

SB 373

FILED

2009 MAY 11 PM 4:06

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

WEST VIRGINIA
SECRETARY OF STATE

—●—
ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 373

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND
CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed April 11, 2009; to take effect July 1, 2009.]

FILED

2009 MAY 11 PM 4: 06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 373

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed April 11, 2009; to take effect July 1, 2009.]

AN ACT to repeal §18C-7-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18B-1D-9; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18C-1-1, §18C-1-4 and §18C-1-5 of said code; to amend and reenact §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code; and to amend and reenact §29-22-18a of said code, all relating to higher education in West Virginia generally; requiring training and development opportunities for members of the Higher Education Policy Commission, the Council for Community and Technical College Education and the institutional governing boards; revising

criteria for membership of certain institutional governing board and designating the manner in which the membership is determined; requiring the governor to consider certain factors and seek a certain balance when appointing members; reconstituting the Higher Education Student Financial Aid Advisory Board; providing for member appointments; setting forth member qualifications and terms of office; setting forth duties of the advisory board; modifying conditions upon which students who attended high school outside the state may be eligible for certain financial aid; dissolving the PROMISE Scholarship Board and transferring its powers and duties to the Higher Education Policy Commission and under the administration of the Vice Chancellor for Administration; requiring the Vice Chancellor for Administration to submit an annual report; defining terms; authorizing investment of certain funds with the West Virginia Investment Management Board; increasing the aggregate and excess lottery amounts the Legislature intends to allocate to PROMISE scholarship program for certain fiscal years; setting a minimum amount for the PROMISE scholarship annual award and authorizing the Higher Education Policy Commission to provide annual awards greater than the minimum under certain circumstances if funds are available; increasing flexibility for adjusting requirements to receive a PROMISE scholarship; providing conditions under which PROMISE scholarship annual awards are continued to certain students under certain circumstances; establishing citizenship and legal immigrant conditions of eligibility for a PROMISE scholarship; clarifying that a PROMISE scholarship may supplement certain tuition and fee waivers; and authorizing the Higher Education Policy Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That §18C-7-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18B-1D-9; that §18B-2A-1 of

said code be amended and reenacted; that §18C-1-1, §18C-1-4 and §18C-1-5 of said code be amended and reenacted; that §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code be amended and reenacted; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

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

1 (a) The commission and council, either jointly or
2 separately, shall coordinate periodic training and develop-
3 ment opportunities for members of the commission,
4 council and institutional governing boards as provided in
5 this section.

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

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

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

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

16 (4) Ethical considerations arising from board member-
17 ship.

18 (c) With the exception of the ex officio members of the
19 commission and the council and the student member of a

20 governing board, each member shall complete at least six
21 hours of training and development related to his or her
22 duties within two years of beginning service and within
23 every two years of service thereafter.

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

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

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

49 (g) As used in this section, "member" means all mem-
50 bers of the commission, council and the governing boards
51 unless a specific exception is provided in this section.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

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

1 (a) *Findings.* –

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

5 (1) The academic expertise and institutional experience
6 of faculty members and a student of the institution
7 governed by the board;

8 (2) The technical or professional expertise and institu-
9 tional experience of a classified employee of the institu-
10 tion governed by the board;

11 (3) An awareness and understanding of the issues facing
12 the institution governed by the board; and

13 (4) The diverse perspectives that arise from a member-
14 ship that is balanced in terms of gender and varied in
15 terms of race and ethnic heritage.

16 (b) *Boards of governors established.* –

17 A board of governors is continued at each of the
18 following institutions: Bluefield State College, Blue Ridge
19 Community and Technical College, The Community and
20 Technical College at West Virginia University Institute of
21 Technology, Concord University, Eastern West Virginia
22 Community and Technical College, Fairmont State
23 University, Glenville State College, Marshall Community
24 and Technical College, Marshall University, New River
25 Community and Technical College, Pierpont Community
26 and Technical College, Shepherd University, Southern
27 West Virginia Community and Technical College, West
28 Liberty State University, West Virginia Northern Commu-

29 nity and Technical College, the West Virginia School of
30 Osteopathic Medicine, West Virginia State Community
31 and Technical College, West Virginia State University,
32 West Virginia University and West Virginia University at
33 Parkersburg.

34 (c) *Board Membership.* –

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

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

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

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

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

52 (C) A member from the institutional classified employ-
53 ees duly elected by the classified employees of the respec-
54 tive institution;

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

59 (5) For the board of governors at West Virginia Univer-
60 sity, twelve lay members appointed by the Governor, by

61 and with the advice and consent of the Senate, pursuant to
62 this section, and additionally:

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

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

69 (6) For each board of governors of the other state
70 institutions of higher education, nine lay members ap-
71 pointed by the Governor, by and with the advice and
72 consent of the Senate, pursuant to this section.

