

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 294

BY SENATORS PHILLIPS, JEFFRIES, AND HAMILTON

[Originating in the Committee on Finance; reported on

March 3, 2021]

1 A BILL to amend and reenact §18-30-3, §18-30-4, and §18-30-6 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §18-30-6a, all relating to savings and investment programs offered by the state; defining
4 terms; reconciling definition of “qualified education expenses” with federal law for college
5 savings program tax benefit purposes; increasing number of persons on the Board of
6 Trustees of the College Prepaid Tuition and Savings Program; requiring that certain
7 members appointed to the board have experience, knowledge, or skill in a financial field;
8 providing that reasonable efforts shall be made to appoint one member to board with a
9 CFA; authorizing early closure of Prepaid Tuition Trust Plan and fund upon depletion of
10 fund and election of board; authorizing board to expend moneys in the Prepaid Tuition
11 Trust Plan Escrow Fund to satisfy outstanding obligations of the Prepaid Tuition Trust
12 Plan; specifying when Prepaid Tuition Plan account owner assets are presumed
13 abandoned; providing for allocation of moneys remaining in escrow fund upon closure of
14 the Prepaid Tuition Plan; permitting board to maintain a certain amount in the escrow fund
15 for 10 years following closure of the Prepaid Tuition Trust Fund to satisfy potential claims;
16 providing conditions for final closure of escrow fund; creating a nonappropriated special
17 revenue account; transferring moneys from escrow fund to the special revenue account;
18 authorizing receipts to, and expenditures from, the special revenue account for certain
19 purposes related to new savings and investment programs; providing for investment of
20 moneys in special revenue account; removing obsolete language; and making technical
21 corrections.

Be it enacted by the Legislature of West Virginia:

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

§18-30-3. Definitions.

1 For the purposes of this article, the following terms have the meanings ascribed to them,
2 unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. §529:

3 ~~(a)~~ "Account" means a prepaid tuition account or a savings plan account established in
4 accordance with this article.

5 ~~(b)~~ "Account owner" means the individual, corporation, association, partnership, trust, or
6 other legal entity who enters into a prepaid tuition contract and is obligated to make payments in
7 accordance with the prepaid tuition contract or who enters into a savings plan contract and invests
8 money in a savings plan account.

9 ~~(c)~~ "Beneficiary" means the individual designated as a beneficiary at the time an account
10 is established, the individual designated as the beneficiary when beneficiaries are changed, the
11 individual entitled to receive distributions from an account, and any individual designated by the
12 account owner, his or her agent, or his or her estate in the event the beneficiary is unable or
13 unwilling to receive distributions under the terms of the contract.

14 ~~(d)~~ "Board" means the Board of Trustees of the College Prepaid Tuition and Savings
15 Program, as provided in §18-30-4 of this code.

16 ~~(e)~~ "Distribution" means any disbursement from an account in accordance with 26 U.S.C.
17 §529.

18 ~~(f)~~ "Eligible educational institution" means an institution of higher education or a private or
19 religious primary, middle, or secondary school that qualifies under 26 U.S.C. §529 as an eligible
20 educational institution.

21 "Outstanding obligations of the Prepaid Tuition Plan" means the outstanding contract
22 obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes
23 any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition
24 Trust Fund or plan.

25 ~~(g)~~ “Prepaid tuition account” means an account established by an account owner pursuant
26 to this article, in order for the beneficiary to apply distributions in accordance with the Prepaid
27 Tuition Plan.

28 ~~(h)~~ “Prepaid tuition contract” means a contract entered into by the board and an account
29 owner establishing a prepaid tuition account.

30 ~~(i)~~ “Prepaid Tuition Plan” means the plan that contractually guarantees payment of tuition
31 at a ~~West Virginia public, private, or religious~~ an eligible educational institution.

32 ~~(j)~~ “Program” means the West Virginia College Prepaid Tuition and Savings Program
33 established ~~under~~ pursuant to this article and as defined in §18-30-4(a) of this code.

34 ~~(k)~~ “Qualified education expenses” ~~mean education expenses permitted~~ means expenses
35 treated as “qualified higher education expenses” under 26 U.S.C. §529. ~~for enrollment or~~
36 ~~attendance of a beneficiary at an eligible educational institution~~

37 ~~(l)~~ “Savings plan” means the plan that allows account distributions for qualified higher
38 educational expenses and tuition at private or religious primary, middle, and secondary schools.

