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**SUBSTITUTE SENATE BILL 6423**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Higher Education (originally sponsored by Senators Bailey, Kohl-Welles, Litzow, McAuliffe, Dammeier, Frockt, Fain, Mullet, Chase, and Tom)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to the opportunity scholarship program; amending  
2 RCW 28B.145.020, 28B.145.030, and 28B.145.050; and adding a new section  
3 to chapter 28B.145 RCW.

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

5 **Sec. 1.** RCW 28B.145.020 and 2011 1st sp.s. c 13 s 3 are each  
6 amended to read as follows:

7 (1) The opportunity scholarship board is created. The opportunity  
8 scholarship board consists of (~~seven~~) eleven members:

9 (a) (~~Three~~) Five members appointed by the governor. For (~~two~~)  
10 three of the (~~three~~) five appointments, the governor shall consider  
11 names from a list provided by the president of the senate and the  
12 speaker of the house of representatives; and

13 (b) (~~Four~~) Six foundation or business and industry  
14 representatives appointed by the governor from among the state's most  
15 productive industries such as aerospace, manufacturing, health  
16 (~~sciences~~) care, information technology, engineering, agriculture,  
17 and others, as well as philanthropy. The foundation or business and  
18 industry representatives shall be selected from among nominations  
19 provided by the private sector donors to the opportunity scholarship

1 and opportunity expansion programs. However, the governor may request,  
2 and the private sector donors shall provide, an additional list or  
3 lists from which the governor shall select these representatives.

4 (2) Board members shall hold their offices for a term of four years  
5 from the first day of September and until their successors are  
6 appointed. No more than the terms of two members may expire  
7 simultaneously on the last day of August in any one year.

8 (3) The members of the opportunity scholarship board shall elect  
9 one of the business and industry representatives to serve as chair.

10 (4) (~~Five~~) Seven members of the board constitute a quorum for the  
11 transaction of business. In case of a vacancy, or when an appointment  
12 is made after the date of expiration of the term, the governor or the  
13 president of the senate or the speaker of the house of representatives,  
14 depending upon which made the initial appointment to that position,  
15 shall fill the vacancy for the remainder of the term of the board  
16 member whose office has become vacant or expired.

17 (5) The opportunity scholarship board shall be staffed by the  
18 program administrator.

19 (6) The purpose of the opportunity scholarship board is to provide  
20 oversight and guidance for the opportunity expansion and the  
21 opportunity scholarship programs in light of established legislative  
22 priorities and to fulfill the duties and responsibilities under this  
23 chapter, including but not limited to determining eligible education  
24 programs for purposes of the opportunity scholarship program. Duties,  
25 exercised jointly with the program administrator, include soliciting  
26 funds and setting annual fund-raising goals.

27 (7) The opportunity scholarship board may report to the governor  
28 and the appropriate committees of the legislature with recommendations  
29 as to:

30 (a) Whether some or all of the scholarships should be changed to  
31 conditional scholarships that must be repaid in the event the  
32 participant does not complete the eligible education program; and

33 (b) A source or sources of funds for the opportunity expansion  
34 program in addition to the voluntary contributions of the high  
35 technology research and development tax credit under RCW 82.32.800.

36 **Sec. 2.** RCW 28B.145.030 and 2011 1st sp.s. c 13 s 4 are each  
37 amended to read as follows:

1 (1) The program administrator, under contract with the board, shall  
2 staff the opportunity scholarship board and shall have the duties and  
3 responsibilities provided in this chapter, including but not limited to  
4 publicizing the program, selecting participants for the opportunity  
5 scholarship award, distributing opportunity scholarship awards, and  
6 achieving the maximum possible rate of return on investment of the  
7 accounts in subsection (2) of this section, while ensuring transparency  
8 in the investment decisions and processes. Duties, exercised jointly  
9 with the opportunity scholarship board, include soliciting funds and  
10 setting annual fund-raising goals. The program administrator shall be  
11 paid an administrative fee as determined by the opportunity scholarship  
12 board.

