

**Department of Health and Human Resources
Bureau for Public Health
Legislative Rule
Title 64, Series 30**

FEES FOR PERMITS

BRIEF SUMMARY OF PROPOSED RULE

The amendment to the existing Fees for Permits rule will allow local health departments, whether they are county, municipal or combined Boards of Health, to revise their fee schedules for a variety of permits that they are required to issue.

The state Bureau for Public Health is acting as a conduit for the local Boards of Health by promulgating this rule on their behalf. Neither the Bureau for Public Health nor the Department of Health and Human Resources will receive any of the revenue generated by this rule. All permit fees collected are retained by the local health departments.

Changes to section four of this rule adopt the procedures for fee changes for Local Health Departments that was approved by the legislature in the Bureau for Public Health, Fees For Services Rule, 64CSR51, effective April 2004. The change allows Local Health Departments to use a public comment period instead of a mandatory public hearing prior to enacting any new fees or changing existing fee amounts.

The existing fees have not been increased for 15 years. The last revision was in 1991. Not all local health departments choose to charge the fees that are authorized by this rule because some counties have levies or other means of financial support for these local health department services.

Definitions have been revised to make them consistent with federal and state statutory laws or with the same terms as they are defined in other Bureau for Public Health rules. The dates of standard expiration for some of the permits have been changed to make them consistent with other rules and the authorizing statutes.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 64CSR30 - FEES FOR PERMITS

Type of Rule: X Legislative Interpretive Procedural

Agency: HEALTH AND HUMAN RESOURCES

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Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

This rule has no cost or effect on state government. The fees proposed to be charged in this rule are entirely within the discretion of LOCAL HEALTH DEPARTMENTS to adopt, if they choose to do so. At this time less than half of all Local Health Departments charge the fees that are authorized in this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

3. Explanation of above estimates (Including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

No impact on costs or revenues of any agency of State government. Neither the Department of Health and Human Resources nor the Bureau for Public Health will incur costs or receive any revenue from this rule. All revenues will be received and all costs will be borne by the LOCAL HEALTH DEPARTMENTS.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Local Health Departments have the legal authority to charge reasonable fees for services, such as issuing permits, that they perform. The fees established by this rule have not been raised in 15 years. Local health departments have undergone a tremendous transformation in duties and responsibilities over that time period. The increases in the fees for permits in this rule will allow Local Health Departments to recoup some of their costs of providing services to the public.

Date

Agency

Authorized Representative

Department of Health and Human Resources

Martha Yeager Walker
Martha Walker
Secretary

FILED

2005 JUN 29 P 3:40

TITLE 64
 LEGISLATIVE RULE
~~BOARD OF HEALTH~~
 DEPARTMENT OF HEALTH AND HUMAN RESOURCES ~~OFFICE WEST VIRGINIA~~
BUREAU FOR PUBLIC HEALTH ~~SECRETARY OF STATE~~

SERIES 30
 FEES FOR PERMITS

§64-30-1. General.

1.1. Scope. -- ~~These~~ This legislative rules ~~establish~~ rule establishes the fees for permits issued by a county, municipal or combined ~~board~~ boards of health.

1.2. Authority. -- W. Va. Code ~~§16-2A-6.~~ §§16-1-4(h) and 16-2-11(b)(3).

1.3. Filing Date. -- ~~April 16, 1991.~~

1.4. Effective Date. -- ~~May 1, 1991.~~

§64-30-2. Application and Enforcement.

2.1. Application. -- ~~These legislative rules apply~~ This rule applies to any county, municipal or combined board of health which charges a fee for the issuance of such permits as covered by ~~these legislative rules~~ this rule.

2.2. Enforcement. -- The enforcement of ~~these legislative rules~~ this rule is vested with the ~~director~~ commissioner of the West Virginia ~~department~~ division of bureau for public health or his or her lawful designee.

§64-30-3. Definitions.

3.1. Bathing Beach. — ~~A public bathing place located on a natural stream, pond or lake or on an artificial pond or lake which is formed by impounding a natural waterway.~~ Bed and Breakfast - An establishment providing sleeping accommodations and at a minimum, a breakfast for a fee.

3.2. Bureau - The bureau for public health in the state department of health and human resources.

3.3 Campground - A tract or parcel of land maintained, offered or used for camping, tent camping and/or parking of recreational vehicles. Wilderness camping areas are not included in this definition.

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.

~~3.2.~~ 3.5. Child Care Center - A facility ~~earing~~ where care is provided for seven or more children ~~for all or part of a day~~ in a twenty-four hour period.

~~3.3.~~ 3.6. Developed Site - A location for placement and hookup of a mobile home.

~~3.4.~~ 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 are derived from the state code or the rule which authorizes the issuance of the particular permit.

~~3.5.~~ 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.

~~3.6.~~ 3.9. Hotel/Motel - Any temporary or permanent buildings or structures which are maintained, offered, or used for dwelling or sleeping quarters for pay.

~~3.7.~~ 3.10. Individual ~~On-Site~~ Sewage Disposal System - A system for the collection, treatment and disposal of sewage which serves a single dwelling or establishment.

