



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-32  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes  
RULE NAME: 133-32 Tuition and Fee Policy

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 18B-1-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

18B-10-1(d)

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/13/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/13/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Higher Education constituents notified by e-mail and posted to website.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Establishes policy for the assessment of tuition and fees at WV undergraduate public higher education institutions.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Simplify the rule and align it with statutory requirements.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



TITLE 133  
LEGISLATIVE RULE  
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 32  
TUITION AND FEE POLICY

§133-32-1. General.

1.1. Scope. This rule establishes the policy for the assessment of tuition and fees at West Virginia's undergraduate public institutions of higher education.

1.2. Authority. West Virginia Code §~~18B-1-6~~ and §18B-10-1(d).

1.3. Filing Date. – ~~June 4, 2018.~~

1.4. Effective Date. – ~~June 4, 2018.~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect on ~~June 4, 2023.~~

§133-32-2. Definitions.

2.1. Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §§ 18B-10-1c and 18B-19-2 apply to this rule in addition to the definitions set forth below:

~~2.1.a. 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 charges other than sales 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. Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public. “Administratively exempted schools” means those universities that are not statutorily exempted, but that have obtained administratively exempt status pursuant to W. Va. Code §18B-1-1f. Administratively exempted schools remain subject to the provisions of this rule.~~

~~2.2. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal. Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowship programs. Auxiliary capital fees support 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, and other service centers.~~

~~2.3. Tuition and Required 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. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.~~

~~2.4.1.b.—“Statutorily Exempted schools” The exempted schools are means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine. The statutorily exempted schools are exempt from the provisions of this rule.~~

~~2.5.—Full Cost of Instruction. Full cost of instruction includes the direct functional expenditures from each institution’s audit for both instruction and student services expenditures.~~

~~2.6.1.c.—“Higher Education Price Index or HEPI” means the inflation index designed specifically for use by institutions of higher education 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, a branch of Commonfund, a nonprofit organization devoted to the management of college and university endowments.~~

~~2.7.—Median Family Income. Median household income is household income which the U.S. Census Bureau gathers and reports annually from data gathered by various surveys. Median is the statistical center of all reported households’ income and is presumed to be a better gauge of income as opposed to average family income means .~~

~~2.8.—Peer. A higher education institution located in another state that is similar to a West Virginia college or university.~~

~~2.9.1.d. Special “Supplemental Fee” means the Operational charges or user fees charged to offset the specific costs for providing these services. These fees include, but are not limited to, course, lab, parking, late payments, drug testing, instrument fees, and other services provided to students. Charging students these fees allows financial aid to be used as a form of payment for qualifying students. These fees do not include sales of merchandise and tickets, short term rental of space or equipment, and sales or services to the general public.~~

### **§133-32-3. Goals. [Reserved]**

~~3.1. The Commission seeks to achieve the following goals and objectives with its tuition rule:~~

~~3.1.a. To establish equity in the determination of tuition and fees charged to students.~~

~~3.1.b. To foster goals related to program completion for West Virginia students.~~

~~3.1.c. To promote the future economic welfare of the state through an increased output of degree holders in West Virginia.~~

~~3.1.d. To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics.~~

### **§133-32-4. Tuition and Fee Adjustments Increases.**

~~4.1. Objectives. The Commission, in partnership with the institutional governing boards, shall enhance education opportunities for the widest range of state citizens:—~~

~~4.1.a. 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~~

~~4.1.b. 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 Commission. W. Va. Code §18B-1D-3(a)(2)(B).~~

~~4.2.4.1. Approval of Tuition and Required Fee Adjustments Increases.~~

~~4.2.a. Approval Guidelines. A governing board may approve auxiliary, tuition, and required education and general, and capital fee increases for resident students each fiscal year of up to ten percent collectively. Over any three-year rolling period, the cumulative increase may not exceed seven percent per year. Except for mandatory auxiliary fees authorized by the Boards of Governors of exempted schools, auxiliary, tuition and required education and general and capital fee increases above ten percent collectively must be approved by the Commission. Governing boards are not required to approve sales prices. Tuition and fee increases for online courses are not subject to approval by the Commission. Programmed fee increases constituted as part of pre-existing institutional bond obligations/covenants shall be excluded from annual fee increase calculations.~~

~~4.2.a.1.4.1.a.~~ For the purposes of this rule, calculation of ~~the increases~~ seven percent (7%) shall be based on all required tuition and fee rates charged to all West Virginia resident students.

