

# WEST VIRGINIA REGISTER

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**This week's publication includes documents submitted by the following agencies:**

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Grievances Report

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|---|---|---|---|
| **NEW PROPOSED RULES FILED FOR PUBLIC COMMENT THIS WEEK** | | | |
| **AGENCY** | **RULE/TYPE** | **AUTHORITY** | **HEARING/COMMENT PERIOD/LOCATION** |
| Education<br>(126-25A) | Standards for Basic and Specialized Health Care Procedures (2422.7)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Rebecca J. King<br>WVDE Office of Special Education<br>Capitol Building 6<br>1900 Kanawha Boulevard, East<br>Charleston, WV 25305-0330 |
| Education<br>(126-28) | West Virginia's Universal Access to a Quality Education System (2525)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Janet Bock-Hager, Coordinator<br>WVDE Office of Early Learning<br>Capitol Building 6, Room 603<br>1900 Kanawha Boulevard East<br>Charleston, WV 25305-0330 |
| Education<br>(126-44G) | WV College and Career Readiness Standards for World Languages (2520.7)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Debora L Nicholson, Coordinator<br>WVDE Office of Middle/Secondary Learning<br>Capitol Building 6, Room 603<br>1900 Kanawha Boulevard East<br>Charleston, WV 25305-0330 |
| Education<br>(126-44M) | WV College and Career Readiness Programs of Study/Standards for Career and Technical Education (2520.13)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Kathy D'Antoni, Associate Superintendent, WVDE<br>Div of Tech Ed & Governor's Economic Initiatives<br>Capitol Building 6, Room 221<br>1900 Kanawha Boulevard East<br>Charleston, WV 25305-0330 |
| Education<br>(126-44O) | West Virginia Pre-K Standards (Ages 3-5) (2520.15)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Rhonda Fisher<br>WVDE Office of Early Learning<br>Capitol Building 6, Room 603<br>1900 Kanawha Boulevard East<br>Charleston, WV 25305-0330 |

| CHRONOLOGICAL INDEX, VOLUME XXXIV ISSUE 32 | | | |
|---|---|---|---|
| **NEW PROPOSED RULES FILED FOR PUBLIC COMMENT THIS WEEK** | | | |
| **AGENCY** | **RULE/TYPE** | **AUTHORITY** | **HEARING/COMMENT PERIOD/LOCATION** |
| Education<br>(126-44P) | WV Alternate Academic Achievement Standards (2520.16)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Dawn Embrey-King, Coordinator<br>WVDE Office of Special Education<br>Capitol Building 6, Room VEN<br>1900 Kanawha Boulevard East<br>Charleston, WV 25305-0330 |
| Education<br>(126-92) | WV School Bus Transportation Policy and Procedures Manual (4336)<br>Legislative Exempt | §29A-3B-1 et seq. | Written Comments Only<br>September 11, 2017, 4:00 pm<br>Michael Pickens, WVDE Office of School Transportation and School Facilities<br>Capitol Building 6, Room 215<br>1900 Kanawha Boulevard East<br>Charleston, WV 25305-0330 |

| NEW EMERGENCY RULES FILED THIS WEEK | | | | |
|---|---|---|---|---|
| **AGENCY** | **RULE/TYPE** | **AUTHORITY** | **EFFECTIVE DATE** | **DATE NOTICE FOR HEARING** |
| Health and Human Resources<br>(69-13, amendment) | Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State | §16-53-3 | ERD by September 21, 2017 | July 27, 2017 |
| Health and Human Resources<br>(69-14, amendment) | Collection and Exchange of Data Related to Overdoses | §16-5T-5 | ERD by September 21, 2017 | July 27, 2017 |

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## GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

| | | |
|---|---|---|
| Column | 1. | Agency Name, (Title and Series Number) |
| Column | 2. | Rule Title, Price and Type |
| Column | 3. | Date Notice of Public Hearing or Comment Period Filed |
| Column | 4. | Date of Public Hearing or Last Date Comments Will Be Received |
| Column | 5. | Date Emergency Rule Filed, Emergency Amendments Filed, Emergency Rule Decision (ERD) Number & Date ERD Filed (Effective Date of Emergency Rule) |
| Column | 6. | Date Agency Approved Legislative Rules Filed. |
| Column | 7. | Date Review by the Legislative Rule-Making Review Committee & Action Taken **Please Note** The Board of Education, Board of Trustees & Board of Directors File Their Rules With the Educational Over-Sight Committee |
| Column | 8. | Legislative Action |
| Column | 9. | Date Agency Final Files Legislative, Procedural or Interpretive Rules. This is the Final Step for Procedural & Interpretive Rules |
| Column | 10. | Date Rule is Effective |

- Emergency rules will not have a "Notice" date until the agency files one, but the rule will appear in Columns 1, 2 & 5. An Agency must file for either a public hearing or public comment period either before filing as an emergency or no more than 30 days after filing the rule as an emergency
- If more than one date appears in a column, it means the agency has repeated that step (ex. - holding an additional public hearing)

## CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

| TITLE NUMBER | | NAME OF AGENCY |
|---|---|---|
| TITLE | 1 | ACCOUNTANCY |
| TITLE | 3 | BARBERS AND COSMETOLOGISTS |
| TITLE | 7 | PROFESSIONAL ENGINEERS |
| TITLE | 8 | HEARING AID DEALERS |
| TITLE | 10 | LICENSED PRACTICAL NURSES |
| TITLE | 11 | MEDICINE |
| TITLE | 14 | OPTOMETRY |
| TITLE | 15 | PHARMACY |
| TITLE | 16 | PHYSICAL THERAPY |
| TITLE | 17 | PSYCHOLOGISTS |
| TITLE | 20 | SANITARIANS |
| TITLE | 24 | OSTEOPATHY |
| TITLE | 25 | SOCIAL WORK EXAMINERS |
| TITLE | 26 | VETERINARY MEDICINE |
| TITLE | 27 | COUNSELING |
| TITLE | 29 | SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY |
| TITLE | 31 | DIETITIANS |
| TITLE | 33 | OFFICE OF WASTE MANAGEMENT (FORMERLY PART OF TITLE 47) |
| TITLE | 35 | OFFICE OF OIL AND GAS |
| TITLE | 36 | COAL MINE HEALTH & SAFETY |
| TITLE | 38 | MINING & RECLAMATION |
| TITLE | 42 | LABOR |
| TITLE | 45 | OFFICE OF AIR QUALITY |
| TITLE | 47 | OFFICE OF WATER RESOURCES |
| TITLE | 48 | MINES TRAINING EDUCATION & CERTIFICATION |
| TITLE | 56 | MINERS' HEALTH, SAFETY AND TRAINING |
| TITLE | 58 | NATURAL RESOURCES |
| TITLE | 60 | ENVIRONMENTAL PROTECTION, SECRETARY'S OFFICE |
| TITLE | 61 | AGRICULTURE |
| TITLE | 63 | CONSERVATION AGENCY |
| TITLE | 64 | HEALTH |
| TITLE | 65 | HEALTH CARE AUTHORITY |
| TITLE | 69 | HEALTH & HUMAN RESOURCES |
| TITLE | 76 | SENIOR SERVICES |
| TITLE | 78 | HUMAN SERVICES |
| TITLE | 81 | STATE POLICE |
| TITLE | 82 | CULTURE AND HISTORY |
| TITLE | 85 | WORKERSCOMPENSATION BY THE INSURANCE COMMISSION |
| TITLE | 86 | VETERANS AFFAIRS |
| TITLE | 87 | FIRE COMMISSION |
| TITLE | 90 | CORRECTIONS |
| TITLE | 91 | MOTOR VEHICLES |
| TITLE | 94 | REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY |
| TITLE | 96 | WORKFORCE WEST VIRGINIA |
| TITLE | 110 | TAX DEPARTMENT |
| TITLE | 112 | TREASURER |
| TITLE | 113 | HEALTH INSURANCE PLAN |
| TITLE | 114 | INSURANCE |
| TITLE | 126 | EDUCATION |
| TITLE | 127 | SECONDARY SCHOOLS ACTIVITIES COMM. |
| TITLE | 133 | HIGHER EDUCATION POLICY COMMISSION |
| TITLE | 135 | COMMUNITY & TECHNICAL COLLEGE EDUCATION |
| TITLE | 143 | PERSONNEL |
| TITLE | 144 | TOURISM |
| TITLE | 146 | STATE ELECTION COMMISSION |
| TITLE | 148 | ADMINISTRATION |
| TITLE | 149 | CRIME, DELINQUENCY AND CORRECTION |
| TITLE | 150 | PUBLIC SERVICE COMMISSION |
| TITLE | 153 | SECRETARY OF STATE |
| TITLE | 157 | DIVISION OF HIGWAYS |
| TITLE | 158 | ETHICS COMMISSION |
| TITLE | 162 | CONSOLIDATED PUBLIC RETIREMENT BOARD |
| TITLE | 164 | SCHOOL BUILDING AUTHORITY |
| TITLE | 172 | STATE RAIL AUTHORITY |
| TITLE | 174 | REAL ESTATE COMMISSION |
| TITLE | 175 | ALCOHOL BEVERAGE CONTROL COMMISSION |
| TITLE | 176 | ALCOHOL BEVERAGE CONTROL COMMISSION – BEER |
| TITLE | 177 | ATHLETIC COMMISSION |
| TITLE | 178 | RACING COMMISSION |
| TITLE | 179 | LOTTERY |
| TITLE | 184 | PARKWAYS ECONOMIC DEV. & TOURISM AUTHORITY |
| TITLE | 190 | REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD |
| TITLE | 191 | FAMILY PROTECTION SERVICES BOARD |
| TITLE | 194 | MASSAGE THERAPY LICENSURE BOARD |
| TITLE | 199 | EXPLOSIVES & BLASTING |
| TITLE | 204 | HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY |

