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Administrative Law Division
Judy Cooper, Manager

Mac Warner
Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770

(304) 558-6000
www.wvsos.com

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NEW PROPOSED RULES FILED FOR PUBLIC COMMENT THIS WEEK

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Public Service Commission (150-3)	Government of Electric Utilities Legislative Exempt	§824-1-1, 24-1-7, 24-2-1 and 24-2-2	Written Comments Only December 11, 2017, 4:00 pm Ingrid Ferrell, Executive Secretary 201 Brooks Street PO Box 812 Charleston, WV 25323
Public Service Commission (150-4)	Government of Gas Utilities and Gas Pipeline Safety Legislative Exempt	§824-1-1, 24-1-7, 24-2-1 and 24-2-2	Written Comments Only December 11, 2017, 4:00 pm Ingrid Ferrell, Director Executive Secretary Division PO Box 812 Charleston, WV 25323

NEW EMERGENCY RULES FILED THIS WEEK

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DATE</u>	<u>DATE NOTICE FOR HEARING</u>
Osteopathic Medicine (24-2)	Osteopathic Physician Assistants	§830-1-7(a) and 30-3E-3(a)(1)-(10)	ERD by December 18, 2017	October 12, 2017



Mac Warner
Secretary of State
State of West Virginia

Office of the Secretary of State
State Capitol
Charleston, West Virginia 25305

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvssos.gov

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 38	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	WORKERS COMPENSATION 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 HIGHWAYS
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	SECSTATE	LB/MC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Accountancy, WV (1-01)	Board Rules and Rules of Bd. Of Professional Conduct Legislative	6/23/2017	7/23/2017		7/28/2017	Modified & Approved 9/20/2017 Filed 9/29/2017			
Administration (148-03)	State Owned Vehicles Legislative	6/26/2017	7/26/2017		7/26/2017				
Administration (148-5)	Parking Legislative	6/21/2017	7/21/2017		7/25/2017	Approved 8/29/2017			
Agriculture (61-01)	Animal Disease Control Legislative	6/28/2017	7/28/2017		7/28/2017				
Agriculture (61-1A)	Freezing of Untreated Garbage to Swine Legislative	6/22/2017	7/22/2017		7/27/2017				
Agriculture (61-2)	West Virginia Apairy Law Legislative	6/15/2017	7/16/2017		7/18/2017	Modified & Approved 8/29/2017 Filed 9/18/2017			
Agriculture (61-86)	Schedule of Charges for Inspection Services Fruit Legislative	11/1/2017	12/1/2017						
Agriculture (61-11)	Public Markets Legislative	6/2 7/2017	7/27/2017		7/27/2017				
Agriculture (61-11B)	Auctioneers Legislative	6/26/2017	7/26/2017		7/26/2017				
Agriculture (61-14A)	Noxious Weeds Legislative	6/22/2017	7/22/2017 Hearing 11/3/2017		7/28/2017				
Agriculture (61-16)	Inspection of Meat and Poultry Legislative	6/13/2017	7/18/2017		7/17/2017	Modified & Approved 8/29/2017 Filed 9/18/2017			
Agriculture (61-23D)	Inspection of Nontraditional, Domesticated Animals Legislative	6/15/2017	7/16/2017		7/17/2017	Modified & Approved 9/20/2017 Filed 9/29/2017			
Air Quality (45-8)	Ambient Air Quality Standards Legislative	6/8/2017	7/11/2017		7/21/2017	Approved 8/29/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC STATE	LB/MC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/6/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Air Quality (45-18)	Control of Air Pollution from Combustion of Solid Waste Legislative	6/7/2017	7/11/2017		7/21/2017	Modified & Approved 8/29/2017 Filed 8/24/2017			
Air Quality (45-23)	Control of Air Pollution from Municipal Solid Waste Landfills Legislative	6/7/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
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	Approved 8/29/2017			
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/6/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Athletic Commission (177-1)	WV State Athletic Commission Legislative	6/16/2017	7/16/2017		7/27/2017	Modified & Approved 9/20/2017 Filed 10/3/2017			
Athletic Commission (177-2)	Regulation of Mixed Martial Arts Legislative	6/16/2017	7/16/2017		7/27/2017	Modified & Approved 9/20/2017 Filed 10/3/2017			
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 (149-203)	Protocol for Law Enforcement Response to Domestic Violence Legislative	6/28/2017	7/28/2017		7/28/2017				
Culture and History (82-6)	Archives and History Library Services and Fee Guidelines Procedural	8/24/2017	10/2/2017						
Distillates (31-1)	Licenses and Renewal Requirements Legislative	6/9/2017	7/17/2017		7/24/2017				
Education (126-25A)	Standards for Basic and Specialized Health-Care Procedures (2422.7) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	11/13/2017

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SECSTATE	LB/MRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Education (128-28)	West Virginia's Universal Access to a Quality Early Education System (2525) Legislative Exempt	8/10/2017	8/11/2017					10/12/2017	7/1/2018
Education (128-44G)	WV College and Career Readiness Standards for World Languages (2520.7) Legislative Exempt	8/10/2017	8/11/2017					10/12/2017	7/1/2018
Education (128-44M)	WV College and Career Readiness Programs of Study/Standards for Career and Technical Education (2520.13) Legislative Exempt	8/10/2017	8/11/2017					10/12/2017	7/1/2018
Education (128-44O)	WV Pres-K Standards (Ages 3-5) (2520.15) Legislative Exempt	8/10/2017	8/11/2017					10/12/2017	7/1/2019
Education (128-44P)	WV Alternate Academic Achievement Standards (2520.16) Legislative Exempt	8/10/2017	8/11/2017					10/12/2017	7/1/2018
Education (128-73)	School Calendar (3234) Legislative Exempt	8/7/2017	10/10/2017						
Education (128-81)	Attendance (4110) Legislative Exempt	7/13/2017	8/14/2017					10/12/2017	11/13/2017
Education (128-86)	Standards for School Nutrition (Policy 432E.1) Legislative Exempt	6/15/2017	7/17/2017					8/10/2017	12/2016
Education (128-92)	WV School Bus Transportation Policy and Procedures Manual (4336) Legislative Exempt	8/10/2017	8/11/2017						
Education (128-098)	Expected Behavior in Safe and Supportive Schools (4373) Legislative Exempt	7/13/2017	8/14/2017					10/12/2017	11/13/2017
Education (128-114)	Approval of Educational Personnel Preparation Programs (5100) Legislative Exempt	7/13/2017	8/14/2017					10/12/2017	11/13/2017
Education (128-136)	Minimum Requirements for the Licensure of Professional Personnel and Advanced Salary Classification (5202) Legislative Exempt	7/13/2017 8/7/2017	8/14/2017 10/10/2017						

