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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

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

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: 2

TITLE OF RULE BEING PROPOSED: Finance

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2904

SECTION 18B-17-3(f), PASSED ON April 6, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: April 20, 2009


Authorized Signature

FILED

TITLE 135
LEGISLATIVE RULE 2009 APR 17 AM 11:16
COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

SERIES 2
FINANCE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§135-2-1. General.

- 1.1. Scope: This rule governs finance for the Council for Community and Technical College Education (Council) and affiliated community and technical colleges.
- 1.2. Authority: West Virginia Code §§ 18B-1-6, 18B-2B-6(c)(2)
- 1.3. Filing Date: April 17, 2009
- 1.4. Effective Date: April 20, 2009

§135-2-2. Purpose.

- 2.1. The purpose of this rule is to set forth a system of financing community and technical college education in West Virginia. Consistent with that overarching purpose, the rule addresses:
 - 2.1.1. The purposes for which the Council would prefer to receive state appropriations from the West Virginia Legislature;
 - 2.1.2. The procedure by which the Council would allocate any funds that it receives from the Legislature; and
 - 2.1.3. The process by which the Council will review proposed institutional tuition and fee adjustments.
- 2.2. Consistent with the mandate contained in Senate Bill No. 595 (2008) (Vision 2020 accountability system), the Council has developed an innovative, performance-based funding system that aligns with state and system goals and priorities.
 - 2.2.1. The rule outlines a system for allocating funding to develop, expand and sustain high-demand technical programs.
 - 2.2.2. The rule outlines a comprehensive system for allocating funding to institutions for enrolling, retaining and graduating students with additional funding if students require developmental education or started or returned to school as adults.

- 2.2.3. The rule modifies the current peer equity formula for allocating equity funding to allow for the use of the most currently available system enrollment and funding data, while allowing for meaningful comparison of shortfalls with peer institutions.
- 2.3. The performance-based funding system supports the goals for delivery of comprehensive community and technical college education set forth in the Council's master plan:
 - 2.3.1. To provide access to affordable comprehensive community and technical college education in all regions of West Virginia;
 - 2.3.2. To produce high quality graduates with the general education and technical skills to be successful in the workplace or subsequent education;
 - 2.3.3. To provide high quality workforce development programs that meet the demands of West Virginia's employers and enhance the economic development efforts of the State;
 - 2.3.4. To collaborate with other providers in delivering education and training programs to the community and technical college district; and
 - 2.3.5. To collaborate with the public school system to increase the college-going rate in West Virginia.

§135-2-3. Definitions.

- 3.1. Adults. Individuals age 25 and older.
- 3.2. 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.
- 3.3. Base Budget. The amount of funding that a community and technical college receives through a state appropriation for its operations and for which there are no significant restrictions on expenditure.
- 3.4. Campus. A site identified as a "campus" by the Higher Learning Commission of the North Central Association of Colleges and Schools.
- 3.5. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal.

- 3.6. **Developmental Education Courses.** Community and technical college courses, generally in areas of mathematics, reading and writing, offered to those who lack the fundamental education competencies to be successful in college-level work.
- 3.7. **Educational and General Fees.** Charges levied on all students of that class or category to support educational and general program services or optional charges 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 plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations.
- 3.8. **Higher Education Price Index.** Inflation index 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.
- 3.9. **Momentum Point.** A level of student achievement that makes it more likely that a student will be successful in reaching an additional level of academic achievement, obtaining employment at a higher wage, or maintaining employment where the acquisition of increased skills is necessary.
- 3.10. **Peer.** A higher education institution located in another state that is similar to a West Virginia community and technical college.
- 3.11. **Required Fees.** Charges levied to all students of a particular class or category (e.g., undergraduate).

§135-2-4. Goals. The Council seeks to achieve the following goals and objectives with its finance rule:

- 4.1. To ensure that state funding is requested from the Legislature to achieve strategic priorities of the State and distributed by the Council in a manner that is consistent with the following principles:
 - 4.1.1. Only new state funding shall be allocated in a manner that is consistent with the provisions of this rule. In the absence of a compelling justification, current state base budget allocations may not be redistributed among community and technical colleges.
 - 4.1.2. **State Priorities.** W. Va. Code § 18B-1A-5(b)(6)(D).
 - 4.1.2.1. State priorities for the delivery of comprehensive community and technical college education identified by

the Legislature as put forth in West Virginia Code §18B-1D-3 and the Council's master plan include the delivery of high-demand technical programs; recruitment, retention and graduation of students, particularly adult students; providing access to comprehensive community and technical college education in all regions of the State; and providing a skilled workforce to meet the needs of employers and enhance the state's economic development efforts.

4.1.2.2. Most new funding requested from the Legislature by the Council will align with state priorities, and the Council's master plan for community and technical college education.

4.1.2.3. Any funding appropriated by the Legislature to address a state priority shall be allocated by the Council in a manner that is most likely to maximize achievement of that state priority across the Community and Technical College System.

4.1.3. Sustained Quality. W. Va. Code § 18B-1A-5(b)(6)(E).

4.1.3.1. Some new funding requested from the Legislature by the Council will seek to ensure that the quality of current community and technical college education, including faculty and staff salaries, is sustained over time and that investments are made to support the renewal of facilities and equipment.

4.1.3.2. Any funding appropriated by the Legislature to ensure the sustained quality of community and technical college education shall be allocated by the Council on an equal percentage basis or utilizing an allocation formula, unless there are disparate needs.

