
248 February, two thousand six; or

249 (ii) If the following conditions are met:

250 (I) The new fee or fee increase was approved by an institu-  
251 tional governing board or by a referendum of an institution's  
252 undergraduate students, or both, on or before the first day of  
253 July, two thousand six;

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

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

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

265 (i) Collect such data from any institution under its jurisdic-  
266 tion; and

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

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

### **ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**

#### **§18C-1-1. Legislative findings; purpose; administration gener- ally.**

1 (a) The Legislature finds:

2 (1) That although enrollments in institutions of higher  
3 education in this state and throughout the nation continue to  
4 increase at a rapid pace there continues to exist an underdevel-  
5 opment of the state's human talent and resources because of the  
6 inability of many able, but needy, students to finance a higher  
7 education program;

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

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

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

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

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

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

29 (1) The Guaranteed Student Loan Program, which may be  
30 administered by a private nonprofit agency;

- 31       (2) The Medical Student Loan Program;
- 32       (3) The Underwood-Smith Teacher Scholarship Program;
- 33       (4) The Engineering, Science and Technology Scholarship  
34 Program;
- 35       (5) The West Virginia Higher Education Grant Program;
- 36       (6) The Higher Education Adult Part-time Student Grant  
37 Program;
- 38       (7) The Higher Education Student Assistance Loan Program  
39 under article twenty-two-d, chapter eighteen of this code;
- 40       (8) The West Virginia College Prepaid Tuition and Savings  
41 Program under article thirty, chapter eighteen of this code,  
42 which is administered by the State Treasurer;
- 43       (9) The state aid programs for students of optometry,  
44 pursuant to article three of this chapter;
- 45       (10) The state aid programs for students of veterinary  
46 medicine pursuant to section six-a, article eleven, chapter  
47 eighteen of this code;
- 48       (11) Any reciprocal program and contract program for  
49 student aid under sections three and four, article four, chapter  
50 eighteen-b of this code;
- 51       (12) Any other state level student aid program in this code;  
52 and
- 53       (13) Any federal grant or contract student assistance or  
54 support programs administered at the state level.

**§18C-1-3. Additional legislative findings; purpose of financial aid programs.**

1       (a) *Legislative findings:*

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

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

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

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

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

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

24       (7) Sources of student financial aid can be distinguished as  
25 providing either access or affordability to higher education  
26 opportunities;



27 (8) Access refers to a student's financial ability to pursue  
28 post-secondary education. Affordability refers a student's  
29 freedom to choose where to attend college based on available  
30 resources;

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

35 (b) *Purposes of financial aid programs:*

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

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

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

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

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

54 (3) The Underwood-Smith Teacher Scholarship Program is  
55 a merit-based program that encourages students who have

56 demonstrated outstanding academic abilities to pursue teaching  
57 careers. This program serves to meet West Virginia's statewide,  
58 geographic and discipline-specific needs for highly qualified  
59 teachers.

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

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

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

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

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

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

85 (4) The state must continue to strive to support equally the  
86 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.**

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

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

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

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

11 (i) Was a resident of this state; and

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

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

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

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

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

23 (i) The school is fully accredited in that state to the degree  
24 acceptable to the State Superintendent of Schools; and

25 (ii) The school's curriculum requirements for graduation  
26 are equivalent to the curriculum requirements for graduation in  
27 this state, or sufficiently similar to those requirements, as  
28 determined by the State Superintendent of Schools; or

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

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

34 (B) The student's parent or legal guardian:

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

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

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

42 (b) This section may not be construed to alter, amend or  
43 extend any application deadlines or other requirements estab-  
44 lished by law or policy.

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

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

1 (a) The Higher Education Student Financial Aid Advisory  
2 Board is established.

3 (b) The purpose of the board is to provide financial aid  
4 expertise and policy guidance to the commission, the council,  
5 the PROMISE Scholarship Board, the Vice Chancellor for  
6 Administration and the Executive Director of the PROMISE  
7 Scholarship Program on all matters related to federal, state and  
8 private student financial aid resources and programs.