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LM/RC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
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	Modified & Approved 10/18/2017 Filed 10/25/2017			
Health (64-12)	Hospital Licensure Legislative	6/27/2017	7/27/2017		7/28/2017	Modified & Approved 8/29/2017 Filed 8/30/2017			
Health (64-17)	Food Establishments Legislative	8/27/2017	7/27/2017		7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
Health (64-48)	Emergency Medical Services Legislative	6/27/2017	7/27/2017		7/28/2017				
Health (64-107)	Designation of Comprehensive, Primary and Acute Stroke-Ready Hospitals Legislative	8/27/2017	7/27/2017		7/28/2017				
Health (64-108)	Local Board of Health Plans of Consentation Procedure Procedural	9/11/2017	10/11/2017					10/24/2017	11/25/2017
Health and Human Resources (69-10)	WV Clearance for Access: Registry and Employment Screening Legislative	6/26/2017	7/26/2017		7/27/2017	Approved 8/28/2017			

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AGENCY/SERIES AND	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LB/MRC- ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health and Human Resources (88-13)	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 Effective 9/21/2017 Amendment 10/25/2017 ERD by 12/6/2017	7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
Health and Human Resources (88-14)	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 Effective 9/21/2017	7/28/2017				
Health Care Authority (85-13)	Financial Disclosure Rule Legislative	6/27/2017	7/27/2017	6/27/2017 Approved 7/20/2017	7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
Hearing Aid Dealers (8-01)	WV Board of Hearing Aid Dealers Legislative	6/23/2017	7/4/2017	7/4/2017	7/26/2017	Approved 8/28/2017			
Highways (157-2)	Disposal, Lease and Management of Real Property and Apartment Structures and Relocation Assistance Legislative	6/22/2017	7/4/2017	7/4/2017	7/28/2017				
Highways (157-12)	Employment Procedures Legislative	11/2/2017	12/2/2017	11/1/2017 ERD by 12/13/2017					
Human Services (78-01)	Child Care Licensing Legislative	6/26/2017	7/26/2017	7/27/2017	7/27/2017	Modified & Approved 9/20/2017 Filed 10/4/2017			
Human Services (78-02)	Child Funding Agencies Licensing Legislative	6/26/2017	7/26/2017	7/27/2017	7/27/2017	Modified & Approved 9/20/2017			
Human Services (78-18)	Family Child Care Facility Licensing Requirements Legislative	6/27/2017	7/26/2017	7/28/2017	7/28/2017	Modified & Approved 9/20/2017 Filed 10/4/2017			

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LMRRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Human Services (78-19)	Family Child Care Home Registration Requirements Legislative	6/26/2017	7/26/2017	7/26/2017	7/27/2017	Modified & Approved 9/20/2017			
Human Services (78-20)	Informal and Relative Family Child Care Home Registration Requirements Legislative	6/26/2017	7/26/2017	7/26/2017	7/28/2017	Approved 9/20/2017			
Human Services (78-21)	Out-of-School Time Child Care Center Legislative	6/26/2017	7/26/2017	7/26/2017	7/28/2017	Approved 9/20/2017			
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 Effective 9/8/2017	7/28/2017				
Labor (42-10)	Zipline and Canopy Tour Responsibility Act Legislative	6/15/2017	7/17/2017	7/17/2017	7/27/2017	Approved 9/20/2017			
Labor (42-12)	Bedding and Upholstered Furniture Legislative	6/15/2017	7/17/2017	7/17/2017	7/27/2017	Approved 9/20/2017			
Labor (42-17)	Amusement Rides and Amusement Attractions Safety Act Legislative	6/15/2017	7/17/2017	7/17/2017	7/27/2017	Approved 9/20/2017			
Labor (42-21)	Elevator Safety Act Legislative	6/21/2017	7/22/2017	7/22/2017	7/27/2017	Approved with Amendments			
Labor (42-33)	Employer Wage Bonds Legislative	6/15/2017	7/17/2017	7/17/2017	7/27/2017	Approved 9/20/2017			
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	Approved 9/20/2017			
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	Approved 9/20/2017			
Licensed Practical Nurses (10-04)	Schedule of Fees for Services Rendered by the WV State Bd. of Examiners for Licensed Practical Nurses Legislative	6/29/2017	7/28/2017	7/28/2017	7/31/2017				

