

WSR 22-06-063

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed February 25, 2022, 4:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-024.

Title of Rule and Other Identifying Information: Chapter 246-90 WAC, Local board of health membership, the state board of health (board) is proposing adding a new chapter of rule to implement new requirements made by E2SHB 1152 (chapter 205, Laws of 2021) as it relates to the appointment of nonelected members of local boards of health.

Hearing Location(s): On April 13, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing. This helps provide social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space will be held instead. Board members, presenters, and staff will all participate remotely.

Register in advance for this hearing at https://us02web.zoom.us/webinar/register/WN_fPNK3XjVT0uzyc12vSkdtQ. After registering, you will receive a confirmation email containing information about joining the webinar/hearing.

Date of Intended Adoption: April 13, 2022.

Submit Written Comments to: Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, email <https://fortress.wa.gov/doh/policyreview>, by March 30, 2022.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-4110, TTY 711, email Melanie.Hisaw@sboh.wa.gov, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will establish the selection and appointment process for nonelected members of local boards of health. The purpose of the rule is to provide local governments a standard process for such recruitment and ultimate appointment of nonelected members of local boards of health. The rule will reduce uncertainty on how local boards of health need to conduct selection and provide the public an understanding of the process for how they may apply for local board of health positions.

Reasons Supporting Proposal: During the 2021 legislative session, the legislature passed E2SHB 1152. Among other changes, this bill made changes to the required composition of local boards of health by requiring an equal number of members who are nonelected officials. The statute specifies groups of individuals that must be represented on the local board of health. The legislation also requires the board to establish rules for the appointment process of these nonelected members of local boards of health in a manner that is fair and unbiased, and ensure to the extent possible a balanced representation of elected and nonelected persons with diversity of expertise and experience.

Statutory Authority for Adoption: E2SHB 1152 (chapter 205, Laws of 2021), codified as RCW 43.20.300.

Statute Being Implemented: E2SHB 1152 (chapter 205, Laws of 2021), codified as RCW 43.20.300, 70.05.030 (1)(a), 70.05.035 (1)(a), 70.46.020 (1)(a), and 70.46.031 (1)(a).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Samantha Pskowski, 101 Israel Road S.E., Tumwater, WA 98504-7990, 360-789-2358.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt from completing a cost-benefit analysis under RCW 34.05.328 (5) (b) (ii) because they are only related to the internal operations of a governmental entity. The proposed rule sets the process and standards for the recruitment, selection, and appointment of nonelected members of local boards of health and is solely implemented by the governmental entity.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

February 25, 2022
Michelle A. Davis
Executive Director

OTS-3624.1

**Chapter 246-90 WAC
LOCAL BOARD OF HEALTH MEMBERSHIP**

NEW SECTION

WAC 246-90-005 Purpose, scope, and applicability of chapter.

(1) The purpose of this chapter is to establish requirements for the recruitment, selection and appointment process of nonelected members of local boards of health. The processes established in this chapter are intended to be fair, unbiased, and ensure to the extent practicable that the membership of local boards of health include a balanced representation of elected officials and nonelected people with a diversity of expertise and lived experience.

(2) The provisions of this chapter apply to the following:

(a) A county without a home rule charter in which the jurisdiction of the local board of health is coextensive with the boundaries of the county as established in RCW 70.05.030;

(b) A county with a home rule charter in which the jurisdiction of the local board of health is coextensive with the boundaries of the county as established in RCW 70.05.035;

(c) A health district consisting of two or more counties in which the jurisdiction of the local board of health is coextensive with the combined boundaries of the counties as established in RCW 70.46.020;
and

(d) A health district consisting of one county in which the jurisdiction of the board of health is coextensive with the boundary of the county as established in RCW 70.46.031.

(3) The provisions of this chapter apply only to the recruitment, selection and appointment of persons who are not elected officials who are identified in RCW 70.05.030 (1)(a), 70.05.035 (1)(a), 70.46.020 (1)(a), and 70.46.031 (1)(a).

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NEW SECTION

WAC 246-90-010 Definitions. The following definitions apply throughout this chapter unless the context clearly requires otherwise:

(1) "Board" means the Washington state board of health.

(2) "Consumers of public health" means the category of persons consisting of county or health district residents who have self-identified as having faced significant health inequities or as having lived experiences with public health-related programs.

(3) "Elected official" means any person elected at a general or special election to public office representing a city or county, and any person appointed to fill a vacancy in any such office.