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

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

15 (2) Recommend methods for achieving a comprehensive  
16 system of student financial aid:

17 (A) To maximize the return on the state's investment in  
18 such programs by increasing the skills, qualifications and  
19 education achievement of the citizens receiving the benefits;  
20 and

21 (B) To establish methods for coordinating administration  
22 among state-funded student financial aid programs so that the  
23 state achieves the appropriate blend of student financial aid  
24 programs to expand the range of economic opportunities  
25 available to state citizens;

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

28 (1) The chair of the Higher Education Policy Commission  
29 or a designee who is a member of the commission;

30 (2) The chair of the West Virginia Council for Community  
31 and Technical College Education or a designee who is a  
32 member of the council;

- 33       (3) The State Superintendent of Schools or a designee;
- 34       (4) The Secretary of Education and the Arts or a designee;
- 35       (5) The State Treasurer or a designee;
- 36       (6) A member of the PROMISE Scholarship Board selected  
37 by that board;
- 38       (7) Three financial aid administrators, excluding the  
39 president of the West Virginia Association of Student Financial  
40 Aid Administrators.
- 41       (A) All financial aid administrators are appointed by the  
42 Vice Chancellor for Administration in consultation with the  
43 commission and the council, as appropriate. Of the initial  
44 appointments, the vice chancellor shall appoint one member to  
45 a two-year term, one member to a three-year term and one  
46 member to a four-year term. Thereafter, all terms are for four  
47 years.
- 48       (B) It is the duty of the Vice Chancellor for Administration  
49 to select financial aid administrators so that the following types  
50 of institutions have representatives serving on the board on a  
51 rotating basis:
- 52       (i) State institutions of higher education which are doc-  
53 toral-degree granting research universities;
- 54       (ii) State institutions of higher education which primarily  
55 grant baccalaureate degrees;
- 56       (iii) State institutions of higher education which are  
57 free-standing community and technical colleges;
- 58       (iv) State institutions of higher education which are  
59 administratively linked community and technical colleges; and

60 (v) Private institutions of higher education which are  
61 regionally accredited and located within the state.

62 (8) Three at-large private sector members who are ap-  
63 pointed jointly by the commission and the council. Of the initial  
64 appointments, the commission and the council jointly shall  
65 appoint one member to a two-year term, one member to a  
66 three-year term and one member to a four-year term. Thereaf-  
67 ter, all terms are for four years.

68 (A) At-large members shall:

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

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

73 (iii) Reside within this state.

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

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

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

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

83 (1) After the initial appointments, each appointed member  
84 serves a term of four years and may be reappointed upon  
85 expiration of the term.

86       (2) In the event of a vacancy among appointed members,  
87 the commission and the council shall appoint a person for the  
88 remainder of the unexpired term to represent the same interests  
89 as those of the original appointee. A person appointed to fill a  
90 vacancy is eligible for reappointment. Unless a vacancy occurs  
91 due to death or resignation, an appointed member continues to  
92 serve until a successor has been appointed and qualified as  
93 provided in this section.

94       (f) Members of the advisory board serve without compensa-  
95 tion, but are entitled to reimbursement by the commission for  
96 expenses, including travel expenses, which are actually incurred  
97 by the member in the official conduct of the business of the  
98 advisory board. Members are reimbursed in a manner consistent  
99 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.**

1       (a) The Higher Education Grant Program is continued.

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

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

11       (2) The Grant Program is a vitally important source of  
12 financial assistance for needy residents of the state; and



13 (3) The Grant Program aids lower income students to  
14 realize their full academic potential;

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

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

27 (1) Eligibility criteria for awards;

28 (2) Coordination with other student financial aid programs;  
29 and

30 (3) Appeal procedures.

