

**SPECIAL MEETING OF THE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**Presidents' Conference Room*
Boulevard Tower
1018 Kanawha Boulevard East
Charleston, West Virginia**

**September 13, 2011
2:00 P.M.**

AGENDA

- I. Call to Order
- II. Approval of Financing Plan for Headquarter Building at Mountwest Community and Technical College
- III. Approval of Fiscal Year 2013 Appropriation Request
- IV. Approval of Series 32, Tuition and Fee Policy
- V. Approval of Interim President at Bluefield State College
- VI. Additional Board Action and Comment
- VII. Adjournment

**To join the meeting by conference call, dial the following numbers: 1-866-453-5550, participant code: 5245480#.*

**West Virginia Higher Education Policy Commission
Meeting of September 13, 2011**

ITEM: Approval of Financing Plan for Headquarter Building

INSTITUTION: Mountwest Community and Technical College

RECOMMENDED RESOLUTION: *Resolved,* That the West Virginia Higher Education Policy Commission approves the resolution prepared by bond counsel to issue revenue bonds in an aggregate principal amount not to exceed \$3.5 million by the Mountwest Community and Technical College Board of Governors for the renovation, improvement, equipping, and furnishing of the Mountwest Community and Technical College Headquarter Building.

STAFF MEMBER: Richard Donovan

BACKGROUND:

Mountwest Community and Technical College is requesting approval to issue revenue bonds pursuant to West Virginia Code §18B-10 and §18B-19. According to the Code, the issuance of revenue bonds shall be authorized by resolution adopted by the governing board receiving the proceeds and the Commission. The Mountwest Community and Technical College Board of Governors approved its resolution authorizing issuance of the bonds on September 9, 2011 and the Commission is requested to approve the resolution prepared by bond counsel.

Two separate bond allocations have been made to fund a building for Mountwest Community and Technical College. In 2004, Marshall University received \$4,253,559 from the Commission's 2004 Series B bond issue for a community college building. The University subsequently purchased property for approximately \$3.2 million near the Stadium at 20th Street and Fifth Avenue and began designing the building; however, this allocation was not enough to actually build a suitable building. In 2008, the Legislature passed House Bill 3215 which separated the community and technical college from Marshall University and in 2010, Mountwest received an additional bond allocation of \$13.5 million from the Council for Community and Technical Education's 2010 Series A bond issue to design, build, and equip a headquarter building in Huntington.

The Marshall University Board of Governors decided to retain the property at 20th Street and Fifth Avenue, and as part of the separation agreement between Marshall and Mountwest, agreed to pay Mountwest \$3.2 million in ten annual installments of \$350,000 over nine years, plus a final payment of \$50,000 in the tenth year. As the result of Marshall University's decision, Mountwest conducted a search and investigation of other potential property and buildings in Huntington and ultimately decided to purchase and renovate the former Ashland Coal Building. The purchase price of this property was \$7.7 million, leaving \$5.8 million for renovation of this 115,000 square foot facility at 2205 Fifth Street.

The remaining \$5.8 million balance in bond proceeds is not enough to renovate all four floors of the Ashland Coal Building. Approximately \$6,720,000 in additional funds is needed for design, construction, and other expenses. Mountwest currently has \$3,220,000 from the remaining 2004 Bond Proceeds, property payments received to date from Marshall, rental income from DirecTV, who continued to lease the building after Mountwest purchased it, and operating and capital reserves. To secure the additional \$3.5 million in additional funds needed for renovation, Mountwest proposes to issue \$3.5 million in revenue bonds which will be retired in ten years. The Board of Governors would pledge certain student fees and payments by Marshall University to Mountwest of \$3.2 million. The bonds would be sold to First Sentry Bank or such other purchaser or purchasers designated by Mountwest and subject to review and approval of final documents by Commission/Council staff prior to execution.

**STATE OF WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION RESOLUTION RATIFYING AND
APPROVING PROPOSED CAPITAL PROJECT FOR
MOUNTWEST COMMUNITY AND TECHNICAL
COLLEGE, BEING THE PLANNING, DESIGN,
ACQUISITION, CONSTRUCTION, EQUIPPING AND
FURNISHING OF RENOVATIONS AND IMPROVEMENTS
TO THE HEADQUARTERS BUILDING ON THE CAMPUS
OF MOUNTWEST COMMUNITY AND TECHNICAL
COLLEGE AND APPROVING THE FINANCING OF A
PORTION OF THE COSTS THEREOF THROUGH THE
ISSUANCE BY THE MOUNTWEST COMMUNITY AND
TECHNICAL COLLEGE BOARD OF GOVERNORS OF
REVENUE BONDS IN AN AGGREGATE PRINCIPAL
AMOUNT OF NOT MORE THAN \$3,500,000**

