WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

Committee Substitute for
SENATE BILL NO. ___542_____

(By Senator __Walker, et al____)

PASSED __March 11,____ 2000
In Effect ninety days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 542

(SENATORS WALKER, PREZIOSO, KESSLER, PLYMALE, MCCABE, SNYDER, MINEAR, CHAFIN, LOVE, BALL, DAWSON, MITCHELL, BOWMAN, JACKSON, UNGER, EDGELL, SHARPE, ROSS, REDD, ANDERSON AND DITTMAR, original sponsors)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to repeal article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact articles one and two of said chapter, all relating to the state public health system and local boards of health and their purposes; definitions; powers and duties of the secretary; rules; state health officer; powers and duties of the commissioner; disposition of fees collected by the commissioner; receipt and disbursement of federal aid; employee training; investigations and hearings; authority to create municipal, county and combined boards of health; appointment to and composition of local boards of
health; terms of appointment, compensation and expenses of members of local boards of health; meetings, quorum, bylaws and powers and duties of local boards of health; local health officer appointment, qualifications and power and duties; financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding; penalties; and severability.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles one and two of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-1. Purpose.

1 It is the policy of this state to promote the physical and mental health of all of its citizens and to prevent disease, injury, and disability whenever possible. The state recognizes its responsibility to assist in the provision of essential public health services and establishes by this article a state public health system to work in conjunction with local boards of health to provide basic public health services that encourage healthy people in healthy communities.

§16-1-2. Definitions.

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

3 (a) "Basic public health services" means those services that are necessary to protect the health of the public. The three areas of basic public health services are communicable and reportable disease prevention and control, commu-
(b) "Bureau" means the bureau for public health in the department of health and human resources;

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

(d) "Commissioner" means the commissioner of the bureau for public health, who is the state health officer;

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

(f) "Department" means the West Virginia department of health and human resources;

(g) "Director" or "director of health" means the state health officer. Administratively within the department, the bureau for public health through its commissioner carries out the public health functions of the department, unless otherwise assigned by the secretary;

(h) "Essential public health services" means the core public health activities necessary to promote health and prevent disease, injury and disability for the citizens of the state. The services include:

(1) Monitoring health status to identify community health problems;

(2) Diagnosing and investigating health problems and health hazards in the community;

(3) Informing, educating and empowering people about health issues;
(4) Mobilizing community partnerships to identify and solve health problems;

(5) Developing policies and plans that support individual and community health efforts;

(6) Enforcing laws and rules that protect health and ensure safety;

(7) Uniting people with needed personal health services and assuring the provision of health care when it is otherwise not available;

(8) Promoting a competent public health and personal health care workforce;

(9) Evaluating the effectiveness, accessibility and quality of personal and population-based health services; and

(10) Researching for new insights and innovative solutions to health problems.

(i) "Licensing boards" means those boards charged with regulating an occupation, business or profession and on which the commissioner serves as a member;

(j) "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(k) "Local health department" means the staff of the local board of health;

(l) "Local health officer" means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner;
(m) "Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

(n) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which public health performance can be measured;

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

(p) "Public water system" means any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system. A public water system does not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce;

(q) "Secretary" means the secretary of the state department of health and human resources;

(r) "Service area" means the territorial jurisdiction of a local board of health;
(s) "State advisory council on public health" is the advisory body charged by this article with providing advice to the commissioner with respect to the provision of adequate public health services for all areas in the state;

(t) "State board of health" means, and refers to, the secretary, notwithstanding any other provision of this code to the contrary, whenever and wherever in this code there is a reference to the state board of health.

§16-1-3. Powers and duties of the secretary.

(a) The secretary may establish a state public health system.

(b) All powers and duties of the director of health previously established by former section ten of this article that are not specifically included in this chapter as powers and duties of the commissioner are powers and duties of the secretary.

(c) As necessary for the effective, efficient and economical operation of the system, the secretary may from time to time delegate, assign, transfer or combine responsibilities or duties to or among employees of the department.

(d) Within the limits of applicable federal law, the secretary may require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application.

§16-1-4. Proposal of rules by the secretary.

The secretary may propose rules, in accordance with the provisions of article three, chapter twenty-nine-a of the code, that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, post-
mortem examinations, mental health and mental retardation centers and any other areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation of:

(a) Land usage endangering the public health: Provided, that no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single family dwelling unit; (2) propose or enforce rules applicable to single family dwelling units for single family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply;

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor 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;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply,
sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals, and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other
requirements in accordance with article seven of this chapter, as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications, and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: **Provided,** That any regulation of emergency medical service attendants and emergency medical care technician-paramedics shall not exceed the provisions of article four-c of this chapter.

(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: **Provided,** That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant style or commercial food service facility: **Provided, however,** That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the bureau for public health including, but not limited to, laboratory service
fees, environmental health service fees, health facility fees and permit fees;

(i) The collection of data on health status, the health system and the costs of health care; and

(j) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

§16-1-5. State health officer; appointment; qualifications; term.

