



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Health TITLE-SERIES: 64-30  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 64-30 Fees for Permits

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code §16-1-4, §16-1-11(d), and §16-2-11(b)(3)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§16-1-11(d) The secretary shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code, setting forth the fees established, assessed, and charged by the commissioner.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/14/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/15/2019

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

In-State Vendor Temporary Food Service Establishment Permit (non-potentially hazardous food only). This category was added for clarification that a permit fee charged to these vendors is good for one year in all bordering counties or 25 air miles.

Labor Camp permit category and fee was removed in 2006 because local health departments indicated that they did not have this category of facilities. However, this category has been added back in due to natural gas well fracking operations and natural gas pipeline construction companies providing on-site housing accommodations for their employees.

Other proposed changes made to modernize the 64 CSR 30 are:

Removing the requirement for the local boards of health to receive approval from the Bureau for Public Health when fees for permits are changed or added. This will allow the local health departments to increase permits in a timely manner with only a notification to the BPH Commissioner.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

HB 2495 was passed during the 2019 Regular Session authorizing the Secretary to review and modernize the Legislative rules regarding local boards of health fees located in 64 CSR 30 in the next filing period.

Amendments include updating language to match other DHHR rules and add a new permit category for In-State Vendor Temporary Food Service Establishment Permit (non-potentially hazardous food only). All maximum permit fee amounts are increased by approximately 25 percent.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

N/A

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Debra G Garnes -- 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 64  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BUREAU FOR PUBLIC HEALTH

SERIES 30  
FEES FOR PERMITS

**§64-30-1. General.**

1.1. Scope - This rule establishes the fees for permits issued by county, municipal, or combined boards of health.

1.2. Authority. -- W. Va. Code §16-1-4, §16-1-11(d), and §16-2-11(b)(3).

1.3. Filing Date. -- ~~May 8, 2006.~~

1.4. Effective Date. -- ~~May 8, 2006.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§64-30-2. Application and Enforcement.**

2.1. Application - This rule applies to any county, municipal or combined board of health which charges a fee for the issuance of permits that are covered by this rule.

2.2. Enforcement - The enforcement of this rule is vested with the commissioner of the West Virginia Bureau for Public Health or his or her designee.

**§64-30-3. Definitions.**

3.1. Bed and Breakfast - An establishment providing lodging facilities in the form of sleeping accommodations and at a minimum, a breakfast for a fee.

3.2. Bureau - The Bureau for Public Health in the West Virginia Department of Health and Human Resources.

3.3. Campground - A tract ~~or parcel~~ of land maintained, and offered or used for camping, tent camping and/or parking of recreational vehicles. ~~Wilderness camping areas are not included in this definition.~~ to the public for payment for the location or placement of two or more camping units as defined in the bureau's "General Sanitation" rule, 64CSR18.

3.4. Care Facility – Facilities included, but not limited to, public or private halfway houses, adult day care facilities, residential care facilities (such as juvenile group homes and work release centers), and non-disaster emergency shelters (such as homeless shelters and family violence protection centers). The term does not include health care facilities licensed by the ~~bureau~~ Office of Health Facility Licensure and Certification in the Office of the Inspector General.

3.5. Child Care Center - A facility where care is provided for seven or more children in a ~~twenty-four~~ 24-hour period. The term does not include facilities excluded in the bureau's "Child Care Centers" rule, 64CSR21.

3.6. Developed Site - A location for placement and hookup of a ~~mobile~~ manufactured home.

3.7. Fixed Expiration Date - An annual date at which time all permits of the same type expire. The fixed expiration date for each of the permits covered by this rule is derived from the state code or the rule which authorizes the issuance of the particular permit.

3.8. Food Service Establishment - Any fixed or mobile restaurant; coffee shop; cafeteria; short-order cafe; soda fountain; tavern; bar; cocktail lounge; delicatessen; nightclub; roadside stand; industrial feeding establishment; private, public, or non-profit organization or institution routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

3.9. Hotel/Motel - Any temporary or permanent buildings or structures which are maintained, offered, or used ~~for dwelling or as~~ sleeping quarters for pay.

3.10. Individual Sewage Disposal System - A system for the collection, treatment and disposal of sewage which serves a single dwelling or establishment.

3.11. Innovative Alternative Type Sewage System - A method of sewage disposal for a single-family dwelling or establishment for which design standards have been prepared and listed in the West Virginia Bureau for Public Health rule, "Sewage Treatment and Collection System Design Standards," 64CSR47, as an innovative or alternative system.

