

Senate Bill No. 12

(By Senator Foster)

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[Introduced January 12, 2011; referred to the Committee on Health
and Human Resources; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §16-1-6 of the Code of West Virginia,
1931, as amended; and to amend and reenact §22-1-3 of said
code, all relating to requiring the Commissioner of the Bureau
for Public Health to conduct a public health impact statement
assessing the health impact of any new, or modification to,
air or water rule proposed by the Secretary of the Department
of Environmental Protection; and requiring the Secretary of
the Department of Environmental Protection to incorporate
findings of the impact statement into the proposed rule.

Be it enacted by the Legislature of West Virginia:

That §16-1-6 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §22-1-3 of said code be amended
and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

1 **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

2 **§16-1-6. Powers and duties of the commissioner.**

3 The commissioner is the chief executive, administrative and
4 fiscal officer of the Bureau for Public Health and has the
5 following powers and duties:

6 (a) To supervise and direct the fiscal and administrative
7 matters of the bureau, and in that regard and in accordance with
8 law, employ, fix the compensation of and discharge all persons
9 necessary for the proper execution of the public health laws of
10 this state and the efficient and proper discharge of the duties
11 imposed upon, and execution of powers vested in the commissioner by
12 law and as directed by the secretary;

13 (b) To enforce all laws of this state concerning public
14 health; to that end, the commissioner shall make, or cause to be
15 made, investigations and inquiries respecting the cause of disease,
16 especially of epidemics and endemic conditions, and the means of
17 prevention, suppression or control of those conditions; the source
18 of sickness and mortality, and the effects of environment,
19 employment, habits and circumstances of life on the public health.

20 The commissioner shall further make, or cause to be made,
21 inspections and examinations of food, drink and drugs offered for
22 sale or public consumption in the manner the commissioner considers
23 necessary to protect the public health and shall report all

1 violations of laws and rules relating to the law to the prosecuting
2 attorney of the county in which the violations occur;

3 © To make complaint or cause proceedings to be instituted
4 against any person, corporation or other entity for the violation
5 of any public health law before any court or agency, without being
6 required to give security for costs; the action may be taken
7 without the sanction of the prosecuting attorney of the county in
8 which the proceedings are instituted or to which the proceedings
9 relate;

10 (d) To promote the provision of essential public health
11 services to citizens of this state;

12 (e) To monitor the administration, operation and coordination
13 of the local boards of health and local health officers;

14 (f) To develop and maintain a state plan of operation that
15 sets forth the needs of the state in the areas of public health;
16 goals and objectives for meeting those needs; methods for achieving
17 the stated goals and objectives; and needed personnel, funds and
18 authority for achieving the goals and objectives;

19 (g) To collect data as may be required to foster knowledge on
20 the citizenry's health status, the health system and costs of
21 health care;

22 (h) To delegate to any appointee, assistant or employee any
23 and all powers and duties vested in the commissioner, including,

1 but not limited to, the power to execute contracts and agreements
2 in the name of the bureau: *Provided*, That the commissioner is
3 responsible for the acts of his or her appointees, assistants and
4 employees;

5 (I) To transfer at the direction of the secretary,
6 notwithstanding other provisions of this code, any patient or
7 resident between hospitals and facilities under the control of the
8 commissioner and, by agreement with the ~~state~~ Commissioner of
9 Corrections and otherwise in accord with law, accept a transfer of
10 a resident of a facility under the jurisdiction of the ~~state~~
11 Commissioner of Corrections;

12 (j) To make periodic reports to the Governor and to the
13 Legislature relative to specific subject areas of public health,
14 the state facilities under the supervision of the commissioner, or
15 other matters affecting the public health of the people of the
16 state, at the direction of the secretary;

17 (k) At the direction of the secretary, to accept and use for
18 the benefit of the health of the people of this state, any gift or
19 devise of any property or thing which is lawfully given: *Provided*,
20 That if any gift is for a specific purpose or for a particular
21 state hospital or facility it shall be used as specified. Any
22 profit which may arise from any gift or devise of any property or
23 thing shall be deposited in a special revenue fund with the State

