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Administrative Law Division

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

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Health Care Authority

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RULES FILED FOR PUBLIC COMMENT THIS WEEK

AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION
Education (126-203)	Exempt Purchasing Procedures (8210) Legislative Exempt	§§29A-3B-1, et seq.,	Written Comments Only: November 13, 2023, 4:00pm Phillip Uy, Finance Officer WVDE Office of Internal Operations Capitol Bldg. 6, Suite 700 1900 Kanawha Blvd. E., Charleston, WV 25305 puy@k12.wv.us

NO EMERGENCY RULES FILED THIS WEEK

AGENCY/RULE	RULE NAME	AUTHORITY	EFFECTIVE DATE	COMMENT END DATE

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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
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TITLE	17	PSYCHOLOGISTS
TITLE	19	REGISTERED 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	53	PUBLIC ENERGY AUTHORITY
TITLE	56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE	58	NATURAL RESOURCES
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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	103	FIRE MARSHAL
TITLE	110	TAX DEPARTMENT
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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
TITLE	153	SECRETARY OF STATE
TITLE	155	AUDITOR
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TITLE	164	SCHOOL BUILDING AUTHORITY
TITLE	174	REAL ESTATE COMMISSION
TITLE	175	ALCOHOL BEVERAGE CONTROL COMMISSION
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TITLE	177	ATHLETIC COMMISSION
TITLE	178	RACING COMMISSION
TITLE	179	LOTTERY COMMISSION
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TITLE	220	MULTIMODAL TRANSPORTATION FACILITIES

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Accountancy (1-01)	Board Rules and Rules of Professional Conduct Legislative	5/10/2023	6/30/2023		7/24/2023	Approved 8/9/2023			
Acupuncture (32-03)	Application for Licensure to Practice Acupunture Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/22/2023			
Administration (148-03) Sunset Provision	State Owned Vehicles Legislative				10/25/2022	Approved 8/7/2023			
Agriculture (61-04B)	Frozen Desserts and Imitation Frozen Desserts Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Agriculture (61-12A)	Certified Pesticide Applicator Rules Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/27/2023			
Agriculture (61-12B)	Licensing of Pesticide Business Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Agriculture (61-23B)	WV Shellfish Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Agriculture (61-30)	Hemp Products Legislative	6/28/2023	7/28/2023	6/28/2023 Effective 8/9/2023	7/28/2023				
Agriculture (61-37) Sunset Provision	Agritourism Legislative				12/15/2022	Approved 8/7/2023			
Air Quality (45-01)	Alternative Emission Limitations During Startup and Shutdown Operations Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-02)	Control of Particulate Matter Air Pollution from the Combustion of Fuel in Indirect Heat Exchangers Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-03)	Control of Air Pollution from the Operation of Hot Mix Asphalt Plants Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-05)	Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-06)	Control of Air Pollution from Combustion of Refuse Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-07)	Control of Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-08)	Ambient Air Quality Standards Legislative	5/31/2023	7/6/2023		7/28/2023	Approved 9/10/2023			
Air Quality (45-10)	Control of Air Pollution from the Emission of Sulfur Oxides Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	5/31/2023	7/6/2023		7/28/2023	Approved 9/10/2023			
Air Quality (45-21)	Control of Air Pollution from the Emission of Volatile Organic Compounds Legislative	5/31/2023	7/6/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	5/31/2023	7/6/2023		7/28/2023	Approved 9/10/2023			
Air Quality (45-44, repeal)	Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units Legislative	5/31/2023	7/6/2023		7/28/2023	Approved 9/10/2023			
Architects (2-02)	Disciplinary and Complaint Procedures for Architects Procedural	9/6/2023	10/6/2023					10/6/2023	11/8/2023

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Barbers and Cosmetologists (3-01)	Procedures, Criteria and Curricula for Examination and Licensure of Barbers, Cosmetologists, Nail Technicians, Aestheticians, and Hair Stylists Legislative	4/12/2023	5/31/2023		6/14/2023	Modified & Approved 8/7/2023 Filed 8/11/2023			
Barbers and Cosmetologists (3-15)	Application For Waiver Of Initial Licensing Fees For Certain Individuals Legislative	4/7/2023	5/15/2023		6/14/2023	Modified & Approved 8/7/2023 Filed 8/24/2023			
Barbers and Cosmetologists (3-16)	Cosmetology Apprenticeship Legislative	4/10/2023	5/31/2023		6/14/2023	Modified & Approved 8/7/2023 Filed 8/21/2023			
Coal Mine Health and Safety (36-44)	Rule Governing Mine Rescue Requirements Legislative Exempt	6/28/2023	7/28/2023					9/11/2023	10/111/2023
Coal Mine Health and Safety (36-59)	Supervision of Underground Apprentices in Areas Other Than the Working Section Legislative Exempt	6/28/2023	7/28/2023					9/11/2023	10/11/2023
Community and Technical College Education (135-06)	Performance Indicators Legislative	6/21/2023	7/24/2023		7/26/2023				
Community and Technical College Education (135-19)	Guidelines for the Offering of Early Enrollment Courses for High School Students Legislative	6/21/2023	7/24/2023	6/21/2023 Approved 6/30/2023	7/26/2023	Modified & Approved 9/12/2023 Filed 9/14/2023			
Community and Technical College Education (135-20)	Initial Authorization of Degree-Granting Institutions Legislative	6/21/2023	7/24/2023		7/26/2023				
Community and Technical College Education (135-32)	Tuition and Fees Legislative	6/21/2023	7/24/2023		7/26/2023				
Community and Technical College Education (135-49, repeal)	Accountability System Legislative	6/21/2023	7/24/2023		7/26/2023				
Couseling (27-01)	Licensing Rule Legislative	9/5/2023	10/5/2023	8/31/2023 Effective 10/12/2023	10/6/2023				