4.1.4. Peer Equity. W. Va. Code § 18B-1A-5(b)(6)(A).

4.1.4.1. Some new funding requested by the Council will seek to ensure that base budget appropriations are relatively equitable among institutions and seek to remedy past inequities.

4.1.4.2. Any funding appropriated by the Legislature to address equity among community and technical colleges shall be allocated utilizing a formula that compares the relative funding of West Virginia community and technical

colleges and their peer institutions nationally and devotes greater amounts of funding to community and technical colleges that are farthest away from their peers in terms of funding.

- 4.2. To allow community and technical colleges to charge and collect sufficient tuition and fee revenue to operate effectively while at the same time striving to ensure that the cost of attendance at community and technical colleges does not unduly limit student access or leave students with excessive debt at the conclusion of their educations.

§135-2-5. State Priorities Funding: High-Demand Technical Programs.

- 5.1. Objective. The Council, in partnership with the Governor's Office and Legislature, shall "[d]evelop a stable funding stream for state institutions of higher education to pay for essential programs which are expensive to deliver, are in high demand and/or are critical to the state's capacity to replace an aging workforce as employees retire. This objective has a particular impact on community and technical colleges which deliver high-cost technical programs." W. Va. Code §18B-1D-3(b)(6).
- 5.2. Findings. The Council finds:
 - 5.2.1. Community and technical colleges must develop new, and expand and maintain existing, high-demand technical programs to meet State workforce needs.
 - 5.2.2. High demand technical programs typically cost more to develop, expand and maintain than do other types of programs.
 - 5.2.3. The State of West Virginia has made a significant investment in community and technical college capital construction and renovation to support advanced technology centers and other flexible space in which high-demand technical programs can be offered.
 - 5.2.4. The State of West Virginia has made a significant investment to expand existing high-demand allied health programs, but has not developed a funding strategy to ensure the long-term sustainability of these programs.
 - 5.2.5. The State of West Virginia has made an ongoing investment in technical program development, which funds the development of new high-demand technical programs. There currently is no ongoing funding available to support the expansion of high-demand technical programs.

5.2.6. The State of West Virginia has made almost no investment to ensure that high-demand programs, once developed or expanded, are maintained over time. Peer equity funding, while taking into consideration program mix as part of the peer selection process, certainly does not ensure that high-cost and high-demand programs are supported financially. As a result, community and technical colleges have little financial incentive to develop, expand and/or maintain high-demand technical programs.

5.2.7. A successful funding program for high-demand technical programs will have three mechanisms:

5.2.7.1.A mechanism to support the development of new high-demand technical programs; and

5.2.7.2.A mechanism to support the expansion of existing high-demand technical programs; and

5.2.7.3.A mechanism to support the maintenance of existing high-demand technical programs.

5.3. Funding Model. A hybrid funding model shall be utilized to address both the development and expansion and the maintenance of high-demand technical programs.

5.3.1. Development and Expansion of High-Demand Technical Programs.

5.3.1.1.The Council shall utilize technical program development grant funding to support both new and expanded high-demand technical programs.

5.3.1.2.Technical program development grant funding shall be allocated to institutions through a Request for Proposals (RFP) process.

5.3.1.3.Separate RFPs shall be developed for new high-demand technical programs and expanded high-demand technical programs.

5.3.1.4.Priority for technical program development grant funding shall be given to programs for which there is a demonstrable statewide or regional workforce demand.

5.3.1.5.Priority for technical program development grant funding generally shall be given to new programs over expanded programs.

5.3.1.6. Technical program development grant funding shall support new or expanded high-demand technical programs for a period of up to three years.

5.3.1.7. Technical program development grant funding is intended to provide one-time funding to cover programmatic costs. Grant funds may be used for any type of expense, including staffing, other types of operating costs, and capital and equipment purchases.

5.3.1.8. New Programs. The following rules shall apply to new high-demand technical programs:

5.3.1.8.1. To qualify for funding for a new program, a community and technical college shall submit a grant application, including a detailed budget, for a program that it currently does not offer.

5.3.1.8.2. The Council annually shall establish a maximum amount for all such awards.

5.3.1.9. Expanded Programs. The following shall apply to expanded high demand technical programs.

5.3.1.9.1. To qualify for expansion funding, a community and technical college shall submit a grant application, including a detailed budget, for a program that it currently offers.

5.3.1.9.2. Awards shall be calculated based on the increased number of full-time-equivalent (FTE) students to be served by the expanded program.

5.3.1.9.3. If a community and technical college fails to enroll the number of FTE students it has committed to enroll, it shall reimburse the Council on an FTE student basis.

5.3.1.10. At the end of the three-year funding cycle, the high-demand technical programs funded through this program, if also high-cost, shall be incorporated into the maintenance funding model described in section 4.3.2 of this rule.

5.3.1.11. Technical program development funding is intended to be a revolving pool of grant funds. Once a grant ends, the program moves from the development grant funding pool to the maintenance pool described in section 4.3.2 of this

rule, and newly unencumbered technical program funds shall be made available for a new cycle of grant awards.

5.3.1.12. The Council may promulgate a procedural rule to govern the administration of the technical program development program.

5.3.2. Maintenance of High-Demand, High-Cost Technical Programs.

5.3.2.1. The Council shall request funding from the Legislature to support the maintenance of high-demand, high-cost technical programs.

5.3.2.2. The Council annually shall determine which technical programs qualify as both high-demand and high-cost and thus shall be considered for maintenance funding. The Council may assign greater weights to programs it deems of either higher demand or higher cost than other high-demand, high cost technical programs.

