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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 564

(SENATORS EDGELL, PLYMALE, KESSLER
AND STOLLINGS, *original sponsors*)

[Passed March 8, 2008; to take effect July 1, 2008.]

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AN ACT to amend and reenact §18-19-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-10-1, §18B-10-5, §18B-10-6 and §18B-10-7 of said code, all relating to higher education tuition and fees;

clarifying eligibility requirements for tuition and fee waivers for certain applicants; allowing increases in existing tuition and fees at institutions that are below the state average; changing method of calculating limits on waivers of tuition and fees; exempting tuition and fee waivers granted to higher education employees, spouses and dependents and all tuition and fee waivers authorized by statute from calculation of limits on percentage of tuition and fee waivers granted by state institutions of higher education; and requiring waivers of tuition and fees for certain individuals.

Be it enacted by the Legislature of West Virginia:

That §18-19-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-10-1, §18B-10-5, §18B-10-6 and §18B-10-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR SPOUSES AND CHILDREN OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

1 (a) To be eligible for the benefits of this article, a child
2 or spouse set forth in section one of this article shall
3 meet the following conditions:

4 (1) In the case of a child, is at least sixteen and not
5 more than twenty-five years of age;

6 (2) Is enrolled in a post-secondary education or

7 training institution in this state; and

8 (3) Is the child or spouse of an enlistee who designated
9 West Virginia as his or her state of record.

10 (b) The application shall be made to, and upon forms
11 provided by, the West Virginia Division of Veterans'
12 Affairs. The division shall determine the eligibility of
13 those who apply and the yearly amount to be allotted
14 each applicant. The amount, in the discretion of the
15 division, may vary from year to year, but may not
16 exceed the sum of one thousand dollars in any one
17 semester or a total of two thousand dollars in any one
18 year. In selecting those to receive the benefits of this
19 article, preference shall be given those who are
20 otherwise financially unable to secure the educational
21 opportunities.

CHAPTER 18B. HIGHER EDUCATION.

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.

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

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special
11 revenue account for each of the following classifications
12 of fees:

13 (1) All tuition and required educational and general
14 fees collected;

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

17 (3) All required educational and general capital fees
18 collected to support existing systemwide and
19 institutional debt service and future systemwide and
20 institutional debt service, capital projects and campus
21 renewal for educational and general facilities.

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

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

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

43 (e) The schedule of all tuition and fees, and any
44 changes in the schedule, shall be entered in the minutes
45 of the meeting of the appropriate governing board and
46 the board shall file with the commission or council, or
47 both, as appropriate, and the Legislative Auditor a
48 certified copy of the schedule and changes.

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

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

60 (2) Fees for students enrolled in summer terms or
61 other nontraditional time periods shall be prorated
62 based upon the number of credit hours for which the
63 student enrolls in accordance with the provisions of this
64 subsection.

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

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

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

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

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

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

93 (h) In addition to the other fees provided in this
94 section, each governing board may impose, collect and
95 distribute a fee to be used to finance a nonprofit,
96 student-controlled public interest research group if the
97 students at the institution demonstrate support for the

98 increased fee in a manner and method established by
99 that institution's elected student government. The fee
100 may not be used to finance litigation against the
101 institution.

102 (i) Institutions shall retain tuition and fee revenues
103 not pledged for bonded indebtedness or other purposes
104 in accordance with the tuition rule proposed by the
105 commission and council jointly pursuant to this section.
106 The tuition rule shall:

107 (1) Provide a basis for establishing nonresident tuition
108 and fees;

109 (2) Allow institutions to charge different tuition and
110 fees for different programs;

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

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

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

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

123 (D) If the fee is approved, the amount of the state
124 subsidy shall be reduced annually by the amount of

125 money generated for the institution by the fees. All
126 state subsidies for the auxiliary services shall cease five
127 years from the date the mandatory auxiliary fee is
128 implemented;

129 (E) The commission, council or both, as appropriate,
130 shall certify to the Legislature annually by the first day
131 of October the amount of fees collected for each of the
132 five years;

133 (4) Establish methodology, where applicable, to
134 ensure that, within the appropriate time period under
135 the compact, community and technical college tuition
136 rates for community and technical college students in
137 all independently accredited community and technical
138 colleges will be commensurate with the tuition and fees
139 charged by their peer institutions.