#### **§18C-5-2. Definitions.**

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

2 (1) A state institution of higher education as defined in  
3 section two, article one, chapter eighteen-b of this code;  
4 Alderson-Broadus College, Appalachian Bible College,  
5 Bethany College, Mountain State University, Davis and Elkins  
6 College, Ohio Valley University, Salem International Univer-  
7 sity, the University of Charleston, West Virginia Wesleyan  
8 College and Wheeling Jesuit University, all in West Virginia;  
9 and

10 (2) Any other regionally or nationally accredited institution  
11 of higher education in this state, public or private, approved by  
12 the vice chancellor if the institution has been licensed for a  
13 minimum of fifteen years subject to the provisions of section  
14 nine, article two-b, chapter eighteen-b of this code and section  
15 six, article two-b of said chapter.

16 (b) "Grant" or "grant program" means a higher education  
17 grant or the higher education grant program authorized and  
18 established by the provisions of this article.

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

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

1 (a) The grant program established in this article is adminis-  
2 tered by the Vice Chancellor for Administration.

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

6 (1) The fund consists of:

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

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

11 (C) All interest or other income earned from investment of  
12 the fund.

13       (2) The fund does not consist of federal funds received nor  
14 higher education resource assessment funds received pursuant  
15 to section two, article ten, chapter eighteen-b of this code.

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

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

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

23       (c) For the fiscal year beginning the first day of July, two  
24 thousand six, it is the intent of the Legislature to appropriate  
25 twenty-five million dollars for the grant program. For each  
26 fiscal year thereafter until and including the fiscal year ending  
27 the thirtieth day of June, two thousand eleven, it is the intent of  
28 the Legislature to appropriate two percent more than each prior  
29 year's appropriation for the grant program. For the fiscal year  
30 beginning the first day of July, two thousand eleven, and in  
31 each fiscal year thereafter, it is the intent of the Legislature to  
32 appropriate an amount for the grant program equal to the  
33 amount appropriated for the fiscal year beginning the first day  
34 of July, two thousand eleven.

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

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

1       Subject to the provisions of this article and within the limits  
2 of appropriations made by the Legislature, the vice chancellor  
3 may:

4 (1) Prepare and supervise the issuance of public informa-  
5 tion concerning the grant program;

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

8 (3) Select qualified recipients of grants;

9 (4) Award grants;

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

12 (6) Administer federal and state financial loan programs;

13 (7) Cooperate with approved institutions of higher educa-  
14 tion in the state and their governing boards in the administration  
15 of the grant program;

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

18 (9) Employ, fix the duties of and compensate such employ-  
19 ees as may be necessary to assist the vice chancellor in the  
20 performance of his or her duties; and

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

**§18C-5-5. Eligibility for a grant.**

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

3 (1) Is a citizen of the United States;

4 (2) Has been a resident of the state for one year immedi-  
5 ately preceding the date of application for a grant;

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

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

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

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

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

6 (c) Each grant is renewable until the course of study is  
7 completed, but not to exceed an additional three academic years  
8 beyond the first year of the award. The academic years are not  
9 required to be consecutive years, and the grant will be termi-  
10 nated if the student receives a bachelor's degree in a shorter  
11 period of time.

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

14 (1) Maintaining satisfactory academic standing;

15 (2) Making normal progress toward completion of the  
16 course of study; and

17 (3) Continued eligibility.

18 (e) Grants are awarded:

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

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

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

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

30 (h) The vice chancellor may enter into reciprocal agree-  
31 ments with state grant and grant program agencies in other  
32 states which provide financial assistance to their residents  
33 attending institutions of higher education located in West  
34 Virginia. In connection therewith, the vice chancellor may  
35 authorize residents of West Virginia to use financial assistance  
36 under this article to attend institutions of higher education in  
37 such other states. Residents of West Virginia requesting  
38 financial assistance to attend institutions of higher education  
39 located in any such state must meet all of the eligibility  
40 standards set forth in section five of this article.

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

44 (j) Grant payments are made directly to the institution.