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

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

88 (7) In making lay appointments, the Governor shall
89 consider the institutional mission and membership charac-
90 teristics including the following:

91 (A) The need for individual skills, knowledge and
92 experience relevant to governing the institution;

93 (B) The need for awareness and understanding of
94 institutional problems and priorities, including those
95 related to research, teaching and outreach;

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

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

100 (d) *Board member terms.* —

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

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

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

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

115 (5) A vacancy in an unexpired term of a member shall
116 be filled for the unexpired term within thirty days of the
117 occurrence of the vacancy in the same manner as the
118 original appointment or election. Except in the case of a
119 vacancy, all elections are held and all appointments are
120 made no later than June 30 preceding the commencement
121 of the term. Each board of governors shall elect one of its
122 appointed lay members to be chairperson in June of each
123 year. A member may not serve as chairperson for more
124 than four consecutive years.

125 (6) The appointed members of the boards of governors
126 serve staggered terms of up to four years except that four
127 of the initial appointments to the governing boards of
128 community and technical colleges that became independ-
129 ent July 1, 2008, are for terms of two years and five of the
130 initial appointments are for terms of four years.

131 (e) *Board member eligibility, expenses.* –

132 (1) A person is ineligible for appointment to member-
133 ship on a board of governors of a state institution of higher
134 education under the following conditions:

135 (A) For a baccalaureate institution or university, a
136 person is ineligible for appointment who is an officer,
137 employee or member of any other board of governors; an
138 employee of any institution of higher education; an officer
139 or member of any political party executive committee; the
140 holder of any other public office or public employment
141 under the government of this state or any of its political
142 subdivisions; an employee of any affiliated research
143 corporation created pursuant to article twelve of this
144 chapter; an employee of any affiliated foundation orga-
145 nized and operated in support of one or more state institu-
146 tions of higher education; or a member of the council or
147 commission. This subsection does not prevent the repre-
148 sentative from the faculty, classified employees, students
149 or the superintendent of a county board of education from
150 being members of the governing boards.

151 (B) For a community and technical college, a person is
152 ineligible for appointment who is an officer, employee or
153 member of any other board of governors; a member of a
154 board of visitors of any public institution of higher
155 education; an employee of any institution of higher
156 education; an officer or member of any political party
157 executive committee; the holder of any other public office,

158 other than an elected county office, or public employment,
159 other than employment by the county board of education,
160 under the government of this state or any of its political
161 subdivisions; an employee of any affiliated research
162 corporation created pursuant to article twelve of this
163 chapter; an employee of any affiliated foundation orga-
164 nized and operated in support of one or more state institu-
165 tions of higher education; or a member of the council or
166 commission. This subsection does not prevent the repre-
167 sentative from the faculty, classified employees or stu-
168 dents from being members of the governing boards.

169 (2) Before exercising any authority or performing any
170 duties as a member of a governing board, each member
171 shall qualify as such by taking and subscribing to the oath
172 of office prescribed by section five, article IV of the
173 Constitution of West Virginia and the certificate thereof
174 shall be filed with the Secretary of State.

175 (3) A member of a governing board appointed by the
176 Governor may not be removed from office by the Governor
177 except for official misconduct, incompetence, neglect of
178 duty or gross immorality and then only in the manner
179 prescribed by law for the removal of the state elective
180 officers by the Governor.

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

186 (5) The president of the institution shall make available
187 resources of the institution for conducting the business of
188 its board of governors. All expenses incurred by the board
189 of governors and the institution under this section are paid
190 from funds allocated to the institution for that purpose.

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

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

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

1 (a) The Legislature makes the following findings:

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

8 (2) 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
11 to the full extent of his or her capability; and

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

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

19 (c) The Vice Chancellor for Administration has a
20 ministerial duty to administer, oversee and monitor all
21 state and federal student financial aid programs adminis-
22 tered at the state level in accordance with established
23 rules under the direction of the commission and council
24 and in consultation with the Higher Education Student
25 Financial Aid Advisory Board.

26 (d) These programs include, but are not limited to, the
27 following programs:

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

30 (2) The Medical Student Loan Program;

31 (3) The Underwood-Smith Teacher Scholarship Pro-
32 gram;

33 (4) The Engineering, Science and Technology Scholar-
34 ship Program;

35 (5) The West Virginia Higher Education Grant Program;

36 (6) The Higher Education Adult Part-Time Student
37 Grant Program;

38 (7) The West Virginia Providing Real Opportunities for
39 Maximizing In-State Student Excellence (PROMISE)
40 Scholarship Program;

41 (8) The Higher Education Student Assistance Loan
42 Program established pursuant to article twenty-two-d,
43 chapter eighteen of this code;

44 (9) The West Virginia College Prepaid Tuition and
45 Savings Program established pursuant to article thirty,
46 chapter eighteen of this code, which is administered by the
47 State Treasurer;

48 (10) The state aid programs for students of optometry,
49 pursuant to article three of this chapter;

50 (11) The state aid programs for students of veterinary
51 medicine pursuant to section six-a, article eleven, chapter
52 eighteen of this code;

53 (12) Any reciprocal program and contract program for
54 student aid established pursuant to sections three and
55 four, article four, chapter eighteen-b of this code;

56 (13) Any other state-level student aid programs in this
57 code; and

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

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

**§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
2 rule to the contrary, a student who attended a public or
3 private high school outside the state is eligible for state
4 funded student financial aid, grants and scholarships if:

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

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
13 years immediately preceding the student's attendance at
14 the school;

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) This section does not alter, amend or extend any
46 application deadlines or other requirements established by
47 law or policy.

