WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

---

ENROLLED

Com. Sub. for

HOUSE BILL No. 4344

(By Mr. Speaker, Mr. Chambers)
[By request of the Executive]

---

Passed ..................................... 1990

In Effect ................................... Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4344
(By Mr. Speaker, Mr. Chambers)
[By Request of the Executive]

[Passed February 28, 1990; in effect from passage.]

AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and duties of the director of health and providing the director, upon gubernatorial approval, the power to close, sell, lease or contract out the operation of specified health care facilities; providing for a report to the joint committee on government and finance relative to patient transfers; requiring public hearings under specified conditions; providing certain employment preferences in state agencies for specified employees; and requiring an annual report to the Legislature.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-10. Powers and duties of the director of health.

1 The director shall be the chief executive, administra-
2 tive and fiscal officer of the division of health and shall
have the following powers and duties:

(1) To supervise and control the business, fiscal, administrative and health affairs of the division of health, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the laws of this state relating to health and mental health, and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the director by law; to that end the director may promulgate such written rules as are necessary and proper to delegate functions, establish subdivisions, specify duties and responsibilities, prescribe qualifications of subdivision directors and otherwise administer or supervise the division, subject to the safeguards of the state civil service system as it now exists;

(2) To enforce all laws of this state concerning public health, health and mental health; to that end, the director shall make, or cause to be made, sanitary investigations and inquiries respecting the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression or control of such conditions; the source of sickness and mortality, and the effects of environment, employment, habits and circumstances of life on the public health. The director shall further make, or cause to be made, inspections and examinations of food, drink and drugs offered for sale or public consumption in such manner as the director shall deem necessary to protect the public health and shall report all violations of laws and regulations relating thereto to the prosecuting attorney of the county in which such violations occur;

(3) To make complaint or cause proceedings to be instituted against any person, corporation or other entity for the violation of any health law before any court or agency, without being required to give security for costs; such action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(4) To supervise and coordinate the administration
and operation of the state hospitals named in article two, 
chapter twenty-seven of this code, and any other state 
facility hereafter created for the mentally ill, mentally 
retarded or addicted: Provided, That notwithstanding 
any other provisions of this code, in the interest of 
promoting cost effective health care in government, the 
director, with the approval of the secretary of the 
department of health and human resources and the 
governor, has the power to close, sell or lease or 
otherwise transfer the Greenbrier School for Retarded 
Children or Spencer State Hospital, or to arrange for 
the administration and operation of said facility by 
contract or other means: Provided, however, That 
savings realized pursuant to the closure, sale or lease of 
the facility or the contracting out of the operation of the 
facility shall remain in the "Hospital Services Revenue 
Account": Provided further, That prior to any transfer 
of patients as a result of any closure, sale, lease, 
contracting out of the operations, or other transfer made 
pursuant to this subdivision, a comprehensive plan 
detailing specifically which hospitals are to be closed, 
sold, leased or managed under contract in whole or in 
part; an analysis of the impact such action will have on 
other state facilities, their patients and their staff; a 
detailed plan for the care, placement and movement of 
patients including offering relocation counseling; a plan 
to assist affected employees in finding other employ- 
ment, including retraining and education and relocation 
counseling; an economic and community impact state- 
ment detailing savings and costs associated with the 
proposed closing, sale, lease or management of such 
state facilities, and the effect on local and state 
employment, revenues and services, shall be submitted 
to the joint committee on government and finance: And 
provided further, That prior to any closure, sale, lease, 
contracting out of the operations, or other transfer, the 
joint committee on government and finance shall 
conduct a public hearing on the proposal in the affected 
area of the state. Any person to whom such facility is 
sold, leased, or otherwise transferred or by contract or 
other means administers and operates such facility or 
who operates such facility as an intermediate care
facility for the mentally retarded shall operate such facility in accordance with applicable federal laws and regulations and with chapter twenty-seven of this code and shall use best efforts to employ qualified persons who were employed at the facility by the state immediately prior to such transfer or contract: And provided further, That, notwithstanding any other provision of the code to the contrary, in filling vacancies at other facilities or state agencies the director and other directors of state agencies shall, for a period of twenty-four months after such transfer or contract, give preference, over all but existing employees in such other facilities named in article two, chapter twenty-seven and article five-c, chapter sixteen of this code, to qualified persons who were permanently employed at the facility immediately prior to such transfer or contract: And provided further, That qualified persons who were permanently employed at the facility immediately prior to such transfer or contract shall not supersede those employees with recall rights in other state agencies: And provided further, That preferential consideration be given to West Virginia businesses or corporations headquartered in West Virginia, whenever possible, for the purchase, lease or other transfer of a facility under the provisions of this subsection;