The commissioner of the bureau for public health is the state health officer and shall be appointed by the secretary. The commissioner shall be a physician licensed under the laws of this state to practice medicine or a person holding a doctorate degree in public health administration. The commissioner shall have not less than four years' experience in health services administration or a related field. The commissioner serves at the will and pleasure of the secretary and shall not be actively engaged or employed in any other business, vocation or employment, serving full time in the duties of the office as prescribed by this article.

§16-1-6. Powers and duties of the commissioner.

The commissioner is the chief executive, administrative and fiscal officer of the bureau for public health and has the following powers and duties:

(a) To supervise and direct the fiscal and administrative matters of the bureau, 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 public health laws of this state and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the commissioner by law and as directed by the secretary;
(b) To enforce all laws of this state concerning public health; to that end, the commissioner shall make, or cause to be made, investigations and inquiries respecting the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression or control of those conditions; the source of sickness and mortality, and the effects of environment, employment, habits and circumstances of life on the public health. The commissioner shall further make, or cause to be made, inspections and examinations of food, drink and drugs offered for sale or public consumption in the manner the commissioner considers necessary to protect the public health and shall report all violations of laws and rules relating to the law to the prosecuting attorney of the county in which the violations occur;

(c) To make complaint or cause proceedings to be instituted against any person, corporation or other entity for the violation of any public health law before any court or agency, without being required to give security for costs; the 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;

(d) To promote the provision of essential public health services to citizens of this state;

(e) To monitor the administration, operation and coordination of the local boards of health and local health officers;

(f) To develop and maintain a state plan of operation that sets forth the needs of the state in the areas of public 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;
(g) To collect data as may be required to foster knowledge on the citizenry's health status, the health system and costs of health care;

(h) To delegate to any appointee, assistant or employee any and all powers and duties vested in the commissioner, including, but not limited to, the power to execute contracts and agreements in the name of the bureau: Provided, That the commissioner is responsible for the acts of his or her appointees, assistants and employees;

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

(j) To make periodic reports to the governor and to the Legislature relative to specific subject areas of public health, the state facilities under the supervision of the commissioner, or other matters affecting the public health of the people of the state, at the direction of the secretary;

(k) At the direction of the secretary, to accept and use 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 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;

(l) To acquire by condemnation or otherwise any interest, right, privilege, land or improvement and hold title to the land or improvement, for the use or benefit of the state or a state hospital or facility, and, by and with the consent of
the governor, and at the direction of the secretary, 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 the
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;

(m) To inspect and enforce rules 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, slaughterhouses, workshops, facto-
ries, 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;

(n) To make inspections, conduct hearings, and to
enforce the legislative rules concerning occupational and
industrial health hazards, the sanitary condition of
streams, sources of water supply, sewerage facilities, and
plumbing systems, and the qualifications of personnel
connected with the supplies, facilities or systems without
regard to whether they are publicly or privately owned;
and to make inspections, conduct hearings and enforce the
legislative rules concerning the design of chlorination and
filtration facilities and swimming pools;

(o) To provide in accordance with this subdivision and
the definitions and other provisions of article one-a,
chapter twenty-seven of this code, and as directed by the
secretary, 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 employ-
ment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse;

(p) 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;

(q) To establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the commissioner, and to employ chemists, bacteriologists, and other employees that may be necessary to properly operate the laboratory. The commissioner may establish branches of the state laboratory at any points within the state that are necessary in the interest of the public health.

(r) To establish and fund a uniform health professionals data system to collect and maintain uniform data on all health professionals in the state. This data shall include, but not be limited to, the following information about each health professional: His or her name, profession, the area of the state where he or she is practicing, his or her educational background, his or her employer's name, and
number of years practicing within the profession. The boards provided for in articles three, four, four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one, twenty-three, twenty-eight, thirty-one, thirty-two, thirty-four, thirty-five, thirty-six and thirty-seven, chapter thirty of this code shall annually collect the data on health professionals under their jurisdiction in the format prescribed by the commissioner. Each board shall pay to the bureau annually, an amount determined by the commissioner to be a pro rata portion, for anticipated expenses to establish and operate the uniform health professionals data system required by this section. The commissioner may standardize data collection methods if necessary to implement the provisions of this section. The commissioner shall publish annually and make available, upon request, a report setting forth the data which was collected the previous year; areas of the state which the collected data indicates have a shortage of health professionals; and projections, based upon the collected data, as to the need for more health professionals in certain areas;

(s) To expend, for the purpose of performing the public health duties imposed on the bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may make advance payments to public and non-profit health services providers when the commissioner determines it is necessary for the initiation or continuation of public health services. The advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the commissioner of the necessity of the advance payments and shall be for a period no greater than ninety days in advance of rendition of service or receipt of goods and continuation of health services; and
(t) To exercise all other powers delegated to the commissioner by the secretary or by this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the bureau or the commissioner.