13 (2) With respect to the opportunity scholarship program, the  
14 program administrator shall:

15 (a) Establish and manage two separate accounts into which to  
16 receive grants and contributions from private sources as well as state  
17 matching funds, and from which to disburse scholarship funds to  
18 participants;

19 (b) Solicit and accept grants and contributions from private  
20 sources, via direct payment, pledge agreement, or escrow account, of  
21 private sources for deposit into one or both of the two accounts  
22 created in this subsection (2)(b) in accordance with this subsection  
23 (2)(b):

24 (i) The "scholarship account," whose principal may be invaded, and  
25 from which scholarships must be disbursed beginning no later than  
26 December 1, 2011, if, by that date, state matching funds in the amount  
27 of five million dollars or more have been received. Thereafter,  
28 scholarships shall be disbursed on an annual basis beginning no later  
29 than May 1, 2012, and every (~~May~~) October 1st thereafter;

30 (ii) The "endowment account," from which scholarship moneys may be  
31 disbursed from earnings only in years when:

32 (A) The state match has been made into both the scholarship and the  
33 endowment account;

34 (B) The state appropriations for the state need grant under RCW  
35 28B.92.010 meet or exceed state appropriations for the state need grant  
36 made in the 2011-2013 biennium, adjusted for inflation, and eligibility  
37 for state need grant recipients is at least seventy percent of state  
38 median family income; and

1 (C) The state has demonstrated progress toward the goal of total  
2 per-student funding levels, from state appropriations plus tuition and  
3 fees, of at least the sixtieth percentile of total per-student funding  
4 at similar public institutions of higher education in the global  
5 challenge states, as defined, measured, and reported in RCW 28B.15.068.  
6 In any year in which the office of financial management reports that  
7 the state has not made progress toward this goal, no new scholarships  
8 may be awarded. In any year in which the office of financial  
9 management reports that the percentile of total per-student funding is  
10 less than the sixtieth percentile and at least five percent less than  
11 the prior year, pledges of future grants and contributions may, at the  
12 request of the donor, be released and grants and contributions already  
13 received refunded to the extent that opportunity scholarship awards  
14 already made can be fulfilled from the funds remaining in the endowment  
15 account; (~~and~~)

16 (iii) An amount equal to at least fifty percent of all grants and  
17 contributions must be deposited into the scholarship account until such  
18 time as twenty million dollars have been deposited into the account,  
19 after which time the private donors may designate whether their  
20 contributions must be deposited to the scholarship or the endowment  
21 account. The opportunity scholarship board and the program  
22 administrator must work to maximize private sector contributions to  
23 both the scholarship account and the endowment account, to maintain a  
24 robust scholarship program while simultaneously building the endowment,  
25 and to determine the division between the two accounts in the case of  
26 undesignated grants and contributions, taking into account the need for  
27 a long-term funding mechanism and the short-term needs of families and  
28 students in Washington. The first five million dollars in state match,  
29 as provided in RCW 28B.145.040, shall be deposited into the scholarship  
30 account and thereafter the state match shall be deposited into the two  
31 accounts in equal proportion to the private funds deposited in each  
32 account; and

33 (iv) Once moneys in the opportunity scholarship match transfer  
34 account are subject to an agreement under section 4(5) of this act and  
35 are deposited in the scholarship account or endowment account under  
36 this section, the state acts in a fiduciary rather than ownership  
37 capacity with regard to those assets. Assets in the scholarship

1 account and endowment account are not considered state money, common  
2 cash, or revenue to the state;

3 (c) Provide proof of receipt of grants and contributions from  
4 private sources to the board, identifying the amounts received by name  
5 of private source and date, and whether the amounts received were  
6 deposited into the scholarship or the endowment account;

7 (d) In consultation with the (~~higher education coordinating~~  
8 ~~board~~) student achievement council and the state board for community  
9 and technical colleges, make an assessment of the reasonable annual  
10 eligible expenses associated with eligible education programs  
11 identified by the opportunity scholarship board;

12 (e) Determine the dollar difference between tuition fees charged by  
13 institutions of higher education in the 2008-09 academic year and the  
14 academic year for which an opportunity scholarship is being  
15 distributed;

16 (f) Develop and implement an application, selection, and  
17 notification process for awarding opportunity scholarships;

18 (g) Determine the annual amount of the opportunity scholarship for  
19 each selected participant. The annual amount shall be at least one  
20 thousand dollars or the amount determined under (e) of this subsection,  
21 but may be increased on an income-based, sliding scale basis up to the  
22 amount necessary to cover all reasonable annual eligible expenses as  
23 assessed pursuant to (d) of this subsection, or to encourage  
24 participation in baccalaureate degree programs identified by the  
25 opportunity scholarship board;

26 (h) Distribute scholarship funds to selected participants. Once  
27 awarded, and to the extent funds are available for distribution, an  
28 opportunity scholarship shall be automatically renewed until the  
29 participant withdraws from or is no longer attending the program,  
30 completes the program, or has taken the credit or clock hour equivalent  
31 of one hundred twenty-five percent of the published length of time of  
32 the participant's program, whichever occurs first, and as long as the  
33 participant annually submits documentation of filing both a free  
34 application for federal student aid and for available federal education  
35 tax credits, including but not limited to the American opportunity tax  
36 credit; and

37 (i) Notify institutions of scholarship recipients who will attend

1 their institutions and inform them of the terms of the students'  
2 eligibility.