RULE MONITOR

| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Accountancy, WV Bd. Of (1-01) | Board Rules and Rules of Professional Conduct Legislative | 6/23/2017 | 7/23/2017 | | 7/28/2017 | | | | |
| Administration (148-03) | State Owned Vehicles Legislative | 6/26/2017 | 7/26/2017 | | 7/26/2017 | | | | |
| Administration (148-6) | Parking Legislative | 6/21/2017 | 7/21/2017 | | 7/25/2017 | | | | |
| Agriculture (61-01) | Animal Disease Control Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Agriculture (61-1A) | Feeding of Untreated Garbage to Swine Legislative | 6/22/2017 | 7/22/2017 | | 7/27/2017 | | | | |
| Agriculture (61-2) | West Virginia Apiary Law Legislative | 6/15/2017 | 7/16/2017 | | 7/18/2017 | | | | |
| Agriculture (61-8B) | Schedule of Charges for Inspection Services: Fruit Legislative | 6/15/2017 | 7/172017 | | 7/19/2017 | | | | |
| Agriculture (61-11) | Public Markets Legislative | 6/27/2017 | 7/27/2017 | | 7/27/2017 | | | | |
| Agriculture (61-11B) | Auctioneers Legislative | 6/26/2017 | 7/26/2017 | | 7/28/2017 | | | | |
| Agriculture (61-14A) | Noxious Weeds Legislative | 6/22/2017 | 7/22/2017 | | 7/28/2017 | | | | |
| Agriculture (61-16) | Inspection of Meat and Poultry Legislative | 6/15/2017 | 7/16/2017 | | 7/17/2017 | | | | |
| Agriculutre (61-23D) | Inspection of Nontraditional, Domesticated Animals Legislative | 6/15/2017 | 7/16/2017 | | 7/17/2017 | | | | |
| Air Quality (45-8) | Ambient Air Quality Standards Legislative | 6/6/2017 | 7/11/2017 | | 7/21/2017 | | | | |
| Air Quality (45-16) | Standards of Performance for New Stationary Sources Legislative | 6/6/2017 | 7/11/2017 | | 7/21/2017 | | | | |
| Air Quality (45-18) | Control of Air Pollution from Combustion of Solid Waste Legislative | 6/7/2017 | 7/11/2017 | | 7/21/2017 | | | | |
| Air Quality (45-23) | Control of Air Pollution from Municipal Solid Waste Landfills Legislative | 6/7/2017 | 7/11/2017 | | 7/21/2017 | | | | |

RULE MONITOR

| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Air Quality (45-25) | Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative | 6/6/2017 | 7/11/2017 | | 7/21/2017 | | | | |
| Air Quality (45-34) | Emission Standards for Hazardous Air Pollutants Legislative | 6/6/2017 | 7/11/2017 | | 7/21/2017 | | | | |
| Athletic Commission (177-1) | WV State Athletic Commission Legislative | 6/16/2017 | 7/16/2017 | | 7/27/2017 | | | | |
| Athletic Commission (177-2) | Regulation of Mixed Martial Arts Legislative | 6/16/2017 | 7/16/2017 | | 7/27/2017 | | | | |
| Crime Delinquency and Correction (149-2) | Law Enforcement Training and Certification Standards Legislative | 6/21/2017 | 7/24/2017 | | 7/26/2017 | | | | |
| Crime Delinquency and Correction (149-03) | Protocol for Law Enforcement Response to Domestic Violence Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Dietitians (31-1) | Licensure and Renewal Requirements Legislative | 6/8/2017 | 7/17/2017 | | 7/24/2017 | | | | |
| Education (126-16) | Regulations for the Education of Students with Exceptionalities (2419) Legislative Exempt | 4/13/2017 | 6/11/2017 | | | | | 7/13/2017 | 8/14/2017 |
| Education (126-25A) | Standards for Basic and Specialized Health Care Procedures (2422.7) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |
| Education (126-28) | West Virginia's Universal Access to a Quality Early Education System (2525) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |
| Education (126-44G) | WV College and Career Readiness Standards for World Languages (2520.7) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |
| Education (126-44M) | WV College and Career Readiness Programs of Study/Standards for Career and Technical Education (2520.13) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |
| Education (126-44O) | WV Pre-K Standards (Ages 3-5) (2520.15) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |

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|---|---|---|---|---|---|---|---|---|---|
| Education (126-44P) | WV Alternate Academic Achievement Standards (2520.16) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |
| Education (126-67) | Comprehensive School Counseling Programs (2315) Legislative Exempt | 5/18/2017 | 6/19/2017 | | | | | 7/13/2017 | 8/14/2017 |
| Education (126-81) | Attendance (4110) Legislative Exempt | 7/13/2017 | 8/14/2017 | | | | | | |
| Education (126-86) | Standards for School Nutrition (Policy 4321.1) Legislative Exempt | 6/15/2017 | 7/17/2017 | | | | | 8/10/2017 | 1/2/2018 |
| Education (126-92) | WV School Bus Transportation Policy and Procedures Manual (4336) Legislative Exempt | 8/10/2017 | 9/11/2017 | | | | | | |
| Education (126-099) | Expected Behavior in Safe and Supportive Schools (4373) Legislative Exempt | 7/13/2017 | 8/14/2017 | | | | | | |
| Education (126-114) | Approval of Educational Personnel Preparation Programs (5100) Legislative Exempt | 7/13/2017 | 8/14/2017 | | | | | | |
| Education (126-136) | Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classification (5202) Legislative Exempt | 7/13/2017 | 8/14/2017 | | | | | | |
| Environmental Protection – Secretary's Office (60-03) | Voluntary Remediation and Redevelopment Rule Legislative | 6/5/2017 | 7/6/2017 | | 7/11/2017 | | | | |
| Fire Commission (87-2) | Electrician Licensing Rules Legislative | 6/16/2017 | 7/17/2017 | | 7/25/2017 | | | | |
| Fire Commission (87-3) | Hazardous Substance Emergency Response Training Programs Legislative | 6/19/2017 | 7/19/2017 | | 7/25/2017 | | | | |
| Health (64-03) | Public Water Systems Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Health (64-12) | Hospital Licensure Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Health (64-17) | Food Establishments Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |

RULE MONITOR

| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Health (64-23A) | Technologically Enhanced Naturally Occurring Radioactive Material Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Health (64-48) | Emergency Medical Services Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Health (64-105) | Harm Reduction Programs Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Health (64-106) | Home-Based Food Production Legislative | 6/27/2017 | 7/27/2017 | 6/27/2017 Withdrawn 7/20/2017 | 7/28/2017 | | | | |
| Health (64-107) | Designation of Comprehensive, Primary and Acute Stroke-Ready Hospitals Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Health and Human Resources (69-10) | WV Clearance for Access: Registry and Employment Screening Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| Health and Human Resources (69-13) | Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State Legislative | 6/27/2017 | 7/27/2017 | 6/27/2017 Approved 7/20/2017 Amendment 7/28/2017 ERD by 9/21/2017 | 7/28/2017 | | | | |
| Health and Human Resources (69-14) | Collection and Exchange of Data Related to Overdoses Legislative | 6/27/2017 | 7/27/2017 | 6/27/2017 Approved 7/20/2017 Amendment 7/28/2017 ERD by 9/21/2017 | 7/28/2017 | | | | |
| Health Care Authority (65-13) | Financial Disclosure Rule Legislative | 6/27/2017 | 7/27/2017 | 6/27/2017 Approved 7/20/2017 | 7/28/2017 | | | | |
| Hearing Aid Dealers (8-01) | WV Board of Hearing Aid Dealers Legislative | 6/23/2017 | 7/24/2017 | | 7/26/2017 | | | | |
| Higher Ed. Policy Commission (133-41) | Health Sciences Service Program Procedural | 6/26/2017 | 7/26/2017 | | | | | 8/2/2017 | 9/2/2017 |