3.12. Labor Camp - A labor camp includes any lumber, mining, agricultural, construction, or other industrial camp where 10 or more persons are employed and housed in temporary quarters, such as cars, motor homes, camper vehicles, wagons, tents, cabins, buildings, or other similar enclosures.

~~3.12.3.13.~~ 3.13. Mass Gathering - Any group of 500 or more persons assembled together for a meeting, festival, social gathering, concert or other similar purpose. The term shall not include assembly in any permanent buildings or permanent structures designed, equipped and intended for use by large numbers of people. The term shall not include assembly in any outdoor venue ordinarily used and equipped for such events. For the purposes of this rule, "equipped" means supplied with adequate sanitary facilities for the intended use.

~~3.13.3.14.~~ 3.14. Mobile Food Unit Establishment- ~~A vehicle-mounted food service establishment designed to be readily moveable~~ A food establishment that is mobile by means of mechanical, electrical, manual, or otherwise propelled vehicle operating on land or water that complies with 64 CSR 17 Food Establishment Rule - FDA Food Code Mobile Food Establishment Matrix recommendations based on the menu of food items provided.

~~3.14.3.15.~~ 3.15. Mobile Home Park/Manufactured Home Community - Any site, area, tract, or parcel of land upon which ~~two~~ four or more ~~mobile~~ manufactured homes, used or occupied for dwelling purposes, are

parked, either free of charge or for a monetary consideration.

~~3.15. Motel—same as subsection 3.9. of this section.~~

3.16. Organized Camp - Any area, place, parcel, or tract of land on which facilities are established or maintained to provide an outdoor group living experience for children or adults, or where one or more permanent or semi-permanent structures are established or maintained as living or sleeping quarters for children or adults, and operated for educational, social, recreational, religious instruction or activity, physical education or health, or vacation purposes either gratuitously or for compensation, provided, that this definition shall not be construed to include a hunting, fishing, or other camp privately owned and used exclusively for the personal pleasure of the owner.

3.17. Potentially Hazardous Food or Drink (time/temperature control for safety food) - Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.

3.18. Recreational Water Facility - A body of water, under the control of a person, which has been modified, improved, constructed or installed for the purpose of public swimming or bathing. It includes, but is not limited to, bathing beaches; swimming, wading, and diving pools; water slides, spray pools, lazy rivers, and wave pools; spas, hot tubs, therapeutic pools, hydrotherapy pools and whirlpools. A recreational water facility does not include a private residential swimming pool defined in subsection ~~2.9-~~ 2.10 of the bureau's "Recreational Water Facilities" rule, 64CSR16.

3.19. Retail Food Store - Any place, structure, premise, vehicle, or any part thereof in which food is sold retail, offered for retail sale, or served not to be consumed on the premises. For the purpose of this rule, the term "retail food store" does not include establishments which handle only pre-packed non-potentially-hazardous foods; roadside markets that offer only fresh fruits or fresh vegetables; or the delicatessen operation of a retail food store.

3.20. School - a public or private organization that provides instruction for the teaching of children. The term includes early childhood/ primary education centers, middle school/junior high education centers, adolescent/high school education centers and vocational education centers. The term does not include child care centers as defined in the bureau's "Child Care Centers" rule, 64CSR21.

3.21. Subdivision - ~~Land which has been partitioned or divided into two or more lots, tracts, parcels, plats, sites, areas, units, interests or other division, any of which are less than two acres in size with an average frontage of less than one hundred fifty feet, for the purpose of dwelling or other development. A tract of land which has been divided into two or more lots, tracts, parcels, plats, sites, areas, units, interests, or other division for the purpose of dwelling or establishment development and including the division of land by deed, metes and bounds description, lease, map, plat, or other instrument, or by act of construction.~~

3.22. Temporary Food Service Establishment - A food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration and required by W. Va. Code §16-6-3, to have a permit.

3.23. Vending Machine - A machine designed for the dispensing of potentially hazardous food or drink

to the public by a self-service method.

3.24. Water Well - Any excavation or penetration in the ground, whether drilled, bored, cored, driven, or jetted for a water supply, for the exploration for water, or for removal of water to dewater construction sites.

**§64-30-4. Option to Charge for Permits; Basis for Fees; ~~accounting~~; proposed schedule and public comment period required.**

4.1. Any county, municipal or combined board of health may charge a fee for the issuance of permits covered by this rule.

4.2. Any county, municipal or combined board of health may charge for any permits listed in this rule and are not required to charge for all permits listed. The amount of each fee listed represents the maximum amount which may be charged. Any county, municipal or combined board of health may charge any dollar amount up to the maximum. A county, municipal or combined board of health may not change the formula in section 6 of this rule.

