

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5749

Chapter 12, Laws of 2011

(partial veto)

62nd Legislature
2011 1st Special Session

ADVANCED COLLEGE TUITION PAYMENTS

EFFECTIVE DATE: 08/24/11 - Except sections 1 and 6, which become effective 06/06/11.

Passed by the Senate May 21, 2011
YEAS 41 NAYS 3

BRAD OWEN

President of the Senate

Passed by the House May 24, 2011
YEAS 89 NAYS 7

FRANK CHOPP

Speaker of the House of Representatives

Approved June 6, 2011, 12:07 p.m., with
the exception of Section 1 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5749** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

June 7, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5749

Passed Legislature - 2011 1st Special Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Higher Education & Workforce Development (originally sponsored by Senators Brown, Hewitt, and Shin)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to the Washington advanced college tuition payment
2 program; amending RCW 28B.95.020, 28B.95.030, 28B.95.080, and
3 28B.95.150; reenacting and amending RCW 44.44.040; adding a new section
4 to chapter 28B.95 RCW; creating a new section; providing an expiration
5 date; and declaring an emergency.

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

7 **Sec. 1. RCW 28B.95.020 and 2007 c 405 s 8 are each amended to read*
8 *as follows:*

9 *The definitions in this section apply throughout this chapter,*
10 *unless the context clearly requires otherwise.*

11 *(1) "Academic year" means the regular nine-month, three-quarter, or*
12 *two-semester period annually occurring between August 1st and July*
13 *31st.*

14 *(2) "Account" means the Washington advanced college tuition payment*
15 *program account established for the deposit of all money received by*
16 *the board from eligible purchasers and interest earnings on investments*
17 *of funds in the account, as well as for all expenditures on behalf of*
18 *eligible beneficiaries for the redemption of tuition units and for the*

1 development of any authorized college savings program pursuant to RCW
2 28B.95.150.

3 (3) "Board" means the higher education coordinating board as
4 defined in chapter 28B.76 RCW.

5 (4) "Committee on advanced tuition payment" or "committee" means a
6 committee of the following members: The state treasurer, the director
7 of the office of financial management, the executive director of the
8 higher education coordinating board, or their designees(~~(7)~~); and
9 (~~(two)~~) four members to be appointed by the governor and confirmed by
10 the senate for four-year terms, one representing program participants
11 and (~~(one)~~) three private business representatives with marketing,
12 public relations, or financial expertise. Beginning with appointments
13 made after the effective date of this section, in making the three
14 appointments representing private business, the governor must consider
15 names from a list provided by the president of the senate and the
16 speaker of the house of representatives. Appointment of the two
17 additional members representing private business as provided for in
18 chapter . . . , Laws of 2011 1st sp. sess. (this act) must be made by
19 June 30, 2011, and shall be confirmed by the senate by June 30, 2012.

20 (5) "Governing body" means the committee empowered by the
21 legislature to administer the Washington advanced college tuition
22 payment program.

23 (6) "Contractual obligation" means a legally binding contract of
24 the state with the purchaser and the beneficiary establishing that
25 purchases of tuition units will be worth the same number of tuition
26 units at the time of redemption as they were worth at the time of the
27 purchase.

28 (7) "Eligible beneficiary" means the person for whom the tuition
29 unit will be redeemed for attendance at an institution of higher
30 education. The beneficiary is that person named by the purchaser at
31 the time that a tuition unit contract is accepted by the governing
32 body. Qualified organizations, as allowed under section 529 of the
33 federal internal revenue code, purchasing tuition unit contracts as
34 future scholarships need not designate a beneficiary at the time of
35 purchase.

36 (8) "Eligible purchaser" means an individual or organization that
37 has entered into a tuition unit contract with the governing body for
38 the purchase of tuition units for an eligible beneficiary. The state

1 of Washington may be an eligible purchaser for purposes of purchasing
2 tuition units to be held for granting Washington college bound
3 scholarships.

4 (9) "Full-time tuition charges" means resident tuition charges at
5 a state institution of higher education for enrollments between ten
6 credits and eighteen credit hours per academic term.