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Counseling (27-02)	Licensed Professional Couselor Fee Rules Legislative	9/5/2023	10/5/2023	8/31/2023 Effective 10/12/2023					
Counseling (27-05)	Disciplinary and Complaint Procedural	8/31/2023	9/30/2023					10/10/2023	11/13/2023
Counseling (27-08)	Marriage and Family Therapist Licensing Rule Legislative	9/5/2023	10/5/2023	8/31/2023 Effective 10/12/2023	10/6/2023				
Counseling (27-09)	Marriage and Family Therapist Fees Rule Legislative	9/5/2023	10/5/2023	8/31/2023 Effective 10/12/2023					
Counseling (27-14)	Telehealth and Interstate Telehealth Registration for Licensed Professional Couselors and Licensed Marriage and Family Therapists Legislative	9/5/2023	10/5/2023	8/31/2023 Effective 10/12/2023					
Crime Delinquency and Correction (149-02)	Law Enforcement Training and Certification Legislative	6/23/2023	7/24/2023		7/26/2023	Modified & Approved 9/10/2023 Filed 10/4/2023			
Crime Delinquency and Correction (149-03)	Protocol for Law Enforcement Response to Domestic Violence Legislative	6/26/2023	7/26/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 10/4/2023			
Crime Delinquency and Correction (149-11)	Sexual Assault Forensic Examinations Legislative	8/8/2023	9/8/2023		9/8/2023				
Dentistry (5-10)	Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database Legislative	4/19/2023	5/22/2023		7/25/2023	Modified & Approved 9/10/2023 Filed 9/18/2023			
Dietitians (31-01)	Licensure And Renewal Requirements Legislative	3/14/2023	4/14/2023		4/25/2023	Modified & Approved 8/7/2023 Filed 9/11/2023			
Dietitians (31-05)	Continuing Professional Education Requirements Legislative	3/14/2023	4/14/2023		4/25/2023	Modified & Approved 8/7/2023 Filed 9/11/2023			
Dietitians (31-07)	Telehealth Practice; Requirements; Definitions Legislative	6/21/2023	7/21/2023		7/28/2023	Approved 8/7/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Economic Development, WV Dept. of (145-19)	Rule Governing the Operations of Motorsports Complexes and Events Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023			
Education (126-030)	Tiered System of Support for Early Literacy and Numeracy (2512) Legislative Exempt	8/9/2023	9/11/2023					10/11/2023	11/13/2023
Education (126-044BB)	West Virginia College-and Career-Readiness Standards for Mathematics (Policy 2520.2B) Legislative Exempt	4/13/2023	5/15/2023					8/29/2023	7/1/2024
Education (126-044M)	WV College - and Career-Readiness Programs of Study/Standards for Career Technical Education (2520.13) Legislative Exempt	9/13/2023	10/16/2023						
Education (126-114)	Approval of Educator Preparation Programs Legislative Exempt	9/13/2023	10/16/2023						
Education (126-142)	Performance Evaluation of Professional Personnel and Athletic Coaches (Policy 5310) Legislative Exempt	7/12/2023	8/14/2023					9/13/2023	10/16/2023
Education (126-203)	Exempt Purchasing Procedures(8210) Legislative Exempt	10/11/2023	11/13/2023						
Election Commission (146-01)	Corporate and Membership Organization Political Activity Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023			
Election Commission (146-03)	Regulation of Campaign Finance Legislative	7/27/2023	8/28/2023		9/13/2023				
Election Commission (146-07)	Application and Approval Process for Secretary of State Expenditures from the County Assistance Voting Equipment Fund Legislative	6/27/2023	7/27/2023		7/28/2023	Modified & Approved 9/10/2023			
Emergency Management (170-02)	Industrial Accident Rapid Response Rule Legislative	6/26/2023	7/26/2023		7/27/2023	Approved 9/10/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Environmental Protection Secretarys's Office (60-12)	Administration of Drinking Water Treatment Revolving Fund and Safe Drinking Water Set-Asides Legislative	6/28/2023	7/28/2023	6/29/2023 Effective 8/10/2023	7/28/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Family Protection Services Board (191-02)	Domestic Violence Program Licensure Standards Legislative	5/30/2023	6/29/2023		7/13/2023				
Fire Commission (87-01)	Fire Code Legislative	6/16/2023	7/17/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 10/4/2023			
Fire Commission (87-06)	Certification and Evaluation of Local Fire Departments Legislative	6/23/2023	7/24/2023		7/26/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Fire Commission (87-13)	Certification of Fire Chiefs Legislative	6/23/2023	7/24/2023		7/26/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Fire Marshal (103-01)	Certification of Electrical Inspectors Legislative	6/23/2023	7/24/2023		7/26/2023	Modified & Approved 9/10/2023 Filed 10/4/2023			
Fire Marshal (103-03)	Supervision of Fire Protection Work Legislative	6/23/2023	7/24/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Fire Marshal (103-05)	Electrician Licensing Rules Legislative	6/23/2023	7/24/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Fire Marshal (103-06)	Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Bldg Code Officials, Bldg Code Inspectors and Plans Examiners Legislative	6/23/2023	7/24/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Fire Marshal (103-07)	Certification of Home Inspectors Legislative	6/23/2023	7/24/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Forestry (22-02)	Sediment Control During Commercial Timber-Harvesting Operations-Licensing Legislative	6/26/2023	7/27/2023		7/27/2023	Modified & Approved 9/10/2023			
Forestry (22-03)	Sediment Control During Timber-Harvesting Operations-Logger Certification Legislative	6/26/2023	7/27/2023		7/27/2023	Modified & Approved 9/10/2023			
Health (64-04)	Public Water Systems Operators Legislative	5/17/2023	6/16/2023		7/13/2023				
Health (64-05)	Wastewater Systems and Operators Legislative	5/17/2023	6/16/2023		7/13/2023				
Health (64-11)	Behavioral Health Centers Licensure Legislative	6/5/2023	7/5/2023		7/13/2023				
Health (64-12)	Hospital Licensure Legislative	6/5/2023	7/5/2023		7/13/2023				
Health (64-14) Sunset Provision	Assisted Living Residences Legislative				2/16/2023	Modified & Approved 8/7/2023 Filed 8/21/2023			
Health (64-15)	Cross-Connection Control and Backflow Prevention Legislative	5/17/2023	6/16/2023		7/13/2023				
Health (64-30)	Fees for Permits Legislative	5/17/2023	6/16/2023		7/21/2023				
Health (64-51)	Fees for Services Legislative	5/17/2023	6/16/2023		7/21/2023				
Health (64-84)	Medical Examiner Requirements for Postmortem Inquires Legislative	5/17/2023	6/16/2023		7/13/2023				
Health (64-91) Sunset Provision	Newborn Screening System Legislative				2/16/2023	Modified & Approved 8/7/2023 Filed 8/22/2023			
Health (64-116)	Distribution of Funds from Emergency Medical Services Salary Enhancement Fund Legislative	5/17/2023	6/16/2023	5/18/2023 Approved 5/18/2023	7/18/2023				
Health (64-123, formerly 69-10)	West Virginia Clearance for Access: Registry and Employment Screening Legislative	6/9/2023	7/10/2023		7/19/2023				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health and Human Resources (69-08) Sunset Provision	Chronic Pain Management Clinic Licensure Legislative				2/16/2023	Modified & Approved 8/7/2023 Filed 8/21/2023			
Health and Human Resources (69-12) Sunset Provision	Medication Assisted Treatment-Office-Based Medication-Assisted Treatment Legislative				2/16/2023	Modified & Approved 8/7/2023 Filed 8/21/2023			
Health Care Authority (65-06) Sunset Provision	Cooperative Agreement Approval and Compliance Legislative				10/5/2022	Approved 8/7/2023			
Health Care Authority (65-32)	Certificate of Need Legislative	5/17/2023	6/16/2023		7/21/2023				
Higher Education Policy Commission (133-05)	Empolying and Evaluating Presidents Legislative	6/21/2023	7/21/2023		7/25/2023	Approved 9/12/2023			
Higher Education Policy Commission (133-06)	Higher Education Adult-Part Time Student (HEAPS) Grant Program Legislative	6/21/2023	7/21/2023		7/24/2023	Modified & Approved 9/12/2023 Filed 9/12/2023			