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

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

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

8 (c) It is the intent of the Legislature that the advisory
9 board:

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

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

18 (3) Recommend methods to coordinate state-funded
19 student financial aid programs so that the state achieves
20 the appropriate blend of programs to expand the range of
21 economic opportunities available to state citizens;

22 (4) Recommend ways to improve state-level administra-
23 tion of financial aid programs for the benefit of students
24 and institutions;

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

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

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

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

38 (d) *Advisory board membership.* –

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

41 (A) Three members appointed by the commission;

42 (B) Two members appointed by the council;

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

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

47 (2) Members appointed by the commission and the
48 council shall possess a broad knowledge of state and
49 federal higher education student financial aid programs
50 and have experience in administering these programs,
51 preferably at the campus or system level.

52 (3) The initial appointments of members shall be made
53 as follows:

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

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

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

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

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

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

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

70 (5) The term of each member begins on July 1 of the
71 year in which the appointment is made and ends on June
72 30 of the year in which the appointment expires.

73 (e) The first meeting of the advisory board shall be
74 called by the Vice Chancellor for Administration, at which
75 time the members shall elect a chairperson for an initial
76 term ending on July 31, 2010. The chairperson may
77 succeed himself or herself for an additional one-year term
78 as chairperson. Thereafter, the term of the chairperson is
79 for one year beginning on August 1 of the year in which
80 elected and ending on July 31 of the following year. A
81 member may not serve more than two consecutive terms as
82 chairperson.

83 (f) In the event of a vacancy, a successor shall be
84 appointed by the entity which appointed the vacating
85 member for the unexpired term of the vacating member.
86 A person appointed to fill a vacancy is eligible for reap-
87 pointment for one additional consecutive term unless the
88 time remaining in the unexpired term is less than six
89 months in which case the person filling the vacancy is
90 eligible for reappointment for two additional terms.

91 (g) Members of the advisory board serve without
92 compensation, but are entitled to reimbursement by the
93 commission for expenses, including travel expenses, which
94 are actually incurred by the member in the official con-
95 duct of the business of the advisory board.

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

§18C-7-3. Definitions.

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

6 (b) *Definitions.* –

7 (1) “Eligible institution” means:

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

10 (B) Alderson-Broaddus College, Appalachian Bible
11 College, Bethany College, Davis and Elkins College,
12 Mountain State University, Ohio Valley University, the
13 University of Charleston, West Virginia Wesleyan College
14 and Wheeling Jesuit University, all in West Virginia. Any
15 institution listed in this subdivision ceases to be an eligible
16 institution if it meets either of the following conditions:

17 (i) It loses regional accreditation; or

18 (ii) It changes its status as a private, not-for-profit
19 institution;

20 (C) Any other public or private regionally accredited
21 institution in this state approved by the commission.

22 (2) "Tuition" means the quarter, semester or term
23 charges imposed by an eligible state institution of higher
24 education and, additionally, all mandatory fees required
25 as a condition of enrollment by all students. For the
26 purposes of this article, the following conditions apply:

27 (A) West Virginia University, Potomac State College
28 and West Virginia University Institute of Technology are
29 considered separate institutions for purposes of determin-
30 ing tuition rates; and

31 (B) The tuition amount paid by undergraduate health
32 sciences students at West Virginia University is considered
33 to be the same as the amount of tuition paid by all other
34 West Virginia University undergraduate students.

35 (3) "Enrolled" means either currently enrolled or in the
36 process of enrolling in an eligible institution.

**§18C-7-4. Dissolution of the PROMISE Scholarship Board;
transfer of funds.**

1 (a) The West Virginia PROMISE Scholarship Board is
2 hereby dissolved.

3 (b) All funds administered by the former PROMISE
4 Scholarship Board shall be administered by the Higher
5 Education Policy Commission.