§16-1-7. Duties and powers of the commissioner; service on advisory councils, boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.

(a) The commissioner shall serve on the following business, profession or occupation licensing boards:

(1) The West Virginia board of barbers and cosmetologists;

(2) The West Virginia board of chiropractic examiners;

(3) The West Virginia board of hearing aid dealers;

(4) The West Virginia board of medicine;

(5) The West Virginia nursing home administrators licensing board;

(6) The West Virginia radiologic technology board of examiners;

(7) The West Virginia board of registration for sanitarians; and

(8) Any other licensing board or commission as directed by the secretary.

(b) The commissioner shall serve on the following advisory councils, boards and commissions:

(1) The advisory committee on cancer (cancer registry);

(2) The advisory committee on hemophilia;
(3) The air quality board;

(4) The Appalachian states low-level radioactive waste commission;

(5) The attorney general of West Virginia public health trust;

(6) The breast and cervical cancer screening program advisory coalition;

(7) The child fatality review team;

(8) The clinical laboratories quality assurance act advisory board;

(9) The childhood immunization advisory committee;

(10) The early intervention coordinating council;

(11) The interagency council on osteoporosis;

(12) The jail and prison standards commission;

(13) The medical service fund advisory council;

(14) The nursing home licensing advisory council;

(15) The sewage advisory board;

(16) The state emergency response commission;

(17) The state groundwater coordinating committee;

(18) The sudden infant death syndrome advisory council;

(19) The water development authority;

(20) The West Virginia commission for the deaf and hard of hearing;

(21) The West Virginia infrastructure and jobs development council;
(22) The West Virginia solid waste management board; and

(23) Any other advisory council, board or commission as assigned by the secretary.

c) Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion, designate in writing a representative to serve in his or her stead at the meetings and in the duties of all boards and commissions on which the commissioner is designated as an ex officio member. The appropriately designated representative or proxy may act with the full power and authority of the commissioner in voting, acting upon matters concerning the public health and welfare and any other business that is properly the duty of any board or commission, with the representative serving as proxy for the commissioner at his or her will and pleasure: Provided, That the provisions of this section do not apply to the medical licensing board, the air quality board or any other board, commission or body on which the commissioner is designated by this code as chairman ex officio, secretary ex officio or any board, commission or body on which the commissioner is designated by this code as being that person whose signature must appear on licenses, minutes or other documents necessary to carry out the intents and purposes of the board, commission or body.

§16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.

The commissioner at the direction of the secretary may cooperate with any state health planning and development agencies and any federal government agencies in programs for construction of public or private hospitals, diagnostic
or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes and similar or related facilities and institutions. The commissioner may make inventories of existing public health centers, public and private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes and similar or related facilities and institutions, and the laboratories and other facilities thereof, to make surveys of the need for construction of health facilities. The commissioner may adopt, develop and supervise the administration of the statewide plans or programs for the construction of additional public and private hospitals, public health centers, public or private diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes and similar or related facilities and institutions, as may be necessary to comply with the requirements and conditions of federal law in respect to the granting of federal aid for those purposes. The commissioner, at the direction of the secretary, shall develop standards to assure that all requirements to obtain federal funds and meet the commitments for federal funds are met.

The state health plan of operation set forth in this article and the state medical facilities plan shall be a part of the state health plan, as authorized by the provisions of article two-d of this chapter.

§16-1-9. Duties and powers of the commissioner; supervision over local sanitation; violations; jurisdiction; penalties.

No person, firm, company, corporation, institution or association, whether public or private, county or municipal, may install or establish any system or method of drainage, water supply, or sewage or excreta disposal without first obtaining a written permit to install or establish the system or method from the commissioner or
his or her authorized representative. All systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the commissioner or which have been approved in writing by the commissioner or his or her authorized representative.

Whenever the commissioner or his or her authorized representative finds, upon investigation, that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the commissioner or approved in writing by the commissioner or his or her authorized representative, the commissioner or his or her authorized representative shall issue an order requiring the owner of the system or method to make alterations necessary to correct the improper condition. The alterations shall be made within a reasonable time, which shall not exceed thirty days, unless a time extension is authorized by the commissioner or his or her authorized representative.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau for public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more
than five hundred dollars. Any continuing failure or refusal of the convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner or his or her authorized representative is a separate, distinct and additional offense for each twenty-four hour period of failure or refusal, and, upon conviction thereof, the violator shall be fined not less than fifty dollars nor more than five hundred dollars for each conviction: Provided, That none of the provisions contained in this section apply to those commercial or industrial wastes that are subject to the regulatory control of the West Virginia division of environmental protection.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorization of inspections; violations; criminal, civil and administrative penalties; safe drinking water penalty fund.

(a) A public water system is any water supply or system that regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system does not include a system that meets all of the following
conditions: (1) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) obtains all of its water from, but is not owned or operated by, a public water system that otherwise meets the definition; (3) does not sell water to any person; and (4) is not a carrier conveying passengers in interstate commerce.

