

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 12

BY SENATORS MARONEY, TAKUBO, AND SWOPE

[Passed March 4, 2021; in effect 90 days from passage (June 2, 2021)]

1 AN ACT to amend and reenact §16-2-2, §16-2-9, and §16-2-11 of the Code of West Virginia,
2 1931, as amended, all relating to local health departments; defining terms; permitting an
3 appointing entity to remove a board member; creating an appeal process for adverse
4 determinations; requiring rules by a local board of health to be published; requiring rules
5 to be approved, disapproved or amended and approved by an appointing entity; providing
6 that a rule currently in effect is not subject to approval, unless amended; providing an
7 emergency rule process; requiring that an approved rule shall be filed with the appropriate
8 entity; clarifying that a rule is only effective in the jurisdiction where the appointing entity
9 grants approval; requiring rules shall be kept as public records; establishing an emergency
10 health rule process; and permitting the state health officer to develop policies that each of
11 the local departments must comply with when a statewide public health emergency is
12 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 “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 “Bureau” means the Bureau for Public Health in the Department of Health and Human
11 Resources;

12 “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 “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 “Commissioner” means the Commissioner of the Bureau for Public Health, who is the state
20 health officer;

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

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

31 “County board of health” is one form of organization for a local board of health and means
32 a local board of health serving a single county;

33 “Department” means the West Virginia Department of Health and Human Resources;

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

37 “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 “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 “Local board of health”, “local board”, or “board” means a board of health serving one or
48 more counties or one or more municipalities or a combination thereof;

49 “Local health department” means the staff of the local board of health;

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

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

59 “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 "Program plan" or "plan of operation" means the annual plan for each local board of health
66 that must be submitted to the commissioner for approval;

67 "Secretary" means the Secretary of the Department of Health and Human Resources; and

68 "Service area" means the territorial jurisdiction of the 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.

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

8 (c) A local board, or the appointing authority, of health may remove any of its members
9 pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for
10 official misconduct, incompetence, neglect of duty, or the revocation of any state professional
11 license or certification. With respect to a combined board, a county commission or appointing
12 authority may remove any of its appointed members pursuant to the provisions of its lawfully
13 adopted bylaws and shall remove any of its appointed members for official misconduct,
14 incompetence, neglect of duty, or the revocation of any state professional license or certification.

15 A local board of health, or any of its members may be removed by the state health officer for
16 failure or refusal to comply with duties as set forth by statute or rule. Upon removal, a successor
17 or successors to the member or members removed shall immediately be appointed by the original
18 appointing body pursuant to the provisions of this article.

19 (d) Each member of a local board of health may receive compensation as determined by
20 the local board for attending meetings of and other activities for the board as required by law:
21 *Provided*, That this compensation may not exceed \$100 per day. Each member of a local board
22 may be reimbursed for all reasonable and necessary travel and other expenses actually incurred
23 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 §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 within 30 days of approval from the local board of health.

80 (E) All rules of a combined local board of health shall be approved, disapproved, or
81 amended and approved by each appointing entity within 30 days of approval from the combined
82 local board of health. If one appointing entity approves and another other does not approve a rule
83 from a combined local board health department, the rule is only in effect in the jurisdiction of the
84 appointing entity which approved the rule.

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

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

90 (H) If there is an imminent public health emergency, approval of the county commission
91 or appointing authority is not necessary before the rule goes into effect but shall be approved or
92 disapproved by the county commission or appointing authority within 30 days after the rules are
93 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 state health officer
138 may develop emergency policies and guidelines that each of the local health departments
139 responding to the emergency must comply with in response to the public health emergency.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor