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

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NO RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION

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
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TITLE	25	SOCIAL WORK EXAMINERS
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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
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TITLE	38	MINING AND RECLAMATION
TITLE	42	LABOR
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TITLE	146	STATE ELECTION COMMISSION
TITLE	148	ADMINISTRATION
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TITLE	150	PUBLIC SERVICE COMMISSION
TITLE	153	SECRETARY OF STATE
TITLE	155	AUDITOR
TITLE	157	HIGWAYS
TITLE	164	SCHOOL BUILDING AUTHORITY
TITLE	174	REAL ESTATE COMMISSION
TITLE	175	ALCOHOL BEVERAGE CONTROL COMMISSION
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TITLE	177	ATHLETIC COMMISSION
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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 11/16/2023			
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 11/3/2023			
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 (61-19) Sunset Provision	WV Manufacture Grade Milk Legislative								
Agriculture (61-20) Sunset Provision	Employment Reference and Inquiries and Background Checks Legislative								
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	Recommends Rejection 10/24/2023			
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			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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			
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			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Auditor (155-12)	Rules for Private Trust Companies Legislative	10/25/2023	11/27/2023	10/25/2023 Approved 10/31/2023					
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			
Community and Technical College Education (135-06)	Performance Indicators Legislative	6/21/2023	7/24/2023		7/26/2023	Approved 10/15/2023			
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	Approved 10/15/2023			
Community and Technical College Education (135-32)	Tuition and Fees Legislative	6/21/2023	7/24/2023		7/26/2023	Approved 10/15/2023			
Community and Technical College Education (135-49, repeal)	Accountability System Legislative	6/21/2023	7/24/2023		7/26/2023	Approved 10/15/2023			
Conservation Agency (63-03) Sunset Provision	State Conservation Committee Grant Program Legislative				10/30/2023				
Counseling (27-01)	Licensing Rule Legislative	9/5/2023	10/5/2023	8/31/2023 Effective 10/12/2023	10/6/2023	Modified & Approved 10/30/2023 Filed 11/15/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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	Modified & Approved 10/30/2023 Filed 11/15/2023			
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	Modified & Approved 10/24/2023 Filed 11/9/2023			
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			
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 Filed 11/13/2023			
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

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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					11/8/2023	7/1/2024
Education (126-114)	Approval of Educator Preparation Programs Legislative Exempt	9/13/2023	10/16/2023					11/8/2023	12/11/2023
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 Filed 10/25/2023			
Election Commission (146-03)	Regulation of Campaign Finance Legislative	7/27/2023	8/28/2023		9/13/2023	Modified & Approved 10/24/2023			
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 Filed 10/25/2023			
Emergency Management (170-02)	Industrial Accident Rapid Response Rule Legislative	6/26/2023	7/26/2023		7/27/2023	Approved 9/10/2023			
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			
Environmental Protection Secretarys's Office (60-13)	Design Build Program Procedural	10/27/2023	11/28/2023						
Family Protection Services Board (191-02)	Domestic Violence Program Licensure Standards Legislative	5/30/2023	6/29/2023		7/13/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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			
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 Filed 11/13/2023			
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 Filed 11/13/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health (64-04)	Public Water Systems Operators Legislative	5/17/2023	6/16/2023	10/26/2023 Approved 11/6/2023	7/13/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
Health (64-05)	Wastewater Systems and Operators Legislative	5/17/2023	6/16/2023	10/26/2023 Approved 11/6/2023	7/13/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
Health (64-11)	Behavioral Health Centers Licensure Legislative	6/5/2023	7/5/2023		7/13/2023	Modified & Approved 10/30/2023 Filed 11/7/2023			
Health (64-12)	Hospital Licensure Legislative	6/5/2023	7/5/2023		7/13/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
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	Modified & Approved 10/24/2023 Filed 11/7/2023			
Health (64-30, repeal)	Fees for Permits Legislative	5/17/2023	6/16/2023		7/21/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
Health (64-51)	Fees for Services Legislative	5/17/2023	6/16/2023		7/21/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
Health (64-84)	Medical Examiner Requirements for Postmortem Inquires Legislative	5/17/2023	6/16/2023		7/13/2023	Modified & Approved 10/30/2023 Filed 11/7/2023			
Health (64-91) Sunset Provision	Newborn Screening System Legislative				2/16/2023	Modified & Approved 8/7/2023 Filed 8/22/2023			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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 Amendment 11/7/2023 ERD by 12/19/2023	7/18/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
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	Modified & Approved 10/24/2023 Filed 11/7/2023			
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	Approved 10/24/2023			
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			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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 Filed 11/7/2023			
Highways (157-05)	Traffic and Safety Rules Legislative	6/15/2023	7/17/2023		7/26/2023	Modified & Approved 9/10/2023 Filed 11/8/2023			
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	Modified & Approved 10/24/2023 Filed 11/7/2023			
Human Services (78-27)	Procedure to Contest the Substantiation of Child Abuse or Neglect Legislative	5/30/2023	6/29/2023		7/13/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
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			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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	Modified & Approved 10/30/2023 Filed 11/6/2023			
Medicine (11-01B)	Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 10/30/2023 Filed 11/1/2023			
Medicine (11-06)	Continuing Education for Physicians and Podiatric Physicians Legislative	6/21/2023	7/21/2023		7/27/2023	Modified & Approved 10/30/2023 Filed 11/1/2023			
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			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Miners Health Safety and Training (56-14)	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			
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				11/7/2023				
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	Modified & Approved 10/24/2023 Filed 11/7/2023			
Motor Vehicles (91-06)	Dealer Licensing Legislative	6/23/2023	7/23/2023		7/26/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			
Motor Vehicles (91-10)	Handicapped Parking Permits Legislative	6/6/2023	7/7/2023		7/13/2023	Modified & Approved 10/24/2023 Filed 11/7/2023			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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			
Natural Resources (58-11)	Hunting, Fishing, and Other Outfitters and Guides Legislative	6/26/2023	7/27/2023		7/27/2023	Modified & Approved 10/24/2023 Filed 11/16/2023			
Natural Resources (58-12)	Commercial Whitewater Outfitters Legislative	6/26/2023	7/27/2023		7/27/2023	Modified & Approved 10/24/2023 Filed 11/16/2023			
Natural Resources (58-16) Sunset Provision	Transporting and Selling Wildlife Pelts and Parts Legislative								
Natural Resources (58-23)	Revocation of Hunting and Fishing Licenses Legislative	6/26/2023	7/27/2023		7/27/2023	Modified & Approved 10/24/2023 Filed 11/16/2023			
Natural Resources (58-25) Sunset Provision	Boating Rule Legislative								
Natural Resources (58-26) Sunset Provision	Special Boating Rule Legislative								
Natural Resources (58-32) Sunset Provision	Public Use of Campgrounds in WV State Parks and State Forests and Campsites in State Rail Trails under the DNR Legislative								
Natural Resources (58-34) Sunset Provision	Special Projects and Grants for WV State Parks, State Forests, and State Rail Trails Under the DNR Legislative								
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			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources (58-47) Sunset Provision	Prohibitions When Hunting and Trapping Legislative								
Natural Resources (58-61) Sunset Provision	Special Fishing Rule Legislative								
Natural Resources (58-62) Sunset Provision	Catching and Selling Baitfish Legislative								
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	Modified & Approved 10/24/2023 Filed 11/14/2023			
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	Modified & Approved 10/24/2023 Filed 11/16/2023			
Optometry (14-10)	Continuing Education Legislative	6/27/2023	7/27/2023		7/28/2023	Modified & Approved 10/24/2023 Filed 11/15/2023			
Optometry (14-11)	Injectable Pharmaceuticals by Injection Certificate Legislative	6/28/2023	7/28/2023		7/31/2023	Modified & Approved 10/24/2023 Filed 11/16/2023			
Optometry (14-14)	Eyelid Procedures Legislative	6/28/2023	7/27/2023		7/28/2023	Modified & Approved 11/1/2023 Filed 11/15/2023			
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			
Osteopathic Medicine (24-08) Sunset Provision	Waiver of Initial Licensing Fees for Certain Initial Licensure Applicants Legislative				11/15/2023				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Parkways Authority (184-05)	Rules Providing for Electronic Toll Collection and the Enforcement Process Legislative	8/17/2023	9/20/2023						
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			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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	Authorize with Certain Amendments 11/1/2023			
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	Modified & Approved 10/24/2023 Filed 11/16/2023			
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	Modified & Approved 10/30/2023 Filed 11/16/2023			
Registered Nurses, WV Board of (19-07)	Advanced Practice Registered Nurse Licensure Requirements Legislative	6/14/2023	7/14/2023		7/26/2023	Approved 10/24/2023			
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	Approved 10/24/2023			
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						

