

HB0071S01 compared with HB0071

~~{deleted text}~~ shows text that was in HB0071 but was deleted in HB0071S01.

inserted text shows text that was not in HB0071 but was inserted into HB0071S01.

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Senator Michael S. Kennedy proposes the following substitute bill:

LOCAL HEALTH DEPARTMENT REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen M. Peterson

Senate Sponsor: Michael S. Kennedy

LONG TITLE

~~{Committee Note:~~

~~———— The Health and Human Services Interim Committee recommended this bill.~~

~~———— Legislative Vote: 13 voting for 1 voting against 4 absent~~

~~{General Description:~~

This bill enacts provisions related to local health department governance.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health and Human Services and the Department of Environmental Quality, when reviewing policies or rules that affect local health departments, to make certain determinations;
- ▶ requires the Department of Health and Human Services and local health departments to report on funding received from each county to accomplish

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minimum performance standards;

- ▶ clarifies that the Department of Health and Human Services and the Department of Environmental Quality must have a funding formula for allocating contract funds outlined in administrative rule;
- ▶ creates a reporting requirement; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-1-201, as last amended by Laws of Utah 2020, Chapter 256

26A-1-115, as last amended by Laws of Utah 2018, Chapter 330

26A-1-116, as last amended by Laws of Utah 1991, Chapter 112 and renumbered and amended by Laws of Utah 1991, Chapter 269

26B-1-207, as renumbered and amended by Laws of Utah 2022, Chapter 255

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-1-201** is amended to read:

19-1-201. Powers and duties of department -- Rulemaking authority --

Committee -- Monitoring environmental impacts of inland port.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Health and Human Services to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;

(b) consult with the Department of Health and Human Services and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups;

(c) coordinate implementation of environmental programs to maximize efficient use of

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resources by developing, in consultation with local health departments, a Comprehensive Environmental Service Delivery Plan that:

(i) recognizes that the department and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually;

(d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, as follows:

(i) for a board created in Section 19-1-106, rules regarding:

(A) board meeting attendance; and

(B) conflicts of interest procedures; and

(ii) procedural rules that govern:

(A) an adjudicative proceeding, consistent with Section 19-1-301; and

(B) a special adjudicative proceeding, consistent with Section 19-1-301.5;

(e) ensure that training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(i) under this title;

(ii) by the department; or

(iii) by an agency or division within the department; and

(f) subject to Subsection (2), establish annual fees that conform with Title V of the Clean Air Act for each regulated pollutant as defined in Section 19-2-109.1, applicable to a source subject to the Title V program.

(2) (a) A fee established under Subsection (1)(f) is in addition to a fee assessed under Subsection (6)(i) for issuance of an approval order.

(b) In establishing a fee under Subsection (1)(f), the department shall comply with

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Section 63J-1-504 that requires a public hearing and requires the established fee to be submitted to the Legislature for the Legislature's approval as part of the department's annual appropriations request.

(c) A fee established under this section shall cover the reasonable direct and indirect costs required to develop and administer the Title V program and the small business assistance program established under Section 19-2-109.2.

(d) A fee established under Subsection (1)(f) shall be established for all sources subject to the Title V program and for all regulated pollutants.

(e) An emission fee may not be assessed for a regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.

(f) An emission fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(g) An emission fee shall be based on actual emissions for a regulated pollutant unless a source elects, before the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.

(h) The fees collected by the department under Subsection (1)(f) and penalties collected under Subsection 19-2-109.1(4) shall be deposited into the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.

(3) The department shall establish a committee that consists of:

(a) the executive director or the executive director's designee;

(b) two representatives of the department appointed by the executive director; and

(c) three representatives of local health departments appointed by a group of all the local health departments in the state.

(4) (a) The committee established in Subsection (3) shall:

~~(a)~~ (i) review the allocation of environmental quality resources between the department and the local health departments including whether funds allocated by contract were allocated in accordance with the formula described in Section 26A-1-116;

~~(b)~~ (ii) evaluate rules and department policies that affect local health departments in accordance with Subsection (4)(b);

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~~[(e)]~~ (iii) consider policy changes proposed by the department or by local health departments;

~~[(d)]~~ (iv) coordinate the implementation of environmental quality programs to maximize environmental quality resources; and

~~[(e)]~~ (v) review each department application for any grant from the federal government that affects a local health department before the department submits the application.

(b) When evaluating a policy ~~or rule~~ that affects a local health department, the committee shall:

~~{~~ ~~—~~ (i) ~~determine whether the department has the authority to promulgate the policy;~~

~~}~~ ~~(iii)~~ (i) compute an estimate of the cost a local health department will bear to comply with the policy ~~or rule~~;

~~(iii)~~ (ii) specify whether there is any funding provided to a local health department to implement the policy ~~or rule~~; and

~~(iv)~~ (iii) ~~{determine}~~ advise whether the policy ~~or rule~~ is still needed.