Higher Education Policy Commission (133-07)	WV Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program Legislative	6/21/2023	7/21/2023		7/26/2023	Approved 9/12/2023			
Higher Education Policy Commission (133-19)	Guidelines for College Courses for High School Students Legislative	6/21/2023	7/21/2023	6/21/2023 Approved 6/27/2023	7/28/2023	Approved 9/12/2023			
Higher Education Policy Commission (133-28)	WV Engineering, Science and Technology Scholarship Program Legislative	6/21/2023	7/21/2023		7/24/2023	Approved 9/12/2023			
Higher Education Policy Commission (133-42)	WV Higher Education Grant Program Legislative	6/21/2023	7/21/2023		7/24/2023	Approved 9/12/2023			
Higher Education Policy Commission (133-58)	Nursing Scholarship Program Legislative	6/21/2023	7/21/2023		7/24/2023	Approved 9/12/2023			
Highways (157-03)	Construction and Reconstruction of State Roads Legislative	6/22/2023	7/24/2023		7/31/2023	Modified & Approved 9/10/2023			
Highways (157-05)	Traffic and Safety Rules Legislative	6/15/2023	7/17/2023		7/26/2023	Modified & Approved 9/10/2023			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Human Services (67-01, formerly 69-14)	Collection and Exchange of Data Related to Overdoses Legislative	6/6/2023	7/6/2023		7/18/2023				
Human Services (78-27)	Procedure to Contest the Substantiation of Child Abuse or Neglect Legislative	5/30/2023	6/29/2023		7/13/2023				
Insurance Comm. (114-27) Sunset Provision	Aids Regulations Legislative				3/29/2023	Approved 8/7/2023			
Insurance Comm. (114-100)	Health Benefit Plan Network Access and Adequacy Legislative	6/2/2023	7/5/2023		7/12/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Insurance Comm. (114-103)	Bail Bondsmen in Criminal Cases Legislative	6/2/2023	7/5/2023		7/11/2023	Authorized as Modified w/Certain Amendements 9/12/2023 Filed 9/14/2023			
Labor (42-08)	Minimum Wage, Maximum Hours, and Overtime Compensation Legislative	5/4/2023	6/5/2023		6/6/2023	Modified & Approved 9/10/2023 Filed 9/19/2023			
Labor (42-21A)	Licensing of Elevator Mechanics, Accessibility Technicians, and Limited Technicians and Registration of Elevator Mechanic Apprentices Legislative	6/23/2023	7/26/2023		7/27/2023	Approved 9/10/2023			
Massage Therapy Licensure Bd. (194-01)	General Provision Legislative	6/27/2023	7/27/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/22/2023			
Massage Therapy Licensure Bd. (194-04)	Schedule of Fees Legislative	6/28/2023	7/28/2023	6/27/2023 Effective 8/8/2023	7/28/2023	Modified & Approved 9/10/2023 Filed 9/22/2023			
Massage Therapy Licensure Bd. (194-07)	Establishment Licensure Legislative	6/28/2023	7/28/2023	6/27/2023 Effective 8/8/2023	7/28/2023	Approved 9/10/2023			
Medical Imaging and Radiation Therapy Tech. Board of Examiners (18-01)	West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners Legislative	6/21/2023	7/22/2023		7/24/2023				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Medicine (11-01B)	Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	6/21/2023	7/21/2023		7/27/2023				
Medicine (11-06)	Continuing Education for Physicians and Podiatric Physicians Legislative	6/21/2023	7/21/2023		7/27/2023				
Medicine (11-12) Sunset Provision	Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows Legislative				11/21/2022	Approved 8/7/2023			
Miners Health Safety and Training (56-02)	Rule Governing Safety Provisions for Clearing Crews Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/14/2023			
Miners Health Safety and Training (56-04)	Rule Governing Protective Clothing and Equipment Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Miners Health Safety and Training (56-10)	Rule Governing Reporting Requirements for Independent Contractors Legislative	6/21/2023	7/21/2023		7/27/2023	Approved 9/10/2023			
Miners Health Safety and Training (56-12)	Rule Governing Assessing Health and Safety Violation Penalties Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Miners Health Safety and Training (56-14)	Rule Pertaining to the Office of Miners' Health, Safety and Training Application Process for the WV Innovative Mine Safety Technology Tax Credit Act Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Miners Health Safety and Training (56-18)	Rule for Governing the Program for the Sharing of Information Between Employers Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Miners Health Safety and Training (56-19)	Substance Abuse Screening, Standards and Procedures Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Miners Health Safety and Training (56-22) Sunset Provision	Rules Governing the Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors Legislative								
Miners Health Safety and Training (56-23) Sunset Provision	Operating Diesel Equipment in Underground Mines in WV Legislative				7/27/2023	Approved 8/7/2023			
Miner Training Education and Certification (48-04)	Initial Training Program for Prospective Mine Rescue Team Members and Additional Mine Rescue Requirements Legislative Exempt	9/11/2023	10/11/2023						
Miner Training Education and Certification (48-09)	Duties and Standards for Certification of Underground Outby Mine Examiners for Coal Mines Legislative Exempt	7/28/2023	8/30/2023						
Motor Vehicles (91-03)	Motor Vehicle Titling and Registration Legislative	6/23/2023	7/23/2023	6/27/2023 Effective 8/8/2023	7/26/2023				
Motor Vehicles (91-06)	Dealer Licensing Legislative	6/23/2023	7/23/2023		7/26/2023				
Motor Vehicles (91-10)	Handicapped Parking Permits Legislative	6/6/2023	7/7/2023		7/13/2023				
Motor Vehicles (91-15) Sunset Provision	Safety and Treatment Program Legislative								
Motor Vehicles (91-24) Sunset Provision	State Vehicle Title, Registration and Relicensing Project of 2018 Legislative								
Multimodal Transportation Facilities (220-01)	Valuation of Used Rolling Stock and Equipment Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/29/2023			
Multimodal Transportation Facilities (220-02)	Aviation Grant Process Procedural	8/25/2023	9/29/2023					9/29/2023	11/1/2023
Natural Resources (58-11)	Hunting, Fishing, and Other Outfitters and Guides Legislative	6/26/2023	7/27/2023		7/27/2023				
Natural Resources (58-12)	Commercial Whitewater Outfitters Legislative	6/26/2023	7/27/2023		7/27/2023				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources (58-23)	Revocation of Hunting and Fishing Licenses Legislative	6/26/2023	7/27/2023		7/27/2023				
Natural Resources (58-36) Sunset Provision	Cabwaylingo State Forest Trail System Two Year Pilot Project Permitting ATV's and ORVs Legislative				7/20/2023	Approved 8/7/2023			
Natural Resources (58-67)	Lifetime Hunting, Trapping and Fishing Licenses Legislative	6/26/2023	7/26/2023	6/26/2023 Effective 8/7/2023	7/27/2023				
Nursing Home Administrators Licensing Board (21-01)	Nursing Home Administrators Legislative	5/8/2023	6/8/2023		6/9/2023	Approved 8/7/2023			
Optometry (14-01)	Rules of the WV Board of Optometry Legislative	6/28/2023	7/27/2023		7/28/2023				
Optometry (14-06)	Interview Evaluation Legislative	6/28/2023	7/28/2023		7/28/2023				
Optometry (14-10)	Continuing Education Legislative	6/27/2023	7/27/2023		7/28/2023				
Optometry (14-11)	Injectable Pharmaceuticals by Injection Certificate Legislative	6/28/2023	7/28/2023		7/31/2023				
Optometry (14-13)	Opthalmic Laser Utilization Certificate Legislative	6/28/2023	7/28/2023		7/28/2023				
Optometry (14-14)	Eyelid Procedures Legislative	6/28/2023	7/27/2023		7/28/2023				
Osteopathic Medicine (24-01)	Licensing Procedures for Osteopathic Physicians Legislative	6/26/2023	7/27/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Osteopathic Medicine (24-02)	Osteopathic Physician Assistants Legislative	6/26/2023	7/27/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Parkways Authority (184-05)	Rules Providing for Electronic Toll Collection and the Enforcement Process Legislative	8/17/2023	9/20/2023						