(4) "Health agency" means a private or public business or organization that renders or connects persons to health services, insurance, or other benefits.

(5) "Health facility" means a facility, clinic, or other setting licensed under Title 18, 70, or 71 RCW in which behavioral or medical diagnosis, care, treatment, or services are provided.

(6) "Local board of health" means the county or district board of health as established under chapter 70.05 RCW.

(7) "Local health jurisdiction" or "LHJ" means a county health department under chapter 70.05 RCW or health district under chapter 70.46 RCW.

(8) "Nonelected member" or "nonelected position" means a person appointed to a local board of health who is not an elected official, and represents:

(a) Public health, health care facilities, and providers;

(b) Consumers of public health; or

(c) Other community stakeholders.

(9) "Other community stakeholders" means the category of persons representing the following types of organizations located in the county or health district:

(a) Community-based organizations or nonprofits that work with populations experiencing health inequities in the county;

(b) Active, reserve, or retired armed services members;

(c) The business community; or

(d) The environmental public health regulated community.

(10) "Public health, health care facilities, and providers" means the category of persons practicing or employed in the county or health district who are:

(a) Medical ethicists;

(b) Epidemiologists;

(c) Experienced in environmental public health;

(d) Community health workers;

- (e) Holders of master's degrees or higher in public health or another field with an emphasis or concentration in health care, public health, or health policy;
- (f) Employees of a hospital located in the county; or
- (g) Any of the following providers holding an active or retired license in good standing under Title 18 RCW:
 - (i) Physicians or osteopathic physicians;
 - (ii) Advanced registered nurse practitioners;
 - (iii) Physician assistants;
 - (iv) Registered nurses;
 - (v) Dentists;
 - (vi) Naturopaths; or
 - (vii) Pharmacists.

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NEW SECTION

WAC 246-90-015 Local boards of health—Nonelected members. (1)

The number of nonelected members, as defined in WAC 246-90-010, on a local board of health, including any tribal representatives as described in subsection (2) of this section, must equal the number of elected officials on a local board of health. Elected members of the local board of health may not constitute a majority.

(2) If a federally recognized Indian tribe holds reservation, trust lands, or has usual and accustomed areas within the county or health district, or if a 501 (c) (3) organization registered in Washington that serves American Indian and Alaska Native people and provides services within the county or health district, the local board of health must include a tribal representative selected by the American Indian health commission according to the selection process prescribed by the commission. A tribal representative as described in this subsection may serve in any of the three nonelected member categories as defined in this chapter if the representative meets the requirements of the category.

(3) Any changes to local board of health composition must meet the requirements of this chapter.

(4) If a board of county commissioners or a county legislative authority chooses to adopt a resolution or ordinance or otherwise act to change the size or composition of the local board of health, the resolution, ordinance, or other document used must:

(a) Include provisions, which are comparable to those of elected members, for the appointment, term, including initial term, and, if applicable, compensation or reimbursement of expenses for nonelected members as defined in this chapter;

(b) Ensure elected officials do not constitute a majority of the total membership of the local board of health;

(c) Ensure recruitment, selection, and appointment of nonelected members of the local board of health conform with the requirements of this chapter;

(d) Identify nonelected members as voting members of the local board of health except as it pertains to any decision related to the setting or modification of permit, licensing, and application fees; and

(e) Identify the process for how a local board of health will refer successful applicants to the board of county commissioners for approval and appointment. If a county does not have a board of county commissioners, the local board of health will refer successful applicants to the county legislative authority for consideration for approval and appointment.

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NEW SECTION

WAC 246-90-020 Local boards of health—Nonelected members—Recruitment. (1) A local board of health must actively recruit applicants for nonelected member positions of the local board of health in a manner that solicits a broad pool of applicants that represent a diversity of expertise and lived experience.

(2) A local board of health must:

(a) Provide reasonable advance notice for applicants to apply for vacancies for positions representing nonelected members on a local board of health;

(b) Post vacancy announcements in public places, including the newspaper of record, in the county or district;

(c) Make available vacancy announcements in any language upon request;

(d) Post vacancy announcements in all geographic regions represented by the local board of health;

(e) Work with local community organizations to distribute vacancy notices; and

(f) Comply with applicable provisions of the Americans with Disabilities Act, Public Law Number 101-336 and chapter 49.60 RCW.

(3) A local board of health may:

(a) Require nonelected members serving in the other community stakeholder or public health, health care facilities, and providers positions on the local board of health to reside within the county or local board of health's jurisdictional boundaries; and

(b) Work with local community organizations to identify potential applicants for nonelected positions.

