

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 12**

BY SENATORS MARONEY, TAKUBO, AND SWOPE

[Originating in the Committee on Health and Human

Resources; reported on February 17, 2021]



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; providing the nonvoting member shall not be counted against any  
5 other criteria for board membership; permitting appointing authority to remove local health  
6 department board member; permitting appointing authority of combined board to remove  
7 their own appointed members; requiring the commissioner to establish a procedure for  
8 adverse determinations by local health department to be appealed, unless otherwise  
9 provided; requiring rules adopted, promulgated, and amended by local boards of health  
10 have a public comment published in the State Register and the organization's web page;  
11 setting forth requirement for notice; requiring written comments received during comment  
12 period be presented to appointing authority for approval or disapproval in whole or in part  
13 within specified time frames; providing amendments or modifications not approved may  
14 be resubmitted; providing that a rule currently in effect is not subject to approval, unless  
15 amended, from the county commission or appointing authority; providing emergency rule  
16 approval or disapproval procedures within specified time frames; requiring that approved  
17 rules shall be filed with the clerk of the county commission or the clerk or the recorder of  
18 the municipality, or both, and shall be kept as public records; and requiring state health  
19 officer to develop policies and guidelines that each of the local departments must comply  
20 with when a statewide public health 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           ~~(c)~~ “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 Department of Health and Human Resources;  
68 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  
7 belong to the same political party. A member of the appointing authority shall serve as a

8 nonvoting, ex officio member and this member shall not be counted against any criteria for board  
9 appointment set forth in this section.

**§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 A member of the appointing authority shall serve as a nonvoting, ex officio member and this  
8 member shall not be counted against any criteria for board appointment set forth in this section.

**§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. A member of the appointing  
25 authority shall serve as a nonvoting, ex officio member and this member shall not be counted  
26 against any criteria for board appointment set forth in this section.

27 Upon the formation of a combined local board of health and during the duration of its  
28 existence, there may be no separate county board of health or municipal board of health in any  
29 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. A member of the appointing  
6 authority shall serve as a nonvoting, ex officio member and this member shall not be counted  
7 against any criteria for board appointment set forth in this section.

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

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

21 (d) Each member of a local board of health may receive compensation as determined by  
22 the local board for attending meetings of and other activities for the board as required by law:  
23 *Provided*, That this compensation may not exceed \$100 per day. Each member of a local board  
24 may be reimbursed for all reasonable and necessary travel and other expenses actually incurred  
25 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  
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 ~~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  
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) 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; Provided, That the  
70 commissioner shall establish a procedure by which adverse determinations by local health  
71 departments may be appealed, unless otherwise provided for, for the purpose of ensuring a  
72 consistent interpretation of state public health laws and rules of the Department of Health and  
73 Human Resources. All rules shall be filed with the clerk of the county commission or the clerk or  
74 the recorder of the municipality or both and shall be kept by the clerk or recording officer in a  
75 separate book as public records When rules are adopted, promulgated, or amended, the local  
76 board of health shall place notice in the State Register and on their organization's web page,  
77 setting forth a notice of proposed action, including the text of the new rule or the amendment and  
78 the date, time, and place for receipt of public comment. A hearing may be held to consider public  
79 comment. The language of the new rule or the amendment, including any proposed changes  
80 made in response during the public comment period, with a record of the public hearing, if any,  
81 and written comments shall be presented to the county commission or appointing authority within  
82 30 days of the end of the public comment period. Within 45 days of receiving the proposed new  
83 or amended rules the county commission or appointing authority shall either approve or  
84 disapprove all or part of the amendments and modifications and for any portion of the

85 amendments not approved shall specify the reason or reasons for disapproval. Any portions of  
86 the amendments or modifications not approved may be revised and resubmitted. Approved rules  
87 shall be filed with the clerk of the county commission or the clerk or the recorder of the  
88 municipality, or both, and shall be kept by the clerk or recording officer in a separate book as  
89 public records: *Provided*, That a rule currently in effect is not subject to approval, unless amended,  
90 from the county commission or appointing authority: *Provided, however*, That if there is an  
91 imminent public health emergency, approval of the county commission or appointing authority is  
92 not necessary before the rule goes into effect but shall be approved or disapproved by the county  
93 commission or appointing authority within 30 days after the rules are effective;

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

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

110 inspection of the physical plant and facilities in a regular schedule, the commissioner shall  
111 designate one as the regular inspection agency;

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

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

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

133 (c) The local boards of health are charged with protecting the health and safety, as well  
134 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the

135 Legislature for the benefit of local boards of health shall be used for provision of basic public  
136 health services.

137 (d) If the Governor declares a statewide public health emergency, the Governor may direct  
138 the state health officer to develop emergency policies and guidelines that each of the local health  
139 departments responding to the emergency must comply with in response to the public health  
140 emergency.