

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 12**

BY SENATORS MARONEY, TAKUBO, AND SWOPE

[Introduced February 10, 2021; referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2-2, §16-2-6, §16-2-7, §16-2-8, §16-2-9, and §16-2-11 of the  
 2 Code of West Virginia, 1931, as amended, all relating to local health departments; creating  
 3 definition; permitting members of the appointing authority to serve as nonvoting, ex officio  
 4 members of the board; permitting appointing authority to remove local health department  
 5 board member; requiring rules adopted, promulgated, and amended by local boards of  
 6 health have a 30-day public comment published in the State Register; setting forth  
 7 requirement for notice; requiring written comments received during comment period be  
 8 presented to appointing authority for approval or disapproval in whole or in part within  
 9 specified time frames; providing amendments or modifications not approved may be  
 10 resubmitted; requiring that approved rules shall be filed with the clerk of the county  
 11 commission or the clerk or the recorder of the municipality, or both, and shall be kept as  
 12 public records; and requiring placing a local health department under the authority of the  
 13 state health officer when a state of emergency is declared.

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

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

### **§16-2-2. Definitions.**

1 Unless the context in which used clearly requires a different meaning, as used in this  
 2 article:

3 “Appointing authority” means the county commission or municipality or combination  
 4 thereof that authorized the creation or combination of the local board of health, in whatever form  
 5 it presently exists.

6 ~~(a)~~ “Basic public health services” means those services that are necessary to protect the  
 7 health of the public and that a local board of health must provide. The three areas of basic public  
 8 health services are communicable and reportable disease prevention and control, community  
 9 health promotion, and environmental health protection;

10 ~~(b)~~ “Bureau” means the Bureau for Public Health in the Department of Health and Human

11 Resources;

12 ~~(e)~~ "Clinical and categorical programs" means those services provided to individuals of  
13 specified populations and usually focus on health promotion or disease prevention. These  
14 services are not considered comprehensive health care but focus on specific health issues such  
15 as breast and cervical cancer, prenatal and pediatric health services and home health services;

16 ~~(d)~~ "Combined local board of health" is one form of organization for a local board of health  
17 and means a board of health serving any two or more counties or any county or counties and one  
18 or more municipalities within or partially within the county or counties;

19 ~~(e)~~ "Commissioner" means the commissioner of the Bureau for Public Health, who is the  
20 state health officer;

21 ~~(f)~~ "Communicable and reportable disease prevention and control" is one of three areas  
22 of basic public health services each local board of health must offer. Services shall include  
23 disease surveillance, case investigation and follow-up, outbreak investigation, response to  
24 epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine  
25 preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

26 ~~(g)~~ "Community health promotion" is one of three areas of basic public health services  
27 each local board of health must offer. Services shall include assessing and reporting community  
28 health needs to improve health status, facilitating community partnerships including identifying  
29 the community's priority health needs, mobilization of a community around identified priorities,  
30 and monitoring the progress of community health education services;

31 ~~(h)~~ "County board of health" is one form of organization for a local board of health and  
32 means a local board of health serving a single county;

33 ~~(i)~~ "Department" means the West Virginia Department of Health and Human Resources;

34 ~~(j)~~ "Director" or "director of health" means the state health officer. Administratively within  
35 the department, the Bureau for Public Health through its commissioner carries out the public  
36 health function of the department, unless otherwise assigned by the secretary;

37           ~~(k)~~ “Environmental health protection” is one of three areas of basic public health services  
38 each local board of health must offer. Services shall include efforts to protect the community from  
39 environmental health risks including, inspection of housing, institutions, recreational facilities,  
40 sewage and wastewater facilities; inspection and sampling of drinking water facilities; and  
41 response to disease outbreaks or disasters;

42           ~~(l)~~ “Enhanced public health services” means services that focus on health promotion  
43 activities to address a major health problem in a community, are targeted to a particular population  
44 and assist individuals in this population to access the health care system, such as lead and radon  
45 abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services  
46 are services a local health department may offer;

47           ~~(m)~~ “Local board of health,” “local board” or “board” means a board of health serving one  
48 or more counties or one or more municipalities or a combination thereof;

49           ~~(n)~~ “Local health department” means the staff of the local board of health;