WHEREAS, to improve the quality of student life and academic culture, enhance student services and respond to students needs, and to comply with its Master Plan, Mountwest Community and Technical College (the “College”) proposes to undertake certain capital projects, including without limitation the planning, design, acquisition, construction, equipping and furnishing of renovations and improvements to the headquarter building on the campus of the College which is herein called the “Project”; and

WHEREAS, the College proposes to finance a portion of the cost of the Project through the issuance of Revenue Bonds (the “Bonds”) by the Mountwest Community and Technical College Board of Governors (the “Board of Governors”) in an aggregate principal amount of not more than \$3,500,000, as further described in the Resolution adopted by the Mountwest Community and Technical College Board of Governors on September 9, 2011, a copy of which Resolution is attached hereto as Exhibit A; and

WHEREAS, the principal of, premium, if any, and interest on the Bonds will be payable from (i) all or a portion of the required educational and general capital fees, as defined in the Chapter 18B, Article 10 and Chapter 18B, Article 19 (collectively, the “Act”), imposed on students of the College, exclusive of that component part of the required educational and general capital fees of the College that constituted registration and tuition fees in effect as of March 21, 2004, and (ii) payments to be made by Marshall University to the College pursuant to that certain Memorandum of Understanding finally executed on March 20, 2009, said sources of payment to be as finally determined by the College as evidenced by the Bond Trust Indenture, as executed by an Authorized Officer, as hereinafter defined, between the Board of Governors and a trustee to be designated by the College, to secure the Bonds (the “Indenture”); and

WHEREAS, the Bonds will be secured by a pledge of (i) all or a portion of the required educational and general capital fees, as defined in the Act, imposed on students of the College, exclusive of that component part of the required educational and general capital fees of the College that constituted registration and tuition fees in effect as of March 21, 2004, and (ii) payments to be made by Marshall University to the College pursuant to that certain Memorandum of Understanding finally executed on March 20, 2009, the revenues pledged to

secure the payment of the Bonds to be as finally determined by the College as evidenced by the Indenture as executed by an Authorized Officer, as hereinafter defined, and other amounts held under the Indenture, all such pledges to be subject to all prior pledges thereof, if any, and otherwise in the manner and to the extent to be provided for in the Indenture, and the Bonds shall be special obligations of the State and shall not constitute debts of the State; and

WHEREAS, this Commission and the Board of Governors have the power and authority to execute and deliver the documents required and to carry out the financing described above; and

WHEREAS, the Project is necessary, does not give competitive advantage to new private sector projects over existing West Virginia businesses, does not involve any private sector business, and, specifically, does not involve any private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties; and

WHEREAS, this Commission deems it desirable, in keeping with its purposes and the Master Plan and in the best interests of the College, to ratify and approve the Project and to approve the financing of a portion of the cost thereof through the issuance of the Bonds by the College; and

WHEREAS, West Virginia Code Section 5-1-28, provides that the Bonds may not be issued without the express written direction of the Governor and, accordingly, the Commission desires to authorize and direct the College to take all actions necessary to obtain the written consent and direction of the Governor to issue the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

Section 1. Ratification and Approval of the Project. The Project is hereby ratified and approved. The Chairperson and Vice Chairperson of the Board of Governors and the President of the College or his designee (each, an “Authorized Officer”) are hereby authorized and directed to execute and deliver any documents, certificates, agreements and instruments and take such other actions as may be required or desirable by the Board of Governors or the College to design, construct, acquire, equip and furnish the Project, including but not limited to construction contracts after requisite bidding, and to carry out the purposes of this Resolution. Although the Project is anticipated to be substantially as described herein, this Commission recognizes that there may be changes as the plans and specifications are developed and as the Project is constructed, which changes shall be made in accordance with any applicable rules and procedures of this Commission and of the Board of Governors.

Section 2. Approval of the Bonds. The financing of a portion of the costs of the Project through the issuance of the Bonds by the Board of Governors in an aggregate principal amount of not more than \$3,500,000 is hereby approved. The Commission hereby further approves the pledge by the College of the following to secure the payment of the Bonds: (i) all or a portion of the required educational and general capital fees, as defined in the Act, imposed on students of the College, exclusive of that component part of the required educational and

general capital fees of the College that constituted registration and tuition fees in effect as of March 21, 2004, and (ii) payments to be made by Marshall University to the College pursuant to that certain Memorandum of Understanding finally executed on March 20, 2009, the revenues actually pledged to secure the payment of the Bonds to be as finally determined by the College as evidenced by the Indenture relating to the Bonds as executed by an Authorized Officer, and other amounts held under the Indenture, all such pledges to be subject to all prior pledges thereof, if any, and otherwise in the manner and to the extent to be provided for in the Indenture as finally executed by an Authorized Officer of the College. Each of the Authorized Officers is hereby authorized and directed to execute and deliver the Indenture and any other documents, certificates, agreements and instruments and take such other actions as may be required or desirable by the Board of Governors or the College to accomplish the Bond financing. Although the Bond financing is anticipated to be substantially as described herein, this Commission recognizes that market conditions, the use of credit enhancement and other factors may affect the amount and terms of such financing.

