

**WEST VIRGINIA LEGISLATURE**  
**2021 THIRD EXTRAORDINARY SESSION**

**Introduced**

**Senate Bill 3026**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Introduced October 11, 2021]

1 A BILL to amend and reenact §16-2-11 and §16-2-13 of the Code of West Virginia, 1931, as  
2 amended, all relating to the role of appointing authorities or county boards of education as  
3 to the rules of local boards of health; providing that any rule adopted or established by a  
4 local board of health on which no action is taken by an appointing authority to approve,  
5 disapprove or amend the rule within 30 days after the rule is effective, is void; providing  
6 that, with respect to any rule adopted or established by a local board of health which solely  
7 applies to and affects public schools, such rule shall be approved, disapproved, or  
8 amended by the county board of education, instead of the appointing authority, within 30  
9 days of approval of the rule by the local board of health, and any such rule on which no  
10 action is taken by the county board of education within 30 days after the rule is effective,  
11 is void; providing that, if there is an imminent public health emergency, approval of the  
12 appointing authority or county board of education is not necessary before the rule goes  
13 into effect, but the rule shall be approved or disapproved by the appointing authority or  
14 county board of education within 30 days after the rule is effective, and any rule on which  
15 the appointing authority or county board of education has taken no action within 30 days  
16 shall be void; providing that a rule or rules subject to approval, disapproval, or amendment  
17 by an appointing authority or county board of education shall mean and include any order  
18 or directive issued by a local health officer which operates as a rule or a policy affecting  
19 multiple people as a class within the jurisdiction subject to rules of the local board of health,  
20 including, but not limited to, any order made and entered by a local health officer on or  
21 after the effective date of the amendments to this section during the regular session of the  
22 Legislature, 2021, and any such order or directive issued by a local health officer shall be  
23 null and void if not approved by the appointing authority within 30 days following the  
24 effective date of the reenactment of this section during the third extraordinary session of  
25 the Legislature in 2021; and making technical changes.

*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  
29 commissioner, a public health emergency exists or when the local board fails or refuses to enforce  
30 public health laws and rules necessary to prevent and control the spread of a communicable or  
31 reportable disease dangerous to the public health. The expenses incurred shall be charged  
32 against the 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 municipal  
35 treasury in the service area. The moneys for a county board of health shall be deposited with the  
36 county treasury in the service area. The moneys for a combined local board of health shall be  
37 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 §16-1-1 *et seq.* of this  
39 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  
56 serve 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) (A) Adopt and promulgate and from time to time amend rules consistent with state  
67 public health laws and the rules of the West Virginia State Department of Health and Human  
68 Resources, that are necessary and proper for the protection of the general health of the service  
69 area and the prevention of the introduction, propagation, and spread of disease.

70 (B) The commissioner shall establish a procedure by which adverse determinations by  
71 local health departments may be appealed, unless otherwise provided for, for the purpose of  
72 ensuring a consistent interpretation of state public health laws and rules of the Department of  
73 Health and Human Resources.

74 (C) When rules are adopted, promulgated, or amended, the local board of health shall  
75 place notice in the State Register and on their organization's web page setting forth a notice of  
76 proposed action, including the text of the new rule or the amendment and the date, time, and

77 place for receipt of public comment.

78 (D) All rules shall be approved, disapproved, or amended and approved by the ~~county~~  
79 ~~commission or~~ appointing entity authority within 30 days of approval from the local board of health,  
80 and any rule on which the appointing authority has taken no action within 30 days shall be void:  
81 Provided, That with respect to a rule which solely applies to and affects public schools, such rule  
82 shall be approved, disapproved or amended by the county board of education, instead of the  
83 appointing authority, within 30 days of approval by the local board of health, and any rule on which  
84 the county board of education has taken no action within 30 days shall be void.

85 (E) All rules of a combined local board of health shall be approved, disapproved, or  
86 amended and approved by each appointing ~~entity~~ authority within 30 days of approval from the  
87 combined local board of health. If one appointing ~~entity~~ authority approves and another other does  
88 not approve a rule from a combined local board health department, the rule is only in effect in the  
89 jurisdiction of the appointing ~~entity~~ authority which approved the rule.