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| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Highways (157-2) | Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance Legislative | 6/22/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Human Services (78-01) | Child Care Licensing Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| Human Services (78-02) | Child Placing Agencies Licensing Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| Human Services (78-18) | Family Child Care Facility Licensing Requirements Legislative | 6/27/2017 | 7/26/2017 | | 7/28/2017 | | | | |
| Human Services (78-19) | Family Child Care Home Registration Requirements Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| Human Services (78-20) | Informal and Relative Family Child Care Home Registration Requirements Legislative | 6/26/2017 | 7/26/2017 | | 7/28/2017 | | | | |
| Human Services (78-21) | Out-of-School Time Child Care Center Legislative | 6/26/2017 | 7/26/2017 | | 7/28/2017 | | | | |
| Human Services (78-26) | Drug Screening of Applicants for Cash Assistance Under the Temporary Assistance for Needy Families Program (TANF) Legislative | 6/27/2017 | 7/27/2017 | 6/27/2017 Approved 7/20/2017 Amendment 7/28/2017 ERD by 9/8/2017 | 7/28/2017 | | | | |
| Labor (42-10) | Zipline and Canopy Tour Responsibility Act Legislative | 6/15/2017 | 7/17/2017 | | 7/27/2017 | | | | |
| Labor (42-12) | Bedding and Upholstered Furniture Legislative | 6/15/2017 | 7/17/2017 | | 7/27/2017 | | | | |
| Labor (42-17) | Amusement Rides and Amusement Attractions Safety Act Legislative | 6/15/2017 | 7/17/2017 | | 7/27/2017 | | | | |
| Labor (42-21) | Elevator Safety Act Legislative | 6/21/2017 | 7/22/2017 | | 7/27/2017 | | | | |
| Labor (42-33) | Employer Wage Bonds Legislative | 6/15/2017 | 7/17/2017 | | 7/27/2017 | | | | |

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| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Labor (42-35) | Registration of Service Persons and Service Agencies Legislative | 6/15/2017 | 7/17/2017 | 6/16/2017 Approved 7/20/2017 | 7/27/2017 | | | | |
| Labor (42-36) | Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions Legislative | 6/15/2017 | 7/17/2017 | 6/16/2017 Approved 7/20/2017 | 7/27/2017 | | | | |
| Licensed Practical Nurses (10-04) | Schedule of Fees for Services Rendered by the WV State Bd. Of Examiners for Licensed Practical Nurses Legislative | 6/28/2017 | 7/28/2017 | | 7/31/2017 | | | | |
| Lottery Commission (179-1) | State Lottery Rules Legislative | 6/19/2017 | 7/21/2017 | | 7/28/2017 | | | | |
| Massage Therapy Licensure Board (194-1) | General Provisions Legislative | 6/19/2017 | 7/22/2017 | | 7/26/2017 | | | | |
| Medicine (11-6) | Continuing Education for Physicians and Podiatrists Legislative | 6/21/2017 | 7/21/2017 | | 7/26/2017 | | | | |
| Medicine (11-01B) | Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative | 7/11/2017 | 8/10/2017 | | | | | | |
| Miners' Health, Safety and Training (56-23) | Operating Diesel Equipment in Underground Mines in WV Legislative | 6/22/2017 | 7/24/2017 | 6/22/2017 Approved 7/20/2017 | 7/27/2017 | | | | |
| Mining and Reclamation (38-02) | West Virginia Surface Mining Reclamation Legislative | 6/6/2017 | 7/18/2017 | | 7/27/2017 | | | | |
| Natural Resources (58-02) | Rules Controlling the Public Land Corporations Sale, Lease, Exchange or Transfer of Land or Minerals Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-05) | Recycling Assistance Grant Program Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-11) | Hunting, Fishing and Other Outfitters and Guides Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-25) | Boating Rule Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |

RULE MONITOR

| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Natural Resources (58-28) | Special Requirements Concerning Boating<br>Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-29) | Special Boating Rule for Jennings Randolph Lake<br>Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-49) | General Hunting<br>Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-56) | Special Migratory Bird Hunting<br>Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-64) | Miscellaneous Permits and Licenses<br>Legislative | 6/23/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Natural Resources (58-69) | Wildlife Disease Management<br>Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Optometry (14-01) | WV Board of Optometry<br>Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Pharmacy (15-1) | Licensure and Practice of Pharmacy<br>Legislative | 6/22/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Pharmacy (15-2) | Uniform Controlled Substances Act<br>Legislative | 5/11/2017 | 6/12/2017 | | 7/28/2017 | | | | |
| Pharmacy (15-7) | Registration of Pharmacy Technicians<br>Legislative | 5/12/2017 | 6/12/2017 | | 7/28/2017 | | | | |
| Pharmacy (15-8) | Controlled Substances Monitoring Program<br>Legislative | 6/15/2017 | 7/17/2017 | 6/15/2017<br>Approved<br>7/20/2017 | 7/28/2017 | | | | |
| Pharmacy (15-10) | Pharmacist Recovery Networks<br>Legislative | 5/12/2017 | 6/12/2017 | | 7/28/2017 | | | | |
| Pharmacy (15-12) | Immunizations Administered by Pharmacists and Pharmacy Interns<br>Legislative | 6/22/2017 | 7/24/2017 | | 7/28/2017 | | | | |
| Pharmacy (15-14) | Centralized Prescription Processing<br>Legislative | 6/15/2017 | 7/17/2017 | | 7/28/2017 | | | | |
| Physical Therapy (16-4) | Fees for Physical Therapist and Physical Therapist Assistant<br>Legislative | 3/16/2016 | 4/18/2016 | | 4/22/2016 | Approved<br>9/1/2016 | SB 144<br>HB 2232<br>Bundled<br>HB 2219 | 6/5/2017 | 9/1/2017 |

RULE MONITOR

| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Psychologists (17-01) | Fees<br>Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Psychologists (17-02) | Organization and Procedures of the Board of Examiners of Psychologists<br>Procedural | 6/28/2017 | 7/28/2017 | | | | | | |
| Psychologists (17-03) | Requirements for Licensure as a Psychologist and/or a School Psychologist<br>Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Psychologists (17-06) | Code of Ethics<br>Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Racing Commission (178-1) | Thoroughbred Racing<br>Legislative | 6/19/2017 | 7/19/2017 | | 7/27/2017 | | | | |
| Real Estate Appraiser Licensing & Cert. Bd. (190-2) | Requirements for Licensure and Certification<br>Legislative | 6/14/2017 | 7/17/2017 | | 7/28/2017 | | | | |
| Real Estate Commission (174-01) | Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business<br>Legislative | 6/23/2017 | 7/24/2017 | | 7/27/2017 | | | | |
| Real Estate Commission (174-02) | Schedule of Fees<br>Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| Real Estate Commission (174-03) | Requirements for Real Estate Courses, Course Providers and Instructors<br>Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| School Building Authority of WV (164-1) | School Building Authority Policy and Procedures Handbook<br>Procedural | 12/22/2016 | 1/23/2017 | | | | | | |
| Secondary School Activities Comm. (127-2) | Athletics, Provisions Governing Eligibility<br>Legislative Exempt | 5/18/2017 | 6/19/2017 | | | | | 7/13/2017 | 9/11/2017 |
| Secondary School Activities Comm. (127-3) | Provisions Governing Contests<br>Legislative Exempt | 5/18/2017 | 6/19/2017 | | | | | 7/13/2017 | 9/11/2017 |
| Secretary of State (153-18) | Procedures for Canvassing Elections<br>Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |

RULE MONITOR

| AGENCY/SERIES NO | RULE | NOTICE | HEARING | EMER RULE | SEC/STATE | LRMRC-ACTION | LEGIS | FINAL FILE | EFFECTIVE |
|---|---|---|---|---|---|---|---|---|---|
| Secretary of State (153-27) | Procedures for Handling Ballots and Counting Write-In Votes in Counties Using Optical Scan Ballots Legislative | 6/28/2017 | 7/28/2017 | | 7/28/2017 | | | | |
| Secretary of State (153-34) | Licensing of Private Investigators and Security Guards Legislative | 6/26/2017 | 7/26/2017 | | 7/27/2017 | | | | |
| Secretary of State (153-39) | Vote by Mail Pilot Project Phase 2: Voting by Mail – Repeal Legislative | 6/27/2017 | 7/27/2017 | | 7/28/2017 | | | | |
| Senior Services (76-3) | WV State Plan for Aging Programs Interpretive | 7/7/2016 | 8/8/2016 | | | | | | |
| State Police (81-14) | WV Sex Offender Registration Act Procedural | 7/20/2017 | 8/22/2017 | | | | | | |
| Tax (110-10F) | Payment of Taxes by Electronic Funds Transfer Legislative | 6/16/2017 | 7/17/2017 | | 7/27/2017 | | | | |
| Tax (110-13DD) | Farm-To-Food Bank Tax Credit Legislative | 6/16/2017 | 7/17/2017 | | 7/27/2017 | | | | |
| Tax (110-22) | Property Transfer Tax Legislative | 6/19/2017 | 7/20/2017 | | 7/27/2017 | | | | |
| Tax (110-28) | Municipal Sales and Service and Use Tax Administration Legislative | 6/16/2017 | 7/17/2016 | 6/13/2017 Approved 7/20/2017 | 7/28/2017 | | | | |
| Veterinary Medicine (26-1) | Organization and Operation and Licensing of Veterinarians Legislative | 6/12/2017 | 7/13/2017 | | 7/18/2017 | | | | |
| Veterinary Medicine (26-5) | Certified Animal Euthanasia Technicians Legislative | 6/12/2017 | 7/13/2017 | | 7/18/2017 | | | | |
| Veterinary Medicine (26-6) | Schedule of Fees Legislative | 6/12/2017 | 7/13/2017 | | 7/18/2017 | | | | |
| Waste Mgmt., Div. of Water & Waste Mgmt (33-20) | Hazardous Waste Management System Legislative | 6/5/2017 | 7/6/2017 | | 7/21/2017 | | | | |
| Waste Mgmt., Div. of Water & Waste Mgmt (33-30) | Underground Storage Tanks Legislative | 6/5/2017 | 7/6/2017 | | 7/25/2017 | | | | |