50           ~~(o)~~ “Local health officer” means the individual physician with a current West Virginia  
51 license to practice medicine who supervises and directs the activities of the local health  
52 department services, staff and facilities and is appointed by the local board of health with approval  
53 by the commissioner;

54           ~~(p)~~ “Municipal board of health” is one form of organization for a local board of health and  
55 means a board of health serving a single municipality;

56           ~~(q)~~ “Performance-based standards” means generally accepted, objective standards such  
57 as rules or guidelines against which a local health department’s level of performance can be  
58 measured;

59           ~~(r)~~ “Primary care services” means health care services, including medical care, that  
60 emphasize first contact patient care and assume overall and ongoing responsibility for the patient  
61 in health maintenance and treatment of disease. Primary care services are services that local  
62 boards of health may offer if the board has determined that an unmet need for primary care

63 services exists in its service area. Basic public health services funding may not be used to support  
 64 these services;

65 ~~(s)~~ "Program plan" or "plan of operation" means the annual plan for each local board of  
 66 health that must be submitted to the commissioner for approval;

67 ~~(t)~~ "Secretary" means the secretary of the State Department of Health and Human  
 68 Resources; and

69 ~~(u)~~ "Service area" means the territorial jurisdiction of the local board of health.

**§16-2-6. Appointment to and composition of municipal boards of health; qualifications;  
 number of appointees.**

1 A municipal board of health is composed of five members selected and appointed by vote  
 2 of the governing body of the municipality. Each member appointed to a municipal board of health  
 3 shall be a resident of the municipality. No more than two members who reside in the same  
 4 municipal ward may be appointed and no more than two members may be appointed who are  
 5 personally licensed or certified in, engaged in, or actively participating in the same business,  
 6 profession or occupation. No more than three members of a municipal board of health may belong  
 7 to the same political party. The most senior member of the appointing agency shall serve as a  
 8 nonvoting member, ex-officio.

**§16-2-7. Appointment to and composition of county boards of health; qualifications;  
 number of appointees.**

1 A county board of health is composed of five members selected and appointed by vote of  
 2 the county commission. Each member appointed to the county board of health shall be a resident  
 3 of the county. No more than two members who reside in the same magisterial district may be  
 4 appointed and no more than two members may be appointed who are personally licensed or  
 5 certified in, engaged in, or actively participating in the same business, profession or occupation.  
 6 No more than three members of a county board of health may belong to the same political party.  
 7 The most senior member of the appointing agency shall serve as a nonvoting member, ex-officio.

**§16-2-8. Appointment to and composition of combined local boards of health; qualifications; number of appointees.**

1           A combined local board of health is composed of at least five members. The number of  
2 combined local board of health members to be selected by each participating county or  
3 municipality shall be established by agreement of the participating counties or municipalities. No  
4 more than one half of the members of a combined local board of health may be personally  
5 licensed or certified in, engaged in, or actively participating in the same business, profession or  
6 occupation. The number of members of a combined local board of health belonging to the same  
7 political party may not exceed by more than one the number of members belonging to another  
8 political party. No member may be selected and appointed by and represent more than one  
9 participating county or municipality.

10           The county commission of each participating county may select and appoint by vote no  
11 fewer than one and no more than three persons to serve as the representatives of the county on  
12 the combined local board of health. Each member appointed as a county representative to the  
13 combined local board of health shall be a resident of the participating county. No more than two  
14 persons residing in the same magisterial district may be appointed by a participating county as  
15 members and no more than two members may be appointed by a participating county who are  
16 personally licensed or certified in, engaged in, or actively participating in the same business,  
17 profession or occupation.

18           The governing body of each participating municipality may select and appoint by vote no  
19 fewer than one and no more than three persons to serve as the representatives of the municipality  
20 on the combined local board of health. Each member appointed as a municipality's representative  
21 to the combined local board of health shall be a resident of the municipality. No more than two  
22 members who reside in the same municipal ward may be appointed and no more than two  
23 members may be appointed who are personally licensed or certified in, engaged in, or actively  
24 participating in the same business, profession, or occupation. The most senior member of the

25 appointing agency shall serve as a nonvoting member, ex-officio.

26           Upon the formation of a combined local board of health and during the duration of its  
27 existence, there may be no separate county board of health or municipal board of health in any  
28 county or any municipality participating in the combined local board of health.

