WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 101
(By Mr. Speaker, Mr. Kiss, and Delegates Michael, Mezzatesta, Williams, Doyle, Leach and Tabb)

Passed March 21, 2004

In Effect from Passage
AN ACT to repeal §18B-10-3, §18B-10-4a and §18B-10-10 of the code of West Virginia, 1931, as amended; to amend and reenact §18B-5-4 of said code; to amend said code by adding thereto a new section, designated §18B-9-2a; to amend and reenact §18B-10-1, §18B-10-2, §18B-10-4, §18B-10-4b, §18B-10-5, §18B-10-6, §18B-10-7a, §18B-10-8, §18B-10-9, §18B-10-11, §18B-10-12, §18B-10-13, §18B-10-14 and §18B-10-15 of said code; to amend said code by adding thereto a new section, designated §18B-10-1b; and to amend and reenact §18C-3-1 of said code, all relating to fees collected and moneys expended by state institutions of higher education; tuition and fee simplification for public higher education; clarifying authority of the West Virginia council for community and technical college education related to community and technical college tuition and fees; repealing obsolete language; expanding certain purchasing authority; modifying certain purchasing procedures; expanding certain employee classifications; authorizing deferred payment plans for students; requiring maintenance of support for certain instructional and student
activities; clarifying authority of commission to enter into trust agreements; clarifying purposes for which fees may be used; deleting certain restrictions on bookstore sales; clarifying certain tuition and fee waiver provisions; and clarifying terms and conditions for the health education student loan program.

Be it enacted by the Legislature of West Virginia:

That §18B-10-3, §18B-10-4a and §18B-10-10 of the code of West Virginia, 1931, as amended, be repealed; that §18B-5-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-9-2a; that §18B-10-1, §18B-10-2, §18B-10-4, §18B-10-4b, §18B-10-5, §18B-10-6, §18B-10-7a, §18B-10-8, §18B-10-9, §18B-10-11, §18B-10-12, §18B-10-13, §18B-10-14 and §18B-10-15 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-1b; and that §18C-3-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, commission and each governing board, through the vice chancellor for administration, shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the council or commission, as appropriate, and the state institutions of higher education under their jurisdiction. The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. The rules shall assure that the council, commission and governing boards:
(1) Do not preclude any person from participating and making sales thereof to the governing board or to the council or commission except as otherwise provided in section five of this article. Provision of consultant services such as strategic planning services will not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services;

(2) Establish and prescribe specifications, in all proper cases, for materials, supplies, equipment, services and printing to be purchased;

(3) Adopt and prescribe such purchase order, requisition or other forms as may be required;

(4) Negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices;

(6) Post notices of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the specified institution involved in the purchase, at least two weeks prior to making such purchases and ensure that the notice is available to the public during business hours;

(7) Provide for purchasing in the open market;
(8) Provide for vendor notification of bid solicitation and emergency purchasing;

(9) Provide that competitive bids are not required for purchases of twenty-five thousand dollars or less; and

(10) Provide for not fewer than three bids where bidding is required. If fewer than three bids are submitted, an award may be made from among those received.

(b) The council, commission or each governing board, through the vice chancellor for administration, may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(c) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code apply to the competitive bids made pursuant to this section.

(d) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid that it was the successful bid and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. A record in the purchase file may not be destroyed without the written consent of the legislative auditor.
for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the legislative auditor. All files, no matter the storage method, shall be open for inspection by the legislative auditor upon request.

(e) The commission and council also jointly shall adopt rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment, either is:

(1) A graduate of an accredited college or university; or

(2) Has at least four years’ experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(f) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond shall be filed with the secretary of state. The cost of any such bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(g) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two,
chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered and they may be entered into the state’s centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a, and specifically sections twenty-six, twenty-seven and twenty-eight of said article two, to determine whether the amount of the purchase is within the commission’s, council’s or governing board’s quarterly allotment, is in accordance with the approved expenditure schedule, and otherwise conforms to the provisions of article two, chapter five-a of this code.

(h) The governing boards, council and commission may make requisitions upon the auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the auditor shall draw a warrant upon the treasurer for such accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every thirty days or more often if required by the state auditor.

