

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Senate Bill 546

BY SENATORS TARR, ROBERTS, PLYMALE, AND NELSON

[Passed March 10, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §18B-10-1c of the code of West Virginia, 1932, as amended; and
2 to amend and reenact §18B-10-8 of said code, all relating to using fees and other money
3 collected from students at institutions of higher education; defining terms; clarifying
4 allowable expenses for the use of tuition and required general fees; providing for fees
5 charged to be used for information technology purposes; allowing for a specified
6 percentage of gross tuition revenue funds to be spent on information technology projects;
7 and establishing what costs are allowable for information technology projects.

Be it enacted by the Legislature of West Virginia:

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

§18B-10-1c. Definitions.

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

3 (a) "Auxiliary capital fees" means charges levied on students to support debt service,
4 information technology projects, capital projects and campus maintenance and renewal for the
5 auxiliary facilities and information technology systems of the institutions;

6 (b) "Auxiliary fees" means charges levied on all students to support auxiliary enterprises
7 or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales
8 and service revenue from entities that exist predominately to furnish goods or services to
9 students, faculty or staff such as residence halls, faculty and staff housing, food services,
10 intercollegiate athletics, student unions, bookstores, parking and other service centers;

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

13 (d) "Full-time undergraduate student" means an undergraduate student who is enrolled for
14 12 or more credit hours in a regular term;

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

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

17 (2) Charges levied on all students to support debt service, information technology projects,
18 capital projects and campus maintenance and renewal for an institution's educational and general
19 educational facilities, and information systems.

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

21 (1) Charges levied on all students of that class or category to support educational and
22 general program services and to support debt service, information technology projects, capital
23 projects and campus maintenance, and renewal for an institution's educational and general
24 educational facilities, auxiliary facilities and information technology systems; and

25 (2) Optional charges levied for education and general services collected only from
26 students using the service or from students for whom the services are made available.

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

1 (a) This section and any rules adopted by the commission, council, or both, in accordance
2 with this section and §29A-3a-1 *et seq.* of this code, govern the collection, disposition, and use of
3 the capital and auxiliary capital fees authorized by §18B-10-1 of this code. The statutory
4 provisions governing collection and disposition of capital funds in place prior to the enactment of
5 this section remain in effect.

6 (b) *Fees for full-time students.* — The governing boards shall fix capital and auxiliary
7 capital fees for full-time students at each state institution of higher education per semester. For
8 institutions under its jurisdiction, a governing board may fix the fees at higher rates for students
9 who are not residents of this state.

10 (c) *Fees for part-time students.* — For all part-time students and for all summer school
11 students, the governing boards shall impose and collect the fees in proportion to, but not

12 exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same
13 manner as any other fee collected at state institutions of higher education.

14 (d) There is continued in the State Treasury a special capital improvements fund and
15 special auxiliary capital improvements fund for each state institution of higher education and the
16 commission into which shall be paid all proceeds, respectively, of the following:

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

19 (2) The fees collected from the students pursuant to section one of this article. The fees
20 shall be expended by the commission and governing boards for the payment of the principal of or
21 interest on any revenue bonds issued by the board of regents or the succeeding governing boards
22 for which the fees were pledged prior to the enactment of this section.

23 (e) The governing boards may make expenditures from any of the special capital
24 improvements funds or special auxiliary capital improvement funds established in this section,
25 and up to 50 percent of its gross tuition revenues to finance or fund on a cash basis, in whole or
26 in part, in combination with any federal, state or other grants or contributions, for any one or more
27 of the following projects:

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

29 (2) The construction or acquisition of new buildings;

30 (3) The renovation or construction of additions to existing buildings;

31 (4) The acquisition of furnishings and equipment for the buildings;

32 (5) The costs of information technology projects, including, but not limited to, costs
33 associated with planning, designing, implementing, upgrading, modifying and replacing new and
34 existing enterprise resource planning, data, student, critical, or foundational technology systems,
35 without regard to whether such costs are capitalizable, and which may include costs relating to
36 the improvement of business practices to maximize the use of such systems, design,

37 development, infrastructure, software licenses and subscriptions, testing, training, data transfers
38 and relevant labor costs and consultant costs; and

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

45 (f) The commission, when singly or jointly requested by the council or governing boards,
46 periodically may issue revenue bonds of the state as provided in this section to finance all or part
47 of the purposes and pledge all or any part of the moneys in the special funds for the payment of
48 the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any
49 pledge of the special funds for the revenue bonds shall be a prior and superior charge on the
50 special funds over the use of any of the moneys in the funds to pay for the cost of any of the
51 purposes on a cash basis. Any expenditures from the special funds, other than for the retirement
52 of revenue bonds, may be made by the commission or governing boards only to meet the cost of
53 a predetermined capital improvements program for one or more of the state institutions of higher
54 education, in the order of priority agreed upon by the governing board or boards and the
55 commission and for which the aggregate revenue collections projected are presented to the
56 Governor for inclusion in the annual budget bill, and are approved by the Legislature for
57 expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the
58 10-year campus development plan approved by the governing board pursuant to §18B-19-3 of
59 this chapter.

60 (g) The revenue bonds periodically may be authorized and issued by the commission or
61 governing boards to finance, in whole or in part, the purposes provided in this section in an
62 aggregate principal amount not exceeding the amount which the commission determines can be

63 paid as to both principal and interest and reasonable margins for a reserve therefor from the
64 moneys in the special funds.