(b)(1) The secretary shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if the secretary considers appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer.

(2) The secretary shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

(3) In addition, the secretary shall establish by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, establish requirements govern-
ing the taste, odor, appearance and other consumer
acceptability parameters of drinking water.

(c) Authorized representatives of the bureau have right
of entry to any part of a public water system, whether or
not the system is in violation of a legal requirement, for
the purpose of inspecting, sampling or testing, and shall be
furnished records or information reasonably required for
a complete inspection.

(d)(1) Any individual, partnership, association, syndi-
cate, company, firm, trust, corporation, government
corporation, institution, department, division, bureau,
agency, federal agency, or any entity recognized by law
who violates any provision of this section, or any of the
rules or orders issued pursuant to this section, is guilty of
a misdemeanor and, upon conviction thereof, shall be fined
not less than fifty dollars nor more than five hundred
dollars, and each day's violation shall constitute a separate
offense. The commissioner or his or her authorized
representative may also seek injunctive relief in the circuit
court of the county in which all or part of the public water
system is situated for threatened or continuing violations.

(2) For a willful violation of a provision of this section,
or of any of the rules or orders issued under this section for
which a penalty is not otherwise provided under subdivi-
sion (3) of this subsection, an individual, partnership,
association, syndicate, company, firm, trust, corporation,
government corporation, institution, department, division,
bureau, agency, federal agency, or entity recognized by
law, upon a finding of a willful violation by the circuit
court of the county in which the violation occurs, shall be
subject to a civil penalty of not more than five thousand
dollars, and each day's violation shall be grounds for a
separate penalty.
The commissioner or his or her authorized representative shall have authority to assess administrative penalties and initiate any proceedings necessary for the enforcement of drinking water rules. The administrative penalty for a violation of any drinking water rule is a minimum of one thousand dollars per day per violation and each day's violation shall be grounds for a separate penalty. In any action brought to enforce drinking water rules, the administrative penalty may not exceed an aggregate amount of five thousand dollars for systems serving a population of less than ten thousand persons and may not exceed twenty-five thousand dollars for systems serving a population of ten thousand persons or more. Penalties are payable to the commissioner. All moneys collected under this section shall be deposited into a restricted account known as the safe drinking water penalty fund previously created in the office of the state treasurer. All money deposited into the fund shall be used by the commissioner to provide technical assistance to public water systems.

§16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.

Individual systems with surface water discharge may be considered for approval for a permit pursuant to section nine of this article under the following conditions: (1) To correct existing failures when other means of treatment and disposal have proven ineffective; (2) on a tract, lot or parcel of land that equals or exceeds two acres which cannot qualify for standard or alternative soil absorption systems; or (3) on existing lots which received approval under a prior permit where it has been determined that applicable standards cannot be met to qualify for a standard or alternate soil absorption system. Approval under these conditions are applicable only to single family residential units.
When installing a standard sewage disposal system, modified system, experimental system or other approved system, the reserve area shall consist of an area for the placement of the original system together with an area for replacement and upgrade of absorption field lines within the reserve area. Testing of the site for approval shall consist of a six foot hole and a percolation test of the soils.

§16-1-10. Disposition of permit, license or registration fees received by the commissioner; report to auditor; health facility licensing account.

(a) The commissioner shall receive and account for all moneys required to be paid as fees to the bureau for permits, licenses or registrations, pursuant to the provisions of this code and legislative rules.

(b) Subject to the provisions set forth in section two, article two, chapter twelve of this code, there is continued in the state treasury a separate account which shall be designated "the health facility licensing account". The commissioner shall deposit to the health facility licensing account all health facility licensing fees and may spend the moneys deposited in the health facility licensing account in accordance with the laws of this state to implement activities of health facility licensing. As part of the annual state budget, the Legislature shall appropriate for health facility licensure all moneys deposited in the health facilities licensing account.

Any remaining balance including accrued interest in the account at the end of any fiscal year shall not revert to the general revenue fund, but shall remain in the account, and the moneys may be spent after appropriation by the Legislature in ensuing fiscal years. The commissioner shall make an annual report to the Legislature on the health facility licensing account, including the previous
§16-1-11. Disposition of fees for services charged and received by the commissioner; health services fund.

(a) Notwithstanding any other provisions of this chapter, the commissioner may assess and charge reasonable fees for the provision of services provided by the bureau: Provided, That no individual may be denied health care services by the bureau because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them. The fees shall be deposited into a special revolving fund in the state treasury designated the "health services fund".

(b) Any balance including accrued interest in the special revolving fund at the end of any fiscal year shall not revert to the general revenue fund but shall remain in the fund for use by the commissioner for funding health programs in the ensuing fiscal years.