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
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 Filed 10/25/2023			
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 Filed 10/25/2023			
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					11/3/2023	12/4/2023
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	Approved 10/24/2023			
Tax (110-21H)	Income Tax Credits for Property Taxes Paid Legislative	6/8/2023	7/10/2023		7/25/2023	Approved 10/24/2023			
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	Approved 10/24/2023			
Treasurer (112-05)	Enforcement of the Unifrom Unclaimed Property Act Legislative	6/27/2023	7/27/2023		7/28/2025	Modified & Approved 10/24/2023 Filed 11/2/2023			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Treasurer (112-19)	West Virginia Hope Scholarship Board Procedures and Bylaws Procedural	8/16/2023	9/15/2023						
Treasurer (112-20)	Jumpstart Savings Program Legislative	6/9/2023	7/10/2023		7/13/2023	Modified & Approved 10/24/2023 Filed 11/2/2023			
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

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11/16/2023 9:04:47 AM

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Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative TITLE-SERIES: 61-04B

RULE NAME: Frozen Desserts and Imitation Frozen Desserts

CITE AUTHORITY: §19-11B-10

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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.

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MAC WARNER

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11/15/2023 12:29:37 PM

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Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Counseling

RULE TYPE: Legislative TITLE-SERIES: 27-01

RULE NAME: Series1 Licensing Rule

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

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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.

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11/15/2023 12:46:38 PM

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Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Counseling

RULE TYPE: Legislative TITLE-SERIES: 27-08

RULE NAME: Series 8 Marriage and Family Therapist Licensing Rule

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

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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.

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MAC WARNER

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11/9/2023 2:44:27 PM

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Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Crime Delinquency And Correction

RULE TYPE: Legislative TITLE-SERIES: 149-11

RULE NAME: Sexual Assault Forensic Examinations

CITE AUTHORITY: W. Va. Code 15-9B-4

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Brandolyn N Felton-Ernest -- 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.

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11/13/2023 3:31:03 PM

Office of West Virginia
Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Economic Development WV Department of

RULE TYPE: Legislative TITLE-SERIES: 145-19

RULE NAME: Rule Governing The Operation Of Motorsports Complexes And Events

CITE AUTHORITY: 20-19-7

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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.

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MAC WARNER

ADMINISTRATIVE LAW DIVISION

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11/13/2023 3:25:53 PM

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Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Forestry

RULE TYPE: Legislative TITLE-SERIES: 22-02

RULE NAME: Sediment Control During Commercial Timber-Harvesting Operations - Licensing

CITE AUTHORITY: 19-1B-4

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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

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11/13/2023 3:29:19 PM

Office of West Virginia
Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Forestry

RULE TYPE: Legislative TITLE-SERIES: 22-03

RULE NAME: Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification

CITE AUTHORITY: 19-1B-7

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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.

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11/16/2023 5:00:23 PM

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Natural Resources

RULE TYPE: Legislative TITLE-SERIES: 58-11

RULE NAME: Hunting, Fishing and Other Outfitters and Guides

CITE AUTHORITY: 20-1-7(30) and 20-2-23

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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.

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Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Natural Resources

RULE TYPE: Legislative TITLE-SERIES: 58-12

RULE NAME: Commercial Whitewater Outfitters

CITE AUTHORITY: 20-2-23a

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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.

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11/16/2023 5:03:55 PM

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Natural Resources

RULE TYPE: Legislative TITLE-SERIES: 58-23

RULE NAME: Revocation of Hunting and Fishing Licenses

CITE AUTHORITY: 20-1-7(31) and 20-2-28

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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
11/14/2023 2:54:30 PM
Office of West Virginia
Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Natural Resources

RULE TYPE: Legislative TITLE-SERIES: 58-67

RULE NAME: Lifetime Hunting, Trapping, and Fishing Licenses

CITE AUTHORITY: §20-2B-7

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Graham Platz -- 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
11/16/2023 12:36:27 PM
Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Optometry

RULE TYPE: Legislative TITLE-SERIES: 14-01

RULE NAME: Rules Of the West Virginia Board of Optometry

CITE AUTHORITY: WV Code, 30-1-26, 30-8A-1, et. seq. and 30-8-1, et. seq.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Pamela P Carper -- 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
11/15/2023 4:27:07 PM
Office of West Virginia
Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Optometry

RULE TYPE: Legislative TITLE-SERIES: 14-10

RULE NAME: Continuing Education

CITE AUTHORITY: WV Code, 30-1-26, 30-8A-1, et. seq. and 30-8-1, et. seq.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Pamela P Carper -- 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
11/16/2023 8:20:11 AM
Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Optometry

RULE TYPE: Legislative TITLE-SERIES: 14-11

RULE NAME: Injectable Pharmaceutical Agents Certificate

CITE AUTHORITY: WV Code, 30-1-26, 30-8A-1, et. seq. and 30-8-1, et. seq.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Pamela P Carper -- 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
11/15/2023 4:47:45 PM

Office of West Virginia
Secretary Of State

Legislative

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Optometry

RULE TYPE: Legislative TITLE-SERIES: 14-14

RULE NAME: Eyelid Procedures

CITE AUTHORITY: WV Code, 30-1-26, 30-8A-1, et. seq. and 30-8-1, et. seq.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Pamela P Carper -- 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
11/15/2023 11:30 AM

Office of West Virginia
Secretary Of State

NOTICE OF TECHNICAL AMENDMENT

AGENCY: Osteopathic Medicine TITLE-SERIES: 24-08

RULE TYPE: Legislative

RULE NAME: Waiver of Initial Licensing Fees for Certain Initial Licensure Applicants

CITE STATUTORY AUTHORITY: W. Va. Code § 30-1-23

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

The second sentence in section 3.4 currently reads:

An individual granted an initial licensing fee waiver must still apply for licensure and meet the qualifications and criteria for licensure as set forth in W. Va. Code §30-3-1, et seq., or W. Va. Code §30-3E-1, et seq., and the Boards corresponding legislative rules as set forth in 24CSR1, et seq., or 24CSR2, et seq.

This sentence will be revised to read:

An individual granted an initial licensing fee waiver must still apply for licensure and meet the qualifications and criteria for licensure as set forth in W. Va. Code §30-14-1 et seq. or W. Va. Code §30-3E-1 et seq. and the Boards corresponding legislative rules as set forth in 24CSR1 or 24CSR2.

FILING DATE: 11/15/2023 EFFECTIVE DATE: 05/04/2020

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
11/15/2023 2:17:13 PM

Office of West Virginia
Secretary Of State

Legislative

NOTICE OF SUNSET PROVISION EXTENSION REQUEST

AGENCY: Osteopathic Medicine TITLE-SERIES: 24-08

RULE TYPE: Legislative CITE STATUTORY AUTHORITY: W. Va. Code § 30-1-23

RULE NAME: 24-08 Waiver of Initial Licensing Fees for Certain Initial Licensure Applicants

PLEASE SELECT A SUNSET PROVISION OPTION:

[X] EXTEND THE SUNSET DATE OF THE RULE.

5 REQUESTED NUMBER OF YEARS FOR EXTENSION (SUBJECT TO LRMRC REVIEW).

[ ] LET THIS RULE EXPIRE.

PLEASE INDICATE IF THIS RULE INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS [ ] INCORPORATED BY REFERENCE [ ]

PLEASE PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes procedures for waiving the initial licensing fee for qualifying low-income individuals and military families. The Board only seeks to extend the sunset date of the rule from May 4, 2025, to August 1, 2030.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE REASONS FOR REQUESTING A SUNSET PROVISION EXTENSION:

The Board supports this rule and is required to maintain this rule pursuant to W. Va. Code § 30-1-23.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Board licenses osteopathic physicians and physician assistants. The respective initial licensing fees for those professions are $400 and $100. The Board would incur a loss in revenue if issuing a license without a fee pursuant to this rule. It is not possible to predict how many future applicants will qualify for the fee waiver under this rule, but that number is likely low. The Board does not expect this rule to impact its financial stability.