**§18C-7-5. Powers and duties of the West Virginia Higher
Education Policy Commission regarding the
PROMISE Scholarship.**

1 (a) *Powers of commission.* – In addition to the powers
2 granted by any other provision of this code, the commis-
3 sion has the powers necessary or convenient to carry out
4 the purposes and provisions of this article including, but
5 not limited to, the following express powers:

6 (1) To promulgate legislative rules in accordance with
7 the provisions of article three-a, chapter twenty-nine-a of
8 this code to effectuate the purposes of this article;

9 (2) To invest any of the funds of the West Virginia
10 PROMISE Scholarship Fund established in section seven
11 of this article with the West Virginia Investment Manage-
12 ment Board in accordance with the provisions of article
13 six, chapter twelve of this code. Any investments made
14 pursuant to this article shall be made with the care, skill,
15 prudence and diligence under the circumstances then
16 prevailing that a prudent person acting in a like capacity
17 and familiar with such matters would use in conducting an
18 enterprise of a like character and with like aims. Fiducia-
19 ries shall diversify plan investments to the extent permit-
20 ted by law to minimize the risk of large losses, unless
21 under the circumstances it is clearly prudent not to do so;

22 (3) To execute contracts and other necessary instru-
23 ments;

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

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

32 (B) Received instruction in the home or other approved
33 place pursuant to subsection (c), section one, article eight,

34 chapter eighteen of this code for the two years immedi-
35 ately preceding application;

36 (C) This subsection does not establish residency require-
37 ments for matriculation or fee payment purposes at state
38 institutions of higher education;

39 (5) To contract for necessary goods and services, to
40 employ necessary personnel and to engage the services of
41 private persons for administrative and technical assistance
42 in carrying out the responsibilities of the scholarship
43 program. Any services provided or secured to implement
44 or administer the provisions of this section remain under
45 the direction and authority of the Vice Chancellor for
46 Administration;

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

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

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

59 (b) *Duties of commission.* – In addition to any duty
60 required by any other provision of this code, the commis-
61 sion has the following responsibilities:

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

64 (2) To operate the program as a merit-based program;

65 (3) To adjust academic eligibility requirements should
66 projections indicate that available funds will not be
67 sufficient to cover future costs; and

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

74 (A) Information requested by the commission to deter-
75 mine the number and percentage of recipients who shall:

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

77 (ii) Obtain employment in West Virginia after gradua-
78 tion; and

79 (iii) Enroll in post-graduate education programs;

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

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

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

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

90 (B) Make annual recommendations to the Legislative
91 Oversight Commission on Education Accountability
92 regarding any actions the commission considers necessary
93 or expedient to encourage PROMISE recipients to live and
94 work in the state after graduation.

§18C-7-6. Promise scholarship program requirements; legislative rule.

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

3 (1) For a student enrolled in a state institution of higher
4 education, the annual award is equal to the lesser of the
5 cost of tuition or \$4,750, except that a student who was
6 awarded and used a PROMISE scholarship annual award
7 prior to January 1, 2010, shall continue to receive the
8 annual award calculated under the same terms and
9 conditions that applied on the day before the effective
10 date of this article;

11 (2) For a student enrolled in an eligible institution other
12 than a state institution of higher education, the annual
13 award is equal to, but may not exceed, the lesser of the
14 cost of tuition or \$4,750, except that a student who was
15 awarded and used a PROMISE scholarship annual award
16 prior to January 1, 2010, shall continue to receive the
17 annual award calculated under the same terms and
18 conditions that applied on the day before the effective
19 date of this article;

20 (3) The annual award may exceed \$4,750, if the com-
21 mission determines that adequate funds are available, but
22 in any case, may not be greater than the actual cost of
23 tuition;

24 (4) The annual award shall be used by an eligible
25 institution to supplement, but may not supplant, a tuition
26 and fee waiver for which the individual is eligible pursu-
27 ant to section five, six-a, seven or seven-b, article ten,
28 chapter eighteen-b of this code.

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

32 (c) In order to be eligible to receive a PROMISE schol-
33 arship award an individual shall:

34 (1) Submit a scholarship award application to the
35 commission:

36 (A) Within two years of graduating from high school or
37 within two years of acquiring a general equivalency degree
38 if provided instruction in the home or other approved
39 place pursuant to subsection (c), section one, article eight,
40 chapter eighteen of this code; or

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

46 (2) Apply for and submit a Free Application for Federal
47 Student Aid;

48 (3) Maintain a grade point average of at least 3.0 on a
49 4.0 grading scale in the required core and elective course
50 work necessary to prepare students for success in post-
51 secondary education at the associate and baccalaureate
52 degree levels as determined by the commission, if the
53 individual has completed not more than one semester or
54 term at an institution of higher education, excluding
55 credits earned in advanced placement, international
56 baccalaureate, dual credit and comparable courses while
57 the student is enrolled in high school;

58 (4) Maintain appropriate academic progress toward the
59 completion of a degree at the undergraduate education
60 level as determined by the commission if the individual
61 has completed more than one semester or term at an
62 institution of higher education, excluding credits earned
63 in advanced placement, international baccalaureate, dual

64 credit and comparable courses while the student is en-
65 rolled in high school;

66 (5) Be a United States citizen or legal immigrant to the
67 United States;