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Pharmacy (15-03)	Continuing Education for Licensure for Pharmacists Legislative	6/27/2023	7/27/2023		7/28/2023	Approved 9/10/2023			
Pharmacy (15-07)	Registration of Pharmacy Technicians Legislative	6/27/2023	7/27/2023		7/28/2023	Approved 9/10/2023			
Pharmacy (15-12)	Immunizations Administered by Pharmacists, Pharmacy Interns, and Pharmacy Technicians Legislative	6/27/2023	7/27/2023	6/27/2023 Approved 6/29/2023	7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Pharmacy (15-14)	Centralized Prescription Processing Legislative	6/29/2023	7/28/2023	6/27/2023 Approved 6/29/2023	7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Pharmacy (15-15)	Regulations Governing Pharmacy Permits Legislative	6/27/2023	7/27/2023	6/27/2023 Approved 6/29/2023	7/28/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Pharmacy (15-17) Sunset Provision	The Subsitution of Biological Pharmaceuticals Legislative				7/20/2023	Approved 8/7/2023			
Professional Surveyors (23-01)	Examination and Licensing of Professional Surveyors in West Virginia Legislative	6/7/2023	7/7/2023		7/31/2023	Modified & Approved 9/10/2023 Filed 10/3/2023			
Psychologists (17-04)	Disciplinary and Complaint Procedures for Psychologists Legislative	6/15/2023	7/17/2023		7/25/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Psychologists (17-05)	Contested Case Hearing Procedure Legislative	6/15/2023	7/17/2023		7/25/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Public Energy Authority (53-05)	Rule to Petition the Public Energy Authority for Approval of Decommissioning or Deconstruction Activities Related to Any Coal, Oil, or Natural Gas Fueled Power Plant Legislative	6/23/2023	7/23/2023	6/14/2023 Approved 6/27/2023	9/7/2023				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Racing Commission (178-01)	Thoroughbred Racing Legislative	6/5/2023	7/6/2023		7/26/2023	Authorized w/Certain Amendments 9/10/2023 Filed 9/25/2023			
Real Estate Commission (174-01)	Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business Legislative	6/12/2023	7/14/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/27/2023			
Real Estate Commission (174-02)	Schedule of Fees Legislative	6/12/2023	7/14/2023		7/28/2023	Approved 9/10/2023			
Real Estate Commission (174-03)	Real Estate Courses, Course Providers and Instructors Legislative	6/13/2023	7/14/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/27/2023			
Registered Nurses, WV Board of (19-01)	Policies, Standards and Criteria for the Evaluation, Approval and National Nursing Accreditation of Prelicensure Nursing Education Programs Legislative	6/14/2023	7/14/2023	5/31/2023 Approved 6/27/2023	8/1/2023				
Registered Nurses, WV Board of (19-03)	Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct Legislative	6/14/2023	7/14/2023		7/26/2023				
Registered Nurses, WV Board of (19-07)	Advanced Practice Registered Nurse Licensure Requirements Legislative	6/14/2023	7/14/2023		7/26/2023				
Registered Nurses, WV Board of (19-12)	Fees for Services Rendered by the Board Legislative	6/14/2023	7/14/2023	5/31/2023 Approved 6/27/2023	7/26/2023				
Respiratory Care (30-09)	Student Temporary Permit - Amended Legislative	4/28/2023	6/1/2023		6/8/2023	Modified & Approved 8/7/2023 Filed 9/28/2023			
Respiratory Care (30-11)	Telehealth Practice Legislative	9/26/2023	10/30/2023						
Secretary of State (153-14)	Guidelines fo the Use of Nicknames and Other Designations on the Ballot Legislative	6/28/2023	7/28/2023		7/28/2023	Modified & Approved 9/10/2023			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Secretary of State (153-25, repeal)	Combined Voter Registration and Driver Licensinig Fund Legislative	6/282023	7/28/2023		7/28/2023	Approved 9/10/2023			
Secretary of State (153-55)	Minimum Standards for Election Administration, Infrastructure, and Security Legislative	6/27/20223	7/27/2023		7/28/2023	Modified & Approved 9/10/2023			
State Police (81-08)	WV State Police Member Grievance Procedure Legislative	6/23/2023	7/23/2023		7/27/2023	Approved 9/10/2023			
State Police (81-18)	WV State Police Purchasing Rule Procedural	10/4/2023	11/3/2023						
State Police (81-19)	Motor Vehicle Inspection Legislative	6/23/2023	7/23/2023		7/27/2023	Modified & Approved 9/10/2023 Filed 9/26/2023			
Tax (110-15K) Sunset Provision	Aircraft Operated Under A Fractional Ownership Program Legislative				3/28/2023	Approved 8/7/2023			
Tax (110-21B) Sunset Provision	Citizen Tax Credit for Property Taxes Paid Legislative				12/30/2022	Modified & Approved 8/7/2023 Filed 8/21/2023			
Tax (110-21G)	Income Tax Paid at the Entity Level by Electing Pass-Through Entities Legislative	6/8/2023	7/10/2023		7/28/2023				
Tax (110-21H)	Income Tax Credits for Property Taxes Paid Legislative	6/8/2023	7/10/2023		7/25/2023				
Tax (110-49) Sunset Provision	Administration of Tax on Purchases of Wine and Liquor Legislative				12/30/2022	Modified & Approved 8/7/2023 Filed 8/21/2023			
Tax (110-99)	Privilege Tax on Sales of Hemp-Derived Cannabinoid and Kratom Products Legislative	6/8/2023	7/10/2023		7/25/2023				
Treasurer (112-05)	Enforcement of the Unifrom Unclaimed Property Act Legislative	6/27/2023	7/27/2023		7/28/2025				
Treasurer (112-19)	West Virginia Hope Scholarship Board Procedures and Bylaws Procedural	8/16/2023	9/15/2023						