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

This rule is likely to have zero or minimal economic impact on the state or its residents, depending on the number of future applicants who qualify for the fee waiver.

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
11/15/2023 2:54:35 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: Osteopathic Medicine TITLE-SERIES: 24-08

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

RULE NAME: 24-08 Waiver of Initial Licensing Fees for Certain Initial Licensure Applicants

PRIMARY CONTACT

NAME: Chase Holcomb

ADDRESS: 405 Capitol Street Suite 402

Charleston, WV 25301

EMAIL: chase.o.holcomb@wv.gov

PHONE NUMBER: 304-558-6095

CITE STATUTORY AUTHORITY: W. Va. Code § 30-1-23

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 § 30-1-23 establishes a waiver of initial licensing fees for certain low-income individuals and military families. The Board is required to maintain this rule to carry out the intent of W. Va. Code § 30-1-23. The rule establishes procedures for waiving the applicable fees for qualifying individuals.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

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? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

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

eFILED
11/16/2023 11:43:29 AM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Registered Nurses WV Board of

RULE TYPE: Legislative TITLE-SERIES: 19-01

RULE NAME: POLICIES , STANDARDS AND CRITERIA FOR THE EVALUATION, APPROVAL AND NATIONAL NURSING ACCREDITATION OF PRELICENSURE NURSING EDUCATION PROGRAMS

CITE AUTHORITY: 30-7-4 and 30-1-4

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Sue Ann Painter -- 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
11/16/2023 10:39:51 AM

Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Registered Nurses WV Board of

RULE TYPE: Legislative TITLE-SERIES: 19-03

RULE NAME: REQUIREMENTS FOR REGISTRATION AND LICENSURE AND CONDUCT CONSTITUTING PROFESSIONAL MISCONDUCT

CITE AUTHORITY: 30-7-4

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Sue Ann Painter -- 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
23-1C-02030	Insurance Commission	Amanda M. Gorham	11/9/2023
N/A	Registered Nurses, WV Board of	Amy Marie Mackey	10/4/2023

State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

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

AG OPINION

FILED
2023 NOV 16 P 4: 08
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

November 16, 2023

Sarah Canterbury
General Counsel
Office of the State Treasurer of West Virginia
State Capitol, Room E-145
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Ms. Canterbury:

On behalf of the State Treasurer (acting in his capacity as Chairman of the West Virginia Hope Scholarship Board), you have asked for an Opinion of the Attorney General on whether a county school board or public school may take certain actions against students who are enrolled full-time in public-school programs while also attending privately funded nonpublic-school programs.

We are issuing this opinion under West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advice upon questions of law ... whenever required to do so, in writing, by ... any ... state officer, board or commission." 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 some West Virginia students are engaged in "dual enrollment." In that situation, a student enrolls in and attends a public-school program full-time while also attending a privately funded additional education program outside the time that he or she is attending public school. For example, a dual-enrolled student might attend an in-person private school during the day while attending a virtual public school in the evening. Your letter assumes that each student is meeting all the academic and attendance requirements of his or her public-school program while dual-enrolled.

We understand that some families dual-enroll to qualify their children to receive funds under the Hope Scholarship Act. That act creates state-administered educational-savings accounts for eligible students. Among other ways, a student may become eligible to receive Hope Scholarship funds if he or she is "enrolled full-time and attending a public elementary or secondary school program in this state for at least 45 calendar days during an instructional term at the time of application and until an award letter is issued by the [Hope Scholarship] board." W. Va. Code § 18-31-2(5)(B). So after attending their public schools continuously for 45 days, a dual-enrolled student can file a notice of intent to invoke the exemption from compulsory public-school attendance requirements for Hope Scholarship recipients, *id.* § 18-8-1(m), and apply to the Hope Scholarship program, *id.* § 18-31-5. Once accepted, the student can unenroll from the public-school program and use his or her Hope Scholarship account to pay for nonpublic school tuition or any other qualified educational expense. *Id.* § 18-31-7.

Some have objected to this dual-enrollment approach to securing eligibility for Hope Scholarship funds. Your letter reports that at least one public school has informed parents that it will not allow students to enroll in public school if those students are simultaneously enrolled in a nonpublic school program. According to your letter, a parent has also reported that a public school has threatened to mark dual-enrolled students as truant, even though the dual-enrolled students are meeting attendance requirements. The Hope Scholarship Board has also learned that some county school boards plan to adopt policies prohibiting dual enrollment to render a student eligible to receive Hope Scholarship funds.

Your letter thus raises two related legal questions:

(1) *Can a county board of education or public school lawfully prohibit a student from participating in a public-school program based on the student's simultaneous engagement in nonpublic education outside of the public-school program?*

(2) *Can a county board of education or public school lawfully prohibit a student from participating in nonpublic education outside of the public-school program while simultaneously enrolled in and attending a public-school program?*

As we explain further below, we answer both questions the same way: "No." Excluding students from public schools merely because they are pursuing additional educational opportunities elsewhere would contravene both the United States and West Virginia Constitutions and state statutes. The same is true of any attempt by county school boards or schools to bar students from participating in nonpublic school programs while attending public schools. And both approaches would undermine the Legislature's intent in establishing the Hope Scholarship program, further confirming that neither is appropriate.

Any local school authorities who are acting or intending to act against dual-enrolled students should stop immediately.

AG OPINION

DISCUSSION

Local school authorities have evidently sought to foreclose "dual enrollment" by either barring certain students from attending public schools or preventing public-school students from participating in private educational activities. We address each approach in turn.

I. Prohibiting Dual-Enrolled Students From Participating In Public-School Programs

Local school authorities, like county school boards and public schools, must always ensure that their actions have not violated either "statutes []or the Constitution." *Randolph Cnty. Bd. of Educ. v. Adams*, 196 W. Va. 9, 15 n.7, 467 S.E.2d 150, 156 n.7 (1995). So in considering whether those authorities can bar dual-enrolled students from the public schools, we start by examining the statutory and constitutional provisions implicated here.

The Right to Public Education Generally

Education is particularly important in West Virginia. West Virginia's founders "lived among the ruins of a system that virtually ignored public education and its significance to a free people." *Adams*, 196 W. Va. at 15, 467 S.E.2d at 156. So they had a special appreciation for the idea that "[e]ducation is the cornerstone of our society." *Cobb v. W. Va. Hum. Rts. Comm'n*, 217 W. Va. 761, 775, 619 S.E.2d 274, 288 (2005). They thus "gave high priority to public education" when they wrote our Constitution. *Adams*, 196 W. Va. at 15, 467 S.E.2d at 156.

Perhaps unsurprisingly, then, the Supreme Court of Appeals of West Virginia "has unquestionably found that education is a fundamental right" under the West Virginia Constitution. *Kanawha Cnty. Pub. Libr. Bd. v. Bd. of Educ. of Cnty. of Kanawha*, 231 W. Va. 386, 402, 745 S.E.2d 424, 440 (2013). It has repeatedly stressed the right's importance for going on half of a century now. *See, e.g.*, *State v. Beaver*, 248 W. Va. 177, ___, 887 S.E.2d 610, 629 (2022); *Bd. of Educ. of Cnty. of Kanawha v. W. Va. Bd. of Educ.*, 219 W. Va. 801, 807, 639 S.E.2d 893, 899 (2006); *Pauley v. Kelly*, 162 W. Va. 672, 707, 255 S.E.2d 859, 878 (1979). And that right is rooted in the express text of our Constitution, where Article 12, Section 1 of the West Virginia Constitution directs that the State will provide "a thorough and efficient system of free schools." In short, although education is not a fundamental right under the U.S. Constitution, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35-39 (1973), the West Virginia Constitution provides broader protections, *Pauley*, 162 W. Va. at 679, 255 S.E.2d at 864 (noting *Rodriguez* does not limit state constitutions).