(c) The commissioner may authorize reasonable fees for the provision of services by local boards of health as created in article two of this chapter: Provided, That no individual may be denied health care services by the local health department because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them. The fees shall be deposited into the local board of health account for use by the local board for funding health programs. The commissioner shall establish the fees on a sliding fee basis determined by an individual's ability to pay: Provided, however, That the local board of health may submit a request through the administrator for third party reimbursement where the request is appropriate: Provided further, That local boards of health that
establish fees shall annually submit a schedule of fees, a
sliding fee scale and an accounting of amounts collected to
the commissioner as part of its program plan or plan of
operation.

(d) The secretary shall propose legislative rules in
accordance with article three, chapter twenty-nine-a of
this code, setting forth the fees established, assessed, and
charged by the commissioner.

§16-1-12. Receipt and disbursement of federal aid and other
moneys for health purposes.

(a) The commissioner, at the direction of the secretary,
may accept, receive and receipt for federal moneys and
other moneys, either public or private, for and in behalf of
this state or any county or municipality of this state, for
public health purposes, or for the establishment or con-
struction of public health facilities, whether the work is to
be done by the state, or by the county or municipality, or
jointly, aided by grants of aid from the United States,
upon such terms and conditions as are, or may be, pre-
scribed by the laws of the United States and regulations
made thereunder. The commissioner may act as the agent
of the state or any of its agencies, or of any county or
municipality of this state, upon the request of any agency
of the state or of any county or municipality, in accepting,
receiving and receipting for the moneys in its behalf, for
public health facilities financed either, in whole or in part,
by federal moneys.

(b) The state, or any agency of the state, or any county or
municipality may, designate the commissioner as its agent
for the purposes set forth in subsection (a) of this section
and the agency, county or municipality may enter into an
agreement with the commissioner prescribing the terms
and conditions of the agency in accordance with federal
laws and regulations, and with the laws of this state. The
moneys paid over by the United States government shall be retained by the state or paid over to the counties or municipalities under the terms and conditions imposed by the United States government in making the grants.

(c) All moneys accepted for disbursement pursuant to this section shall be deposited by the secretary or the commissioner in the state treasury, and unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purpose for which the moneys were made available, and held by the state in trust for those purposes. All moneys are hereby appropriated for the purposes for which the moneys were made available and shall be expended in accordance with federal laws and regulations and with the laws of this state. The commissioner may, whether acting for the state or one of its agencies, or as the agency for any county or municipality, when requested by the United States government or any agency or department of the United States government, or when requested by the state, a state agency, or any county or municipality for which the moneys have been made available, disburse the moneys for the designated purposes, but this shall not include any other authorized method of disbursement.

§16-1-13. Hospital services revenue account; health facilities long-range plans.

(a) Subject to the provisions set forth in section two, article two, chapter twelve of this code, there is continued in the state treasury a separate account which shall be designated the “hospital services revenue account”. The secretary shall deposit promptly into the account any fees received by a facility owned and operated by the department from whatever source including the federal govern-
(b) A five-year health facilities long-range plan shall be developed by the secretary and shall be adopted as a rule in accordance with this chapter and article three, chapter twenty-nine-a of this code. The health facilities long-range plan shall be updated and revised at least every two years.

(c) The secretary may spend the moneys deposited in the hospital services revenue account in accordance with federal laws and regulations and with the laws of this state as necessary for the development of the five-year health facilities long-range plan and subsequent revisions. The secretary may spend the moneys deposited in the hospital services revenue account as provided for in the health facilities long-range plan at those times and in the amounts the secretary determines necessary for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility: Provided, That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in section two-a, article four-a, chapter nine of this code, except for funds appropriated by the Legislature for other purposes within the annual budget bill: Provided, however, That during any fiscal year in which the secretary anticipates spending any money from the account, he or she shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, his or her recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery
of health or for the purpose of maintaining or obtaining
certification at a state health facility in the amounts the
secretary determines to be necessary for the development
of, and as provided for in, the five-year health facilities
long-range plan and subsequent revisions.

(d) The secretary shall make an annual report to the
Legislature on the status of the health services revenue
account, including the previous year's expenditures and
projected expenditures for the next year.

§16-1-14. Training of employees.

To insure adequate standards of public service, the
commissioner may provide technical and specialized
instruction for employees of the bureau.

If upon review of the personnel records of any employee
of the bureau, the commissioner is of the opinion that it
would be in the best interest of the bureau to provide the
employee with additional training or instruction, not to
exceed nine months in any four-year period, in the field or
vocation in which the employee is engaged, the commis-
sioner may, upon approval of the secretary, direct that the
employee obtain the additional training or instruction at
any place the commissioner considers suitable. Designated
attendance of the employee shall be compensated for as a
part of regular employment. The commissioner is further
authorized to pay out of federal funds and such state funds
as are available to match such federal funds, any required
tuition or enrollment fees.

§16-1-15. Investigations and hearings; power to administer
oaths, subpoena witnesses, etc.; use of information
and material acquired.

(a) The secretary, the commissioner, any officer or
employee of the department designated by the secretary,
or any other individual designated by the secretary may
hold investigations, inquiries and hearings concerning matters covered by the laws of this state pertaining to public health and within the authority and the rules and orders of the secretary. Hearings shall be open to the public and shall be held upon any call or notice considered advisable by the secretary.