45 (k) In the event that a grant recipient transfers from one  
46 approved institution of higher education to another, the grant is  
47 transferable only with the approval of the vice chancellor.

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

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

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

1 (a) The Legislature finds and declares that:

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

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

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

13 (4) Higher levels of education attainment result in higher  
14 levels of personal income over a lifetime;

15 (5) Students who acquire a baccalaureate degree will earn  
16 an estimated one million dollars more over their lifetimes than  
17 those who attain only a high school diploma. This translates  
18 into an increased tax base and economic development for West  
19 Virginia and more discretionary income for its citizens;

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

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

25 (8) The PROMISE Scholarship Program is highly success-  
26 ful and should be maintained with merit as its strongest  
27 component. The merit component:

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

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

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

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

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

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

40 (b) It is the purpose of this article to continue the West  
41 Virginia PROMISE Scholarship Program to deal effectively  
42 with the findings set forth in this section.



43 (c) Nothing in this article guarantees:

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

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

### §18C-7-3. Definitions.

1 (a) "Eligible institution" means:

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

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

10 (A) Loses regional accreditation; or

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

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

14 (b) "Board" means the West Virginia PROMISE Scholar-  
15 ship Board of the West Virginia PROMISE Scholarship  
16 Program as provided for in section four of this article.

17 (c) "Tuition" means the quarter, semester or term charges  
18 imposed by a state institution of higher education and all  
19 mandatory fees required as a condition of enrollment by all  
20 students.

21 (d) "Enrolled" means either currently enrolled or in the  
22 process of enrolling in an eligible institution.

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

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

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

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

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

14 (4) The Secretary of Education and the Arts;

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

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

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

20 (8) Eight at large members, appointed by the Governor with  
21 the advice and consent of the Senate:

22 (A) One of the eight at-large members has knowledge, skill  
23 and expertise in state and federal student financial aid policy  
24 and management;

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

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

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

43 (c) Members of the board shall serve without compensation,  
44 but shall be reimbursed by the Office of the Secretary of  
45 Education and the Arts for expenses, including travel expenses,  
46 actually incurred by a member in the official conduct of the  
47 business of the board at the same rate as is paid the employees  
48 of the state.

49 (d) The Secretary of Education and the Arts is the chairper-  
50 son and presiding officer of the board. A majority of the  
51 members of the board constitute a quorum for the transaction of  
52 business.

53 (e) The at-large members appointed by the Governor may  
54 be removed by the Governor for official misconduct, incompe-  
55 tence, neglect of duty or gross immorality and then only in the  
56 manner prescribed by law for the removal by the Governor of  
57 the state elective officers in accordance with section five, article  
58 six, chapter six of this code.

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

1 (a) *Powers of board* –

2 In addition to the powers granted by any other provision of  
3 this article, the board has the powers necessary or convenient to  
4 carry out the purposes and provisions of this article including,  
5 but not limited to, the following express powers:

6 (1) To adopt and amend bylaws;

7 (2) To propose legislative rules to the commission for  
8 promulgation in accordance with the provisions of article  
9 three-a, chapter twenty-nine-a of this code to effectuate the  
10 purposes of this article;

11 (3) To invest any of its funds at the board's discretion, with  
12 the West Virginia Investment Management Board in accor-  
13 dance with the provisions of article six, chapter twelve of this  
14 code. Any investments made under this article shall be made  
15 with the care, skill, prudence and diligence under the circum-  
16 stances then prevailing that a prudent person acting in a like  
17 capacity and familiar with such matters would use in the  
18 conduct of an enterprise of a like character and with like aims.  
19 Fiduciaries shall diversify plan investments to the extent  
20 permitted by law so as to minimize the risk of large losses,  
21 unless under the circumstances it is clearly prudent not to do so;

22 (4) To execute contracts and other necessary instruments;