**WEST VIRGINIA SECRETARY OF STATE**

MAC WARNER

**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

LEGISLATIVE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE**
**(Page 1)**

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-025A**
RULE NAME **Standards for Basic and Specialized Health Care Procedures (Policy 2422.7)**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.: W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO
**Rebecca J. King**
**WVDE Office of Special Education**
**Capitol Building 6**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Mary C Tuckwiller – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-025A Rule Id: 16593 Document: 49782

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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE**
**(Page 1)**

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-028**
RULE NAME **West Virginia's Universal Access to a Quality Early Education System (Policy 2525)**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.: W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO
**Janet Bock-Hager, Coordinator**
**WVDE Office of Early Learning**
**Capitol Building 6, Room 603**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Mary C Tuckwiller – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-028 Rule Id: 16595 Document: 49784

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LEGISLATIVE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE**
**(Page 1)**

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-044G**
RULE NAME **West Virginia College- and Career-Readiness Standards for World Languages (Policy 2520.7)**
CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO
**Debora L. Nicholson, Coordinator**
**WVDE Office of Middle/Secondary Learning**
**Capitol Building 6, Room 603**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Mary C Tuckwiller -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-044G Rule Id: 16597 Document: 49786

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE**
**(Page 1)**

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-044M**
RULE NAME **West Virginia College- and Career-Readiness Programs of Study/Standards for Career Technical Education (Policy 2520.13)**
CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO
**Kathy D'Antoni, Associate Superintendent, WVDE**
**Div of Tech Ed & Governor's Economic Initiatives**
**Capitol Building 6, Room 221**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Mary C Tuckwiller -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-044M Rule Id: 16596 Document: 49785

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LEGISLATIVE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE**
**(Page 1)**

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-044O**
RULE NAME **West Virginia Pre-K Standards (Ages 3-5) (Policy 2520.15)**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO
**Rhonda Fisher**
**WVDE Office of Early Learning**
**Capitol Building 6, Room 603**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Mary C Tuckwiller – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-044O Rule Id: 16598 Document: 49788

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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE**
**(Page 1)**

AGENCY **Education**
RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-044P**
RULE NAME **West Virginia Alternant Academic Achievement Standards (Policy 2520.16)**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO
**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO
**Dawn Embrey-King, Coordinator**
**WVDE Office of Special Education**
**Capitol Building 6, Room VEN**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Mary C Tuckwiller – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-044P Rule Id: 16599 Document: 49787

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LEGISLATIVE

**FORM 5 – NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY **Education**

RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-086**

RULE NAME **Standards for School Nutrition (Policy 4321.1)**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

RULE IS LEGISLATIVE EXEMPT

**Yes**

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

**W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS

**Tuesday, January 02, 2018**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Mary C Tuckwiller – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-086 Rule Id: 16473 Document: 49780

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**ADMINISTRATIVE LAW DIVISION**

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**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 1)**

AGENCY **Education**

RULE TYPE **Legislative Exempt** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **126-092**

RULE NAME **West Virginia School Bus Transportation Policy and Procedures Manual (Policy 4336)**

CITE AUTHORITY **W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839 (1988)**

COMMENTS LIMITED TO

**Written**

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS

**Monday, September 11, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO

**Michael Pickens, WVDE Office of School Transportation and School Facilities**
**Capitol Building 6, Room 215**
**1900 Kanawha Boulevard, East**
**Charleston, West Virginia 25305-0330**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**

**Mary C Tuckwiller – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 126-092 Rule Id: 16594 Document: 49783

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EMERGENCY

FORM 8 -- NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE (Page 1)

AGENCY **Health And Human Resources**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **69-13**
RULE NAME **Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State**
CITE AUTHORITY **16-53-3**

DATE EMERGENCY RULE WAS ORIGINALLY FILED
**Tuesday, June 27, 2017**
FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE

DATE OF FIRST EMERGENCY AMENDMENT

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Melanie A Pagliaro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 69-13 Rule Id: 16558 Document: 49729

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MAC WARNER
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FORM 8 -- NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE (Page 1)

AGENCY **Health And Human Resources**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **69-14**
RULE NAME **Collection and Exchange of Data Related to Overdoses**

CITE AUTHORITY **16-5T-5**

DATE EMERGENCY RULE WAS ORIGINALLY FILED
**Tuesday, June 27, 2017**
FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE

DATE OF FIRST EMERGENCY AMENDMENT

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**
**Melanie A Pagliaro -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

Title-Series: 69-14 Rule Id: 16559 Document: 49695

# August Legislative Interim Schedule

## August 20-23, 2017

## State Capitol

Posted in the following offices; Senate President, House Speaker, Senate Clerk, House Clerk, Legislative Services and Secretary of State's office.
August 10, 2017

### Sunday, August 20, 2017

| | | |
|---|---|---|
| 1:00 PM | 2:00 PM | Joint Commission on Economic Development - JOINT MEETING ..... House Gov. Org. |
| 1:00 PM | 2:00 PM | Legislative Oversight Comm. on Workforce Investment for Econ. Dev. - JOINT MEETING ..... House Gov. Org. |
| 1:00 PM | 2:00 PM | Post Audits Subcommittee ..... Senate Finance |
| 2:00 PM | 3:00 PM | Commission on Special Investigations ..... Senate Finance |
| 2:00 PM | 3:00 PM | Select Committee on Infrastructure ..... Senate Judiciary |
| 2:00 PM | 4:00 PM | Joint Government Accountability, Transparency and Efficiency Committee ..... House Gov. Org. |
| 4:00 PM | 6:00 PM | Select Committee on PEIA, Seniors and Long Term Care ..... Senate Finance |
| 4:00 PM | 6:00 PM | Joint Legislative Oversight Commission on Dept of Transportation Accountability ..... Senate Judiciary |

### Monday, August 21, 2017

| | | |
|---|---|---|
| 8:00 AM | 9:00 AM | Joint Committee on Children and Families ..... House Finance |
| 8:00 AM | 9:00 AM | Parks, Recreation and Natural Resources Subcommittee ..... Senate Finance |
| 9:00 AM | 10:00 AM | Legislative Oversight Committee on Regional Jail and Correctional Facility Authority ..... House Finance |
| 9:00 AM | 10:00 AM | Forest Management Review Commission ..... Senate Finance |
| 10:00 AM | 12:00 PM | Joint Legislative Committee on Flooding ..... House Chamber |
| 12:00 PM | 3:00 PM | Joint Committee on Health ..... House Chamber |
| 12:00 PM | 3:00 PM | Joint Standing Committee on Energy ..... Senate Judiciary |
| 3:00 PM | 6:00 PM | Joint Standing Committee on the Judiciary ..... House Chamber |
| 3:00 PM | 6:00 PM | Joint Standing Committee on Finance ..... House Gov. Org. |

### Tuesday, August 22, 2017

| | | |
|---|---|---|
| 8:00 AM | 9:00 AM | Select Committee on Veterans' Affairs ..... House Judiciary |
| 8:00 AM | 9:00 AM | Joint Committee on Technology ..... Senate Finance |
| 9:00 AM | 11:00 AM | Legislative Oversight Commission on Health and Human Resources Accountability ..... House Finance |
| 9:00 AM | 11:00 AM | Legislative Oversight Commission on Education Accountability ..... Senate Finance |
| 11:00 AM | 12:00 PM | Commission on Interstate Cooperation ..... House Finance |
| 11:00 AM | 12:00 PM | Joint Committee on Government and Finance ..... Senate Finance |
| 12:00 PM | 1:00 PM | Labor and Worker Safety Issues ..... House Gov. Org. |
| 12:00 PM | 1:00 PM | Agriculture and Rural Development ..... Senate Finance |
| 1:00 PM | 4:00 PM | Joint Standing Committee on Education ..... House Chamber |
| 1:00 PM | 4:00 PM | Joint Committee on Government Operations - JOINT MEETING ..... House Gov. Org. |
| 1:00 PM | 4:00 PM | Joint Standing Committee on Government Organization - JOINT MEETING ..... House Gov. Org. |
| 4:00 PM | 6:00 PM | Joint Committee on Volunteer Fire Departments & Emergency Medical Services ..... House Finance |
| 4:00 PM | 6:00 PM | Joint Committee on Natural Gas Development ..... House Gov. Org. |