7 (10) "Institution of higher education" means an institution that
8 offers education beyond the secondary level and is recognized by the
9 internal revenue service under chapter 529 of the internal revenue
10 code.

11 (11) "Investment board" means the state investment board as defined
12 in chapter 43.33A RCW.

13 (12) "State institution of higher education" means institutions of
14 higher education as defined in RCW 28B.10.016.

15 (13) "Tuition and fees" means undergraduate tuition and services
16 and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded
17 to the nearest whole dollar. For purposes of this chapter, services
18 and activities fees do not include fees charged for the payment of
19 bonds heretofore or hereafter issued for, or other indebtedness
20 incurred to pay, all or part of the cost of acquiring, constructing, or
21 installing any lands, buildings, or facilities.

22 (14) "Tuition unit contract" means a contract between an eligible
23 purchaser and the governing body, or a successor agency appointed for
24 administration of this chapter, for the purchase of tuition units for
25 a specified beneficiary that may be redeemed at a later date for an
26 equal number of tuition units.

27 (15) "Unit purchase price" means the minimum cost to purchase one
28 tuition unit for an eligible beneficiary. Generally, the minimum
29 purchase price is one percent of the undergraduate tuition and fees for
30 the current year, rounded to the nearest whole dollar, adjusted for the
31 costs of administration and adjusted to ensure the actuarial soundness
32 of the account. The analysis for price setting shall also include, but
33 not be limited to consideration of past and projected patterns of
34 tuition increases, program liability, past and projected investment
35 returns, and the need for a prudent stabilization reserve.

**Sec. 1 was vetoed. See message at end of chapter.*

36 **Sec. 2.** RCW 28B.95.030 and 2005 c 272 s 2 are each amended to read
37 as follows:

1 (1) The Washington advanced college tuition payment program shall
2 be administered by the committee on advanced tuition payment which
3 shall be chaired by the executive director of the board. The committee
4 shall be supported by staff of the board.

5 (2)(a) The Washington advanced college tuition payment program
6 shall consist of the sale of tuition units, which may be redeemed by
7 the beneficiary at a future date for an equal number of tuition units
8 regardless of any increase in the price of tuition, that may have
9 occurred in the interval.

10 (b) Each purchase shall be worth a specific number of or fraction
11 of tuition units at each state institution of higher education as
12 determined by the governing body.

13 (c) The number of tuition units necessary to pay for a full year's,
14 full-time undergraduate tuition and fee charges at a state institution
15 of higher education shall be set by the governing body at the time a
16 purchaser enters into a tuition unit contract.

17 (d) The governing body may limit the number of tuition units
18 purchased by any one purchaser or on behalf of any one beneficiary,
19 however, no limit may be imposed that is less than that necessary to
20 achieve four years of full-time, undergraduate tuition charges at a
21 state institution of higher education. The governing body also may, at
22 its discretion, limit the number of participants, if needed, to ensure
23 the actuarial soundness and integrity of the program.

24 (e) While the Washington advanced college tuition payment program
25 is designed to help all citizens of the state of Washington, the
26 governing body may determine residency requirements for eligible
27 purchasers and eligible beneficiaries to ensure the actuarial soundness
28 and integrity of the program.

29 (3)(a) No tuition unit may be redeemed until two years after the
30 purchase of the unit. Units may be redeemed for enrollment at any
31 institution of higher education that is recognized by the internal
32 revenue service under chapter 529 of the internal revenue code.

33 (b) Units redeemed at a nonstate institution of higher education or
34 for graduate enrollment shall be redeemed at the rate for state public
35 institutions in effect at the time of redemption.

36 (4) The governing body shall determine the conditions under which
37 the tuition benefit may be transferred to another family member. In

1 permitting such transfers, the governing body may not allow the tuition
2 benefit to be bought, sold, bartered, or otherwise exchanged for goods
3 and services by either the beneficiary or the purchaser.