(i) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the attorney general. A contract which requires approval as to form by the attorney general is considered approved if the attorney general has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or
standardized forms previously approved by the attorney general
and do not make substantive changes in the terms and condi-
tions of the contract do not require approval by the attorney
general. The attorney general shall make a list of those changes
which he or she deems to be substantive and the list, and any
changes thereto, shall be published in the state register. A
contract that exceeds the dollar amount requiring competitive
sealed bids in this section shall be filed with the state auditor.

If requested to do so, the governing boards, council or commis-
sion shall make all contracts available for inspection by the
state auditor. The governing board, council or commission, as
appropriate, shall prescribe the amount of deposit or bond to be
submitted with a bid or contract, if any, and the amount of
deposit or bond to be given for the faithful performance of a
contract.

(j) If the governing board, council or commission purchases
or contracts for materials, supplies, equipment, services and
printing contrary to the provisions of sections four through
seven of this article or the rules pursuant thereto, such purchase
or contract is void and of no effect.

(k) Any governing board or the council or commission, as
appropriate, may request the director of purchases to make
available, from time to time, the facilities and services of that
department to the governing boards, council or commission in
the purchase and acquisition of materials, supplies, equipment,
services and printing and the director of purchases shall
cooperate with that governing board, council or commission, as
appropriate, in all such purchases and acquisitions upon such
request.

(l) Each governing board or the council or commission, as
appropriate, shall permit private institutions of higher education
to join as purchasers on purchase contracts for materials,
supplies, services and equipment entered into by that governing
board or the council or commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the council or commission an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The private school shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(m) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from cooperative buying groups, consortia, the federal government or from a federal government contract and purchasing from the cooperative buying groups, consortia, federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(n) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(o) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of the provisions of
section fifty-four, article three, chapter five-a of this code, also
known as the “prompt pay act of 1990”.

(p) Consultant services, such as strategic planning services,
may not preclude or inhibit the governing boards, council or
commission from considering any qualified bid or response for
delivery of a product or a commodity because of the rendering
of those consultant services.

(q) After the commission or council, as appropriate, has
granted approval for lease-purchase arrangements by the
governing boards, a governing board may enter into
lease-purchase arrangements for capital improvements,
including equipment. Any lease-purchase arrangement so
entered shall constitute a special obligation of the state of West
Virginia. The obligation under a lease-purchase arrangement so
entered may be from any funds legally available to the institu-
tion and must be cancelable at the option of the governing
board or institution at the end of any fiscal year. The obligation,
any assignment or securitization thereof, never constitutes an
indebtedness of the state of West Virginia or any department,
agency or political subdivision thereof, within the meaning of
any constitutional provision or statutory limitation, and may not
be a charge against the general credit or taxing powers of the
state or any political subdivision thereof. Such facts shall be
plainly stated in any lease-purchase agreement. Further, the
lease-purchase agreement shall prohibit assignment or securiti-
zation without consent of the lessee and the approval of the
attorney general of West Virginia. Proposals for any arrange-
ment must be requested in accordance with the requirements of
this section and any rules or guidelines of the commission and
council. In addition, any lease-purchase agreement which
exceeds one hundred thousand dollars total shall be approved
by the attorney general of West Virginia. The interest compo-
ment of any lease-purchase obligation is exempt from all
taxation of the state of West Virginia, except inheritance, estate
and transfer taxes. It is the intent of the Legislature that if the
requirements set forth in the Internal Revenue Code of 1986, as
amended, and any regulations promulgated pursuant thereto are
met, the interest component of any lease-purchase obligation
also is exempt from the gross income of the recipient for
purposes of federal income taxation and may be designated by
the governing board or the president of the institution as a
bank-qualified obligation.

(r) Notwithstanding any other provision of this code to the
contrary, the commission, council and governing boards have
the authority, in the name of the state, to lease, or offer to lease,
as lessee, any grounds, buildings, office or other space in
accordance with this paragraph and as provided below:

(1) The commission, council and governing boards have
sole authority to select and to acquire by contract or lease all
grounds, buildings, office space or other space, the rental of
which is necessarily required by the commission, council or
governing boards for the institutions under their jurisdiction.
The chief executive officer of the commission, council or an
institution shall certify the following:

(A) That the grounds, buildings, office space or other space
requested is necessarily required for the proper function of the
commission, council or institution;

(B) That the commission, council or institution will be
responsible for all rent and other necessary payments in
connection with the contract or lease; and

(C) That satisfactory grounds, buildings, office space or
other space is not available on grounds and in buildings
currently owned or leased by the commission, council or the
institution.
Before executing any rental contract or lease, the commission, council or a governing board shall determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair rental value.