5.3.2.2.1. Factors to be evaluated in determining whether a technical program is high-demand include: whether economic or survey data indicate that jobs that pay a living wage are available for students who complete the technical program.

5.3.2.2.2. Factors to be evaluated in determining whether a technical program is high-cost include, but are not limited to: specialized programmatic accreditation; required low faculty-student ratio; high cost of faculty; a high percentage of program content involving courses with laboratory and/or on-campus clinical components; and/or the necessity for expensive equipment or specialized facilities to operate the program.

5.3.2.3. Maintenance funding shall be allocated to each community and technical college based upon the number of credit-hours students completed in high-demand, high-cost technical programs during the prior two academic years.

5.3.2.4. Credit hours produced in programs receiving new or expanded technical program grant funding shall not count for maintenance funding during the academic year(s) in which grant funding is provided

5.3.2.5. Maintenance funding shall never become part of a community and technical college's base budget.

5.3.2.6. The Council shall promulgate a procedural rule to govern the administration of the technical program maintenance program.

§135-2-6. State Priorities Funding: Student Momentum Points.

6.1. Objectives. The Council, in partnership with the Governor's Office and Legislature, shall develop a consistent funding stream to address complementary sets of objectives for community and technical colleges, including:

6.1.1. "Making maximum effort to recruit and retain adults twenty-five years old or over." W. Va. Code § 18B-1D-3(b)(4); and

6.1.2. "Increasing the percentage of functionally literate adults in each region of the state." W. Va. Code § 18B-1D-3(b)(9); and

6.1.3. "Increasing the percentage of entering students who persist to receive a degree, a certificate or an industry-recognized credential." W. Va. Code § 18B-1D-3(b)(3).

6.2. Findings. The Council finds:

6.2.1. If community and technical colleges are to increase enrollment, they should do so primarily by recruiting more adult students, who historically have participated in postsecondary education at very low levels in West Virginia.

6.2.2. The State provides need-based financial aid for eligible students through the Higher Education Grant Program and Higher Education Adult Part-time Student (HEAPS) Grant Program. The Higher Education Grant Program, however, contains numerous barriers to access that make it challenging for adult students to qualify for awards. Additionally, the State currently provides no special financial support for institutions to recruit adult students or special rewards to institutions for their ultimate persistence and completion of degrees or certificates.

6.2.3. If West Virginia's functional literacy rates are to improve, community and technical colleges must increase their efforts to assist students to successfully complete developmental education classes to persist and complete postsecondary education.

- 6.2.4. The State currently provides no special financial support to institutions for successfully assisting developmental education students who persist and complete their certificates and/or degrees.
 - 6.2.5. If West Virginia's educational attainment rates are to increase, community and technical colleges must do a better job of retaining and graduating all types of students, not just developmental students and adult students.
 - 6.2.6. Research concludes that students who persist through one year of postsecondary education and earn a credential, certificate and/or degree have increased earning power over their lifetime.
 - 6.2.7. The State currently provides no financial incentive for institutions to improve student persistence and completion rates.
- 6.3. Funding Model. A hybrid funding model shall be utilized to address enrollment, persistence and completion rates of all students, but particularly for students who need developmental education and adult students. The first part of this model will focus on giving institutions additional resources to address these challenges. The second part of this model will focus on rewarding institutions for student persistence and completion.
- 6.3.1. Funding for Adult Student Coordinators. The Council shall request funding for one Community and Technical College Adult Student Coordinator at each community and technical college.
 - 6.3.1.1. The coordinator will recruit and assist non-traditional adult students to enroll, persist and complete courses, improve skills sets, obtain certificates and/or degrees within the community and technical college system. The coordinator also will be responsible for collaborating and coordinating efforts of the Adult Basic Education (ABE) program.
 - 6.3.1.2. The intent of this base allocation is to provide an individual to assist each community and technical college in ensuring that adult students are equipped to be successful within the college system.
 - 6.3.2. Enrollment, Persistence and Completion Momentum Points. The Council shall request funding to reward institutions for certain types of student enrollment, persistence and completion.
 - 6.3.2.1. Enrollment Enhancement
 - 6.3.2.1.1. Adults. Each community and technical college shall be allocated an established dollar amount

for each new adult student who enrolls in college for the first time or after a two or more year absence from college.

6.3.2.1.2. **Developmental Students.** Each community and technical college shall be allocated an established dollar amount for each student who successfully completes the highest level of developmental courses in math and English and is academically prepared to enter into traditional college courses and programs.

6.3.2.2. Persistence Enhancement

6.3.2.2.1. **All Students.** Each community and technical college shall be allocated an established dollar amount for each student who successfully completes at least thirty (30) credit hours of instruction or earns a certificate.

6.3.2.2.2. **Adult Students.** In addition to any allocation under section 5.3.2.2.1 of this rule, each community and technical college shall be allocated an established dollar amount for each adult student who successfully completes at least thirty (30) credit hours of instruction or earns a certificate.

6.3.2.2.3. **Developmental Students.** In addition to any allocation under sections 5.3.2.2.1 or 5.3.2.2.2 of this rule, each community and technical college shall be allocated an established dollar amount for each student who successfully completes one or more developmental courses within five (5) years before going on to complete at least thirty (30) credit hours of instruction or earn a certificate.

6.3.2.3. Completion Enhancement.

6.3.2.3.1. **All Students.** Each community and technical college shall be allocated an established dollar amount for each student who successfully earns an associate degree.