140 (j) A penalty may not be imposed by the commission
141 or council upon any institution based upon the number
142 of nonresidents who attend the institution unless the
143 commission or council determines that admission of
144 nonresidents to any institution or program of study
145 within the institution is impeding unreasonably the
146 ability of resident students to attend the institution or
147 participate in the programs of the institution. The
148 institutions shall report annually to the commission or
149 council on the numbers of nonresidents and such other
150 enrollment information as the commission or council
151 may request.

152 (k) Tuition and fee increases of the governing boards,
153 except for the governing boards of the state institutions
154 of higher education known as Marshall University and
155 West Virginia University, are subject to rules adopted

156 by the commission and council jointly pursuant to this
157 section and in accordance with the provisions of article
158 three-a, chapter twenty-nine-a of this code.

159 (1) Subject to the provisions of subdivisions (4) and (8)
160 of this subsection, a governing board of an institution
161 under the jurisdiction of the commission may propose
162 tuition and fee increases of up to nine and one-half
163 percent for undergraduate resident students for any
164 fiscal year. The nine and one-half percent total
165 includes the amount of increase over existing tuition
166 and fees, combined with the amount of any newly
167 established specialized fee which may be proposed by
168 a governing board.

169 (2) A governing board of an institution under the
170 jurisdiction of the council may propose tuition and fee
171 increases of up to four and three-quarters percent for
172 undergraduate resident students for any fiscal year,
173 except a governing board may propose increases in
174 excess of four and three quarters percent if existing
175 tuition and fee rates at the institution are below the
176 state average for tuition and fees at institutions under
177 the jurisdiction of the council. The four and
178 three-quarters percent total includes the amount of
179 increase over existing tuition and fees, combined with
180 the amount of any newly established, specialized fee
181 which may be proposed by a governing board.

182 (3) The commission or council, as appropriate, shall
183 examine individually each request from a governing
184 board for an increase.

185 (4) Subject to the provisions of subdivision (8) of this
186 subsection, the governing boards of Marshall University

187 and West Virginia University, as these provisions relate
188 to the state institutions of higher education known as
189 Marshall University and West Virginia University, each
190 may annually:

191 (A) Increase tuition and fees for undergraduate
192 resident students to the maximum allowed by this
193 section without seeking approval from the commission;
194 and

195 (B) Set tuition and fee rates for post-baccalaureate
196 resident students and for all nonresident students,
197 including establishing regional tuition and fee rates,
198 reciprocity agreements or both.

199 (C) The provisions of this subdivision do not apply to
200 tuition and fee rates of the administratively linked
201 institution known as Marshall Community and
202 Technical College, the administratively linked
203 institution known as the Community and Technical
204 College at West Virginia University Institute of
205 Technology, the regional campus known as West
206 Virginia University at Parkersburg and, until the first
207 day of July, two thousand seven, the regional campus
208 known as West Virginia University Institute of
209 Technology.

210 (5) Any proposed tuition and fee increase for state
211 institutions of higher education other than the state
212 institutions of higher education known as Marshall
213 University and West Virginia University requires the
214 approval of the commission or council, as appropriate.
215 In determining whether to approve or deny the
216 governing board's request, the commission or council
217 shall determine the progress the institution has made

218 toward meeting the conditions outlined in this
219 subdivision and shall make this determination the
220 predominate factor in its decision. The commission or
221 council shall consider the degree to which each
222 institution has met the following conditions:

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

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

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

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

235 (E) Has demonstrated to the satisfaction of the
236 commission or council that the institution is making
237 adequate progress toward achieving the goals for
238 education established by the southern regional
239 education board; and

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

244 (6) This section does not require equal increases
245 among institutions or require any level of increase at an

246 institution.

247 (7) The commission and council shall report to the
248 Legislative Oversight Commission on Education
249 Accountability regarding the basis for each approval or
250 denial as determined using the criteria established in
251 subdivision (5) of this subsection.