~~3.8.~~ 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 ~~board of health~~ Bureau for Public Health rule interpretive rules, Sewage Treatment and Collection System Design Standards, 64CSR47, as an innovative or alternative system.

3.12. Mass Gathering - Any group of two hundred fifty (250) 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. For the purposes of this rule, "equipped" means supplied with adequate sanitary facilities for the intended use.

~~3.9.~~ 3.13. Mobile Food Unit- -- A vehicle-mounted food service establishment designed to be readily moveable.

~~3.10.~~ 3.14. Mobile Home Park- -- Any site, area, tract, or parcel of land upon which two ~~(2)~~ or more mobile homes, used or occupied for dwelling purposes, are parked, either free of charge or for a consideration.

3.15. Motel - see Hotel/Motel, section 3.9., above.

~~3.11.~~ 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.

~~3.12.~~ 3.17. Potentially Hazardous Food or Drink- -- 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. ~~The term does not include clean, whole, uncracked, odorfree shell eggs or foods which have a pH level of 4.6 or below or a~~

~~water activity (aw) value of 0.85 or less.~~

3.18. Recreational Water Facility - A body of water, under the control of a person, that 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 section 2.9 of the bureau's Recreational Water Facilities Rule, 64CSR16.

~~3.13.~~ 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 prepacked, 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 Child Care Centers rule, 64CSR21.

~~3.14. Sewage Tank Cleaning Truck. - A truck used for the removal, collection or transportation of sewage.~~

~~3.15.~~ 3.21. Subdivision- -- Land which has been partitioned or divided into two (2) or more lots, tracts, parcels, plats, sites, areas, units, interests or other division, any of which are less than two (2) acres in size with an average frontage of less than one hundred fifty (150) feet, for the purpose of dwelling or other development.

~~3.16. Swimming Pool. - Any artificial basin, chamber, or tank used or intended to be used by the public for swimming, diving, or recreational type bathing.~~

~~3.17.~~ 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 fourteen (14) consecutive days in conjunction with a single event or celebration and required by law, W-Va. Code §16-6-3, to have a permit.

~~3.18. Tent and Travel Trailer Campground. -- A tract or parcel of land maintained, offered, or used for camping and parking of recreational house trailers. Wilderness camping areas are not included in this definition.~~

~~3.19. 3.23. Vending Machine. -- A machine designed for the dispensing of potentially hazardous food or drink to the public by a self-service method.~~

~~3.20. 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 site(s).~~

§64-30-4. Option to Charge for Permits; Public Hearing Required; Record of Hearing.

4.1. Any county, municipal or combined board of health may charge a fee for the issuance of ~~a permit~~ permits covered by ~~these rules~~ 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 ~~shall~~ may be charged. Any county, municipal or combined board of health may charge any dollar amount up to the maximum. ~~Provided, That a~~ A county, municipal or combined board of health ~~shall~~ may not change the ~~formulas utilized~~ formula in ~~Sections 5 and~~ section 6 of this rule.

4.3. Basis for Fees - 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. ~~Any county, municipal or combined board of health which~~

~~elects to change or add fees based on this rule shall conduct a public hearing to inform the public of its county of the purpose and use of the fees and provide opportunity for the public to comment on the fees.~~ 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. The board shall publish notice of the hearing in a newspaper with wide circulation in its county and may also otherwise provide notice to the public living in its county of its intent to change or add fees. Such notice shall be provided at least fourteen (14) days and no more than sixty (60) days prior to the implementation of such changed or additional fees.~~ Posting of Proposed Fees - After a local board of health's adoption of a proposed schedule of fees, the board shall post, publish or otherwise inform the public living in the area served by the board of the proposal and allow for a thirty day comment period.

~~4.6. The board shall prepare a report of the public hearing and shall file a copy of the report, all written comments and the proposed and final fee schedules with the division of health no less than sixty (60) days subsequent to the hearing. The record of the hearing shall be kept on file by the board and the division for one (1) year.~~ Submission of Proposal for Approval - A local board of health proposing to charge fees shall 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;

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

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

4.6.d. A response to the comments.

4.7. Emergency Fees - Establishment of fees other than in accordance with subsection 9.6 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. Approval or Rejection of Fees of Local Boards of Health by the Commissioner of Public Health - The commissioner shall approve or reject a local board of health's proposed budget and program plan and fees. If there is a rejection, the local board of health may propose a revision. Upon approval by the commissioner of the proposed fees, the local board of health shall file the approved 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 shall 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.

§64-30-5. Permits and Fees.

5.1. Bathing Beach and Swimming Pool Permit. — \$50 per permit. The fixed expiration date is December 31. Bed and Breakfast Permit. - \$50 per permit. The fixed expiration date is June 30.

5.2. Campground - See Table 64-30A, found at the end of this rule.

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

5.2. 5.4. Child Care Center Permit. -- \$25 per permit. The fixed expiration date is December 31. — See Table 64-30B, found at the end of this rule.

5.3. 5.5. Food Service Establishment. -- See Table 64-30A 64-30C, found at the end of this ~~regulation~~ rule.