6.3.2.3.2. **Adult Students.** In addition to any allocation under section 5.3.2.3.1 of this rule, each community and technical college shall be

allocated an established dollar amount for each adult student who successfully earns an associate degree.

6.3.2.3.3. Developmental Students. In addition to any allocation under sections 5.3.2.3.1 or 5.3.2.3.2 of this rule, each community and technical college shall be allocated an established dollar amount for each student who successfully completes one or more developmental courses five (5) or fewer years before earning an associate degree.

6.3.2.3.4. Board of Governors' Associate of Applied Science Degree and Associate of Applied Science in Occupational Development Degree Recipients. In addition to any allocation under sections 5.3.2.3.1, 5.3.2.3.2 and 5.3.2.3.3 of this rule, each community and technical college shall be allocated an established dollar amount for each adult student who earns a Board of Governors' Associate of Applied Science or Associate of Applied Science in Occupational Development degree.

6.3.2.4. Each benchmark that moves a student closer to a certificate or an associate's degree shall be rewarded with a higher dollar incentive than the previous benchmark.

6.3.2.5. Institution awards shall be made as soon after Council receipt of enrollment and graduation data as possible.

6.3.2.6. The Council shall promulgate a procedural rule to govern the administration of the technical program development program.

§135-2-7. State Priorities Funding – Regional Access.

7.1. Objective. The Council, in partnership with the Governor's Office and Legislature, shall develop a stable funding stream to "assure uniform delivery of community and technical college education for all regions of the state." W. Va. Code § 18B-1D-3(b)(7).

7.2. Findings. The Council finds:

7.2.1. In order to ensure uniform delivery of community and technical college education across the state, some community and technical colleges must operate multiple campuses.

- 7.2.2. Multiple small campuses cost more money to operate than does one large campus, or an instructional site, because of the necessary redundancy of certain services.
- 7.2.3. The State currently provides no financial incentive for community and technical colleges to operate multiple campuses. No consideration is given to multi-campus funding in either the peer selection or peer equity funding process.
- 7.3. Development of Funding Model. A funding model to address regional access needs to be developed.
 - 7.3.1. On or before July 1, 2009, the Council shall develop a proposed system to provide enhanced funding to community and technical colleges that operate multiple campuses.
 - 7.3.2. In defining what constitutes a campus, the Council shall utilize the definition and designations of the Higher Learning Commission of the North Central Association of Colleges and Schools (HLC).

§135-2-8. State Priorities Funding – Workforce and Economic Development.

- 8.1. Objective. The Council, in partnership with the Governor's Office and Legislature, shall develop stable funding streams at both the state and institution levels to support statewide workforce and economic development. W. Va. Code § 18B-1D-3(a)(1).
- 8.2. Findings. The Council finds:
 - 8.2.1. Institutions must have access to funding to meet employers' short-term workforce and economic development needs. Workforce training and development often are provided through non-credit instruction.
 - 8.2.2. The State does not have an interest in supporting financially all non-credit instruction, but rather only non-credit instruction that supports workforce and economic development.
 - 8.2.3. The Council currently receives funding through a program called WV ADVANCE to support employers' customized training needs. There, however, currently is no stable funding mechanism at the institution level.
 - 8.2.4. Currently institutions do not always track, and the Council does not collect, complete data on non-credit instruction that could serve as a basis for allocating funding for such instruction.

- 8.3. Development of Funding Model. A funding model to address workforce-and-economic-development-based non-credit instruction needs to be developed.
 - 8.3.1. Effective with the 2008-2009 academic year, institutions shall begin collecting and reporting on non-credit instruction to the Council.
 - 8.3.2. On or before July 1, 2010, the Council will develop a proposed formula-based system to fund non-credit instruction that supports the State's workforce and economic development needs.
 - 8.3.3. Over the period while these changes are being made, the Council shall continue to rely exclusively upon state funding through WV ADVANCE to support workforce and economic development goals.
- 8.4. Even with the development of a funding model, WV ADVANCE funding will be needed to address state needs in partnership with entities such as the Governor's Office and the West Virginia Development Office.

§135-2-9. State Priorities Funding – Other Issues.

- 9.1. The Council, in partnership with the Governor's Office and Legislature, may develop additional appropriation requests and allocation methodologies that align with other state priorities identified in statute or the Council's master plan.
- 9.2. The Council may request additional funding for any state priority for which the Council deems funding to be inadequate for its stated purpose up to the level that the Council determines to be adequate.
- 9.3. Once the Council deems an appropriation to be adequate to address a state priority, the Council may request increases in funding at a rate that is equivalent to the prior year's increase in the Higher Education Price Index (HEPI) or other appropriate inflationary benchmark.

§135-2-10. Sustained Quality Funding – Inflationary Adjustments to Institution Base Budgets.

- 10.1. Objectives. The Council, in partnership with the Governor's Office and Legislature, may develop appropriation requests that address the following objectives:
 - 10.1.1. "Sustaining the quality" of community and technical colleges. W. Va. Code § 18B-1A-5; and

10.1.2. "Adequately compensating faculty, classified employees and other employees at a competitive level to attract and retain high quality personnel." W. Va. Code § 18B-1-1a(d)(9).

10.2. Findings. The Council finds:

10.2.1. Inflationary pressures result in the cost of providing students with an education to increase.

10.2.2. Overall, community and technical college faculty, classified employees and other employees are paid below market averages, which make it difficult to attract, retain and motivate quality employees.

10.2.3. The average salary increases of community and technical college employees should keep pace with the average salary increases of workers in comparable markets.

