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**SUBSTITUTE SENATE BILL 5106**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Higher Education (originally sponsored by Senators McAuliffe, Wood, Kohl, Prince, Patterson, Hochstatter, Bauer, Sheldon, Brown, Rasmussen, Long, Goings, Haugen, Franklin, Thibaudeau, Loveland, Snyder, Winsley and Oke)

Read first time 02/11/97.

1 AN ACT Relating to the Washington advanced college tuition payment  
2 program; amending RCW 43.79A.040; and adding a new chapter to Title 28B  
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The Washington advanced college tuition  
6 payment program is established to help make higher education affordable  
7 and accessible to all citizens of the state of Washington by offering  
8 a savings incentive that will protect purchasers and beneficiaries  
9 against rising tuition costs. The program is designed to encourage  
10 savings and enhance the ability of Washington citizens to obtain  
11 financial access to institutions of higher education. In addition, the  
12 program encourages elementary and secondary school students to do well  
13 in school as a means of preparing for and aspiring to higher education  
14 attendance. This program is intended to promote a well-educated and  
15 financially secure population to the ultimate benefit of all citizens  
16 of the state of Washington.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter, unless the context clearly requires otherwise.

- 1 (1) "Academic year" means the regular nine-month, three-quarter, or  
2 two-semester period annually occurring between July 1st and June 30th.
- 3 (2) "Account" means the Washington advanced college tuition payment  
4 program account established for the deposit of all money received by  
5 the board from eligible purchasers and interest earnings on investments  
6 of funds in the account, as well as for all expenditures on behalf of  
7 eligible beneficiaries for the redemption of tuition units.
- 8 (3) "Board" means the higher education coordinating board as  
9 defined in chapter 28B.80 RCW.
- 10 (4) "Contractual obligation" means a legally binding contract of  
11 the state with the purchaser and the beneficiary establishing that  
12 purchases of tuition units will be worth the same number of tuition  
13 units at the time of redemption as they were worth at the time of the  
14 purchase.
- 15 (5) "Eligible beneficiary" means the person for whom the tuition  
16 unit will be redeemed for attendance at an institution of higher  
17 education. The beneficiary is that person named by the purchaser at  
18 the time that a tuition unit contract is accepted by the board. With  
19 the exception of tuition unit contracts purchased by qualified  
20 organizations as future scholarships, the beneficiary must reside in  
21 the state of Washington or otherwise be a resident of the state of  
22 Washington at the time the tuition unit contract is accepted by the  
23 board.
- 24 (6) "Eligible purchaser" means an individual or organization that  
25 has entered into a tuition unit contract with the board for the  
26 purchase of tuition units for an eligible beneficiary.
- 27 (7) "Full-time tuition charges" means resident tuition charges at  
28 a state institution of higher education for enrollments between ten  
29 credits and eighteen credit hours per academic term.
- 30 (8) "Institution of higher education" means an institution that  
31 offers education beyond the secondary level and is accredited by a  
32 nationally recognized accrediting association or is licensed to do  
33 business in the state in which it is located.
- 34 (9) "Investment board" means the state investment board as defined  
35 in chapter 43.33A RCW.
- 36 (10) "State institution of higher education" means institutions of  
37 higher education as defined in RCW 28B.10.016.
- 38 (11) "Tuition and fees" means tuition and services and activities  
39 fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest

1 whole dollar. The maximum tuition and fees charges recognized for  
2 beneficiaries enrolled in a state technical college shall be equal to  
3 the tuition and fees for the community college system.

4 (12) "Tuition unit contract" means a contract between an eligible  
5 purchaser and the board, or a successor agency appointed for  
6 administration of this chapter, for the purchase of tuition units for  
7 a specified beneficiary that may be redeemed at a later date for an  
8 equal number of tuition units.

9 (13) "Unit purchase price" means the minimum cost to purchase one  
10 tuition unit for an eligible beneficiary. Generally, the minimum  
11 purchase price is one percent of the weighted average tuition and fees  
12 for the current year, rounded to the nearest whole dollar, adjusted for  
13 the costs of administration and adjusted to ensure the actuarial  
14 soundness of the account.

15 (14) "Weighted average tuition" shall be calculated as the sum of  
16 the undergraduate tuition and services and activities fees for each  
17 four-year state institution of higher education, multiplied by the  
18 respective full-time equivalent student enrollment at each institution  
19 divided by the sum total of undergraduate full-time equivalent student  
20 enrollments of all four-year state institutions of higher education,  
21 rounded to the nearest whole dollar.

