

1 **H. B. 3089**

2
3 (By Delegates Perdue, Manypenny, Fleischauer,
4 Guthrie and D. Poling)

5
6 [Introduced March 25, 2013; referred to the
7 Committee on Health and Human Resources then Finance.]

8 **FISCAL**
9 **NOTE**

10 A BILL to amend and reenact §16-1-6 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §22-1-3 of said
12 code, all relating to requiring the Commissioner of the Bureau
13 for Public Health to conduct a public health impact statement
14 assessing the health impact of any new, or modification to,
15 air or water rule proposed by the Secretary of the Department
16 of Environmental Protection; and requiring the Secretary of
17 the Department of Environmental Protection to incorporate
18 findings of the impact statement into the proposed rule.

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

20 That §16-1-6 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted; and that §22-1-3 of said code be amended
22 and reenacted, all to read as follows:

23 **CHAPTER 16. PUBLIC HEALTH.**

24 **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

25 **§16-1-6. Powers and duties of the commissioner.**

1 The commissioner is the chief executive, administrative and
2 fiscal officer of the Bureau for Public Health and has the
3 following powers and duties:

4 (a) To supervise and direct the fiscal and administrative
5 matters of the bureau, and in that regard and in accordance with
6 law, employ, fix the compensation of and discharge all persons
7 necessary for the proper execution of the public health laws of
8 this state and the efficient and proper discharge of the duties
9 imposed upon, and execution of powers vested in the commissioner by
10 law and as directed by the secretary;

11 (b) To enforce all laws of this state concerning public
12 health; to that end, the commissioner shall make, or cause to be
13 made, investigations and inquiries respecting the cause of disease,
14 especially of epidemics and endemic conditions, and the means of
15 prevention, suppression or control of those conditions; the source
16 of sickness and mortality, and the effects of environment,
17 employment, habits and circumstances of life on the public health.

18 The commissioner shall further make, or cause to be made,
19 inspections and examinations of food, drink and drugs offered for
20 sale or public consumption in the manner the commissioner considers
21 necessary to protect the public health and shall report all
22 violations of laws and rules relating to the law to the prosecuting
23 attorney of the county in which the violations occur;

24 (c) To make complaint or cause proceedings to be instituted

1 against any person, corporation or other entity for the violation
2 of any public health law before any court or agency, without being
3 required to give security for costs; the action may be taken
4 without the sanction of the prosecuting attorney of the county in
5 which the proceedings are instituted or to which the proceedings
6 relate;

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

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

11 (f) To develop and maintain a state plan of operation that
12 sets forth the needs of the state in the areas of public health;
13 goals and objectives for meeting those needs; methods for achieving
14 the stated goals and objectives; and needed personnel, funds and
15 authority for achieving the goals and objectives;

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

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

1 (i) To transfer at the direction of the secretary,
2 notwithstanding other provisions of this code, any patient or
3 resident between hospitals and facilities under the control of the
4 commissioner and, by agreement with the ~~state~~ Commissioner of
5 Corrections and otherwise in accord with law, accept a transfer of
6 a resident of a facility under the jurisdiction of the ~~state~~
7 Commissioner of Corrections;

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

13 (k) At the direction of the secretary, to accept and use for
14 the benefit of the health of the people of this state, any gift or
15 devise of any property or thing which is lawfully given: *Provided,*
16 That if any gift is for a specific purpose or for a particular
17 state hospital or facility it shall be used as specified. Any
18 profit which may arise from any gift or devise of any property or
19 thing shall be deposited in a special revenue fund with the State
20 Treasurer and shall be used only as specified by the donor or
21 donors;

22 (l) To acquire by condemnation or otherwise any interest,
23 right, privilege, land or improvement and hold title to the land or
24 improvement, for the use or benefit of the state or a state

1 hospital or facility, and, by and with the consent of the Governor,
2 and at the direction of the secretary, to sell, exchange or
3 otherwise convey any interest, right, privilege, land or
4 improvement acquired or held by the state, state hospital or state
5 facility and deposit the proceeds from the sale, exchange or other
6 conveyance into the hospital services revenue account. Any
7 condemnation proceedings shall be conducted pursuant to chapter
8 fifty-four of this code;

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

18 (n) To make inspections, conduct hearings, and to enforce the
19 legislative rules concerning occupational and industrial health
20 hazards, the sanitary condition of streams, sources of water
21 supply, sewerage facilities, and plumbing systems, and the
22 qualifications of personnel connected with the supplies, facilities
23 or systems without regard to whether they are publicly or privately
24 owned; and to make inspections, conduct hearings and enforce the

1 legislative rules concerning the design of chlorination and
2 filtration facilities and swimming pools;

3 (o) To provide in accordance with this subdivision and the
4 definitions and other provisions of article one-a, chapter twenty-
5 seven of this code, and as directed by the secretary, for a
6 comprehensive program for the care, treatment and rehabilitation of
7 alcoholics and drug abusers; for research into the cause and
8 prevention of alcoholism and drug abuse; for the training and
9 employment of personnel to provide the requisite rehabilitation of
10 alcoholics and drug abusers; and for the education of the public
11 concerning alcoholism and drug abuse;

12 (p) To provide in accordance with this subdivision for a
13 program for the care, treatment and rehabilitation of the parents
14 of sudden infant death syndrome victims; for the training and
15 employment of personnel to provide the requisite rehabilitation of
16 parents of sudden infant death syndrome victims; for the education
17 of the public concerning sudden infant death syndrome; for the
18 responsibility of reporting to the Legislature on a quarterly basis
19 the incidence of sudden infant death syndrome cases occurring in
20 West Virginia; for the education of police, employees and
21 volunteers of all emergency services concerning sudden infant death
22 syndrome; for the state sudden infant death syndrome advisory
23 council to develop regional family support groups to provide peer
24 support to families of sudden infant death syndrome victims; and