23       (5) To impose reasonable requirements for residency for  
24 students applying for the PROMISE scholarship. Except as  
25 provided in section four, article one of this chapter, the require-  
26 ments shall include that an eligible student must have met the  
27 following requirements:

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

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

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

38       (6) To contract for necessary goods and services, to employ  
39 necessary personnel and to engage the services of private  
40 persons for administrative and technical assistance in carrying  
41 out the responsibilities of the scholarship program;

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

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

47       (7) To solicit and accept gifts, including bequests or other  
48 testamentary gifts made by will, trust or other disposition,  
49 grants, loans and other aid from any source and to participate in  
50 any federal, state or local governmental programs in carrying  
51 out the purposes of this article;

52 (8) To define the terms and conditions under which  
53 scholarships are awarded with the minimum requirements being  
54 set forth in section six of this article; and

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

58 (b) *Duties of board* —

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

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

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

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

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

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

77 (i) Continue to live in West Virginia after graduation;

78 (ii) Obtain employment in West Virginia after graduation;  
79 and

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

83 (B) Such other relevant information as the board may  
84 reasonably request to implement the provisions of this subdivi-  
85 sion.

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

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

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

**§18C-7-6. PROMISE Scholarship Program requirements; legisla-  
tive rule.**

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

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

5 (2) Equals an amount determined by the board, but not to  
6 exceed the cost of tuition at state institutions of higher educa-  
7 tion, for a student enrolled in an eligible institution that is not  
8 a state institution of higher education; and

9       (3) Is used by an eligible institution to supplement, but not  
10 to supplant, a tuition and fee waiver for which the individual is  
11 eligible pursuant to sections five, six-a or seven, article ten,  
12 chapter eighteen-b of this code.

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

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

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

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

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

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

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



39 (4) Maintain appropriate academic progress toward the  
40 completion of a degree at the undergraduate education level as  
41 determined by the board if the individual has completed more  
42 than one semester or term at an institution of higher education,  
43 excluding credits earned in advanced placement, international  
44 baccalaureate, dual credit and comparable courses while the  
45 student is enrolled in high school;

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

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

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

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

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

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

67 (B) Meet the needs of community residents; or

68 (C) Foster civic responsibility.

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

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

75 (A) The amount of a PROMISE scholarship award may not  
76 exceed the cost of tuition at state institutions of higher educa-  
77 tion;

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

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

87 (i) To promote academic excellence;

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

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

91 (D) Provisions for making the highest and best use of the  
92 PROMISE Scholarship Program in conjunction with the West  
93 Virginia Prepaid Tuition Trust Act set forth in article thirty,  
94 chapter eighteen of this code;

95 (E) A provision defining the relationship of PROMISE  
96 scholarship awards to all other sources of student financial aid  
97 to ensure maximum coordination. The provision shall include  
98 the following:

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

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

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

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

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

114 (ii) Eliminating any current recipient from eligibility;

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

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

119 (A) Requiring repayment of the amount of the scholarship,  
120 in whole or in part, if a scholarship recipient chooses to work  
121 outside the state after graduation: *Provided*, The rule may not  
122 require a recipient to repay a scholarship in whole or in part

123 unless the prospective recipient has been informed of this  
124 requirement in writing before initial acceptance of the PROM-  
125 ISE scholarship award.

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

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

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

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

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

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

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

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

8 (3) Any gifts, grants or contributions received for the  
9 PROMISE Scholarship Program; and

10       (4) All interest or other income earned from investment of  
11       the fund.

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

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

32       (d) The board may expend the moneys in the fund to  
33       implement the provisions of this article.

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

*Randy White*  
Chairman Senate Committee

*[Signature]*  
Chairman House Committee

Originating in the House.

In effect July 1, 2006.

*Darrell Edwards*  
Clerk of the Senate

*Bruce W. Sawyer*  
Clerk of the House of Delegates

*Carl Ray Brubaker*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *is approved* this the *3/8*  
day of *April*, 2006.

*[Signature]*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2006

Time 10:30am