10.2.4. The gap between the salaries of community and technical college employees and the salaries of workers in comparable markets should be reduced over time to make salaries more competitive.

10.2.5. If the State does not offset all or a portion of the increased cost of education resulting from inflation, students bear much of the burden of the increased costs in the form of increased tuition and fees.

10.2.6. Low community and technical college tuition removes barriers to access to higher education and reduces the debt load of community and technical college students.

10.3. Funding Model. The Council sets forth the following guidelines to govern requests for and distribution of increased sustained quality funding to institution base budgets:

10.3.1. Appropriations to Institution Base Budgets.

10.3.1.1. The Council annually may request funding to increase institution base budget appropriations by a rate that is equivalent to the prior year's increase in the HEPI or other appropriate inflationary benchmark.

10.3.1.2. The Council shall allocate any state appropriation aimed at assisting institutions in offsetting inflationary increases on a pro rata basis.

10.3.1.3. Any increase in an institution's base budget appropriation shall be considered part of the institution's base budget for future years.

10.3.2. Appropriations for Faculty and Staff Salaries and Benefits.

10.3.2.1. The Council annually may request funding to increase institution base budget appropriations by an amount that is equivalent to the prior year's overall percentage increase nationally in community and technical college faculty and staff salaries.

10.3.2.2. The Council annually also may request funding to reduce the gap between actual faculty and staff salaries and salaries in external markets.

10.3.2.3. The Council may request one-time or ongoing funding annually to support education, training and development of faculty and staff.

10.3.2.4. Any increase in an institution's base budget appropriation for salaries and benefits shall be considered part of the institution's base budget for future years.

§135-2-11. Sustained Quality Funding – Instructional Equipment.

11.1. Objective. The Council, in partnership with the Governor's Office and Legislature, may develop an appropriation request to "fund the replacement, upgrading and purchase of equipment to implement and/or maintain technical education programs." W. Va. Code § 18B-1D-3(b)(6)(B)(iii).

11.2. Findings. The Council finds:

11.2.1. The State is making a significant one-time capital investment in facilities and a significant ongoing investment in technical program development to facilitate the expansion of technical programs at community and technical colleges.

11.2.2. The majority of technical programs that community and technical colleges offer are equipment intensive.

11.2.3. To keep pace with changes in the workplace, community and technical colleges must update and replace equipment on an ongoing basis.

11.3. Funding Model. The Council sets forth the following guidelines to govern requests for and distribution of increased sustained quality funding for instructional equipment:

11.3.1. The Council, in collaboration with community and technical colleges, shall develop an equipment replacement schedule to be utilized to determine the minimum amount of funding each community and technical college should set aside annually for instructional equipment upgrades.

11.3.2. The Council shall request ongoing funding to replace instructional equipment utilized by community and technical colleges consistent with the annual equipment upgrade cost calculation.

11.3.3. The Council may request one-time funding to replace instructional equipment utilized by community and technical colleges.

11.3.4. The Council shall allocate funding received for instructional equipment either utilizing an allocation formula or based on demonstrated need.

§135-2-12. Sustained Quality Funding – Capital Projects and Facilities Maintenance.

12.1. Objectives. The Council, in partnership with the Governor's Office and Legislature, may develop an appropriation request that addresses the following objective: "developing a state-level facilities plan and funding mechanism to reduce the obligation of students and parents to bear the cost of higher education capital projects and facilities maintenance." W. Va. Code § 18B-1D-3(b)(1).

12.2. Findings. The Council finds:

12.2.1. Historically, West Virginia has been one of the very few states in the nation that has not funded community and technical college capital projects through state appropriations, but rather through student capital fees.

12.2.2. At most of West Virginia's former administratively-linked community and technical colleges, tuition and required fees are significantly higher than the national average and the average at West Virginia's long-standing free-standing community and technical colleges because of student capital fees.

12.2.3. Student capital fees create barriers to community and technical college student access and increase student debt loads.

- 12.2.4. A way to remove the significant variation in tuition and required fees across the community and technical system is to reduce or eliminate the student capital fees.
- 12.2.5. The State is in the process of making significant new investments in the construction and renovation of community and technical college facilities.
- 12.2.6. To maximize the useful life of community and technical college facilities, adequate funds must be set aside to address both routine maintenance and capital maintenance.
- 12.3. Funding Model. The Council sets forth the following guidelines to govern requests for and distribution of increased sustained quality funding for capital projects, facilities maintenance and instructional equipment.
 - 12.3.1. Major Capital Projects.
 - 12.3.1.1. The Council may request sufficient ongoing funding for capital projects to allow for periodic bond issues to finance major capital projects, including both the renovation of existing facilities and the construction of new facilities.
 - 12.3.1.2. The Council periodically may request one-time funding for major capital projects, including both the renovation of existing facilities and the construction of new facilities, through a bond issue or other means.
 - 12.3.1.3. The Council shall allocate capital project funding based on clearly-defined system priorities.
 - 12.3.1.4. The Council shall develop procedures to ensure that state funding provided for major capital projects is spent effectively and efficiently.
 - 12.3.2. Facilities Maintenance.
 - 12.3.2.1. The Council shall utilize a building renewal formula to determine the minimum amount of funding each community and technical college should set aside annually for maintenance.
 - 12.3.2.2. The Council regularly shall request sufficient ongoing state funding to ensure that both routine and capital maintenance is not deferred.

12.3.2.3. The Council also may request one-time funding for high priority facilities maintenance projects, even though this should not be viewed as a preferred funding approach.