Section 3. Special Obligations. This Commission recognizes and agrees that all covenants, stipulations, obligations and agreements of the Board of Governors or the College entered into in connection with the Project and the Bonds shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Board of Governors and the College to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon this Commission, the Board of Governors and the College, and their respective successors. No covenant, stipulation, obligation or agreement entered in connection with the Project or the Bonds shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of this Commission, the Board of Governors or the College in his or her individual capacity, and no member, officer, agent or employee of this Commission, the Board of Governors or the College shall be liable personally thereunder or be subject to any personal liability or accountability by reason thereof.

Section 4. Incidental Action. The Chancellor, the Chairperson, Vice-Chairperson, Secretary and other appropriate members and officers of this Commission are hereby authorized and directed to execute and deliver any documents, certificates, agreements and instruments and take such other actions as may be required or desirable by the Board of Governors or the College to carry out the purposes of this Resolution.

Section 5. Written Direction of the Governor. In accordance with the provisions of West Virginia Code Section 5-1-28, the Bonds may not be issued until such time as the express written direction of the Governor to issue the Bonds has been obtained. The College is authorized and directed to take all actions necessary to obtain the express written direction of the Governor to issue the Bonds and all prior actions taken by the College in connection therewith are hereby ratified and approved.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

ADOPTED this 13th day of September, 2011.

WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION

By: _____
Its: _____

**West Virginia Higher Education Policy Commission
Meeting of September 13, 2011**

ITEM: Approval of Fiscal Year 2013 Appropriation Request

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the Fiscal Year 2013 appropriation request as submitted to the West Virginia State Budget Office.

STAFF MEMBER: Ed Magee

BACKGROUND:

As part of its statutory responsibilities, the Commission is required to annually submit an appropriation request to the West Virginia State Budget Office aimed at supporting and enhancing the public policy agenda outlined both in West Virginia Code and the Commission’s 2007-2012 Master Plan, *Charting the Future*. For Fiscal Year (FY) 2013, Commission staff developed a funding request that complies with the Budget Office’s instructions by limiting requests for budget improvements to items that are essential and which ultimately enhance college access opportunities for more West Virginians.

The table below provides a summary of the Commission’s improvement request for FY 2013.

Higher Education Policy Commission FY 2013 Improvement Request		
Financial Aid		\$10,000,000
<i>Higher Education Grant Program</i>	<i>\$7,000,000</i>	
<i>HEAPS Grant Program</i>	<i>\$3,000,000</i>	
Deferred Maintenance		\$10,000,000
<i>Commission Projects</i>	<i>\$8,000,000</i>	
<i>Council Projects</i>	<i>\$2,000,000</i>	
Commission Funding Formula		\$15,000,000
Institutional Initiatives		\$2,600,000
<i>West Virginia State University Operational Budget Increase</i>	<i>\$1,600,000</i>	
<i>West Virginia University School of Public Health</i>	<i>\$1,000,000</i>	
<i>West Virginia University Institute of Technology Revitalization</i>	<i>TBD</i>	
Commission Programs		\$9,000,000
<i>West Virginia Regional Technology Park Operating Funds</i>	<i>\$4,000,000</i>	
<i>Innovation Fund</i>	<i>\$5,000,000</i>	

