

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2011 OCT 25 AM 10:09

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Council for Community and Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: 18B-1D-3(a)(s)(B) and 18B-10-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 32

TITLE OF RULE BEING PROPOSED: Tuition and Fees

\_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature



- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

October 26, 2011

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- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

James L. Skidmore, Chancellor

WV Council for Community and Technical College Education

1018 Kanawha Blvd., East, Suite 700

Charleston, WV 25301

(304)558-0265

~~(304)558-1646 fax~~

skidmore@wvctcs.org

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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**WV Council for Community and Technical College Education  
Meeting of October 20, 2011**

**ITEM:** Approval of Series 32, *Tuition and Fees*

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved*, that the West Virginia Council for Community and Technical College Education approves Series 32, *Tuition and Fees*, for filing with the Secretary of State and submission to the Legislative Oversight Commission on Education Accountability for approval.

**STAFF MEMBER:** James Skidmore / Pat Hunt

**BACKGROUND:**

At the August 18, 2011 meeting of the West Virginia Council for Community and Technical College Education (Council), legislative rule Series 32, *Tuition and Fees*, was approved to be filed for the 30-day comment period. There were primarily three comments which follow.

**Comment:**

The policy recognizes the WV Code mandates that tuition and fee rates for out-of-state students, at a minimum, must cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Council.

- I am aware that some institutions have approved or proposed a “metro fee” where students in other states pay a reduced tuition.
- Under what authority are metro rates approved? I do not see any citation of metro fees in the proposed revisions.
- The policy does provide for reciprocity agreements where out-of-state students may be able to pay resident tuition. These provisions are not relevant to the metro fee because 1) the agreements are with nearby out-of-state institutions (not students) and 2) the agreements must be mutually beneficial to students from all participating states.

If metro rates are going to be approved, I believe that provisions need to be added to the policy to accommodate and provide for their approval.

**Response:**

Section 5.3 was added to the rule to address the review of reduced non-resident tuition and fees (or metro rates) similar to the review process for non-resident tuition and fees.

**Comment:**

There is no current legislation that sets refund policy. The history of this goes back to a legislative rule put in place in 1994. This rule has since been superseded through many revisions of 18B and the local BOG's do have local authority to provide institutional policy for refunding. However, in the research I have done, most policies still have a 90/70/50 % refund rule that mimics the legislative rule from 1994. To be safe and considerate of the Legislature, Council, and HEPC, I recommend:

- The new tuition and fee rules for both HEPC and Council institutions should indicate that the local boards have the authority to establish its own refund policy.
- That LOCEA is made aware that the tuition and fee rule will not include any refund policy.

History tells me that the same legislative thought process of being more student friendly with tuition and fees, by not removing the cap, went into the original refund rule mandated in 1994 and we should make sure that the Legislature (through LOCEA) are comfortable with each institution having their own distinct refund policy.

**Response:**

Council staff agrees that the tuition and fee rule should address a refund policy. Staff modified Series 32 adding Section 6 that provides refund schedules. Section 6.1 is identical to the refund schedule in Series 35 for proprietary institutions. Section 6.2 provides a refund schedule aligned with the United States Department of Education return of Title IV, student financial aid funds. Institutions have the flexibility to choose between one of the two refund schedules in setting a policy.

The modified Series 32 was circulated to the Presidents and their staff for further comments. Most comments were agreeable to having two refund policies; however, some institutions stated their preference to have Section 6.1 refund schedule similar to the one approved by the Higher Education Policy Commission. Some institutions also expressed concern with a prescribed refund policy and the impact on institutional flexibility. While Council staff appreciates the need for flexibility at each local Board, it does not seem appropriate to have a refund policy for public institutions less favorable to students than that approved for proprietary institutions.

**Comment:**

18B-10-1 was amended to NOT require a joint tuition and fee rule of Commission and Council. But another part of 18B-10-1 says Commission and Council shall JOINTLY propose rules for deferred tuition and fee plans by the BOGS or third parties. So we have to put something in both rules on that subject that is identical or do a different joint rule on that subject.

**Response:**

Section 7 was added to address deferred tuition and fee payment plans.

Series 32 follows with appropriate underlines to reflect the changes discussed above. Council staff recommends that Council approve this rule as modified.