(b) Each individual designated to hold any inquiry, investigation or hearing shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses in the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the secretary or his or her authorized representative may invoke the aid of any circuit court of this state. The court may thereupon order that person to comply with the requirements of the subpoena order or to give evidence as to the matter in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) Subject to the provisions of subsections (a) and (b) of this section, the secretary may in his or her discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings: Provided, That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article may not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but the information, if available, shall be furnished upon request to the commissioner of the bureau of employment programs for the sole purpose of adjusting claims presented to the commissioner.
§16-1-16. Public health advisory council; duties; composition; appointment; meetings; compensation; expenses and continuation.

(a) The public health advisory council is hereby created as an advisory body to the commissioner for the purpose of advising the commissioner as to the provision of adequate public health services for all areas in the state.

(b) The council may advise the commissioner in all matters pertaining to the commissioner's duties and functions concerning public health and the provisions of this chapter. The council may review all state public health rules and advise the commissioner on necessary revisions. The council may advise the commissioner on the need for additional or special advisory committees to assist the council in matters concerning public health in relation to any business, profession or industry in the state. The council shall review all performance based standards and assist the commissioner in the development and implementation of a coordinated, population-based prevention oriented program that promotes and protects the health of all citizens of West Virginia.

(c) The council shall be composed of fifteen members appointed by the governor by and with the advice and consent of the Senate. The state insurance commissioner or his or her designated representative shall serve as a member ex officio. Twelve members shall be chosen from nominations by: (1) The West Virginia association of local health officers which shall submit to the governor a list of three names of local health officers; (2) the West Virginia association of local health departments which shall submit to the governor a list of three names of members of local boards of health; (3) the West Virginia association of county commissioners which shall submit to the governor a list of three names of representatives from its association; (4) the West Virginia association of sanitarians which
shall submit to the governor a list of three names of representatives from its association; (5) the West Virginia hospital association which shall submit to the governor a list of three names of representatives from its association; (6) the West Virginia medical association which shall submit to the governor a list of three names of representatives from its association; (7) the West Virginia emergency medical services coalition, which shall submit to the governor a list of three names of representatives from its association; (8) the West Virginia primary care association which shall submit to the governor a list of three names of representatives from its association; (9) the nursing section of the West Virginia public health association which shall submit to the governor a list of three names of public health nurses; (10) the state college and university systems of West Virginia which shall submit to the governor a list of three names of representatives from its members; (11) the state health education council which shall submit to the governor a list of three names of individuals from the prevention and wellness community; and (12) the state chamber of commerce which shall submit to the governor a list of three names of representatives from the business community. The governor shall appoint one individual from each list submitted to serve on the council. In addition the governor shall appoint two persons to represent the general public.

(d) Pursuant to the provisions of this section, the governor shall appoint an advisory council on the first day of July, two thousand. Of those first members appointed, one-third shall serve for one year, one-third shall serve for two years and one-third shall serve for three years. Each subsequent term shall be a three year term and no member may serve more than four consecutive terms.
(e) The advisory council shall choose its own chairperson and meet at the call of the commissioner at least twice a year.

(f) The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion of a day engaged in the performance of official duties.

(g) Pursuant to the provisions of article ten, chapter four of this code, the state advisory council on public health shall continue to exist until the first day of July, two thousand three.

§16-1-17. Penalties for interfering with examiners, inspectors or other authorized representatives of the commissioner in the performance of duty.

The commissioner may employ such administrative employees, inspectors, examiners or other persons as may be necessary to properly carry out the provisions of the public health laws of this state. The inspectors, examiners and other employees shall act as the commission's representatives and, under his or her direction, shall enforce the provisions of the public health laws and all duly promulgated public health rules and in the discharge of official duties, shall have the right of entry into any institution or school, whether public or private, public conveyances, dairy, creamery, slaughterhouse, workshop, factory, labor camp, place of entertainment, hotel, tourist camp, 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 hazardous trades or industries are conducted.
Any person interfering with or attempting to interfere with any inspector, examiner, or other duly authorized employee of the commissioner in the discharge of his or her duties under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars.

§16-1-18. Penalties for violating provisions of article.

Any person violating any of the provisions of this article for which the penalty is not otherwise provided, or any of the rules or orders issued pursuant to this article, shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-1. Purpose.

Local boards of health, created, established and operated pursuant to the provisions of this article, are responsible for directing, supervising and carrying out matters relating to the public health of their respective counties or municipalities. This article provides that local boards of health may be organized as boards of health serving a single municipality, a single county or a combination of any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties. This article establishes uniform provisions applicable to all local boards of health, whatever organizational form is elected, to insure the consistent performance of duties relating to basic public health services and other health services and the enforcement of the laws of this state pertaining to public health.

