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Administrative Law Division

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This week's publication includes documents submitted by the following agencies:

Agriculture

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Massage Therapy Licensure Board

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Real Estate Appraiser Licensing & Cert. Bd.

State Police

Treasurer

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RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	**RULE/TYPE**	**AUTHORITY**	**HEARING/COMMENT PERIOD/LOCATION**
Agriculture (61-36)	Farm to Food Bank Tax Credit Legislative	§11-13DD-5(b)	Written Comments Only May 18, 2022, 12:00 pm Jodee Martin WV Department of Agriculture 1900 Kanawha Blvd., East Charleston, WV 25305 rulescomments@wvda.us

NO EMERGENCY RULES FILED THIS WEEK				
AGENCY	**RULE/TYPE**	**AUTHORITY**	**EFFECTIVE DATE**	**DATE NOTICE OF HEARING**

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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	2	ARCHITECTS
TITLE	3	BARBERS AND COSMETOLOGISTS
TITLE	4	CHIROPRACTIC EXAMINERS
TITLE	5	DENTISTRY
TITLE	6	FUNERAL SERVICE EXAMINERS
TITLE	7	PROFESSIONAL ENGINEERS
TITLE	10	LICENSED PRACTICAL NURSES
TITLE	11	MEDICINE
TITLE	14	OPTOMETRY
TITLE	15	PHARMACY
TITLE	16	PHYSICAL THERAPY
TITLE	17	PSYCHOLOGISTS
TITLE	19	REGISTERED PROFESSIONAL NURSES
TITLE	20	SANITARIANS
TITLE	22	FORESTRY
TITLE	24	OSTEOPATHIC MEDICINE
TITLE	25	SOCIAL WORK EXAMINERS
TITLE	26	VETERINARY MEDICINE
TITLE	27	COUNSELING
TITLE	29	SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
TITLE	30	RESPIRATORY CARE
TITLE	31	DIETITIANS
TITLE	32	ACUPUNCTURE
TITLE	33	WASTE MANAGEMENT, DIV. OF WATER AND WASTE MGMT.
TITLE	35	OIL AND GAS
TITLE	36	COAL MINE HEALTH AND SAFETY
TITLE	38	MINING AND RECLAMATION
TITLE	42	LABOR
TITLE	45	AIR QUALITY
TITLE	47	WATER RESOURCES, DIV. OF WATER AND WASTE MGMT.
TITLE	56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE	58	NATURAL RESOURCES
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TITLE	76	SENIOR SERVICES
TITLE	78	HUMAN SERVICES
TITLE	81	STATE POLICE
TITLE	87	FIRE COMMISSION
TITLE	89	PUBLIC DEFENDER SERVICES
TITLE	90	CORRECTIONS
TITLE	91	MOTOR VEHICLES
TITLE	94	REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
TITLE	110	TAX DEPARTMENT
TITLE	112	TREASURER
TITLE	114	INSURANCE COMMISSION
TITLE	126	EDUCATION
TITLE	127	SECONDARY SCHOOLS ACTIVITIES COMMISSION
TITLE	133	HIGHER EDUCATION POLICY COMMISSION
TITLE	135	COMMUNITY AND TECHNICAL COLLEGE EDUCATION
TITLE	143	PERSONNEL
TITLE	144	TOURISM
TITLE	145	DEVELOPMENT OFFICE
TITLE	146	STATE ELECTION COMMISSION
TITLE	148	ADMINISTRATION
TITLE	149	CRIME, DELINQUENCY AND CORRECTIONS
TITLE	150	PUBLIC SERVICE COMMISSION
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TITLE	177	ATHLETIC COMMISSION
TITLE	178	RACING COMMISSION
TITLE	179	LOTTERY COMMISSION
TITLE	190	REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Agriculture (61-01A)	Feeding of Untreated Garbage to Swine Legislative	6/16/2021	7/16/2021		7/19/2021	Modified & Approved 9/12/2021 Filed 10/5/2021	Bundled SB334	4/15/2022	4/18/2022
Agriculture (61-05)	Commercial Feed Legislative	6/25/2021	7/24/2021	7/27/2021 Approved 8/9/2021	7/26/2021	Modified & Approved 12/9/2021 Filed 1/3/2022	Bundled SB334		
Agriculture (61-08B)	Schedule of Charges for Inspection Services: Fruit Legislative	4/12/2022	5/11/2022						
Agriculture (61-10)	Fresh Food Act Legislative	6/29/2021	7/29/2021		7/29/2021	Modified & Approved 9/15/2021 Filed 10/5/2021	Bundled SB334	4/15/2022	4/18/2022
Agriculture (61-11B)	Auctioneers Legislative	6/29/2021	7/29/2021		7/29/2021	Modified & Approved 9/12/2021 Filed 10/5/2021	Bundled SB334		
Agriculture (61-14A)	Rules Dealing with Noxious Weeds Legislative	3/30/2022	4/29/2022						
Agriculture (61-30)	Hemp Products Legislative	6/28/2021	7/28/2021	7/30/2021 Approved 8/9/2021	7/30/2021	Modified & Approved 9/15/2021 Filed 10/5/2021	Bundled SB334		
Agriculture (61-31)	Livestock Care Standards Legislative	6/30/2021	7/30/2021	6/30/2021 Effective 8/11/2021	7/30/2021	Modified w/Certain Amendments & Approved 12/13/2021 Filed 1/3/2022	Bundled SB334		
Agriculture (61-33)	Rural Rehabilitation Program Legislative	6/24/2021	7/24/2021		7/27/2021	Modified & Approved 9/12/2021 Filed 10/5/2021	Bundled SB334	4/15/2022	4/18/2022
Agriculture (61-36)	Farm to Food Bank Tax Credit Legislative	4/18/2022	5/18/2022						
Agriculture (61-38)	Farmers Markets Legislative	6/24/2021	7/24/2021	7/30/2021 Approved 8/9/2021	7/30/2021	Modified & Approved 9/12/2021 Filed 10/5/2021	Bundled SB334		

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Agriculture (61-39)	Seed Certification Legislative	6/28/2021	7/28/2021		7/30/2021	Modified & Approved 9/12/2021 Filed 10/6/2021	Bundled SB334	4/15/2022	4/18/2022
Alcohol Beverage Control Comm. (175-02)	Private Club Licensing Legislative	6/1/2021	7/1/2021		7/27/2021	Modified & Approved 12/8/2021 Filed 12/20/2021	Bundled SB312		
Alcohol Beverage Control Comm. – Beer (176-01)	Nonintoxicating Beer Licensing and Operations Procedures Legislative	6/1/2021	7/1/2021		7/28/2021	Modified & Approved 12/8/2021 Filed 12/20/2021	Bundled SB312		
Auditor (155-09)	Accountability Requirements for State Funds and Grants Legislative	7/30/2021	8/30/2021		9/13/2021	Modified & Approved 12/9/2021 Filed 1/3/2022	Bundled SB334		
Chiropractic Examiners (4-06)	Fees Pertaining to the Practice of Chiropractic Legislative							4/6/2022	7/1/2022
Chiropractic Examiners (4-09)	Chiropractic Telehealth Practice Legislative	6/9/2021	7/9/2021	6/8/2021 Effective 7/20/2021	7/13/2021	Modified & Approved 12/9/2021 Filed 12/15/2021	Bundled SB334	4/1/2022	6/30/2022
Coal Mine Health and Safety (36-23)	Surface Construction Operations Within the Coal Mining Industry of the State of WV Legislative Exempt	2/17/2022	4/4/2022						
Community & Technical College Ed (135-08)	WV Invests Grant Program Legislative	10/8/2021	11/9/2021		11/10/2021	Approved 12/5/2021	HB4291	4/5/2022	6/5/2022
Contractor Licensing Board (28-02)	Contractor Licensing Act Legislative	6/30/2021	7/30/2021		7/30/2021	Modified & Approved 12/8/2021 Filed 12/9/2021	Bundled SB334	4/1/2022	5/1/2022
Counseling (27-01)	Licensing Rule Legislative	6/30/2021	7/29/2021		7/29/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334		
Counseling (27-02)	Licensed Professional Counselor Fees Rule Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334		