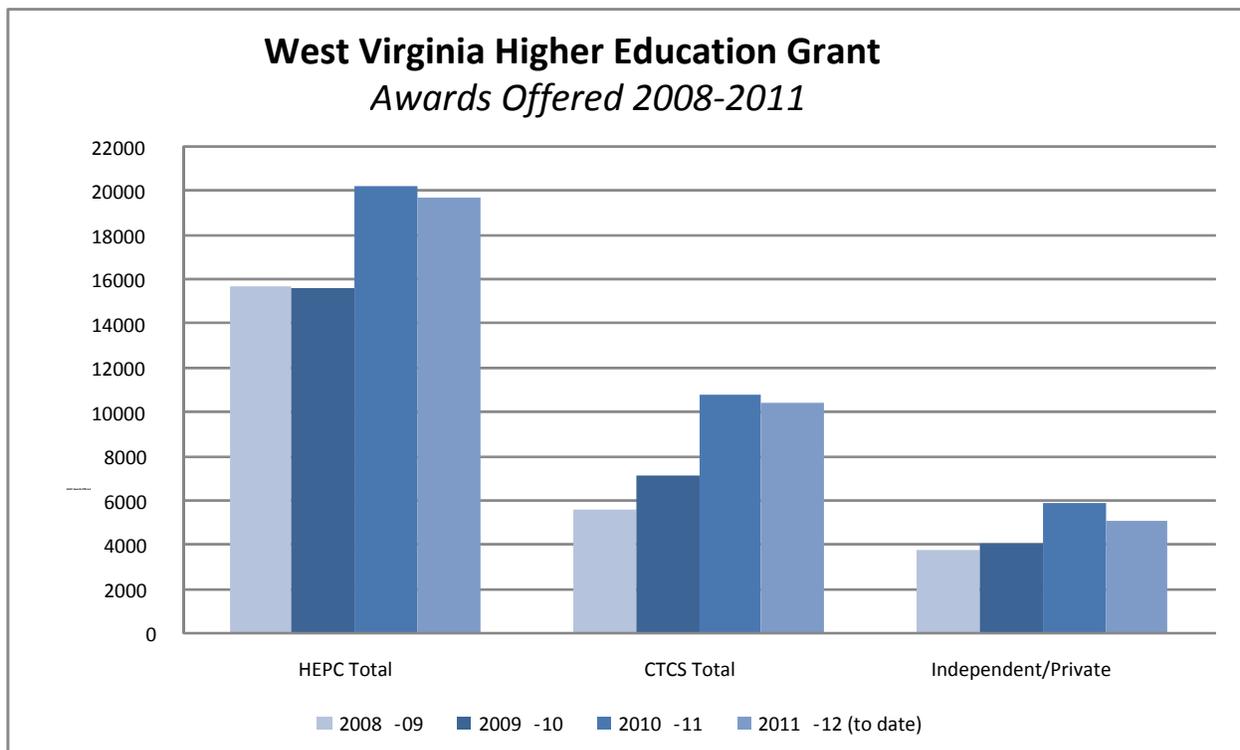
Budget Office projections show that long-term current program level funding continues to outpace estimated revenues; therefore, institutions are encouraged to exercise prudence as they examine their internal revenue and expenditure profiles.

Funding Priority One: Financial Aid

Staff recommends a FY 2013 improvement request of \$10,000,000 for the state's major need-based financial aid programs. The Higher Education Grant Program and the Higher Education Adult Part-Time Student (HEAPS) Grant Program receive approximately \$39,000,000 and \$5,000,000, respectively, on an annual basis.

Higher Education Grant Program: \$7,000,000

The Higher Education Grant Program is designed to ensure that students with demonstrated financial need have access to postsecondary educational opportunities. House Bill 4049 (2006) included legislative intent to increase the program's funding by two percent per year from FY 2006 through FY 2011. Since that time, demand for the program has grown substantially across all sectors of higher education. The program has offered financial awards to more than 35,000 students for the 2010-2011 school year. This represents an increase of 32 percent over 2009-2010 levels.



With additional funding, the maximum award has increased from \$2,100 to \$2,400 for the 2011-2012 award year. Without additional funding to accommodate increased demand for need-based aid, there will be a dilution of the award, either in the amount of students served or in the amount of individual awards.

The PROMISE Scholarship Program has increased steadily over the last decade from \$5,500,000 in FY 2002 to \$47,500,000 in FY 2012. Commission staff is requesting that funding for the Higher Education Grant Program mirror that of the PROMISE Scholarship. This funding request creates a two-step process with an improvement request of \$7,000,000 for FY 2013 and intentions of an additional \$1,500,000 in funding requested for FY 2014. The improvement for FY 2013 will take the Higher Education Grant Program from \$39,019,864 to \$46,019,864, which represents an increase of 17 percent. Assuming stability in the accepted award pool, this request will increase the average award to \$2,600 in FY 2013 and \$2,700 in FY 2014.

HEAPS Grant Program: \$3,000,000

The Higher Education Adult Part-Time Student (HEAPS) Grant Program provides access to students enrolled on a part-time basis in two-year and four-year colleges and universities, as well as public vocational-technical schools. An additional workforce development component of HEAPS currently assists students in workforce oriented programs.

This request of an additional \$3,000,000 would bring the total funded amount to \$8,005,425, and represents an increase of approximately 60 percent. The program has been funded at approximately \$5,000,000 since FY 2006. However, the program received one-time supplemental funding of \$1,000,000 in FY 2008 in addition to its regular funding. With the current economic situation, these funds will be used to support growing demand for the program for displaced workers and will assist in bringing more adults into the higher education system.