§16-2-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:
(a) "Basic public health services" means those services that are necessary to protect the health of the public and that a local board of health must provide. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion, and environmental health protection;

(b) "Bureau" means the bureau for public health in the department of health and human resources;

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

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

(e) "Commissioner" means the commissioner of the bureau for public health, who is the state health officer;

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

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

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

(i) "Department" means the West Virginia Department of health and human resources;

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

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

(l) "Enhanced public health services" means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system, such as lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services are services a local health department may offer;
(m) "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(n) "Local health department" means the staff of the local board of health;

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

(p) "Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

(q) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which a local health department's level of performance can be measured.

(r) "Primary care services" means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

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

(t) "Secretary" means the secretary of the state department of health and human resources; and
§16-2-3. Authority to create, establish and maintain county boards of health; service area.

A county commission shall create, establish and maintain a county board of health if no other local board of health organized under this article is established and responsible for public health in the service area. The county board of health shall be organized pursuant to and with the powers and duties prescribed by this article. The service area of any county board of health is the county territorial limits and includes every municipality within the county that does not have a municipal board of health maintaining a separate full-time municipal health department under the supervision of a municipal local health officer or that is not a member of a combined local board of health.

§16-2-4. Authority to create, establish and maintain municipal boards of health; service area.

The governing body of a municipality may create, establish and maintain a municipal board of health organized pursuant to and with the powers and duties prescribed by this article. The territorial jurisdiction of any municipal board of health is an area including the municipality and all points within a distance of one mile from the limits of the municipality.

§16-2-5. Authority to create, establish and maintain combined local boards of health; service area.

Any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties may combine to create, establish and maintain a combined local board of health organized pursuant to and with the powers and duties prescribed by
this article. The plan of combination must be approved by
the commissioner. The service area of any combined local
board of health is the combined territorial limits of the
participating municipality or municipalities and county or
counties: Provided, That if all or a portion of a participat-
ing municipality is located in a nonparticipating county,
the service area of the combined local board of health is
limited to the territorial limits of the municipality and
does not extend to or include any area of the nonpartici-
pating county outside of the municipal limits: Provided,
however, That the service area of a combined local board
does not extend to or include any area within the service
area of a municipal board of health maintaining a separate
full-time municipal health department under the supervi-
sion of a municipal local health officer.

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

A municipal board of health is composed of five mem-
ers selected and appointed by vote of the governing body
of the municipality. Each member appointed to a munici-
al board of health shall be a resident of the municipality.
No more than two members who reside in the same
municipal ward may be appointed and no more than two
members may be appointed who are personally licensed or
certified in, engaged in, or actively participating in the
same business, profession or occupation. No more than
three members of a municipal board of health may belong
to the same political party.

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

A county board of health is composed of five members
selected and appointed by vote of the county commission.
Each member appointed to the county board of health
shall be a resident of the county. No more than two
members who reside in the same magisterial district may
be appointed and no more than two members may be
appointed who are personally licensed or certified in,
engaged in, or actively participating in the same business,
profession or occupation. No more than three members of
a county board of health may belong to the same political
party.

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

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

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

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

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

(a) The term of office for members selected and appointed to a local board of health pursuant to the provisions of this article is five years. Members may serve until their duly qualified successors are selected and appointed by vote of the original appointing authority. Members may be reappointed for additional terms of five years. Board members' oaths of office shall be duly recorded before entering into or discharging any duties of the office.

(b) Any vacancy on any local board of health shall be filled by appointment of the original appointing authority. This appointment is for the unexpired term.
(c) A local board of health may remove any of its members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for official misconduct, incompetence, neglect of duty, gross immorality or the revocation of any state professional license or certification. A local board of health, or any of its members may be removed by the state health officer for failure or refusal to comply with duties as set forth by statute or rule. Upon removal, a successor or successors to the member or members removed shall immediately be appointed by the original appointing body pursuant to the provisions of this article.

(d) Each member of a local board of health may receive compensation as determined by the local board for attending meetings of and other activities for the board as required by law: Provided, That this compensation may not exceed one hundred dollars per day. Each member of a local board may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by the member in the performance of duties as a member of the local board.

§16-2-10. Local board of health; meetings; attendance; bylaws; quorum; chairperson selection, powers and duties.

(a) Each local board of health may meet as often as necessary to orderly and efficiently execute its duties and exercise its powers: Provided, That in a service area having a population of less than thirty thousand residents, the board shall meet no fewer than four times per year and in a service area having a population of more than thirty thousand residents, the board shall meet no fewer than six times per year. Members of a local board of health shall attend board meetings in compliance with attendance policies established by its bylaws or rules.
(b) Each local board of health is authorized to and shall adopt and may amend bylaws or rules governing the time and place of its regular meetings, procedures and method of conducting its meetings including quorum, meeting attendance policies, requirements for written minutes and board actions as public records, duties and election process for officers, process for filling board vacancies, number, duties, tenure and eligibility of members, and any other matters affecting how the board is organized to perform its duties. A quorum of the board for transacting business is a simple majority of the constituent membership of the board.