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Counseling (27-08)	Marriage and Family Therapist Licensing Rule Legislative	6/30/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334		
Counseling (27-09)	Marriage and Family Therapist Fees Rule Legislative	6/30/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334		
Counseling (27-14)	Telehealth and Interstate Telehealth Registration for Licensed Professional Counselors and Licensed Marriage and Family Therapists Legislative	12/6/2021	1/14/2022	1/10/2022 Approved 1/13/2022	1/26/2022				
Crime, Delinquency and Correction (149-02)	Law Enforcement Training and Certification Standards Legislative	6/28/2021	7/28/2021	6/28/2021 Effective 8/9/2021	7/29/2021	Modified & Approved 9/12/2021 Filed 9/23/2021	Bundled HB4141		
Dentistry (5-01)	Rule for the WV Board of Dentistry Legislative	6/18/2021	7/21/2021		7/26/2021	Modified & Approved 9/12/2021 Filed 9/17/2021	Bundled SB334		
Dentistry (5-02)	Formation and Approval of Professional Limited Liability Companies Legislative	6/18/2021	7/21/2021		7/26/2021	Modified & Approved 9/12/2021 Filed 9/17/2021	Bundled SB334		
Dentistry (5-06)	Formation and Approval of Dental Corporations; and Dental Practice Ownership Legislative	6/18/2021	7/21/2021		7/26/2021	Modified & Approved 9/12/2021 Filed 9/17/2021	Bundled SB334		
Dentistry (5-11)	Continuing Education Requirements Legislative	6/18/2021	7/21/2021		7/26/2021	Modified & Approved 9/12/2021 Filed 9/17/2021	Bundled SB334		
Dentistry (5-12)	Administration of Anesthesia by Dentists Legislative	6/18/2021	7/21/2021		7/26/2021	Modified & Approved 9/12/2021 Filed 9/20/2021	Bundled SB334		
Dentistry (5-13)	Expanded Duties of Dental Hygienists and Dental Assistants Legislative	6/18/2021	7/21/2021		7/26/2021	Modified & Approved 9/12/2021 Filed 9/20/2021	Bundled SB334		

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Dentistry (5-16)	Teledentistry Legislative	6/17/2021	7/17/2021	6/17/2021 Amendment 7/26/2021 Effective 9/6/2021 Amendment 12/13/2021 Effective 1/24/2022	7/26/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334		
Economic Development Auth. (117-02)	Meetings and Meeting Notices Procedural	2/24/2022	3/28/2022						
Education (126-004)	Rules of Procedure for Administrative Hearings and Appeals (Policy 1340) Legislative Exempt	3/9/2022	4/11/2022						
Education (126-014)	WV Measure of Academic Progress (Policy 2340) Legislative Exempt	4/14/2022	5/16/2022						
Education (126-015)	Reg. and English Language Proficiency Standards for English Learners and Alternate English Language Proficiency Standards for English Learners and Significant Cognitive Disabilities (Policy 2417) Legislative Exempt	2/10/2022	3/11/2022					4/14/2022	5/16/2022
Education (126-016)	Regulations for the Education of Students with Exceptionalities (Policy 2419) Legislative Exempt	4/14/2022	5/16/2022						
Education (126-042)	Assuring Quality of Education: Regulations for Education Programs (Policy 2510) Legislative Exempt	12/9/2021	1/10/2022					2/10/2022	7/1/2022
Education (126-044CC)	WV College and Career-Readiness Standards for Science (Policy 2520.3C) Legislative Exempt	6/9/2021	7/12/2021					8/16/2021	7/1/2022
Education (126-044M)	WV College- and Career-Readiness Programs of Study/Standards for Career Technical Ed. (Policy 2520.13) Legislative Exempt	12/9/2021	1/10/2022					2/10/2022	7/1/2022

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Education (126-067)	Comprehensive School Counseling Model (Policy 2315) Legislative Exempt	4/14/2022	5/16/2022						
Education (126-094)	Procedures for the Collection, Maintenance, and Disclosure of Student Data (Policy 4350) Legislative Exempt	3/9/2022	4/11/2022						
Education (126-149)	Professional Learning for WV Educators (Policy 5500) Legislative Exempt	4/14/2022	5/16/2022						
Education (126-185)	Intercounty Transfer Arrangements (Policy 7200) Legislative Exempt	12/9/2021	1/10/2022					2/10/2022	7/1/2022
Environmental Protection, Secretary's Office (60-10)	Purchasing Procedure Procedural	8/19/2021	9/20/2021						
Ethics Commission (158-06)	Use of Office for Private Gain, Including Nepotism Legislative	3/22/2021	4/22/2021		5/12/2021	Modified & Approved 12/8/2021 Filed 12/16/2021	Bundled HB4114	3/31/2022	5/15/2022
Fire Commission (87-01)	Fire Code Legislative	6/28/2021	7/28/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 1/7/2022	Bundled HB4141		
Fire Commission (87-04)	State Building Code Legislative	6/23/2021	7/26/2021		7/30/2021	Modified w/Certain Amendments & Approved 12/13/2021 Filed 1/7/2022	Bundled HB4141		
Fire Commission (87-10)	Volunteer Fire Department Equipment and Training Grant Funding Disbursement Legislative	4/12/2021	5/31/2021	3/30/2021 Effective 5/11/2021	6/23/2021	Modified & Approved 9/12/2021 Filed 9/21/2021	Bundled HB4141		
Fire Commission (87-11)	Specialized Membership Legislative	6/22/2021	7/23/2021		7/30/2021	Approved 9/12/2021	Bundled HB4141		
Fire Commission (87-12)	Junior Firefighters Legislative	6/22/2021	7/23/2021	6/22/2021 Effective 8/3/2021	7/30/2021	Approved 9/12/2021	Bundled HB4141		
Fire Commission (87-13)	Certification of Fire Chiefs Legislative	6/22/2021	7/23/2021	6/22/2021 Effective 8/3/2021	7/30/2021	Modified & Approved 9/12/2021 Filed 9/21/2021	Bundled HB4141		