12.3.2.4. The Council shall allocate ongoing state funding for routine and capital maintenance utilizing a building renewal formula.

12.3.2.5. If state funding is not provided, or is inadequate by itself to avoid having maintenance projects deferred, the Council shall ensure that community and technical colleges collect adequate capital fees to cover both routine and capital maintenance costs.

§135-2-13. Sustained Quality Funding – Financial Aid.

13.1. Objectives. The Council, in partnership with the Higher Education Policy Commission, Governor’s Office and Legislature, may develop appropriation requests that address the following objectives:

13.1.1. “Removing such financial barriers to the individual's education goals as may remain after he or she has utilized all resources and work opportunities available.” W. Va. Code § 18C-1-1(a)(2)(B).

13.1.2. “Making post-secondary education both accessible and affordable for its citizens.” W. Va. Code § 18C-1-3(a)(9).

13.2. Findings. The Council finds:

13.2.1. The State provides significant funding for both merit-based and need-based student financial aid.

13.2.2. Need-based student financial aid generally benefits community and technical college students more than does merit-based student financial aid.

13.2.3. Community and technical college students expend a significant proportion of their family incomes on higher education, even after accounting for federal, state, and other grant aid.

13.2.4. At a minimum, the State’s investment in need-based student financial aid should keep pace with institution increases in tuition and required fees.

13.3. Financial Aid.

13.3.1. The Council annually may request funding to increase need-based financial aid at a percentage that is equivalent to the prior fiscal year's average increase in tuition and required fees.

13.3.2. The Council annually also may request additional funding for need-based financial aid to serve more students and/or to decrease the debt being incurred by students.

13.3.3. Any request for additional need-based financial aid should take into consideration changes in federal Pell grant program funding.

§135-2-14. Peer Equity Funding – Peer Selection.

14.1. Objectives. The primary purpose of selecting peer institutions is to provide a means of comparing West Virginia community and technical colleges to comparable institutions across the nation. W.Va. Code §18B-1A-3(b)(3). Peer comparisons shall be made:

14.1.1. To determine how to allocate from legislative peer equity funding among West Virginia community and technical colleges;

14.1.2. To evaluate appropriate levels of tuition and fees;

14.1.3. To determine comparable faculty and staff teaching requirements and other workloads; and

14.1.4. For such other purposes as the law may require or the Council find useful or necessary.

14.2. Findings. The Council finds:

14.2.1. Overall West Virginia's community and technical colleges are funded significantly below, both in terms of state revenue and overall revenue, than their peer institutions nationally.

14.2.2. Some community and technical colleges are significantly below their peers in terms of funding than are other community and technical colleges.

14.2.3. Community and technical colleges that are significantly below their peers in terms of funding should receive additional funding, all other things being equal, than other community and technical colleges.

14.3. Background of Selection Process.

14.3.1. Responsibility. The Commission and Council share responsibility for selecting community and technical college peers.

- 14.3.1.1. The Commission shall select and adjust peers for community and technical colleges under the jurisdiction of the Council in collaboration with the Council.
 - 14.3.1.2. Final peer selection is subject to the approval of the Legislative Oversight Commission on Education Accountability.
 - 14.3.2. Frequency. Peer institutions for each West Virginia public higher education institution shall be adjusted at least every six years or as necessary based on:
 - 14.3.2.1. Changes in missions of West Virginia public higher education institutions as approved in institutional compacts; or
 - 14.3.2.2. Changes at peer institutions.
 - 14.3.3. Pool. Peer institutions shall be selected from among public higher education institutions throughout the United States.
 - 14.3.4. Number of Peers. At least twenty (20) peer institutions shall be selected for each West Virginia public higher education institution.
 - 14.3.5. Factors. In selecting peer institutions for West Virginia public higher education institutions, the Commission and Council may consider the following non-financial factors available from National Center for Education Statistics Integrated Postsecondary Education Data System (IPEDS) and other sources, including, but not limited to, student headcount and full-time-equivalent enrollment, percentage of part-time students, and program mix.
 - 14.3.6. Fiscal Year. For purposes of identifying peer institutions, Commission staff shall rely on data from the latest three fiscal years for which complete comparison data is available.
- 14.4. Process. The Commission, in consultation with the Council, shall select and adjust peer institutions for each West Virginia community and technical college through an open, deliberative, and objective process and in consultation with each institution's boards of governors.
 - 14.4.1. Staff shall begin the peer selection or adjustment process by contracting with a national, independent education consulting firm to assist in the process.
 - 14.4.2. Staff and/or the consulting firm shall develop a proposed list of peer institutions for each West Virginia public higher education institution using the process established in this rule.

- 14.4.3. Staff and/or the consulting firm shall review each proposed list of peer institutions to identify potential peer institutions that should be stricken.
- 14.4.4. Staff shall provide a copy of the proposed list, including an explanation of any strikes previously made, to the chairman of the institution's board of governors and to the institution's President. The proposed list shall contain at least five (5) alternate institutions.
- 14.4.5. Within sixty (60) days of delivery of the proposed list of peer institutions, the board of governors may object in writing to any institutions, including alternates, on the proposed list. The objection shall identify with specificity the reason for the objection.
- 14.4.6. Staff and/or the consulting firm shall review each board objection and make a recommendation for the Commission's and Council's consideration.
- 14.4.7. If staff and/or the consulting firm determine that an objection is valid, they shall review the remaining list of potential peer institutions to determine whether other institutions should be stricken for the same reason.
- 14.4.8. Before making a decision concerning a proposed list of peer institutions, the Commission or Council shall give a representative of the West Virginia public higher education institution an opportunity to address the staff recommendation.
- 14.4.9. Once the Commission and Council have approved a proposed list of peer institutions, the proposed list shall be forwarded to the Legislative Oversight Commission on Education Accountability for its consideration and approval.