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LM/RC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Lottery Commission (179-1)	State Lottery Rules Legislative	6/19/2017	7/21/2017		7/28/2017				
Medicine (11-6)	Continuing Education for Physicians and Podiatrists Legislative	6/21/2017	7/21/2017		7/28/2017	Approved 8/29/2017			
Medicine (11-018)	Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	7/11/2017	8/10/2017	9/11/2017 Approved 10/20/2017	8/29/2017				
Mines' 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 (38-52)	West Virginia Surface Mining Reclamation Legislative	6/8/2017	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	Approved 8/29/2017			
Natural Resources (58-11)	Hunting, Fishing and Other Outfits and Guides Legislative	6/23/2017	7/24/2017		7/28/2017				
Natural Resources (58-49)	General Hunting Legislative	6/23/2017	7/24/2017		7/28/2017				
Natural Resources (58-56)	Special Migratory Bird Hunting Legislative	6/23/2017	7/24/2017		7/29/2017				
Natural Resources (58-04)	Miscellaneous Permits and Licenses Legislative	6/23/2017	7/24/2017		7/28/2017				
Natural Resources (58-69)	Wildlife Disease Management Legislative	6/28/2017	7/28/2017		7/28/2017				
Optometry (14-01)	WV Board of Optometry Legislative	6/28/2017	7/28/2017		7/28/2017	Approved 8/29/2017			
Osteopathic Medicine (24-2)	Osteopathic Physician Assistants Legislative	9/12/2017	10/12/2017	11/6/2017 ERD by 12/18/2017	10/17/2017				
Pharmacy (15-1)	Licensure and Practice of Pharmacy Legislative	6/22/2017	7/24/2017		7/28/2017	Approved 9/20/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LMRCL ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-2)	Uniform Controlled Substances Act Legislative	5/11/2017	6/12/2017		7/28/2017	Approved & Modified 9/20/2017 Filed 11/6/2017			
Pharmacy (15-7)	Registration of Pharmacy Technicians Legislative	5/12/2017	6/12/2017		7/28/2017				
Pharmacy (15-8)	Controlled Substances Monitoring Program Legislative	6/15/2017	7/17/2017	6/15/2017 Approved 9/19/2017	7/28/2017	Approved & Modified 9/20/2017 Filed 11/7/2017			
Pharmacy (15-10)	Pharmacist Recovery Networks Legislative	5/12/2017	6/12/2017		7/28/2017	Approved & Modified 9/20/2017 Filed 11/7/2017			
Pharmacy (15-12)	Immunizations Administered by Pharmacists and Pharmacy Interns Legislative	6/22/2017	7/24/2017		7/28/2017	Approved & Modified 9/20/2017 Filed 11/6/2017			
Pharmacy (15-14)	Centralized Prescription Processing Legislative	6/15/2017	7/17/2017		7/28/2017				
Psychologists (17-07)	Fees Legislative	6/28/2017	7/28/2017		7/28/2017				
Psychologists (17-02)	Organization and Procedures of the Board of Examiners of Psychologists Procedural	6/28/2017	7/28/2017		7/28/2017				
Psychologists (17-03)	Requirements for Licensure as a Psychologist and/or a School Psychologist Legislative	6/28/2017	7/28/2017		7/28/2017				
Psychologists (17-06)	Code of Ethics Legislative	6/28/2017	7/28/2017		7/28/2017				
Public Service Commission (150-3)	Government of Electric Utilities Legislative Exempt	11/8/2017	12/11/2017						
Public Service Commission (150-4)	Government of Gas Utilities and Gas Pipeline Safety Commission Legislative Exempt	11/8/2017	12/11/2017						

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC STATE	LM/RC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Reading Commission (178-1)	Thoroughbred Racing Legislative	6/19/2017	7/19/2017		7/27/2017				
Real Estate Appraiser Licensing & Cert. Bd. (190-2)	Requirements for Licensure and Certification 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 Legislative	6/23/2017	7/24/2017		7/27/2017				
Real Estate Commission (174-02)	Schedule of Fees Legislative	6/26/2017	7/26/2017		7/27/2017				
Real Estate Commission (174-03)	Requirements for Real Estate Courses, Course Providers and Instructors Legislative	6/26/2017	7/26/2017		7/27/2017				
Secretary of State (153-1)	Electronic Filing and Formatting of Rules Procedural	8/25/2017	9/29/2017					10/11/2017	11/11/2017
Secretary of State (153-9)	Authorized Use of the Great Seal of the State of WV Interpretive	10/23/2017	11/22/2017						
Secretary of State (153-18)	Procedures for Convassing Elections Legislative	6/28/2017	7/28/2017		7/28/2017				
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	Approved 8/29/2017			
Senior Services (76-3)	WV State Plan for Aging Programs Instructive	7/7/2016	8/9/2016						
State Police (81-14)	WV Sex Offender Registration Act Procedural	7/20/2017	8/22/2017						

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SECSTATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Tax (110-10F)	Payment of Taxes by Electronic Funds Transfer Legislative	6/16/2017	7/17/2017		7/27/2017	Approved 8/29/2017			
Tax (110-13DD)	Farm-To-Food Bank Tax Credit Legislative	6/16/2017	7/17/2017		7/27/2017	Modified & Approved 8/29/2017 Filed 9/1/2017			
Tax (110-22)	Property Transfer Tax Legislative	6/19/2017	7/20/2017		7/27/2017	Approved 8/29/2017			
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	Modified & Approved 8/29/2017 Filed 8/8/2017			
Veterinary Medicine (26-1)	Organization and Operation and Licensing of Veterinarians Legislative	6/12/2017	7/13/2017		7/18/2017	Modified & Approved 8/29/2017 Filed 8/29/2017			
Veterinary Medicine (26-5)	Certified Animal Euthanasia Technicians Legislative	6/12/2017	7/13/2017		7/18/2017	Approved & Modified 9/20/2017			
Veterinary Medicine (26-6)	Schedule of Fees Legislative	6/12/2017	7/13/2017		7/18/2017	Modified & Approved 8/29/2017 Filed 8/29/2017			
Waste Mgmt., Div. of Water & Waste Mgmt. (33-20)	Hazardous Waste Management System Legislative	6/6/2017	7/6/2017		7/21/2017				
Waste Mgmt., Div. of Water & Waste Mgmt. (33-30)	Underground Storage Tanks Legislative	6/6/2017	7/6/2017		7/25/2017				



P.O. BOX 2067
CHARLESTON, WV 25327

PHONE: 304-558-1050
1-800-WVA-CASH

LEGISLATIVE

Jim Justice
Governor

Alan H. Larrick
Director

October 31, 2017

October 31, 2017

Honorable Mac Warner
West Virginia Secretary of State
Attn: Administrative Law Division
1003 Kanawha Boulevard, East
Charleston, WV 25310-0771

Honorable Mac Warner
West Virginia Secretary of State
Attn: Administrative Law Division
1003 Kanawha Boulevard, East
Charleston, WV 25310-0771

Dear Secretary Warner:

Dear Secretary Warner:

Pursuant to WV Code §26-22A-5(a), the West Virginia State Lottery is, from time to time, to adopt game rules pertaining to instant video lottery which are specifically authorized by WV Code §26-22A-1, et seq.

Pursuant to WV Code §26-22A-5(a), the West Virginia State Lottery is, from time to time, to adopt game rules pertaining to instant video lottery which are specifically authorized by WV Code §26-22A-1, et seq.

Enclosed are game rules for "China Shores", "Lucky Honeycomb Hot Boats", "Jester's Mirror", and "Heart of Romance" manufactured by Konami Gaming for lottery terminals located at all four licensed racetracks in the State.

Enclosed are game rules for "Betty White's Tall Tales" and "Betty White's Story Time" manufactured by IGT for lottery terminals located at all four licensed racetracks in the State.

Please file these documents as a game rule.

Please file these documents as a game rule.