~~4.3. Local board of health maximum fees may be based on the actual cost of service delivery plus administrative overhead. Administrative overhead may include but is not limited to: 1) salaries and wages; 2) utilities and other direct costs; and 3) that portion of the general and administrative costs, to include the administrator, secretaries, clerks, financial management and other overhead expenses, which contribute to the delivery of the service.~~

~~4.4. Fee Proposals By Local Boards of Health—A local board of health proposing to charge fees under this rule shall submit to the bureau an annual program plan and budget for the current fiscal year which includes:~~

~~4.4.a. An accounting of fee collections in the previous fiscal year and in the current fiscal year, and projected fee collections in the remainder of the current fiscal year and during the next fiscal year; and~~

~~4.4.b. A proposed schedule of fees.~~

~~4.5.4.3.~~ After a local board of health's ~~adoption~~ approval of a proposed schedule of fees, the board must post, publish or otherwise inform the public living in the area served by the board of the proposal and allow for a 30-day comment period.

~~4.6.4.4.~~ A local board of health proposing to charge fees must submit to the commissioner of the Bureau for Public Health:

~~4.6.a. A budget and program plan including the information required in subsection 4.3 of this rule;~~

4.4.1. The proposed schedule of fees; a current fee schedule, and a projection of permit fee collections for both fee schedules expected in the next fiscal year.

~~4.6.b.~~ 4.4.2. A copy of the posted notice of the proposed fees and a description of the public notice process;



~~4.6.c.~~ 4.4.3. A copy of comments received on the proposed fees; and

~~4.6.d.~~ 4.4.4. A response to the comments.

~~4.7.4.5.~~ The establishment of fees other than in accordance with subsections 4.4.3 through 4.6.4 of this rule may be accomplished only upon petition by the local board of health to the commissioner in response to an emergency.

~~4.8.4.6.~~ The commissioner must approve or reject a local board of health's proposed budget and program plan and proposed fee schedule. If there is a rejection, the local board of health may propose a revision. The commissioner may not approve any proposed fees that exceed an increase of twenty five percent per year of the local boards current fees, up to the maximum amount permitted by this rule. In the event the local board is requesting to institute a fee for a service permit for which they do not currently impose a fee for, the commissioner may approve a proposed fee that is no greater than twenty five percent of the up to the maximum amount allowed by this rule. The local board of health must submit the adopted schedule of fees to the commissioner within 60 days after approval by the local board of health. Upon approval by submission to the commissioner of the proposed fees adopted schedule of fees, the local board of health must file the approved adopted fee schedule with the clerk of all the county commissions or municipalities of which the board is a part, or in the case of a combined board of health, the filings must be with the clerks or recorders of all the participating county commissions and municipalities. After the local board of health has made all the required filings, it may charge the approved fees.

4.7. Any local board of health charging the 2006 maximum allowable permit fees at the time this rule becomes effective shall be able to increase to the maximum permit fees set within this rule without approval of the commissioner but must comply with sections 4.3. and 4.4. of this rule prior to implementing the change.

4.8. Local boards of health must not charge any permit fee above the maximum fee allowed by this rule and must not create any other permits or permit fees not covered by this rule.

#### **§64-30-5. Permits and Fees.**

5.1. Bed and Breakfast Permit - ~~\$50~~ \$60 per permit. The fixed expiration date is June 30.

5.2. Campground Permit - Fee set forth in Table 64-30A, of this rule.

5.3. Care Facility Permit - ~~\$50~~ \$60 per permit. The fixed expiration date is June 30.

5.4. Child Care Center Permit - Fee set forth in Table 64-30B, of this rule.

5.5. Food Service Establishment Permit - Fee set forth in Table 64-30C, of this rule.

5.6. Hotel/Motel Permit - Fee set forth in Table 64-30D, of this rule.

5.7. Individual Sewage Disposal Systems and Innovative Alternative Type Sewage Systems Permit - Fee set forth in Table 64-30E, of this rule.

5.8. Labor Camp Permit - \$125 per permit. The fixed expiration date is June 30.

~~5.8-5.9.~~ Mass Gathering Permit - ~~\$50~~ \$60 per event. The fixed expiration date is the end of the event.

~~5.9-5.10.~~ Mobile Food ~~Unit~~ Establishment Permit - ~~Potentially hazardous food only~~ food service establishment, ~~\$100~~ \$125 per unit. The fixed expiration date is June 30.