22 (15) "Weighted average tuition unit" is the value of the weighted  
23 average tuition and fees divided by one hundred. The weighted average  
24 is the basis upon which tuition benefits are calculated for graduate  
25 program enrollments and for attendance at nonstate institutions of  
26 higher education and is the basis for any refunds provided from the  
27 program.

28 NEW SECTION. **Sec. 3.** (1) The Washington advanced college tuition  
29 payment program shall be administered by the board.

30 (2) The board shall review its administration of the program and  
31 make a recommendation to the legislature by the end of the second year  
32 after the effective date of this section as to whether continued  
33 responsibility for the program should reside with the board or be  
34 assigned to another state agency or state entity.

35 (3)(a) The Washington advanced college tuition payment program  
36 shall consist of the sale of tuition units, which may be redeemed by  
37 the beneficiary at a future date for an equal number of tuition units

1 regardless of any increase in the price of tuition, that may have  
2 occurred in the interval.

3 (b) Each purchase shall be worth a specific number of or fraction  
4 of tuition units at each state institution of higher education as  
5 determined by the board.

6 (c) The number of tuition units necessary to pay for a full year's,  
7 full-time tuition and fee charges at a state institution of higher  
8 education shall be set by the board at the time a purchaser enters into  
9 a tuition unit contract.

10 (d) The board may limit the number of tuition units purchased by  
11 any one purchaser or on behalf of any one beneficiary, however, no  
12 limit may be imposed that is less than that necessary to achieve four  
13 years of full-time, undergraduate tuition charges at a state  
14 institution of higher education. The board also may, at its  
15 discretion, limit the number of participants, if needed, to ensure the  
16 actuarial soundness and integrity of the program.

17 (4)(a) No tuition unit may be redeemed until two years after the  
18 purchase of the unit. Units may be redeemed for enrollment at any  
19 institution of higher education.

20 (b) Units redeemed at a nonstate institution of higher education or  
21 for graduate enrollment shall be redeemed at the current weighted  
22 average tuition unit in effect at the time of redemption.

23 (5) The board shall determine the conditions under which the  
24 tuition benefit may be transferred to another family member. In  
25 permitting such transfers, the board may not allow the tuition benefit  
26 to be bought, sold, bartered, or otherwise exchanged for goods and  
27 services by either the beneficiary or the purchaser.

28 (6) The board shall administer the Washington advanced college  
29 tuition payment program in a manner reasonably designed to be  
30 actuarially sound, such that the assets of the trust will be sufficient  
31 to defray the obligations of the trust including the costs of  
32 administration. The board may, at its discretion, discount the minimum  
33 purchase price for certain kinds of purchases such as those from  
34 families with young children, as long as the actuarial soundness of the  
35 account is not jeopardized.

36 (7) The board shall annually determine current value of a tuition  
37 unit and the value of the weighted average tuition unit.

38 (8) The board shall promote, advertise, and publicize the  
39 Washington advanced college tuition payment program.

- 1 (9) In addition to any other powers conferred by this chapter, the  
2 board may:
- 3 (a) Impose reasonable limits on the number of tuition units or  
4 units that may be used in any one year;
- 5 (b) Determine and set any time limits, if necessary, for the use of  
6 benefits under this chapter;
- 7 (c) Impose and collect administrative fees and charges in  
8 connection with any transaction under this chapter;
- 9 (d) Appoint and use advisory committees as needed to provide  
10 program direction and guidance;
- 11 (e) Formulate and adopt all other policies and rules necessary for  
12 the efficient administration of the program;
- 13 (f) Consider the addition of an advanced payment program for room  
14 and board contracts and also consider a college savings program;
- 15 (g) Purchase insurance from insurers licensed to do business in the  
16 state, to provide for coverage against any loss in connection with the  
17 account's property, assets, or activities or to further insure the  
18 value of the tuition units;
- 19 (h) Make, execute, and deliver contracts, conveyances, and other  
20 instruments necessary to the exercise and discharge of its powers and  
21 duties under this chapter;
- 22 (i) Contract for the provision for all or part of the services  
23 necessary for the management and operation of the program with other  
24 state or nonstate entities authorized to do business in the state;
- 25 (j) Contract for other services or for goods needed by the board in  
26 the conduct of its business under this chapter;
- 27 (k) Employ all personnel as necessary to carry out its  
28 responsibilities under this chapter and to fix the compensation of  
29 these persons;
- 30 (l) Contract with financial consultants, actuaries, auditors, and  
31 other consultants as necessary to carry out its responsibilities under  
32 this chapter;
- 33 (m) Solicit and accept cash donations and grants from any person,  
34 governmental agency, private business, or organization; and
- 35 (n) Perform all acts necessary and proper to carry out the duties  
36 and responsibilities of this program under this chapter.

