

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 80

**FISCAL
NOTE**

BY SENATOR FERNS

[Introduced January 10, 2018; 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:

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 2018 Regular Session of the Legislature and approve, modify or void the 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 §16-2-3 of this code is required to have any policy approved by order of the
6 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 §16-2-3 of this code which has been approved by the county commission pursuant to §16-2-

26 3(c) of this code.

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

41 Acting through the local board of health the commissioner may:

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

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

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

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

47 and

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

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

50 (6) Deposit all moneys and collected fees into an account designated for local board of
51 health purposes. The moneys for a municipal board of health shall be deposited with the municipal

52 treasury in the service area. The moneys for a county board of health shall be deposited with the
53 county treasury in the service area. The moneys for a combined local board of health shall be
54 deposited in an account as designated in the plan of combination: *Provided*, That nothing
55 contained in this subsection is intended to conflict with the provisions of article one, chapter
56 sixteen of this code;

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

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

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

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

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

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

72 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve
73 as needed and at the will and pleasure of the local board of health. Staff and any contractors
74 providing services to the board shall comply with applicable West Virginia certification and
75 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
76 Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the
77 alternative and with the consent and approval of the appointing authority, establish and adopt a

78 merit system for its eligible employees. The merit system may be similar to the state merit system
79 and may be established by the local board by its order, subject to the approval of the appointing
80 authority, adopting and making applicable to the local health department all, or any portion of any
81 order, rule, standard, or compensation rate in effect in the state merit system as may be desired
82 and as is properly applicable;

83 (3) Adopt and promulgate and from time to time amend rules consistent with state public
84 health laws and the rules of the West Virginia State Department of Health and Human Resources,
85 that are necessary and proper for the protection of the general health of the service area and the
86 prevention of the introduction, propagation and spread of disease. Any action on these rules
87 requires the approval of the county commission as set forth in §16-2-3(c) of this code. All rules
88 shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality
89 or both and shall be kept by the clerk or recording officer in a separate book as public records;

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

93 (5) Assess, charge and collect fees for permits and licenses for the provision of public
94 health services: *Provided*, That permits and licenses required for agricultural activities may not be
95 assessed, charged or collected: *Provided, however*, That a local board of health may assess,
96 charge and collect all of the expenses of inspection of the physical plant and facilities of any
97 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization
98 facilities are located outside this state but who sells or distributes in the state, or transports,
99 causes or permits to be transported into this state, milk or milk products for resale, use or
100 consumption in the state and in the service area of the local board of health. A local board of
101 health may not assess, charge and collect the expenses of inspection if the physical plant and
102 facilities are regularly inspected by another agency of this state or its governmental subdivisions
103 or by an agency of another state or its governmental subdivisions certified as an approved

104 inspection agency by the commissioner. No more than one local board of health may act as the
105 regular inspection agency of the physical plant and facilities; when two or more include an
106 inspection of the physical plant and facilities in a regular schedule, the commissioner shall
107 designate one as the regular inspection agency;

108 (6) Assess, charge and collect fees for services provided by the local health department:
109 *Provided*, That fees for services shall be submitted to and approved by the commissioner:
110 *Provided, however*, That a local health department may bill health care service fees to a payor
111 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization and the
112 Public Employees Insurance Agency for medical services provided: *Provided further*, That health
113 care service fees billed by a local health department are not subject to commissioner approval
114 and may be at the payor's maximum allowable rate.

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

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

129 (c) The local boards of health are charged with protecting the health and safety, as well

130 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the
131 Legislature for the benefit of local boards of health shall be used for provision of basic public
132 health services.

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

1 ~~(a) 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 totally rewritten, therefore it has been completely underscored.