(c) Before November 1 of each year, the department shall provide a report to the Administrative Rules Review and General Oversight Committee regarding the determinations made under Subsection (4)(b).

(5) The committee shall create bylaws to govern the committee's operations.

(6) The department may:

(a) investigate matters affecting the environment;

(b) investigate and control matters affecting the public health when caused by environmental hazards;

(c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;

(d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;

(e) use local health departments in the delivery of environmental health programs to the extent provided by law;

(f) enter into contracts with local health departments or others to meet responsibilities established under this title;

(g) acquire real and personal property by purchase, gift, devise, and other lawful

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means;

(h) prepare and submit to the governor a proposed budget to be included in the budget submitted by the governor to the Legislature;

(i) in accordance with Section 63J-1-504, establish a schedule of fees that may be assessed for actions and services of the department that are reasonable, fair, and reflect the cost of services provided;

(j) for an owner or operator of a source subject to a fee established by Subsection (6)(i) who fails to timely pay that fee, assess a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually;

(k) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;

(l) perform the administrative functions of the boards established by Section 19-1-106, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the board's functions;

(m) upon the request of a board or a division director, provide professional, technical, and clerical staff and field and laboratory services, the extent of which are limited by the money available to the department for the staff and services; and

(n) establish a supplementary fee, not subject to Section 63J-1-504, to provide service that the person paying the fee agrees by contract to be charged for the service to efficiently use department resources, protect department permitting processes, address extraordinary or unanticipated stress on permitting processes, or make use of specialized expertise.

(7) In providing service under Subsection (6)(n), the department may not provide service in a manner that impairs another person's service from the department.

(8) (a) As used in this Subsection (8):

(i) "Environmental impacts" means:

(A) impacts on air quality, including impacts associated with air emissions; and

(B) impacts on water quality, including impacts associated with storm water runoff.

(ii) "Inland port" means the same as that term is defined in Section 11-58-102.

(iii) "Inland port area" means the area in and around the inland port that bears the environmental impacts of destruction, construction, development, and operational activities within the inland port.

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(iv) "Monitoring facilities" means:

(A) for monitoring air quality, a sensor system consisting of monitors to measure levels of research-grade particulate matter, ozone, and oxides of nitrogen, and data logging equipment with internal data storage that are interconnected at all times to capture air quality readings and store data; and

(B) for monitoring water quality, facilities to collect groundwater samples, including in existing conveyances and outfalls, to evaluate sediment, metals, organics, and nutrients due to storm water.

(b) The department shall:

(i) develop and implement a sampling and analysis plan to:

(A) characterize the environmental baseline for air quality and water quality in the inland port area;

(B) characterize the environmental baseline for only air quality for the Salt Lake International Airport; and

(C) define the frequency, parameters, and locations for monitoring;

(ii) establish and maintain monitoring facilities to measure the environmental impacts in the inland port area arising from destruction, construction, development, and operational activities within the inland port;

(iii) publish the monitoring data on the department's website; and

(iv) provide at least annually before November 30 a written report summarizing the monitoring data to:

(A) the Utah Inland Port Authority board, established under Title 11, Chapter 58, Part 3, Port Authority Board; and

(B) the Legislative Management Committee.

Section 2. Section **26A-1-115** is amended to read:

26A-1-115. Apportionment of costs -- Contracts to provide services -- Percentage match of state funds -- Audit.

(1) (a) The cost of establishing and maintaining a multicounty local health department may be apportioned among the participating counties on the basis of population in proportion to the total population of all counties within the boundaries of the local health department, or upon other bases agreeable to the participating counties.

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(b) Costs of establishing and maintaining a county health department shall be a charge of the county creating the local health department.

(c) Money available from fees, contracts, surpluses, grants, and donations may also be used to establish and maintain local health departments.

(d) As used in this Subsection (1), "population" means population estimates prepared by the Utah Population Committee.

(2) The cost of providing, equipping, and maintaining suitable offices and facilities for a local health department is the responsibility of participating governing bodies.

(3) Local health departments that comply with all department rules and secure advance approval of proposed service boundaries from the department may by contract receive funds under Section 26A-1-116 from the department to provide specified public health services.

(4) Contract funds distributed under Subsection (3) shall be in accordance with Section 26A-1-116 and policies and procedures adopted by the department.

(5) Department rules shall require that contract funds be used for public health services and not replace other funds used for local public health services.

(6) (a) (i) All state funds distributed by contract from the department to local health departments for public health services shall be matched by those local health departments at a percentage determined by the department in consultation with local health departments.

(ii) Counties shall have no legal obligation to match state funds at percentages in excess of those established by the department and shall suffer no penalty or reduction in state funding for failing to exceed the required funding match.

