



**West Virginia State Board of Registration
for Professional Engineers**

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May 15, 2019

The Honorable Jim Justice, Governor
c/o Manda Bickoff, Legislative Aide
Office of the Governor, State of West Virginia
State Capitol Building
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Request for Filing Permission Pursuant to Executive Order No. 2-18 - Regulatory Moratorium

Dear Mr. Bentley:

The West Virginia State Board of Registration for Professional Engineers is interested in filing proposed Legislative Rules for its Title 7, Series 1 Rules for review by the 2020 Legislative Rule-Making Review Committee and for public comment. For the reasons set forth below, the Board and its counsel believe the majority of the changes to this series are either needed to keep current with our national examination changes and/or fall within stated exemptions set forth in paragraph 3 of the Executive Order. In addition, general "consistency" and "clean up" language is included and outlined for your consideration. The Board requests the amendments to be approved for filing pursuant to the Governor's Regulatory Moratorium.

LEGISLATIVE RULES – TITLE 7, SERIES 1

Professional Engineer (PE) Examination: The engineering licensing community is served by the National Council of Examiners for Engineering and Surveying (NCEES). NCEES has been gradually assuming the primary role in overseeing the examination of professional engineers and has already done so for engineer interns. Several of the Board's recent changes to its legislative rules have been necessitated by changes at the national level, especially with regard to computer-based testing (CBT). Several years ago, NCEES took over administration of the examinations, but the state boards still approved applicants as eligible to take the exam. Then, with the advent of CBT testing for the Fundamentals of Engineering Exam (FE), which is required to become an Engineer Intern and to sit for the Principles and Practice Engineering Exam (PE), application to take the FE was moved to NCEES. This required both changes to West Virginia statute and rules (Article 13 of Chapter 30 of the Code and Title 7 Legislative Rules). Some flexibility – and the authority to file emergency rules – was written into exam-related sections of Chapter 30, Article 13 and the related rules so that the Board could adapt to this changing environment. That has been helpful, as NCEES is currently transitioning all PE testing to CBT testing as well. However, those seeking to take the PE exam must still apply to the Board for approval to take the test. If they are unsuccessful on their first attempt, they must also re-apply to take the exam for each and every subsequent attempt.

In addition, under current rules, a graduate of an engineering curriculum of four years or more approved by the Board must have earned an additional four to six years of acceptable engineering experience before he or she can sit for the PE exam. There is a growing trend within the engineering licensing community to ‘decouple’ the experience requirement from the eligibility criteria for applying for approval to take the PE exam. “Decoupling” reduces the regulatory burden and allows the engineering graduate to take the PE exam on their own schedule and any time after he or she graduates and passes the FE exam without the need to have four years of experience in the profession prior to applying for the exam. Upon successfully passing the exam, the individual would continue to earn the required experience and be permitted to apply for licensure immediately upon meeting the experience requirement. Currently at least 14 state Boards have adopted this approach with many others currently making the necessary legislative changes to follow.

In summary, our Board is seeking two changes to the PE exam rules:

1. Direct PE exam application to NCEES, exactly as was previously put in place for the FE exam, given the ongoing PE CBT transition on a national level. This will not only remove the paper application burden for the examinee to the Board prior to successfully passing the exam, but it will remove any possible additional re-application burden and re-application fees paid to the Board for each subsequent attempt, which, depending on the performance of the examinee, could amount to a significant time and monetary savings to the applicant.
2. “Decoupling” the exam from the required experience, allows flexibility based on the recognition that successful examination performance may be easier the closer it is to the education component of what we call the “three-legged stool” – education, examination and experience.

The proposed PE exam changes in §7-1-5.2 mimic those FE exam changes in §7-1-5.3 previously approved in the 2016 WV Legislative Session. The Board is of the opinion that these proposed changes are exempt under paragraph 3(o) since allowing the engineering graduate much greater flexibility on when to sit for the PE exam reduces the regulatory impact of existing rules. In addition, not requiring the unsuccessful examinee to continue to re-apply to the Board, with corresponding re-apply fees, for approval for each subsequent exam administration again reduces the regulatory impact of existing rules.

PE Re-Application Fee Removal and Certificate of Authorization (COA) Renewal and Reinstatement Fee Reductions: The Board is also interested in removing or reducing a number of application, renewal and reinstatement fees set forth in 7-1-13.4.

1. The PE Re-application fee, currently set at \$40, will no longer be collected by the Board as a result of the new PE exam procedural changes that will be implemented at the national level. Only successful PE examinees will apply to the Board for licensure consideration.
2. The Board has determined that a fee reduction is warranted for the COA renewal and reinstatement fees for larger firms (those with 4 or more professional engineers).

With the implementation of these fee removals and reductions, there is significant cost reductions to our applicants (PE examinees as well as firms renewing their COAs or applying for reinstatement) which therefore reduces the regulatory impact of existing rules and should therefore be exempt under paragraph 3(o).

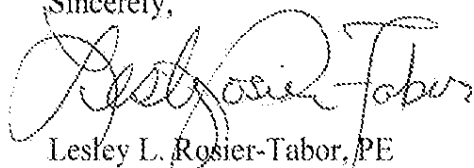
Low Income and Military Fee Waiver Accommodations: Definitions and fee waivers for Low Income and Military designations have been incorporated to comply with the SB 396 passed during the 2019 WV Legislative Session. SB396 required boards and licensing authorities to waive initial occupational licensing fees for low-income individuals and military families, define terms, and provide an application form for individuals seeking a fee waiver. Changes are specific to §7-1-2.11, 7-1-2.12, and 7-1-13.6. With implementation of these initial application fee waivers, there is no cost to applicants meeting this criteria which therefore reduces the regulatory impact of existing rules, in addition to SB 396 stating boards or licensing authorities shall propose rules for legislative approval in accordance with §29A-3-1 et seq. to implement the required provisions, and should therefore be exempt under paragraph 3(o) and 3(q) as these are deemed necessary by the Governor.

General COA designations for nonpracticing status and other consistency / minor / clean up items: The Board is interested in updating the rules for consistency and clarity of longstanding administrative terms used in the designations of nonpracticing status for firm COAs as set forth in 7-1-11.5. Similar language was inserted for individual PE nonpracticing status by legislative staff and was approved during the 2016 Legislative Session and we were told at the time we should include such language for firm COAs during our next filing.

Other underlines and strikethroughs throughout include minor / clean up items, updates to filing date / effective date / former rules amendment date, correction of an improper code reference in §7-1-3.5.a. missed in previous 2016 rules revision, routine clean-up to fix a double "shall" in §7-1-3.6.b.2, adding "within 30 days" to §7-1-6.5 for individual (PE or EI) information updates so consistent with firm COA language already in place in §7-1-11.9, specifying "electronic" as an allowable type of seal permitted in §7-1-7.2.e, and adding "patent" in lieu of "article" which the Board believes is already covered by "published paper" in §7-1-10.4. Again, these routine items promote consistency and/or allow for reduction of the regulatory impact of existing rules by providing for greater flexibility than current rules.

Thank you for your consideration of the Board's requests for exemptions and permission for filing. Should you have any questions, please do not hesitate to contact me at 304-558-3554.

Sincerely,



Lesley L. Rosier-Tabor, PE
Executive Director