37 NEW SECTION. **Sec. 4.** The board may, at its discretion, allow an  
38 organization to purchase tuition units for future use as scholarships.

1 Such organizations electing to purchase tuition units for this purpose  
2 must enter into a contract with the board which, at a minimum, ensures  
3 that the scholarship shall be freely given by the purchaser to a  
4 scholarship recipient. For such purchases, the purchaser need not name  
5 a beneficiary until four months before the date when the tuition units  
6 are first expected to be used.

7 The board shall formulate and adopt such rules as are necessary to  
8 determine which organizations may qualify to purchase tuition units for  
9 scholarships under this section. The board also may consider  
10 additional rules for the use of tuition units if purchased as  
11 scholarships.

12 The board may establish its own scholarship fund under this  
13 chapter. Scholarships issued by the board under this section shall be  
14 given to students who demonstrate financial need. Financial need is  
15 not a criterion that any other organization need consider when using  
16 tuition units as scholarships.

17 NEW SECTION. **Sec. 5.** The Washington advanced college tuition  
18 payment program is an essential state governmental function. The  
19 board's contracts with eligible participants shall be contractual  
20 obligations legally binding on the state as set forth in this chapter.  
21 If, and only if, the moneys in the account are projected to be  
22 insufficient to cover the state's contracted expenses for a given  
23 biennium, then the legislature shall appropriate to the account the  
24 amount necessary to cover such expenses.

25 The tuition and fees charged by a state institution of higher  
26 education to an eligible beneficiary for a current enrollment shall be  
27 paid by the account to the extent the beneficiary has remaining unused  
28 tuition units for the appropriate school. The tuition and fees charged  
29 to a beneficiary for graduate level enrollments or by a nonstate  
30 institution of higher education shall be paid by the account to the  
31 extent that the beneficiary has remaining weighted average tuition  
32 units.

33 NEW SECTION. **Sec. 6.** (1) The Washington advanced college tuition  
34 payment program account is created in the custody of the state  
35 treasurer. The account shall be a discrete nontreasury account  
36 retaining its interest earnings in accordance with RCW 43.79A.040.

1 (2) The board shall deposit in the account all money received for  
2 the program. The account shall be self-sustaining and consist of  
3 payments received from purchasers of tuition units and funds received  
4 from other sources, public or private. With the exception of  
5 investment and operating costs associated with the investment of money  
6 by the investment board paid under RCW 43.33A.160 and 43.84.160, the  
7 account shall be credited with all investment income earned by the  
8 account. Disbursements from the account are exempt from appropriations  
9 and the allotment provisions of chapter 43.88 RCW. Money used for  
10 program administration is subject to the allotment and budgetary  
11 controls of chapter 43.88 RCW, but no appropriation is required for  
12 expenditures.

13 (3) The assets of the account may be spent for the purpose of  
14 making payments to institutions of higher education on behalf of the  
15 qualified beneficiaries, making refunds, transfers, or direct payments  
16 upon the termination of the Washington advanced college tuition payment  
17 program, and paying the costs of administration of the program.  
18 Disbursements from the account shall be made only on the authorization  
19 of the board.

20 NEW SECTION. **Sec. 7.** (1) The investment board has the full power  
21 to invest, reinvest, manage, contract, sell, or exchange investment  
22 money in the account. All investment and operating costs associated  
23 with the investment of money shall be paid pursuant to RCW 43.33A.160  
24 and 43.84.160. With the exception of these expenses, the earnings from  
25 the investment of the money shall be retained by the account.

26 (2) All investments made by the investment board shall be made with  
27 the exercise of that degree of judgment and care pursuant to RCW  
28 43.33A.140 and the investment policy established by the state  
29 investment board.

30 (3) As deemed appropriate by the investment board, money in the  
31 account may be commingled for investment with other funds subject to  
32 investment by the board.

33 (4) The authority to establish all policies relating to the  
34 account, other than the investment policies as set forth in subsections  
35 (1) through (3) of this section, resides with the board. With the  
36 exception of expenses of the investment board set forth in subsection  
37 (1) of this section, disbursements from the account shall be made only  
38 on the authorization of the board, and money in the account may be

1 spent only for the purposes of the program as specified in this  
2 chapter.