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Fire Commission (87-14)	Use of Aqueous Film-Forming Foam (AFFF) for Fire Training Program Purposes Legislative	6/23/2021	7/26/2021		7/27/2021	Approved 9/12/2021	Bundled HB4141		
Fire Marshal (103-04)	Regulation of Fireworks and Related Explosive Materials Legislative	6/25/2021	7/27/2021		7/28/2021	Approved 9/12/2021	Bundled HB4141		
Health (64-26)	Procedures Pertaining to the Dangerousness Assessment Advisory Board Legislative	2/4/2022	3/7/2022	2/4/2022 Approved 2/4/2022	3/8/2022				
Health (64-43)	Food Manufacturing Facilities Legislative	6/30/2021	7/30/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/14/2021	Bundled HB4126	4/4/2022	5/31/2022
Health (64-57)	Clinical Laboratory Practitioner Licensure and Certification Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/16/2021	Bundled HB4126	4/4/2022	5/1/2022
Health (64-92)	Clandestine Drug Laboratory Remediation Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/16/2021	Bundled HB4126	4/4/2022	5/1/2022
Insurance Comm. (114-42)	Continuing Education for Individual Insurance Producers and Individual Insurance Adjusters Legislative	5/28/2021	7/1/2021		7/8/2021	Approved 8/19/2021	Bundled SB312		
Insurance Comm. (114-99)	Pharmacy Auditing Entities and Pharmacy Benefit Managers Legislative	6/1/2021	7/1/2021		7/27/2021	Approved 12/8/2021	Bundled SB312		
Insurance Comm. (114-102)	Term and Universal Life Insurance Reserve Financing Legislative	5/28/2021	7/1/2021		7/8/2021	Approved 9/12/2021	Bundled SB312		
Insurance Comm. (114-103)	Bail Bondsmen in Criminal Cases Legislative	6/1/2021	7/1/2021		7/9/2021	Modified & Approved 8/19/2021 Filed 8/24/2021	Bundled SB312		
Labor (42-09)	Child Labor Rule Legislative	6/29/2021	7/30/2021		7/30/2021	Modified & Approved 8/19/2021 Filed 9/1/2021	Bundled HB4242	3/31/2022	5/1/2022
Lottery Comm. (179-01)	WV Lottery State Lottery Rules Legislative	5/28/2021	6/29/2021		7/7/2021	Modified & Approved 9/12/2021 Filed 9/27/2021	Bundled SB312	4/14/2022	7/1/2022

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Lottery Comm. (179-05)	WV Limited Video Lottery Rule Legislative	6/1/2021	7/1/2021		7/8/2021	Modified & Approved 9/12/2021 Filed 9/27/2021	Bundled SB312	4/14/2022	7/1/2022
Massage Therapy Licensure Bd. (194-01)	General Provisions Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 8/19/2021 Filed 9/1/2021	Bundled SB334	4/15/2022	4/15/2022
Medicine (11-01A)	Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons Legislative	6/29/2021	7/29/2021		7/30/2021	Approved 9/14/2021	Bundled SB334		
Medicine (11-01B)	Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	6/29/2021	7/29/2021	6/29/2021 Effective 8/10/2021	7/30/2021	Modified & Approved 9/14/2021 Filed 10/25/2021 2nd Filed 11/2/2021	Bundled SB334		
Medicine (11-05)	Bd. Of Medicine Rule for Dispersing of Prescription Drugs by Practitioners Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 9/14/2021 Filed 10/25/2021	Bundled SB334		
Medicine (11-06)	Continuing Education for Physicians and Podiatric Physicians Legislative	6/29/2021	7/29/2021		7/30/2021	Approved 9/14/2021	Bundled SB334		
Medicine (11-10)	Practitioner Requirements for Accessing the WV Controlled Substances Monitoring Program Database Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 9/14/2021 Filed 10/25/2021	Bundled SB334		
Medicine (11-11)	Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 9/14/2021 Filed 10/25/2021	Bundled SB334		
Medicine (11-14)	Registration to Practice During Declared State of Emergency Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 9/14/2021 Filed 10/25/2021	Bundled SB334		

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Medicine (11-15)	Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physicians Assistants Legislative	6/29/2021	7/29/2021	6/29/2021 Effective 8/10/2021	7/30/2021	Modified w/Certain Amendments & Approved 12/8/2021 Filed 12/16/2021	Bundled SB334		
Miners Health Safety and Training (56-03)	Rule Governing the Safety of Those Employed in and Around Surface Mines in WV Legislative	5/7/2021	6/7/2021	5/7/2021 Approved 6/7/2021 Amendment 8/24/2021 Effective 10/5/2021	6/11/2021	Modified & Approved 8/18/2021 Filed 8/24/2021	Bundled HB4242	4/5/2022	5/5/2022
Miners Health Safety and Training (56-19)	Substance Abuse Screening, Standards and Procedures Legislative	6/25/2021	7/26/2021		7/30/2021	Modified & Approved 8/19/2021 Filed 8/24/2021	Bundled HB4242	4/5/2022	7/1/2022
Mining and Reclamation (38-03)	Rules for Quarrying and Reclamation Legislative	4/6/2022	5/11/2022						
Natural Resources (58-23)	Revocation of Hunting and Fishing Licenses Legislative	6/30/2021	7/29/2021		7/30/2021	Modified & Approved 8/19/2021 Filed 8/31/2021	Bundled HB4242		
Natural Resources (58-27)	Special Motorboating Regulations Legislative	6/30/2021	7/29/2021		7/30/2021	Approved 8/19/2021	Bundled HB4242		
Natural Resources (58-38)	Public Shooting Ranges Legislative	6/30/2021	7/29/2021	6/30/2021 Effective 8/11/2021	7/30/2021	Modified & Approved 8/19/2021 Filed 8/31/2021	Bundled HB4242		
Natural Resources (58-49)	General Hunting Legislative	6/30/2021	7/29/2021		7/30/2021	Approved 8/19/2021	Bundled HB4242		
Natural Resources (58-63)	Commercial Sale of Wildlife Legislative	6/30/2021	7/29/2021		7/30/2021	Modified w/Certain Amendments & Approved 12/8/2021 Filed 12/29/2021	Bundled HB4242		
Natural Resources (58-67)	Lifetime Hunting, Trapping and Fishing Licenses Legislative	6/30/2021	7/29/2021		7/30/2021	Modified & Approved 8/19/2021 Filed 8/31/2021	Bundled HB4242		