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Treasurer (112-20)	Jumpstart Savings Program Legislative	6/9/2023	7/10/2023		7/13/2023				
Waste Mgmt. Division of Water and Waste Mgmt. (33-20)	Hazardous Waste Management System Legislative	6/12/2023	7/18/2023		7/24/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			
Water Resources Division of Water and Waste Mgmt. (47-13)	Underground Injection Control Legislative	6/12/2023	7/18/2023		7/28/2023	Modified & Approved 9/10/2023 Filed 9/15/2023			

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
10/13/2023 9:15 AM

Office of West Virginia
Secretary Of State

Legislative

FILED

2023 OCT 10 P 12:48

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF TECHNICAL AMENDMENT

AGENCY: Auditor TITLE-SERIES: 155-06

RULE TYPE: Legislative

RULE NAME: Local Government Purchasing Card Program

CITE STATUTORY AUTHORITY: 6-9-2a

LIST WITH DETAIL EACH SPECIFIC CHANGE MADE TO THE RULE AND WHERE IT CAN BE FOUND:

The Sunset date in Section 1.5 is changed from March 31, 2025 to August 1, 2025.

FILING DATE: 10/13/2023 EFFECTIVE DATE: 03/31/2020

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

Yes
Vincent J Smith -- 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 DIVISION OF CORRECTIONS & REHABILITATION

POLICY DIRECTIVE UPDATES

NUMBER	DATE	SUBJECT
503.00	16 October 2023	Mail Privileges for Inmates

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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10/6/2023 11:11:05 AM

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Legislative

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

AGENCY: Counseling TITLE-SERIES: 27-01

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

RULE NAME: 27-01 Licensing Rule

PRIMARY CONTACT

NAME: Cheryl Henry

ADDRESS: West Virginia Board Of Examiners In Counseling
815 Quarrier Street Suite 212
Charleston, WV 25301

EMAIL: cheryl.j.henry@wv.gov

PHONE NUMBER: 304-558-5494

CITE STATUTORY AUTHORITY: W. Va. Code §§30-31-5(19) and 30-31-6

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:

It is unlawful for any person to practice or offer to practice professional counseling in this state without a license. W. Va. Code §30-31-1.

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: 9/5/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 10/5/2023

COMMENTS RECEIVED: No

(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

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10/6/2023 11:30:39 AM

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: Counseling TITLE-SERIES: 27-08

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

RULE NAME: 27-08 Marriage and Family Therapist Licensing Rule

PRIMARY CONTACT

NAME: Cheryl Henry

ADDRESS: West Virginia Board Of Examiners In Counseling
815 Quarrier Street Suite 212
Charleston, WV 25301

EMAIL: cheryl.j.henry@wv.gov

PHONE NUMBER: 304-558-5494

CITE STATUTORY AUTHORITY: W. Va. Code §§30-31-5 and 30-31-6.

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:

It is unlawful for any person to practice or offer to practice marriage and family therapy in this state without a license. W. Va. Code §30-31-1.

