



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Fees for Permits

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 16-1-4

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:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/17/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/16/2023

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?

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

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

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule incorporates the reciprocity of in-state food services permits and a 10% across-the-board increase in permit fees.

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 ON SPECIAL REVENUE ACCOUNTS:

n/a

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

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			

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

n/a

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

Yes

April L Robertson -- 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. -- ~~April 15, 2020.~~

1.4. Effective Date. -- ~~April 15, 2020.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~April 15, 2025~~ August 1, 2029.

§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 of land maintained and offered to the public for payment for the location or placement of two or more camping units as defined in the bureau's "General Sanitation" legislative 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 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 24-hour period. The term does not include facilities excluded in the bureau's "Child Care Centers" legislative rule, 64CSR21.

3.6. Developed Site -- A location for placement and hookup of a 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 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. Industrial Campground -- A campground for the location or placement of two or more camping units as defined in 64CSR18, and to be occupied by workers employed for an industrial purpose and intended for long term stays of over 60 days.

3.12. 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's rule~~, "Sewage Treatment and Collection System Design Standards," legislative rule, 64CSR47, as an innovative or alternative system.

3.13. 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.

3.14. 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.

3.15. Mobile Food Establishment -- A food establishment that is mobile by means of mechanical, electrical, manual, or otherwise propelled vehicle operating on land or water that complies with the bureau's "Food Establishments" legislative rule, 64CSR17, Food Establishment Rule -- FDA Food Code Mobile Food Establishment Matrix recommendations based on the menu of food items provided.

3.16. Manufactured Home Community -- Any site, area, tract, or parcel of land upon which four or more manufactured homes, used or occupied for dwelling purposes, are parked, either free of charge or for a monetary consideration.

3.17. 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.

~~3.18. 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.~~

~~3.19~~ 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 2.10 of the bureau's "Recreational Water Facilities" legislative rule, 64CSR16.

~~3.20~~ 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.

~~3.21~~ 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" legislative rule, 64CSR21.

~~3.22~~ 3.21. Subdivision -- 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.

~~3.23~~ 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. Temporary Tattoo Studio -- A single building structure, special event, area, or location where a tattooist performs tattooing for a maximum of 14 days.

3.24. Time/Temperature Control for Food Safety -- Food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

~~3.24~~ 3.25. Vending Machine -- A machine designed for the dispensing of potentially hazardous food or drink to the public by a self-service method.

~~3.25~~ 3.26. 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; 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. After a local board of health's approval of a proposed schedule of fees, the board must post notice of the proposed fees to its website, provide the notice to the board's appointing authority with a request for publication on the authority's website and in its public offices, and allow for a 30-day comment period.

4.4. A local board of health proposing to charge fees must submit to the Commissioner of the Bureau for Public Health:

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;

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

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

4.4.4. A response to the comments.

4.5. The establishment of fees other than in accordance with subsections 4.3 through 4.4 of this rule may be accomplished only upon petition by the local board of health to the commissioner in response to an emergency.

4.6. 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 submission to the commissioner of the adopted schedule of fees, the local board of health must file the 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 -- ~~\$60~~ \$70 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 -- ~~\$60~~ \$70 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. Industrial Campground -- ~~\$100~~ \$118 per permit. The fixed expiration is June 30.
- 5.9. Labor Camp Permit -- ~~\$125~~ \$148 per permit. The fixed expiration date is June 30.
- 5.10. Mass Gathering Permit -- ~~\$60~~ \$70 per event. The fixed expiration date is the end of the event.
- 5.11. Mobile Food Establishment Permit -- Food service establishment, ~~\$125~~ \$175 per unit. Mobile food establishment reciprocity permits issued to in-state vendors are not subject to an additional fee. The fixed expiration date is June 30.
- 5.12. Manufactured Home Community Permit -- Fee set forth in Table 64-30F of this rule.
- 5.13. Organized Camp Permit -- ~~\$90~~ \$107 per permit. The fixed expiration date is June 30.
- 5.14. Recreational Water Facility Permit -- ~~\$125~~ \$148 per facility. The fixed expiration date is December 31.
- 5.15. Retail Food Store Permit (annual) -- ~~\$60~~ \$70 per check-out station. The fixed expiration date is June 30.
- 5.16. Schools -- ~~\$60~~ \$70 per site. The fixed expiration date is June 30.
- 5.17. Subdivision Permit -- Fee set forth in Table 64-30G of this rule.
- 5.18. Temporary Food Service Establishment Permit (maximum 14 days) -- ~~\$60~~ \$70 per unit. The fixed expiration date is as noted on the permit.
- 5.19. Temporary Tattoo Studio Permit (maximum for 14 consecutive calendar days) -- \$100 per unit. The fixed expiration date is as noted on the permit. Fee set forth in Table 64-30H.
- ~~5.19~~ 5.20. In-State Vendor Temporary Food Service Establishment Permit (non-potentially hazardous food only) -- ~~\$60~~ \$70 per unit, permit fee valid for one year from date of issuance of permit. The fixed expiration date is as noted on the permit.
- ~~5.20~~ 5.21. Vending Machine Permit -- Potentially hazardous food only, ~~\$60~~ \$70 per machine, per site, maximum of ~~\$360~~ \$425 per site. The fixed expiration date is June 30.

~~5.21~~ 5.22. Water Well Permit (new or repair) -- ~~\$125~~ \$148 per well.

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

6.1. 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.

7.1. 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~~ West Virginia Bureau for Public Health's procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.

Table 64-30A Campground Permit Fees

Fee for Permit

~~\$6~~ \$7 per site, ~~\$60~~ \$70 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)	\$60 <u>\$70</u>
Day Care Center (13 – 25)	\$125 <u>\$148</u>
Day Care Center (26 and over)	\$185 <u>\$218</u>

The fixed expiration date is December 31.

Table 64-30C Food Service Establishment* Permit Fees

Seating Capacity	Fee for Permit
0 – 20	\$125 <u>\$148</u>
21 – 50	\$250 <u>\$295</u>
51 – 80	\$375 <u>\$442</u>
81 and over	\$500 <u>\$590</u>

* If the facility has a liquor license from the West Virginia Alcoholic Beverage Control Administration – an additional ~~\$125~~ \$148 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	\$125 <u>\$148</u>
21 – 50	\$250 <u>\$295</u>
51 – 80	\$375 <u>\$442</u>
81 and over	\$500 <u>\$590</u>

The fixed expiration date is June 30.

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

Conventional Single-Family Dwelling	\$185 <u>\$218</u>
All other types of system	\$375 <u>\$442</u>

Table 64-30F Manufactured Home Community Permit Fees

Fee for Permit

Up to 10 parked manufactured home units	\$125 <u>\$148</u>
11 to 20 parked manufactured home units	\$150 <u>\$177</u>
21 to 30 parked manufactured home units	\$225 <u>\$265</u>
More than 30 parked manufactured home units	\$275 <u>\$325</u>

Assessed as of April 1. The fixed expiration date is December 31.

Table 64-30G Subdivision Permit Fees

Fee for Permit

~~\$12~~ \$14 per lot, ~~\$100~~ \$118 minimum fee

No expiration date.

Table 64-30HFee for Permit

<u>1-5 Tattoo Artists</u>	<u>\$ 200.00</u>
<u>6-10 Tattoo Artists</u>	<u>\$ 400.00</u>
<u>10-15 Tattoo Artists</u>	<u>\$ 600.00</u>
<u>15-20 Tattoo Artists</u>	<u>\$ 800.00</u>
<u>20+ Tattoo Artists</u>	<u>\$ 1000.00</u>

Table 64-30HI 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 64-30IJ 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.