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Osteopathic Medicine (24-01)	Licensing Procedures for Osteopathic Physicians Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 9/14/2021 Filed 9/24/2021	Bundled SB334	4/20/2022	5/1/2022
Osteopathic Medicine (24-02)	Osteopathic Physician Assistants Legislative	6/29/2021	7/29/2021	6/29/2021 Effective 8/10/2021	7/30/2021	Modified & Approved 9/14/2021 Filed 9/29/2021	Bundled SB334	4/20/2022	5/1/2022
Osteopathic Medicine (24-07)	Practitioner Requirements for Controlled Substances Licensure and Accessing the WV Controlled Substances Monitoring Program Database Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 9/14/2021 Filed 9/24/2021	Bundled SB334	4/20/2022	5/1/2022
Osteopathic Medicine (24-10)	Telehealth Practice and Interstate Telehealth Registration for Osteopathic Physicians and Physician Assistants Legislative	6/29/2021	7/29/2021	6/29/2021 Effective 8/10/2021	7/30/2021	Modified w/Certain Amendments & Approved 12/8/2021 Filed 12/15/2021 2/16/2022	Bundled SB334	4/20/2022	5/1/2022
Parole Board (92-01)	Procedural Rules of the WV Parole Board Eligibility, Decisions and Discharge Procedural	3/16/2022	4/15/2022						
Personnel (143-01)	Administrative Rule of the WV Division of Personnel Legislative	5/28/2021	6/30/2021	1/4/2022 Approved 1/7/2022 Withdrawn 2/1/2022	7/29/2021	Modified & Approved 8/18/2021 Filed 8/24/2021	Bundled HB4114	3/24/2022	7/1/2022
Pharmacy (15-19)	Inspections Legislative	2/3/2022	3/7/2022	1/6/2022 Approved 1/7/2022	4/4/2022				
Racing Commission (178-01)	Thoroughbred Racing Legislative	5/28/2021	6/28/2021		7/28/2021	Modified & Approved 12/8/2021 Filed 12/8/2021	Bundled SB312		
Registered Professional Nurses (19-16)	Telehealth Practice Legislative	6/30/2021 7/30/2021	7/30/2021 8/29/2021	7/2/2021 Withdrawn 7/8/2021 7/29/2021 Effective 9/9/2021	8/31/2021	Authorized w/Certain Amendments & Approved 12/8/2021	Bundled SB334		
School Building Authority (164-02)	Funding School Building Authority Projects Legislative	9/29/2021	11/1/2021		12/15/2021	Approved 1/10/2022	SB499	4/1/2022	5/1/2022

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Secretary of State (153-25)	Combined Voter Registration and Driver Licensing Fund Legislative	6/25/2021	7/27/2021		7/30/2021	Modified & Approved 12/8/2021 Filed 12/29/2021	Bundled SB334		
Secretary of State (153-43)	Regulation of Political Party Headquarters Finances Legislative	6/24/2021	7/27/2021		7/30/2021	Modified & Approved 12/8/2021 Filed 12/29/2021	Bundled SB334		
Secretary of State (153-45)	Standards and Guidelines for Electronic Notarization, Remote Online Notarization, and Remote Ink Notarization Legislative	6/24/2021	7/27/2021		7/30/2021	Modified & Approved 12/8/2021 Filed 12/29/2021	Bundled SB334		
Secretary of State (153-48)	Real Property Electronic Recording Standards and Regulations Legislative	6/29/2021	7/29/2021		7/30/2021	Approved 12/8/2021	Bundled SB334		
Secretary of State (153-53)	Election Processes and Absentee Eligibility During State of Emergency			3/20/2020 Effective 3/20/2020					
Senior Services (76-04)	WV State Plan for Aging Programs Interpretive	3/14/2022	4/13/2022					4/14/2022	10/1/2022
Social Work Examiners (25-01)	Qualifications for the Profession of Social Work Legislative	6/30/2021	7/30/2021	6/30/2021 Effective 8/11/2021	7/30/2021	Modified & Approved 12/9/2021 Filed 12/20/2021	Bundled SB334		
Social Work Examiners (25-05)	Continuing Education for Social Workers and Providers Legislative	6/30/2021	7/30/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/20/2021	Bundled SB334		
Speech Language Pathology and Audiology (29-01)	Licensure of Speech-Pathology and Audiology Legislative	4/28/2021	6/4/2021	4/27/2021 Effective 6/8/2021	6/9/2021	Modified & Approved 12/9/2021 Filed 12/16/2021	Bundled SB334	4/1/2022	5/1/2022
State Police (81-03)	Career Progression Legislative	6/29/2021	7/30/2021		7/30/2021	Modified & Approved 8/18/2021 Filed 1/10/2022	Bundled HB4141	4/15/2022	4/15/2022
Tax (110-01J)	Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes Legislative	6/4/2021	7/7/2021	6/8/2021 Effective 7/20/2021	7/30/2021	Recommend Rejection 1/9/2022			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Tax (110-13KK)	WV Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers Legislative	6/4/2021	7/7/2021		7/8/2021	Modified & Approved 8/19/2021 Filed 9/7/2021	Bundled SB312		
Tax (110-15F)	Sales Tax Holiday Legislative	5/11/2021	6/11/2021	5/7/2021 Amendment 6/3/2021 Approved 6/7/2021	6/30/2021	Modified & Approved 9/12/2021 Filed 9/21/2021	Bundled SB312		
Tax (110-15L)	Exemption for Repair, Remodeling, and Maintenance of Aircraft Legislative	6/2/2021	7/7/2021	6/2/2021 Effective 7/14/2021	7/8/2021	Modified & Approved 8/19/2021 Filed 9/7/2021	Bundled SB312		
Tax (110-15M)	Vendor Absorption or Assumption of Sales and Use Tax Legislative	6/3/2021	7/7/2021		7/8/2021	Approved 9/12/2021	Bundled SB312		
Tax (110-16A)	On-Line Bingo and Raffles Legislative	6/3/2021	7/7/2021		7/8/2021	Approved 9/12/2021	Bundled SB312		
Tax (110-21F)	The Coal Severance Tax Rebate Interpretive	2/7/2022	3/9/2022						
Tax (110-24)	Corporation Net Income Tax Legislative	6/2/2021	7/7/2021		7/27/2021	Modified & Approved 9/12/2021 Filed 9/21/2021	Bundled SB312		
Treasurer (112-15)	WV College & Jumpstart Savings Programs Bd of Trustees Bylaws Procedural	4/4/2022	5/4/2022						
Treasurer (112-18)	Hope Scholarship Program Legislative	2/9/2022	3/11/2022	2/9/2022 Effective 3/23/2022	4/21/2022				
Treasurer (112-19)	WV Hope Scholarship Board Procedures and Bylaws Procedural	2/10/2022	3/14/2022					4/20/2022	5/20/2022
Workers Compensation Bd. Of Review (102-01)	Rules of Practice and Procedure and Litigation of Protests Procedural	2/23/2022	3/25/2022					4/4/2022	7/1/2022

LEGISLATIVE RULES FILED PER THE SUNSET PROVISION W. Va. Code §29A-3-19 and 29A-3A-20

AGENCY/SERIES NUMBER	RULE/SUNSET DATE	REQUEST	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration 148-06	Parking 3/1/2023	10/14/2021	10/15/2021				
Agriculture 61-23D	Inspection of Nontraditional, Domesticated Animals 4/22/2023	11/15/2021	11/15/2021				
Athletic Commission 177-02	Regulation of Mixed Martial Arts 6/1/2023	1/27/2022	1/27/2022				
Auditor 155-08	Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body 7/1/2022	5/13/2021	1/3/2022	Modified & Approved 1/9/2022 Filed 1/10/2022	Bundled SB334		
Community & Technical College Education 135-35	Correspondence, Business, Occupational, and Trade Schools 7/19/2022	4/5/2021	4/27/2021	Approved 9/14/2021	HB4291	4/5/2022	6/5/2022
Community & Technical College Education 135-52	Annual Reauthorization of Degree-Granting Institutions 7/19/2022	4/6/2021	4/27/2021	Approved 9/14/2021	HB4291	4/5/2022	6/5/2022
Health and Human Resources 69-13	Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State 3/22/2023	12/3/2021					
Higher Education Policy Commission 133-48	Research Trust Fund 8/5/2022	5/5/2021	5/5/2021	Approved 9/14/2021		4/8/2022	6/5/2022
Higher Education Policy Commission 133-52	Annual Reauthorization of Degree-Granting Institutions 8/5/2022	5/5/2021	5/5/2021	Approved 9/14/2021		4/8/2022	6/5/2022
Highways 157-02	Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance 4/6/2023	12/17/2021					
Insurance Commission 114-98	Adoption of Valuation Manual 5/19/2022 Technical Amendment Filed 8/1/2022	3/31/2021	3/31/2021	Approved 8/19/2021	Bundled SB312		
Labor 42-35	Registration of Service Persons and Service Agencies 3/30/2023	11/30/2021	11/30/2021				
Labor 42-36	Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions 3/30/2023	11/29/2021	11/30/2021				