1 Treasurer and shall be used only as specified by the donor or
2 donors;

3 (1) To acquire by condemnation or otherwise any interest,
4 right, privilege, land or improvement and hold title to the land or
5 improvement, for the use or benefit of the state or a state
6 hospital or facility, and, by and with the consent of the Governor,
7 and at the direction of the secretary, to sell, exchange or
8 otherwise convey any interest, right, privilege, land or
9 improvement acquired or held by the state, state hospital or state
10 facility and deposit the proceeds from the sale, exchange or other
11 conveyance into the hospital services revenue account. Any
12 condemnation proceedings shall be conducted pursuant to chapter
13 fifty-four of this code;

14 (m) To inspect and enforce rules to control the sanitary
15 conditions of and license all institutions and health care
16 facilities as set forth in this chapter, including, but not limited
17 to, schools, whether public or private, public conveyances,
18 dairies, slaughterhouses, workshops, factories, labor camps, places
19 of entertainment, hotels, motels, tourist camps, all other places
20 open to the general public and inviting public patronage or public
21 assembly, or tendering to the public any item for human consumption
22 and places where trades or industries are conducted;

23 (n) To make inspections, conduct hearings, and to enforce the

1 legislative rules concerning occupational and industrial health
2 hazards, the sanitary condition of streams, sources of water
3 supply, sewerage facilities, and plumbing systems, and the
4 qualifications of personnel connected with the supplies, facilities
5 or systems without regard to whether they are publicly or privately
6 owned; and to make inspections, conduct hearings and enforce the
7 legislative rules concerning the design of chlorination and
8 filtration facilities and swimming pools;

9 (o) To provide in accordance with this subdivision and the
10 definitions and other provisions of article one-a, chapter twenty-
11 seven of this code, and as directed by the secretary, for a
12 comprehensive program for the care, treatment and rehabilitation of
13 alcoholics and drug abusers; for research into the cause and
14 prevention of alcoholism and drug abuse; for the training and
15 employment of personnel to provide the requisite rehabilitation of
16 alcoholics and drug abusers; and for the education of the public
17 concerning alcoholism and drug abuse;

18 (p) To provide in accordance with this subdivision for a
19 program for the care, treatment and rehabilitation of the parents
20 of sudden infant death syndrome victims; for the training and
21 employment of personnel to provide the requisite rehabilitation of
22 parents of sudden infant death syndrome victims; for the education
23 of the public concerning sudden infant death syndrome; for the

1 responsibility of reporting to the Legislature on a quarterly basis
2 the incidence of sudden infant death syndrome cases occurring in
3 West Virginia; for the education of police, employees and
4 volunteers of all emergency services concerning sudden infant death
5 syndrome; for the state sudden infant death syndrome advisory
6 council to develop regional family support groups to provide peer
7 support to families of sudden infant death syndrome victims; and
8 for requesting appropriation of funds in both federal and state
9 budgets to fund the sudden infant death syndrome program;

10 (q) To establish and maintain a state hygienic laboratory as
11 an aid in performing the duties imposed upon the commissioner, and
12 to employ chemists, bacteriologists and other employees that may be
13 necessary to properly operate the laboratory. The commissioner may
14 establish branches of the state laboratory at any points within the
15 state that are necessary in the interest of the public health;

16 ® To establish and fund a uniform health professionals data
17 system to collect and maintain uniform data on all health
18 professionals in the state. This data shall include, but is not be
19 limited to, the following information about each health
20 professional: His or her name, profession, the area of the state
21 where he or she is practicing, his or her educational background,
22 his or her employer's name, and number of years practicing within
23 the profession. The boards provided ~~for~~ in articles three, four,

1 four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen,
2 sixteen, twenty, twenty-one, twenty-three, twenty-eight, thirty-
3 one, thirty-two, thirty-four, thirty-five, thirty-six and thirty-
4 seven, chapter thirty of this code shall annually collect the data
5 on health professionals under their jurisdiction in the format
6 prescribed by the commissioner. Each board shall pay to the bureau
7 annually, an amount determined by the commissioner to be a pro rata
8 portion, for anticipated expenses to establish and operate the
9 uniform health professionals data system required by this section.
10 The commissioner may standardize data collection methods if
11 necessary to implement the provisions of this section. The
12 commissioner shall publish annually and make available, upon
13 request, a report setting forth the data which was collected the
14 previous year; areas of the state which the collected data
15 indicates have a shortage of health professionals; and projections,
16 based upon the collected data, as to the need for more health
17 professionals in certain areas;