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

71 (7) Enroll in an eligible institution. A student enrolled
72 at an eligible institution who receives a PROMISE scholar-
73 ship award may retain and renew the scholarship to
74 complete his or her undergraduate education at that
75 institution or any other eligible institution under the
76 following circumstances:

77 (A) The institution at which the student is enrolled loses
78 its status as an eligible institution pursuant to the provi-
79 sions of subdivision (1), subsection (b), section three of this
80 article; and

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

83 (d) It is the intent of the Legislature that the commis-
84 sion shall strongly encourage prospective candidates for
85 the PROMISE scholarship to perform at least twenty hours
86 of unpaid community service while in high school to help
87 prepare them for success in post-secondary education.
88 The community service may include, but is not limited to,
89 participation with nonprofit, governmental or community-
90 based organizations designed with any or all of the
91 following purposes:

92 (1) Improving the quality of life for community resi-
93 dents;

94 (2) Meeting the needs of community residents; or

95 (3) Fostering civic responsibility.

96 (e) The commission shall promulgate a legislative rule
97 in accordance with the provisions of article three-a,
98 chapter twenty-nine-a of this code.

99 (1) The rule shall include at least the following provi-
100 sions:

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

109 (B) Additional objective standards the commission
110 considers necessary:

111 (i) To promote academic excellence;

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

113 (iii) To operate the program within the limits of avail-
114 able funds.

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

120 (D) A provision defining the relationship of PROMISE
121 scholarship awards to all other sources of student finan-
122 cial aid to ensure maximum coordination. The provision
123 shall include the following:

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

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

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

131 (E) A method for awarding scholarships within the
132 limits of available appropriations, including circumstances
133 when program funds are not sufficient to provide awards
134 to all eligible applicants. The commission may not use any
135 of the following methods:

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

139 (ii) Eliminating any current recipient from eligibility;
140 and

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

143 (2) The rule may provide for or require the following at
144 the commission's discretion:

145 (A) Requiring repayment of the amount of the scholar-
146 ship, in whole or in part, if a scholarship recipient chooses
147 to work outside the state after graduation. The rule may
148 not require a recipient to repay a scholarship, in whole or
149 in part, unless the prospective recipient has been informed
150 of this requirement in writing before initial acceptance of
151 the PROMISE scholarship award;

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

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

158 (D) Providing additional criteria as determined by the
159 commission.

160 (3) The Legislature finds that an emergency exists and,
161 therefore, the commission shall file a rule to implement the
162 provisions of this section as an emergency rule pursuant to
163 the provisions of article three-a, chapter twenty-nine-a of
164 this code. The rule is subject to the prior approval of the
165 Legislative Oversight Commission on Education Account-
166 ability.

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

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

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

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

8 (2) All appropriations by the Legislature for the PROM-
9 ISE Scholarship Fund;

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

12 (4) All interest or other income earned from investment
13 of the fund.

14 (b) The allocations to the fund are subject to appropria-
15 tion by the Legislature. Nothing in this article requires
16 any specific level of funding by the Legislature nor

17 guarantees nor entitles any individual to any benefit or
18 grant of funds.

19 (c) For the fiscal year beginning July 1, 2006, it is the
20 intent of the Legislature that the aggregate of the amount
21 of moneys transferred to the fund pursuant to section
22 eighteen-a, article twenty-two, chapter twenty-nine of this
23 code, and any other amounts of public moneys that may be
24 transferred to the fund by appropriation of the Legisla-
25 ture, shall equal, but may not exceed, \$40 million. For
26 each fiscal year thereafter until and including the fiscal
27 year ending June 30, 2009, it is the intent of the Legisla-
28 ture that this aggregate be an amount two percent greater
29 than the aggregate established by this subsection for the
30 prior fiscal year. For the fiscal year beginning July 1,
31 2009, it is the intent of the Legislature that the aggregate
32 of the amount of moneys transferred to the fund pursuant
33 to section eighteen-a, article twenty-two, chapter twenty-
34 nine of this code and any other amounts of public moneys
35 that may be transferred to the fund by appropriation of
36 the Legislature shall equal \$45 million. For the fiscal year
37 beginning July 1, 2010, it is the intent of the Legislature
38 that the aggregate of the amount of moneys transferred to
39 the fund shall equal \$48 million. For the fiscal year
40 beginning July 1, 2011, and every fiscal year thereafter, it
41 is the intent of the Legislature that the aggregate of the
42 amount of moneys transferred to the fund shall equal
43 \$47,500,000.

44 (d) The commission may expend the moneys in the fund
45 to implement the provisions of this article.

**CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.**

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Revenue Fund.