(2) The commission, council and governing boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year but not to exceed forty years. Any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting therefrom, pursuant to the provisions of this subsection shall be presented by the policy commission or council, as appropriate, to the joint committee on government and finance for prior review. Any such lease shall contain, in substance, all the following provisions:

(A) That the commission, council or governing board, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days’ written notice to the lessor at least thirty days prior to the last day of the succeeding month;

(B) That the lease is considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds therefor or otherwise acts to impair the lease or cause it to be canceled; and

(C) That the lease is considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the commission, council or governing board before the end of the then-current fiscal year.
(3) The commission, council or institution which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the commission, council or governing board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

(4) Leases and other instruments for grounds, buildings, office or other space, once approved by the commission, council or governing board, may be signed by the chief executive officer of the commission, council or institution. Any lease or instrument exceeding one hundred thousand dollars annually shall be approved as to form by the attorney general. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the state auditor.

(5) The commission and council jointly may promulgate rules they consider necessary to carry out the provisions of this section.

(s) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to the provisions of this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution under their respective jurisdictions using
purchasing cards. The procedures shall ensure that each maintains:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with the provisions of article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) By the first day of November, two thousand four, the council and commission jointly shall present the procedures to the legislative oversight commission on education accountability for its adoption.

(3) Notwithstanding any other provision of this code to the contrary, if the legislative oversight commission on education accountability adopts the procedures, the council, commission, and any institution authorized pursuant to subdivision (4) of this subsection, may use purchasing cards for:

(A) Travel expenses directly related to the job duties of the traveling employee, including fuel and food; and

(B) Any routine, regularly-scheduled payment, including, but not limited to, utility payments and real property rental fees.

The council, commission and each institution annually by the thirtieth day of June, shall provide to the state purchasing division a list of all goods or services for which payment was made pursuant to this provision during that fiscal year.

(4) The commission and council each shall evaluate the capacity of each institution under its jurisdiction for complying with the procedures established pursuant to subdivision (3) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to said
subdivision (3) for any such institution it determines has the capacity to comply.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARIESCHEDULE AND CLASSIFICATION SYSTEM.


The Legislature finds that the doctoral institutions, as defined in section one, article eight of this chapter, have unique staffing demands for their extensive research and doctoral programs, and therefore require additional nonclassified staff. Each doctoral institution may exceed the percentage of nonclassified employees authorized in section two, article nine of this chapter by an additional five percent.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:
(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing system-wide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from such accounts, an institution may expend funds from each such special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student’s attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

(d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.

(e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a, chapter
twenty-nine-a of this code, subject to the prior approval of the
legislative oversight commission on education accountability.

(f) The schedule of all tuition and fees, and any changes
therein, shall be entered in the minutes of the meeting of the
appropriate governing board and the board shall file with the
commission or council, or both, as appropriate, and the legisla-
tive auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged
full-time students, as defined in section one-b of this article,
who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit
hours in a regular term shall have their fees reduced pro rata
based upon one twelfth of the full-time rate per credit hour and
graduate students taking fewer than nine credit hours in a
regular term shall have their fees reduced pro rata based upon
one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other
nontraditional time periods shall be prorated based upon the
number of credit hours for which the student enrolls in accor-
dance with the above provisions.

(h) All fees are due and payable by the student upon
enrollment and registration for classes except as provided in
this subsection:

(1) The governing boards shall permit fee payments to be
made in installments over the course of the academic term. All
fees shall be paid prior to the awarding of course credit at the
end of the academic term.

(2) The governing boards also shall authorize the accep-
tance of credit cards or other payment methods which may be
generally available to students for the payment of fees. The
73 governing boards may charge the students for the reasonable
74 and customary charges incurred in accepting credit cards and
75 other methods of payment.

76 (3) If a governing board determines that a student’s
77 finances are affected adversely by a legal work stoppage, it may
78 allow the student an additional six months to pay the fees for
79 any academic term. The governing board shall determine on a
80 case-by-case basis if the finances of a student are affected
81 adversely.

82 (4) The commission and council jointly shall propose a rule
83 in accordance with the provisions of article three-a, chapter
84 twenty-nine-a of this code, defining conditions under which an
85 institution may offer tuition and fee deferred payment plans
86 through the institution or through third parties.