90 (F) An approved rule shall be filed with the clerk of the county commission or the clerk or  
91 the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a  
92 separate book as public records.

93 (G) A rule currently in effect is not subject to approval, unless amended, from the ~~county~~  
94 ~~commission or~~ appointing authority.

95 (H) If there is an imminent public health emergency, approval of the ~~county commission,~~  
96 ~~or~~ appointing authority or county board of education is not necessary before the rule goes into  
97 effect, but the rule shall be approved or disapproved by the ~~county commission or~~ appointing  
98 authority or county board of education within 30 days after the rules are effective, and any rule on  
99 which the appointing authority or county board of education has taken no action within 30 days  
100 shall be void;

101 (I) For purposes of this section, a "rule" or "rules" subject to approval, disapproval, or  
102 amendment by an appointing authority or county board of education shall mean and include any

103 order or directive issued by a local health officer which operates as a rule or a policy affecting  
104 multiple people as a class within the jurisdiction subject to rules of the local board of health,  
105 including, but not limited to, any order made and entered by a local health officer on or after the  
106 effective date of the amendments to this section during the regular session of the Legislature,  
107 2021, and any such order or directive issued by a local health officer shall be null and void if not  
108 approved by the appointing authority within 30 days following the effective date of the reenactment  
109 of this section during the third extraordinary session of the Legislature in 2021.

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

113 (5) Assess, charge, and collect fees for permits and licenses for the provision of public  
114 health services: *Provided*, That permits and licenses required for agricultural activities may not be  
115 assessed, charged, or collected: *Provided, however*, That a local board of health may assess,  
116 charge, and collect all of the expenses of inspection of the physical plant and facilities of any  
117 distributor, producer, or pasteurizer of milk whose milk distribution, production, or pasteurization  
118 facilities are located outside this state but who sells or distributes in the state, or transports,  
119 causes or permits to be transported into this state, milk or milk products for resale, use or  
120 consumption in the state and in the service area of the local board of health. A local board of  
121 health may not assess, charge, and collect the expenses of inspection if the physical plant and  
122 facilities are regularly inspected by another agency of this state or its governmental subdivisions  
123 or by an agency of another state or its governmental subdivisions certified as an approved  
124 inspection agency by the commissioner. No more than one local board of health may act as the  
125 regular inspection agency of the physical plant and facilities; when two or more include an  
126 inspection of the physical plant and facilities in a regular schedule, the commissioner shall  
127 designate one as the regular inspection agency;

128 (6) Assess, charge, and collect fees for services provided by the local health department:

129 *Provided*, That fees for services shall be submitted to and approved by the commissioner:  
130 *Provided, however*, That a local health department may bill health care service fees to a payor  
131 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the  
132 Public Employees Insurance Agency for medical services provided: *Provided further*, That health  
133 care service fees billed by a local health department are not subject to commissioner approval  
134 and may be at the payor's maximum allowable rate;

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

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

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

153 (d) If the Governor declares a statewide public health emergency, the state health officer  
154 may develop emergency policies and guidelines that each of the local health departments



155 responding to the emergency must comply with in response to the public health emergency.

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

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

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

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

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

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

22 (c) Any order or directive issued by a local health officer which operates as a rule or a  
23 policy affecting multiple people as a class within the jurisdiction subject to rules of the local board  
24 of health, including, but not limited to, any order made and entered by a local health officer on or

25 after the effective date of the amendments to §16-2-11 of this code during the regular session of  
26 the Legislature, 2021, shall be subject to approval, disapproval, or amendment by an appointing  
27 authority or county board of education pursuant to §16-2-11 of this code within 30 days following  
28 the effective date of the reenactment of this section in the third extraordinary session of the  
29 Legislature in 2021.

NOTE: The purpose of this bill is to make any rule of a local health board which has not been approved, disapproved, or amended and approved by the appropriate local elected board (county commission, municipality, or county board of education) within 30 days of approval from the local board of health, void; and to include orders and directives made by local health officer which operates as a rule or policy affecting multiple people as a class within the jurisdiction subject to the process for approval, disapproval, or amendment by the local elected body.

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