Sincerely,

Sincerely,

Alan H. Larrick
Director

Alan H. Larrick
Director

AHL:ar

AHL:ar

Enclosures:
China Shores
Lucky Honeycomb Hot Boats
Jester's Mirror
Heart of Romance

Enclosures:
Betty White's Tall Tales
Betty White's Story Time





P.O. BOX 2067
CHARLESTON, WV 25327

PHONE: 304-558-0700
1-800-WVA-CASH

Jim Justice
Governor

October 31, 2017

Honorable Max Warner
West Virginia Secretary of State
Attn: Administrative Division
1900 Kanawha Boulevard, East
Charleston, WV 25305-0771

Dear Secretary Warner:

Pursuant to WV Code §20-22A-5(a), the West Virginia State Lottery is, from time to time, to adopt game rules pertaining to instant video lottery which are specifically authorized by WV Code §§20-22A-1 et seq.

Enclosed are game rules for "5 Treasures" manufactured by Bally Technologies for lottery terminals located at all four licensed racetracks in the State.

Please file these documents as a game rule.

Sincerely,

Alan H. Larrick
Director

AHL:ar

Enclosure: 5 Treasures

www.wvlottery.com



P.O. BOX 2067
CHARLESTON, WV 25327

PHONE: 304-558-0700
1-800-WVA-CASH

Jim Justice
Governor

October 31, 2017

Honorable Max Warner
West Virginia Secretary of State
Attn: Administrative Division
1900 Kanawha Boulevard, East
Charleston, WV 25305-0771

Dear Secretary Warner:

Pursuant to WV Code §20-22A-5(a), the West Virginia State Lottery is, from time to time, to adopt game rules pertaining to instant video lottery which are specifically authorized by WV Code §§20-22A-1 et seq.

Enclosed are game rules for "Real Sweet Stacks", "Rolling Action Gold Bonanza", "Wild Wicked & Wild", "Cool...I Scooped It Again!", "Happy Prigs", "Garden of Magic", "Jade Garden", and "Wonder 4 Tall Fenners" manufactured by Acitmont for lottery terminals located at all four licensed racetracks in the State.

Please file these documents as a game rule.

Sincerely,

Alan H. Larrick
Director

AHL:ar

Enclosure:

Real Sweet Stacks
Rolling Action Gold Bonanza
Wild Wicked & Wild
Cool...I Scooped It Again!
Happy Prigs
Garden of Magic
Jade Garden
Wonder 4 Tall Fenners

www.wvlottery.com

LEGISLATIVE

Alan H. Larrick
Director





WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

#FILED
11/02/2017 10:29:00 AM

LEGISLATIVE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Pharmacy
RULE TYPE: Legislative
RULE NAME: Uniform Controlled Substances Act
CITE AUTHORITY: 30-5-7
TITLE SERIES: 15-02

The above proposed legislative rule, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Pharmacy
RULE TYPE: Legislative
RULE NAME: Controlled Substances Monitoring Program
CITE AUTHORITY: 30-5-7
TITLE SERIES: 15-08

The above proposed legislative rule, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

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



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

#RPSD
11/7/2017 10:15:39 AM

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

#RPSD
11/6/2017 3:50:32 PM

LEGISLATIVE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Pharmacy
RULE TYPE: Legislative
RULE NAME: Pharmaceutical Recovery Networks
CITE AUTHORITY: 30-6-7
TITLE SERIES: 15-10

The above proposed legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Pharmacy
RULE TYPE: Legislative
RULE NAME: Immunizations
CITE AUTHORITY: 30-6-7
TITLE SERIES: 15-12

The above proposed legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

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

WEST VIRGINIA
SECRETARY OF STATE
MAC WARNER



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11/8/2017 2:09:10 PM

WEST VIRGINIA SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

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WEST VIRGINIA
SECRETARY OF STATE
MAC WARNER



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WEST VIRGINIA SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

LEGISLATIVE

FORM 1 - NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

(Page 1)

AGENCY Public Service Commission
RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 150-0
RULE NAME Government of Electric Utilities

CITE AUTHORITY 24-4-2-1, 24-4-2 and 24-2-2

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

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

WRITTEN COMMENTS MAY BE MAILED TO
Ingrid Ferrell, Executive Secretary
201 Brooks Street
PO Box 812
Charleston, WV 25313

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

Yes

Ingrid M Ferrell - By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §20A-3-1 and §20A-3-2.



Title-Series: 150-00



Rule Id: 10084



Document: 40994

FORM 1 - NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

(Page 1)

AGENCY Public Service Commission
RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 150-0
RULE NAME Government of Gas Utilities and Gas Pipeline Safety

CITE AUTHORITY 24-4-2-1, 24-4-2, 24-2-1 and 24-2-2

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

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

WRITTEN COMMENTS MAY BE MAILED TO
Ingrid Ferrell, Director
Executive Secretary Division
PO Box 812
Charleston, WV 25313

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

Yes

Ingrid M Ferrell - By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §20A-3-1 and §20A-3-2.



Title-Series: 150-04



Rule Id: 10400



Document: 40995



WEST VIRGINIA
SECRETARY OF STATE
MAC WARNER

ADMINISTRATIVE LAW DIVISION

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11/6/2017 3:59:49 PM

EMERGENCY

WEST VIRGINIA SECRETARY OF STATE

FORM 17 - NOTICE OF AN EMERGENCY RULE (Page 1)

AGENCY Osteopathic Medicine
RULE TYPE Legislative AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 24-02
RULE NAME Osteopathic Physician Assistant
CITE AUTHORITY 20-2-7(a) & 20-2C-10(b)(5)(B)

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE AND WITHOUT DELAY BEING APPLIED, WHEREVER OCCURS FIRST, THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

SB 1014 was passed and signed into law on September 7, 2017. The WV Board of Medicine has been notified and is currently reviewing their legislative rules to enforce SB 1014. They have affected the osteopathic physician assistants and we are submitting an emergency rule to allow immediate enforcement.

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

Yes

Diana K. Sheppard - 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 §30A-3-2.