Every student in the State is entitled to a public education. Indeed, the Supreme Court of Appeals often speaks in blanket and unequivocal terms in defining the right. "*[A]ll students* are entitled to a basic level of education free of budgetary concerns." *Adams*, 196 W. Va. at 21, 467 S.E.2d at 162 (emphasis added); *see also Cowen v. Harrison Cnty. Bd. of Educ.*, 195 W. Va. 377, 381, 465 S.E.2d 648, 652 (1995) (explaining that the West Virginia Constitution "assures every student in West Virginia a thorough and efficient education"). "[A]ll West Virginia children" benefit from that right. *Beaver*, 248 W. Va. at ___, 888 S.E.2d at 629; *see also, e.g.*, *Potter v. Miller*, 168 W. Va. 601, 603, 287 S.E.2d 163, 165 (1981) ("Certainly petitioners have a clear legal

right to reasonable access to public education for their children."). Even a century ago, the Court emphasized how "*[e]very child* of school age in this state is entitled to attend the public schools in the district in which it actually resides for the time being." *Grand Lodge, I.O.O.F., of W. Va., v. Bd. of Educ. of Indep. Sch. Dist. of Elkins*, 90 W. Va. 8, 15, 110 S.E. 440, 443 (1922).

Statutory Considerations

Consistent with this exception-free approach, the Legislature has likewise said that public schools must be open to *all* students of a certain age. West Virginia Code § 18-5-15(a), for example, provides that "[t]he public schools shall be open for the full instructional term to *all* persons who have attained the [statutorily set] entrance age." (emphasis added). Other provisions speak in similarly blanket terms. *See, e.g.*, W. Va. Code § 18-5-18(a) (prescribing that county school boards "shall provide kindergarten programs for all children"); *id.* § 18-20-1 (providing for special educational programs for "all exceptional children" between certain ages).

West Virginia courts read these provisions to mean that "the public schools of this State are presumptively open to all persons of proper age." *White by White v. Linkinoggor*, 176 W. Va. 410, 414, 344 S.E.2d 633, 637 (1986). The only recognized exceptions concern students who are not properly inoculated, those that might be carrying infectious diseases, and those who are so disruptive that they can be properly expelled. *Id.* But otherwise, "[t]here is no authority for school boards to refuse admittance to children to attend public schools within the age requirements provided by statute." *State ex rel. Doe v. Kingery*, 157 W. Va. 667, 673, 203 S.E.2d 358, 361 (1974); *see also Detch v. Bd. of Ed. of Greenbrier Cnty.*, 145 W. Va. 722, 730, 117 S.E.2d 138, 143 (1960) (explaining that Section 18-5-15 is "clearly intended … to guarantee or assure a child, who has reached the [statutory] age … before the commencement of a particular term, the right to be enrolled for the full term").

In our view, county school boards and local school officials violate these statutes when they bar dual-enrolled students from attending public-school programs merely because those students are also benefiting from educational opportunities elsewhere. None of the few narrow recognized exceptions to universal education apply here. And we do not see any implied powers in these statutes that would allow a local authority to bar a student who is otherwise meeting the attendance, behavior, and academic standards of the public school. "All persons" and "all students" means just that—all. *See Nat'l Coal. For Students With Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 290 (4th Cir. 1998) (describing how the "broad, inclusive word 'all'" "suggests an expansive meaning because 'all' is a term of great breadth").

Our conclusion adheres to prior interpretations of the statutes from this office and elsewhere.

In a 1966 opinion letter, for instance, the Attorney General explained how "it is generally held that youths of school age have an absolute right to attend public schools." Letter from C. Donald Robertson, W. Va. Att'y Gen., to William Hamilton, Exec. Assistant, State Superintendent of Schs. (Jan. 17, 1966), 1966 WL 87450. The opinion went on to suggest that there might be "conditions under which youths may be excluded in the interest of the welfare of the other students." *Id.* We are unsure if all the "conditions" then listed in the opinion letter align with the

approach later taken in *Kingery*, *Linkinoggor*, and other more recent authority. But even if they do, none of them are analogous to students engaged in dual enrollment—as those students pose no discernible threat to the other public-school students.

Likewise, in another 1966 opinion letter, the Attorney General discussed a different kind of dual-enrollment scenario, in which students attending a nonpublic school wished to attend a public school only part-time. Letter from C. Donald Robertson, W. Va. Att'y Gen., to William Hamilton, Exec. Assistant, State Superintendent of Schs. (Sept. 8, 1966), 1966 WL 87435. The opinion notes again that the right generally admits of no exception. *Id.* It then concludes: "A child who has elected to attend a private, parochial or approved nonpublic school, *and who claims exemption from the statutory attendance requirement in the public school*, has no legally enforceable right to compel his enrollment in the public school under a 'shared time' or 'dual enrollment' plan." *Id.* (emphasis added). That conclusion makes sense—when a student elects to remove himself or herself from the public-school system, it may well be that he or she cannot insist that the county board selectively provide some benefits anyway. *Cf. Beaver*, 248 W. Va. at ___, 887 S.E.2d at 629 (finding that right to public schools was not impermissibly lost by the student's "entirely voluntary" decision to elect private schooling); *Janasiewicz v. Bd. of Educ. of Kanawha Cnty.*, 171 W. Va. 423, 426, 299 S.E.2d 34, 38 (1982) ("[A] parochial school student has chosen to reject a free public school education in favor of a privately paid education."). But that situation, of course, does not track the circumstances you describe, as the dual-enrolled student in your case is assuming both the benefits (continued education from the public schools) and the burdens (continued compliance with the compelled attendance requirements). In other words, the dual-enrolled student is not rejecting public education.

Similarly, in a 2002 interpretation, the State Superintendent of Schools concluded that local school districts could not prevent students from enrolling merely because they pursued other educational activities—in that case, a General Equivalency Diploma. The Superintendent, citing Section 18-5-5, confirmed that public schools did indeed "have to accept GED graduates back into their schools." Letter from David Stewart, State Superintendent of Schools, to Stephen Baldwin, Superintendent, Greenbrier County Schools (July 5, 2002), https://bit.ly/40rYnig. Ultimately, all "students ages twenty-one and younger should automatically be re-enrolled and subject to compulsory school attendance." *Id.* So too here.

In short, given what our State's statutes say about who may attend public schools, county school boards and other local school officials would not have authority to prevent dual-enrolled students who are meeting all statutory requirements from attending public schools.

Constitutional Considerations

Statutes aside, we conclude that local actions barring dual-enrolled students from public schools would also be unconstitutional under the West Virginia Constitution. If a local actor "denies or infringes upon a person's fundamental right to an education, then strict scrutiny will apply." *Beaver*, 248 W. Va. at ___, 887 S.E.2d at 629. The school official must then "prove that [his or her] action is necessary to serve some compelling State interest" and that the action is "narrowly tailored" to serve that interest. *Id.* Denying a dual-enrolled student the right to remain enrolled in public schools at all would, in our view, deny the fundamental right to public education,

so this "difficult" standard would apply. *Whitener v. W. Va. Bd. of Embalmers & Funeral Directors*, 169 W. Va. 513, 517, 288 S.E.2d 543, 545 (1982); *see also Miller v. Johnson*, 515 U.S. 900, 920 (1995) (characterizing strict scrutiny as "our most rigorous and exacting standard of constitutional review").

We do not see how effectively expelling dual-enrolled students from the public-school system could satisfy strict scrutiny here.

No compelling state interest would be served by denying public schooling to students meeting all the requirements of public enrollment but doing additional work in out-of-school hours. In fact, compelling students to enroll in public schools alone only to have them withdraw 45 days later and then enroll in a nonpublic program would seem more disruptive to those students' progress than merely allowing the students to enroll in the nonpublic programs at the outset. We recognize public schools might face challenges from planning and budgeting because of the anticipated withdrawal of some number of students 45 days into the school year. But dual enrollment is not the cause of this shift; students would withdraw 45 days into the year no matter whether they are permitted to "dual enroll" or forced to "single" enroll in public schools during the 45-day window. We also have no evidence that students are departing in sufficient numbers to present real challenges to local schools. (Relatedly, we do not have evidence that these departures materially affect the students that remain.) And budgetary and planning concerns seem less substantial because these students would be *departing* public schools—thus freeing up funds unexpectedly and producing something akin to a financial windfall for the schools. What's more, we think the Legislature has already weighed this interest and found it insufficient to overcome other interests that the Hope Scholarship program serves.