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

18 (b) For the fiscal year beginning July 1, 2002, the
19 commission shall deposit: (1) \$65 million into the
20 subaccount of the State Excess Lottery Revenue Fund
21 hereby created in the State Treasury to be known as the
22 General Purpose Account to be expended pursuant to
23 appropriation of the Legislature; (2) \$10 million into the
24 Education Improvement Fund for appropriation by the
25 Legislature to the PROMISE Scholarship Fund created in
26 section seven, article seven, chapter eighteen-c of this
27 code; (3) \$19 million into the Economic Development
28 Project Fund created in subsection (e) of this section for
29 the issuance of revenue bonds and to be spent in accor-
30 dance with the provisions of said subsection; (4) \$20
31 million into the School Building Debt Service Fund
32 created in section six, article nine-d, chapter eighteen of
33 this code for the issuance of revenue bonds; (5) \$40 million
34 into the West Virginia Infrastructure Fund created in
35 section nine, article fifteen-a, chapter thirty-one of this
36 code to be spent in accordance with the provisions of said

37 article; (6) \$10 million into the Higher Education Improve-
38 ment Fund for Higher Education; and (7) \$5 million into
39 the State Park Improvement Fund for Park Improvements.
40 For the fiscal year beginning July 1, 2003, the commission
41 shall deposit: (1) \$65 million into the General Purpose
42 Account to be expended pursuant to appropriation of the
43 Legislature; (2) \$17 million into the Education Improve-
44 ment Fund for appropriation by the Legislature to the
45 PROMISE Scholarship Fund created in section seven,
46 article seven, chapter eighteen-c of this code; (3) \$19
47 million into the Economic Development Project Fund
48 created in subsection (e) of this section for the issuance of
49 revenue bonds and to be spent in accordance with the
50 provisions of said subsection; (4) \$20 million into the
51 School Building Debt Service Fund created in section six,
52 article nine-d, chapter eighteen of this code for the
53 issuance of revenue bonds; (5) \$40 million into the West
54 Virginia Infrastructure Fund created in section nine,
55 article fifteen-a, chapter thirty-one of this code to be spent
56 in accordance with the provisions of said article; (6) \$10
57 million into the Higher Education Improvement Fund for
58 Higher Education; and (7) \$7 million into the State Park
59 Improvement Fund for Park Improvements.

60 (c) For the fiscal year beginning July 1, 2004, and
61 subsequent fiscal years through the fiscal year ending June
62 30, 2009, the commission shall deposit: (1) \$65 million into
63 the General Purpose Account to be expended pursuant to
64 appropriation of the Legislature; (2) \$27 million into the
65 Education Improvement Fund for appropriation by the
66 Legislature to the PROMISE Scholarship Fund created in
67 section seven, article seven, chapter eighteen-c of this
68 code; (3) \$19 million into the Economic Development
69 Project Fund created in subsection (e) of this section for
70 the issuance of revenue bonds and to be spent in accor-
71 dance with the provisions of said subsection; (4) \$19
72 million into the School Building Debt Service Fund

73 created in section six, article nine-d, chapter eighteen of
74 this code for the issuance of revenue bonds: *Provided*, That
75 for the fiscal year beginning July 1, 2008, and subsequent
76 fiscal years, no moneys shall be deposited in the School
77 Building Debt Service Fund pursuant to this subsection
78 and instead \$19 million shall be deposited into the Excess
79 Lottery School Building Debt Service Fund; (5) \$40
80 million into the West Virginia Infrastructure Fund created
81 in section nine, article fifteen-a, chapter thirty-one of this
82 code to be spent in accordance with the provisions of said
83 article; (6) \$10 million into the Higher Education Improve-
84 ment Fund for Higher Education; and (7) \$5 million into
85 the State Park Improvement Fund for Park Improvements.
86 No portion of the distributions made as provided in this
87 subsection and subsection (b) of this section, except
88 distributions made in connection with bonds issued under
89 subsection (e) of this section, may be used to pay debt
90 service on bonded indebtedness until after the Legislature
91 expressly authorizes issuance of the bonds and payment of
92 debt service on the bonds through statutory enactment or
93 the adoption of a concurrent resolution by both houses of
94 the Legislature. Until subsequent legislative enactment or
95 adoption of a resolution that expressly authorizes issuance
96 of the bonds and payment of debt service on the bonds
97 with funds distributed under this subsection and subsec-
98 tion (b) of this section, except distributions made in
99 connection with bonds issued under subsection (d) of this
100 section, the distributions may be used only to fund capital
101 improvements that are not financed by bonds and only
102 pursuant to appropriation of the Legislature.