4 (5) The governing body shall administer the Washington advanced
5 college tuition payment program in a manner reasonably designed to be
6 actuarially sound, such that the assets of the trust will be sufficient
7 to defray the obligations of the trust including the costs of
8 administration. The governing body may, at its discretion, discount
9 the minimum purchase price for certain kinds of purchases such as those
10 from families with young children, as long as the actuarial soundness
11 of the account is not jeopardized.

12 (6) The governing body shall annually determine current value of a
13 tuition unit.

14 (7) The governing body shall promote, advertise, and publicize the
15 Washington advanced college tuition payment program.

16 (8) In addition to any other powers conferred by this chapter, the
17 governing body may:

18 (a) Impose reasonable limits on the number of tuition units or
19 units that may be used in any one year;

20 (b) Determine and set any time limits, if necessary, for the use of
21 benefits under this chapter;

22 (c) Impose and collect administrative fees and charges in
23 connection with any transaction under this chapter;

24 (d) Appoint and use advisory committees and the state actuary as
25 needed to provide program direction and guidance;

26 (e) Formulate and adopt all other policies and rules necessary for
27 the efficient administration of the program;

28 (f) Consider the addition of an advanced payment program for room
29 and board contracts and also consider a college savings program;

30 (g) Purchase insurance from insurers licensed to do business in the
31 state, to provide for coverage against any loss in connection with the
32 account's property, assets, or activities or to further insure the
33 value of the tuition units;

34 (h) Make, execute, and deliver contracts, conveyances, and other
35 instruments necessary to the exercise and discharge of its powers and
36 duties under this chapter;

37 (i) Contract for the provision for all or part of the services

1 necessary for the management and operation of the program with other
2 state or nonstate entities authorized to do business in the state;

3 (j) Contract for other services or for goods needed by the
4 governing body in the conduct of its business under this chapter;

5 (k) Contract with financial consultants, actuaries, auditors, and
6 other consultants as necessary to carry out its responsibilities under
7 this chapter;

8 (l) Solicit and accept cash donations and grants from any person,
9 governmental agency, private business, or organization; and

10 (m) Perform all acts necessary and proper to carry out the duties
11 and responsibilities of this program under this chapter.

12 **Sec. 3.** RCW 28B.95.080 and 1997 c 289 s 8 are each amended to read
13 as follows:

14 The governing body shall annually evaluate, and cause to be
15 evaluated by ~~((a-nationally-recognized))~~ the state actuary, the
16 soundness of the account and determine the additional assets needed, if
17 any, to defray the obligations of the account. The governing body may,
18 at its discretion, consult with a nationally recognized actuary for
19 periodic assessments of the account.

20 If funds are ~~((not-sufficient))~~ determined by the governing body,
21 based on actuarial analysis to be insufficient to ensure the actuarial
22 soundness of the account, the governing body shall adjust the price of
23 subsequent tuition credit purchases to ensure its soundness.

24 If there are insufficient numbers of new purchases to ensure the
25 actuarial soundness of the account, the governing body shall request
26 such funds from the legislature as are required to ensure the integrity
27 of the program. Funds may be appropriated directly to the account or
28 appropriated under the condition that they be repaid at a later date.
29 The repayment shall be made at such time that the account is again
30 determined to be actuarially sound.

31 **Sec. 4.** RCW 28B.95.150 and 2001 c 184 s 2 are each amended to read
32 as follows:

33 (1) The committee may establish a college savings program. If such
34 a program is established, the college savings program shall be
35 established, in such form as may be determined by the committee, to be
36 a qualified state tuition program as defined by the internal revenue

1 service under section 529 of the internal revenue code, and shall be
2 administered in a manner consistent with the Washington advanced
3 college tuition payment program. The committee, in planning and
4 devising the program, shall consult with the state investment board,
5 the state treasurer, (~~(a-qualified-actuarial-consulting-firm-with~~
6 ~~appropriate expertise to evaluate such plans)~~) the state actuary, the
7 legislative fiscal and higher education committees, and the
8 institutions of higher education. The governing body may, at its
9 discretion, consult with a qualified actuarial consulting firm with
10 appropriate expertise to evaluate such plans for periodic assessments
11 of the program.