87 (5) An institution may charge interest or fees for any
88 deferred or installment payment plans.

89 (i) In addition to the other fees provided in this section,
90 each governing board may impose, collect and distribute a fee
91 to be used to finance a nonprofit, student-controlled public
92 interest research group if the students at the institution demon-
93 strate support for the increased fee in a manner and method
94 established by that institution’s elected student government.
95 The fee may not be used to finance litigation against the
96 institution.

97 (j) Institutions shall retain tuition and fee revenues not
98 pledged for bonded indebtedness or other purposes in accor-
99 dance with the tuition rule proposed by the commission and
100 council jointly pursuant to this section. The tuition rule shall:

101 (1) Provide a basis for establishing nonresident tuition and
(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.
(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(l) Tuition and fee increases of the governing boards are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) A governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board. A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three quarters percent. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board. The commission or council, as appropriate, shall examine individually each request from a governing board for an increase. Any proposed increase requires the approval of the commission or council, as appropriate.

In determining whether to approve or disapprove the governing board’s request, the commission or council shall
164 determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution has met the following conditions:

169 (A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

172 (B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

175 (C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

178 (D) Is implementing the efficiency measures required by section nine, article five of this chapter;

180 (E) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

183 (F) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

187 (G) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

190 (2) This section does not require equal increases among institutions or require any level of increase at an institution.
(3) The commission and council shall report to the legislative oversight commission on education accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (1) of this subsection.

(4) For fiscal year two thousand five only, a governing board of any institution under the jurisdiction of the commission may increase tuition and fees for undergraduate resident students by one and one-half percent greater than the amount authorized by the commission pursuant to the provisions of this section.

(m) The amount of fees assessed immediately prior to the effective date of this act under the provisions of this article relating to a higher education resource fee, a faculty improvement fee, a medical education fee, a health professions fee and a student activities fee are included in the appropriate tuition or fees classifications established under subsection (a) of this section.

§18B-10-1b. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) “Auxiliary capital fees” means charges levied on students to support debt service, capital projects and campus maintenance and renewal for the auxiliary facilities of the institutions;

(b) “Auxiliary fees” means charges levied on 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 predominately 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;

(c) "Full-time graduate student" means a graduate student who is enrolled for nine or more credit hours in a regular term;

(d) "Full-time undergraduate student" means an undergraduate student who is enrolled for twelve or more credit hours in a regular term;

(e) "Required educational and general capital fees" means:

(1) Charges levied on all students to support debt service of systemwide bond issues; and

(2) Charges levied on all students to support debt service, capital projects and campus maintenance and renewal for an institution’s educational and general educational facilities; and

(f) "Tuition and required educational and general fees" means:

(1) Charges levied on all students of that class or category to support educational and general program services; and

(2) 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 are categorized as 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, hospitals or independent operations.

(a) Pursuant to the authority granted by section four, article one-b of this chapter, and section six, article two-b of this chapter, the commission and council jointly shall establish a higher education resource assessment per student for each state institution of higher education under their respective jurisdictions. Community and technical colleges shall transfer all funds collected pursuant to this section to the council. All other institutions shall transfer all funds collected pursuant to this section to the commission. Any reference in this code to higher education resource fee means this higher education resource assessment.

(b) The commission and council jointly shall fix the assessment for the various institutions and classes of students and may periodically change these assessments. The amount of the assessment for each institution shall be prorated for part-time students.

(c) Each institution shall maintain a level of support for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services comparable to that level supported by the higher education resource fee previously authorized by this section.

(d) The assessment shall be expended or allocated by the commission or council to meet its general operating expenses or to fund statewide programs. To the maximum extent practicable, the commission and council shall offset the impact, if any, on financially needy students of any potential assessment increase under this section by allocating an appropriate amount of the revenue to the state scholarship program to be expended in accordance with the provisions of article five, chapter eighteen-c of this code.
§18B-10-4. Medical education.

The commission shall determine an appropriate portion of all tuition and fees paid by medical students enrolled for credit at the West Virginia university school of medicine, Marshall university school of medicine and the West Virginia school of osteopathic medicine to be used to support the health education student loan fund. The portion determined by the commission for this purpose shall be deposited into the health education student loan fund account in accordance with the provisions of article three, chapter eighteen-c of this code.

§18B-10-4b. Additional fee waivers for health sciences and technology academy programs.