(5) To supervise and coordinate the administration and operation of the health and other facilities named in chapter twenty-six of this code, except as otherwise therein provided, and any other state facility hereafter created relating to health, not otherwise provided for: Provided, That notwithstanding any other provisions of this code, in the interest of promoting cost effective health care in government, the director, with the approval of the secretary of the department of health and human resources and the governor, has the power to close, sell or lease or otherwise transfer Andrew S. Rowan Memorial Home and the Denmar State Hospital, or to arrange for the administration and operation of such facilities by contract or other means: Provided, however, That savings realized pursuant to the closure, sale or lease of any facility or the contracting out of the operation of any facility shall remain in the “Hospital
Provided further, That prior to any transfer of patients as a result of any closure, sale, lease, contracting out of the operations, or other transfer made pursuant to this subdivision, a comprehensive plan detailing specifically which hospitals are to be closed, sold, leased or managed under contract in whole or in part; an analysis of the impact such action will have on other state facilities, their patients and their staff; a detailed plan for the care, placement and movement of patients including offering relocation counseling; a plan to assist affected employees in finding other employment, including retraining and education and relocation counseling; an economic and community impact statement detailing savings and costs associated with the proposed closing, sale, lease or management of such state facilities, and the effect on local and state employment, revenues and services, shall be submitted to the joint committee on government and finance: And provided further, That prior to any closure, sale, lease, contracting out of the operations, or other transfer, the joint committee on government and finance shall conduct a public hearing on the proposal in the affected area of the state. Any person to whom such facility is sold, leased, or otherwise transferred, or by contract or other means administers and operates such facility or who operates such facility as a personal care home or nursing home for the mentally retarded, shall operate such facility in accordance with applicable federal laws and regulations and with chapter twenty-seven or article five-c, chapter sixteen of this code and shall use best efforts to employ qualified persons who were employed at the facility by the state immediately prior to such transfer or contract: And provided further, That, notwithstanding any other provision of the code to the contrary, in filling vacancies at other facilities or other state agencies the director and the directors of other state agencies shall, for a period of twenty-four months after such transfer or contract, give preference, over all but existing employees in such other facilities named in article two, chapter twenty-seven and article five-c, chapter sixteen of this code, to qualified persons who were permanently employed at the facility immediately
prior to such transfer or contract: *And provided further,*

That qualified persons who were permanently employed
at the facility immediately prior to such transfer or
contract shall not supersede those employees with recall
rights in other state agencies: *And provided further,*

That preferential consideration be given to West
Virginia businesses or corporations headquartered in
West Virginia, whenever possible, for the purchase,
lease or other transfer of a facility under the provisions
of this subsection;

(6) To supervise and coordinate the administration
and operation of the county and municipal boards of
health and health officers;

(7) To develop and maintain a state plan of operation
which sets forth the needs of the state in the areas of
health and mental health; goals and objectives for
meeting those needs; methods for achieving the stated
goals and objectives; and needed personnel, funds and
authority for achieving the goals and objectives;

(8) To collect data as may be required to foster
knowledge on the citizenry's health status, the health
system and costs of health care;

(9) To delegate to any appointee, assistant or employee
any and all powers and duties vested in the director,
including, but not limited to, the power to execute
contracts and agreements in the name of the division:
*Provided,* That the director shall be responsible for the
acts of such appointees, assistants and employees;

(10) To transfer, notwithstanding other provisions of
this code, any patient or resident between hospitals and
facilities under the control of the director and, by
agreement with the state commissioner of corrections or
successor thereto and otherwise in accord with law,
accept a transfer of a resident of a facility under the
jurisdiction of the state commissioner of corrections or
successor thereto;

