

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

Form #2

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Legislative CITE AUTHORITY: §18B-1-6 and §18B-10-1(d)

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: 32

TITLE OF RULE BEING PROPOSED: Tuition and Fee Policy

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 8, 2011 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Dr. Brian Noland, Chancellor

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

2011 AUG -9 PM 3:49

SERIES 32
TUITION AND FEE POLICY

OFFICE OF THE
SECRETARY OF STATE

§133-32-1. General.

- 1.1. Scope. This rule establishes the policy for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education.
- 1.2. Authority. West Virginia Code §18B-1-6 and §18B-10-1(d)
- 1.3. Filing Date. --.
- 1.4. Effective Date. --.

§133-32-2. Definitions.

- 2.1. 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.
- 2.2. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal.
- 2.3. 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 physical plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations.
- 2.4. 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.
- 2.5. 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.
- 2.6. Median Family Income. Median family 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.

- 2.7. Peer. A higher education institution located in another state. Selected pursuant to W. Va. Code §18B-1A-3.
- 2.8. Required Fees. Charges levied to all students of a particular class or category e.g., undergraduate, graduate.
- 2.9. Special Fee. Operational charges or user fees charged to offset the specific costs for providing these services. These fees include, but are not limited to, 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.

§135-32-3. Goals.

- 3.1. The Commission seeks to achieve the following goals and objectives with its tuition rule:
 - 3.1.1. To establish equity in the establishment of tuition charged to students.
 - 3.1.2. To foster goals related to program completion for West Virginia students.
 - 3.1.3. To promote the future economic welfare of the state through an increased output of degree holders in West Virginia.

§133-32-4. Tuition and Fee Adjustments.

- 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. Approval of Tuition and Required Fee Adjustments.
 - 4.2.a. Approval Guidelines. A governing board may approve tuition and required fee increases for resident students each fiscal year of up to five percent. Tuition and fee increases above five percent must be approved by the Commission. Programmed fee increases constituted as part of pre-existing institutional bond obligations/covenants shall be excluded from annual fee increase calculations; and

A fee used solely for the purpose of complying with the athletic provisions of 20 U.S.C. 1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the limitations on fee increases set forth in this subsection for three years from June 10, 2011 (*See Section* §18B-10-1(k)2).

- 4.2.a.1. For the purposes of this rule, calculation of five percent shall be based on all required tuition and fee rates charged to all West Virginia resident students.
- 4.2.a.2. Tuition increases related to fee simplification proposals that result in a revenue neutral change for the institution shall not be counted toward the five percent allowance exempt from Commission approval.
- 4.2.b. In establishing guidelines, the Commission shall communicate to institutions benchmarks and guidelines for consideration of any increase above five percent. The benchmarks and guidelines may include, but are not limited to such items as:
 - 4.2.b.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;
 - 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;
 - 4.2.b.5. Institutional distance from peer equity levels;
 - 4.2.b.6. Institutional and state funding per full-time equivalent student;
 - 4.2.b.7. Most recent three year history of tuition rates and increases;
 - 4.2.b.8. Increases utilized to maintain high-quality programs;
 - 4.2.b.9. Institutional progress toward achieving the goals of education established by the Southern Regional Education Board;
 - 4.2.b.10. Demonstrate that base appropriation increases have not kept pace with recognized national inflationary benchmarks;
 - 4.2.b.11. Total sources of student generated revenue, including special fee and program fee rates; and,
 - 4.2.b.12. Other factors as requested or deemed relevant by the Commission or in response to any new statutory language.
- 4.2.c. In responding to the guidelines and benchmarks provided by the Commission, each governing board shall provide the Commission with an annual report that details:

- 4.2.c.1. All tuition and fee rates presently charged and the estimated number of students currently being charged the tuition and fees;
 - 4.2.c.2. The proposed total increase in any tuition and fees for the next fiscal year;
 - 4.2.c.3. The estimated number of students who will be charged the increased tuition and fees; and
 - 4.2.c.4. 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 FTE. 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 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 they were collected under.

§133-32-6. Refunds.

- 6.1. Refunds of tuition and fees shall be effectuated in the same manner as the refunds dictated by federal financial aid rules or regulations.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Tuition and Fee Policy

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301
Contact: Dr. Brian Noland, Chancellor

Phone Number: 304-558-0699 Email: noland@hepc.wvnet.edu

Fiscal Note Summary

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

No impact.

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	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Tuition and Fee Policy

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

There will be no effect on cost or revenue.

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.

Date: August 9, 2011

Signature of Agency Head or Authorized Representative

B. Mel

**West Virginia Higher Education Policy Commission
Meeting of August 5, 2011**

ITEM: Approval of Series 32, Tuition and Fee Policy

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the proposed Series 32 as a legislative rule for filing with the Secretary of State for a thirty-day public comment period.

Further Resolved, That staff is instructed to forward the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action at the conclusion of the comment period if no comments are received during the comment period.

STAFF MEMBER: Brian Noland

BACKGROUND:

West Virginia Code §18B-10-1 requires the Commission to propose a legislative rule to govern the establishment, collection, and expenditure of tuition and other fees by the institutional governing boards. A primary goal of the new rule is to provide institutional flexibility in setting tuition rates. The proposed rule establishes guidelines for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education.

The Presidents, Chairs of the Advisory Councils, and other constituents have been provided with a draft copy of the proposed rule.

It is recommended that the Commission approve the proposed version of Series 32 for filing with the Secretary of State's office for a thirty-day public comment period. It is further recommended that if no comments are received during the comment period, the rule be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) for approval and further legislative action.

The Commission is required to submit the proposed new rule to LOCEA by October 1, 2011.