(a) In addition to the number of fee waivers permitted in sections five and six of this article for undergraduate, graduate and professional schools, each state institution of higher education may waive all fees or any part thereof for students who are residents of West Virginia and who successfully complete the health sciences and technology academy affiliated programs.

(b) For purposes of this section, “Health Sciences and Technology Academy Programs” means those programs in the health sciences designed to assist junior high and high school students in conjunction with their parents and teachers, to enhance their knowledge and abilities in subject matters which will further a career in the field of health sciences.

§18B-10-5. Fee waivers — Undergraduate schools.

Each governing board periodically may establish fee waivers for students in undergraduate studies at institutions under its jurisdiction entitling recipients to waiver of tuition, capital and other fees subject to the following conditions and limitations:
(a) A state institution of higher education may not have in effect at any time a number of undergraduate fee waivers which exceeds five percent of the number of full-time equivalent undergraduate students registered during the fall semester of the immediately preceding academic year.

(b) Each undergraduate fee waiver entitles the recipient thereof to attend a designated state institution of higher education without payment of the tuition, capital and other fees as may be prescribed by the governing board and is for a period of time not to exceed eight semesters of undergraduate study.

(c) The governing board shall make rules governing the award of undergraduate fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits thereof; the use of the fee waivers by the recipients; and the rights and duties of the recipients with respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(d) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the governing board.

(e) Students enrolled in an administratively-linked community and technical college shall be awarded a proportionate share of the total number of undergraduate fee waivers awarded by a governing board. The number to be awarded to students of the community and technical college is based upon the full-time equivalent enrollment of that institution.

§18B-10-6. Fee waivers – Professional and graduate schools.

In addition to the fee waivers authorized for undergraduate study by the provisions of section five of this article, each governing board periodically may establish fee waivers for study in graduate and professional schools under its jurisdiction, including medicine and dentistry, entitling the recipients
to waiver of tuition, capital, and other fees, subject to the following conditions and limitations:

(a) West Virginia university may not have in effect at any time graduate and professional school fee waivers in a number which exceeds ten percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above ten percent, all graduate assistants employed by West Virginia university shall be granted a fee waiver.

(b) Institutions of higher education other than West Virginia university may not have in effect at any time a number of graduate and professional school fee waivers which exceeds five percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above five percent, all graduate assistants employed by these institutions shall be granted a fee waiver.

(c) Each graduate or professional school fee waiver entitles the recipient to waiver of the tuition, capital, and other fees as may be prescribed by the governing boards and is for a period of time not to exceed the number of semesters normally required in the recipient’s academic discipline.

(d) The governing boards shall make rules governing the award of graduate and professional school fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits thereof; the use of the fee waivers by the recipients; and the rights and duties of the recipients with respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.
(e) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board.

§ 18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.

(a) Each governing board shall promulgate a rule establishing a reduced tuition and fee program for senior citizens. The rule shall include at least the following:

1. (1) One option for individuals who attend undergraduate and graduate courses without receiving credit and one option for those who attend undergraduate and graduate courses for credit;

2. (2) A requirement that the following conditions be met under either option of the program:

   (A) The participant is a resident of West Virginia;

   (B) The participant is sixty-five years of age or older; and

   (C) Classroom space is available;

3. (3) A method of establishing priority for allowing a participant to attend a class or course;

4. (4) A determination of whether to require participants to pay special fees, including laboratory fees, if the fees are required of all other students;

5. (5) A determination of whether to require participants to pay for parking;

6. (6) Requirements for participants in the program under the no credit option:
(A) A grade or credit may not be given; and

(B) The total tuition and fees charged for each course or class, excluding laboratory and parking fees, may not exceed fifty dollars. After the first day of July, two thousand four, the governing boards may change the maximum fee; and

(7) A requirement for participants in the program under the for credit option that tuition and fee rates may not exceed fifty percent of the normal rates charged to state residents by the institution.

(b) The provisions of this section apply to both classroom-based courses, electronic and internet-based courses, and all other distance education delivery.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) Effective the first day of July, two thousand four, this section, and any rules adopted by the commission, council, or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, govern the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. Prior to the first day of July, two thousand four, the statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix such fees at higher rates for students who are not residents of this state.
(c) Fees for part-time students. – For all part-time students and for all summer school students, the governing boards shall impose and collect such fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of such fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is created in the state treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from such students pursuant to section one of this article.