LEGISLATIVE RULES FILED PER THE SUNSET PROVISION W. Va. Code §29A-3-19 and 29A-3A-20

AGENCY/SERIES NUMBER	RULE/SUNSET DATE	REQUEST	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources 58-11	Hunting, Fishing, and Other Outfitters and Guides 5/7/2023	11/30/2021	11/30/2021				
Natural Resources 58-64	Miscellaneous Permits and Licenses 5/7/2023	11/30/2021	11/30/2021				
Psychologists 17-06	Code of Ethics 7/1/2023	2/3/2022					
Public Service Commission 150-37	Rules Governing the Occupancy of Customer-Provided Conduit 8/1/2022	5/6/2021	8/6/2021	Modified & Approved 8/19/2021 Filed 8/24/2021	Bundled SB334		
Racing Commission 178-05	Pari-Mutuel Wagering 8/1/2022	4/26/2021	4/30/2021	Approved 8/18/2021	Bundled SB312		
Registererd Professional Nurses 19-08	Limited Prescriptive Authority for Nurses in Advanced Practice 5/15/2022	3/17/2021	5/10/2021	Approved 12/8/2021	Bundled SB334		
Risk and Insurance Management 115-07	Patient Injury Compensation Fund 5/1/2022	4/21/2021					
Secretary of State 153-03	Voter Registration at the Division of Motor Vehicles 5/23/2022	5/10/2021	5/10/2021	Approved 12/8/2021	Bundled SB334		
Secretary of State 153-05	Voter Registration List Maintenance by the Secretary of State 5/23/2022	5/10/2021	5/10/2021	Approved 12/8/2021	Bundled SB334		
Tax 110-13DD	Farm-To-Food Bank Tax Credit 8/1/2023	3/23/2022	3/25/2022				
Tax 110-22	Property Transfer Tax 8/1/2023	3/23/2022	3/25/2022				
Tax 110-28	Municipal Sales and Service and Use Tax Administration 8/1/2023	3/23/2022	3/25/2022				
Tax 110-42	Personnel Rule for the Tax Division 8/1/2023	3/10/2022	3/25/2022				

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
4/15/2022 9:42:30 AM
Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Agriculture TITLE-SERIES: 61-01A

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Feeding of Untreated Garbage to Swine

CITE STATUTORY AUTHORITY: §19-9A-1

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section §64-9-1 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 18, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

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

Yes

Norman Bailey -- 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.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
4/15/2022 10:23:55 AM
Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Agriculture TITLE-SERIES: 61-10

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Fresh Food Act

CITE STATUTORY AUTHORITY: §19-37-3

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section §64-9-1 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 18, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

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

Yes

Norman Bailey -- 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.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
4/15/2022 10:45:28 AM
Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Agriculture TITLE-SERIES: 61-33

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Rural Rehabilitation Program

CITE STATUTORY AUTHORITY: §19-1-11

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section §64-9-1 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 18, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

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

Yes

Norman Bailey -- 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.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
4/18/2022 12:27:28 PM
Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Agriculture TITLE-SERIES: 61-36

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Farm to Food Bank Tax Credit

CITE STATUTORY AUTHORITY: 11-13DD-5(b)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 05/18/2022 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Jodee Martin

ADDRESS: WV Department of Agriculture

1900 Kanawha Blvd., East Charleston, WV 25305

EMAIL: rulescomments@wvda.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/15/2022 11:41:57 AM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Agriculture TITLE-SERIES: 61-39

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Seed Certification

CITE STATUTORY AUTHORITY: §19-16-3a, §19-16-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section §64-9-1 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 18, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

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

Yes

Norman Bailey -- 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.

FILED

2022 APR 20 A 9:47

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

GENERAL DISTRIBUTION

WEST VIRGINIA DIVISION OF CORRECTIONS & REHABILITATION

POLICY DIRECTIVE UPDATES

NUMBER	DATE	SUBJECT
132.00	18 April 2022	Non-Uniform Promotion Guidelines
132.02	18 April 2022	Correctional Officer Promotion
320.00	18 April 2022	Body Armor
410.17	01 May 2022	Narcan Administration
453.07	18 April 2022	Vivitrol Program
505.00	18 April 2022	Visitation Procedure for Adult Facilities

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/15/2022 4:39:13 PM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Massage Therapy Licensure Board TITLE-SERIES: 194-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: General Provisions

CITE STATUTORY AUTHORITY: §30-37-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 334

Section §64-9-11 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 15, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

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

Yes

Linda Lyter -- 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.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/20/2022 11:00:23 AM

Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Osteopathic Medicine TITLE-SERIES: 24-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Licensing Procedures for Osteopathic Physicians

CITE STATUTORY AUTHORITY: W. Va. Code § 30-14-14 and § 30-1D-1(d)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section 64-9-14 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes

Chase Holcomb -- 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.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/20/2022 11:13:50 AM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Osteopathic Medicine TITLE-SERIES: 24-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Osteopathic Physician Assistants

CITE STATUTORY AUTHORITY: W. Va. Code § 30-1-7(a), § 30-3E-3(a)(1)-(9), and § 30-1D-1(d)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section 64-9-14 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes
Chase Holcomb -- 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.

STATE OF WEST VIRGINIA
BOARD OF OSTEOPATHIC MEDICINE
405 Capitol Street, Suite 402
Charleston, W.V. 25301

TELEPHONE 304.558.6095
FACSIMILE 304.558.6096
WEB ADDRESS wvbdosteo.org

FILED
2022 APR 20 A 11:39
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

MEMORANDUM

DATE: April 20, 2022

TO: Mac Warner
Secretary of State

FROM: Jonathan T. Osborne
Executive Director of the West Virginia Board of Osteopathic Medicine

RE: **Suspension of Rules in Response to COVID-19**

The West Virginia Board of Osteopathic Medicine requests that the rules described below be temporarily suspended pursuant to W. Va. Code § 15-5-6(c)(7) and the State of Emergency declared by Governor Justice on March 16, 2020. The Board further requests that the subject rules remain suspended until the Board terminates this Notice or the State of Emergency is lifted, whichever occurs first.