12 (2) Up to two hundred thousand dollars of administrative fees
13 collected from guaranteed education tuition program participants may be
14 applied as a loan to fund the development of a college savings program.
15 This loan must be repaid with interest before the conclusion of the
16 biennium in which the committee draws funds for this purpose from the
17 advanced college tuition payment program account.

18 (3) If such a college savings program is established, the college
19 savings program account is created in the custody of the state
20 treasurer for the purpose of administering the college savings program.
21 If created, the account shall be a discrete nontreasury account in the
22 custody of the state treasurer. Interest earnings shall be retained in
23 accordance with RCW 43.79A.040. Disbursements from the account, except
24 for program administration, are exempt from appropriations and the
25 allotment provisions of chapter 43.88 RCW. Money used for program
26 administration is subject to the allotment provisions, but without
27 appropriation.

28 (4) The committee, after consultation with the state investment
29 board, shall determine the investment policies for the college savings
30 program. Program contributions may be invested by the state investment
31 board or the committee may contract with an investment company licensed
32 to conduct business in this state to do the investing. The committee
33 shall keep or cause to be kept full and adequate accounts and records
34 of the assets of each individual participant in the college savings
35 program.

36 (5) Neither the state nor any eligible educational institution may
37 be considered or held to be an insurer of the funds or assets of the
38 individual participant accounts in the college savings program created

1 under this section nor may any such entity be held liable for any
2 shortage of funds in the event that balances in the individual
3 participant accounts are insufficient to meet the educational expenses
4 of the institution chosen by the student for which the individual
5 participant account was intended.

6 (6) The committee shall adopt rules to implement this section.
7 Such rules shall include but not be limited to administration,
8 investment management, promotion, and marketing; compliance with
9 internal revenue service standards; application procedures and fees;
10 start-up costs; phasing in the savings program and withdrawals
11 therefrom; deterrents to early withdrawals and provisions for hardship
12 withdrawals; and reenrollment in the savings program after withdrawal.

13 (7) The committee may, at its discretion, determine to cease
14 operation of the college savings program if it determines the
15 continuation is not in the best interest of the state. The committee
16 shall adopt rules to implement this section addressing the orderly
17 distribution of assets.

18 NEW SECTION. **Sec. 5.** (1) Pursuant to passage of Engrossed Second
19 Substitute House Bill No. 1795 (the higher education opportunity act),
20 and to maintain the actuarial soundness of the account and to lower the
21 risk to the state of incurring additional unfunded liability, the
22 governing body as defined in RCW 28B.95.020 shall, with the assistance
23 of the state actuary, assess the financial solvency of the advanced
24 college tuition payment program and shall determine if any changes
25 should be made to the program for units purchased on or after September
26 1, 2011, including, but not limited to:

27 (a) Establishing a unit payout value that increases predictability
28 and affordability to consumers;

29 (b) Modifying the tuition unit price;

30 (c) Modifying the contracting of tuition unit purchases to better
31 align the tuition unit price paid throughout the length of the contract
32 with the price established for each enrollment period; and

33 (d) Modifying the enrollment period.

34 (2) The governing body shall submit a report of these efforts to
35 the governor and the appropriate fiscal committees of the legislature
36 no later than October 1, 2011.

37 (3) This section expires December 31, 2011.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 28B.95 RCW
2 to read as follows:

3 (1)(a) A legislative advisory committee to the committee on
4 advanced tuition payment is established. The advisory committee shall
5 consist of the following members:

6 (i) Two members from each of the two largest caucuses of the house
7 of representatives appointed by the speaker of the house of
8 representatives. At least one member from each caucus shall be a
9 member of the house of representatives ways and means committee and at
10 least one member from each caucus shall be a member of the house of
11 representatives higher education committee; and

12 (ii) Two members from each of the two largest caucuses of the
13 senate appointed by the president of the senate. At least one member
14 from each caucus shall be a member of the senate ways and means
15 committee and at least one member from each caucus shall be a member of
16 the senate higher education and workforce development committee.

17 (b) All members must be appointed by June 30, 2011, and must serve
18 a term of no less than two years.