§135-2-15. Peer Equity Funding – Funding Formula.

- 15.1. Objective. The primary objective of peer equity funding is to provide a mechanism to increase internal equity in the funding of West Virginia higher education institutions by adjusting the operating budgets of State institutions so that they are comparable with the operating budgets of peer institutions.
- 15.2. Data.
 - 15.2.1. Enrollment Data.
 - 15.2.1.1. In determining enrollment levels at West Virginia community and technical colleges, Council staff shall rely

on annualized FTE enrollment data provided by the institutions and published in the Commission's and Council's official reports.

15.2.1.2. In determining enrollment levels at peer institutions, Council staff shall rely on data contained in IPEDS.

15.2.2. Financial Data.

15.2.2.1. For West Virginia community and technical colleges, Council staff shall rely on financial data from institutions' audited financial statements.

15.2.2.2. For peer institutions, Council staff shall rely on financial data submitted by peer institutions to IPEDS.

15.2.3. Fiscal Year. For purposes of comparing funding of West Virginia community and technical colleges to their peer institutions, Council staff shall rely on:

15.2.3.1. Data from the latest two fiscal years for which complete data is available for West Virginia community and technical colleges; and

15.2.3.2. Data from the most recent fiscal year for which complete data is available for peer institutions, which typically is one year behind the most recent data for West Virginia community and technical colleges. The single year of data shall be adjusted utilizing HEPI to provide a comparable comparison.

15.3. External Comparison.

15.3.1. Goal. The primary goal of external peer equity funding comparison is:

15.3.1.1. To calculate the amount each West Virginia community and technical college receives per FTE student to cover instruction-related costs (hereinafter known as variable *A*); and

15.3.1.2. To calculate the average amount a West Virginia community and technical college's peer institutions receives per full-time-equivalent student to cover instruction-related costs (hereinafter known as variable *B*); and

15.3.1.3. To calculate a percentage ratio of West Virginia

community and technical college funding per FTE student to average peer funding per FTE student (hereinafter known as variable *C*).

$$\text{Formula: } C = A / B$$

15.3.2. Calculating Revenue Per Student

15.3.2.1. To calculate the amount a West Virginia community and technical college receives per FTE student to cover instruction-related costs (*A*), Council staff shall divide the institution's number of annualized FTE students (hereinafter known as variable *D*) by the sum of the following categories of revenue for the community and technical college's audited financial statements:

15.3.2.2. State appropriations (hereinafter known as variable *E*) less any clearly identifiable appropriations for capital projects, non-credit instruction, public service or research (hereinafter collectively known as variable *F*); and

15.3.2.3. Local appropriations, if any (hereinafter known as variable *G*); and

15.3.2.4. Net student tuition and fees (hereinafter known as variable *H*); and

15.3.2.5. Tuition discounts and allowances (hereinafter known as variable *I*).

$$\text{Formula: } A = [(E - F) + G + H + I] / D$$

15.3.3. To calculate the average amount a West Virginia community and technical college's peer institutions receive per FTE student to cover instruction-related costs (*B*), Council staff shall divide all peer institutions' numbers of annualized FTE students (hereinafter known as variable *J*) by the sum of the following categories of revenue reported through IPEDS for all peer institutions:

15.3.3.1. State appropriations (hereinafter known as variable *K*); and

15.3.3.2. Local appropriations (hereinafter known as variable *L*); and

15.3.3.3. Net student tuition and fees (hereinafter known as variable *M*); and

15.3.3.4. Tuition discounts and allowances (hereinafter known as variable *N*).

$$\text{Formula: } B = (K + L + M + N) / J$$

15.4. Internal Comparison.

15.4.1. Goal. The primary goal of internal peer equity funding comparison is to provide a principled methodology for distributing peer equity funding among West Virginia community and technical colleges.

15.4.2. Pools. Peer equity funding shall be divided into three equal pools.

15.4.2.1. 70% Funding Goal Pool. The first funding pool shall be divided among all West Virginia community and technical colleges funded at 70% or less of their peers.

15.4.2.2. 80% Funding Goal Pool. The second funding pool shall be divided among all West Virginia community and technical colleges funded at 80% or less of their peers.

15.4.2.3. 90% Funding Goal Pool. The third funding pool shall be divided among all West Virginia community and technical colleges funded at 90% or less of their peers.

15.4.3. Allocation Per Pool. In allocating funding among West Virginia community and technical college in any pool, Council staff shall:

15.4.3.1. Calculate each West Virginia community and technical college's total funding deficiency (hereinafter known as variable *O*) by multiplying the institution's number of annualized FTE students (variable *D*):

15.4.3.1.1. By the difference between the amount the West Virginia institution receives per FTE student to cover instruction-related costs (variable *A*) and the average amount a West Virginia institution's peer institutions receives per full-time-equivalent student to cover instruction-related costs (variable *B*); and

15.4.3.1.2. By the percentage funding goal (70%, 80%, 90%) (hereinafter known as variable *P*).

$$\text{Formula: } O = D * (B - A) * P$$

15.4.3.2. Calculate the total funding deficiency of all West Virginia community and technical colleges eligible to participate in the funding pool (hereinafter known as variable Q).

$$\text{Formula: } Q = O_1 + O_2 + O_n \dots$$

15.4.3.3. Allocate the available funding to each eligible West Virginia community and technical colleges (hereinafter known as variable R) by multiplying the total amount of available funding (variable S) by the ratio of the institution's total funding deficiency (variable O) to the total funding deficiency of all institutions (variable Q).

$$\text{Formula: } R = S * (O_n / Q)$$

15.4.4. Special Rules.

15.4.4.1. If the amount available for allocation (variable R) at any funding level exceeds the total funding deficiency for all eligible West Virginia institutions at that funding level (variable Q), the excess funding available for allocation shall be allocated among institutions at the next funding level.