And even if these interests were compelling, we do not think that banning students outright is a narrowly tailored remedy. Most obviously, schools could just as easily ask families whether their students intend to withdraw to help plan and budget. In any event, we do not think that students enrolling in two programs at once present the sort of "extreme cases and … specific showing[s] of necessity" that must be established before "strict scrutiny could permit the effective temporary denial of all State-funded educational opportunity." *Cathe A. v. Doddridge Cnty. Bd. of Educ.*, 200 W. Va. 521, 532 n.12, 490 S.E.2d 340, 351 n.12 (1997).

We also conclude that county school boards and public schools would offend the U.S. Constitution if they barred dual-enrolled students from enrolling.

Although education is not a fundamental right under the federal constitution, "neither is it merely some governmental 'benefit' indistinguishable from other forms of social welfare legislation." *Plyler v. Doe*, 457 U.S. 202, 221 (1982). So "[i]f the State"—or, in this case, a local entity—"is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest." *Id.* at 230; *see also, e.g.*, *Toledo v. Sanchez*, 454 F.3d 24, 33 (1st Cir. 2006) (explaining that "heightened scrutiny" would apply to a case of "outright exclusion"). Preserving financial resources is not a substantial interest in this context. *Plyler*, 457 U.S. at 229.

AG OPINION

We do not think a county school board or public school could justify excluding dual-enrolled students under *Plyler*. The facts would present the sort of outright exclusion described in that case. And as we explained above, we can discern no substantial interests that this exclusion would serve. At most, keeping these students out of public schools might serve some kind of financial or administrative interest, but *Plyler* says that kind of interest is not enough to lock the schoolhouse gate. The state educational system is better served by allowing students to pursue more education, not less. *Cf. Embry v. O'Bannon*, 798 N.E.2d 157, 167 (Ind. 2003) ("[D]ual-enrollment programs provide obvious significant educational benefits to the Indiana children for whom participation in a dual-enrollment program affords educational resources and training in subjects they would not otherwise receive"). Further, as your request notes, the exclusion seems especially unjustifiable considering how many similarly situated students—such as home-school students—would *not* be excluded under the apparent policies at issue.

Thus, even if state statutes could be construed in a way that would not foreclose the local schools' proposed actions, our state and federal constitutions would nevertheless present separate barriers, too.

Arbitrary Decision-making

Lastly, even if we could overlook the significant statutory and constitutional problems that we have just described, any actions barring dual-enrolled students from public schools could very well constitute unlawfully irrational decision-making.

The Supreme Court of Appeals has stressed that county school boards—and, by extension, the public schools they govern—must exercise their discretion "intelligently and not arbitrarily and capriciously." *Blessing v. Mason Cnty. Bd. of Educ.*, 176 W. Va. 32, 34, 341 S.E.2d 407, 409 (1985); *see also, e.g.*, *Bd. of Educ. of Cnty. of Randolph v. Scott*, 217 W. Va. 128, 134, 617 S.E.2d 478, 484 (2005) (explaining how a school board's decision must be "reasonable, in the best interests of the students, and not arbitrary or capricious"). An education-related decision might violate that standard when, among other things, it "work[s] an undue hardship on the children to whom it applies." *Blessing*, 176 W. Va. at 34, 341 S.E.2d at 409. In *Blessing*, for example, the Supreme Court of Appeals found that a county board's "mechanical adherence to an inflexible cut-off date for admission to [its] kindergarten program" was arbitrarily and unreasonably applied to a student just a few days shy of that date. *Id.*

As our above analysis suggests, courts might conclude that excluding these students is a not rational, justifiable approach. Perhaps exclusion serves some minimal financial interests of the local schools, but we do not think those interests can ultimately overcome the students' interests in attending the school of their choice. *Cf. Shrewsbury v. Bd. of Ed., Wyoming Cnty.*, 164 W. Va. 698, 702, 265 S.E.2d 767, 769-70 (1980) (explaining that a county school board could not "arbitrarily or capriciously discriminate among children of school age" for financial reasons). The decision to target a few specific students who are enrolled in academic activities outside public-school hours seems irrational for the additional reason that similarly situated students (such as home-school students) are not targeted in a similar way. And forcing students to either forgo potential Hope Scholarship eligibility or withdraw from a private-school program to which they will return in just 45 days seems to work an undue hardship on the student.

In short, we expect West Virginia courts could declare policies excluding dual-enrolled unlawful students for this separate and independent reason as well.

II. Prohibiting Public-School Students From Participating In Nonpublic-School Programs

We must also consider whether local school authorities can prevent their public-school students from engaging in nonpublic educational activities outside of public-school hours. Here again, we start by examining the statutory and constitutional limits that might apply. *See State ex rel. Dilley v. W. Va. Pub. Emps. Ret. Sys.*, 180 W. Va. 24, 26, 375 S.E.2d 202, 204 (1988) (noting how a county school board must act "within constitutional and statutory limits").

Statutory Considerations

As the Supreme Court of Appeals has stressed for ages, county "boards of education are 'created by statute with functions of a public nature.'" *Hartman v. Putnam Cnty. Bd. Of Educ.*, 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* syl. pt. 1, *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."). Every county school board 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)).

When a statute does not expressly grant a board powers, 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 the board of education's express powers. Syl. pt. 7, *City of Huntington v. Bacon*, 196 W. Va. 457, 473 S.E.2d 743 (1996) (quoting syl. pt. 4, *Shinn*, 39 W. Va. 497, 20 S.E. 604); *cf. Commonwealth, Pa. 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 lacks authority. *See* Syl. pt. 1, *McCallister v. Nelson*, 186 W. Va. 131, 411 S.E.2d 456 (1992).

We cannot locate any statutory authority that would expressly or impliedly empower local school authorities to prohibit public-student involvement in nonpublic educational activities outside school hours. We do not see that kind of authority in West Virginia Code § 18-5-13, which sets out the general powers that boards of education may exercise. All the powers listed in that statute concern authority over public-school activities and public-school-owned property. W. Va. Code § 18-5-13(a). None concern private activities. So while local officials concededly have "considerable authority ... to operate [their] *public* schools," *Mason Cnty. Bd. of Educ. v. State Superintendent of Sch.*, 160 W. Va. 348, 351, 234 S.E.2d 321, 323 (1977) (emphasis added), we see no evidence of similar board authority over the nonpublic sphere. *See also Dilley*, 180 W. Va.

at 26, 375 S.E.2d at 204 (explaining how local boards have authority to "control and manage the [public] schools and school interests for all school activities and upon all school property"). That's unsurprising considering how, "[a]s a general matter, private schools are run privately, without governmental interference in the schools' internal administration." *Klunder v. Brown Univ.*, 778 F.3d 24, 32 (1st Cir. 2015).

The closest thing we can find to authority over activities outside the public schools is a local board's authority over extracurricular activities, *see Bailey v. Truby*, 174 W. Va. 8, 11, 321 S.E.2d 302, 305 (1984)—but that power does not extend far enough to encompass a ban on private, out-of-school-hours educational activities. To be sure, county school boards may "control, supervis[e], and regulat[e] ... all ... extracurricular activities of the students in public secondary schools." W. Va. Code § 18-2-25(a). But "extracurricular" is not generally understood to embrace all educational activities outside the usual public-school curriculum, no matter who conducts them. Rather, "extracurricular activities" usually refer to "voluntary activities *sponsored by a school, a county board or an organization sanctioned by a county board or the State Board of Education.*" *Id.* § 53-8-1(8) (emphasis added); *see also id.* § 18-10F-2(f) (same); W. Va. Code St. R. § 126-26-3.1 (providing that policies governing extracurricular activities governed only "interscholastic athletics, student government, and class officers in grades 6-12"); *id.* § 126-42-12 (defining "extracurricular activities" as "[a]ctivities that are not part of the required instructional day or curricular offerings *but are under the supervision of the school*" (emphasis added)); *accord Thomas v. Crews*, 203 So. 3d 701, 706 & n.2 (Miss. Ct. App. 2016) (explaining that "extracurricular" activities are those sponsored by and usually held at the public school). So county school boards cannot invoke their power over "extracurricular activities" to justify restrictions on unaffiliated, private educational activities in which public-school students might also engage.

Without statutory authority, county school boards and public schools cannot act to bar their students from participating in private educational opportunities outside the hours they are engaged in public schools, including activities that might amount to "dual enrollment."