Funding Priority Two: Institutional Capital Budgets

Staff proposes a one-time appropriation of \$10,000,000 to address deferred maintenance and Code compliance issues in education and general (E&G) facilities.

Deferred Maintenance Projects: \$10,000,000 (One-Time Request)

Building upon the investment made by the Legislature during the 2008 session, staff seeks the Commission's approval to update the list of high-priority capital projects developed last year which address E&G deferred maintenance and Code compliance issues. This funding will be utilized for selected projects at both four-year and two-year institutions, with 80 percent designated for Commission institutions and 20 percent for Council institutions. Consistent with prior practice, institutions will be required to match the state investment on a dollar per dollar basis with institutional or private funds.

Funding Priority Three: Commission Funding Formula

During the July 23, 2010 meeting, the Commission approved the conceptual framework for a new funding formula that aligns with *Charting the Future*, the Commission's master plan. Subsequent staff presentations were provided regarding the development of the funding formula with the most recent staff presentation on January 21, 2011.

The funding formula creates a policy venue through which finance policy is coherently integrated with the goals and objectives of *Charting the Future*. The funding model specifically addresses: 1) economic growth through increased graduate production; 2) access for non-traditional students; 3) cost and affordability through funding for inflation and learning; and 4) accountability through retention and course completion.

The funding formula seeks to balance the need to preserve access for all students while rewarding institutions for improvements in the key policy areas identified above.

This request for \$15,000,000 will provide additional funding to institutions based upon performance in the following areas:

1. Degree production;
2. Adult learners;
3. Completion;
4. Access; and
5. Retention.

While institutional funding is designated for performance, as a point of reference, this level of funding would partially support a three percent salary increase costing approximately \$18,000,000 for employees paid from education and general funds. It would also partially fund an approximate \$6,000,000 inflationary increase in other education and general operating costs as defined by the preliminary 2011 Higher Education Price Index (HEPI).

Funding Priority Four: Institutional Initiatives

West Virginia State University Operational Budget Increase: \$1,600,000

The reduction in capacity utilization resulting from the separation of Kanawha Valley Community and Technical College from West Virginia State University will have an impact on the University's FY 2013 financial status. The University will have a shortfall of approximately \$1,600,000 in service agreement revenues currently provided by Kanawha Valley Community and Technical College. Given a limited ability to negate the impact through increased tuition and fee rates and/or significantly increase enrollment, additional state funds are requested by the institution.

West Virginia University School of Public Health: \$1,000,000

For several generations, West Virginia's public health statistics have been at the bottom of national rankings. Whether it is obesity, oral health, heart disease, complications of diabetes, tobacco use, prescription drug abuse, or any of dozens of other indicators, West Virginia is invariably at or near the bottom of the list. All these preventable causes of illness result in a lower quality of life for citizens, higher health costs, and shortened life spans. Arrayed against these challenges is an aging public health workforce—half are approaching retirement. Poor public health is a factor in slowing economic development. High health costs divert potential public and private investment from more productive areas.

West Virginia University is implementing the plan to develop an accredited School of Public Health at the Health Sciences Center. This will facilitate attracting the best-qualified faculty and students in the profession. A School of Public Health can broaden the research base in public health—the real key to developing effective solutions to the state’s persistent health issues. West Virginia University will offer master’s degrees in public health and school health education, and a Ph.D. program in public health sciences. The School will also provide a teacher certification program in health education.

West Virginia University requests additional one-time appropriations of \$1,000,000 for each of the next four years to support the start-up of this important new initiative.

West Virginia University Institute of Technology Revitalization: TBD

Earlier this year, the West Virginia Legislature passed a bill requiring the Commission to conduct a detailed study on the revitalization of West Virginia University Institute of Technology. A panel comprised of members with a connection to West Virginia, but also higher education accomplishments outside of the state, was appointed and has been studying the issues. They are expected to identify various recommendations with potential investment needs that will be required in order to fulfill any of those options. West Virginia University requests additional funding support to implement the recommendations of the revitalization review team.

Funding Priority Five: Commission Programs

West Virginia Regional Technology Park Operating Funds: \$4,000,000

Funding is needed to operate the West Virginia Regional Technology Park while the facilities are being renovated. Additional state support will be necessary until the facilities can be fully occupied. To cover operating expenses during this transition period, \$4,000,000 is requested. The Commission has been successful in securing donations, grants, and bond funds to pay costs related to the renovation of existing facilities.

