

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4521**

BY DELEGATES SUMMERS, BIBBY, HARDY, WAXMAN AND

McGEEHAN

(BY REQUEST)

[Introduced January 23, 2020; Referred to the  
Committee on Political Subdivisions then Health and  
Human Resources]

1 A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended, relating  
 2 to requiring rules of local boards of health to be approved by the county commission except  
 3 in cases of a public health emergency.

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

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

**§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:

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

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

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

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

19 (3) Submit a general plan of operation to the commissioner for approval, if it receives any  
 20 state or federal money for health purposes. This program plan shall be submitted annually and

21 comply with provisions of the local board of health standards administrative rule;

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

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

33 (6) Deposit all moneys and collected fees into an account designated for local board of  
34 health purposes. The moneys for a Municipal Board of Health shall be deposited with the  
35 municipal treasury in the service area. The moneys for a county board of health shall be deposited  
36 with the county treasury in the service area. The moneys for a combined local board of health  
37 shall be deposited in an account as designated in the plan of combination: *Provided*, That nothing  
38 contained in this subsection is intended to conflict with the provisions of article one, chapter  
39 sixteen of this code;

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

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

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

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

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

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

55 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve  
56 as needed and at the will and pleasure of the local board of health. Staff and any contractors  
57 providing services to the board shall comply with applicable West Virginia certification and  
58 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the  
59 Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the  
60 alternative and with the consent and approval of the appointing authority, establish and adopt a  
61 merit system for its eligible employees. The merit system may be similar to the state merit system  
62 and may be established by the local board by its order, subject to the approval of the appointing  
63 authority, adopting and making applicable to the local health department all, or any portion of any  
64 order, rule, standard, or compensation rate in effect in the state merit system as may be desired  
65 and as is properly applicable;

66 (3) Adopt and promulgate and from time to time amend rules consistent with state public  
67 health laws and the rules of the West Virginia State Department of Health and Human Resources,  
68 that are necessary and proper for the protection of the general health of the service area and the  
69 prevention of the introduction, propagation and spread of disease. All rules shall be approved by  
70 the county commission or appointing entity and then filed with the clerk of the county commission  
71 or the clerk or the recorder of the municipality or both, and shall be kept by the clerk or recording  
72 officer in a separate book as public records: Provided, That where there is an imminent public

73 health emergency, or application of state law, rule, or regulation approval by the county  
74 commission or appointing entity is not necessary before the rule goes into effect;

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

78 (5) Assess, charge and collect fees for permits and licenses for the provision of public  
79 health services: *Provided*, That permits and licenses required for agricultural activities may not be  
80 assessed, charged or collected: *Provided, however*, That a local board of health may assess,  
81 charge and collect all of the expenses of inspection of the physical plant and facilities of any  
82 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization  
83 facilities are located outside this state but who sells or distributes in the state, or transports,  
84 causes or permits to be transported into this state, milk or milk products for resale, use or  
85 consumption in the state and in the service area of the local board of health. A local board of  
86 health may not assess, charge and collect the expenses of inspection if the physical plant and  
87 facilities are regularly inspected by another agency of this state or its governmental subdivisions  
88 or by an agency of another state or its governmental subdivisions certified as an approved  
89 inspection agency by the commissioner. No more than one local board of health may act as the  
90 regular inspection agency of the physical plant and facilities; when two or more include an  
91 inspection of the physical plant and facilities in a regular schedule, the commissioner shall  
92 designate one as the regular inspection agency;

93 (6) Assess, charge and collect fees for services provided by the local health department:  
94 *Provided*, That fees for services shall be submitted to and approved by the commissioner:  
95 *Provided, however*, That a local health department may bill health care service fees to a payor  
96 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization and the  
97 Public Employees Insurance Agency for medical services provided: *Provided further*, That health  
98 care service fees billed by a local health department are not subject to commissioner approval

99 and may be at the payor's maximum allowable rate.

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

105 (8) Retain and make available child safety car seats, collect rental and security deposit  
106 fees for the expenses of retaining and making available child safety car seats, and conduct public  
107 education activities concerning the use and preventing the misuse of child safety car seats:  
108 *Provided*, That this subsection is not intended to conflict with the provisions of §17C-15-46 of this  
109 code: *Provided, however*, That any local board of health offering a child safety car seat program  
110 or employee or agent of a local board of health is immune from civil or criminal liability in any  
111 action relating to the improper use, malfunction or inadequate maintenance of the child safety car  
112 seat and in any action relating to the improper placement, maintenance or securing of a child in  
113 a child safety car seat.

114 (c) The local boards of health are charged with protecting the health and safety, as well  
115 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the  
116 Legislature for the benefit of local boards of health shall be used for provision of basic public  
117 health services.

NOTE: The purpose of this bill is to require approval by the county commission or  
appointing entity of local board of health rules, except in certain cases of emergency.

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