**§16-2-9. Local board of health; terms of appointment; reappointment; oath of office;  
vacancies; removal; compensation; expenses.**

1           (a) The term of office for members selected and appointed to a local board of health  
2 pursuant to the provisions of this article is five years. Members may serve until their duly qualified  
3 successors are selected and appointed by vote of the original appointing authority. Members may  
4 be reappointed for additional terms of five years. Board members' oaths of office shall be duly  
5 recorded before entering into or discharging any duties of the office. The most senior member of  
6 the appointing agency shall serve as a nonvoting member, ex-officio.

7           (b) Any vacancy on any local board of health shall be filled by appointment of the original  
8 appointing authority. This appointment is for the unexpired term.

9           (c) A local board of health, or the appointing authority, may remove any of its members  
10 pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for  
11 official misconduct, incompetence, neglect of duty, gross immorality or the revocation of any state  
12 professional license or certification. A local board of health, or any of its members may be  
13 removed by the state health officer for failure or refusal to comply with duties as set forth by statute  
14 or rule. Upon removal, a successor or successors to the member or members removed shall  
15 immediately be appointed by the original appointing body pursuant to the provisions of this article.

16           (d) Each member of a local board of health may receive compensation as determined by  
17 the local board for attending meetings of and other activities for the board as required by law:  
18 *Provided*, That this compensation may not exceed \$100 per day. Each member of a local board  
19 may be reimbursed for all reasonable and necessary travel and other expenses actually incurred  
20 by the member in the performance of duties as a member of the local board.

**§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 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 ~~article one, chapter~~  
39 ~~sixteen~~ §16-1-1 *et seq.* 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 filed with the~~  
70 ~~clerk of the county commission or the clerk or the recorder of the municipality or both and shall~~  
71 ~~be kept by the clerk or recording officer in a separate book as public records~~ When rules are  
72 adopted, promulgated, or amended, the local board of health shall file for publication in the State  
73 Register, a notice of proposed action, including the text of the new rule or the amendment and a  
74 date, time, and place for receipt of public comment. A hearing may be held to consider public  
75 comment. The language of the new rule or the amendment, including any proposed changes  
76 made in response to the public comment period, with a record of the public hearing, if any, and  
77 written comments shall be presented to the appointing authority within 90 days of the end of the

78 public comment period. Within 60 days of receiving the proposed new or amended rules the  
79 appointing authority shall either approve or disapprove all or part of the amendments and  
80 modifications and for any portion of the amendments not approved shall specify the reason or  
81 reasons for disapproval. Any portions of the amendments or modifications not approved may be  
82 revised and resubmitted. Approved rules shall be filed with the clerk of the county commission or  
83 the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording  
84 officer in a separate book as public records;

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

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

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

104 *Provided*, That fees for services shall be submitted to and approved by the commissioner:  
105 *Provided, however*, That a local health department may bill health care service fees to a payor  
106 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization and the  
107 Public Employees Insurance Agency for medical services provided: *Provided* further, that health  
108 care service fees billed by a local health department are not subject to commissioner approval  
109 and may be at the payor's maximum allowable rate.

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

115 (8) Retain and make available child safety car seats, collect rental and security deposit  
116 fees for the expenses of retaining and making available child safety car seats, and conduct public  
117 education activities concerning the use and preventing the misuse of child safety car seats:  
118 *Provided*, That this subsection is not intended to conflict with the provisions of section §17C-15-  
119 46 of this code: *Provided, however*, That any local board of health offering a child safety car seat  
120 program or employee or agent of a local board of health is immune from civil or criminal liability  
121 in any action relating to the improper use, malfunction or inadequate maintenance of the child  
122 safety car seat and in any action relating to the improper placement, maintenance or securing of  
123 a child in a child safety car seat.

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

128 (d) If the Governor declares a state of emergency for a county, the local board of health in  
129 that county comes under the control and authority of the state health officer.

NOTE: The purpose of this bill is to update the authority of local health departments. The bill defines "appointing authority" and permits the appointing authority to remove local health board members and can serve as ex-officio non-voting members of the local health board THi. Additionally, the bill requires a thirty-day public comment period for rules of local health board of health. The rules will be published in the State Register. The notice includes the date, time and place to submit public comments. The bill sets forth timeframes for the process. Approved rules shall be filed as public comments. The bill requires local health departments to come under the control of the state health officer when the Governor declares a state of emergency in that county.

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