Innovation Fund: \$5,000,000

These funds will provide a venue through which the State of West Virginia can incentivize the creation of innovative policies and initiatives across the institutions. The funding will establish an Innovation Fund that provides seed funding for initiatives that benefit the state’s higher education institutions. As an example, the FY 2011 purchase of a DegreeWorks license which will be shared between 14 institutions. The funding of these initiatives will allow the schools to share staff and gain efficiencies by sharing resources. Other areas of possible funding include, but are not limited to: veterans education, adult learners, marketing and outreach, and service learning.

**West Virginia Higher Education Policy Commission
Meeting of September 13, 2011**

ITEM: Approval of Series 32, Tuition and Fee Policy

INSTITUTIONS: All

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

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

STAFF MEMBER: Ed Magee

BACKGROUND:

Series 32, Tuition and Fee Policy, is the legislative rule that establishes the policy for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education. At the August 5, 2011 meeting, the Commission approved a revision of Series 32 to be submitted to the Secretary of State for a thirty-day public comment period.

The proposed revisions to Series 32, summarized below, strengthen the rule and clarify the procedures for West Virginia undergraduate public institutions of higher education to assess tuition and fees. A summary of significant revisions is as follows:

Revisions based on suggestions from public comment period:

1. The proposed rule did not provide a sufficiently narrow definition for Auxiliary Fees. The rule should exclude sales prices for merchandise and services. After “Auxiliary fee include” “charges other than sales” was inserted and “sales and service revenues” was deleted. The sentence “Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public” was added. (Section 2.1.)

2. The Capital Fee definition did not align with the West Virginia Code categories. The following sentences were added: “Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of the physical plant, and scholarships and fellowship programs. Auxiliary Capital Fees support entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers.” (Section 2.2.)
3. The term Education and General Fees did not align with the West Virginia Code. The words “Tuition and required” were inserted before “Education and General Fees” to provide consistency. Tuition is not defined in the West Virginia Code, although a policy is required for its assessment. The proposed rule also did not define tuition. Not all institutions have created or may need to create a tuition category. The sentence “An institution may create a category within Education and General Fees labeled Tuition to classify a fee or group of fees charged for instructional services.” was added to provide a definition for this optional term that is used in the West Virginia Code and the proposed rule. (Section 2.3.)
4. Section 2.8. was deleted because it is redundant after the above changes are made.
5. The proposed rule did not provide a sufficiently narrow definition for Special Fees. The rule should include additional categories and specifically exclude sales prices for merchandise and services. After “These fees include, but are not limited to”, “course, lab” was inserted. The sentence “Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public” was added. (Section 2.9.)
6. The recognition that differences in mission, in geographic location, and in local median family incomes result in differences in tuition is an important goal. The sentence “To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics.” was added. (Section 3.1.d.)
7. To provide additional clarity, “Auxiliary” was inserted before “tuition and required”; “education and general, and capital” was inserted before “fee increases”; and “collectively” was inserted after “percent”. “Auxiliary tuition, and required education and general, and capital” were inserted before “Tuition and” which was deleted. “Collectively” was inserted again after “percent”. The sentence “Governing Boards are not required to approve sales prices” was added. (Section 4.2.a.)

8. To precisely express the intent of the section, "...expense neutral change for an in-state student" was inserted and "...revenue neutral for the institution" was deleted. A fee simplification resulting in an expense neutral outcome for an in-state student could add revenue for an institution if enrollment would increase. (Section 4.2.a.2.)
9. The word "appropriations" was exchanged for "allocations" to provide additional clarity. To align the HEPI benchmark analysis with the appropriate fiscal year, the word "corresponding" was added and the word "next" was deleted before "fiscal year". (Section 4.2.b.1.)
10. Because the per capita income varies widely across the state, institutions may not meet the needs of their students without a guideline that focuses on service areas. The phrase "statewide and specifically as to the county(ies) in which 75% of the institution's in-state students reside" was inserted to allow institutions to target tuition and fee rates to their specific student populations. (Section 4.2.b.4.)
11. To more accurately express the intent of the language, the phrases "of the sum of appropriations and tuition and fees" and "as defined by the peer equity model" were added. (Section 4.2.b.5.)
12. A concern was raised that adherence to the federal refund regulations for all payments may result in a loss of revenues for the institutions. To address this concern, Section 6.1. was moved to Section 6.2. and a new Section 6.1. was written to reflect current institutional practice.

Additional suggestions from public comment period (no revisions made):

1. A suggestion was made to include language addressing the collection of tuition and fees and additional language regarding their expenditure. The collection and expenditure of tuition and fees are addressed by the West Virginia Code.
2. More detail was requested to define "Full Cost of Instruction" as to whether or not the intent of the rule was to include marginal and athletic costs. It is not the intent of the rule to include a formal marginal cost analysis. The rule only includes instruction and student services costs from the annual audits. Athletic costs are not included in these categories from the institutional audits.
3. A concern was raised that excessive debt mentioned in Section 4.1.a. is not defined and would be open to subjective and inconsistent interpretation and application. A definition for this term will vary given economic circumstances, projected salaries for various occupations, and other factors. It may not be possible to avoid an inconsistent application of the provision, although objective measures may be identified and found to be useful.