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: 9/5/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 10/5/2023

COMMENTS RECEIVED: No

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

PUBLIC HEARING:

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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10/11/2023 1:27 PM

Office of West Virginia Secretary Of State

Legislative

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

AGENCY: Education

TITLE-SERIES: 126-030

RULE TYPE: Legislative Exempt

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Tiered System of Support for Early Literacy and Numeracy (2512)

CITE STATUTORY AUTHORITY: W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451, 376 S.E.2d 839 (1988); and, W. Va. Bd. of Educ. v. Bd. of Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

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

November 13, 2023

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

Yes

Kelli D Talbott -- 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

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10/11/2023 1:30:52 PM

Office of West Virginia Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education

TITLE-SERIES: 126-203

RULE TYPE: Legislative Exempt

Amendment to Existing Rule: No

Repeal of existing rule: No

RULE NAME: Exempt Purchasing Procedures (8210)

CITE STATUTORY AUTHORITY: W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451, 376 S.E.2d 839 (1988); and, W. Va. Bd. of Educ. v. Bd. of Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/13/2023 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Phillip Uy, Finance Officer

ADDRESS: WVDE Office of Internal Operations, Capitol Bldg. 6, Suite 700

1900 Kanawha Blvd. E., Charleston, WV 25305

EMAIL: puy@k12.wv.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
10/6/2023 2:11 PM
Office of West Virginia
Secretary Of State

Procedural

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

AGENCY: Architects TITLE-SERIES: 2-02

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

RULE NAME: Disciplinary and Complaint Procedures for Architects

CITE STATUTORY AUTHORITY: §30-12-1

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

November 8, 2023

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

Yes
Emily B Papadopoulos -- 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

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10/10/2023 4:29 PM
Office of West Virginia
Secretary Of State

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

AGENCY: Counseling TITLE-SERIES: 27-05

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

RULE NAME: Series 5 Disciplinary and Complaint Procedures for Counselors

CITE STATUTORY AUTHORITY: W. Va. Code §30-31-1 et seq. and 30-1-1 et seq.

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

November 13, 2023

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

Yes
Cheryl Henry -- 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
23-4-12769-X	Health Care Authority	Home Care Plus, Inc.	9/27/2023
23-7-12773-X	Health Care Authority	United Hospital Center	9/27/2023
22-3-12471-P	Health Care Authority	Charleston Area Medical Center, Inc.	9/27/2023
23-1/2/3-12742-A/P	Health Care Authority	Mountain Health Network, Inc.	9/13/2023
23-1/2/3-12742-A/P	Health Care Authority	University Physicians & Surgeons, Inc.	9/13/2023
23-1-12780-X	Health Care Authority	Med-Surg Physician Group	9/27/2023
23-10-12774-X	Health Care Authority	REM West Virginia	9/27/2023
18-6-11297-H	Health Care Authority	West Virginia University Hospitals, Inc.	7/26/2023
22-2-12457-X 17-2-11142-NH	Health Care Authority	Next Huntington Realty, LLC	7/26/2023
22-2-12457-X 17-2-11142-NH	Health Care Authority	First Center, LLC	7/26/2023
22-2-12457-X 17-2-11142-NH	Health Care Authority	Citenik Properties, LLC	7/26/2023
23-6-12764-X	Health Care Authority	Braley and Thompson, Inc.	9/13/2023
23-9-12771-X	Health Care Authority	Berkeley Medical Center	9/13/2023
23-4-12721-P	Health Care Authority	Summersville Regional Medical Center	9/13/2023
23-6-12731-P	Health Care Authority	United Physicians Care, Inc.	9/13/2023
23-7-12737-A	Health Care Authority	Monongalia Health System, Inc.	9/13/2023
22-3-12467-A	Health Care Authority	Kanawha Hospice Care, Inc. dba Home Health of West Virginia	9/27/2023
21-1/3/5-12138-A	Health Care Authority	BrightSpring Health Services, Inc.	9/27/2023
23-80-W	Medicine, West Virginia Board Of	Akhtar Sultan Khan, MD	10/5/2023
23-74-W	Medicine, West Virginia Board Of	Rodney Harry Cowans, MD	10/5/2023
N/A	Registered Nurses, WV Board of	Patricia Lynn Smith	10/5/2023
N/A	Registered Nurses, WV Board of	Courtney Erin Taylor	10/6/2023

10/13/2023 9:12:03 AM

FILED
2023 OCT 10 A 9:25 AG Opinion
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State of West Virginia
Office of the Attorney General

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Attorney General

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October 6, 2023

Honorable Gabrielle Mucciola
Monongalia County Prosecuting Attorney
75 High Street
Morgantown, WV 26505

Dear Prosecutor Mucciola:

You have asked for an Opinion of the Attorney General on whether the Monongalia County Board of Education can lease school property to a for-profit business that it will then co-own. This Opinion is being issued under West Virginia Code § 5-3-2, which provides that the Attorney General "may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

Your letter explains that the Monongalia County Board of Education wants to take advantage of historic tax credits to renovate the Morgantown High School Auditorium. To do so, the Board would need to restructure how the building is managed. Though the Board would still own the building, it would create two entities: a for-profit management company and a non-profit foundation. The Board would enter a long-term lease with the management entity, which would in turn enter a sublease with the foundation. Then, an unspecified investor would apply for and receive the historic tax credits, which would provide funds to the management entity to make the repairs. To make sure this plan works, the Board would need to be a part owner of the management company.

You have asked the following question:

Whether the Board of Education has authority to lease county-owned property to a for-profit management entity, and whether the Board can hold an ownership position in the for-profit entity?

We conclude that, under the facts you have described, the Board's plans are impermissible under West Virginia Code Sections 18-5-7 and 18-5-13.