19 (c) Vacancies on the advisory committee shall be filled by
20 appointment by either the president of the senate or the speaker of the
21 house of representatives. All such vacancies shall be filled from the
22 same political party and from the same house as the member whose seat
23 was vacated.

24 (d) The members of the advisory committee shall serve without
25 additional compensation, but shall be reimbursed in accordance with RCW
26 44.04.120 while attending meetings of the advisory committee and of the
27 committee on advanced tuition payment.

28 (e) The advisory committee shall appoint its own chair and vice
29 chair and shall meet at least once annually.

30 (2) The advisory committee shall provide advice to the committee on
31 advanced tuition payment and the state actuary regarding the
32 administration of the program including, but not limited to, pricing
33 guidelines, the tuition unit price, and the unit payout value.

34 (3) Staff support for the advisory committee must be jointly
35 provided by the senate committee services and the house of
36 representatives office of program research.

1 **Sec. 7.** RCW 44.44.040 and 2003 c 295 s 4 and 2003 c 92 s 2 are
2 each reenacted and amended to read as follows:

3 The office of the state actuary shall have the following powers and
4 duties:

5 (1) Perform all actuarial services for the department of retirement
6 systems, including all studies required by law.

7 (2) Advise the legislature and the governor regarding pension
8 benefit provisions, and funding policies and investment policies of the
9 state investment board.

10 (3) Consult with the legislature and the governor concerning
11 determination of actuarial assumptions used by the department of
12 retirement systems.

13 (4) Prepare a report, to be known as the actuarial fiscal note, on
14 each pension bill introduced in the legislature which briefly explains
15 the financial impact of the bill. The actuarial fiscal note shall
16 include: (a) The statutorily required contribution for the biennium
17 and the following twenty-five years; (b) the biennial cost of the
18 increased benefits if these exceed the required contribution; and (c)
19 any change in the present value of the unfunded accrued benefits. An
20 actuarial fiscal note shall also be prepared for all amendments which
21 are offered in committee or on the floor of the house of
22 representatives or the senate to any pension bill. However, a majority
23 of the members present may suspend the requirement for an actuarial
24 fiscal note for amendments offered on the floor of the house of
25 representatives or the senate.

26 (5) Provide such actuarial services to the legislature as may be
27 requested from time to time.

28 (6) Provide staff and assistance to the committee established under
29 RCW 41.04.276.

30 (7) Provide actuarial assistance to the law enforcement officers'
31 and firefighters' plan 2 retirement board as provided in chapter 2,
32 Laws of 2003. Reimbursement for services shall be made to the state
33 actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of 2003.

34 (8) Provide actuarial assistance to the committee on advanced
35 tuition payment pursuant to chapter 28B.95 RCW, including recommending
36 a tuition unit price to the committee on advanced tuition payment to be
37 used in the ensuing enrollment period. Reimbursement for services
38 shall be made to the state actuary under RCW 39.34.130.

1 NEW SECTION. **Sec. 8.** Sections 1 and 6 of this act are necessary
2 for the immediate preservation of the public peace, health, or safety,
3 or support of the state government and its existing public
4 institutions, and take effect immediately.

Passed by the Senate May 21, 2011.

Passed by the House May 24, 2011.

Approved by the Governor June 6, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State June 7, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 1,
Engrossed Substitute Senate Bill 5749 entitled:

"AN ACT Relating to the Washington advanced college tuition
payment program."

Section 1 would expand the membership of the Committee on Advanced
Tuition Payment, limit private sector and citizen representatives on
the committee to four year terms and require Senate confirmation of
citizen and business representatives. The work of this committee
involves oversight of complex financial issues. The bill does not
stagger the terms of the committee members, and expands the number of
term-limited members to four of the committee's seven members.
Unstaggered and limited terms for a majority of the committee members
would leave the committee highly vulnerable to the loss of expertise
accumulated by citizen and business representatives and inhibit the
work of this committee.

For these reasons, I have vetoed Section 1 of Engrossed Substitute
Senate Bill 5749.

With the exception of Section 1, Engrossed Substitute Senate Bill 5749
is approved."