103 (d) For the fiscal year beginning July 1, 2009, and
104 subsequent fiscal years, the commission shall deposit: (1)
105 \$65 million into the General Purpose Account to be
106 expended pursuant to appropriation of the Legislature; (2)
107 \$29 million into the Education Improvement Fund for
108 appropriation by the Legislature to the PROMISE Schol-

109 arship Fund created in section seven, article seven, chapter
110 eighteen-c of this code; (3) \$19 million into the Economic
111 Development Project Fund created in subsection (e) of this
112 section for the issuance of revenue bonds and to be spent
113 in accordance with the provisions of said subsection; (4)
114 \$19 million into the Excess Lottery School Building Debt
115 Service Fund created in section six, article nine-d, chapter
116 eighteen of this code; (5) \$40 million into the West Virginia
117 Infrastructure Fund created in section nine, article
118 fifteen-a, chapter thirty-one of this code to be spent in
119 accordance with the provisions of said article; (6) \$10
120 million into the Higher Education Improvement Fund for
121 Higher Education; and (7) \$5 million into the State Park
122 Improvement Fund for Park Improvements. No portion of
123 the distributions made as provided in this subsection and
124 subsection (b) of this section, except distributions made in
125 connection with bonds issued under subsection (e) of this
126 section, may be used to pay debt service on bonded
127 indebtedness until after the Legislature expressly autho-
128 rizes issuance of the bonds and payment of debt service on
129 the bonds through statutory enactment or the adoption of
130 a concurrent resolution by both houses of the Legislature.
131 Until subsequent legislative enactment or adoption of a
132 resolution that expressly authorizes issuance of the bonds
133 and payment of debt service on the bonds with funds
134 distributed under this subsection and subsection (b) of this
135 section, except distributions made in connection with
136 bonds issued under subsection (e) of this section, the
137 distributions may be used only to fund capital improve-
138 ments that are not financed by bonds and only pursuant to
139 appropriation of the Legislature.

140 (e) The Legislature finds and declares that in order to
141 attract new business, commerce and industry to this state,
142 to retain existing business and industry providing the
143 citizens of this state with economic security and to ad-
144 vance the business prosperity of this state and the eco-

145 nomic welfare of the citizens of this state, it is necessary to
146 provide public financial support for constructing, equip-
147 ping, improving and maintaining economic development
148 projects, capital improvement projects and infrastructure
149 which promote economic development in this state.

150 (1) The West Virginia Economic Development Authority
151 created and provided for in article fifteen, chapter
152 thirty-one of this code shall, by resolution, in accordance
153 with the provisions of this article and article fifteen,
154 chapter thirty-one of this code, and upon direction of the
155 Governor, issue revenue bonds of the Economic Develop-
156 ment Authority in no more than two series to pay for all or
157 a portion of the cost of constructing, equipping, improving
158 or maintaining projects under this section or to refund the
159 bonds at the discretion of the authority. Any revenue
160 bonds issued on or after July 1, 2002, which are secured by
161 state excess lottery revenue proceeds shall mature at a
162 time or times not exceeding thirty years from their respec-
163 tive dates. The principal of and the interest and redemp-
164 tion premium, if any, on the bonds shall be payable solely
165 from the special fund provided in this section for the
166 payment.

167 (2) The special revenue fund named the Economic
168 Development Project Fund into which shall be deposited
169 the amounts to be deposited in the fund as specified in
170 subsections (b), (c) and (d) of this section is continued. The
171 Economic Development Project Fund shall consist of all
172 such moneys, all appropriations to the fund, all interest
173 earned from investment of the fund and any gifts, grants
174 or contributions received by the fund. All amounts
175 deposited in the fund shall be pledged to the repayment of
176 the principal, interest and redemption premium, if any, on
177 any revenue bonds or refunding revenue bonds authorized
178 by this section, including any and all commercially
179 customary and reasonable costs and expenses which may
180 be incurred in connection with the issuance, refunding,

181 redemption or defeasance of the bonds. The West Virginia
182 Economic Development Authority may further provide in
183 the resolution and in the trust agreement for priorities on
184 the revenues paid into the Economic Development Project
185 Fund that are necessary for the protection of the prior
186 rights of the holders of bonds issued at different times
187 under the provisions of this section. The bonds issued
188 pursuant to this subsection shall be separate from all other
189 bonds which may be or have been issued, from time to
190 time, under the provisions of this article.

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

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

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

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

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

243 (7) Applications for grants submitted on or before July
244 1, 2002, shall be considered refiled with the committee.
245 Within ten days from the effective date of this section as
246 amended in the year 2003, the lead applicant shall file
247 with the committee any amendments to the original
248 application that may be necessary to properly reflect
249 changes in facts and circumstances since the application
250 was originally filed with the committee.

251 (8) When determining whether or not to certify a
252 project, the committee shall take into consideration the
253 following:

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

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

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

265 (D) Whether the project will promote economic devel-
266 opment in the region and the type of economic develop-
267 ment that will be promoted;

268 (E) The type of capital investments to be made with
269 bond proceeds and the useful life of the capital invest-
270 ments; and

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

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

278 The project of an individual or private person or entity
279 may be certified to receive a low-interest loan paid from
280 bond proceeds. The terms and conditions of the loan,
281 including, but not limited to, the rate of interest to be paid
282 and the period of the repayment, shall be determined by

283 the Economic Development Authority after considering all
284 applicable facts and circumstances.