The Board originally filed a memorandum on March 26, 2020, suspending certain provisions of 24 CSR 2. After amendments to 24 CSR 2 became effective following the 2020 Regular Session of the Legislature, the Board re-suspended certain provisions of 24 CSR 2 on August 10, 2020. The Board then filed an emergency version of 24 CSR 2, which became effective today, requiring the Board to re-suspend certain provisions of 24 CSR 2 on August 10, 2021. Today, the Board filed the final version of 24 CSR 2, which contains amendments approved by the Legislature during the 2022 Regular Session. As such, the Board is required to re-suspend

certain provisions of 24 CSR 2.

1. In recognition of the potentially fluid and dynamic nature of providing medical care during the COVID-19 emergency, the Board temporarily suspends its formal procedures for creating or amending practice notifications. During the State of Emergency, PAs and health care facility representatives must notify the Board via email when a PA enters into new practice notifications. This temporary measure affects the provisions of **W. Va. CSR § 24-2-11**. The Board's temporary suspension of the fees associated with practice notifications set forth in the aforementioned provisions and 24 CSR 5 remains in effect.

The scope of practice and prevailing standard of care applicable to PAs remain unchanged. These measures will remain in effect until terminated by the Board or the State of Emergency is lifted, whichever occurs first. Strict compliance with these rules would hinder or delay necessary action in coping with the emergency declared by the Governor.

Jonath T Osborn
(Agency Representative)

LEGISLATIVE

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
4/20/2022 11:17:27 AM
Office of West Virginia Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Osteopathic Medicine TITLE-SERIES: 24-07

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Practitioner Requirements for Controlled Substances Licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database

CITE STATUTORY AUTHORITY: W. Va. Code § 60A-9-5a(c) and § 60A-3-301

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section 64-9-14 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes
Chase Holcomb -- 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.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/20/2022 11:20:24 AM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Osteopathic Medicine

TITLE-SERIES: 24-10

RULE TYPE: Legislative

Amendment to Existing Rule: No

Repeal of existing rule: No

RULE NAME: Telehealth Practice and Interstate Telehealth Registration for Osteopathic Physicians and Physician Assistants

CITE STATUTORY AUTHORITY: W. Va. Code § 30-1-26(b)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section 64-9-14 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes

Chase Holcomb -- 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.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/19/2022 12:23:32 PM

Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Real Estate Appraiser Licensing And Certification Board

TITLE-SERIES: 190-02

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Requirements for Licensure and Certification

CITE STATUTORY AUTHORITY: Chapter 30 Article 38

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section 64-9-18 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 19, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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

Yes

Patricia R Pope -- 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.

LEGISLATIVE

West Virginia Real Estate Appraiser Licensing and Certification Board

405 Capitol Street, Suite 906
Charleston, West Virginia 25301
Telephone 304.558.3919
FAX 304.558.3983
WEBSITE: https://appraiserboard.wv.gov

Dean E. Dawson
Board Chair

Patricia Rouse Pope
Executive Director

FILED
2022 APR 19 P 12:55
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Date: April 19, 2022

To: The Honorable Mac Warner
WV Secretary of State

From: Patricia Rouse Pope
Executive Director, WV Real Estate Appraiser Licensing and Certification Board

RE: **Continuation of Suspension of Legislative Rule 190-3 in Response to COVID-19**

The WV Real Estate Appraiser Licensing and Certification Board (WVREALCB) respectfully requests the rule described below to continue to be suspended in full, pursuant to W. Va. Code §15-5-6(c)(7) and the State of Emergency declared by Governor Jim Justice on March 16, 2020. The WVREALCB further requests the subject rule remain suspended until the WVREALCB terminates the Notice or the State of Emergency is lifted, whichever occurs first.

190CSR3 defines Renewal of Licensure or Certification. Suspension of this rule will extend the existing appraiser and apprentice permit, license, or certification expiration date of September 30, and the assessment of non-applicable late fees due to COVID-19 crisis-related circumstances. Strict compliance with this rule could hinder or delay necessary action required of appraisers and apprentices conducting business in the State of West Virginia and their profiles listed on the Federal Register.

Thank you for your attention to this request.

Respectfully,

Patricia Rouse Pope
Executive Director

West Virginia Real Estate Appraiser Licensing and Certification Board

405 Capitol Street, Suite 906
Charleston, West Virginia 25301
Telephone 304.558.3919
FAX 304.558.3983
WEBSITE: https://appraiserboard.wv.gov

Dean E. Dawson
Board Chair

Patricia Rouse Pope
Executive Director

FILED
2022 APR 19 P 12:55
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Date: April 19, 2022

To: The Honorable Mac Warner
WV Secretary of State

From: Patricia Rouse Pope
Executive Director, WV Real Estate Appraiser Licensing and Certification Board

RE: **Continuation of Suspension of Legislative Rule 190-5 in Response to COVID-19**

The WV Real Estate Appraiser Licensing and Certification Board (WVREALCB) respectfully requests the rule described below to continue to be suspended in full, pursuant to W. Va. Code §15-5-6(c)(7) and the State of Emergency declared by Governor Jim Justice on March 16, 2020. The WVREALCB further requests the subject rule remain suspended until the WVREALCB terminates the Notice or the State of Emergency is lifted, whichever occurs first.

190CSR5 defines Requirements for Registration and Renewal of Appraisal Management Companies. Suspension of this rule will extend the existing registration expiration date of June 30, and the assessment of non-applicable late fees due to COVID-19 crisis-related circumstances. Strict compliance with this rule could hinder or delay necessary action required of Appraisal Management Companies conducting business in the State of West Virginia and the corresponding effect on essential appraiser business.

Thank you for your attention to this request.

Respectfully,

Patricia Rouse Pope
Executive Director

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/15/2022 1:21:45 PM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: State Police TITLE-SERIES: 81-03

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: West Virginia State Police Career Progression System

CITE STATUTORY AUTHORITY: W. Va. Code §§15-2-5, 15-2-25.

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB4141

Section §64-6-4. Passed On 3/9/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 15, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

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

Yes

Shallon Oglesby -- 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.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/21/2022 3:39:53 PM

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: Treasurer TITLE-SERIES: 112-18

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Hope Scholarship Program

PRIMARY CONTACT

NAME: James G Fuerhoff

ADDRESS: 1900 Kanawha Boulevard East Rm E 145

Charleston, WV 25305

EMAIL: james.fuerhoff@wvsto.com

PHONE NUMBER: 304-341-0744

CITE STATUTORY AUTHORITY: §18-31-9

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:

W.Va. Code §18-31-9 permits the Hope Scholarship Board to promulgate legislative rules to administer the Hope Scholarship Program and that are necessary for the administration of the article.

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: 2/9/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 3/11/2022

COMMENTS RECEIVED: Yes

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

PUBLIC HEARING: No

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
4/20/2022 3:24 PM
Office of West Virginia
Secretary Of State

PROCEDURAL

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL RULE

AGENCY: Treasurer TITLE-SERIES: 112-19

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: West Virginia Hope Scholarship Board Procedures and Bylaws

CITE STATUTORY AUTHORITY: §§18-31-4, 18-31-5, 18-31-9, 18-31-10

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 20, 2022

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

Yes
James G Fuerhoff -- 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.