The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest therein;

(2) The construction or acquisition of new buildings;
(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for any such buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

(f) The governing boards, in their discretion, may use the moneys in such special capital improvements funds and special auxiliary improvement funds to finance the costs of the above purposes on a cash basis. The commission, when singly or jointly requested by the governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis. Any expenditures from such special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as was agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected
are presented to the governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure.

(g) Such revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

(h) The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission and such revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as determined by the governing board receiving the proceeds and the commission. Such revenue bonds shall be signed by the governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. Such revenue bonds shall be sold in such manner as the commission or governing board determines is for the best interests of the state.

(i) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions
authorizing the issuance of such bonds may enter into valid and
legally binding covenants with the holders of such revenue
bonds as to the custody, safeguarding and disposition of the
proceeds of such revenue bonds, the moneys in such special
funds, sinking funds, reserve funds or any other moneys or
funds; as to the rank and priority, if any, of different issues of
revenue bonds by the commission or governing boards under
the provisions of this section; as to the maintenance or revision
of the amounts of such fees; as to the extent to which swap
agreements, as defined in section two-h, article two-g, chapter
thirteen of this code shall be used in connection with such
revenue bonds, including such provisions as payment, term,
security, default and remedy provisions as the commission shall
consider necessary or desirable, if any, under which such fees
may be reduced; and as to any other matters or provisions
which are considered necessary and advisable by the commis-
sion or governing boards in the best interests of the state and to
enhance the marketability of such revenue bonds.

(j) After the issuance of any of such revenue bonds, the fees
at the state institutions of higher education pledged to the
payment thereof may not be reduced as long as any of such
revenue bonds are outstanding and unpaid except under such
terms, provisions and conditions as shall be contained in the
resolution, trust agreement or other proceedings under which
such revenue bonds were issued. Such revenue bonds shall be
and constitute negotiable instruments under the uniform
commercial code of this state; shall, together with the interest
thereon, be exempt from all taxation by the state of West
Virginia, or by any county, school district, municipality or
political subdivision thereof; and such revenue bonds may not
be considered to be obligations or debts of the state and the
credit or taxing power of the state may not be pledged therefor,
but such revenue bonds shall be payable only from the revenue
pledged therefor as provided in this section.
(k) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. It is the intent of the Legislature to authorize over a five-year period beginning on the first day of July, two thousand four, additional sources of revenue and funds to effect such funding for capital improvement.

(l) Funding of systemwide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(m) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the commission.

(n) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(o) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b, chapter eighteen prior to the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission shall have the authority to transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(p) Effective the first day of July, two thousand four, the capital and auxiliary capital fees authorized by this section and section one of this article are in lieu of any other fees set out in
this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section, such fees shall remain in effect in amounts not less than the amounts in effect as of that date, until such time as the revenue bonds payable from any of such fees have been paid or the pledge of such fees is otherwise legally discharged.

§18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal, state or local agency or from any foundation, corporation or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state institution of higher education administering the program has the authority to excuse all students enrolled in such program from the payment of tuition and other fees.

§18B-10-11. Fees and money derived from athletic contests.

The governing board of a state institution of higher education may fix and charge admission fees to athletic contests at institutions under its jurisdiction. The governing board may enter into contracts and spend and receive money under such contracts for the student athletic teams of the institutions to contest with other athletic teams inside or outside the state. All money received from such fees and contracts shall be deposited in the auxiliary operating account of the institution and ex-
§ 18B-10-12. Student activities.

(a) The governing board of a state institution of higher education may make funds available from tuition and fees to support extracurricular activities of the students as considered necessary.

(b) Each institution shall maintain a level of support for extracurricular activities of the students comparable to that level supported by student activities fees previously authorized by this section.

§ 18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.

The appropriate governing board of each state institution of higher education shall fix the fees to be charged students and faculty members for rooms, board and meals at the dormitories, faculty homes, dining halls and cafeterias operated by such board at the institution. Such fees shall be commensurate with the complete cost of such services.

All fees collected for such services shall be used first to meet interest, principal and sinking fund requirements due on any outstanding revenue bonds for which the receipts may have been pledged as security and to pay the operating and maintenance costs of the dormitories, faculty homes, dining halls and cafeterias. Any such receipts not needed for these purposes may be expended by the appropriate governing board for any other auxiliary enterprise or educational and general instructional costs.