3 (5) The investment board shall routinely consult and communicate  
4 with the board on the investment policy, earnings of the trust, and  
5 related needs of the program.

6 NEW SECTION. **Sec. 8.** The board shall annually evaluate, and cause  
7 to be evaluated by a nationally recognized actuary, the soundness of  
8 the account and determine the additional assets needed, if any, to  
9 defray the obligations of the account.

10 If funds are not sufficient to ensure the actuarial soundness of  
11 the account, the board shall adjust the price of subsequent tuition  
12 credit purchases to ensure its soundness.

13 If there are insufficient numbers of new purchases to ensure the  
14 actuarial soundness of the account, the board shall request such funds  
15 from the legislature as are required to ensure the integrity of the  
16 program. Funds may be appropriated directly to the account or  
17 appropriated under the condition that they be repaid at a later date.  
18 The repayment shall be made at such time that the account is again  
19 determined to be actuarially sound.

20 NEW SECTION. **Sec. 9.** (1) In the event that the state determines  
21 that the program is not financially feasible, or for any other reason,  
22 the state may declare the discontinuance of the program. At the time  
23 of such declaration, the board will cease to accept any further tuition  
24 unit contracts or purchases.

25 (2) The remaining tuition units for all beneficiaries who have  
26 either enrolled in higher education or who are within four years of  
27 graduation from a secondary school shall be honored until such tuition  
28 units have been exhausted, or for ten fiscal years from the date that  
29 the program has been discontinued, whichever comes first. All other  
30 contract holders shall receive a refund equal to the value of the  
31 current weighted average tuition units in effect at the time that the  
32 program was declared discontinued.

33 (3) At the end of the ten-year period, any tuition units remaining  
34 unused by currently active beneficiaries enrolled in higher education  
35 shall be refunded at the value of the current weighted average tuition  
36 unit in effect at the end of that ten-year period.

1 (4) At the end of the ten-year period, all other funds remaining in  
2 the account not needed to make refunds or to pay for administrative  
3 costs shall be deposited to the state general fund.

4 (5) The board may make refunds under other exceptional  
5 circumstances as it deems fit, however, no tuition units may be honored  
6 after the end of the tenth fiscal year following the declaration of  
7 discontinuance of the program.

8 NEW SECTION. **Sec. 10.** (1) The board, in planning and devising the  
9 program, shall consult with the investment board, the state treasurer,  
10 the state actuary, the office of financial management, and the  
11 institutions of higher education.

12 (2) The board may seek the assistance of the state agencies named  
13 in subsection (1) of this section, private financial institutions, and  
14 any other qualified party with experience in the areas of accounting,  
15 actuary, risk management, or investment management to assist with  
16 preparing an accounting of the program and ensuring the fiscal  
17 soundness of the account.

18 (3) State agencies and public institutions of higher education  
19 shall fully cooperate with the board in matters relating to the program  
20 in order to ensure the solvency of the account and ability of the board  
21 to meet outstanding commitments.

22 NEW SECTION. **Sec. 11.** This chapter shall not be construed as a  
23 promise that any beneficiary shall be granted admission to any  
24 institution of higher education, will earn any specific or minimum  
25 number of academic credits, or will graduate from any such institution.  
26 In addition, this chapter shall not be construed as a promise of either  
27 course or program availability.

28 Participation in this program does not guarantee an eligible  
29 beneficiary the right to resident tuition and fees. To qualify for  
30 resident and respective tuition subsidies, the eligible beneficiary  
31 must meet the applicable provisions of RCW 28B.15.011 through  
32 28B.15.015.

33 This chapter shall not be construed to imply that the redemption of  
34 tuition units shall be equal to any value greater than the  
35 undergraduate tuition and services and activities fees at a state  
36 institution of higher education as computed under this chapter.  
37 Eligible beneficiaries will be responsible for payment of any other fee

1 that does not qualify as a services and activities fee including, but  
2 not limited to, any expenses for tuition surcharges, tuition overload  
3 fees, laboratory fees, equipment fees, book fees, rental fees, room and  
4 board charges, or fines.