4. A responder asked if the governing board of a regional institution could presume that, so long as it kept its tuition at or just below the tuition charged by Marshall University and West Virginia University, that it would not run afoul of this provision. Given the variance mentioned above, an arbitrary benchmark is not likely to satisfy the requirements of this provision.
5. A concern was raised that some institutions may raise fees under the Title IX provision in Section 4.2.a. over the next three years and circumvent the Legislature's goal in reigning in student costs. Although this may occur, this provision cannot be changed because it is established in the West Virginia Code.
6. The provision in Section 4.2.b. regarding the consideration of families' ability to pay for college was identified as an issue because it may be difficult to measure. Although it may be difficult to measure these criteria, this provision is also required by West Virginia Code.
7. A statement was made that program completion or students' competency should be considered to measure an institution's performance. These measures are included in an institution's compact performance.
8. A statement was made that since federal financial aid rules and regulations are subject to change that this rule will need to be updated annually. This issue was not addressed.
9. A suggestion was made that metro fees be addressed in this rule. At this time, insufficient input has been acquired by Commission staff to propose a policy for these fees.
10. A concern was raised that the rule does not discuss program or major fees that are being assessed by some institutions. Institutions may continue this practice because the rule permits the assessment of fees by categories unspecified by the rule.
11. A question was asked as to whether or not there has been consideration for giving flexibility against the cap for long-term planning for auxiliary enterprises tied to repair and renovation projects the same way that the Title IX Athletic Fee is addressed in the draft rule. No such consideration has been made.

Staff recommends approval of the proposed revisions to Series 32, as a legislative rule, for filing with the Secretary of State for an additional thirty-day public comment period due to the volume and substantive nature of changes made to the rule based on the initial comment period. If no substantive comments are received during the additional comment period, staff recommends forwarding the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 32
TUITION AND FEE POLICY

§133-32-1. General.

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

§133-32-2. Definitions.

- 2.1. Auxiliary Fees. Charges levied to all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include ~~sales and service revenue charges other than sales~~ from entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers. Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public.
- 2.2. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal. Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowship programs. Auxiliary Capital Fees support entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers.
- 2.3. Tuition and Required Educational and General Fees. Charges levied on all students of that class or category to support educational and general program services or optional charges levied for education and general services collected only from students using the service or from students

for whom the services are made available. Educational and general expenditures include instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.

- 2.4. Full Cost of Instruction. Full cost of instruction includes the direct functional expenditures from each institution's audit for both instruction and student services expenditures.
- 2.5. Higher Education Price Index. Inflation index designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.
- 2.6. Median Family Income. Median household income is household income which the U.S. Census Bureau gathers and reports annually from data gathered by various surveys. Median is the statistical center of all reported households income and is presumed to be a better gauge of income as opposed to average family income.
- 2.7. Peer. A higher education institution located in another state that is similar to a West Virginia college or university.
- ~~2.8. Required Fees. Charges levied to all students of a particular class or category e.g., undergraduate, graduate.~~
- 2.89. Special Fee. Operational charges or user fees charged to offset the specific costs for providing these services. These fees include, but are not limited to, course, lab, parking, late payments, drug testing, instrument fees, and other services provided to students. Charging students these fees, allows financial aid to be used as a form of payment for qualifying students. These fees do not include sales of merchandise and tickets, short-term rental of space or equipment and sales of services to the general public.

§135-32-3. Goals.

- 3.1. The Commission seeks to achieve the following goals and objectives with its tuition rule:
 - 3.1.a. To establish equity in the establishment of tuition charged to students.

- 3.1.b. To foster goals related to program completion for West Virginia students.
- 3.1.c. To promote the future economic welfare of the state through an increased output of degree holders in West Virginia.
- 3.1.d. ~~To recognize that differences in mission, in geographic location, and in local median family income result in differences in tuition.~~ To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics.