15.4.4.2. In allocating funding at successive funding levels, institutional deficiencies shall be calculated taking into consideration allocations provided at previous funding levels.

§135-2-16. Tuition and Fee Adjustments.

16.1. Objectives. The Council, in partnership with the governing boards of the community and technical college system, shall enhance education opportunities for the widest range of state citizens:

16.1.1. "by 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

16.1.2. "by 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).

16.2. Findings: The Council finds:

16.2.1. 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.

16.2.2. The average tuition and fee rate for community and technical colleges in West Virginia exceeds the national average for public community and technical colleges.

16.2.3. 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.

16.2.4. 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.

16.3. Approval of Tuition and Required Fee Adjustments.

16.3.1. Approval Guidelines. By January of each year, the Council shall establish guidelines and ranges for increases, for institutions to follow in proposing tuition and fee adjustments for Council approval.

16.3.2. In establishing guidelines, the Council may consider such items as:

16.3.2.1. The HEPI, or other appropriate inflationary benchmark, which new allocations to the institution's base budget for the next fiscal year did not offset;

16.3.2.2. Continued achievement of benchmarks in the institution compact;

16.3.2.3. Institution pursuit of the statewide compact for postsecondary education;

16.3.2.4. The per capita income of West Virginia families and their ability to pay for college;

16.3.2.5. Institution distance from peer equity levels; and

16.3.2.6. Institution funding per full-time equivalent student.

16.3.3. Each governing board shall provide the Council with an annual report that details:

- 16.3.3.1. All tuition and fee rates presently charged and the estimated number of students currently being charged the tuition and fees;
 - 16.3.3.2. The proposed total increase in any tuition and fees for the next fiscal year;
 - 16.3.3.3. The estimated number of students who will be charged the increased tuition and fees; and
 - 16.3.3.4. The estimated increase in revenue to be generated from the increased tuition and fees.
- 16.3.4. All tuition and required fees shall be approved by the Council.
- 16.3.5. A governing board may propose tuition and required fee increases for resident students each fiscal year of up to four and three-quarters (4.75) percent. If existing tuition and fee rates at an institution are below the state average in required tuition and fees paid by all resident community and technical college students, a governing board may propose increases in excess of the four and three-quarters (4.75) percent.
- 16.3.6. A governing board shall propose tuition and required fee rates for non-resident students at levels that, at a minimum, cover the average full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Council.
- 16.3.6.1. The Council annually shall inform each institution of the full cost of instruction per full-time-equivalent student at that institution for the prior fiscal year. The full cost of instruction shall be calculated annually utilizing functional classifications in institution audited financial statements.
 - 16.3.6.2. Tuition and fee rates for non-resident students in the next fiscal year shall not be below the full cost of instruction per full-time equivalent student.
 - 16.3.6.3. The Council declares as a public policy goal entering 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.
 - 16.3.6.3.1. Governing boards may enter into reciprocal regional and interstate agreements, including

agreements with the Southern Regional Education Board, that allow non-resident students to be charged resident tuition and fee rates, when the agreements are mutually beneficial to the students of the participating states.

16.3.6.3.2. Reciprocity agreements shall be approved by the Council. Any request for approval shall include an estimate of the total participants from West Virginia and other states over the life of the agreement.

16.3.6.3.3. Tuition and required fees for non-resident 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.

16.3.7. Calculating increases. In calculating the percentage increase in tuition and required fees for purposes of the caps set out in section 15.3.5 of this rule, only those tuition and fees charged to all students may be considered.

16.3.8. Special Fees. Fees not charged to all students do not require Council approval. The Council, however, may take into consideration the amount of special fees charged and collected in approving tuition and fee required fee adjustments.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Finance

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

Phone Number: 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.

None

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.

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

Rule Title: _____

Rule Title: Finance

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

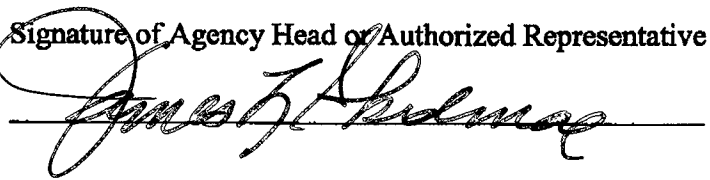
NA

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**.

This rule establishes the principles to guide the development of financing and resource allocation policies and procedures to be utilized by the West Virginia Council for Community and Technical College Education and affiliated community and technical colleges.

Date: _____

Signature of Agency Head or Authorized Representative


SUMMARY

Title 135
Legislative Rule
West Virginia Council for Community and Technical College Education

Series 2
Higher Education Finance Policy

This rule establishes the principles to guide the development of financing and resource allocation policies and procedures to be utilized by the West Virginia Council for Community and Technical College Education and affiliated community and technical colleges.