Title-Series: 24-02



Rule Id: 16600



Document: 49977

Orders Report

Docket Number	Agency	Respondent	Date Rendered
17-3-11196-X	Health Care Authority	Boone Memorial Hospital Inc	11/1/2017
17-8-11261-X	Health Care Authority	Mountaineer Mental Health LLC	11/1/2017
17-6-11294-X	Health Care Authority	RSCR West Virginia Inc	11/1/2017
17-3-11193-X	Health Care Authority	WomenCare Inc.	11/1/2017
17-2-11182-X	Health Care Authority	Aeternus Riverview Holdings LLC	10/25/2017
17-6-11183-X	Health Care Authority	Alkamy Center for Weight Management & Surgical Services	10/23/2017
17-5/6-11160-A	Health Care Authority	Cavalier Mobile X-Ray Co	10/25/2017
17-2-11181-X	Health Care Authority	Marshall University	10/24/2017
17-2/4-11186-X	Health Care Authority	New Horizons Therapy Services LLC	10/24/2017
17-6-11195-H	Health Care Authority	West Virginia University Hospitals Inc	10/25/2017
17-2-11175-X	Health Care Authority	Williamson Health and Wellness Center	10/24/2017

WEST VIRGINIA ETHICS COMMISSION CONTRACT EXEMPTION

NO.

OPINION SOUGHT

2017-07

The Sheriff of Hardy County requests an exemption to purchase emergency lighting equipment for the Sheriff's Office's law enforcement vehicles from a business owned by one of his deputies.

2017-08

The Hancock County Commission requests an exemption to allow its Sheriff's Department to use Water World Car Wash, a business owned by County Commissioner Jeff Davis.

Grievances Report

Docket Number	Grievants Name	Respondents Name	Date Decision
2017-0514-DHHR	Michael Nelson Malone	Health And Human Resources Inspector General	10/4/2017
2018-0018-MISC	Kerri A. Swager	Personnel	10/4/2017
2017-1874-DHHR	Nikole Kidd	Hammond Public Service District Health And Human Resources	10/4/2017
2017-2089-DHHR	Debbie Sparks	Children And Families Health And Human Resources	10/5/2017
2018-0021-DOC	Michael D. Bryant	Mildred Mitchell-Bateman Hospital	10/5/2017
2017-2296-DOC	Sarah Kelly	Natural Resources	10/6/2017
2017-0959-DHHR	Deborah S. Smith	Workforce West Virginia Health And Human Resources	10/6/2017
2017-1082-CONS	Priscilla Ann Thomas	Child Support Enforcement	10/17/2017
2017-2172-DOO	Bruce Wilson	Logan County Board Of Education Tax Department	10/17/2017
2016-0225-CONS	Richard Jones, et al.	West Liberty University	10/17/2017
2018-0279-DHHR	Aimme Reynolds	Health And Human Resources	10/18/2017
2018-0206-DOO	Jonathan P. Terry	Jackie Withrow Hospital	10/19/2017
2016-1585-CONS	Marcus Strader	Parkways Authority	10/19/2017
2017-1155-DHHR	R. D.	Health And Human Resources William R. Sharpe, Jr. Hospital	10/20/2017
2017-2342-CONS	Mike Duminiack	Health And Human Resources	10/20/2017
2017-2029-BooED	Robin Gabbert	Children And Families Water Development Authority	10/25/2017
		Boone County Board Of Education	10/25/2017

2017-1992-DHHR

Tonia Guthrie

Health And Human Resources

10/25/2017

2015-1774-CONS

Helmo Riedel

Hopemont Hospital

10/25/2017

2017-1146-MerED

Carl W. Finley

West Virginia University

10/31/2017

2017-0211-WVU

Kayla Hawley

Mercer County Board Of Education

10/31/2017

2017-2041-CONS

Alisa Sisley

Health And Human Resources

10/31/2017

William R. Sharpe, Jr. Hospital

10/31/2017



State of West Virginia
Office of the Attorney General
Slate Capito, Clerk
Building L, Room 26-E
Charleston, WV 25305-0220

Patrick Merriam
Attorney General

November 1, 2017

Mr. Austin Caperton
Cabinet Secretary
West Virginia Department of
Environmental Protection
601 57th Street, Southpark
Charleston, WV 25304

Dear Secretary Caperton:

You have asked for an Opinion of the Attorney General regarding whether amendments to West Virginia Code § 22-11-7b contained in House Bill 2506 and Senate Bill 687 can be harmonized so whether effect must be given to Senate Bill 687 as the later-enacted statute. This Opinion is being issued pursuant to West Virginia Code § 5-5-1, which provides that the Attorney General "shall give written opinions and advice upon questions of law . . . whenever required to do so by the Legislature or the judges of any court of this State in the exercise of environmental protection." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Attorney General's Office.

In your letter, you explain that in the 2017 Regular Session of the Legislature, the Legislature enacted two bills purporting to amend the provisions of West Virginia Code § 22-11-7b. According to your letter, prior to both enactments, West Virginia Code § 22-11-7b(d) directed the Secretary of the West Virginia Department of Environmental Protection ("DEP") to establish standards of water quality for all surface and ground waters in the State and implement a regulatory program to protect waters of the State from activities that may degrade water quality. That provision did not mandate that DEP use a particular formula or to assess the quality of drinking water. A different subsection of the same provision—West Virginia Code § 22-11-7b(f)—directed the Secretary to propose a legislative rule implementing a method for determining the health of a stream based on the presence and health of aquatic life in the stream.

Your letter further explains that, during the 2017 session, House Bill 2506 added a provision to subsection (c) requiring DEP to use harmonic mean flow in calculating permit limits when implementing human health criteria to protect drinking water sources and in allowing mixing zones to overlap, subject to certain conditions. The House Bill passed the Legislature on March 28, 2017, was signed into law by the Governor on April 8, 2017, and had an effective date of June 26, 2017. Eleven days after the House Bill passed the Legislature, on April 8, 2017, the Legislature

AG OPINION

Mr. Austin Caperton
November 1, 2017
Page 2

enacted Senate Bill 687, which removed a provision from subsection (f) requiring the Secretary to develop a method to determine the health of streams. The amendment "supports a balanced aquatic community . . . diverse species composition." The Secretary did not incorporate the amendment to subsection (c) made by the House bill that removed the harmonic mean flow to assess the quality of drinking water. Senate Bill 687 took effect on April 8 and was signed into law by the Governor on April 26, 2017.

Finally, your letter notes that DEP is aware of the West Virginia Supreme Court of Appeals' opinion in *Wiley v. Toppenberg*, 210 W. Va. 173, 556 S.E.2d 818 (2001), which provides that "effect should always be given to the latest . . . expression of the legislative will."

Your letter raises the following specific legal question:

Whether the amendments to West Virginia Code § 22-11-7b contained in Senate Bill 687 supersede the amendments to West Virginia Code § 22-11-7b contained in House Bill 2506?

