



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Community And Technical College Education TITLE-SERIES: 135-32
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 135-32 Tuition and Fees

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 18B-1D 3(a)(2)(B)

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:

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: 6/21/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/24/2023

COMMENTS RECEIVED: No

(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?

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

Revisions to this rule clarify guidelines for policy and procedure and bring the rule into compliance with W. Va. State Code.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule governs the approval of tuition and fee increases for all West Virginia public community and technical colleges.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NA

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

NA

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

NA

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	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
2. Estimated Total Revenues	0	0	0

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

NA

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

Yes

Angela S Kerns -- 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 135

LEGISLATIVE RULE

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

SERIES 32

TUITION AND FEES

§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~~ the fixing, collection, and expenditure of tuition and other fees by the governing boards of the State's public community and technical colleges and establishes the processes by which the Council for Community and Technical College Education approves tuition and fee increases at those institutions.

1.2. Authority. -- West Virginia Code ~~§18B-1D-3(a)(2)(B)~~, §18B-10-1(d)

1.3. Filing Date. -- ~~March 29, 2019~~

1.4. Effective Date. -- ~~March 29, 2019~~

1.5. Sunset Date Provision. -- This rule shall terminate and have no further force or effect on ~~March 29, 2024~~ August 1, 2029.

§135-32-2. Purpose. [Reserved]

~~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 ten percent (510%) and above seven percent (7%) over any three-year rolling period.~~

~~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. 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.~~

~~3.2. Capital Fees. — Charges levied on all students to support debt service, capital projects and facilities maintenance and renewal. Chancellor. -- The Chancellor for Community and Technical College Education, as that term is defined by W. Va. Code §§ 18B-2-1 and 18B-2B-2(d), or his or her designee.~~

3.3. Community and Technical College System. – The total of the nine public community and technical colleges under the jurisdiction of the Council for Community and Technical College Education (Council).

~~3.3.~~ 3.4. 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. The amount, excluding State appropriation, established by a board of governors to pay all costs associated with teaching a course.~~

3.6. Full-Time Equivalent Students or Annualized Full-Time Equivalent Students (AFTES). -- 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 two to get AFTES that translates student credit hours into an equivalent number of full-time, full-year students.

3.7. Higher Education Price Index (HEPI). -- A measurement for inflation 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.

~~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.~~ 3.8. 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.~~ 3.9. Reduced Nonresident Tuition and Fees. -- A special tuition and required educational and general 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. 3.10. Special Supplemental Fees. -- Operational charges or user fees charged to offset the specific costs for providing a particular service. These fees include, but are not limited to, parking, course, lab, late payments, drug testing, instrument fees, and other services provided to students.~~

~~§135-32-4. Goals. [Reserved]~~

~~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. 5.1.1. In establishing guidelines, the The Council shall communicate to institutions by February 28 annually the benchmarks and guidelines for consideration of any tuition and fee increase above ~~ten~~ 10 percent ~~and in one year or above seven percent (7%) per year averaged over any a rolling three-year rolling period calculated by averaging the proposed increase with the increase for the immediate two previous years.~~ The cumulative increase is calculated by averaging the proposed increased with the increase for the immediate two previous years. Tuition and fee increases for online courses are not subject to approval by the Council. The benchmarks and guidelines may include, but are not limited to such items as:~~

~~5.1.a.1. 5.1.1.a. The HEPI, or other appropriate inflationary benchmarks, which was not offset~~

by any new state allocations appropriation to the institution's base budget for the next corresponding 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 and fees 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. 5.1.1.b. Institutional and State funding per annualized full-time equivalent student;~~

~~5.1.a.6. 5.1.1.c. Most recent three-year history of tuition and fee increases;~~

~~5.1.a.7. 5.1.1.d. Institutional implementation of new, high cost programs as defined by the Council;~~

~~5.1.a.8. 5.1.1.e. Total sources of student generated revenue, including special supplemental and program fees; and,~~

~~5.1.a.9. 5.1.1.f. Other factors as requested or deemed relevant by the Council, or in response to any new statutory language.~~

~~5.1.b. 5.1.2. A governing board may approve without Council approval tuition and required fee increases for resident students each fiscal year up to ~~ten~~ 10 percent (10%) and or not above seven percent (7%) over any a three-year rolling period ~~without Council approval~~ calculated as described in W. Va. Code § 18B-10-1(k)(1) and Subsection 5.1.1. above.~~

~~5.1.b.1. 5.1.2.a. For the purposes of this rule, the tuition and fee increases that require only local governing board do not require Council approval shall be based on required the institution's tuition and required fee rates charged to all in-state, resident students.~~

~~5.1.b.2. 5.1.2.b. A special The Council shall approve any supplemental 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 50 percent or more of the students and if the inclusion new or increased fee causes resident tuition and fee increases to exceed ten percent in one year and above or seven percent (7%) over any three-year rolling period calculated as described in W. Va. Code § 18B-10-1(k)(1) and Subsection 5.1.1. above. Determination of An institution shall calculate whether the fifty the new or increased fee affects 50 percent (or more) of the students is calculated by using comparing its most current, unduplicated, fall headcount enrollment and comparing these amounts to with the institutional its reported projected student population to be charged. These fees must be included Institutions shall include these new or increased fees in both the reports to Council discussed in sections 5.1.e. and 5.1d required by Subsections 5.1.3. and 5.1.4. below.~~

~~5.1.b.3. 5.1.2.c. The governing boards shall approve all Pprogram fees, must be approved by each governing board and which do not require Council's approval. However, institutions shall include these fees must be included in both the reports to Council discussed in sections 5.1.e. and 5.1d required by Subsections 5.1.3. and 5.1.4. below.~~

~~5.1.e. 5.1.3. In responding to the guidelines and benchmarks provided by the Council By August 31 annually, each institution shall provide the Council with an annual a report by August 31* that specifies details the following information from the most recent academic year:~~

~~5.1.e.1. 5.1.3.a.~~ All Tuition and required educational and general fee rates, program fees, and supplemental fees charged for to resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees students;

~~5.1.e.2. 5.1.3.b.~~ The total number of students charged resident, nonresident, and reduced nonresident required tuition and required educational and general fees, program fees, and special supplemental fees; and

~~5.1.e.3. 5.1.3.c.~~ The total revenue generated from resident, nonresident, and reduced nonresident required tuition and required educational and general fees, program fees, and special supplemental fees.