39 ~~(m)~~ “Savings plan account” means an account established by an account owner pursuant
40 to this article, in order for the beneficiary to apply distributions toward qualified higher education
41 expenses and tuition expenses at eligible educational institutions.

42 ~~(n)~~ “Savings plan contract” means a contract entered into by the board or its agent, if any,
43 and an account owner establishing a savings plan account.

44 ~~(o)~~ “Treasurer” means the West Virginia State Treasurer.

45 ~~(p)~~ “Tuition” means the quarter, semester, or term charges imposed by an eligible
46 educational institution and all mandatory fees required as a condition of enrollment by all students
47 for full-time attendance.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

1 (a) The West Virginia College Prepaid Tuition and Savings Program is continued. The
2 program consists of ~~a prepaid tuition plan and a savings plan~~ and the outstanding obligations of
3 the Prepaid Tuition Plan.

4 (b) The Board of the College Prepaid Tuition and Savings Program is continued, and all
5 powers, rights, and responsibilities of the Board of Trustees of the Prepaid Tuition Trust Fund are
6 vested in the Board of the College Prepaid Tuition and Savings Program.

7 (c) The board consists of ~~eight~~ nine members and includes the following:

8 (1) The State Treasurer, or his or her designee;

9 (2) The State Superintendent of Schools, or his or her designee;

10 (3) A representative of the Higher Education Policy Commission, who may or may not be
11 a member of the Higher Education Policy Commission, appointed by the commission who serves
12 as a voting member of the board;

13 (4) A representative of the Council for Community and Technical College Education, who
14 may or may not be a member of the Council for Community and Technical College Education,
15 appointed by the council who serves as a voting member of the board; and

16 (5) ~~Four~~ Five other members, appointed by the Governor, with the advice and consent of
17 the Senate, with knowledge, skill and experience in an arts, academic, business, or financial field,
18 ~~to be appointed~~ as follows:

19 (A) ~~Two~~ Three private citizens with knowledge, skill, and experience in a financial field,
20 who are not employed by, or an officer of, the state or any political subdivision of the state:
21 Provided, That reasonable efforts shall be made to appoint one such citizen to the board who
22 holds a designation of Chartered Financial Analyst, offered by the CFA Institute; and

23 (B) Two members representing the interests of private institutions of higher education
24 located in this state appointed from one or more nominees of the West Virginia Independent
25 Colleges and Universities.

26 ~~(d) The members representing the interests of private institutions of higher education are~~
27 ~~appointed by the Governor with the advice and consent of the Senate~~

28 ~~(e)~~ (d) Only state residents are eligible for appointment to the board.

29 ~~(f)~~ (e) Members appointed by the Governor serve a term of five years and are eligible for
30 reappointment at the expiration of their terms. If there is a vacancy among appointed members,
31 the Governor shall appoint a person representing the same interests to fill the unexpired term.

32 ~~(g)~~ (f) Members of the board serve until the later of the expiration of the term for which the
33 member was appointed or the appointment of a successor. Members of the board serve without
34 compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred
35 by board members in the conduct of their official duties. Expense payments are made from the
36 College Prepaid Tuition and Savings Program Administrative Account and are made at the same
37 rate paid to state employees.

38 ~~(h)~~ (g) The Treasurer may provide support staff and office space for the board.

39 ~~(i)~~ (h) The Treasurer is the chairperson and presiding officer of the board and may appoint
40 the employees the board considers advisable or necessary. A majority of the members of the
41 board ~~constitute~~ constitutes a quorum for the transaction of the business of the board.

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

1 (a) The Prepaid Tuition Trust Fund is continued within the accounts held by the State
2 Treasurer for administration by the board until such time as the moneys in the fund are depleted
3 and the board elects to close the fund.

4 ~~(b) The Prepaid Tuition Trust Fund shall continue to receive all payments from account~~
5 ~~owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or~~
6 ~~private. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall~~

7 ~~remain in the Prepaid Tuition Trust Fund held in trust in the same manner as payments, except~~
8 ~~as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining~~
9 ~~and administering the prepaid tuition plan~~

10 (b) Upon the closure of the Prepaid Tuition Trust Fund, the board is authorized to expend
11 moneys from the Prepaid Tuition Trust Escrow Fund for the purpose of satisfying outstanding
12 obligations of the Prepaid Tuition Trust Plan, according to the requirements of subsection (h) of
13 this section.