### Wednesday, August 23, 2017

| | | |
|---|---|---|
| 9:00 AM | 12:00 PM | Legislative Rule-Making Review Committee ..... Senate Judiciary |

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SECRETARY OF STATE

# Orders Report

| Docket Number | Agency | Respondent | Date Rendered |
|---|---|---|---|
| VCRB 2014-126 | Ethics Commission | J. Michael Ihle | 8/3/2017 |
| 17-5-11130-X | Health Care Authority | Sabra Health Care REIT, Inc | 7/31/2017 |
| 17-3-11113-P | Health Care Authority | Charleston Area Medical Center Inc | 7/31/2017 |
| 17-AP-FINCON-02010 | Insurance Commission | American Medical and Life Insurance Company | 7/31/2017 |
| 17-AP-PRLC-02016 | Insurance Commission | Axis Life Insurance LLC | 8/1/2017 |
| 17-MAP-02003 | Insurance Commission | Farmers' Mutual Insurance Company | 7/11/2017 |

| WEST VIRGINIA ETHICS COMMISSION ADVISORY OPINIONS | |
|---|---|
| **NO.** | **OPINION SOUGHT** |
| 2017-17 | A County Planning Commission Member asks whether he may, on behalf of his clients, attend public hearings before the Planning Commission to answer questions if he removes himself from the meeting room prior to the deliberations and vote on the matter. |
| 2017-19 | A County Planning Commission asks whether its members, including those on its "sign ordinance" subcommittee, who own businesses that utilize signs may participate in reviewing and making recommendations regarding amendments to the county's sign ordinance. |
| 2017-20 | A Municipal Police Chief asks whether police officers in his department may attend a "Coffee with Cops" event hosted by a local fast-food restaurant. |

| WEST VIRGINIA ETHICS COMMISSION'S COMMITTEE ON OPEN GOVERNMENTAL MEETINGS ADVISORY OPINIONS | |
|---|---|
| **NO.** | **OPINION SOUGHT** |
| 2017-02 | The Director of the West Virginia Division of Homeland Security and Emergency Management asks whether the Open Governmental Proceedings Act applies to meetings of the Statewide Interoperability Executive Committee in the exercise of its supervision and implementation of the Statewide Interoperability Radio Network. |

# Grievances Report

| Docket Number | Grievants Name | Respondents Name | Date Decision |
|---|---|---|---|
| 2017-1076-DHHR | **Shondda Allen** | Health And Human Resources | 7/5/2017 |
| | | Jackie Withrow Hospital | 7/5/2017 |
| 2017-1366-DEA | **Cari J. Stone** | Rehabilitation Services | 7/7/2017 |
| 2016-1532-CONS | **Adam Burkholder** | Highways | 7/9/2017 |
| | **Donnie Preast** | Highways | 7/9/2017 |
| 2016-1657-DHHR | **Judy Matthews** | Health And Human Resources | 7/11/2017 |
| | | William R. Sharpe, Jr. Hospital | 7/11/2017 |
| 2017-0148-MonED | **Jill Strahan** | Monongalia County Board Of Education | 7/14/2017 |
| 2017-1190-CONS | **Jonatha Baldwin et al.** | Education | 7/20/2017 |
| | | Institutional Education Programs | 7/20/2017 |
| 2017-0210-DHHR | **Brian Large** | Health And Human Resources | 7/20/2017 |
| | | William R. Sharpe, Jr. Hospital | 7/20/2017 |
| 2017-1075-MerED | **Pamela Nowlin** | Mercer County Board Of Education | 7/20/2017 |
| 2017-0809-RalED | **Gwen Wagner** | Raleigh County Board Of Education | 7/20/2017 |
| 2017-1369-KanED | **William Courts** | Kanawha County Board Of Education | 7/21/2017 |
| 2017-0980-HarED | **Michael Spatafore** | Harrison County Board Of Education | 7/26/2017 |
| 2015-1445-CONS | **Michael Weaver, et al.** | Morgan County Board Of Education | 7/26/2017 |

**STATE OF WEST VIRGINIA**

**EXECUTIVE DEPARTMENT**

**At Charleston**

**EXECUTIVE ORDER NO. 6-17**

**By the Governor**

EXECUTIVE ORDER

**WHEREAS**, the West Virginia Legislature passed during the 2017 Regular Session Senate Bill 362, effective from, its passage on April 18, 2017, and I signed such bill into law April 25, 2017; and

**WHEREAS**, pursuant to the terms of Senate Bill 362, I am authorized to redirect certain revenues currently dedicated to payment of the unfunded liability of the Workers' Compensation Debt Reduction Fund to the General Revenue Fund by Executive Order during fiscal year 2018; and

**WHEREAS**, by my exercise of authority to redirect certain revenues pursuant to Senate Bill 362, it is estimated that $33 million in additional revenue will be provided to the General Revenue Fund for fiscal year 2018; and

**WHEREAS**, by this Executive Order, I am exercising the authority granted to me pursuant to Senate Bill 362 to redirect certain revenues into the General Revenue Fund during fiscal year 2018; and

**WHEREAS**, pursuant to the terms of Senate Bill 362, I retain the authority to change the duration of such revenue redirections during fiscal year 2018, and may alter these periods by subsequent Executive Order.

**NOW, THEREFORE, I, JIM JUSTICE**, by virtue of the authority vested in me as the Governor of West Virginia, do hereby **DECLARE** and **ORDER** that:

1. The deposits of revenues described in West Virginia Code § 23-2C-3(f)(3)(A) & (B) are redirected to the General Revenue fund for the period commencing after June 30, 2017, until such time as seventy-five percent of the total deposit of revenues to be collected during fiscal year 2018 have been redirected. After seventy-five percent of the total deposits are redirected to the General Revenue Fund, all remaining deposits will be made as described in West Virginia Code § 23-2C-3.

2. Pursuant to the Budget passed for Fiscal Year 2018 and Senate Bill 362, the deposits of revenues described in West Virginia code § 29-22A-10d are redirected to the General Revenue Fund for the period commencing after June 30, 2017, until such time as seventy-five percent of the total deposits of revenues to be collected during fiscal year 2018, have been redirected. After seventy-five percent of the total deposits are redirected to the General Revenue Fund, all remaining deposits will be made as described in West Virginia Code §29-22A-10d.

3. Pursuant to the Budget passed for Fiscal Year 2018 and Senate Bill 362, the deposits of revenues described in West Virginia Code § 29-22A-10e are redirected to the General Revenue Fund for the period commencing after June 30, 2017, until such time as seventy-five percent of the total deposit of revenues to be collected during fiscal year 2018 have been redirected. After seventy-five percent of the total deposits are redirected to the General Revenue Fund, all remaining deposits will be made as described in West Virginia Code § 29-22A-10C.

4. The Secretary of the Department of Revenue shall supply instructions on the implementation of this revenue redirection.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

EXECUTIVE ORDER



**DONE** at the Capitol, in the City of Charleston, State of West Virginia, this the seventh day of August, in the year of our Lord, Two Thousand Seventeen, in the One Hundred Fifty-Fifth year of the State.

**GOVERNOR**

**By the State**

Mac Warner

**SECRETARY OF STATE**

**STATE OF WEST VIRGINIA**

**EXECUTIVE DEPARTMENT**

At Charleston

PROCLAMATION

# A PROCLAMATION

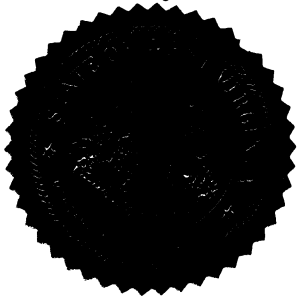
By the Governor

**WHEREAS,** in accordance with my authority as Governor, I declared a State of Emergency in Harrison, Marion, Marshall, Monongalia, Ohio, Taylor, Tucker and Wetzel Counties, West Virginia on the twenty-ninth day of July, Two Thousand Seventeen, because of a severe storm event that brought significant rainfall and wind; and

**WHEREAS,** it is necessary to expand the scope of the State of Emergency declaration to include additional counties in West Virginia.

**NOW, THEREFORE, I, JIM JUSTICE,** by virtue of the authority vested in me as Governor of the State of West Virginia, and in view of the foregoing, do hereby **FIND AND DECLARE** that the State of Emergency proclaimed on the twenty-ninth day of July, Two Thousand Seventeen, memorialized by formal Proclamation dated the twenty-ninth day of July, Two Thousand Seventeen is hereby expanded to include Doddridge, Preston and Randolph Counties, West Virginia in addition to Harrison, Marion, Marshall, Monongalia, Ohio, Taylor, Tucker and Wetzel Counties of West Virginia. In response to this State of Emergency, I have **INVOKED** the emergency powers set forth in section six, article five, chapter fifteen of the Code of West Virginia; **UTILIZED** the Emergency Operations Plan, as necessary; **ORDERED** appropriate personnel and resources to mobilize and respond to the emergency; and **DELEGATED** certain administrative powers to the Director of the West Virginia Division of Homeland Security and Emergency Management, as necessary, to facilitate the provision of essential emergency services.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



**DONE** at the Capitol in the City of Charleston, State of West Virginia, this the seventh day of August, in the year of our Lord, Two Thousand Seventeen, and in the One Hundred Fifty-Fifth year of the State.