OCT 10 2023

DISCUSSION

As the Board acknowledges, county "boards of education are 'created by statute with functions of a public nature.'" *Hartman v. Putnam*, No. 21-0765, 2022 WL 9925098, at *2 (W. Va. Oct. 17, 2022) (quoting syl. pt. 2, *Napier v. Lincoln Cnty. Bd. of Educ.*, 209 W. Va. 719, 551 S.E.2d 362 (2001)); *see also Pa. Lightning Rod Co. v. Bd. of Educ. of Cass Twp.*, 20 W. Va. 360, 360 (1882) ("Corporations created by statute must depend, both for their powers and the mode of exercising them, upon the true construction of the statute creating them."). A county board of education like Monongalia County thus depends on its enacting statute for its powers. And the Board "can exercise no power not expressly conferred or fairly arising from necessary implication, and in no other mode than that prescribed or authorized by the statute." Syl. pt. 2, *Napier*, 209 W. Va. 719, 551 S.E.2d 362 (quoting syl. pt. 4, *Shinn v. Bd. of Educ.*, 39 W.Va. 497, 20 S.E. 604 (1894)); *see also City of Huntington v. Bacon*, 196 W. Va. 457, 470, 473 S.E.2d 743, 756 (1996) ("[A] board of education can only exercise power which is expressly conferred upon it by statute, and therefore, does not have a moral obligation to do anything," (cleaned up)).

When a statute does not grant the Board powers expressly, then the Board can presume to exercise implied authority only in certain limited circumstances. Implied authority "fairly aris[es] from necessary implication[s]" in the exercise of a board of education's express powers. Syl. pt. 7, *Bacon*, 196 W. Va. 457, 473 S.E.2d 743 (quoting syl. pt. 4, *Shinn*, 39 W. Va. 497, 20 S.E. 604); *cf. Commonwealth, Pennsylvania Fish & Boat Comm'n v. Consol Energy, Inc.*, 233 W. Va. 409, 414, 758 S.E.2d 762, 767 (2014) (explaining that agencies created by statute hold only those implied powers that "may be necessary for the[] just and reasonable execution" of express powers). And if a statute is ambiguous when it comes to the powers it might confer on the board, then a court will find that the board does *not* have authority. *See* Syl. pt. 1, *McCallister v. Nelson*, 186 W. Va. 131, 411 S.E.2d 456 (1992).

We conclude that the Board does not have either express or implied statutory authority to either lease the auditorium or create or co-own a for-profit management entity.

Take the lease agreement first. Two statutory provisions give county boards of education authority over lease agreements. *First*, a county board of education may sell or lease school property that is no longer needed for school purposes. W. Va. Code § 18-5-7. *Second*, a board has authority to control and manage "all of the schools and school interests for all school activities and upon all school property owned or leased by the county." *Id.* § 18-5-13. (Relatedly, the Board must also "provide … [f]or the repair and good order of the school … buildings." *Id.*)

West Virginia Code Section 18-5-7 does not give the Board the authority to enter into the proposed lease agreement here. That statute sets out the procedure for leasing school property: If a "county board determines that any school property is no longer needed for school purposes," then it may "offer the property for lease." *Id.* § 18-5-7(e). The Board may also lease out the building if it is "for a public use to the State of West Virginia, or its political subdivisions, including county commissions." *Id.* § 18-5-7(f). So the Board may lease property if it no longer needs it, or if it leases the building to the State or its political subdivisions.

But under the facts you have described, neither subsection of Section 18-5-7 applies here—the Board still intends to use the auditorium for school use, and it would be leasing it to a private company. Thus, the Board's proposal would exceed its express authority under Section 18-5-7. We find no implied authority deriving from the statute, either. We think it important that the Legislature was unmistakably clear about what types of leases it wanted to permit—and the sort of lease the Board now wants to enter is noticeably absent. "[I]n the interpretation of statutory provisions the familiar maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies." *Progressive Max Ins. Co. v. Brehm*, 246 W. Va. 328, 334, 873 S.E.2d 859, 865 (2022); *cf. Dooley v. Bd. of Educ. of Cabin Creek Dist.*, 80 W. Va. 648, 93 S.E. 766, 768 (1917) (finding that a statute's specificity about the ways in which school property could be disposed precluded other, non-enumerated avenues of sale or disposition).

We reach the same conclusion under West Virginia Code § 18-5-13, which sets out the general powers that boards of education may exercise. As relevant here, boards may "[c]ontrol and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county" and likewise maintain buildings like the auditorium here. W. Va. Code § 18-5-13. But nothing in this language explicitly gives the Board the ability to lease the auditorium to a for-profit company. And we further conclude that the language does not unambiguously greenlight this sort of lease by implication because this kind of lease arrangement—a lease of a still-operating school facility to a for-profit entity for the express purpose of leasing back the facility to a non-profit entity—is not a normal and necessary aspect of managing and maintaining school buildings. What's more, because Section 18-5-7 already addresses the limited circumstances that the Board may lease school property, Section 18-5-13 shouldn't be read to expand that authority. *See Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W. Va. 663, 670, 815 S.E.2d 474, 481 (2018) ("[T]he general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled.").

Cases from the Supreme Court of Appeals confirm our understanding of these two statutes, as the Court has hewed closely to the enabling statutes' language when deciding the powers of a county board of education to lease land. *See Herald v. Bd. of Educ.*, 65 W. Va. 765, 65 S.E. 102 (1909). In *Herald*, the Court rejected a county school board's lease of a school lot for oil and gas, finding that a board of education "cannot lease [land] for money making, because the statute provides for the accomplishment of its object by taxation, not by negotiation in the business world." *Id.* at 105. To allow the board to lease for profit, the Court said, would provide limitless powers to a board of education. *Id.* at 106 ("If such boards may wield such powers, where is the limit, and how far may it not frustrate the whole purpose of the ownership of the board?"). The Court later upheld a similar plan, however, after the legislature revised the statute because "[t]hat power has since been conferred by the legislature." *Garrett v. Bd. of Educ. of Chapmansville Dist.*, 109 W. Va. 714, 156 S.E. 115, 116 (1930). Thus, the Court recognizes that a school board's power goes only as far as the statutory language.

This Office addressed similar questions in similar fashion in two earlier opinion letters. In a 2018 opinion letter, we explained that a county commission lacks the authority to create a

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"lease designed to allow a private company to conduct for-profit business activities" on county-owned property because it would exceed "the Commission's express powers." 35 W. Va. Att'y Gen. Op. 24, 2018 WL 3390019 (June 6, 2018). This concern arises "even as a joint lessee." 35 W. Va. Att'y Gen. Op. 24. This Opinion was consistent with another opinion from 2014, in which we concluded that a county commission could not lease or rent the third floor of a county-owned building to a private individual for use as a private residence. 31 W. Va. Att'y Gen. Op. 20, 2014 WL 1875639 (May 6, 2014). Though we noted county commissions may lease property involving a private company provided it is for a "public purpose," that power exists only because a statutory provision gives the county commission express authority. W. Va. Code § 7-1-3hh. It also makes sense for county commissions to have this authority—and not boards of education—because county commissions' "powers are wider than those of a board of education." *Herald*, 65 W. Va. 765, 65 S.E. 102, 105 (1909).