Constitutional Considerations

We also see constitutional problems with purporting to prevent students from participating in nonpublic educational programs.

Construing the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the U.S. Supreme Court has repeatedly "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). And in case after case, the Supreme Court has stressed that—out of respect for that right—state and local officials may not prevent students from choosing a specific educational program (outside the public schools) for their children. A century ago, for example, the Supreme Court held that parents' "power ... to control the education of their own," *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923), meant that the State of Nebraska could not ban the teaching of any language other than English to children younger than ninth grade, *id.* at 400-01. A few years later, in striking down Oregon's compulsory school attendance law, the Supreme Court emphasized how the Fourteenth Amendment "excludes any general power of the state to standardize its children by

forcing them to accept instruction from public teachers only." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925).

Returning to the subject again decades later, the Court expressed special concern for protecting the "traditional interest of parents with respect to the religious upbringing of their children." *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972) (finding that compulsory education for children older than 16 violated the rights of Amish parents); *see also Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (noting the "[t]he rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief"). *Meyer, Pierce, Yoder, Prince*, and the many cases like them, reflect that "parents, not schools, have the primary responsibility 'to inculcate moral standards, religious beliefs, and elements of good citizenship.'" *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 (3d Cir. 2005).

At bottom, then, the U.S. Constitution ensures that "parents have the fundamental liberty to choose how and in what manner to educate their children." *Zelman v. Simmons-Harris*, 536 U.S. 639, 680 n.5 (2002) (Thomas, J., concurring). That's especially so when it comes to religious education.

Like the federal constitution, "Article III, Section 10 of the Constitution of West Virginia ... protect[s] the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *In re Visitation of L.M.*, 245 W. Va. 328, 336, 859 S.E.2d 271, 279 (2021); *see also Lindsie D.L. v. Richard W.S.*, 214 W. Va. 750, 754-55, 591 S.E.2d 308, 312-13 (2003) (citing *Meyer*, *Pierce*, and *Troxel*, and providing West Virginia authority in accord). So under the West Virgina Constitution as well, parents' rights to decide matters like their children's education "must be respected by the state, its legislature, and the courts." *In re Edward B.*, 210 W. Va. 621, 631, 558 S.E.2d 620, 630 (2001). Those rights must be respected by officials like local school boards, too.

We do not think that the policies that your letter describes—policies that seek to prevent students from undertaking additional educational opportunities outside school hours—track with any of these constitutional principles and limits. Quite the opposite: "Enforcement" of the kinds of policies that your letter describes "would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful." *Farrington v. T. Tokushige*, 273 U.S. 284, 298 (1927). Parents should not, for instance, face the risk of criminal sanctions from recorded truancy violations (for non-truant students) merely because they have chosen to supplement the education that public schools provide through private means. Indeed, we struggle to imagine a clearer violation of the notion that a parent should control his or her child's education than this one. And we see no rational reason behind that infringement, seeing as how children participate in any number of out-of-school-hour activities without interference or objection from school officials.

We recognize that this area of the law is not without debate. For instance, courts have wrestled with what type of scrutiny should apply to a regulation implicating parental rights of this sort, as *Meyer* and *Pierce* were decided long before tiers of scrutiny came to be. *Compare Brach v. Newsom*, 6 F.4th 904, 931 (9th Cir. 2021), *vacated* 18 F.4th 1031 (9th Cir. 2021) (applying strict scrutiny to a "challenged restriction [that] wholly deprive[d] the private-school Plaintiffs of a

central and longstanding aspect of the *Meyer-Pierce* right"), *with Herndon by Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 179 (4th Cir. 1996) (applying rational-basis review to a similar claim and suggesting a higher standard might apply to claims implicating religion). Even so, we are comfortable in concluding that the sort of wholesale denials your letter describes would fail under any standard of review. After all, the policies would do exactly what *Pierce* says they cannot: "forc[e] [students] to accept instruction from public teachers only." 268 U.S. at 535. And your letter informs us that "students utilizing dual enrollment are largely attending nonsecular programs," which adds "a religious element." That religious aspect would seem to trigger a higher level of scrutiny even before courts that employ more forgiving standards of review.

For all these reasons, then, any effort to prevent students from attending nonpublic educational programs outside of school hours while also enrolled in and attending public schools does not appear to be consistent with either the West Virginia or United States Constitutions.

Arbitrary Decision-making

As we've already noted, local school authorities must make reasoned, non-arbitrary decisions on issue likes these. And we do not think that standard can be met when barring students from dual-enrolling in private educational programs.

We agree with your observation that no reasonable explanation supports a decision to prevent a student from seeking *additional* educational services beyond their public-school enrollment. Again: students engage in all sorts of activities in the hours outside school—sports, hobbies, trips, and otherwise—and public-school officials have never shown any concern for that engagement before. If anything, dual-enrolled students might be expected to be better students, having received additional instruction and guidance from diverse sources. *See, e.g.*, *O'Bannon*, 798 N.E.2d at 167. And we cannot see how singling out students who wish to pursue private schooling in their free time benefits the students around them in any discernible way.

So once more, restrictions on a student's "simultaneous engagement in private education outside of the public-school program" could not survive a legal challenge for this additional reason.

* * * *

Having already described the many reasons why county school boards and public schools cannot take the actions you describe, we're reluctant to belabor the point further. But one more item warrants mention.

In the Hope Scholarship Act, the Legislature made the express choice to allow students to depart public schools with state funding in hand so long as they are enrolled in public schools for 45 continuous days. *See* W. Va. Code § 18-31-2. The Legislature placed no further conditions on

this 45-day requirement. We assume—as we must—that the Legislature already weighed the various benefits and costs of the rule when choosing to implement it. *See Garrett v. Bd. of Educ. of Chapmansville Dist.*, 109 W. Va. 714, 720-21, 156 S.E. 115, 118 (1930) ("[T]he Legislature is presumed to have taken into consideration the objections … and to have concluded that the ills to be suffered would be compensated by the advantages received."); *accord Woodall v. Darst*, 71 W. Va. 350, 80 S.E. 367, 367 (1912) (Robinson, J., concurring) ("[T]he legislature must be presumed to have acted in good faith, for the public good, and upon sound reasons."). Local school boards and public-school officials must respect that choice.

We are concerned that the actions taken by local officials you've described in your letter are driven by ideological disagreement with the Hope Scholarship Act itself—and are thus designed to make it more difficult for students to benefit from the Act. *See, e.g.*, Josephine E. Moore, *Raleigh County Fears Impacts of Hope Scholarship*, REGISTER-HERALD (July 12, 2022), https://bit.ly/3Mxlanf (describing a local school board's opposition to the program). If our suspicions are right, then the actions you've described are even more unjustified. "[S]chool boards, as creatures of the State, obviously must give effect to policies announced by the state legislature." *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 476 (1982). They cannot "defeat the very purpose of the statute." *Fisher v. Jackson*, 107 W. Va. 138, 141, 147 S.E. 541, 542 (1929). And parents and students should not be punished merely because they intend to benefit from the Hope Scholarship Act. As one court explained in a related context:

> Parents may be committed to private school for their child whatever the [public] school authorities may propose. They may honestly feel that the best the [public] school authorities can offer their child is not enough. This cannot *ipso facto* mean that the parents, as citizens and taxpayers, lose the right to seek a "free appropriate public education" for their child.

Sarah M. v. Weast, 111 F. Supp. 2d 695, 701 n.6 (D. Md. 2000).

From our perspective, the Hope Scholarship Act is a bold step towards enabling parents to choose the best possible education for their children. We expect that the Act will greatly help the State's students. After all, even without the Hope Scholarship, "private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience." *Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 247 (1968).

But even if local school authorities disagree, that disagreement does not license them to undermine the program, directly or indirectly. We stand ready to act if we suspect that local officials are continuing to do so.

AG OPINION

Altogether, county boards of education or public schools may not lawfully prohibit students from engaging in "dual enrollment" or deny students the ability to participate in public-school programs based on those students' simultaneous engagement in private education outside public-school programs.[1]

Sincerely,

Patrick Morrisey
West Virginia Attorney General

Lindsay S. See
Solicitor General

Michael R. Williams
Principal Deputy Solicitor General

Spencer J. Davenport
Assistant Solicitor General

[1] This opinion addresses only students who are enrolled full-time in public schools and who are meeting any attendance and academic requirements the school may impose. Our conclusions here do not necessarily extend to other situations, such as a student who is enrolled full-time in a private school and wants to "dual enroll" in some public-school programs part-time. *See generally, e.g., Snyder v. Charlotte Pub. Sch. Dist.*, 421 Mich. 517 (1984).