285 (10) Prior to making each certification, the committee
286 shall conduct at least one public hearing, which may be
287 held outside of Kanawha County. Notice of the time,
288 place, date and purpose of the hearing shall be published
289 in at least one newspaper in each of the three congressio-
290 nal districts at least fourteen days prior to the date of the
291 public hearing.

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

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

299 (B) Health clinics and other health facilities;

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

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

304 (E) Biotechnical incubators, development centers and
305 facilities;

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

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

311 (H) Railroad bridges, switches and track extension or
312 spurs on public or private land necessary to retain existing
313 businesses or attract new businesses;

314 (I) Recreational facilities, such as amphitheaters,
315 walking and hiking trails, bike trails, picnic facilities,
316 restrooms, boat docking and fishing piers, basketball and
317 tennis courts, and baseball, football and soccer fields;

318 (J) State-owned buildings that are registered on the
319 National Register of Historic Places;

320 (K) Retail facilities, including related service, parking
321 and transportation facilities, appropriate lighting, land-
322 scaping and security systems to revitalize decaying
323 downtown areas; and

324 (L) Other facilities that promote or enhance economic
325 development, educational opportunities or tourism
326 opportunities thereby promoting the general welfare of
327 this state and its residents.

328 (12) Prior to the issuance of bonds under this subsec-
329 tion, the committee shall certify to the Economic Develop-
330 ment Authority a list of those certified projects that will
331 receive funds from the proceeds of the bonds. Once
332 certified, the list may not thereafter be altered or amended
333 other than by legislative enactment.

334 (13) If any proceeds from sale of bonds remain after
335 paying costs and making grants and loans as provided in
336 this subsection, the surplus may be deposited in an ac-
337 count in the State Treasury known as the Economic
338 Development Project Bridge Loan Fund administered by
339 the Economic Development Authority created in article
340 fifteen, chapter thirty-one of this code. Expenditures from
341 the fund are not authorized from collections but are to be
342 made only in accordance with appropriation by the
343 Legislature and in accordance with the provisions of
344 article three, chapter twelve of this code and upon fulfill-
345 ment of the provisions of article two, chapter five-a of this
346 code. Loan repayment amounts, including the portion

347 attributable to interest, shall be paid into the fund created
348 in this subdivision.

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

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

375 (h) When bonds are issued for projects under subsection
376 (d) (e) of this section or for the School Building Authority,
377 infrastructure, higher education or park improvement
378 purposes described in this section that are secured by
379 profits from lotteries deposited in the State Excess Lottery
380 Revenue Fund, the Lottery Director shall allocate first to
381 the Economic Development Project Fund an amount equal

382 to one tenth of the projected annual principal, interest and
383 coverage requirements on any and all revenue bonds
384 issued, or to be issued as certified to the Lottery Director;
385 and second, to the fund or funds from which debt service
386 is paid on bonds issued under this section for the School
387 Building Authority, infrastructure, higher education and
388 park improvements an amount equal to one tenth of the
389 projected annual principal, interest and coverage require-
390 ments on any and all revenue bonds issued, or to be issued
391 as certified to the Lottery Director. In the event there are
392 insufficient funds available in any month to transfer the
393 amounts required pursuant to this subsection, the defi-
394 ciency shall be added to the amount transferred in the
395 next succeeding month in which revenues are available to
396 transfer the deficiency.

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

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

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

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

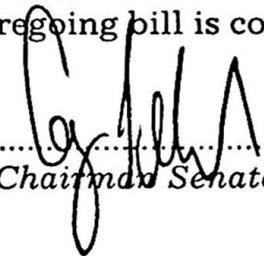
409 (C) Providing funding to help address the shortage of
410 qualified teachers and substitutes in areas of need, both in
411 number of teachers and in subject matter areas.

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

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

416 (k) The Legislature further directs the Governor to
417 focus resources on the creation of a prescription drug
418 program for senior citizens by pursuing a Medicaid waiver
419 to offer prescription drug services to senior citizens; by
420 investigating the establishment of purchasing agreements
421 with other entities to reduce costs; by providing discount
422 prices or rebate programs for seniors; by coordinating
423 programs offered by pharmaceutical manufacturers that
424 provide reduced cost or free drugs; by coordinating a
425 collaborative effort among all state agencies to ensure the
426 most efficient and cost-effective program possible for the
427 senior citizens of this state; and by working closely with
428 the state's congressional delegation to ensure that a
429 national program is implemented. The Legislature further
430 directs that the Governor report his or her progress back
431 to the Joint Committee on Government and Finance on an
432 annual basis until a comprehensive program has been fully
433 implemented.

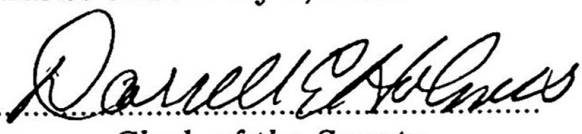
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



.....
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2009.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is appended this the 11th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:15 AM