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.]
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.

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

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

(2) Is enrolled in a post-secondary education or
(3) Is the child or spouse of an enlistee who designated West Virginia as his or her state of record.

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

(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 systemwide 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 the accounts, an institution may expend funds from each 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 schedule of all tuition and fees, and any changes in the schedule, 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 Legislative Auditor a certified copy of the schedule and changes.

(f) 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 accordance with the provisions of this subsection.

(g) 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 acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

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

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

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

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the
increased fee in a manner and method established by
that institution's elected student government. The fee
may not be used to finance litigation against the
institution.

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

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

(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 annually by the first day
of October 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.

(j) 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.

(k) Tuition and fee increases of the governing boards,
except for the governing boards of the state institutions
of higher education known as Marshall University and
West Virginia University, 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) Subject to the provisions of subdivisions (4) and (8)
of this subsection, 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.

(2) 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 for
undergraduate resident students for any fiscal year,
except a governing board may propose increases in
excess of four and three quarters percent if existing
tuition and fee rates at the institution are below the
state average for tuition and fees at institutions under
the jurisdiction of the council. 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.

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

(4) Subject to the provisions of subdivision (8) of this
subsection, the governing boards of Marshall University
and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:

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

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

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

(5) Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University requires the approval of the commission or council, as appropriate. In determining whether to approve or deny the governing board’s request, the commission or council shall 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:

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

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

(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;

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

(E) 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

(F) 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.

(6) This section does not require equal increases among institutions or require any level of increase at an
(7) 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 (5) of this subsection.

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

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

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

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

(i) If the new fee or fee increase is approved by an
institutional governing board or by a referendum of an institution's undergraduate students, or both, on or before the first day of February, two thousand six; or

(ii) If the following conditions are met:

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

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

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

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

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

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

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

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

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

(2) Each undergraduate fee waiver entitles the recipient of the waiver 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.

(3) The governing board shall make rules pursuant to the provisions of section six, article one of this chapter.
governing the award of undergraduate fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits of the waiver; 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.

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

(5) 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.

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

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

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

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

(1) An institution may not have in effect at any time graduate and professional school fee waivers totaling more in value than five percent of the tuition and required fees assessed for all 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 five percent in this subdivision, all graduate assistants employed by these institutions shall be granted a fee waiver.

(2) 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.
(3) The governing boards shall make rules pursuant to the provisions of section six, article one of this chapter governing the award of graduate and professional school fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits of the waivers; 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.

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

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

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

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

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

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

(C) A parole officer;

(D) A probation officer;

(E) A conservation officer; or

(F) A registered firefighter; and

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

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

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

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

(1) A National Guard member or a member of a reserve component of the armed forces of the United States killed in the line of duty. The member is considered to have been killed in the line of duty if death resulted from performing a duty required by his or her orders or commander while in an official duty status, other than on federal active duty, authorized under federal or state law; or
A person on federal or state active military duty who is a resident of this state and is killed in the line of duty. The person is considered to have been killed in the line of duty if death resulted from performance of a duty required by his or her orders or commander while in an official duty status.

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

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

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

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

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

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

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

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

(e) The governing boards may promulgate rules:

(1) For determining the availability of classroom space;

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

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

(f) The governing boards may extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Officer

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 is approved this 1st Day of , 2008.

Governor