(a) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell books,
stationery and other school and office supplies generally carried in college bookstores.

(b) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage and other operating expenses.

(c) Each governing board also shall ensure that bookstores operated at institutions under its jurisdiction meet the additional objective of minimizing the costs to students of purchasing textbooks by adopting policies which may require the repurchase and resale of textbooks on an institutional or a statewide basis and provide for the use of certain basic textbooks for a reasonable number of years.

(d) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in section two, article two, chapter twelve of this code. Subject to the approval of the governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

(e) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and ensuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

§18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.
(a) The governing board of each state institution of higher education may provide special services and special programs at such institutions and may fix and collect special fees or charges therefor. Such special services and special programs include, but are not limited to, any of the following:

(1) The conduct of music camps and band, orchestra or voice clinics for secondary school students or other youth groups; summer tutoring programs for primary and secondary school students; speech therapy clinics and services; educational and psychological testing programs; student guidance programs; and statistical studies and calculations by an electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff and visitors.

(3) Rental of musical recordings, educational films, slides and other audiovisual aids.

(4) Microfilming or other mechanical reproduction of records and noncopyrighted library reference materials.

(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses and any other special program or special service customarily provided by institutions of higher education.

(6) Motor pools consisting of motor vehicles for the use of their employees when carrying on the business and affairs of the institutions.

(b) All fees or charges collected for any such special services or programs shall cover the total cost of the service or program.
CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-1. Health education loan program; establishment; administration; eligibility and loan cancellation; required report.

(a) For the purposes of this section, vice chancellor of administration means the person employed pursuant to section two, article four, chapter eighteen-b of this code.

(b) There is continued a special revolving fund account under the commission in the state treasury to be known as the health education student loan fund which shall be used to carry out the purposes of this section. The fund consists of:

(1) All funds on deposit in the medical student loan fund in the state treasury or which are due or become due for deposit in the fund as obligations made under the previous enactment of this section;

(2) Those funds provided pursuant to the provisions of section four, article ten, chapter eighteen-b of this code;

(3) Appropriations provided by the Legislature;

(4) Repayment of any loans made under this section;

(5) Amounts provided by medical associations, hospitals, or other medical provider organizations in this state, or by political subdivisions of the state, under an agreement which requires the recipient to practice his or her health profession in this state or in the political subdivision providing the funds for a predetermined period of time and in such capacity as set forth in the agreement; and
(6) Other amounts which may be available from external
sources.

Balances remaining in the fund at the end of the fiscal year
do not expire or revert. All costs associated with administering
this section shall be paid from the health education student loan
fund.

(c) The vice chancellor for administration may utilize any
funds in the health education student loan fund for the purposes
of the medical student loan program. The commission shall give
priority for the loans to residents of this state, as defined by the
commission. An individual is eligible for loan consideration if
the individual:

(1) Demonstrates financial need;

(2) Meets established academic standards;

(3) Is enrolled or accepted for enrollment at one of the
aforementioned schools of medicine in a program leading to the
degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);

(4) The individual has not yet received one of the degrees
provided in subdivision (3) of this subsection; and

(5) Is not in default of any previous student loan.

(d) At the end of each fiscal year, any individual who has
received a medical student loan and who has rendered services
as a medical doctor or a doctor of osteopathy in this state in a
medically underserved area or in a medical specialty in which
there is a shortage of physicians, as determined by the division
of health at the time the loan was granted, may submit to the
commission a notarized, sworn statement of service on a form
provided for that purpose. Upon receipt of the statement the
commission shall cancel five thousand dollars of the outstand-
ing loan or loans for every full twelve consecutive calendar
months of such service.

(e) No later than thirty days following the end of each fiscal
year, the vice chancellor for administration shall prepare and
submit a report to the commission for inclusion in the statewide
report card required under section eight, article one-b, chapter
eighteen-b of this code to be submitted to the legislative
oversight commission on education accountability established
under section eleven, article three-a, chapter twenty-nine-a of
this code. At a minimum, the report shall include the following
information:

(1) The number of loans awarded;

(2) The total amount of the loans awarded;

(3) The amount of any unexpended moneys in the fund; and

(4) The rate of default during the previous fiscal year on the
repayment of previously awarded loans.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 4th day of April, 2004.

Governor
PRESENTED TO THE GOVERNOR
Date 4/3/04
Time 2:15 P.M.