Orders Report

Docket Number	Agency	Respondent	Date Rendered
22-1C-02024	Insurance Commission	West Virginia Counties Group Self-Insurance Risk Pool	4/18/2022
22-1C-02111	Insurance Commission	Ambac Assurance Corporation	4/18/2022
22-1C-02112	Insurance Commission	Golden Rule Insurance Company	4/18/2022
22-1C-02114	Insurance Commission	New York Marine & General Insurance Company	4/18/2022
22-1C-02113	Insurance Commission	Ohio State Life Insurance Company	4/18/2022
22-1C-02115	Insurance Commission	Public Service Insurance Company	4/18/2022
22-1C-02116	Insurance Commission	Renaissance Reinsurance US, Inc.	4/18/2022
22-1C-02118	Insurance Commission	Siriuspoint America Insurance Company	4/18/2022
22-1C-02119	Insurance Commission	Southwest Marine and General Insurance Company	4/18/2022
22-1C-02120	Insurance Commission	The Gray Casualty & Surety Company	4/18/2022
22-1C-02121	Insurance Commission	ZPIC Insurance Company	4/18/2022
19-70-W	Medicine, West Virginia Board Of	Walid Mohamed Radwan, MD	4/18/2022
N/A	Medicine, West Virginia Board Of	Allison Wierda Suttle, MD	4/18/2022

State of West Virginia
Office of the Attorney General
1900 Kanawha Blvd E
Building 1, Room 26-E
Charleston, WV 25305-0220

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

FILED
2022 APR 20 P 3:18
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AG OPINION

April 18, 2022

The Honorable Mac Warner
West Virginia Secretary of State
State Capitol Complex
1900 Kanawha Blvd. East, Bldg 1, Rm-157-K
Charleston, WV 25305

Dear Secretary Warner:

You have asked for an Opinion of the Attorney General concerning the selection process of community voting locations for early in-person voting. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions ... upon questions of law, whenever required to do so, in writing, by ... any ... state officer, board or commission." To the extent this Opinion relies on facts, it is based solely on the factual assertions set forth in your correspondence with the Office of the Attorney General.

Your request involves the interplay between West Virginia Code § 3-3-2a and West Virginia Code of State Rules § 153-13-1 *et seq.*, both of which relate to election administration and the selection of community locations for early in-person voting. In your correspondence you note that this statute and legislative rule have both undergone multiple amendments over the last several years. Your letter raises the following legal question:

> *Following an amendment to West Virginia Code § 3-3-2a that removed a statutory requirement that the chairpersons of the county executive committees of the two major political parties agree to locations for early voting, do legislative rules that retain this requirement remain valid?*

We conclude that, in light of the 2011 amendment to West Virginia Code § 3-3-2a(b) removing the requirement that community locations for in-person early voting must be agreed to by the chairpersons of the county executive committees of the two major political parties, a reviewing court would likely set aside West Virginia Code of State Rules § 153-13-3.5, which addresses lack of consent by a chairperson. We further conclude, however, that other portions of the legislative rule retain full force and effect of law, including the location selection deadlines established in West Virginia Code of State Rules §§ 153-13-3.1 and -3.4.

Background

In 2009, the Legislature amended West Virginia Code § 3-3-2a to address certain early in-person voting procedures. Of relevance to the question at hand, it read:

> The county commission may, with the approval of the county clerk or other official charged with the administration of elections, *and the written agreement of the chairpersons of the county executive committees of the two major political parties*, designate additional locations for early voting other than the county courthouse or courthouse annex.

W. Va. Code § 3-3-2a(b) (2009) (emphasis added). Additionally, West Virginia Code § 3-3-2a(c) (2009) directed the Secretary of State to "propose legislative and emergency rules ... necessary to implement the provisions of this section," including "establishment of criteria to assure neutrality and security in the selection of additional locations."

The Secretary of State followed that directive, and in 2010 promulgated West Virginia Code of State Rules § 153-13-1 *et seq.* to establish "criteria to assure neutrality and security in the selection process for early voting in person satellite precincts ... and deadlines for establishing such precincts." *See* 153 C.S.R. § 13-1.1 (2010). Under that legislative rule, county clerks are required to submit to the county commission proposals for early voting community locations no less than 120 days prior to election day. *See id.* § 13-3.1. The clerk must submit with the proposal "a duly notarized written agreement from the chairperson of the county executive committee of each of the two major political parties" together with "the basis for neutrality of the proposal." *See id.* §§ 13-3.3.a, 13-3.3.b. The county commission is required to either approve or disapprove the submitted proposal "no less than 90 days prior to election day." *See id.* § 13-3.4. Finally, if an "agreement cannot be reached among the county commission, county clerk and the chairperson of the county executive committee of each of the two major political parties," the proposal is void—or in other words, each of those four people or entities have veto power. *Id.* § 13-3.5.

In 2011, the Legislature amended West Virginia Code § 3-3-2a(b) again and removed the requirement that the two chairpersons must agree to community locations for in-person early voting. Following the 2011 amendments, West Virginia Code § 3-3-2a(b) read as follows:

> The county commission may, with the approval of the county clerk or other official charged with the administration of elections,

> designate community voting locations for early voting, other than the county courthouse or courthouse annex, *by a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose.*

(emphasis added). Rather than making the chairpersons of the county executive committees necessary parties for approving community voting locations for early voting, the Legislature provided that they could participate in the process by nominating locations for community voting instead. W. Va. Code § 3-3-2a(b)(3) (2011). The Legislature left in place the requirement that the Secretary of State establish rules with "criteria to assure neutrality and security in the selection of community voting locations." *See* W. Va. Code § 3-3-2a(c) (2011).

Although West Virginia Code of State Rules § 153-13-1 *et seq.* was amended in 2019 and West Virginia Code § 3-3-2a was amended once more in 2020, none of these amendments altered the language above or are otherwise relevant to your request.

Discussion

Because "[l]egislative rules have the force of law," "only an unambiguous conflicting statute, contradictory legislative history, a defect in the rulemaking process, evidence of bias or abuse of power, or some other startling revelation of fact" can upset "an agency's legitimate rulemaking authority." *Appalachian Power Co. v. State Tax Dep't of W. Va.*, 195 W. Va. 573, 583, 589, 466 S.E.2d 424, 434, 440 (1995) (cleaned up). In that vein, our supreme court uses the federal test to determine how much latitude agencies have to interpret their governing statutes: "If the intention of the Legislature is clear, that is the end of the matter," but "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." Syl. pts. 3 & 4, *id.* (citing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). This means that "clear" statutory "intent will trump any agency's rule to the contrary"—and as a result, "clearcut evidence of an inconsistency" is enough to set aside an otherwise valid rule. *Id.* at 589, 588, 466 S.E.2d at 440, 439.

And while sometimes the Legislature can effectively acquiesce to an agency's interpretation of a statute by adopting a legislative rule, the Supreme Court of Appeals recognizes acquiescence only in instances where the statute does not squarely address the issue at hand. *See W. Va. Health Care Cost Rev. Auth. v. Boone Mem'l Hosp.*, 196 W. Va. 326, 340, 472 S.E.2d 411, 425 (1996) (finding legislative acquiescence through adoption of legislative rule where statute was ambiguous); *Swiger v. UGI/AmeriGas, Inc.*, 216 W. Va. 756, 765, 613 S.E.2d 904, 913 (2005) (finding legislative acquiescence where statute was silent regarding parameters of agency regulation). And more generally, courts often hesitate to find legislative acquiescence because "[t]he failure of harried legislatures awash in statutes to modify or explain statutory details is as likely the result of inattention or overwork as it is of implicit legislative approval." *Bailey v. SWCC*, 170 W. Va. 771, 777, 296 S.E.2d 901, 907 (1982), *overruled on other grounds by Fucillo v. Workers' Comp. Cmm'r*, 180 W. Va. 595, 378 S.E.2d 637 (1988).

