

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 284**

BY SENATOR FERNS

[Introduced January 14, 2016; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on Government Organization.]

1 A BILL to amend and reenact §16-2-3, §16-2-11 and §16-2-13 of the Code of West Virginia, 1931,  
2 as amended, all relating to powers and duties of local boards of health; granting county  
3 commissions authority to approve, modify or disapprove policies to be implemented by  
4 local boards of health; and allowing county commissions to review existing policies and  
5 approve, modify or void them.

*Be it enacted by the Legislature of West Virginia:*

1 That §16-2-3, §16-2-11 and §16-2-13 of the Code of West Virginia, 1931, as amended be  
2 amended and reenacted, all to read as follows:

## **ARTICLE 2. LOCAL BOARDS OF HEALTH.**

### **§16-2-3. Authority to create, establish and maintain county boards of health; service area; health policy approval.**

1 (a) If no other local board of health responsible for public health in a specific service area  
2 is organized pursuant to this article a county commission shall approve, create, establish and  
3 maintain a county board of health. The county board of health shall be organized and have the  
4 powers and duties as set forth in this article.

5 (b) The service area of any county board of health is the county territorial limits. It shall  
6 include all municipalities within the county: *Provided*, That a municipality within the county  
7 territorial limits that operates a municipal board of health and maintains a separate full-time  
8 municipal health department under the supervision of a municipal local health officer or, that is a  
9 member of a combined local board of health, may not be included in a local board of health.

10 (c) The county board of health is required to submit any potential health policy to the  
11 county commission sixty days prior to the anticipated enforcement and enactment date of the  
12 policy. The county commission may by a majority vote of its members enter an order either  
13 approving, modifying or disapproving any county-wide health policy which the county board of  
14 health wishes to implement. If the county commission enters an order which disapproves the  
15 policy, the county board of health may not enact or enforce the policy. The county commission

16 may call up any policy of the county board of health existing prior to the enactment of this section  
17 during the 2016 Regular Session of the Legislature and approve, modify or void such policy.

**§16-2-11. Local board of health; powers and duties.**

1 (a) Each local board of health created, established and operated pursuant to the  
2 provisions of this article shall:

3 (1) Provide the following basic public health services and programs in accordance with  
4 state public health performance-based standards: Provided, That any local board of health  
5 created pursuant to section three of this article is required to have any policy approved by order  
6 of the county commission;

7 (i) Community health promotion including assessing and reporting community health  
8 needs to improve health status, facilitating community partnerships including identifying the  
9 community's priority health needs, mobilization of a community around identified priorities and  
10 monitoring the progress of community health education services;

11 (ii) Environmental health protection including the promoting and maintaining of clean and  
12 safe air, water, food and facilities and the administering of public health laws as specified by the  
13 commissioner as to general sanitation, the sanitation of public drinking water, sewage and  
14 wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

15 (iii) Communicable or reportable disease prevention and control including disease  
16 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and  
17 prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases,  
18 HIV/AIDS, tuberculosis and other communicable and reportable diseases;

19 (2) Appoint a local health officer to serve at the will and pleasure of the local board of  
20 health with approval of the commissioner;

21 (3) Submit a general plan of operation to the commissioner for approval, if it receives any  
22 state or federal money for health purposes. This program plan shall be submitted annually and  
23 comply with provisions of the local board of health standards administrative rule: Provided, That

24 the commissioner may not modify or alter any policy of any local board of health created pursuant  
 25 to section three of this article which has been approved by the county commission pursuant to  
 26 subsection (c) of section three of this article.