~~5.1.d. 5.1.4.~~ By April 1 annually, Each institution must shall provide to the Council by April 1st a report of any board-approved or proposed new tuition and required educational and general fees, program fees, and supplemental fees for the next academic year. This report will shall specify:

~~5.1.d.1. 5.1.4.a.~~ Current and proposed tuition and required educational and general fee rates, program fees, and supplemental fees for resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees students;

~~5.1.d.2. 5.1.4.b.~~ The estimated number of students who will be charged any new or proposed changes to existing special supplemental fees; and

~~5.1.d.3. 5.1.4.c.~~ The ~~projected~~ revenue increases projected to be generated from any proposed increases to tuition and required educational and general fees, program fees, and supplemental fees increases for resident, nonresident, and reduced nonresident required tuition and fees, program fees, and special fees students; and

~~5.1.d.4. 5.1.4.d.~~ The justification for tuition and fee increases that exceed a total of 10 % percent in one year and above or seven percent (7%) over any a three-year rolling period calculated as described in W. Va. Code § 18B-10-1(k)(1) and Subsection 5.1.1. above.

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. 5.2.1.~~ The Council will require each Each institution to shall report to the Council annually on the number of nonresident students enrolled and its nonresident tuition and fee rates. 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.e. 5.2.2.~~ Full cost of instruction at each institution is based on the functional schedule from the institution's most recent financial statements. ~~A calculation will be made and is calculated~~ for each institution taking by dividing the total instruction and student services expenses ~~divided~~ by the institution's full-time equivalent students. The ~~System Council shall determine the average~~ shall be determined full cost of instruction for the community and technical college system by totaling the instruction and student services expenses for all institutions ~~divided and dividing that sum~~ by the full-time equivalent students ~~for the entire system enrolled at all the institutions.~~ Both The Council shall provide to the institutions annually its calculations shall be provided to the institutions annually by January 31st of both the institutional and

~~system average full cost of instruction. Each institution will report all nonresident tuition and fee rates. The Chancellor shall review. Nonresident tuition and fees will be reviewed by Council staff to determine if current proposed nonresident total tuition and fees fall below the lower lesser of the most recently reported system average or the applicable institutional full cost of instruction.~~

~~5.2.d. 5.2.3.~~ Institutional governing boards may choose to set nonresident tuition based on the ~~lower lesser~~ of the respective institution's full cost of instruction or the system average full cost of instruction.

~~5.2.e. 5.2.4. In order to~~ To provide additional educational opportunities to West Virginia residents, ~~West Virginia community and technical colleges governing boards~~ may enter into reciprocity agreements with nearby out-of-state higher education institutions whereby the ~~out-of-state~~ institutions makes available programs and courses that are not available at the ~~reciprocating West Virginia institution and vice versa.~~

~~5.2.e.1. 5.2.4.a.~~ 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. 5.2.4.b.~~ Reciprocity agreements ~~shall be approved by the Council may not go into effect until they are approved by the Council and approved as to form by the Attorney General's Office.~~ An institution's ~~Request for approval of a proposed reciprocity agreement~~ 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. 5.2.4.c.~~ Tuition and required fees for nonresident students subject to reciprocity agreements; ~~shall be charged by community and technical colleges in a manner that is~~ shall be consistent with the ~~Council fully~~ 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, cover the full cost of instruction as defined in 5.2.e. unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Council.~~

~~5.3.b. 5.3.1. Each governing board shall provide There must be clear, specific criteria provided by each Governing Board to govern what in its determination of which students will be charged this the reduced, nonresident tuition rate, i.e. geographic location such as the out-of-state surrounding counties bordering the West Virginia institution.~~

~~5.3.e. 5.3.2. Each institution must shall report to the Council 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. required by subsection 5.1.4. above.~~

§135-32-6. Refunds.

6.1. Each board of governors ~~must shall~~ 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.e. 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.~~

§135-32-7. Deferred Payment Plans.

~~7.1. Each board of governors shall permit fee payments to be made in installments over the course of an academic term establish a policy that provides for implementation of deferred payment plans for students allowing them to pay their tuition and required fees in installments. The deferred payment plan(s) shall provide for full payment prior to the end of the academic term. All deferred payment policies shall address:~~

~~7.1.1. The type of installment plans available either institutionally or through a third-party provider; and~~

~~7.1.2. The interest rates, if any, that will be charged during the term of the plan.~~

§135-32-8. Expenditure.

~~8.1. Institutions may expend auxiliary fees on the operations of food services, student unions, bookstores and other service centers.~~

~~8.2. Institutions may spend auxiliary capital fees on debt service; information technology projects; capital projects; operation and maintenance of the physical plant; and repair, maintenance, and renewal of capital facilities.~~

~~8.3. 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.~~

~~8.4. 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.~~