252 (8) Notwithstanding the provisions of subdivisions (1)
253 and (4) of this subsection, tuition and fee increases at
254 state institutions of higher education which are under
255 the jurisdiction of the commission, including the state
256 institutions of higher education known as Marshall
257 University and West Virginia University, are subject to
258 the following conditions:

259 (A) Institutions may increase tuition and fees for
260 resident, undergraduate students by no more than an
261 average of seven and one-half percent per year during
262 any period covering four consecutive fiscal years, with
263 the first fiscal year of the first four fiscal-year cycle
264 beginning on the first day of July, two thousand seven;

265 (B) The seven and one-half percent average cap does
266 not apply to an institution for any fiscal year in which
267 the total state base operating budget appropriations to
268 that institution are less than the total state base
269 operating budget appropriations in the fiscal year
270 immediately preceding;

271 (C) A new capital fee or an increase in an existing
272 capital fee is excluded from the tuition and fee increase
273 calculation in this subdivision:

274 (i) If the new fee or fee increase is approved by an

275 institutional governing board or by a referendum of an
276 institution's undergraduate students, or both, on or
277 before the first day of February, two thousand six; or

278 (ii) If the following conditions are met:

279 (I) The new fee or fee increase was approved by an
280 institutional governing board or by a referendum of an
281 institution's undergraduate students, or both, on or
282 before the first day of July, two thousand six;

283 (II) The institution for which the capital fee is
284 approved has been designated a university pursuant to
285 the provisions of section six, article two-a of this
286 chapter by the effective date of this section; and

287 (III) The institutional board of governors previously
288 oversaw a community and technical college that
289 achieved independent accreditation and consequently
290 acquired its own board of governors;

291 (D) Institutions shall provide, in a timely manner, any
292 data on tuition and fee increases requested by the staff
293 of the commission. The commission shall:

294 (i) Collect the data from any institution under its
295 jurisdiction; and

296 (ii) Annually by the first day of July, provide a
297 detailed analysis of the institutions' compliance with
298 the provisions of this subdivision to the Legislative
299 Oversight Commission on Education Accountability.

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

1 Each governing board periodically may establish fee
2 waivers for students in undergraduate studies at
3 institutions under its jurisdiction entitling recipients to
4 waiver of tuition, capital and other fees subject to the
5 following conditions and limitations:

6 (a) Undergraduate fee waivers established by the
7 governing boards of Marshall University and West
8 Virginia University, respectively, for the state
9 institutions of higher education known as Marshall
10 University and West Virginia University, are subject to
11 the provisions of section six-a of this article;

12 (b) For the governing boards of state institutions of
13 higher education other than the state institutions of
14 higher education known as Marshall University and
15 West Virginia University, the following conditions
16 apply:

17 (1) An institution may not have in effect at any time
18 undergraduate fee waivers totaling more in value than
19 fivepercent of the tuition and required fees assessed for
20 all full-time equivalent undergraduate students
21 registered during the fall semester of the immediately
22 preceding academic year.

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

29 (3) The governing board shall make rules pursuant to
30 the provisions of section six, article one of this chapter

31 governing the award of undergraduate fee waivers; the
32 issuance and cancellation of certificates entitling the
33 recipients to the benefits of the waiver; the use of the
34 fee waivers by the recipients; and the rights and duties
35 of the recipients with respect to the fee waivers. These
36 rules may not be inconsistent with the provisions of this
37 section.

38 (4) The awarding of undergraduate fee waivers shall
39 be entered in the minutes of the meetings of the
40 governing board.

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

48 (6) An institution may grant fee waivers to its
49 employees, their spouses and dependents and these
50 waivers are not counted when determining the
51 maximum percentage of waivers permitted by this
52 section.

53 (7) Any fee waivers mandated by this article or by
54 section three, article nineteen, chapter eighteen of this
55 code are not counted when determining the maximum
56 percentage of waivers permitted by this section.

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

1 In addition to the fee waivers authorized for
2 undergraduate study by the provisions of section five of

3 this article, each governing board periodically may
4 establish fee waivers for study in graduate and
5 professional schools under its jurisdiction, including
6 medicine and dentistry, entitling the recipients to
7 waiver of tuition, capital and other fees subject to the
8 following conditions and limitations:

9 (a) Graduate and professional fee waivers established
10 by the governing boards of Marshall University and
11 West Virginia University, respectively, are subject to
12 the provisions of section six-a of this article;

13 (b) For the governing boards of state institutions of
14 higher education other than the state institutions of
15 higher education known as Marshall University and
16 West Virginia University, the following conditions
17 apply:

18 (1) An institution may not have in effect at any time
19 graduate and professional school fee waivers totaling
20 more in value than five percent of the tuition and
21 required fees assessed for all full-time equivalent
22 graduate and professional students registered during
23 the corresponding fall semester, spring semester and
24 summer term of the immediately preceding academic
25 year. In addition to the five percent in this subdivision,
26 all graduate assistants employed by these institutions
27 shall be granted a fee waiver.