**GOVERNOR**

**By the Governor**

Mac Warner

**SECRETARY OF STATE**

FILED
2017 AUG -8 A 10:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AG OPINION

State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

July 18, 2017

Honorable Pat Lefebure
Wood County Prosecuting Attorney
Donald F. Black Courthouse Annex
317 Market Street
Parkersburg, WV 26101

Dear Prosecutor Lefebure:

You have asked for an Opinion of the Attorney General concerning the scope and applicability of West Virginia Code § 8-33-3, which governs, *inter alia*, the membership of municipal and county building commissions. This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General may "consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office . . . ." To the extent this Opinion relies on facts, it is based upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

In your letter, you ask about the effect of a prohibition in West Virginia Code § 8-33-3 on the current members of the Wood County Building Commission. That provision states, in pertinent part, that "no member of [a building commission] shall hold any office (other than the office of notary public) or employment under the United States of America, the state of West Virginia, any county or political subdivision thereof, or any political party." You explain that the three current members of the Wood County Building Commission are "members of other boards," including the "Parkersburg Planning Commission, [the] Wood County Sheriff's Civil Service Commission, [the] Wood County Recreation Commission, and the West Virginia Industrial Council."

Your letter raises the following legal question:

*Does West Virginia Code § 8-33-3 prevent the identified individuals, who serve on other State, county, or municipal boards, from serving as members of a building commission?*





We conclude that West Virginia Code § 8-33-3 prohibits the identified individuals from serving as members of the Wood County Building Commission. Under the plain statutory language, an individual cannot serve on a building commission if he or she either serves as a government employee or holds a federal, state, or local office (other than notary public). Notably, this prohibition sweeps more broadly than similar statutory prohibitions considered in previous Supreme Court of Appeals cases, in which individuals were barred from serving on certain boards if they otherwise occupied public office. *See, e.g.*, *City of Bridgeport v. Matheny*, 223 W. Va. 445, 675 S.E.2d 925 (2009); *Carr v. Lambert*, 179 W. Va. 277, 367 S.E.2d 225 (1988). We believe the high court would find the language of West Virginia Code § 8-33-3, which includes *both* public office *and* employment, to clearly cover the identified individuals.

We are guided by a recent case addressing the status of an individual on a municipal board. In *Cales v. Town of Meadow Bridge*, --- S.E.2d ---, 2017 WL 2415300 (May 30, 2017), the Court considered whether a member of a municipal sanitary board is a public officer for purposes of the procedural protections against removal set forth in West Virginia Code § 6-6-7. Applying a multi-factor test from *State ex rel. Carson v. Wood*, 154 W. Va. 397, 175 S.E.2d 482 (1970), "for determining whether a position is an office or mere employment," the Court found that the petitioner "fell short of establishing that the position was an 'office." *Cales*, 2017 WL 2415300, at *8. Among other points, the Court stressed that being a member of the sanitary board did not make the petitioner "a representative of the sovereign." *Id.* at *10.

This recent case suggests that the Supreme Court of Appeals views members of governmental boards as either officers or employees. That is the binary question that *Carson* answers. As the court explained, the *Carson* case "recognized that there is a legal distinction between a 'public officer' and a 'public employee,'" and "announced [a] test for determining whether a position is an office or a mere employment." *Cales*, 2007 WL 2415300, at *8; *see also Carson*, 154 W. Va. at 410-11, 175 S.E.2d at 490-91 (setting forth "the criteria to be considered in determining whether a position is an office or a mere employment"). So in choosing to apply the *Carson* test to discern the status of the board member in *Cales*, the Supreme Court of Appeals appears to have determined that individuals serving on a State, county, or municipal board fall into one of two categories: public officers or public employees.

For the purpose of this Opinion, this lesson from *Cales* is largely dispositive. According to your letter, all three identified individuals are "members of other boards." And if members of a governmental board are either officers or employees, then all three individuals fall within the prohibitory language of West Virginia Code § 8-33-3. Because the prohibition broadly covers both public officers and public employees, it is irrelevant how exactly the *Carson* analysis would come out. It is sufficient that the reasoning in *Cales* suggests the Supreme Court of Appeals would find these individuals to fall within one category or the other.

This conclusion is bolstered by the fact that the individuals, as members of the identified boards, appear clearly not to be public agents or independent contractors. The Supreme Court of Appeals has suggested that state actors can fall into four categories: officials, agents, employees, and independent contractors. *Cf.* Syl., *Brady v. Smith*, 139 W. Va. 259, 79 S.E.2d 851 (1954) (noting that the State Road Commissioner can act "through his officers, agents and employees, or

through the instrumentality of an independent contractor"). The identified individuals do not appear to be agents, because agents have only "temporary" and "intermittent" duties, *see* Syl., *State ex rel. Key v. Bond*, 94 W. Va. 255, 118 S.E. 276 (1923), whereas all the identified boards have fixed tenures and ongoing duties, *see* W. Va. Code §§ 8A-2-3, -11 (planning commission); W. Va. Code §§ 7-14-3, -6 (sheriff's civil service commission); W. Va. Code §§ 7-11-2, -3 (recreation commission); W. Va. Code § 23-2C-5 (West Virginia Industrial Council). Nor is it plausible to suggest that members of a governmental board constitute independent contractors not subject to government control. That leaves two possible categories—officials or employees—which, again, are both covered by the broad prohibition set forth in West Virginia Code § 8-33-3.

Sincerely,

Patrick Morrisey
Attorney General

Elbert Lin
Solicitor General

Zachary Viglianco
Assistant Attorney General

AG OPINION

FILED

2017 AUG -9 A 10:21

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

August 4, 2017

The Honorable Bill J. Crouch
Secretary of the West Virginia Department of Health and Human Resources
Office of the Secretary
One Davis Square, Suite 100 East
Charleston, WV 25301

Dear Secretary Crouch:

You have asked for an Opinion of the Attorney General about the circumstances under which a state employee may forfeit his or her job by failing to cooperate with investigations conducted by agency employees of complaints made by other employees, clients, customers, patients, or residents. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advise upon questions of law, . . . whenever required to do so, in writing, by . . . any . . . state officer, board, or commission." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

In your letter, you explain that union representatives have advised Department of Health and Human Resources ("DHHR") employees not to answer any questions posed to them during internal investigations of employee, client, customer, patient, or resident complaints. You indicate that this lack of cooperation makes it more difficult for DHHR to investigate complaints effectively. You also note that DHHR is currently revising its Employee Conduct policy to encompass an employee's obligation to comply with an internal investigation. In that regard, you have asked a series of questions relating to the potential application of West Virginia Code § 29-6-19, which provides that employees who refuse or fail to cooperate in certain proceedings relating to the affairs or government of the State shall forfeit their employment.

While your letter poses ten distinct questions, those questions fall into two general categories. *First*, you inquire into whether, and in what circumstances, West Virginia Code § 29-6-19 mandates that an employee who refuses or fails to participate in an investigation conducted by agency employees shall forfeit his or her employment. While you do not provide details on the precise type of investigation you have in mind, we assume for purposes of this letter that you mean an internal and informal disciplinary investigation into an employee's conduct conducted by DHHR's human resources personnel and/or supervisory or managerial employees. For purposes of this letter, we shall refer to that type of investigation as an "internal investigation" to distinguish

it from a proceeding that a state employee might initiate before an external tribunal, such as the West Virginia Public Employees Grievance Board. We also will use the term "agency employees" to refer generally to managers, supervisors, and human resources personnel who would be the most likely persons to conduct a first-level informal investigation into a disciplinary matter. We conclude that W.Va. Code § 29-6-19 does not apply to internal investigations conducted by agency employees, and therefore, the statute does not mandate an employee who refuses or fails to participate in such investigations to forfeit his or her employment. Because we have not been asked, we do not address whether DHHR may possess inherent discretionary authority, independent of the statute, to create policies that would impose discipline on employees for conduct relating to an internal investigation.

*Second*, your letter inquires into whether there may be potential applications of West Virginia Code § 29-6-19 that would interfere with an employee's right to be free from self-incrimination under the Fifth Amendment to the U.S. Constitution or its counterpart under Article III, section 5 of the West Virginia Constitution. Because we conclude that West Virginia Code § 29-6-19 does not apply to internal investigations conducted by agency employees, it is unnecessary to address this question.

This Opinion thus addresses the following legal question:

*Under West Virginia Code § 29-6-19, does a West Virginia civil service employee forfeit his or her office or position by refusing or failing to comply with a DHHR internal investigation?*

Considering the text of West Virginia Code § 29-6-19, the associated-words canon of construction ("*noscitur a sociis*"), and relevant case law, we conclude that the statute does not require state employees to participate in informal investigations conducted by agency employees on pain of losing their jobs. Rather, we conclude that the statute applies only to formal proceedings held before a court, legislative body, or administrative tribunal or officer specifically authorized by statute to conduct a covered investigation. As noted above, it is beyond the scope of this Opinion whether DHHR may possess inherent discretionary authority to create policies that would impose discipline on employees for conduct relating to an internal investigation.