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

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

24 ~~(e) The requirements of the provisions of Chapter 32 of this code do not apply to the sale~~
25 ~~of a prepaid tuition contract by the board, its employees, and agents.~~

26 ~~(f) The Prepaid Tuition Plan and the Prepaid Tuition Trust Fund shall continue in existence~~
27 ~~until terminated by the Legislature as it determines or by the board upon determining that~~
28 ~~continued operation is infeasible. Upon and after payment of all fees, charges, expenses, and~~
29 ~~penalties, the assets of the Prepaid Tuition Trust Fund are paid to current account owners, to the~~
30 ~~extent possible, on a pro rata basis as their interests may appear, and any assets presumed~~
31 ~~abandoned are reported and remitted to the unclaimed property administrator in accordance with~~

32 ~~the Uniform Unclaimed Property Act in §36-8-1 et seq. of this code. Any assets then remaining in~~
33 ~~the Prepaid Tuition Trust Fund shall revert to the state General Revenue Fund~~

34 ~~(g) (e)~~ Effective March 8, 2003, the Prepaid Tuition Plan is closed to new contracts ~~until~~
35 ~~the Legislature authorizes the plan to reopen. Closing the plan to new contracts does not mean~~
36 ~~the Prepaid Tuition Plan is closed and does not affect any Prepaid Tuition Plan contracts in effect~~
37 ~~on March 8, 2003. All contract owners shall continue to pay any amounts due, including without~~
38 ~~limitation monthly installments, penalties, and fees. Earnings derived from the investment of~~
39 ~~moneys in the Prepaid Tuition Trust Fund shall continue to accrue to the fund until the fund is~~
40 ~~closed in accordance with this article section. Upon a determination of the board that all~~
41 ~~outstanding contract obligations to persons owning Prepaid Tuition Plan accounts have been~~
42 ~~satisfied as provided in subsection (h) of this section, the plan shall be closed.~~

43 ~~(h) (f)~~ The board shall continue to have the actuarial soundness of the Prepaid Tuition
44 Trust Fund evaluated annually until the fund's closure.

45 ~~(i) (1) (g)~~ On or before December 1, 2003, and each year ~~thereafter~~ until the Prepaid
46 Tuition Trust Fund's closure, the chairperson of the board shall submit to the Governor, the
47 President of the Senate, the Speaker of the House of Delegates, the Joint Committee on
48 Government and Finance, and the unclaimed property administrator a report certified by an
49 actuary of the actuarial status of the Prepaid Tuition Trust Fund at the end of the fiscal year
50 immediately preceding the date of the report.

51 ~~(2) The Prepaid Tuition Trust Escrow Fund is continued in the state Treasury to guarantee~~
52 ~~payment of Prepaid Tuition Plan contracts. The board shall invest the Prepaid Tuition Trust~~
53 ~~Escrow Fund in accordance with the provisions of this article in fixed income securities, and all~~
54 ~~earnings of the escrow fund shall accrue to the escrow fund and be available for expenditure in~~
55 ~~accordance with this section.~~

56 ~~(3)~~

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

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

63 ~~(4) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the~~
64 ~~amount of money needed to meet the current obligations of the Prepaid Tuition Trust Fund the~~
65 ~~board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed~~
66 ~~to meet current obligations of the Prepaid Tuition Trust Fund.~~

67 ~~(5) Notwithstanding any provision of this code to the contrary, the Governor, after~~
68 ~~consultation with the Budget Office of the Department of Revenue, may request an appropriation~~
69 ~~to the board in the amount of the deficiency to meet the current obligations of the Prepaid Tuition~~
70 ~~Trust Fund, in the budget presented to the next session of the Legislature for its consideration.~~
71 ~~The Legislature is not required to make any appropriation pursuant to this subsection, and the~~
72 ~~amount of the deficiency is not a debt or a liability of the state.~~