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

34 (3) The governing boards shall make rules pursuant to
35 the provisions of section six, article one of this chapter
36 governing the award of graduate and professional
37 school fee waivers; the issuance and cancellation of
38 certificates entitling the recipients to the benefits of the
39 waivers; the use of the fee waivers by the recipients;
40 and the rights and duties of the recipients with respect
41 to the fee waivers. These rules may not be inconsistent
42 with the provisions of this section.

43 (4) The awarding of graduate and professional school
44 fee waivers shall be entered in the minutes of the
45 meeting of each governing board.

46 (5) An institution may grant fee waivers to its
47 employees, their spouses and dependents, and these
48 waivers are not counted when determining the
49 maximum percentage of waivers permitted by this
50 section.

51 (6) Any fee waivers mandated by this article or by
52 section three, article nineteen, chapter eighteen of this
53 code are not counted when determining the maximum
54 percentage of waivers permitted by this section.

**§18B-10-7. Tuition and fee waivers for children and spouses
of officers, firefighters, National Guard
personnel, reserve personnel and active
military duty personnel killed in the line of
duty.**

1 (a) Each state institution of higher education shall
2 waive tuition and fees for any person who is the child or
3 spouse of an individual who:

4 (1) Was employed or serving as:

5 (A) A law-enforcement officer as defined in section
6 one, article twenty-nine, chapter thirty of this code;

7 (B) A correctional officer at a state penal institution;

8 (C) A parole officer;

9 (D) A probation officer;

10 (E) A conservation officer; or

11 (F) A registered firefighter; and

12 (2) Was killed in the line of duty while:

13 (A) Employed by the state or any political subdivision
14 of the state; or

15 (B) A member of a volunteer fire department serving
16 a political subdivision of this state.

17 (b) Each state institution of higher education shall
18 waive tuition and fees for any person who is the child or
19 spouse of:

20 (1) A National Guard member or a member of a
21 reserve component of the armed forces of the United
22 States killed in the line of duty. The member is
23 considered to have been killed in the line of duty if
24 death resulted from performing a duty required by his
25 or her orders or commander while in an official duty
26 status, other than on federal active duty, authorized
27 under federal or state law; or

28 (2) A person on federal or state active military duty
29 who is a resident of this state and is killed in the line of
30 duty. The person is considered to have been killed in
31 the line of duty if death resulted from performance of a
32 duty required by his or her orders or commander while
33 in an official duty status.

34 (c) Any waiver granted pursuant to this section is
35 subject to the following:

36 (1) The recipient may attend any undergraduate
37 course if classroom space is available;

38 (2) The recipient has applied and been admitted to the
39 institution;

40 (3) The recipient has applied for and submitted the
41 Free Application for Federal Student Aid;

42 (4) The recipient has exhausted all other sources of
43 student financial assistance dedicated solely to tuition
44 and fees that exceed other grant assistance that are
45 available to him or her, excluding student loans;

46 (5) Waiver renewal is contingent upon the recipient
47 continuing to meet the academic progress standards
48 established by the institution.

49 (d) The state institution of higher education may
50 require the person to pay:

51 (1) Special fees, including any laboratory fees, if the
52 fees are required of all other students taking a single
53 course or that particular course; and

54 (2) Parking fees.

55 (e) The governing boards may promulgate rules:

56 (1) For determining the availability of classroom
57 space;

58 (2) As it considers necessary to implement this section;
59 and

60 (3) Regarding requirements for attendance, which
61 may not exceed the requirements for other persons.

62 (f) The governing boards may extend to persons
63 attending courses and classes under this section any
64 rights, privileges or benefits extended to other students
65 which it considers appropriate.

21 [Enr. Com. Sub. for Com. Sub. for S. B. No. 564

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

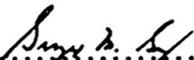

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Chairman Senate Committee

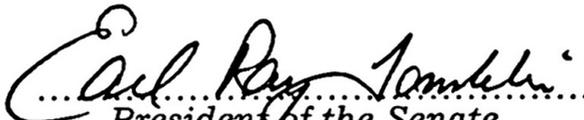

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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2008.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *us approved* this
the *1st* Day of *April*, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 3:48 pm