The relevant provision reads in full (with key words in italics):

> If any employee in the classified or classified-exempt service shall willfully refuse or fail to appear before any court or judge, any legislative committee, or *any officer, board or body authorized to conduct any hearing or inquiry*, or having appeared shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept a grant of immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, he shall forfeit his office or position and shall not be eligible thereafter for appointment to any position in the classified or classified-exempt service.

AG OPINION



W.Va. Code § 29-6-19 (emphasis added); *see also* W.Va. Code St. R. § 143-1-14.10.a.

Close analysis of this provision yields two related conclusions. *First*, an agency employee is not an "officer, board or body" within the meaning of the statute. *Second*, an internal investigation is not a "hearing or inquiry" under the statute. This letter sets forth the bases for these two conclusions in turn.

*First*, agency employees are not listed among the persons or entities that conduct hearings or inquiries covered by West Virginia Code § 29-6-19.

As a textual matter, agency employees plainly do not constitute a "court or judge" or a "legislative committee." Therefore, the only way in which West Virginia Code § 29-6-19 could apply to agency employees would be if they, either singly or in concert, constituted an "officer, board or body authorized to conduct any hearing or inquiry."

The terms "board" and "body," in common parlance, typically refer to a defined multimember entity with certain official responsibilities. *See* Black's Law Dictionary 184 (8th ed. 2004) (defining "board" as "[a] group of persons having managerial, supervisory, or advisory powers");[1] *id.* at 185 (defining "body," in relevant part, as "[a]n artificial person created by a legal authority"). There are certain official entities created by state law that fit naturally within the plain meaning of "board" or "body." For example, the West Virginia Legislature has created a West Virginia Public Employees Grievance Board whose purpose is to process and resolve formal grievances filed by state employees. *See* W. Va. Code §§ 6C-3-1 et seq. Similarly, the State Personnel Board is charged under state law with, among other things, proposing legislative rules to set personnel policies for state agencies. *See id.* at §§ 29A-1-1 et seq. By contrast, we have not identified any statute, nor does your letter point to any, that constitutes any particular set of DHHR agency employees as a "body" or "board."

We also have no reason to believe that the agency employees conducting internal investigations for DHHR constitute "officer[s]" under state law.

The distinction between "officers" and "employees" runs throughout the civil service code. *See, e.g.*, W. Va. Code §§ 29-6-11 and -12. The Supreme Court of Appeals of West Virginia has authoritatively construed this term in other sections of the code and has instructed that the same language appearing in different provisions of the code should be read harmoniously. *See State ex rel. Callaghan v. W. Va. Civil Serv. Comm'n*, 166 W. Va. 117, 120, 273 S.E.2d 72, 74 (1980) ("Our civil service system act is a conglomeration of statutes that must be read in pari materia.").

---

[1] *See also Comm'rs of State Ins. Fund v. Dinowitz*, 39 N.Y.S.2d 34, 38 (N.Y. Sup. Ct. 1942) (defining "board" as "an official or representative body organized . . . to execute official or representative functions or which has the management of a public office or department exercising administrative or governmental functions") (citing 11 C.J.S., Board, p.369).

To distinguish officers from employees, the Supreme Court of Appeals has applied a well-established set of criteria, including

> whether the position was created by law; whether the position was designated as an office; whether the qualifications of the appointee have been prescribed; . . . and whether one occupying the position has been constituted a representative of the sovereign.

Syl. Pt. 5, *Fraley v. Civil Serv. Comm'n*, 177 W. Va. 729, 356 S.E.2d 483 (1987) (quoting Syl. Pt. 5, *State ex rel. Carson v. Wood*, 154 W. Va. 397, 175 S.E.2d 482 (1970)); *see also* W. Va. Op. Att'y Gen., 2017 WL 3224718 (Jul. 18, 2017), available at http://www.ago.wv.gov/publicresources/Attorney%20General%20Opinions/Documents/M02224 74.pdf. These criteria, commonly referred to as the *Carson* factors, have repeatedly been applied by the Supreme Court of Appeals in a variety of other contexts as well.

While applying the *Carson* factors to distinguish "officers" from "employees" can at times present challenging legal questions, *see, e.g.*, *Cales v. Town of Meadow Bridge*, 800 S.E.2d 874, 879–885 (W. Va. 2017), we have no reason to suspect that the agency employees conducting internal investigations for DHHR should be considered officers. While you do not identify such employees with specificity, typically individual supervisors, managers, and human resources personnel do not occupy positions created by law, have not had their positions designated as offices, do not have qualifications set by statute, and have not been designated representatives of the sovereign. Your letter thus presents materially different facts from those in *Fraley*, in which the Supreme Court of Appeals ruled that the position of county coroner is a public office because it was created by the West Virginia Constitution and statute, required appointees to take the same oath as other county officers, and contained statutory limitations on qualifications and duties. *See Fraley*, 356 S.E.2d at 487–88.

The traditional canon of construction *noscitur a sociis* further supports the conclusion that agency employees are not covered "officers." Under that canon, also known as the associated-words canon, "words are given meaning by their context." Antonin Scalia & Bryan Garner, *Reading Law* 195 (2012). Specifically, "[w]hen several nouns . . . are associated in a context suggesting that the words have something in common, they should be assigned a permissible reading that makes them similar." *Id.*

Here, the word "officer" is part of a longer list of covered entities and persons—namely, "court," "judge," "legislative committee," "board," and "body." The first three of these terms, and arguably all five, share in common the characteristics of being official government entities or agents with specific legal authority to investigate and adjudicate certain disputes, and deriving that authority either directly from the West Virginia Constitution or an act of the state Legislature. In addition, this statutory list appears designed to cover the official adjudicatory functions of all three branches of government—the judicial ("court or judge"), the legislative ("legislative committee"), and the executive ("officer, board or body"). Read in this way, the phrase "officer, board or body" appears to represent the executive-branch equivalent of a court or legislative committee—that is, an official entity constituted by law to handle investigatory or adjudicative matters. That reading

AG OPINION



finds further support in the phrase considered as a whole—"any officer, board or body *authorized* to conduct any hearing or inquiry" (emphasis added)—which suggests that it refers to administrative tribunals located within the executive branch that have been "authorized" by legislative acts to resolve certain disputes requiring witness statements or testimony. As noted above, the West Virginia Public Employees Grievance Board and State Personnel Board would appear to fit the definition of "board[s]" covered under this reading of the statute.

In short, West Virginia Code § 29-6-19 appears to exclude from its reach any disciplinary inquiries or investigations handled internally by agency employees.

*Second*, an internal investigation does not appear to constitute a "hearing or inquiry" under the statute.

The plain meaning of the word "hearing" denotes a formal proceeding—either "[a] judicial setting . . . held for the purpose of deciding issues of fact or of law," or "[a]ny setting in which an affected person presents arguments to an agency decision-maker." Black's Law Dictionary 737 (8th ed. 2004). The word "inquiry," by contrast, can refer more broadly to "fact-finding" or, in parliamentary law, "[a] request for information, either procedural or substantive." *Id.* at 808.

Absent additional context, it might be possible to construe the word "inquiry" to apply to any question or investigation conducted by anyone, regardless of degree of formality. But the associated-words canon again demonstrates that the term is properly read narrowly. When paired with the word "hearing," and in connection with the antecedent references to courts, legislative committees, and various administrative tribunals, the word "inquiry" most naturally takes on a more formal connotation—namely, an official investigatory or adjudicative proceeding before some duly-authorized public body.

This conclusion finds support in the U.S. Supreme Court decision in *United States v. Nugent*, 346 U.S. 1 (1953). In that case, the Court considered the scope of the similar terms "appropriate inquiry" and "hearing" for claims of conscientious objection under Section 6(j) of the Selective Service Act. *Id.* at 3–7. The Court explained that, under Section 6(j), the Department of Justice must "accord[] a fair opportunity to the registrant to speak his piece before an impartial hearing officer," "produce all relevant evidence in his own behalf," and supply him or her with "any adverse evidence in the investigator's report." *Id.* at 6. These requirements of an impartial hearing officer and presentation and receipt of adverse evidence are not characteristic of (and are certainly not required in) internal investigations conducted by agency employees.

This reading is further supported by at least one decision of the Education and State Employees Grievance Board—the predecessor to the Public Employees Grievance Board. In the case of *John Brewster v. West Virginia Bureau of Employment Programs*, 1998 WL 248527 (W. Va. Educ. St. Empl. Griev. Bd. Apr. 24, 1998), the Board construed language in state administrative personnel rules similar to that contained within West Virginia Code § 29-6-19 to determine whether an employee was entitled to paid leave for participating in an internal agency investigation. *See id.* at *3. The personnel policy at issue provided for paid leave for time spent "appear[ing] as a witness before any court or judge, any legislative committee, or any officer,

board, or body authorized by law to conduct an hearing or inquiry." *Id.* (quoting W. Va. Div. of Pers. Admin. R. § 15.11(a)). The Board observed that it would "stretch[] the meaning of the word 'inquiry'" to have it apply to internal investigations, *id.* at *4, and concluded that the employee "failed to prove" that the personnel policy extended to internal investigations, *id.* at *6.