~~5.10-5.11.~~ ~~Mobile Home Park~~ Manufactured Home Community Permit - Fee set forth in Table 64-30F, of this rule.

~~5.11-5.12.~~ Organized Camp Permit - ~~\$75~~ \$90 per permit. The fixed expiration date is June 30.

~~5.12-5.13.~~ Recreational Water Facility Permit - ~~\$100~~ \$125 per facility. The fixed expiration date is December 31.

~~5.13-5.14.~~ Retail Food Store Permit (annual) - ~~\$50~~ \$60 per check-out station. The fixed expiration date is June 30.

~~5.14-5.15.~~ Schools - ~~\$50~~ \$60 per site. The fixed expiration date is June 30.

~~5.15-5.16.~~ Subdivisions Permit - Fee set forth in Table 64-30G, of this rule.

~~5.16-5.17.~~ Temporary Food Service Establishment Permit (maximum 14 days) - ~~\$50~~ \$60 per unit. The fixed expiration date is as noted on the permit.

5.17.1. In-State Vendor Temporary Food Service Establishment Permit (non-potentially hazardous food only) - \$60 per unit, permit fee valid for one year from date of issuance of permit. The fixed expiration date is as noted on the permit.

~~5.17-5.18.~~ Vending Machine Permit - Potentially hazardous food only, ~~\$50~~ \$60 per machine, per site, maximum of ~~\$300~~ \$360 per site. The fixed expiration date is June 30.

~~5.18-5.19.~~ Water Well Permit (new or repair) - ~~\$100~~ \$125 per well.

#### **§64-30-6. Prorating of Fixed Expiration Date Permit Fees.**

The fee charged for an annual permit with a fixed expiration date must be prorated according to the formula shown in Table 64-30H, of this rule.

#### **§64-30-7. Administrative Due Process.**

Any person adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges must do so in the manner prescribed in the bureau's "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1.

**Table 64-30A Campground Permit Fees**

Fee for Permit

~~\$5~~ \$6 per site, ~~\$50~~ \$60 minimum fee.

The fixed expiration date is June 30.

**Table 64-30B Child Care Centers Permit Fees**

Number of Children	Fee for Permit	
Family Day Care Facility (7 – 12)	<del>\$50</del>	<u>\$60</u>
Day Care Center (13 – 25)	<del>\$100</del>	<u>\$125</u>
Day Care Center (26 and over)	<del>\$150</del>	<u>\$185</u>

The fixed expiration date is December 31.

**Table 64-30C Food Service Establishment\* Permit Fees**

Seating Capacity	Fee for Permit	
0 – 20	<del>\$100</del>	<u>\$125</u>
21 – 50	<del>\$200</del>	<u>\$250</u>
51 – 80	<del>\$300</del>	<u>\$375</u>
81 and over	<del>\$400</del>	<u>\$500</u>

\* If the facility has a liquor license from the West Virginia Alcoholic Beverage Control Administration – an additional ~~\$100~~ \$125 fee shall be added to each seating capacity amount.

The fixed expiration date is June 30.

**Table 64-30D Hotel/Motel Permit Fees**

Number of Rooms	Fee for Permit	
0 – 20	<del>\$100</del>	<u>\$125</u>
21 – 50	<del>\$200</del>	<u>\$250</u>
51 – 80	<del>\$300</del>	<u>\$375</u>
81 and over	<del>\$400</del>	<u>\$500</u>

The fixed expiration date is June 30.

**Table 64-30E Individual and Innovative Alternative Type Sewage System Permit Fees**

Conventional Single-Family Dwelling	<del>\$150</del>	<u>\$185</u>
All other types of system	<del>\$300</del>	<u>\$375</u>

**Table 64-30F ~~Mobile Home Park~~ Manufactured Home Community Permit Fees**

Fee for Permit

~~\$5~~ \$6 per site, \$100 minimum fee

The fixed expiration date is December 31.

**Table 64-30G Subdivision Permit Fees**

Fee for Permit

~~\$10~~ \$12 per lot, \$100 minimum fee

No expiration date.

**Table 64-30H Prorated Fixed Expiration Date Permit Fees Formula**

# of Months from Fixed Expiration Date	% Annual Fee to be Paid
< 3 months	25% of annual fee
3 months to < 6 months	50% of annual fee
6 months to < 9 months	75% of annual fee
9 months to < 12 months	100% of annual fee

**Table 64-30I Late Fee for Expired Permits**

A late fee of 25 percent for all expired permits listed in this rule will be applied to the permit fee schedule. Payment must be received within 10 days of the expiration date to avoid the late fee assessment.