65 (h) The issuance of the revenue bonds by schools other than the exempted schools shall
66 be authorized by a resolution adopted by the governing board receiving the proceeds and the
67 commission, and the revenue bonds shall bear the date or dates; mature at such time or times
68 not exceeding 40 years from their respective dates; be in such form either coupon or registered,
69 with such exchangeability and interchangeability privileges; be payable in such medium of
70 payment and at such place or places, within or without the state; be subject to such terms of prior
71 redemption at such prices not exceeding 105 percent of the principal amount thereof; and have
72 the other terms and provisions determined by the governing board receiving the proceeds and by
73 the commission. The revenue bonds issued by schools other than the exempted schools shall be
74 signed by the Governor and by the chancellor of the commission or the chair of the governing
75 boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested
76 by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile
77 signature of the chancellor of the commission or the chair of the appropriate governing boards.
78 The revenue bonds shall be sold in the manner the commission or governing board determines
79 is in the best interests of the state.

80 (i) The issuance of the revenue bonds by exempted schools shall be authorized by a
81 resolution adopted by the governing board receiving the proceeds, and the revenue bonds shall
82 bear the date or dates; mature at such time or times not exceeding 100 years from their respective
83 dates; be in such form either coupon or registered, with such exchangeability and
84 interchangeability privileges; be payable in such medium of payment and at such place or places,
85 within or without the state; be subject to such terms of prior redemption at such prices not
86 exceeding 105 percent of the principal amount thereof; and have the other terms and provisions
87 determined by the governing board receiving the proceeds. The revenue bonds shall be signed
88 by the Governor and the chair of the governing boards authorizing the issuance of the revenue

89 bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons
90 attached to the revenue bonds shall bear the facsimile signature of the chair of the appropriate
91 governing boards. The revenue bonds shall be sold in the manner the governing board
92 determines is in the best interests of the state.

93 (j) The commission or governing boards may enter into trust agreements with banks or
94 trust companies, within or without the state, and in the trust agreements or the resolutions
95 authorizing the issuance of the bonds may enter into valid and legally binding covenants with the
96 holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of
97 the revenue bonds, the moneys in the special funds, sinking funds, reserve funds, or any other
98 moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the
99 commission or governing boards under this section; as to the maintenance or revision of the
100 amounts of the fees; as to the extent to which swap agreements, as defined in §13-2G-2 of this
101 code shall be used in connection with the revenue bonds, including such provisions as payment,
102 term, security, default, and remedy provisions as the commission considers necessary or
103 desirable, if any, under which the fees may be reduced; and as to any other matters or provisions
104 which are considered necessary and advisable by the commission or governing boards in the
105 best interests of the state and to enhance the marketability of the revenue bonds.

106 (k) After the issuance of any revenue bonds, the fees at the state institutions of higher
107 education pledged to the payment of the revenue bonds may not be reduced as long as any of
108 the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions
109 contained in the resolution, trust agreement or other proceedings under which the revenue bonds
110 were issued. The revenue bonds are and constitute negotiable instruments under the Uniform
111 Commercial Code of this state; together with the interest thereon, be exempt from all taxation by
112 the State of West Virginia, or by any county, school district, municipality, or political subdivision
113 thereof; and the revenue bonds may not be considered to be obligations or debts of the state and

114 the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall
115 be payable only from the revenue pledged therefor as provided in this section.

116 (l) Additional revenue bonds may be issued by the commission or governing boards
117 pursuant to this section and financed by additional revenues or funds dedicated from other
118 sources. The special revenue fund in the State Treasury known as the Community and Technical
119 College Capital Improvement Fund into which shall be deposited the amounts specified in §29-
120 22-18(j) of this code is continued. All amounts deposited in the fund shall be pledged to the
121 repayment of the principal, interest and redemption premium, if any, on any revenue bonds or
122 refunding revenue bonds authorized by the commission for community and technical college
123 capital improvements or used by the council on a cash basis as provided under §29-22-18(j)(4)
124 of this code for community and technical college capital improvements or capital projects.

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

129 (n) Any revenue bonds for state institutions of higher education proposed to be issued
130 under this section or other sections of this code first must be approved by the Governor and:

131 (1) Approved by the governing board for revenue bonds issued by the exempted schools;

132 (2) Confirmed by the commission, for revenue bonds issued by institutions under the
133 jurisdiction of the commission, or

134 (3) Approved by the council and the commission, for revenue bonds issued by institutions
135 under the jurisdiction of the council.

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

138 (p) Fees pledged for repayment of revenue bonds issued under this section or §18-12B-1
139 *et seq.* of this code prior to or after the effective date of this section shall be transferred to the

140 commission in a manner prescribed by the commission. The commission may transfer funds from
141 the accounts of institutions pledged for the repayment of revenue bonds issued prior to the
142 effective date of this section or issued subsequently by the commission upon the request of
143 institutions, if an institution fails to transfer the pledged revenues to the commission in a timely
144 manner.

145 (q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section
146 and §18B-10-1 of this code are in lieu of any other fees set out in this code for capital and auxiliary
147 capital projects to benefit public higher education institutions. Notwithstanding any other
148 provisions of this code to the contrary, in the event any capital, tuition, registration, or auxiliary
149 fees are pledged to the payment of any revenue bonds issued pursuant to any general bond
150 resolutions of the commission, any of its predecessors or any institution, adopted prior to the
151 effective date of this section, the fees shall remain in effect in amounts not less than the amounts
152 in effect as of that date, until the revenue bonds payable from any of the fees have been paid or
153 the pledge of the fees is otherwise legally discharged.

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.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

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Governor