We conclude that a court is likely to hold that the currently operative provisions of West Virginia Code § 22-11-7b include (1) subsection (c) of House Bill 2506, requiring DEP, among other things, to use harmonic mean flow in assessing drinking water quality, and (2) the remainder of Senate Bill 687, including subsection (f), which removes the balanced aquatic community assessment requirement.

We reach this conclusion through a combination of statutory and constitutional analysis. We conclude first that the Legislature intended that Senate Bill 687 expressly repeal and replace House Bill 2506 in its entirety. In the alternative, the amendments contained in Senate Bill 687 are irreconcilably conflicted with those in House Bill 2506, and therefore, because the Senate Bill was enacted more recently, it would control in its entirety absent some constitutional defect in the bill. Second, we conclude that the Senate bill *does* suffer in part from a constitutional defect, namely, that the title of the bill *does not* reflect the purported removal of the House amendment to subsection (c). Accordingly, we conclude that a court would most likely deem the Senate Bill's purported elimination of the House amendment to this subsection to be unconstitutional under Article VI, Section 30 of the West Virginia Constitution. Finally, we conclude that a court would proceed to sever the unconstitutional amendment contained in the Senate Bill and permit the remainder of the bill to take full effect. The net result would be that Senate Bill 687, including its amendment to the aquatic life provisions in subsection (f), would take full effect, with the exception of section (c), which would continue to refer to the amendment made by House Bill 2506 requiring DEP to use harmonic mean flow.

The "Last in Time" Rule

The first step in our analysis requires us to determine what provisions of West Virginia Code § 22-11-7b would be operative absent some constitutional infirmity—that is, what law the Legislature in fact enacted as the current version of the law? Under the first step of the analysis, we conclude that the Legislature, either expressly or impliedly, repealed House Bill 2506 in its entirety when it enacted Senate Bill 687. Accordingly, if Senate Bill 687 were free from constitutional defects, it would control in full.

As your letter points out, the West Virginia Supreme Court of Appeals has developed a canon of construction that requires a court, when faced with an actual conflict, to give effect to the provision that was enacted later in time. A court may do this by "last-in-time" rule, however, to determine what the Legislature has deemed to be the provisions of West Virginia Code § 22-1-7b. Courts typically apply this canon to determine whether the Legislature has effected a repeal by implication that is to say, in cases where the Legislature has enacted a new statute that irreconcilably conflicts with a second, earlier-enacted statute but does not directly refer to or address the second law. See, e.g., *State ex re. Phelan v. Farley*, 142 W. Va. 105, 109, 36 S.E.2d 72, 74 (1964).

In such cases, the West Virginia Supreme Court of Appeals has long recognized that "if [a]ny act by implication is not favored in law," 531, pt. 1, *State ex rel. City of Wheeling v. State*, 65 W. Va. 660, 110 S.E.2d 763 (1960). To repeat a statute by implication there must be such positive evidence that the Legislature intended to repeal the old statute that they can not stand together or be consistently construed." *Id.*, at 2, 100 W. Va. 417, 140 S.E.2d 100, 98 S.E.2d 74 ("[W]here two distinct statutes stand in plain and open conflict, and there is no irreconcilable conflict, that section must prevail which can properly be considered as the latest expression of the law making power. . . ."). But where legislative enactments cannot be reconciled, effect must "be given to the latest . . . expression of the legislative will." *Wiley v. Topover*, 210 W. Va. 173, 175, 556 S.E.2d 818, 820 (2001) (quoting *Asopel Spridel Grocery Co. v. Wander*, 56 W. Va. 602, 49 S.E. 534 (1904)).

This case, however, does not appear to involve repeal by implication. By contrast, the Legislature expressly repealed and replaced the entirety of House Bill 2506 with Senate Bill 687, § 221-7b. Typically, if the Legislature expressly amends an existing provision of law with a different provision, it is presumed to repeal the old statute, and there is no reason to consider whether or not the new provision, in part, no longer has effect. In such cases, the amendment is clearly law, and the repealed act no longer has effect. But where legislative enactment to have expressly replaced one provision of West Virginia Code § 22-1-7b with another court may not need to have recourse to the "last-in-time" canon to conclude that Senate Bill 687 reflects the text of the current statute. See *State ex rel. Thompson v. Morrow*, 140 W. Va. 207, 211-12, 84 S.E.2d 791, 795 (1954) (distinguishing between a statute that expressly repeals a provision by referencing "its name, title, or caption" and an implied repeal where the "last-in-time" canon applied); *McCowan v. Guentz*, 21 W. Va. 134, 148 (1882) (distinguishing between express and implied repeal).

To be sure, the Supreme Court of Appeals has also applied the "last-in-time" rule in instances where there is some confusion about what language the Legislature actually intended to provision on the same date. See *Wiley*, 210 W. Va. 175, 556 S.E.2d at 820. Here, there is arguably no such confusion from the Legislature took up and enacted two bills on the same date. Senate Bill 2506 and House Bill 687. It seems clear in such a case that the provision in Senate Bill 687 would govern, regardless of their parative conflict with the text of House Bill 2506.

AG OPINION

Even if it were appropriate to apply a "last-in-time" analysis to resolve the tension between House Bill 2506 and Senate Bill 687, however, we would reach the same conclusion.

As identified in your letter, *Wiley* describes a two-step process for analyzing whether two seemingly inconsistent versions of a particular Code section can be reconciled, and if not, which statute governs. 210 W. Va. at 175, 556 S.E.2d at 820. The first question is whether the provisions conflict or can be reconciled. *Id.* at 175, 556 S.E.2d at 820. If they conflict, the court next must determine which enactment is "the latest . . . expression of the legislative will." *Id.* at 175, 556 S.E.2d at 820. The latest expression of the legislative will is determined based on the time when the respective bills passed the Legislature. *Id.* at 175, 556 S.E.2d at 820.

In *Wiley*, the court considered whether two definitions of "win-betting operations" enacted on the same day could be reconciled. *Id.* at 174-75, 556 S.E.2d at 819-20. The earlier-enacted definition exempted harvesting of lumber from the definition of "win-betting operations" while the later-enacted version omitted the exemption and applied the requirements of the statute to the harvesting of lumber. *Id.* at 174-75, 556 S.E.2d at 819-20. The Court concluded that because the earlier-enacted definition excluded some commercial logging operations that the later-enacted version did not, the provisions conflicted. *Id.* at 175 n.2, 556 S.E.2d at 820 n.2.