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OTHER

west virginia department of environmental protection

Division of Land Restoration
601 57th Street SE
Charleston, WV 25304

Harold Ward, Cabinet Secretary
dep.wv.gov

2022 Hazardous Waste Emergency Response Fee Assessment
Introduction

The West Virginia Department of Environmental Protection is authorized by Article 19, Chapter 22 of the West Virginia Code to annually assess fees on all generators, as defined in 33 CSR 26. Generators, whose fees do not exceed $5.00 will not be sent an invoice. All monies collected from generators are deposited in a special fund designated the "Hazardous Waste Emergency Response Fund," which is utilized to; respond to hazardous waste emergencies, perform Non Time Critical (NTC) response activities, at and in regard to, hazardous waste/Hazardous substance sites, and match federal financial assistance for restoring hazardous waste sites.

In accordance with the law, fees vary annually to a level necessary to produce a fund of at least $1,000,000 at the beginning of each calendar year, with the maximum revenue per year limited to $500,000. If the balance of the fund in any year is in excess of $1,500,000, no fee is assessed until the balance at the end of any year is less than $1,000,000.

The Hazardous Waste Emergency Response Fund Procedural Rule Concerning Fee Assessment (State Rule 33 CSR 26) established fee assessment procedures and data upon which such assessments are based. Fee assessment categories, which have been established by the enabling act, include the following:

Assessment Category	Base Fee Rate
Hazardous waste treated or disposed off-site	100%
Hazardous waste treated or disposed on-site	90%
Hazardous waste treated off-site to be rendered non-hazardous	75%
Hazardous waste treated on-site to be rendered non-hazardous	25%

The following provides clarification as to how the rate per ton is determined:

$w =$ the amount of hazardous waste generated in West Virginia that was treated or disposed off-site (remaining hazardous)

$x =$ the amount of hazardous waste generated in West Virginia that was treated or disposed on-site (remaining hazardous)

$y =$ the amount of hazardous waste generated in West Virginia that was treated off-site to render it non-hazardous

$z =$ the amount of hazardous waste generated in West Virginia that was treated on-site to render it non-hazardous

$$\text{Rate} = \frac{\text{Revenues from total fees assessed (\$500,000)}}{w + x(0.90) + y(0.75) + z(0.25)}$$

Promoting a healthy environment.

west virginia department of environmental protection

Division of Land Restoration
601 57th Street SE
Charleston, WV 25304

Harold Ward, Cabinet Secretary
dep.wv.gov

2022 Hazardous Waste Emergency Response Fee Assessment
Base Rate Calculation and Fee Schedule

Based on information collected from Hazardous Waste Emergency Response Fund Fee Assessment Reports for waste generated during the 2022 calendar year, the 2022 base fee rate has been set at $17.09/ton.

This rate was calculated as follows:

$$\text{Rate} = \frac{\$500,000}{14{,}792.56 + 324.10(0.90) + 15{,}622.26(0.75) + 9{,}841.58(0.25)}$$

The following Fee Schedule has been established:

Fee Assessment Category	Base Fee Rate ($/ton)	Total Generated (tons)
Hazardous waste treated or disposed off-site	$17.09	*14,792.56*
Hazardous waste treated or disposed on-site	$15.38	*324.10*
Hazardous waste treated off-site to be rendered non-hazardous	$12.82	*15,622.26*
Hazardous waste treated on-site to be rendered non-hazardous	$4.27	*9,841.58*

Note: Due to rounding differences within different programs the fee schedule may be +/- $0.02

The West Virginia Department of Environmental Protection will provide a copy of this fee schedule to each generator within fifteen (15) days of publication in the State Register, and invoices will be included for each generator upon whom a fee is assessed. All payments are due within 168 days of publication in the State Register.

Promoting a healthy environment.

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NOVEMBER 16, 2023 10:25 AM

OTHER

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Health Care Authority

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Stacy L. Pridemore
Executive Director

Notice of Review

November 16, 2023

NEWS ITEM

The West Virginia Health Care Authority (Authority), pursuant to the Certificate of Need program, has declared complete and accepted for review the expedited applications referenced below:.

November 14, 2023 - Hometown Care, LLC, CON File #23-7-12797-PC, to provide personal care services in Barbour county, WV. Capital Expenditure $1,500.

November 14, 2023 - United Hospital Center, Inc., CON File #23-7-12815-P, for the development of an ambulatory health care facility through the acquisition of an existing practice in Glenville, Gilmer County, WV. Capital Expenditure $55,000.

November 14, 2023 - Charleston Area Medical Center, Inc., CON File #23-3-12822-P, to acquire James Lohan, M.D.'s private office practice of medicine and to develop an ambulatory health care facility at 9 Courtney Drive, Charleston, Kanawha County, WV. Capital Expenditure $150,000.

November 14, 2023 - Stonepeak Magnet holdings, LP, CON File #23-3-12818-A, for the acquisition of West Virginia radiation and oncology assets and operations of Akumin. Capital Expenditure $860,000.

An application that has been declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

The review cycle begins on **November 15, 2023.**

On or before **December 15, 2023**, any affected person has the right to request that the Authority hold a public hearing on the projects as part of the review. If a public hearing is conducted during the course of the review, a notice of hearing, specifying the date, time and location of the hearing, will be issued to affected persons.

If no public hearing is requested, the file closing date will be **December 20, 2023.** After that date, no further information or evidence will be accepted by the Authority for the remainder of the review of the applications.

The Decision on the project referenced above will be issued by the Authority after it has reviewed the contents of the case files of the projects, including the application, additional information submitted to the Authority during the review, and the record of any Authority public hearing. If there is no request for public hearing, the Decision will be issued on or before **January 16, 2024.**

A press release will be issued after the Decision is made. Anyone wishing to be directly notified of the Decision should submit a written request to Timothy E. Adkins, Director, Certificate of Need, West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia, 25311. Further information on any project referenced in this news release may be obtained by contacting the Certificate of Need office at telephone number (304) 558-7000.

11-16-23
Date

Stacy Pridemore
Stacy L. Pridemore
Executive Director
West Virginia Health Care Authority

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DISTRIBUTION

William King, Director, Hometown Care, LLC

Raymona A. Kinneberg, President, RK SB Health Care Consulting

David E. Jarrett, Planning Analyst II, Charleston Area Medical Center, Inc.

Robert L. Coffield, Esq., Flaherty Sensabaugh Bonasso, PLLC

The Honorable Andrew "Mac" Warner
Secretary of State

Dennis Garrison, Director, Consumer Advocacy Division
West Virginia Insurance Commission

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OTHER

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

November 13, 2023

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **November 9, 2023**.

LETTER OF INTENT RECEIVED

November 8, 2023- Special Touch Nursing Services, Inc., CON File #23-2-12824-PC, to expand in-home personal care services into Lincoln County, West Virginia; capital expenditure, $5,000.

CERTIFICATE OF NEED APPLICATION RECEIVED

November 9, 2023- United Hospital Center, Inc., CON File #23-7-12815-P, for the development of an ambulatory health care facility through the acquisition of an existing practice in Glenville, Gilmer County, West Virginia; capital expenditure, $55,000.

PROJECTS DETERMINED NOT REVIEWABLE

November 6, 2023- West Virginia University Hospitals, Inc., CON File #23-6-12799-X, for the development of a ten(10) bed inpatient rehabilitation unit at WVUH, J.W. Ruby Memorial Hospital, Morgantown, Monongalia County, West Virginia; capital expenditure, $1,518,000.

PROJECTS EXEMPT FROM REVIEW

November 8, 2023- Hope Drug Rehabilitation, CON File #23-3-12816-X, for the complete relocation of their existing 30 male long term, level 3.1 and 3.5, residential treatment bed facility (SUD beds) from 5324 Bradchar Drive, Cross Lanes, Kanawha County, to 5265 Big Tyler Road, Cross Lanes, Kanawha County, West Virginia.