FILED  
2011 OCT 26 AM 10:09

**TITLE 135  
LEGISLATIVE RULE  
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION**

**SERIES 32  
TUITION AND FEES**

OFFICE OF THE CLERK  
WEST VIRGINIA  
SECRETARY OF STATE

**§135-32-1. General.**

- 1.1. Scope. -- This rule governs approval of tuition and fee increases by the West Virginia Council for Community and Technical College Education (Council) for West Virginia public community and technical colleges as required by West Virginia code.
- 1.2. Authority. -- West Virginia Code §18B-1D-3(a)(2)(B), §18B-10-1
- 1.3. Filing Date. --.
- 1.4. Effective Date. --.

**§135-32-2. Purpose.**

- 2.1. The purpose of this rule is to establish guidelines for the Council to approve tuition and fee increases as required by State code. The Council recognizes that each college must have adequate funds to fulfill the institution's mission of delivering comprehensive community and technical college education and that two primary sources of funds are available: state general revenue allocations and tuition and fees collected from students. The Council recognizes the impact that tuition increases have on students and their ability to pay for and attend college. Consistent with this purpose, this rule addresses:
  - 2.1.a. The process by which the Council will approve required in-state resident tuition and fee increases above five percent (5%).
  - 2.1.b. The process by which Council staff will review special fees to determine if these fees should be included in required tuition and fees and thus subject to Council approval.
  - 2.1.c. The process by which the Council will review out-of-state nonresident tuition and fee rates to determine if these rates meet the "full cost of instruction" as required by W. Va. Code.

**§135-32-3. Definitions.**

- 3.1. Auxiliary Fees. Charges levied to all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers.

- 3.2. Capital Fees. Charges levied on all students to support debt service, capital projects and facilities maintenance and renewal.
- 3.3. Deferred payment plans. Payment plans approved by each Board of Governors to allow for payment of tuition and fees at less than full payment prior to the start of classes.
- 3.4. Educational and General Fees. Charges levied on all students to support educational and general program services or optional fees levied for education and general services collected only from students using the service or from students for whom the services are made available. Educational and general expenditures include instruction, research, academic support, student services, institutional support, operation and maintenance of the physical plant, scholarships, and fellowships. Educational and general expenditures do not include expenditures for auxiliary enterprises or independent operations.
- 3.5. Full Cost of Instruction. The direct, functional expenditures from each institution's audit for both instruction and student services expenditures.
- 3.6. Full-time equivalent students. A calculation completed on an annual basis by Council staff using end of term enrollment data and is also referred to as annualized full-time equivalent students (AFTES). The calculation is as follows: end of term course hours for each semester (summer, fall and spring) divided by fifteen to get end of term FTES; sum the FTES for all three semesters; and divide by two to get AFTES.
- 3.7. Higher Education Price Index (HEPI). A measurement for inflation designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.
- 3.8. Median Family Income. Household income that is reported to the U.S. Census Bureau from various surveys and is the statistical center of all reported households income for a region.
- 3.9. Net college costs. The total cost to the student for tuition, room and board minus the amount of any financial aid a student may receive.
- 3.10. Peer Institution. A higher education institution located in another state that is similar to a West Virginia community and technical college and is one of twenty colleges selected to be a peer institution.
- 3.11. Program Fees. Charges levied to all students who take classes in a specific degree program to offset some of the higher, direct, instructional costs of these programs and minimize required tuition charged to all students.
- 3.12. Reduced nonresident tuition and fees. A special tuition and fees rate charged to a specific group of nonresident students typically in counties that border the West Virginia institution.

- 3.13. Required Tuition and Fees. Charges levied to all students and include educational and general fees, auxiliary fees, and capital fees. Increases in these fees above five percent must be approved by the Council.
- 3.14. Special Fees. Operational or user fees charged to offset the specific costs for providing a service. These fees include, but are not limited to, parking, late payments, drug testing, instrument fees, and other services provided to students.

**§135-32-4.**

**Goals.**

- 4.1. Objectives. The Council, in partnership with the governing boards of the ten community and technical colleges comprising the community and technical college system of West Virginia, shall enhance education opportunities for the widest range of state citizens by:
  - 4.1.a. Establishing tuition and fee levels for in-state students that do not inhibit access to public education nor cause students to incur excessive debt; W. Va. Code §18B-1D-3(a)(2)(B); and
  - 4.1.b. Establishing tuition and fee rates for out-of-state students at levels which, at a minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature ... or the Council. W. Va. Code § 18B-1D-3(a)(2)(B).
- 4.2. Findings. The Council finds:
  - 4.2.a. Students attending community and technical colleges in West Virginia pay a significantly higher proportion of their family income for tuition and fees than do students in most other states.
  - 4.2.b. The average tuition and fee rate for community and technical colleges in West Virginia exceeds the national average for public community and technical colleges.
  - 4.2.c. Providing opportunities for adult students to enroll in community and technical college programs is a priority, and tuition and fee rates must remain affordable for this targeted population.
  - 4.2.d. A delicate balance exists between the need for tuition increases to address increasing institutional operating costs and the impact on accessibility and affordability for students.
  - 4.2.e. The Council for Community and Technical College Education declares that it is supportive of institutional tuition plans that lead to increase degrees and/or certificates attainment in the State of West Virginia.

