

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

### **Introduced**

## **House Bill 2961**

BY DELEGATES FAST, C. MARTIN, FOSTER, MANDT,

HOWELL, BUTLER, AND STEELE

[Introduced February 11, 2019; Referred  
to the Committee on Technology and Infrastructure  
then Government Organization.]

1 A BILL to amend and reenact §16-1-4, 16-1-9, and §16-1-9a of the Code of West Virginia, 1931,  
2 as amended, all relating to permitting the commissioner to require a water supply system  
3 be equipped with a backflow prevention assembly; requiring the appropriate water utility  
4 to install the backflow prevention assembly at the meter; requiring the appropriate water  
5 utility to maintain the backflow prevention assembly; and requiring the water utility to  
6 provide information relating to maintenance and necessity for any backflow prevention  
7 assembly.

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

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

### **§16-1-4. Proposal of rules by the secretary.**

1 (a) The secretary may propose rules in accordance with the provisions of §29A-3-1 *et seq*  
2 of this code that are necessary and proper to effectuate the purposes of this chapter. The  
3 secretary may appoint or designate advisory councils of professionals in the areas of hospitals,  
4 nursing homes, barbers and beauticians, postmortem examinations, mental health and  
5 intellectual disability centers and any other areas necessary to advise the secretary on rules.

6 (b) The rules may include, but are not limited to, the regulation of:

7 (1) Land usage endangering the public health: *Provided*, That no rules may be  
8 promulgated or enforced restricting the subdivision or development of any parcel of land within  
9 which the individual tracts, lots or parcels exceed two acres each in total surface area and which  
10 individual tracts, lots or parcels have an average frontage of not less than 150 feet even though  
11 the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area,  
12 and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding  
13 the provisions of this subsection, nothing in this section may be construed to abate the authority  
14 of the department to:

15 (A) Restrict the subdivision or development of a tract for any more intense or higher density  
16 occupancy than a single-family dwelling unit;

17 (B) Propose or enforce rules applicable to single-family dwelling units for single-family  
18 dwelling unit sanitary sewerage disposal systems; or

19 (C) Restrict any subdivision or development which might endanger the public health, the  
20 sanitary condition of streams or sources of water supply;

21 (2) The sanitary condition of all institutions and schools, whether public or private, public  
22 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open  
23 to the general public and inviting public patronage or public assembly, or tendering to the public  
24 any item for human consumption and places where trades or industries are conducted;

25 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources  
26 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel  
27 connected with any of those facilities, including determining whether the use of a backflow  
28 prevention assembly is necessary on any plumbing system, without regard to whether the  
29 supplies or systems are publicly or privately owned; and the design of all water systems, plumbing  
30 systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming  
31 pools in this state, whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in  
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment  
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect  
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination  
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a  
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public  
40 notification by a public water system on being granted a variance or exemption or upon failure to  
41 comply with specific requirements of this section and rules promulgated under this section; record  
42 keeping; laboratory certification; as well as procedures and conditions for granting variances and

43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water  
45 and may establish requirements governing the taste, odor, appearance and other consumer  
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription  
48 of sale and other requirements in accordance with §16-7-1 *et seq* of the code as are necessary  
49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants  
51 and emergency medical care technician-paramedics; the designation of the health care facilities,  
52 health care services and the industries and occupations in the state that must have emergency  
53 medical service attendants and emergency medical care technician-paramedics employed and  
54 the availability, communications and equipment requirements with respect to emergency medical  
55 service attendants and to emergency medical care technician-paramedics. Any regulation of  
56 emergency medical service attendants and emergency medical care technician- paramedics may  
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and  
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment  
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may  
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer  
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not  
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six  
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast  
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,  
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 (c) The secretary shall propose a rule for legislative approval in accordance with the  
70 provisions of §29A-3-1 *et seq* of this code for the distribution of state aid to local health  
71 departments and basic public health services funds.

72 The rule shall include the following provisions:

73 Base allocation amount for each county;

74 Establishment and administration of an emergency fund of no more than two percent of  
75 the total annual funds of which unused amounts are to be distributed back to local boards of health  
76 at the end of each fiscal year;

77 A calculation of funds utilized for state support of local health departments;

78 Distribution of remaining funds on a per capita weighted population approach which  
79 factors coefficients for poverty, health status, population density and health department  
80 interventions for each county and a coefficient which encourages counties to merge in the  
81 provision of public health services;

82 A hold-harmless provision to provide that each local health department receives no less  
83 in state support for a period of four years beginning in the 2009 budget year.

84 The Legislature finds that an emergency exists and, therefore, the secretary shall file an  
85 emergency rule to implement the provisions of this section pursuant to the provisions of §29A-3-  
86 15 of this code. The emergency rule is subject to the prior approval of the Legislative Oversight  
87 Commission on Health and Human Resources Accountability prior to filing with the Secretary of  
88 State.

89 (d) The secretary may propose rules for legislative approval that may include the  
90 regulation of other health-related matters which the department is authorized to supervise and for  
91 which the rule-making authority has not been otherwise assigned.

**§16-1-9. Duties and powers of the commissioner; supervision over local sanitation;  
violations; jurisdiction; penalties.**

1 No person, firm, company, corporation, institution or association, whether public or private,

2 county or municipal, may install or establish any system or method of drainage, water supply, or  
3 sewage or excreta disposal without first obtaining a written permit to install or establish the system  
4 or method from the commissioner or his or her authorized representative. All systems or methods  
5 shall be installed or established in accordance with plans, specifications and instructions issued  
6 by the commissioner or which have been approved in writing by the commissioner or his or her  
7 authorized representative.