AG OPINION

Your letter asks "whether the previous and current position taken by the Secretaries of State was in excess of our rule-making authority by keeping the material provisions of the Rule at Sections 3.1, 3.4, and 3.5 in place after the 2011 statutory amendment." Turning first to the interplay between the rule at Section 3.5 and West Virginia Code § 3-3-2a(b), a plain reading of these provisions reveals that they are in conflict. Current Section 3-3-2a(b) expressly outlines who must agree to proposed early in-person voting locations: the county clerk and a "majority of the members of the county commission." Yet the legislative rule adds the chairpersons of the major parties' county executive committees to this list. Applying the principles of interpretation outlined above, we conclude that this portion of the rule conferring authority to veto a proposed community voting location on two additional people is in direct conflict with Section 3-3-2a(b).

First, Section 3-3-2a(b)'s history shows that there is no statutory gap for the Secretary of State to fill when it comes to authority to consent to or veto a proposed location. The Legislature—not once but twice—addressed this issue head-on. In the 2009 version of the statute, the Legislature expressly granted authority to agree to or reject a proposed location to the county commission, the county clerk, and the chairpersons of the county executive committees of the two major political parties (which, of course, led to the prior Secretary including that same list in West Virginia Code of State Rules § 153-13-1 *et seq.*). But in 2011, the Legislature chose to remove from the statute the chairpersons' authority to approve a proposed location. The Legislature thus made clear its intent to determine which individuals' consent is needed in the community location selection process. Both statutes list the entities and officials the Legislature selected by name, and when "a subsequent statute dealing with the same subject uses different language concerning that subject," courts "*presume[]*" the Legislature intended to make that "change in the law." *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 144, 107 S.E.2d 353, 358 (1959) (emphasis added).

Second, the fact the 2011 amendment gave the chairpersons a *different* role—nominating locations instead of approving them, W. Va. Code § 3-3-2a(b)(3)—underscores that the Legislature meant for their involvement to go that far and no further. Courts give effect "to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation." Syl. pt. 2, *Smith v. State Workmen's Comp. Cmm'r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). So here, what the Legislature said about the chairpersons' role in one part of the statute confirms that its choice *not* to include the chairpersons in a related section was deliberate. *See Griffith v. Frontier W. Va., Inc.*, 228 W. Va. 277, 285, 719 S.E.2d 747, 754 (2011) (recognizing that the Legislature also provides guidance through statutory silence).

Third, the Legislature's conferral of rule-making authority to "establish[ ] criteria to assure neutrality and security in the selection of community voting locations" does not change the result. *See* W. Va. Code § 3-3-2a(c) (2011). To be sure, in the face of statutory silence, including the chairpersons of the county executive committees in the process might well be a valid criterion of neutrality. But through statutory amendments, the Legislature made plain that affording the chairpersons this veto authority was no longer its intent. *See* Syl. pt. 5, *Appalachian Power Co.*, 195 W. Va. at 579, 466 S.E.2d at 430 (holding that a legislative rule "must faithfully reflect the intention of the legislature" (cleaned up)). In short, while advancing "neutrality" may have been a valid basis for a legislative rule before 2011, it isn't anymore.

Finally, this is not a case of legislative acquiescence. True, the Legislature re-approved the legislative rule in 2019, even though the rule's discussion of the county chairpersons conflicted with then-current law. But as explained above, our supreme court does not credit legislative acquiescence unless a statute is ambiguous—and even then only rarely. *E.g.*, *In re Sorsby*, 210 W. Va. 708, 559 S.E.2d 45 (2001). Here, Section 3-3-2a(b)'s "text, given its plain meaning, answers the interpretative question." *Appalachian Power Co.*, 195 W. Va. at 587, 466 S.E.2d at 438. And recall that the Legislature amended the relevant statute again in 2020, *after* the last time it approved the legislative rule. Any claim of legislative acquiescence thus might well be defeated by appeal to the "ordinary canon[] of interpretation" that "the statute last in time prevails as the most recent expression of the legislative will." *Boone Mem'l Hosp.*, 196 W. Va. at 336, 472 S.E.2d at 421; *see also*, *e.g.*, *In re Sorsby*, 210 W. Va. at 714, 559 S.E.2d at 511 (looking to date of most recent statutory modification as evidence of most recent legislative intent); *Joseph Spiedel Grocery Co. v. Warder*, 49 S.E.2d 534, 536 (1904) (looking to date of last statutory amendment as evidence of legislative intent when interpreting entirety of statute).

In sum, West Virginia Code of State Rules § 153-13-3.5 creates additional veto authority that the Legislature removed from the operative statute in 2011. A reviewing court would almost certainly find that the rule and statute conflict—and in that case, the statute would control.

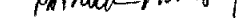
Nevertheless, we also note that *other* aspects of the legislative rule do not raise the same problem. Turning next to West Virginia Code of State Rules §§ 153-13-3.1 and -3.4, a plain reading of these provisions reveals no conflict with the statute. These portions of the rule establish the deadlines for county clerks to submit early voting community location proposals to the county commission and for county commissions to either approve or disapprove them. Because West Virginia Code § 3-3-2a is silent on deadlines it follows that timeframes are appropriate "gap-filling" questions the Legislature delegated to the Secretary of State. *See*, *e.g.*, *Appalachian Power Co.*, 195 W. Va. at 589, 466 S.E.2d at 440 (authorizing agency "to fill the gap" in a way that comports with Legislature's "unambiguously expressed intent" (cleaned up)). In this instance, this is precisely what the Secretary has done.

Our conclusion on the chairperson veto provision is no barrier to enforcing these (and other) aspects of the same rule. The State Administrative Procedures Act provides that unless "a legislative rule specif[ies] that the provisions thereof shall not be severable," the default is that "if any provision of any rule section or amendment thereto is held to be unconstitutional or void, the remaining provisions of the rule shall remain valid." W. Va. Code § 29A-3-18. Because there are no non-severability provisions to contend with here, we expect that a reviewing court would deem Section 3.5 severable from the remaining portions of the legislative rule.

We therefore conclude that although West Virginia Code of State Rules § 153-13-3.5 conflicts with the governing statute insofar as it vests the chairpersons of the county executive committees with veto power over proposed early voting locations, that defect does not extend to the rest of the Secretary of State's rules governing early in-person voting locations. What steps your office might take next in this situation are beyond the scope of this Opinion, particularly as legislative rules retain the force and effect of law unless repealed or invalidated by a court. But

we are confident in the Secretary's commitment to the rule of law and to ensuring an orderly and fair election process as you move forward.

Sincerely,



Patrick Morrisey
Attorney General

Lindsay See
Solicitor General

Virginia Payne
Deputy Attorney General

No "Other" Documents Received
This Week