18 (s) To expend, for the purpose of performing the public health
19 duties imposed on the bureau, or authorized by law, any sums
20 appropriated by the Legislature. The commissioner may make advance
21 payments to public and nonprofit health services providers when the
22 commissioner determines it is necessary for the initiation or
23 continuation of public health services. The advance payments,

1 being in derogation of the principle of payment only after receipt
 2 of goods or services, shall be authorized only after serious
 3 consideration by the commissioner of the necessity of the advance
 4 payments and shall be for a period no greater than ninety days in
 5 advance of rendition of service or receipt of goods and
 6 continuation of health services; and

7 (t) To prepare and submit a public health impact statement
 8 assessing the health impact of any new air or water rule, or
 9 modification of an existing air or water rule, proposed by the
 10 Secretary of the Department of Environmental Protection to insure
 11 that no air or water rule is promulgated without substantiating
 12 independent medical or scientific evidence that there is no
 13 detrimental public health impact from the rule; and

14 ~~(t)~~ (u) To exercise all other powers delegated to the
 15 commissioner by the secretary or by this chapter or otherwise in
 16 this code, to enforce all health laws, and to pursue all other
 17 activities necessary and incident to the authority and area of
 18 concern entrusted to the bureau or the commissioner.

19 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

20 **ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.**

21 **§22-1-3. Rule making generally; relationship to federal programs.**

22 (a) The ~~director~~ secretary has the power and authority to
 23 propose legislative rules for promulgation in accordance with the

1 provisions of article three, chapter twenty-nine-a of this code to
2 carry out and implement the provisions of this chapter and to carry
3 out and implement any other provision of law relating to offices or
4 functions of the ~~division~~ department.

5 (b) The requirements and limitations set forth in this section
6 apply to any rule-making authority granted pursuant to this chapter
7 or chapters twenty-two-b and twenty-two-c of this code.

8 © Prior to the proposal of any new rule, the ~~director~~
9 secretary shall consult with the ~~Division~~ of Environmental
10 Protection Advisory Council and after ~~such~~ the consultation, the
11 ~~director~~ secretary may determine that ~~such a~~ the rule should be the
12 same in substance as a counterpart federal regulation. If the
13 ~~director~~ secretary determines that the rule should be the same in
14 substance as a counterpart regulation, then to the greatest degree
15 practicable, ~~such~~ the proposed rule shall incorporate by reference
16 the counterpart federal regulation. The ~~director~~ secretary shall
17 file, contemporaneously with the proposed rule, a statement setting
18 forth whether the rule is the same in substance as a counterpart
19 federal regulation. If the director determines that the rule
20 should not be the same in substance as a counterpart federal
21 regulation, then the director shall file contemporaneously with the
22 proposed rule, a statement setting forth the differences between
23 the proposed rule and the counterpart federal regulation. In

1 addition, the director shall file a statement setting forth the
2 results of the consultation with the advisory council.

3 (d) Whenever any existing rule is modified, amended or
4 replaced, the provisions of subsection © of this section apply to
5 the proposal of any such modification, amendment or replacement
6 rule.

7 (e) Notwithstanding the provisions of article three, chapter
8 twenty-nine-a of this code, at least one public hearing shall be
9 held by the ~~division~~ department in conjunction with each rule
10 making prior to the expiration of the public comment period for the
11 proposed rules.

12 (f) Notwithstanding any provision of this chapter to the
13 contrary, the Commissioner of the Bureau for Public Health shall
14 prepare and submit a public health impact statement pursuant to
15 section six, article one, chapter sixteen of this code assessing
16 the health impact of any new air or water rule, or modification of
17 an existing air or water rule, proposed by the secretary, and the
18 secretary shall incorporate and implement any findings from the
19 impact statement into the proposed rule.

NOTE: The purpose of this bill is to require the Commissioner of Bureau for Public Health to conduct a public health impact statement assessing the health impact of any new air or water rule, or modification of an existing air or water rule, proposed by the Department of Environmental Protection to insure that no air or water rule is promulgated without substantiating independent

medical or scientific evidence that there is no detrimental public health impact from the rule. The bill also requires that the findings in the impact statement be incorporated into the proposed rule.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.