(11) To make periodic reports to the governor and to
the Legislature relative to specific subject areas of
public health or mental health, the state facilities under
(12) To accept and use for the benefit of the state, for
the benefit of the health of the people of this state, any
gift or devise of any property or thing which is lawfully
given: Provided, That if any gift is for a specific purpose
or for a particular state hospital or facility, it shall be
used as specified. Any profit which may arise from any
such gift or devise of any property or thing shall be
deposited in a special revenue fund with the state
treasurer and shall be used only as specified by the
donor or donors;

(13) To acquire by condemnation or otherwise any
interest, right, privilege, land or improvement and hold
title thereto, for the use or benefit of the state or a state
hospital or facility, and, by and with the consent of the
governor, to sell, exchange or otherwise convey any
interest, right, privilege, land or improvement acquired
or held by the state, state hospital or state facility and
deposit the proceeds from such sale, exchange or other
conveyance into the hospital services revenue account.
Any condemnation proceedings shall be conducted
pursuant to chapter fifty-four of this code;

(14) To inspect and enforce rules and regulations to
control the sanitary conditions of and license all
institutions and health care facilities as set forth in this
chapter, including, but not limited to, schools, whether
public or private, public conveyances, dairies, slaughter-
houses, workshops, factories, labor camps, places of
entertainment, hotels, motels, tourist camps, all other
places open to the general public and inviting public
patronage or public assembly, or tendering to the public
any item for human consumption and places where
trades or industries are conducted;

(15) To make inspections, conduct hearings, and to
enforce the rules and regulations of the board concern-
ing occupational and industrial health hazards, the
sanitary condition of streams, sources of water supply,
sewerage facilities, and plumbing systems, and the
(16) To reorganize the functions and subdivisions of the division of health, structuring all functions previously assigned to the board of health, department of health, department of mental health, and otherwise assigned to the division of health by this chapter, to the end of establishing the most efficient and economic delivery of health services in accord with the purposes of this chapter; to achieve such goal the director shall establish such subdivisions, and delegate and assign such responsibilities and functions as he deems necessary to accomplish such reorganization;

(17) To direct and supervise the provision of dental services in all state institutions;

(18) To provide for, except as otherwise specified herein, a comprehensive system of community mental health and mental retardation supportive services to the end of preventing the unnecessary institutionalization of persons and promoting the community placement of persons presently residing in mental health and mental retardation facilities and other institutions and for the planning of the provisions of comprehensive mental health and mental retardation services throughout the state;

(19) To provide in accordance with this subdivision and the definitions and other provisions of article one-a, chapter twenty-seven of the code, for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse;

(20) To provide in accordance with this subdivision
for a program for the care, treatment and rehabilitation
of the parents of sudden infant death syndrome victims;
for the training and employment of personnel to provide
the requisite rehabilitation of parents of sudden infant
death syndrome victims; for the education of the public
concerning sudden infant death syndrome; for the
responsibility of reporting to the Legislature on a
quarterly basis the incidence of sudden infant death
syndrome cases occurring in West Virginia; for the
education of police, employees and volunteers of all
emergency services concerning sudden infant death
syndrome; for the state sudden infant death syndrome
advisory council to develop regional family support
groups to provide peer support to families of sudden
infant death syndrome victims; and for requesting
appropriation of funds in both federal and state budgets
to fund the sudden infant death syndrome program;

(21) To exercise all other powers delegated to the
division by this chapter or otherwise in this code, to
enforce all health laws and the rules and regulations
promulgated by the board, and to pursue all other
activities necessary and incident to the authority and
area of concern entrusted to the division or director; and

(22) To provide to the Legislature, after approval by
the secretary of the department of health and human
resources, a report on the long term plans for state
hospitals named in article two, chapter twenty-seven of
this code and the health facilities named in chapter
twenty-six of this code on or before the fifteenth day of
January, one thousand nine hundred ninety-one, and
annually updated thereafter.

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

Frederick L. Perez
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.
Takes effect from passage.

Harrell E. Dutton
Clerk of the Senate

Donald L. Hof
Clerk of the House of Delegates

Paul B. S. Sarat
President of the Senate

Lee D. Clippard
Speaker of the House of Delegates

The within is approved this the 13th day of March, 1990.

Morton Caperton
Governor
PRESENTED TO THE
GOVERNOR
Date 3/9/90
Time 2:30 PM