27 (4) Provide equipment and facilities for the local health department that are in compliance  
 28 with federal and state law;

29 ~~(5) Permit the commissioner to act by and through it, as needed. The commissioner may~~  
 30 ~~enforce all public health laws of this state, the rules and orders of the secretary, any county~~  
 31 ~~commission orders or municipal ordinances of the board's service area relating to public health,~~  
 32 ~~and the rules and orders of the local board within the service area of a local board. The~~  
 33 ~~commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner,~~  
 34 ~~a public health emergency exists or when the local board fails or refuses to enforce public health~~  
 35 ~~laws and rules necessary to prevent and control the spread of a communicable or reportable~~  
 36 ~~disease dangerous to the public health. The expenses incurred shall be charged against the~~  
 37 ~~counties or municipalities concerned;~~

38 (5) Permit the commissioner to act by and through the local board of health when, in the  
 39 opinion of the commissioner, a public health emergency exists or when the local board fails or  
 40 refuses to enforce public health laws and rules necessary to prevent and control the spread of a  
 41 communicable or reportable disease dangerous to the public health. Acting through the local  
 42 board of health the commissioner may:

43 (A) Enforce all public health laws of this state;

44 (B) Enforce the rules and orders of the secretary;

45 (C) Enforce any county commission orders including orders of the county commission  
 46 approving local board of health policy;

47 (D) Enforce any municipal ordinances of the board's service area relating to public health;

48 and

49 (E) Enforce the rules and orders of the local board within the service area of a local board.

50           The expenses incurred shall be charged against the counties or municipalities concerned;

51           (6) Deposit all moneys and collected fees into an account designated for local board of  
52 health purposes. The moneys for a municipal board of health shall be deposited with the municipal  
53 treasury in the service area. The moneys for a county board of health shall be deposited with the  
54 county treasury in the service area. The moneys for a combined local board of health shall be  
55 deposited in an account as designated in the plan of combination: *Provided*, That nothing  
56 contained in this subsection is intended to conflict with the provisions of article one, chapter  
57 sixteen of this code;

58           (7) Submit vouchers or other instruments approved by the board and signed by the local  
59 health officer or designated representative to the county or municipal treasurer for payment of  
60 necessary and reasonable expenditures from the county or municipal public health funds:  
61 *Provided*, That a combined local board of health shall draw upon its public health funds account  
62 in the manner designated in the plan of combination;

63           (8) Participate in audits, be in compliance with tax procedures required by the state and  
64 annually develop a budget for the next fiscal year;

65           (9) Perform public health duties approved and assigned by order of a county commission  
66 or by municipal ordinance consistent with state public health laws; and

67           (10) Enforce the public health laws of this state and any other laws of this state applicable  
68 to the local board.

69           (b) Each local board of health created, established and operated pursuant to the  
70 provisions of this article may:

71           (1) Provide primary care services, clinical and categorical programs, and enhanced public  
72 health services;

73           (2) Employ or contract with any technical, administrative, clerical or other persons, to serve  
74 as needed and at the will and pleasure of the local board of health. Staff and any contractors  
75 providing services to the board shall comply with applicable West Virginia certification and

76 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the  
77 Division of Personnel under section six, article ten, chapter twenty-nine of this code. However,  
78 any local board of health may, in the alternative and with the consent and approval of the  
79 appointing authority, establish and adopt a merit system for its eligible employees. The merit  
80 system may be similar to the state merit system and may be established by the local board by its  
81 order, subject to the approval of the appointing authority, adopting and making applicable to the  
82 local health department all, or any portion of any order, rule, standard, or compensation rate in  
83 effect in the state merit system as may be desired and as is properly applicable;

84 (3) Adopt and promulgate and from time to time amend rules consistent with state public  
85 health laws and the rules of the West Virginia State Department of Health and Human Resources  
86 that are necessary and proper for the protection of the general health of the service area and the  
87 prevention of the introduction, propagation and spread of disease. Any action on these rules  
88 requires the approval of the county commission as set forth in subsection (c) of section three of  
89 this article. All rules shall be filed with the clerk of the county commission or the clerk or the  
90 recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate  
91 book as public records;

92 (4) Accept, receive and receipt for money or property from any federal, state or local  
93 governmental agency, from any other public source or from any private source, to be used for  
94 public health purposes or for the establishment or construction of public health facilities;

95 (5) Assess, charge and collect fees for permits and licenses for the provision of public  
96 health services: *Provided*, That permits and licenses required for agricultural activities may not be  
97 assessed, charged or collected: *Provided, however*, That a local board of health may assess,  
98 charge and collect all of the expenses of inspection of the physical plant and facilities of any  
99 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization  
100 facilities are located outside this state but who sells or distributes in the state, or transports,  
101 causes or permits to be transported into this state, milk or milk products for resale, use or