The Court reached the opposite conclusion in *Charleston Gazette v. Switzer*, 232 W. Va. 449, 752 S.E.2d 600 (2013) where a legislative rate and a statutory provision both allowed for the course of donation and did not impose bonding obligations on anyone. Switzer involved a potential conflict between the State Freedom of Information Act ("FOIA") and a legislative rule of Public Safety that Virginia Code § 15-2-21 (1977), which required the West Virginia Division of Public Safety to "conduct background investigations on all persons, entities, and other items related to complaints, internal inquiries, audits, controlled substances, firearms, and other items disseminated or disclosed." *Id.* at 408 n.30, 752 S.E.2d at 622 n.30 (emphasis added). The FOIA statute provided that "[i]nformation of a personal nature such as that kept in a personal, medical or similar file" is exempt from disclosure. *Id.* at 461, 752 S.E.2d at 615. Under *Child Protection Group v. Clow*, 177 W. Va. 29, 350 S.E.2d 541 (1986), a court has discretion in determining whether disclosure constitutes an invasion of privacy under FOIA. *Id.* at 463-64, 752 S.E.2d at 617-18 (citing *Child Prot. Grp. v. Clow*, 177 W. Va. 29, 350 S.E.2d 541 (1986)). Because both the rule and FOIA allow a court discretion to order disclosure, the Supreme Court of Appeals concluded there was no conflict between the two.

Applying the first step in the *Wiley* analysis to the question presented in your letter, we conclude that the case does not involve an actual conflict between conflicting enactments, as in *Wiley*, rather than two reconcilable versions of the same statute, as in *Switzer*. As in *Wiley*, the bills passed to adopt different versions of the same statute. House Bill 2506 imposes an obligation that the other (Senate Bill 687) does not. See 210 W. Va. at 174-75, 556 S.E.2d at 819-20. The conflict is apparent by attempting to reconcile the two provisions. The House Bill's subsection (c) requires DRP to use harmonic mean flow in setting permit limits while the Senate Bill does not. Specifically, House Bill 2506 provides that "the Secretary shall calculate permit limits using the harmonic mean flow. . . ." House Bill 2506

The Title Rule

After concluding that Senate Bill 687 would prevail under an express or implied repeal analysis, we next assess whether the Supreme Court of Appeals would find the Senate bill constitutional. We conclude that the Court would likely find that the Senate bill amendment to subsection (c) is unconstitutional because the Legislature did not provide notice of that change in the title to the bill.

The West Virginia Constitution requires that the object of an act "shall be expressed in title." W. Va. Const. art. X, § 20. The Supreme Court of Appeals has explained that "[l]ike text to be applied in whether the title is sufficient to inform the public of the subject matter to be enacted in the act." *Boon v. State*, 19 W. Va. 467, 470 (1878); *S.E.2d* 141, 144 (1988). The requirement also serves to "prevent the introduction of subjects in substance" because "[t]he very act of amending the title to a bill so that the title corresponds with the substance of the bill may call legislators' attention to the subject of the title amendment." *C.C. Spivey Cupply Garage, Inc. v. Pub. Serv. Comm'n*, 171 W. Va. 489, 493, 300 S.E.2d 485, 489 (1983). Relatedly, the title rule provides the Governor, who must decide whether to sign or veto the legislation, fair notice of the bill's provisions. *Id.* at 493, 300 S.E.2d at 489. Therefore, while it would be inappropriate to presume the subjective intent of legislators when interpreting statutory text, the West Virginia Constitution's title requirement provides an independent check on the Legislature and the Governor enacting mistaken or ill-considered amendments.

In applying that test, the Supreme Court of Appeals has held that where the title is general and fairly encompasses the particular amendment at issue, it satisfies the constitutional requirement. For example, the Court found sufficient a title reading "an Act to repeal article twelve-4, chapter one of the Code of Virginia, one thousand nine hundred thirty-one, as amended and certain parts of a new section of the Code of Virginia, relating to an amendment to increase of certain counties." *City of Winchester v. Commonwealth*, 19 W. Va. 154, 154 W. Va. 634, 638, 177 S.E.2d 591, 595 (1970). The Court reasoned that the title "fairly or sufficiently expressed[]," embraced[] and indicated[] the general subject or object" of the act. *Id.* at 642, 177 S.E.2d at 597 (citation omitted). In another case, the Court concluded that a title explaining that the act "[s]et[te]s] generally the collection of solid waste facilities. *See, Disposal Co., Inc. v. W. Va. Pub. Serv. Comm'n*, 182 W. Va. 423, 425, 388 S.E.2d 297, 299 (1988). The Court reasoned that such a general title alerts the reader to the subject matter of the bill and prompts interested parties to read the bill. *Id.* at 427, 388 S.E.2d at 301.

On the other hand, the Court has also concluded that if the Legislature makes a more granular approach, specifically listing the matters contained in the bill, it must list all changes in order to comply with the title rule. *C.C. Spivey Cupply Garage, Inc. v. Pub. Serv. Comm'n*, 171 W. Va. 489, 493, 300 S.E.2d at 486; *see also Nev. Power Co. v. State*, 182 W. Va. 28, 29 (1987). In *Nev. Power Co.*, the Court held that the bill but distinguishing a case on particular facts), *In C.C. Spivey Csupply Garage, Inc. v. Pub. Serv. Comm'n*, 171 W. Va. 489, 493, 300 S.E.2d at 486, the Court held insufficient a title including a general description of the subject matter—"repealing the Court held insufficient the authority and operations of the public service commission," but then listing every change made by the act except for the deregulation of "trading, handling or carrying certain cars." *Id.* at 490 & n.1.

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(omnibus amendable). If full effect were given to the House bill requiring harmonic mean flow, it would be impossible to give full effect to Senate Bill 687, which grants DEP discretion in determining how to calculate permit limits. Equally, it would be impossible to give full effect to the House bill's subsection (f), which requires DEP to assess compliance with narrative water quality standards based on a balanced aquatic community, and to the Senate bill's removal of that requirement.