1 for requesting appropriation of funds in both federal and state
2 budgets to fund the sudden infant death syndrome program;

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

9 (r) To establish and fund a uniform health professionals data
10 system to collect and maintain uniform data on all health
11 professionals in the state. This data shall include, but not be
12 limited to, the following information about each health
13 professional: His or her name, profession, the area of the state
14 where he or she is practicing, his or her educational background,
15 his or her employer's name, and number of years practicing within
16 the profession. The boards provided ~~for~~ in articles three, four,
17 four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen,
18 sixteen, twenty, twenty-one, twenty-three, twenty-eight, thirty-
19 one, thirty-two, thirty-four, thirty-five, thirty-six and thirty-
20 seven, chapter thirty of this code shall annually collect the data
21 on health professionals under their jurisdiction in the format
22 prescribed by the commissioner. Each board shall pay to the bureau
23 annually, an amount determined by the commissioner to be a pro rata
24 portion, for anticipated expenses to establish and operate the

1 uniform health professionals data system required by this section.
2 The commissioner may standardize data collection methods if
3 necessary to implement the provisions of this section. The
4 commissioner shall publish annually and make available, upon
5 request, a report setting forth the data which was collected the
6 previous year; areas of the state which the collected data
7 indicates have a shortage of health professionals; and projections,
8 based upon the collected data, as to the need for more health
9 professionals in certain areas;

10 (s) To expend, for the purpose of performing the public health
11 duties imposed on the bureau, or authorized by law, any sums
12 appropriated by the Legislature. The commissioner may make advance
13 payments to public and nonprofit health services providers when the
14 commissioner determines it is necessary for the initiation or
15 continuation of public health services. The advance payments,
16 being in derogation of the principle of payment only after receipt
17 of goods or services, shall be authorized only after serious
18 consideration by the commissioner of the necessity of the advance
19 payments and shall be for a period no greater than ninety days in
20 advance of rendition of service or receipt of goods and
21 continuation of health services; and

22 (t) To prepare and submit a public health impact statement
23 assessing the health impact of any new air or water rule, or
24 modification of an existing air or water rule, proposed by the

1 Secretary of the Department of Environmental Protection to insure
2 that no air or water rule is promulgated without substantiating
3 independent medical or scientific evidence that there is no
4 detrimental public health impact from the rule; and

5 ~~(t)~~ (u) To exercise all other powers delegated to the
6 commissioner by the secretary or by this chapter or otherwise in
7 this code, to enforce all health laws, and to pursue all other
8 activities necessary and incident to the authority and area of
9 concern entrusted to the bureau or the commissioner.

10 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

11 **ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.**

12 **§22-1-3. Rule making generally; relationship to federal programs.**

13 (a) The ~~director~~ secretary has the power and authority to
14 propose legislative rules for promulgation in accordance with the
15 provisions of article three, chapter twenty-nine-a of this code to
16 carry out and implement the provisions of this chapter and to carry
17 out and implement any other provision of law relating to offices or
18 functions of the ~~division~~ department.

19 (b) The requirements and limitations set forth in this section
20 apply to any rule-making authority granted pursuant to this chapter
21 or chapters twenty-two-b and twenty-two-c of this code.

22 (c) Prior to the proposal of any new rule, the ~~director~~
23 secretary shall consult with the ~~Division of~~ Environmental
24 Protection Advisory Council and after ~~such~~ the consultation, the

1 ~~director~~ secretary may determine that ~~such a~~ the rule should be the
2 same in substance as a counterpart federal regulation. If the
3 ~~director~~ secretary determines that the rule should be the same in
4 substance as a counterpart regulation, then to the greatest degree
5 practicable, ~~such~~ the proposed rule shall incorporate by reference
6 the counterpart federal regulation. The ~~director~~ secretary shall
7 file, contemporaneously with the proposed rule, a statement setting
8 forth whether the rule is the same in substance as a counterpart
9 federal regulation. If the ~~director~~ secretary determines that the
10 rule should not be the same in substance as a counterpart federal
11 regulation, then the ~~director~~ secretary shall file
12 contemporaneously with the proposed rule, a statement setting forth
13 the differences between the proposed rule and the counterpart
14 federal regulation. In addition, the director shall file a
15 statement setting forth the results of the consultation with the
16 advisory council.

17 (d) Whenever any existing rule is modified, amended or
18 replaced, the provisions of subsection (c) of this section apply to
19 the proposal of any such modification, amendment or replacement
20 rule.

21 (e) Notwithstanding the provisions of article three, chapter
22 twenty-nine-a of this code, at least one public hearing shall be
23 held by the ~~division~~ department in conjunction with each rule
24 making prior to the expiration of the public comment period for the

1 proposed rules.

2 (f) Notwithstanding any provision of this chapter to the
3 contrary, the Commissioner of the Bureau for Public Health shall
4 prepare and submit a public health impact statement pursuant to
5 section six, article one, chapter sixteen of this code assessing
6 the health impact of any new air or water rule, or modification of
7 an existing air or water rule, proposed by the secretary, and the
8 secretary shall incorporate and implement any findings from the
9 impact statement into the proposed rule.

NOTE: The purpose of this bill is to require the Commissioner of Bureau for Public Health to conduct a public health impact statement assessing the health impact of any new air or water rule, or modification of an existing air or water rule, proposed by the Department of Environmental Protection to insure that no air or water rule is promulgated without substantiating independent medical or scientific evidence that there is no detrimental public health impact from the rule. The bill also requires that the findings in the impact statement be incorporated into the proposed rule.

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