102 consumption in the state and in the service area of the local board of health. A local board of  
103 health may not assess, charge and collect the expenses of inspection if the physical plant and  
104 facilities are regularly inspected by another agency of this state or its governmental subdivisions  
105 or by an agency of another state or its governmental subdivisions certified as an approved  
106 inspection agency by the commissioner. No more than one local board of health may act as the  
107 regular inspection agency of the physical plant and facilities; when two or more include an  
108 inspection of the physical plant and facilities in a regular schedule, the commissioner shall  
109 designate one as the regular inspection agency;

110 (6) Assess, charge and collect fees for services provided by the local health department:  
111 *Provided, That fees for services shall be submitted to and approved by the commissioner;*

112 (7) Contract for payment with any municipality, county or board of education for the  
113 provision of local health services or for the use of public health facilities. Any contract shall be in  
114 writing and permit provision of services or use of facilities for a period not to exceed one fiscal  
115 year. The written contract may include provisions for annual renewal by agreement of the parties;  
116 and

117 (8) Retain and make available child safety car seats, collect rental and security deposit  
118 fees for the expenses of retaining and making available child safety car seats, and conduct public  
119 education activities concerning the use and preventing the misuse of child safety car seats:  
120 *Provided, That this subsection is not intended to conflict with the provisions of section forty-six,*  
121 *article fifteen, chapter seventeen-c of this code: *Provided, however, That any local board of health**  
122 *offering a child safety car seat program or employee or agent of a local board of health is immune*  
123 *from civil or criminal liability in any action relating to the improper use, malfunction or inadequate*  
124 *maintenance of the child safety car seat and in any action relating to the improper placement,*  
125 *maintenance or securing of a child in a child safety car seat.*

126 (c) The local boards of health are charged with protecting the health and safety, as well  
127 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the

128 Legislature for the benefit of local boards of health shall be used for provision of basic public  
129 health services.

**§16-2-13. Local health officer; powers and duties.**

1 ~~A local health officer serves as the executive officer of the local board and under its~~  
2 ~~supervision, a local health officer shall administer the provisions of this article, all other laws of~~  
3 ~~this state and the rules and orders of the secretary of the department relating to public health and~~  
4 ~~applicable to the local board's service area, any county commission orders and municipal~~  
5 ~~ordinances of the board's service area relating to public health and the rules and orders of the~~  
6 ~~local board.~~

7 (a) A local health officer serves as the executive officer of the local board. A local health  
8 officer shall administer the provisions of this article including:

9 (1) Enforcement of laws of this state relating to public health applicable to the local board  
10 of health's service area;

11 (2) Enforcement of rules and orders of the secretary of the department relative to public  
12 health and applicable to the local board's service area;

13 (3) Orders of the county commission relative to policy development of the local board of  
14 health and applicable to the local board of health's service area; and

15 (4) Municipal ordinances of the board's service area relating to public health and the rules  
16 and orders of the local board.

17 (b) A local health officer has the following additional powers and duties which may be  
18 delegated with the approval of the board:

19 (1) To attend local board meetings as a nonvoting member. A local health officer serves  
20 as secretary at all board meetings and is responsible for maintaining the board's offices, meeting  
21 minutes and records;

22 (2) To supervise and direct the activities of the local board's health services, employees  
23 and facilities;



24           (3) To ensure that procedures are established for the receipt of communicable or  
25 reportable disease reports from local physicians and other reporting sources and for the  
26 transmittal of the reports to the commissioner;

27           (4) To perform mandatory HIV tests on persons convicted of sex-related offenses and  
28 resident within the service area; and

29           (5) To determine when sufficient corrections have been made to warrant removal of any  
30 restrictions or limitations placed on an individual or entity for public health purposes by an  
31 employee of the local board of health.

NOTE: The purpose of this bill is to provide for approval by the county commission of all health policies enacted by local boards of health.

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

§16-2-3 has been completely rewritten; therefore, it has been completely underscored.