One could argue that the bills do not actually conflict because the Legislature only intended for Senate Bill 687 to amend subsection (f) while it only intended House Bill 2506 to amend subsection (c). But that argument ignores the actual content of the two bills. Senate Bill 687 amends the language in subsection (c) to require DEP to assess compliance with narrative water quality standards based on a balanced aquatic community. (C) by amending and renumbering the language of § 22-2-15. The language in subsection (c) in effect prior to enactment of the House Bill. The text of this bill, the language in subsection (c) in effect prior to enactment of the House Bill 687 to the amendments to subsection (f). To the extent that House Bill 2506 would be to ignore that amendment and give effect to the present, subsection (c) of the Legislature over clear statutory text, which courts generally do not do. *See, e.g., South v. State Probation's Comm'n*, 159 W. Va. 108, 115–16, 219 S.E.2d 361, 365 (1975).

Having found a conflict, we turn to the second step of the Wiley analysis, which requires a court to give "effect . . . to the latest . . . expression of the legislative will . . ." 210 W. Va. at 175, 536 S.E.2d at 820 (quoting *Joseph Spisidol*, 56 W. Va. at 628, 49 S.E. at 526). Under applicable precedent, the latest expression is measured from the date or time that the Legislature passed the law to the effective date or the date of the Governor's signature). *See, e.g.,* at 174–75, 536 S.E.2d at 811 (quoting *City of Rowwood v. Bd. of Educ.*, 212 W. Va. 436, 468, 573 S.E.2d 347, 351 (2002) (concluding that the latest expression of the legislative will was the House Bill 2506, which amended the Legislature's House Bill 2506, which was on March 25, 2017, while Senate Bill 687 was passed on April 4, 2017, making Senate Bill 687 the latest expression of legislative will under Wiley).

In short, whether analyzed as an express or implied repeal, the text of Senate Bill 687 would control over the text of House Bill 2506, absent some other constitutional defect.

The full text of the House Bill 2506 amendment to subsection (c) reads:

"To harmonizing human health criteria for the protection of drinking water, the Secretary shall calculate permit limits using harmonic mean flow and may determine the point of compliance for a water quality standard's discharge for the missing zero provision of the Legislative rule entitled Requirements for Water Quality Standards, 47 C.S.R. 2. Provided, That the Secretary may allow missing zeros to overlap, but not to go beyond a point one-half mile upstream of a public water supply. At locations where missing zeros are allowed to overlap, the Secretary shall require permittees to indicate on their required gauge an indication that missing zeros overlap in a particular vicinity."

Mr. Austin Caperton
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This letter takes no position on whether harmonic mean flow is the appropriate method for calculating permit limits or whether a balance of water quality standards should be considered in determining compliance with higher narrative water quality standards. If the higher narrative limits to remove the harmonic mean flow requirement or mitigate the balanced aquatic community requirement, it may of course amend the West Virginia Code to achieve those results.

AG OPINION

Sincerely,



Patrick McMorrey
Attorney General

Elisa N. Peterson
Assistant Attorney General

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

November 6, 2017

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending November 3, 2017.

LETTER OF INTENT RECEIVED

October 30, 2017 - Potomac Valley Hospital, Keyser, Mineral County, CON File #17-6-11212-P, for the development of an ambulatory health-care facility in Mineral County through the acquisition of a physician practice; capital expenditure: \$237,000.

CERTIFICATE OF NEED APPLICATIONS RECEIVED

October 30, 2017 - Berkeley Medical Center, Martinsburg, Berkeley County, CON File #17-6-11206-P, for the development of an ambulatory health care facility in Berkeley County; capital expenditure: \$673,000.

October 30, 2017 - Hometown Care, LLC, Bellington, Barbour County, CON File #17-6-11207-PC, for the provision of personal care services in Preston, Harrison, Marion and Upatari counties; capital expenditure: \$1,500.

October 30, 2017 - Monongalia County General Hospital Company, Morgantown, Monongalia County, CON File #17-6-11208-P, for the establishment, by acquisition of the assets of Alvaro R. Gutierrez Neurology, PLLC and employment of Gutierrez Neurology's sole physician center, an ambulatory health care facility located at 2159 Chest Road, Morgantown, Monongalia County, capital expenditure: \$125,000.

APPLICATIONS 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 APPLICATIONS

October 23, 2017 - Charleston Area Medical Center, Inc., Charleston, Kanawha County, CON File #17-3-11199-P, for the development of an ambulatory health care facility at 487 Main Street, Suite 1, Marlinton, Boone County, through the transfer of the practice from Integrated Health Care Providers, Inc. to Charleston Area Medical Center; no capital expenditure.

OTHER

October 23, 2017 - Charleston Area Medical Center, Inc., Charleston, Kanawha County, CON File #17-3-11190-P, for the development of an ambulatory health care facility at 500 New Hope Road, Suite 107, Princeton, Mercer County, through the transfer of the practice from Integrated Health Care Providers, Inc. to Charleston Area Medical Center; no capital expenditure.

October 23, 2017 - Charleston Area Medical Center, Inc., Charleston, Kanawha County, CON File #17-3-11191-P, for the development of an ambulatory health care facility at 400 Fairview Heights Road, Suite 202, Summersville, Nicholas County, through the transfer of the practice from Integrated Health Care Providers, Inc. to Charleston Area Medical Center; no capital expenditure.

October 23, 2017 - Charleston Area Medical Center, Inc., Charleston, Kanawha County, CON File #17-3-11192-P, for the development of an ambulatory health care facility at 50 Veres Drive, Chapmanville, Logan County, through the transfer of the practice from Integrated Health Care Providers, Inc. to Charleston Area Medical Center; no capital expenditure.

October 24, 2017 - Elder Aide Services of the Right at Home, Charleston, Kanawha County, CON File #17-3-11195-PC, for the provision of personal care services in Putnam County; no capital expenditure.

October 30, 2017 - Special Touch Nursing Services, Inc., South Charleston, Kanawha County, CON File #17-3-11194-PC, for the provision of personal care services in Kanawha County; capital expenditure: \$1,000.

October 31, 2017 - Southern Home Care Services, Inc., Louisville, Kentucky, CON File #17-16-11203-PC, for the provision of personal care services in Greenbrier, Raleigh and Monroe counties; capital expenditure: \$10,000.

October 31, 2017 - Berkeley Medical Center, Martinsburg, Berkeley County, CON File #17-9-11206-P, for the development of an ambulatory health care facility in Berkeley County; capital expenditure: \$673,000.

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 for the above-referenced projects is as follows:

October 31, 2017 - Review cycle begins.

November 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.