5.4. 5.6. Hotel/Motel Permit. -- See Table 64-30B 64-30D, found at the end of this ~~regulation~~ rule.

5.5. 5.7. Individual On-Site Sewage Disposal Systems and Innovative Alternative Type Sewage Systems. -- See Table 64-30C 64-30E, found at the end of this ~~regulation~~ rule.

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

~~5.6.~~ 5.9. Mobile Food Unit Permit. -- Potentially hazardous food only, \$50 \$100 per unit. The fixed expiration date is June 30.

~~5.7.~~ 5.10. Mobile Home Park Permit. -- See Table 64-30D 64-30F, found at the end of this regulation rule.

~~5.8.~~ 5.11. Organized Camp Permit. -- \$75 per permit. The fixed expiration date is January + June 30.

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

~~5.9.~~ 5.13. Retail Food Store Permit (annual). -- \$25 \$50 per check-out station, maximum \$150. The fixed expiration date is June 30.

~~5.10. Sewage Tank Cleaning Truck Permit. -- \$50 per truck. The fixed expiration date is five (5) years from the date of issuance.~~

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

~~5.11.~~ 5.15. Subdivisions. -- See Table 64-30E 64-30G, found at the end of this regulation rule.

~~5.12.~~ 5.16. Temporary Food Service Establishment Permit. -- \$25 \$50 per unit. The fixed expiration date is June 30 as noted on the permit.

~~5.13. Tent and Travel Trailer Campground. -- See Table 64-30F found at the end of this regulation.~~

~~5.14.~~ 5.17. Vending Machine Permit. -- Potentially hazardous food only, \$25 \$50 per machine, per site, maximum of \$300 per site. The fixed expiration date is June 30.

~~5.15.~~ 5.18. Water Well Permit (new or repair). -- \$50 \$100 per well.

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

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

~~§64-30-7. Severability.~~

~~If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of the rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.~~

~~§64-30-8~~ §64-30-7. Administrative Due Process.

~~These persons~~ Any person adversely affected by the enforcement of these this legislative rules rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a the manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, ~~West Virginia Board of Health Procedural Rules,~~ 64CSR1.

Table 64-30A ~~Food Service Establishment~~ Campground Permit FeesSeating Capacity Fee for Permit

0-35 \$ 50	<u>\$5 per site, \$50 minimum fee.</u>
36-75 \$100	
76 and over \$150	

The fixed expiration date is June 30.

Table 64-30B ~~Hotel~~ Child Care Centers Permit Fees

Number of Rooms	Fee for Permit
<u>Number of Children</u>	

<u>Family Day Care Facility (7 - 12)</u>	<u>\$ 50</u>
<u>Day Care Center (13 - 25)</u>	<u>\$100</u>
<u>Day Care Center (26 and over)</u>	<u>\$150</u>

0-35 \$ 50
36-75 \$100
76 and over \$150

The fixed expiration date is ~~June 30~~ December 31.

Table 64-30C ~~Individual On Site and Innovative Alternative Type Sewage System~~ Food Service Establishment* Permit Fees

Type of System Fee for Permit	<u>Seating Capacity</u>	<u>Fee for Permit</u>
Class I (New or Modified) \$100	<u>0 - 20</u>	<u>\$100</u>
Class II (New or Modified) \$100	<u>21 - 50</u>	<u>\$200</u>
Home Aeration Unit \$100	<u>51 - 80</u>	<u>\$300</u>
	<u>81 and over</u>	<u>\$400</u>

* If the facility has a liquor license from the WVABC - Add \$100 to each seating capacity amount.

The fixed expiration date is June 30.

Table 64-30D ~~Mobile Home Park~~ Hotel/Motel Permit Fees

Number of Developed Sites	<u>Number of Rooms</u>	Fee for Permit
0-35 \$ 50	<u>0 - 20</u>	<u>\$100</u>
36-75 \$100	<u>21 - 50</u>	<u>\$200</u>
76 and over \$150	<u>51 - 80</u>	<u>\$300</u>
	<u>81 and over</u>	<u>\$400</u>

The fixed expiration date is ~~December 31~~ June 30.

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

Number of Lots	Fee for Approval		
1-5 \$ 50		<u>Conventional Single Family Dwelling</u>	<u>\$150</u>
6-10 \$100			
11-14 \$150		<u>All other types of systems</u>	<u>\$300</u>

Table 64-30F Tent and Travel Trailer Campground Mobile Home Park Permit Fees

Number of Developed Sites	Fee for Permit
0-35 \$ 50	<u>\$5 per site, \$100 minimum fee</u>
36-75 \$100	
76 and over \$150	

The fixed expiration date is ~~March 31~~ December 31.

Table 64-30G Prorated Fixed Expiration Date Permit Fees Formula Subdivision Permit Fees

less than 3 months to	6 months to	9 months to	Fee for Permit
3 months less than 6 months	less than 6 months	less than 9 months	<u>\$10 per lot, \$100 minimum fee</u>
months	months	months	
25% of annual fee	50% of annual fee	75% of annual fee	100% of annual fee

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

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

Table 64-30I Late Fee for Expired Permits

A late fee of 25% 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.