(4) A local board of health may not require an applicant to provide their political affiliation or voting history.

(5) A local board of health may require an applicant to designate the specific category or categories they are applying for as identified in WAC 246-90-025(1) in their application materials. A local board of health may consider applicants for any position for which they are qualified.

(6) All applicants for nonelected positions shall be interviewed in a panel format by the local board of health subject to the following:

(a) All applicants shall be asked a standard set of questions;

(b) Follow up questions may be asked if necessary to understand the applicant's response to a standard question; and

(c) In the event of a substantial number of applicants, the local board of health may elect to interview a smaller number of applicants as long as the applicants interviewed include a diversity of expertise and lived experience.

(7) The recruitment process must be consistent with applicable provisions of chapter 42.30 RCW.

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NEW SECTION

WAC 246-90-025 Local boards of health—Nonelected members—Selection. (1) Nonelected members of a local board of health must be selected from the following categories:

- (a) Public health, health care facilities, and providers;
- (b) Consumers of public health; and
- (c) Other community stakeholders.

(2) If the total number of nonelected members of a local board of health is evenly divisible by three, there must be an equal number of members selected from each of the three categories.

(3) There may be no more than one member selected from each category with the same background or position except under the following circumstances:

(a) If there are one or two nonelected members over the nearest multiple of three, those nonelected members may be selected from any of the three categories; and

(b) If, in a health district consisting of one county, there are two nonelected members over the nearest multiple of three, each member over the nearest multiple of three must be selected from a different category.

(4) A local board of health shall assess the following when considering applicants for selection to a local board of health:

(a) Service, current or past, on other local boards or commissions;

(b) Whether the applicant's background meets the qualifications of the applicant's selected category or categories as defined in WAC 246-095-010;

(c) Potential conflict of interest;

(d) The applicant's demonstrated commitment to public health;

(e) Whether the applicant represents a diversity of expertise and lived experience; and

(f) Whether the applicant represents the geographic diversity of the community.

(5) A local board of health shall also assess whether the applicant identifies with a historically underrepresented community when being considered as a nonelected member representing consumers of public health.

(6) Local board of health membership must include a balanced representation of elected officials and nonelected people with a diversity of expertise and lived experience.

(7) Persons with a fiduciary obligation to a health facility or other health agency, or a material financial interest in the rendering of health services, may not be selected as a nonelected member of a local board of health representing consumers of public health.

(8) Applicants must disclose any potential conflict of interest.

(9) If a local board of health demonstrates that it attempted to recruit members from all three categories under subsection (1) of this

section and was unable to do so, the local board of health may select members only from the other two categories.

(10) The selection process must be consistent with applicable provisions of chapter 42.30 RCW.

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NEW SECTION

WAC 246-90-030 Local boards of health—Nonelected members—Appointment. (1) Nonelected members of a local board of health shall be approved and appointed by a majority vote of the board of county commissioners. If a county does not have a board of county commissioners, then the nonelected members of a local board of health shall be approved and appointed by a majority vote of the county legislative authority.

(2) The appointment process must be consistent with applicable provisions of chapter 42.30 RCW.

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NEW SECTION

WAC 246-90-035 Local boards of health—Nonelected members—Exceptions. In accordance with RCW 70.05.030, 70.05.035, 70.46.020, and 70.46.031, the following exceptions apply to this chapter:

(1) For counties with a home rule charter, counties without a home rule charter, health districts consisting of two or more counties, and health districts consisting of one county. A local board of health comprised solely of elected officials may retain its composition if the local health jurisdiction had a public health advisory committee or board with its own bylaws established on January 1, 2021. By January 1, 2022, the public health advisory committee or board must have met the requirements established in RCW 70.46.140 for community health advisory boards.

(2) For local boards of health made up of three counties east of the Cascade mountains:

(a) If a local board of health is comprised solely of elected officials, it may retain its current composition if the local health jurisdiction has a public health advisory committee or board that meets the requirements established in RCW 70.46.140 for community health advisory boards by July 1, 2022.

(b) If the local board of health does not establish the required community health advisory board by July 1, 2022, it must comply with the requirements of this chapter.

(3) For local boards of health established under RCW 70.46.031, "other community stakeholders" as defined in this chapter does not include active, reserve, or retired armed services members. Active, reserve, or retired armed services members are not precluded from representing other categories of nonelected members as defined in WAC 246-90-010.

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