5 NEW SECTION. **Sec. 12.** (1) The intent of the Washington advanced  
6 college tuition payment program is to redeem tuition units for  
7 attendance at an institution of higher education. Refunds shall be  
8 issued under specific conditions that may include the following:

9 (a) Certification that the beneficiary, who is eighteen years of  
10 age or older, will not attend an institution of higher education, will  
11 result in a refund not to exceed ninety-five percent of the current  
12 weighted average tuition and fees in effect at the time of such  
13 certification. No more than one hundred tuition units may be refunded  
14 per year to any individual making this certification. The refund shall  
15 be made no sooner than ninety days after such certification, less any  
16 administrative processing fees assessed by the board. The board may,  
17 at its discretion, impose a greater penalty;

18 (b) If there is certification of the death or disability of the  
19 beneficiary, the refund shall be equal to one hundred percent of any  
20 remaining unused tuition units valued at the current weighted average  
21 tuition units at the time that such certification is submitted to the  
22 board, less any administrative processing fees assessed by the board;

23 (c) If there is certification by the student of graduation or  
24 program completion, the refund may be as great as one hundred percent  
25 of any remaining unused weighted average tuition units at the time that  
26 such certification is submitted to the board, less any administrative  
27 processing fees assessed by the board. The board may, at its  
28 discretion, impose a penalty if needed to comply with federal tax  
29 rules;

30 (d) Certification of other tuition and fee scholarships, which will  
31 cover the cost of tuition for the eligible beneficiary. The refund  
32 shall be equal to one hundred percent of the current weighted average  
33 tuition units in effect at the time of the refund request, plus any  
34 administrative processing fees assessed by the board. The refund under  
35 this subsection may not exceed the value of the scholarship;

36 (e) Incorrect or misleading information provided by the purchaser  
37 or beneficiaries may result in a refund of the purchaser's investment,  
38 less any administrative processing fees assessed by the board. The

1 value of the refund will not exceed the actual dollar value of the  
2 purchaser's contributions; and

3 (f) The board may determine other circumstances qualifying for  
4 refunds of remaining unused tuition units and may determine the value  
5 of that refund.

6 (2) With the exception of subsection (1)(b) and (e) of this section  
7 no refunds may be made before the beneficiary is at least eighteen  
8 years of age.

9 **Sec. 13.** RCW 43.79A.040 and 1996 c 253 s 409 are each amended to  
10 read as follows:

11 (1) Money in the treasurer's trust fund may be deposited, invested  
12 and reinvested by the state treasurer in accordance with RCW 43.84.080  
13 in the same manner and to the same extent as if the money were in the  
14 state treasury.

15 (2) All income received from investment of the treasurer's trust  
16 fund shall be set aside in an account in the treasury trust fund to be  
17 known as the investment income account.

18 (3) The investment income account may be utilized for the payment  
19 of purchased banking services on behalf of treasurer's trust funds  
20 including, but not limited to, depository, safekeeping, and  
21 disbursement functions for the state treasurer or affected state  
22 agencies. The investment income account is subject in all respects to  
23 chapter 43.88 RCW, but no appropriation is required for payments to  
24 financial institutions. Payments shall occur prior to distribution of  
25 earnings set forth in subsection (4) of this section.

26 (4)(a) Monthly, the state treasurer shall distribute the earnings  
27 credited to the investment income account to the state general fund  
28 except under (b) and (c) of this subsection.

29 (b) The following accounts and funds shall receive their  
30 proportionate share of earnings based upon each account's or fund's  
31 average daily balance for the period: The Washington advanced college  
32 tuition payment program account, the agricultural local fund, the  
33 American Indian scholarship endowment fund, the Washington  
34 international exchange scholarship endowment fund, the energy account,  
35 the fair fund, the game farm alternative account, the grain inspection  
36 revolving fund, the rural rehabilitation account, and the self-  
37 insurance revolving fund. However, the earnings to be distributed

1 shall first be reduced by the allocation to the state treasurer's  
2 service fund pursuant to RCW 43.08.190.

3 (c) The following accounts and funds shall receive eighty percent  
4 of their proportionate share of earnings based upon each account's or  
5 fund's average daily balance for the period: The advanced right of way  
6 revolving fund, the federal narcotics asset forfeitures account, the  
7 high occupancy vehicle account, and the local rail service assistance  
8 account.

9 (5) In conformance with Article II, section 37 of the state  
10 Constitution, no trust accounts or funds shall be allocated earnings  
11 without the specific affirmative directive of this section.

12 NEW SECTION. **Sec. 14.** Sections 1 through 12 of this act  
13 constitute a new chapter in Title 28B RCW.

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