(c) Each local board of health, pursuant to its bylaws, shall elect from its members a chairperson. The chairperson shall serve for a term of one year and may be reelected for additional terms. The chairperson may, on behalf of the board, sign documents, execute contracts and otherwise act for and in the name of the board in all matters within its lawful powers and as duly authorized by a majority of the board members.

§16-2-11. Local board of health; powers and duties.

(a) Each local board of health created, established and operated pursuant to the provisions of this article shall:

(1) Provide the following basic public health services and programs in accordance with state public health performance-based standards:

(i) Community health promotion including assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities and
monitoring the progress of community health education services;

(ii) Environmental health protection including the promoting and maintaining of clean and safe air, water, food and facilities and the administering of public health laws as specified by the commissioner as to general sanitation, the sanitation of public drinking water, sewage and wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

(iii) Communicable or reportable disease prevention and control including disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

(2) Appoint a local health officer to serve at the will and pleasure of the local board of health with approval of the commissioner;

(3) Submit a general plan of operation to the commissioner for approval, if it receives any state or federal money for health purposes. This program plan shall be submitted annually and comply with provisions of the local board of health standards administrative rule;

(4) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state, the rules and orders of the secretary, any county commission orders or municipal ordinances of the board’s service area relating to public health, and the rules and orders of the local board within the service area of a
local board. The commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

(6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: Provided, That nothing contained in this subsection is intended to conflict with the provisions of article one, chapter sixteen of this code;

(7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: Provided, That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

(8) Participate in audits, be in compliance with tax procedures required by the state and annually develop a budget for the next fiscal year;

(9) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws; and
(10) Enforce the public health laws of this state and any other laws of this state applicable to the local board.

(b) Each local board of health created, established and operated pursuant to the provisions of this article may:

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the division of personnel under section six, article ten, chapter twenty-nine of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia state department of health and human resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation and spread of disease. All rules shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and
(4) Accept, receive and receipt for money or property from any federal, state or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities;

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

(6) Assess, charge and collect fees for services provided by the local health department: Provided, That fees for services shall be submitted to and approved by the commissioner;
(7) Contract for payment with any municipality, county or board of education for the provision of local health services or for the use of public health facilities. Any contract shall be in writing and permit provision of services or use of facilities for a period not to exceed one fiscal year. The written contract may include provisions for annual renewal by agreement of the parties; and

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: Provided, That this subsection is not intended to conflict with the provisions of section forty-six, article fifteen, chapter seventeen-c of this code: Provided, however, That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance or securing of a child in a child safety car seat.

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

§16-2-12. Local health officer; term of appointment; qualifications; reappointment; compensation; and removal.

A local board of health shall appoint a full-time or part-time local health officer with approval by the commissioner. The local health officer shall be a physician
A local health officer serves at the will and pleasure of the local board for a term of one year and is eligible for reappointment at compensation determined by the local board of health.

A local health officer may be removed from office by the commissioner if the local health officer fails or refuses to carry out the lawful orders or rules of the secretary in the event the commissioner determines a public health emergency exists or if the local health officer fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of communicable or reportable diseases dangerous to the public health. Upon removal, a successor local health officer shall immediately be appointed by the board pursuant to the provisions of this article.

§16-2-13. Local health officer; powers and duties.

(a) A local health officer serves as the executive officer of the local board and under its supervision, a local health officer shall administer the provisions of this article, all other laws of this state and the rules and orders of the secretary of the department relating to public health and applicable to the local board’s service area, any county commission orders and municipal ordinances of the board’s service area relating to public health and the rules and orders of the local board.

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

(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the board’s offices, meeting minutes and records;
(2) To supervise and direct the activities of the local board's health services, employees and facilities;

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

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

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

§16-2-14. Financial responsibilities of appointing authorities for local boards of health; levies; appropriation of county or municipal general funds for public health purposes; state funding.

The appointing authorities for local boards of health shall provide financial support for the operation of the local health department. The county commission of any county or the governing body of any municipality in which a local board of health is established pursuant to the provisions of this article, or the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may levy a county or municipal tax to provide funds for the local board of health: Provided, That the tax may not exceed three cents on each one hundred dollars of assessed valuation of the taxable property in the levying county or municipality, according to the latest assessment.

The county commission of any county or the governing body of any municipality in which a local board of health is established pursuant to the provisions of this article, or
the county commission of any county or the governing body of any municipality who is a participating member of a combined local board of health may appropriate and spend money from the county or municipal general funds for public health purposes and to pay the expenses of the operation of the local board of health services and facilities.

The commissioner and the secretary may pay over and contribute to any board of health created and maintained pursuant to the provisions of this article the sum or sums of money that may be available from funds included in appropriations made for the department of health and human resources. The commissioner may withhold all or part of any funds until a local board of health submits an acceptable plan to correct deficiencies in the local board's program plan.

§16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations; penalties.

Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.

Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.
Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provisions of this article.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the

Day of 2000

Governor