CERTIFICATE OF NEED APPROVAL ISSUED

November 6, 2023- CAMC Greenbrier Valley Medical Center, CON File #23-1-12768-P, for the development of an ambulatory health care facility at 3115 Seneca Trail, Peterstown, Monroe County, West Virginia; capital expenditure, $850,000..

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

Jim Justice
Governor

Sherri A. Young, Interim Cabinet Secretary
West Virginia Department of
Health and Human Resources

OTHER

2023 NOV 16 A 11:03

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

In Re:

CHARLESTON AREA MEDICAL CENTER, INC.
CON File No. 23-3-12775-P

NOTICE OF PREHEARING CONFERENCE
AND ADMINISTRATIVE HEARING

PLEASE TAKE NOTICE that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Stacy Pridemore, Executive Director of the West Virginia Health Care Authority, wishes to announce that the following proceedings have been scheduled for the above-noted application:

A PREHEARING CONFERENCE will be held, **January 31, 2024, at 1:30 p.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

AN ADMINISTRATIVE HEARING will be held, **February 6, 2024, at 9:00 a.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

This application concerns the need to develop an ambulatory health care facility at 100 Tracy Way, Charleston, Kanawha County, WV.

You and any other "affected persons" as defined by W. Va. Code §16-2D-2 wishing to participate in the hearing of this application are directed to be present at both the prehearing conference and the administrative hearing.

The purpose of the prehearing conference is to designate parties to the hearing, to designate the issues for the hearing, resolve any procedural matters, receive any motions, establish the order of proceedings, receive a listing of the witnesses and a summary of direct testimony that will be offered at the hearing, receive a listing of evidence to be offered and copies of any documents to be offered such as reports or analysis prepared by expert witnesses including any financial reports and any other procedural matters. The prehearing conference will be conducted in conformance to Rule 16, West Virginia Rules of Civil Procedure for pretrial conferences.

In a hearing, any person has the right to be present or to be represented by counsel and to present oral or written arguments and relevant evidence. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matters.

PLEASE TAKE NOTICE that if the party who requested the hearing withdraws that request, then the hearing will be canceled.

The file on this application is available for examination in the offices of the Health Care Authority from 8:30 a.m. to 4:30 p.m., Monday through Friday. If you have questions concerning this matter, please contact Stacy Pridemore, Executive Director, at (304) 558-7000.

Date: November 14, 2023

Stacy Pridemore

Stacy Pridemore, Executive Director

FILED
2023 NOV 16 A 11:03
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA
HEALTH CARE AUTHORITY

OTHER

In Re: **CHARLESTON AREA MEDICAL CENTER, INC.**
CON File # 23-3-12775-P

HEARING ORDER

The following shall apply to and govern the above-captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to the hearing.

The parties may not amend, modify or adjust any provision of this order except by leave of the Authority.

1. Hearing date: **February 6, 2024, at 9:00 a.m.**

2. Prehearing conference date: **January 31, 2024, at 1:30 p.m.**

3. Settlement conference (optional): **N/A**

4. All replacement pages to CON application to be filed by: **December 8, 2023**
   Pursuant to W. Va. Code St. R. §65-32-6, if the applicant submits a substantial amendment to the application the Authority may withdraw the application from review. The board may examine the extent of additional information or any amendment made by the applicant to the application and its impact on the new institutional health service, and determine the application to be a new proposal subject to a new review cycle.

5. Motions for discovery to be filed by: **December 18, 2023**

6. Discovery completed on or before: **January 17, 2024**
   Parties engaging in discovery are required to file a copy of the certificate of service attached to the discovery request or response with the board. Affected parties shall not file copies of the actual discovery and responses with the board. To the extent that an affected party intends to introduce a document obtained through the discovery process at the administrative hearing, the document and two (2) copies must be filed at the prehearing conference.

7. Dispositive and preliminary motions to be filed by: **January 24, 2024**
   Parties shall file all prehearing motions with the board a minimum of three (3) days prior to the prehearing conference.

8. All requests for subpoenas and/or subpoenas duces tecum to be filed by: **January 24, 2024**

Entered this 14th day of November, 2023.

/s/ Heather A. Connolly
Heather A. Connolly
Assistant Attorney General
Counsel for the West Virginia Health Care Authority

OTHER

Jim Justice
Governor

Sherri A. Young, Interim Cabinet Secretary
West Virginia Department of
Health and Human Resources

FILED
2023 NOV 16 A 11:04
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

In Re:

MONONGALIA COUNTY GENERAL HOSPITAL COMPANY
d/b/a MON HEALTH MEDICAL CENTER
CON File No. 23-6-12772-P

NOTICE OF PREHEARING CONFERENCE
AND ADMINISTRATIVE HEARING

PLEASE TAKE NOTICE that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Stacy Pridemore, Executive Director of the West Virginia Health Care Authority, wishes to announce that the following proceedings have been scheduled for the above-noted application:

A PREHEARING CONFERENCE will be held, **February 7, 2024, at 1:30 p.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

AN ADMINISTRATIVE HEARING will be held, **February 13, 2024, at 9:00 a.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

This application concerns the establishment of an ambulatory health care facility at 152 W. Main Street, Bridgeport, Harrison County, WV.

You and any other "affected persons" as defined by W. Va. Code §16-2D-2 wishing to participate in the hearing of this application are directed to be present at both the prehearing conference and the administrative hearing.

The purpose of the prehearing conference is to designate parties to the hearing, to designate the issues for the hearing, resolve any procedural matters, receive any motions, establish the order of proceedings, receive a listing of the witnesses and a summary of direct testimony that will be offered at the hearing, receive a listing of evidence to be offered and copies of any documents to be offered such as reports or analysis prepared by expert witnesses including any financial reports and any other procedural matters. The prehearing conference will be conducted in conformance to Rule 16, West Virginia Rules of Civil Procedure for pretrial conferences.

In a hearing, any person has the right to be present or to be represented by counsel and to present oral or written arguments and relevant evidence. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matters.

PLEASE TAKE NOTICE that if the party who requested the hearing withdraws that request, then the hearing will be canceled.

The file on this application is available for examination in the offices of the Health Care Authority from 8:30 a.m. to 4:30 p.m., Monday through Friday. If you have questions concerning this matter, please contact Stacy Pridemore, Executive Director, at (304) 558-7000.

Date: November 14, 2023

Stacy Pridemore

Stacy Pridemore, Executive Director

OTHER

WEST VIRGINIA
HEALTH CARE AUTHORITY

FILED

2023 NOV 16 A 11: 04

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

In Re: **MONONGALIA COUNTY GENERAL HOSPITAL COMPANY**
d/b/a MON HEALTH MEDICAL CENTER
CON File # 23-6-12772-P

HEARING ORDER

The following shall apply to and govern the above-captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to the hearing.

The parties may not amend, modify or adjust any provision of this order except by leave of the Authority.

1. Hearing date: **February 13, 2024, at 9:00 a.m.**

2. Prehearing conference date: **February 7, 2024, at 1:30 p.m.**

3. Settlement conference (optional): **N/A**

4. All replacement pages to CON application to be filed by: **December 15, 2023**
   Pursuant to W. Va. Code St. R. §65-32-6, if the applicant submits a substantial amendment to the application the Authority may withdraw the application from review. The board may examine the extent of additional information or any amendment made by the applicant to the application and its impact on the new institutional health service, and determine the application to be a new proposal subject to a new review cycle.

5. Motions for discovery to be filed by: **December 22, 2023**

6. Discovery completed on or before: **January 23, 2024**
   Parties engaging in discovery are required to file a copy of the certificate of service attached to the discovery request or response with the board. Affected parties shall not file copies of the actual discovery and responses with the board. To the extent that an affected party intends to introduce a document obtained through the discovery process at the administrative hearing, the document and two (2) copies must be filed at the prehearing conference.

7. Dispositive and preliminary motions to be filed by: **January 31, 2024**
Parties shall file all prehearing motions with the board a minimum of three (3) days prior to the prehearing conference.

8. All requests for subpoenas and/or subpoenas duces tecum to be filed by: **January 31, 2024**

OTHER

Entered this 14th day of November, 2023.

/s/ Heather A. Connolly
Heather A. Connolly
Assistant Attorney General
Counsel for the West Virginia Health Care Authority