3 (3) With respect to the opportunity expansion program, the program  
4 administrator shall:

5 (a) Assist the opportunity scholarship board in developing and  
6 implementing an application, selection, and notification process for  
7 making opportunity expansion awards; and

8 (b) Solicit and accept grants and contributions from private  
9 sources for opportunity expansion awards.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.145  
11 RCW to read as follows:

12 (1) The opportunity scholarship board may elect to have the state  
13 investment board invest the funds in the scholarship account and  
14 endowment account described under RCW 28B.145.030(2)(b). If the board  
15 so elects, the state investment board has the full power to invest,  
16 reinvest, manage, contract, sell, or exchange investment money in the  
17 two accounts. All investment and operating costs associated with the  
18 investment of money shall be paid under RCW 43.33A.160 and 43.84.160.  
19 With the exception of these expenses, the earnings from the investment  
20 of the money shall be retained by the accounts.

21 (2) All investments made by the state investment board shall be  
22 made with the exercise of that degree of judgment and care under RCW  
23 43.33A.140 and the investment policy established by the state  
24 investment board.

25 (3) As deemed appropriate by the state investment board, money in  
26 the scholarship and endowment accounts may be commingled for investment  
27 with other funds subject to investment by the state investment board.

28 (4) Members of the state investment board shall not be considered  
29 an insurer of the funds or assets and are not liable for any action or  
30 inaction.

31 (5) Members of the state investment board are not liable to the  
32 state, to the fund, or to any other person as a result of their  
33 activities as members, whether ministerial or discretionary, except for  
34 willful dishonesty or intentional violations of law. The state  
35 investment board in its discretion may purchase liability insurance for  
36 members.

1           (6) The authority to establish all policies relating to the  
2 scholarship account and the endowment account, other than the  
3 investment policies as provided in subsections (1) through (3) of this  
4 section, resides with the opportunity scholarship board and program  
5 administrator acting in accordance with the principles set forth in  
6 this chapter. With the exception of expenses of the state investment  
7 board in subsection (1) of this section, disbursements from the  
8 scholarship account and endowment account shall be made only on the  
9 authorization of the opportunity scholarship board or its designee, and  
10 moneys in the accounts may be spent only for the purposes specified in  
11 this chapter.

12           (7) The investment board shall routinely consult and communicate  
13 with the opportunity scholarship board on the investment policy,  
14 earnings of the accounts, and related needs of the program.

15           **Sec. 4.** RCW 28B.145.050 and 2011 1st sp.s. c 13 s 6 are each  
16 amended to read as follows:

17           (1) The opportunity scholarship match transfer account is created  
18 in the custody of the state treasurer as a nonappropriated account to  
19 be used solely and exclusively for the opportunity scholarship program  
20 created in RCW 28B.145.040. The purpose of the account is to provide  
21 matching funds for the opportunity scholarship program.

22           (2) Revenues to the account shall consist of appropriations by the  
23 legislature into the account and any gifts, grants, or donations  
24 received by the executive director of the ((~~board~~)) student achievement  
25 council for this purpose.

26           (3) No expenditures from the account may be made except upon  
27 receipt of proof, by the executive director of the ((~~board~~)) student  
28 achievement council from the program administrator, of private  
29 contributions to the opportunity scholarship program. Expenditures, in  
30 the form of matching funds, may not exceed the total amount of private  
31 contributions.

32           (4) Only the executive director of the ((~~board~~)) student  
33 achievement council or the executive director's designee may authorize  
34 expenditures from the opportunity scholarship match transfer account.  
35 Such authorization must be made as soon as practicable following  
36 receipt of proof as required under subsection (3) of this section.

1       (5) The student achievement council shall enter into an appropriate  
2 agreement with the program administrator to demonstrate exchange of  
3 consideration for the matching funds.

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