So consistent with the statutory text, case law, and the 2018 and 2014 Opinion Letters, we conclude that a county board of education lacks the authority to lease property still being used for school purposes to a for-profit business.

Even aside from the lease agreement, the Board also lacks the authority to create and co-own a legally distinct for-profit company. Nothing in West Virginia Code Sections 18-5-7, 18-5-13, or any other section that we have reviewed says that a board of education could co-own a for-profit entity. And as explained above, we think this arrangement cannot be seen as an exercise of implied authority tied to one of the Board's express powers. (The Board has not yet identified any such source, either.)

Here again, precedent from the Supreme Court of Appeals forecloses the Board's ability to do so, too. *Napier*, 209 W. Va. 719, 551 S.E.2d 362. In *Napier*, the Court analyzed a Lincoln County Board of Education program called "West Virginia Dreams," a collaborative effort between the board of education and a non-profit community organization to provide after-school and summer programs. *Id.* at 720-21, 551 S.E.2d at 363-64. The Court considered whether this venture was subject to the statutory grievance process for state and local educational employees. *Id.* at 725, 551 S.E.2d at 368. In holding that the Grievance Board had jurisdiction to hear the grievance, the Court recognized that the county board of education lacked "the power under West Virginia law to form such an entity in affiliation with another organization." *Id.* at 724, 551 S.E.2d at 367. No "direct or implied authority permitt[ed]" the board of education's actions. *Id.* So, the board of education could not create a separate entity or shield itself from the "statutory grievance process." *Id.* at 725, 554 S.E.2d at 368. Although *Napier* involved issues of jurisdiction, it again shows that the Supreme Court construes the statutory text that empowers the board of education narrowly in a closely analogous situation.

Napier also shows that, even if the Board could act as a co-owner in this venture, it may not allow the Board to take advantage of the sought-after tax credits. The *Napier* Court analyzed who controlled West Virginia Dreams, finding that the board of education still controlled the program by "retain[ing] the final say in all matters related to the project"; moreover, a "majority of the Management Team [wa]s composed of employees of the Board of Education." *Napier*, 209 W. Va. at 725, 551 S.E.2d at 368. The board of education's control meant that the program

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did not "stand apart to any material degree from the Board of Education" and would be treated as a subordinate organization—not a "fiscal agent for another entity." *Id.* Although we are presented with only limited facts about the degree of control that the Monongalia County Board of Education would exercise over this entity, the same might be true here. At least based on the facts we know, it appears the Board would likely exert substantial control over the for-profit company to ensure that tax credits are received and spent appropriately. So, courts could still treat the management company as part of the Board—making it ineligible for the tax credits.

But that eligibility question only matters if the Board had the authority to enter into a lease with a for-profit business of its own making—something the statutory provisions, case law, and previous Opinions of the Attorney General say cannot happen.

* * * *

However admirable its ultimate objectives might be, the Board has limited powers to lease its property. It can lease its property if it no longer needs it, or it can lease it to the State of West Virginia or its political subdivisions. But it cannot lease its property to a for-profit company, let alone co-own the for-profit business.

Sincerely,

Patrick Morrisey
West Virginia Attorney General

Michael R. Williams
Principal Deputy Solicitor General

Spencer J. Davenport
Assistant Solicitor General

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WV SECRETARY OF STATE
OCTOBER 10, 2023 10:56 AM

Other

WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED
100 Dee Drive
Charleston, West Virginia 25311-1600

October 10, 2023

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **October 6, 2023**.

LETTER OF INTENT RECEIVED

October 3, 2023- St. Joseph Behavioral, LLC, CON File #23-5-12789-BH, to provide inpatient psychiatry services at 1824 Murdoch Avenue, Building G, Parkersburg, Wood County, West Virginia; capital expenditure, $8,983,100.

LETTER OF INTENT WITHDRAWN

October 6, 2023- Hometown Care, LLC, CON File #23-1/2/3/4/5/12785-PC, for the provision of personal care services in Wood, Jackson, Mason, Road, Putnam, Cabell, Kanawha, Lincoln, Wayne, Boone, Logan, Wyoming, Fayette, Raleigh, McDowell, Mercer, Summers, and Monroe counties in West Virginia; capital expenditure, $1,500. Application not received.

HEARING NOTICE

The Administrative Hearing has been SCHEDULED in the following matter:

October 3, 2023- ELDER AIDE SERVICES, LLC
CON File # 23-2/3/4-12697
SPECIAL TOUCH NURSING SERVICE
CON File # 23-2/3-12707-PC
A SPECIAL TOUCH IN-HOME CARE, LLC
CON File # 23-2/3/4-12702-PC
VILLAGE CAREGIVING, LLC
CON File # 23-12-12717-PC
SOUTHERN HOME CARE SERVICES, INC.
CON File # 23-2/3/4/5-12699-PC
PANHANDLE SUPPORT SERVICES, INC.
CON File # 23-2/3-12689-PC
PANHANDLE SUPPORT SERVICES, INC.
CON File # 23-1/4-12694-PC

Tim Adkins, Director CON Testimony

Administrative Hearing: **October 10, 2023 at 9:00 am**

The administrative hearing in the above-referenced matter will be held in the offices of the Health Care Authority, 100 Dee Drive, Charleston, West Virginia 25311-1600, unless otherwise noted.

PROJECTS DETERMINED NOT REVIEWABLE

October 3, 2023- United Hospital Center, CON File #23-7-12773-X, for the office relocation of a physician practice from 812 Gorman Avenue, Elkins, Randolph County, to 105 Nathan Street, Elkins, Randolph County, West Virginia; capital expenditure, $0.

October 6, 2023- Home Care Plus, Inc., CON File #23-4-12769-X, for the addition of a branch office in Summersville, Nicholas County, West Virginia; capital expenditure, $0.

Further information may be obtained on any of the above-referenced projects by contacting Timothy Adkins, Interim Director, Certificate of Need Division.