~~4.2.a.2.4.1.b.~~ Tuition increases related to fee simplification proposals that result in an expense neutral change for an in-state student shall not be counted toward the ten percent (10%) allowance exempt from Commission approval.

~~4.2.b.~~ ~~In establishing guidelines,~~ The Commission shall communicate annually by February 28 to institutions benchmarks and guidelines for consideration of any increase above ~~five~~ seven percent (7%). The benchmarks and guidelines may include, but are not limited to, such items as:

~~4.2.b.1.a.~~ The HEPI, or other appropriate inflationary benchmark, which new appropriations to the institution's base budget for the corresponding fiscal year did not offset;

~~4.2.b.2.~~ ~~Continued achievement of benchmarks in the institutional compact;~~

~~4.2.b.3.~~ ~~Institution pursuit of the statewide compact for postsecondary education;~~

~~4.2.b.4.~~ The per capita income of West Virginia families and their ability to pay for college statewide and specifically as to the county(ies) in which 75% of the institution's in-state students reside;

~~4.2.b.5.~~ ~~Institutional distance of the sum of appropriations and tuition and fee revenues from peer equity levels as defined by the peer equity model;~~

~~4.2.b.6.~~ ~~Institutional and state funding per full-time equivalent student;~~

~~4.2.b.7.c.~~ Most recent three-year history of tuition rates and increases;

~~4.2.b.8.d.~~ Total sources of student generated revenue, including special fee and program fee rates; and,

~~4.2.b.9.e.~~ Other factors as requested or deemed relevant by the Commission ~~or in response to any new statutory language.~~

~~4.2.e.4.3.~~ ~~In responding to the guidelines and benchmarks provided by the Commission,~~ By May 15 annually, each governing board shall provide the Commission with an annual a report that details:

~~4.2.e.1.4.3.a.~~ All tuition and fee rates presently charged and the ~~estimated~~ number of students currently being charged the tuition and fees;

~~4.2.e.2.4.3.b.~~ The proposed total increase in any tuition and fees for the next fiscal year;

~~4.2.e.3.4.3.c.~~ The estimated number of students who will be charged the increased tuition and fees; and,

~~4.2.e.4.4.3.d.~~ The estimated increase in revenue to be generated from the increased tuition and fees.

~~4.2.d.~~ 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. Governing boards may submit for approval institutional policies that support a clearly delineated public policy goal established by the Legislature or the Commission, including but not limited to, proposals to increase the total number of graduates from the institution, aid in economic development or to maximize available capacity on campus.

~~4.2.d.1.~~ Average full cost of instruction is based on the most recent financial statements. The average shall be determined by calculating the cost of instruction and student services per full-time equivalent student. This calculation shall be provided to the institutions annually.

~~4.2.d.2.~~ Institutional governing boards may choose to set non-resident tuition based on the average institutional full cost of instruction or the average full cost of instruction for the system as a whole.

#### §133-32-5. Expenditure.

~~5.1.~~ All tuition and fees collected may only be expended for the statutory purpose under which they were collected under. Institutions may expend auxiliary fees on the operations of residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, and other service centers.

~~5.2.~~ Institutions may spend auxiliary capital fees on debt service, information technology projects, capital projects and campus maintenance and renewal for residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores and other service centers and information technology systems.

~~5.3.~~ Institutions may expend capital fees on debt service, capital projects and facilities maintenance and renewal for facilities that support instruction, research, academic support, student services, institutional support, and operation and maintenance of the physical plant.

~~5.4.~~ Institutions may expend educational and general fees on instruction, research, academic support, student services, institutional support, operation and maintenance of the physical plant, scholarships and fellowships, and debt service on bonds. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.

~~5.5.~~ Institutions may charge supplemental fees to offset the cost of providing services such as, but not limited to, courses, labs, late payments, drug testing, musical instruments, art supplies, and other services provided to students.

### §133-32-6. Refunds.

6.1. Each governing board must establish a refund policy for students who officially withdraw during a semester that ~~at minimum establishes refunds that complies with the following schedule;~~ complies with

~~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 requirements that the United States Department of Education prescribes for the return of Title IV student financial aid funds.~~

### §133-32-7. 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 type of installment plans available either institutionally or through a third party provider.