**§135-32-5.**

**Tuition and Fee Increases.**

- 5.1. Approval of In-State or Resident Tuition and Required Fee Increases.

- 5.1.a. In establishing guidelines, the Council shall communicate to institutions the benchmarks and guidelines for consideration of any tuition and fee increase above five percent. The benchmarks and guidelines may include, but are not limited to such items as:
  - 5.1.a.1. The HEPI, or other appropriate inflationary benchmarks, which any new state allocations to the institution's base budget for the next fiscal year did not offset;
  - 5.1.a.2. Continued achievement of benchmarks in the approved institutional compact;
  - 5.1.a.3. Comparison of the most recent year change in the average West Virginia student's net tuition with change in the West Virginia's median household income to determine whether a community and technical college education is costing families more or less over time and thus impacting the ability of families to pay for college;
  - 5.1.a.4. Institutional distance from peer equity levels;
  - 5.1.a.5. Institutional and state funding per full-time equivalent student;
  - 5.1.a.6. Most recent three year history of tuition and fee increases;
  - 5.1.a.7. Institutional implementation of new, high cost programs as defined by the Council;
  - 5.1.a.8. Total sources of student generated revenue, including special and program fees; and,
  - 5.1.a.9. Other factors as requested or deemed relevant by the Council, or in response to any new statutory language.
- 5.1.b. A governing board may approve tuition and required fee increases for resident students each fiscal year up to five percent (5%) without Council approval.
  - 5.1.b.1. For the purposes of this rule, the five percent tuition and fee increases that require only local governing board approval shall be based on required tuition and fee rates charged to all in-state, resident students.
  - 5.1.b.2. A special fee must be approved by the Council if it is a new fee (or an increase in an existing fee) that is charged to fifty percent or more of the students and if the inclusion causes resident tuition and fee increases to exceed five percent. Determination of the fifty percent (or more) of the students is calculated by using most current, unduplicated, fall

headcount and comparing these amounts to the institutional reported projected student population to be charged. These fees must be included in both reports to Council discussed in sections 5.1.c. and 5.1.d.

5.1.b.3. Program fees must be approved by each governing board and do not require Council's approval. However, these fees must be included in both reports to Council discussed in sections 5.1.c. and 5.1.d.

5.1.c. In responding to the guidelines and benchmarks provided by the Council, each institution shall provide the Council with an annual report by August 31<sup>st</sup> that specifies the following information from the most recent academic year:

5.1.c.1. Tuition and fee rates for resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees;

5.1.c.2. The total number of students charged resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees; and

5.1.c.3. The total revenue generated from resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees.

5.1.d. Each institution must provide to the Council by April 1<sup>st</sup>, any Board approved or proposed new tuition and fees for the next academic year. This report will specify:

5.1.d.1. Current and proposed tuition and fee rates for resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees;

5.1.d.2. The estimated number of students who will be charged any new or proposed changes to existing special fees; and

5.1.d.3. The projected revenue increases to be generated from any proposed tuition and fee increases for resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees; and

5.1.d.4. The justification for tuition and fee increases that exceed a total of 5%

5.2. Review of nonresident tuition and fees.

5.2.a. A governing board shall propose tuition and required fee rates for out of state or nonresident students at levels that, at a minimum, cover the full

cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Council.