* * *

In sum, we conclude that West Virginia Code § 29-6-19 does not apply to internal investigations conducted by agency employees and, therefore, that employees who "willfully refuse or fail to appear" in connection with such investigations do not thereby "forfeit" their employment. Because we conclude that the statute does not apply to internal investigations, we do not reach the question whether there might be particular applications of the statute that would violate the federal or state constitutional right to be free from self-incrimination.

The opinion expressed in this letter is limited to the conclusion that public employees do not *automatically* forfeit their employment by operation of statute if they fail to cooperate with internal investigations. Nothing in this letter should be construed to express an opinion as to whether, and in what circumstances, DHHR may as a matter of *discretion* adopt personnel policies requiring employee participation in internal agency investigations. Nor does this letter express any opinion as to whether DHHR may in its discretion terminate or otherwise discipline an employee for conduct relating to an internal investigation—such as insubordination or making untruthful statements. This letter simply concludes, as a matter of statutory interpretation, that the Legislature did not *mandate* in such cases forfeiture of civil-service positions and loss of opportunity for future appointments.

Sincerely,

Patrick Morrisey
Attorney General

Thomas M. Johnson, Jr.
Deputy Solicitor General

## NOTICE OF PUBLIC HEARING CANCELLATION

In the *West Virginia State Register*, the *Charleston Gazette*, and the *Wheeling Intelligencer*, published on July 7, 2017, the West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) announced an opportunity for a public hearing for the proposed *West Virginia Source Specific Requirements – Removal of Requirements for Permanently Shutdown Facilities State Implementation Plan (SIP) Revision.* The public comment period began on July 7, 2017 and ended on August 7, 2017. No person requested a public hearing. Therefore, the public hearing tentatively scheduled for August 15, 2017 is hereby cancelled.

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2017 AUG -8 A 11:59
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OTHER

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STATE OF WEST VIRGINIA 2017 AUG -7 P 1:00
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF ABANDONED MINE LANDS AND RECLAMATION OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

## PUBLIC NOTICE

**In accordance with the Abandoned Mine Lands and Reclamation Act, West Virginia Code Chapter 22, Article 2, the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation shall facilitate and engage in an acid mine water treatment project known as the Roaring Creek Stream Restoration Phase II project, Project will occupy and/or utilize properties owned by Penn Virginia Operating Company, LLC, Mike Ross, Inc., Beckwith Lumber Company, Fairfax Trucking, Inc., and Roger and Robin Mahanes. Lands located in Roaring Creek District and Womelsdorf Coalton Corporation and situate on a tributary of Roaring Creek known as Kittle Hollow in Randolph County, West Virginia. Said project shall include the construction of a lime slurry dosing system, instream water quality monitoring devices, communication towers and utility development/expansion for system support and operation.**

**In accordance with West Virginia Code Chapter 22, Article 27, notice is hereby provided of this project and that it shall employ the West Virginia Environmental Good Samaritan Act. Project plans and specifications are on file with the Department. Written objectives may be filed with the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation, 601 57th Street S.E., Charleston, WV 25304-2345.**

8-7-17
**Date**

**Rob Rice, Chief**
**Office of Abandoned Mine Lands & Reclamation**

**WEST VIRGINIA HEALTH CARE AUTHORITY**
**CERTIFICATE OF NEED**
**100 Dee Drive**
**Charleston, West Virginia 25311-1600**

FILED
2017 AUG -7 P 2:48
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OTHER

August 7, 2017

## ***LEGAL NOTICE***

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **August 4, 2017**.

**CERTIFICATE OF NEED APPLICATIONS RECEIVED**

July 31, 2017 – Carter Healthcare of West Virginia, LLC, Oklahoma City, Oklahoma, CON File #17-10/11-11146-A, for the acquisition of the home health agency F.C. of West Virginia, Inc. covering Hancock, Brooke, Ohio, Marshall, and Wetzel counties; capital expenditure: $450,000.

August 3, 2017 - Kanawha County Emergency Ambulance Authority, Charleston, Kanawha County, CON File #17-3-11147-P, for the development of an ambulatory health care facility in Charleston, Kanawha County, through the provision of primary care services; capital expenditure: $255,000.

August 4, 2017 - Stonerise Reliable Healthcare LLC, Charleston, Kanawha County, CON File #17-6/10-11150-A, for the acquisition of the home health agency operated by Monongahela Valley Association of Health Centers, Inc. d/b/a MVA Home Health Service. MVA Home Health Services provides services in Monongalia, Taylor, Marion, Harrison and Wetzel counties; capital expenditure: $335,000.

**APPLICATION DECLARED COMPLETE AND UNDER REVIEW**

An application declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

**EXPEDITED APPLICATION**

July 27, 2017 - Stonerise Reliable Healthcare, LLC, Charleston, Kanawha County, CON File #17-1/2/4/5/10/11-11136-A, for the acquisition of the home health agencies operated by subsidiaries of Medical Services of America, Inc. The acquisition includes Medi Home Health Agency, Inc. with a subunit office in New Martinsville serving Brooke, Hancock, Marshall, Ohio, and Wetzel counties; Medi Home Health Agency, Inc. with a subunit office in Barboursville serving Cabell, Jackson, Lincoln, Mason, Putnam, Wayne, and Wood counties; and Mountaineer Home Nursing, Inc. with an agency office in Bluefield serving Greenbrier, McDowell, Mercer, Monroe, Raleigh, Summers, and Wyoming counties; capital expenditure: $5,640,000.

The review cycle for the above-referenced project is as follows:

July 31, 2017 – Review cycle begins;

August 30, 2017 – Last date for an affected person to request a public hearing on the project. If a public hearing is requested, notice of date, time and place will be issued to affected persons;

September 5 – If no public hearing is requested, the file will close and no further information or evidence will be accepted by the Authority for the remainder of the review of the application;

September 29, 2017 – Decision on the project will be issued by the Authority.

Further information may be obtained on any of the above-referenced projects by contacting Barbara Skeen, Director, Certificate of Need Division.

Jim Justice
Governor

Bill J. Crouch, Cabinet Secretary
West Virginia Department of
Health and Human Resources

OTHER

***AMENDED***

***NOTICE OF REVIEW***

FOR IMMEDIATE RELEASE

**August 1, 2017**

**NEWS ITEM**

FILED
2017 AUG 10 P 3:53
SECRETARY OF STATE

The Health Care Authority (Authority), pursuant to the Certificate of Need program, has declared complete and accepted for review the expedited applications referenced below:

July 18, 2017 - United Hospital Center, Inc., Bridgeport, Harrison County, CON File #17-6-11131-Z, for the provision of home health services in Preston County; capital expenditure: $35,000.

July 27, 2017 – Stonerise Reliable Healthcare, LLC, Charleston, Kanawha County, CON File #17-1/2/4/5/10/11-11136-A, for the acquisition of the home health agencies operated by subsidiaries of Medical Services of America, Inc. The acquisition includes Medi Home Health Agency, Inc. with a subunit office in New Martinsville serving Brooke, Hancock, Marshall, Ohio, and Wetzel counties; Medi Home Health Agency, Inc. with a subunit office in Barboursville serving Cabell, Jackson, Lincoln, Mason, Putnam, Wayne, and Wood counties; and Mountaineer Home Nursing, Inc. with an agency office in Bluefield serving Greenbrier, McDowell, Mercer, Monroe, Raleigh, Summers, and Wyoming counties; capital expenditure: $5,640,000.

An application that has been declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

The review cycle begins on **July 31, 2017**.

On or before **August 30, 2017**, any affected person has the right to request that the Authority hold a public hearing on the project as part of the review. If a public hearing is conducted during the course of the review, a notice of hearing, specifying the date, time and location of the hearing, will be issued to affected persons.

If no public hearing is requested, the file closing date will **September 5, 2017**. After that

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date, no further information or evidence will be accepted by the Authority for the remainder of the review of the application.

The Decision on the project referenced above will be issued by the Authority after it has reviewed the contents of the case files of the projects, including the application, additional information submitted to the Authority during the review, and the record of any Authority public hearing. If there is no request for public hearing, the Decision will be issued on or before **September 29, 2017**.

A press release will be issued after the decision is made. Anyone wishing to be directly notified of the Decision should submit a written request to Barbara Skeen, Director, Certificate of Need, Health Care Authority, 100 Dee Drive, Charleston, West Virginia, 25311-1600. Further information on the project referenced in this news release may be obtained by contacting the Certificate of Need office at telephone number (304) 558-7000.

8/10/17
Date

Barbara Skeen
**Barbara Skeen, Director, Certificate of Need**
Health Care Authority