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

- 4.1. Objectives. The Commission, in partnership with the institutional governing boards, shall enhance education opportunities for the widest range of state citizens:
 - 4.1.a. by establishing tuition and fee levels for in-state students that do not inhibit access to public education nor cause students to incur excessive debt; W. Va. Code §18B-1D-3(a)(2)(B); and
 - 4.1.b. by establishing tuition and fee rates for out-of-state students at levels which, at a minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Commission. W. Va. Code §18B-1D-3(a)(2)(B).
- 4.2. Approval of Tuition and Required Fee Adjustments.
 - 4.2.a. Approval Guidelines. A governing board may approve Auxiliary, tuition and required education and general, and capital fee increases for resident students each fiscal year of up to five percent collectively. ~~Auxiliary, tuition and required education and general and capital Tuition~~ and fee increases above five percent collectively must be approved by the Commission. ~~Governing boards are not required to approve sales prices.~~ Programmed fee increases constituted as part of pre-existing institutional bond obligations/covenants shall be excluded from annual fee increase calculations; and

A fee used solely for the purpose of complying with the athletic provisions of 20 U.S.C. 1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the limitations on

fee increases set forth in this subsection for three years from the effective date [*See Section §18B-10-1.(k).2.*]

- 4.2.a.1. For the purposes of this rule, calculation of five percent shall be based on all required tuition and fee rates charged to all West Virginia resident students.
 - 4.2.a.2. Tuition increases related to fee simplification proposals that result in an revenue expense neutral change for ~~the institution~~ an in-state student shall not be counted toward the five percent allowance exempt from Commission approval.
- 4.2.b. In establishing guidelines, the Commission shall communicate to institutions benchmarks and guidelines for consideration of any increase above five percent. The benchmarks and guidelines may include, but are not limited to such items as:
- 4.2.b.1. The HEPI, or other appropriate inflationary benchmark, which new ~~allocations~~ appropriations to the institution's base budget for the ~~next~~ corresponding fiscal year did not offset;
 - 4.2.b.2. Continued achievement of benchmarks in the institutional compact;
 - 4.2.b.3. Institution pursuit of the statewide compact for postsecondary education;
 - 4.2.b.4. The per capita income of West Virginia families and their ability to pay for college, statewide and specifically as to the county(ies) in which 75% of the institution's in-state students reside;
 - 4.2.b.5. Institutional distance of the sum of appropriations and tuition and fee revenues from peer equity levels as defined by the peer equity model;
 - 4.2.b.6. Institutional and state funding per full-time equivalent student;
 - 4.2.b.7. Most recent three year history of tuition rates and increases;
 - 4.2.b.8. Total sources of student generated revenue, including special fee and program fee rates; and,

- 4.2.b.9. Other factors as requested or deemed relevant by the Commission or in response to any new statutory language.
- 4.2.c. In responding to the guidelines and benchmarks provided by the Commission, each governing board shall provide the Commission with an annual report that details:
 - 4.2.c.1. All tuition and fee rates presently charged and the estimated number of students currently being charged the tuition and fees;
 - 4.2.c.2. The proposed total increase in any tuition and fees for the next fiscal year;
 - 4.2.c.3. The estimated number of students who will be charged the increased tuition and fees; and
 - 4.2.c.4. The estimated increase in revenue to be generated from the increased tuition and fees.
- 4.2.d. A governing board shall propose tuition and required fee rates for non-resident students at levels that, at a minimum, cover the average full cost of instruction. Governing boards may submit for approval institutional policies that support a clearly delineated public policy goal established by the Legislature or the Commission, including but not limited to, proposals to increase the total number of graduates from the institution, aid in economic development or to maximize available capacity on campus.
 - 4.2.d.1. Average full cost of instruction is based on the most recent financial statements. The average shall be determined by calculating the cost of instruction and student services per FTE. This calculation shall be provided to the institutions annually.
 - 4.2.d.2. Institutional governing boards may choose to set non-resident tuition based on the average institutional full cost of instruction or the average full cost of instruction for the system as a whole.

§133-32-5. Expenditure.

- 5.1. All tuition and fees collected may only be expended for the statutory purpose under which they were collected ~~under~~.

§133-32-6. Refunds.

6.1. Except for students receiving Title IV financial assistance, students who officially withdraw during a semester in the academic year shall receive a refund of regular fees in accordance with the following schedules.

6.1.a. Academic Year (Semester). Refunds for semesters shall be calculated using the following schedule:

6.1.a.1. During the first and second weeks, 90% refund.

6.1.a.2. During the third and fourth weeks, 70% refund.

6.1.a.3. During the fifth and sixth weeks, 50% refund.

6.1.a.4. Beginning with the seventh week, no refund.

6.1.b. Summer Terms and Nontraditional Periods. Refunds for summer sessions and nontraditional periods shall be established based upon the refund rate for the academic year and calculated using the following schedule:

6.1.b.1. During the first 13% of the term, 90% refund.

6.1.b.2. From 14% to 25% of the term, 70% refund.

6.1.b.3. From 26% to 38% of the term, 50% refund.

6.1.b.4. After 38% of term is completed, no refund.

6.1.c.. Should the percentage calculation identify a partial day, the entire day should be included in the higher refund period.

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