- 5.2.b. The Council will require each institution to report annually on the number of nonresident students. At no time should the admission of nonresident students to any institution or specific program of study within the institution unreasonably impede the ability of resident students to attend the institution or participate in the programs of the institution.
- 5.2.c. Full cost of instruction is based on the functional schedule from the most recent financial statements. A calculation will be made for each institution taking the total instruction and student services expenses divided by the institution's full time equivalent students. The System average shall be determined by totaling the instruction and student services expenses for all institutions divided by the full time equivalent students for the entire system. Both calculations shall be provided to the institutions annually by January 31st. Each institution will report all nonresident tuition and fee rates. Nonresident tuition and fees will be reviewed by Council staff to determine if current proposed nonresident total tuition and fees fall below the *lower of* the most recent reported System average or the applicable institutional full cost of instruction.
- 5.2.d. Institutional governing boards may choose to set nonresident tuition based on the lower of the respective institution's full cost of instruction or the system average full cost of instruction.
- 5.2.e. In order to provide additional educational opportunities to West Virginia residents, West Virginia community and technical colleges may enter into reciprocity agreements with nearby out-of-state higher education institutions whereby institutions make available programs and courses that are not available at the reciprocating institution.
  - 5.2.e.1. Governing boards may enter into reciprocal regional and interstate agreements, including agreements with the Southern Regional Education Board, that allow nonresident students to be charged resident tuition and fee rates, when the agreements are mutually beneficial to the students of the participating states.
  - 5.2.e.2. Reciprocity agreements shall be approved by the Council. Request for approval shall include an estimate of the total number of participating students from West Virginia and other states over the life of the agreement.
  - 5.2.e.3. Tuition and required fees for nonresident students subject to reciprocity agreements shall be charged by community and technical colleges in a manner that is consistent with the Council approved reciprocity agreement.

- 5.3. Review of reduced, nonresident tuition and fees.
  - 5.3.a. A governing board may propose a reduced, nonresident tuition and required fee rates for out of state or nonresident students at levels that, at a minimum, covers the full cost of instruction as defined in 5.2.c. unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Council.
  - 5.3.b. There must be clear, specific criteria provided by each Governing Board to govern what students will be charged this reduced, nonresident tuition rate .i.e. geographic location such as out of state surrounding counties bordering the West Virginia institution.
  - 5.3.c. Each institution must report any proposed or changes to the reduced, nonresident tuition rates to the Council along with the submission of resident and nonresident tuition and fee rates as outlined in section 5.1.d.

**§135-32-6. Refunds.**

- 6.1. Each Board of Governors must establish a refund policy for students who officially withdraw during a semester that at minimum establishes refunds that complies with the following schedule:
  - 6.1.a. A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges;
  - 6.1.b. A student who withdraws after completing more than ten percent (10%) through twenty-five percent (25%) of the term is entitled to a refund of seventy-five percent (75%) of the charges;
  - 6.1.c. A student who withdraws after completing more than twenty-five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges;
  - 6.1.d. A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund; or
- 6.2. Each Board of Governors may establish a refund policy for students who officially withdraw during a semester that establishes refunds based upon the same calculations that the United States Department of Education prescribes for the return of Title IV student financial aid funds.

**§135-32-7. Deferred Payment Plans.**

- 7.1. Each Board of Governors may establish a policy that provides deferred payment plan for students allowing them to pay their tuition and fees in installments. The deferred payment plan(s) must provide for full payment prior to the end of the academic term. This policy must address:

- 7.1.a. The interest rates, if any, that will be charged during the plan.
- 7.1.b. The types of installment plans available either institutionally or through a third party provider.



## **SUMMARY**

### **Title 135 Procedural Rule**

### **WV Council for Community and Technical College Education**

### **Series 32**

### ***Tuition and Fees***

The purpose of this rule is to establish guidelines for the Council to approve tuition and fee increases as required by State code. The Council recognizes that each college must have adequate funds to fulfill the institution's mission of delivering comprehensive community and technical college education and that two primary sources of funds are available: state general revenue allocations and tuition and fees collected from students. The Council recognizes the impact that tuition increases have on students and their ability to pay for and attend college. Consistent with this purpose, this rule addresses:

- The process by which the Council will approve required in-state resident tuition and fee increases above five percent (5%).
- The process by which Council staff will review special fees to determine if these fees should be included in required tuition and fees and thus subject to Council approval.
- The process by which the Council will review out-of-state nonresident tuition and fee rates to determine if these rates meet the "full cost of instruction" as required by W. Va. Code.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Tuition and Fees

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Council for Community and Technical College Education

Address: 1018 Kanawha Blvd., East, Suite 700  
Charleston, WV 25301  
James L. Skidmore, Chancellor

Phone Number: 304-558-0265 Email: Skidmore@wvctcs.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no direct costs associated with this rule.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Tuition and Fees

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

There are no direct costs associated with this rule.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Established guidelines for the Council to approve tuition and fee increases as required by State code.

Date: 8/24/11

Signature of Agency Head or Authorized Representative

\_\_\_\_\_