73 ~~(6) As used in this section, "current obligations of the Prepaid Tuition Trust Fund" means~~
74 ~~amounts required for the payment of contract distributions or other obligations of the Prepaid~~
75 ~~Tuition Trust Fund, the maintenance of the fund, and operating expenses for the current fiscal~~
76 ~~year.~~

77 ~~(7) Nothing in this subsection creates an obligation of state General Revenue Funds or~~
78 ~~requires any level of funding by the Legislature.~~

79 (h) Escrow fund; expenditures. —

80 (1) The Prepaid Tuition Trust Escrow Fund is continued in the State Treasury to guarantee
81 payment of outstanding obligations of the Prepaid Tuition Plan. The board shall invest the Prepaid
82 Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income

83 securities, and all earnings of the escrow fund shall accrue to the escrow fund and be available
84 for expenditure in accordance with this section.

85 (2) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the
86 amount of money needed to meet the outstanding obligations of the Prepaid Tuition Trust Plan,
87 the board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed
88 to meet outstanding obligations of the Prepaid Tuition Trust Plan.

89 (3) To the extent possible, the board shall satisfy outstanding contract obligations to
90 persons owning Prepaid Tuition Plan accounts, on a pro rata basis as their interests may appear.
91 Any account owner assets presumed abandoned shall be reported and remitted to the unclaimed
92 property administrator in accordance with the Uniform Unclaimed Property Act in §36-8-1 et seq.
93 of this code: *Provided*, That notwithstanding the requirements of said article, account owner
94 assets are presumed abandoned 60 days after final payment checks for their remaining plan units
95 are issued and said units have not been presented for payment.

96 (8) (i) After all ~~moneys paid~~ outstanding obligations of the Prepaid Tuition Trust Plan have
97 been satisfied in accordance with this section, any moneys remaining in the Prepaid Tuition Trust
98 Fund and the Prepaid Tuition Trust Escrow Fund shall be transferred to the General Revenue
99 Fund and the account closed allocated as follows:

100 (1) Five million dollars shall be transferred to the West Virginia Savings and Investment
101 Program Fulfillment Fund, as set forth in §18-30-6a of this code.

102 (2) Up to \$1,000,000 may be maintained in the Prepaid Tuition Trust Escrow Fund, at the
103 election of the board, for a period not to exceed 10 years following the closure of the Fund for the
104 purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the fund's
105 closure: *Provided*, That upon the expiration of 10 years following the date of closure of the Prepaid
106 Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero,
107 whichever occurs first, the account shall be closed and any moneys remaining in the Prepaid

108 Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue
109 Fund.

110 (3) All moneys remaining, after the allocations provided in subdivisions (1) and (2) of this
111 subsection, shall revert to the General Revenue Fund.

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

115 (k) Notwithstanding any provision of this code to the contrary, money in the Prepaid Tuition
116 Trust Fund and the Prepaid Tuition Trust Escrow Fund is exempt from creditor process and not
117 subject to attachment, garnishment, or other process; is not available as security or collateral for
118 any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or
119 charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable
120 process or operation of law to pay any debt or liability of any account owner, beneficiary, or
121 successor in interest.

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

§18-30-6a. Special revenue account created for fulfillment of savings and investment programs.

1 (a) There is created in the State Treasury a special revenue account, designated the West
2 Virginia Savings and Investment Program Fulfillment Fund to be administered by the State
3 Treasurer for the purposes authorized by this section.

4 (b) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of
5 all moneys made available pursuant to §18-30-6(i) of this code; any moneys that may be
6 appropriated to the fund by the Legislature; all interest or other return earned or received from
7 investment of the fund; any moneys which the fund is authorized to receive under any provision
8 of this code for the purposes of this article; and all gifts, grants, bequests, or transfers made to

9 the fund from any source. Any balance, including accrued interest and other returns, remaining in
10 the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall
11 remain in the fund to be expended as authorized by this section.

12 (c) Moneys in the West Virginia Savings and Investment Program Fulfillment Fund may
13 be used to pay any expenses incurred by the State Treasurer in implementing or administering
14 any savings and investment program with an initial date of operation occurring on or after July 1,
15 2021. Pending the expenditure of any moneys in the fund, the State Treasurer is authorized to
16 invest and reinvest said moneys, and all interest and earnings of the fund shall accrue to the fund
17 and be available for expenditure in accordance with this section.