8 Whenever the commissioner or his or her authorized representative finds, upon  
9 investigation, that any system or method of drainage, water supply, or sewage or excreta disposal,  
10 whether publicly or privately owned, has not been installed in accordance with plans,  
11 specifications and instructions issued by the commissioner or approved in writing by the  
12 commissioner or his or her authorized representative, the commissioner or his or her authorized  
13 representative shall issue an order requiring the owner of the system or method to make  
14 alterations necessary to correct the improper condition. The alterations shall be made within a  
15 reasonable time, which shall not exceed 30 days, unless a time extension is authorized by the  
16 commissioner or his or her authorized representative.

17 The commissioner can determine that any water supply system must be equipped with a  
18 backflow prevention assembly to protect the health and sanitation of water, whether publicly or  
19 privately owned, and that the backflow prevention assembly must be installed by the appropriate  
20 water utility at the meter and must be regularly maintained by the water utility, all maintenance  
21 activities must be documented by the water utility for every backflow prevention assembly  
22 required or authorized by the commissioner and provided to the commissioner upon request. All  
23 backflow prevention assemblies required to be installed pursuant to this code shall be installed at  
24 the expense of the water utility.

25 The presence of sewage or excreta being disposed of in a manner not approved by the  
26 commissioner or his or her authorized representative constitutes prima facie evidence of the  
27 existence of a condition endangering public health.

28           The personnel of the Bureau for Public Health shall be available to consult and advise with  
29 any person, firm, company, corporation, institution or association, whether publicly or privately  
30 owned, county or municipal, or public service authority, as to the most appropriate design, method  
31 of operation or alteration of any system or method.

32           Any person, firm, company, corporation, institution or association, whether public or  
33 private, county or municipal, violating any provision of this section is guilty of a misdemeanor and,  
34 upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500. Any  
35 continuing failure or refusal of the convicted person, firm, company, corporation, institution or  
36 association, whether public or private, county or municipal, to make the alterations necessary to  
37 protect the public health required by the commissioner or his or her authorized representative is  
38 a separate, distinct and additional offense for each 24 hour period of failure or refusal, and, upon  
39 conviction thereof, the violator shall be fined not less than \$50 nor more than \$500 for each  
40 conviction: *Provided*, That none of the provisions contained in this section apply to those  
41 commercial or industrial wastes that are subject to the regulatory control of the West Virginia  
42 ~~Division~~ Department of Environmental Protection.

43           Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of  
44 any provisions of this section.

**§16-1-9a. Regulation of public water systems.**

1           (a) The commissioner shall regulate public water systems as prescribed in this section.

2           (b) The commissioner shall establish by legislative rule, in accordance with §29A-3-1 *et*  
3 *seq* of this code:

4           (1) The maximum contaminant levels to which all public water systems shall conform in  
5 order to prevent adverse effects on the health of individuals;

6           (2) Treatment techniques that reduce the contaminant or contaminants to a level which  
7 will not adversely affect the health of the consumer;

8           (3) Provisions to protect and prevent contamination of wellheads and well fields used by

9 public water supplies so that contaminants do not reach a level that would adversely affect the  
10 health of the consumer;

11 (4) Minimum requirements for:

12 (A) Sampling and testing;

13 (B) System operation;

14 (C) Public notification by a public water system on being granted a variance or exemption  
15 or upon failure to comply with specific requirements of this section and regulations promulgated  
16 under this section;

17 (D) Recordkeeping;

18 (E) Laboratory certification; and

19 (F) Procedures and conditions for granting variances and exemptions to public water  
20 systems from state public water systems' regulations;

21 (5) Requirements covering the production and distribution of bottled drinking water;

22 (6) Requirements governing the taste, odor, appearance and other consumer acceptability  
23 parameters of drinking water; ~~and~~

24 (7) Any requirement for any water supply system the commissioner determines is  
25 necessary to be equipped with a backflow prevention assembly to be installed and maintained by  
26 the appropriate water utility, all maintenance activities must be documented and provided to the  
27 commissioner upon request; and

28 (8) Any other requirement the commissioner finds necessary to effectuate the provisions  
29 of this article.

30 (c) The commissioner or his or her authorized representatives or designees may enter any  
31 part of a public water system, whether or not the system is in violation of a legal requirement, for  
32 the purpose of inspecting, sampling or testing and shall be furnished records or information  
33 reasonably required for a complete inspection.

34 (d) The commissioner, his or her authorized representative or designee may conduct an



35 evaluation necessary to assure the public water system meets federal safe drinking water  
36 requirements. The public water system shall provide a written response to the commissioner  
37 within 30 days of receipt of the evaluation by the public water system, addressing corrective  
38 actions to be taken as a result of the evaluation.

39 (e)(1) Any individual or entity who violates any provision of this article, or any of the rules  
40 or orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more  
41 than \$5,000. Each day's violation shall constitute a separate offense.

42 (2) For a willful violation of a provision of this article, or of any of the rules or orders issued  
43 under this article, an individual or entity shall be subject to a civil penalty of not more than \$10,000  
44 and each day's violation shall be grounds for a separate penalty.

45 (3) Civil penalties are payable to the commissioner. All moneys collected under this  
46 section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All  
47 moneys deposited into the fund shall be used by the commissioner to provide technical assistance  
48 to public water systems.

49 (f) The commissioner, or his or her authorized representative, may also seek injunctive  
50 relief in the circuit court of the county in which all or part of the public water system is located for  
51 threatened or continuing violations.

NOTE: The purpose of this bill is to permit the commissioner to require a water supply system be equipped with a backflow prevention assembly; requiring the appropriate water utility to install the backflow prevention assembly at the meter; requiring the appropriate water utility to maintain the backflow prevention assembly; and requiring the water utility to provide information relating to maintenance and necessity for any backflow prevention assembly.

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