(b) By October 1 of each year, the department, in consultation with each local health department, shall submit a written report to the Social Services Appropriations Subcommittee describing, for the preceding five fiscal years, each county's annual per capita contribution to a local health department that is used to meet the minimum performance standards described in Section 26A-1-106.

(c) A county may submit an additional written report separate from the report described in Subsection (6)(b) to the Social Services Appropriations Subcommittee outlining a county's contribution to public and community health in the county through other methods that are additional to the annual per capita contribution described in Subsection (6)(b).

(7) (a) Each local health department shall cause an annual financial and compliance

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audit to be made of its operations by a certified public accountant. The audit may be conducted as part of an annual county government audit of the county where the local health department headquarters are located.

(b) The local health department shall provide a copy of the audit report to the department and the local governing bodies of counties participating in the local health department.

Section 3. Section **26A-1-116** is amended to read:

26A-1-116. Allocation of state funds to local health departments -- Formula.

(1) (a) On or before July 1, 2024, each of the following shall establish in rule a formula for allocating state funds by contract to local health departments:

(i) the department; and

(ii) ~~[The Departments of Health and Environmental Quality shall each establish by rule a formula for allocating state funds by contract to local health departments.]~~ the Department of Environmental Quality.

(b) This formula shall provide for allocation of funds based on need.

(c) Determination of need shall be based on population unless the department making the rule establishes by valid and accepted data that other defined factors are relevant and reliable indicators of need.

(d) The formula shall include a differential to compensate for additional costs of providing services in rural areas.

~~ff(2) [(a) The formulas established under Subsection (1) shall be in effect on or before July 1, 1991.]~~

~~[(b) (f2)(a) [The] Except as provided in Subsection (2)(b), the formulas apply to all state funds appropriated by the Legislature to [the Departments of Health and Environmental Quality for local health departments.]~~ any of the following for local health department use:

(i) the department; or

(ii) the Department of Environmental Quality.

~~[(c) (b) The formulas do not apply to funds a local health department receives from:~~

(i) ~~sources other than the [Departments of Health and]~~ department or the Department of Environmental Quality; [and] or

(ii) ~~the [Departments of Health and]~~ department or the Department of Environmental

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Quality:

(A) to operate a specific program within the local health department's boundaries which program is available to all residents of the state;

(B) to meet a need that exists only within the local health department's boundaries; and

(C) to engage in research projects.

Section 4. Section **26B-1-207** is amended to read:

26B-1-207. Policymaking responsibilities -- Regulations for local health departments prescribed by department -- Local standards not more stringent than federal or state standards -- Consultation with local health departments -- Committee to evaluate health policies and to review federal grants.

(1) In establishing public health policy, the department shall consult with the local health departments established under Title 26A, Chapter 1, Local Health Departments.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may prescribe by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, reasonable requirements not inconsistent with law for a local health department as defined in Section 26A-1-102.

(b) Except where specifically allowed by federal law or state statute, a local health department, as defined in Section 26A-1-102, may not establish standards or regulations that are more stringent than those established by federal law, state statute, or administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) Nothing in this Subsection (2), limits the ability of a local health department to make standards and regulations in accordance with Subsection 26A-1-121(1)(a) for:

(i) emergency rules made in accordance with Section 63G-3-304; or

(ii) items not regulated under federal law, state statute, or state administrative rule.

(3) (a) As used in this Subsection (3):

(i) "Committee" means the committee established under Subsection (3)(b).

(ii) "Exempt application" means an application for a federal grant that meets the criteria established under Subsection ~~ff(3)(c)(iii)~~ ~~ff(3)(c)(iv)~~.

(iii) "Expedited application" means an application for a federal grant that meets the criteria established under Subsection ~~ff(3)(c)(iv)~~ ~~ff(3)(c)(v)~~.

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(iv) "Federal grant" means a grant from the federal government that could provide funds for local health departments to help them fulfill their duties and responsibilities.

(v) "Reviewable application" means an application for a federal grant that is not an exempt application.

(b) The department shall establish a committee consisting of:

(i) the executive director, or the executive director's designee;

(ii) two representatives of the department, appointed by the executive director; and

(iii) three representatives of local health departments, appointed by all local health departments.

(c) The committee shall:

(i) evaluate~~[-(f)]~~

~~[(A)]~~ the allocation of public health resources between the department and local health departments~~[-(f), and]~~ including whether funds allocated by contract were allocated in accordance with the formula described in Section 26A-1-116; ~~[and]~~

~~[(B)]~~ (ii) evaluate policies and rules that affect local health departments in accordance with Subsection (3)(g);

~~[(iii)]~~ (iii) consider department policy and rule changes proposed by the department or local health departments;

~~[(iii)]~~ (iv) establish criteria by which an application for a federal grant may be judged to determine whether it should be exempt from the requirements under Subsection (3)(d); and

~~[(iv)]~~ (v) establish criteria by which an application for a federal grant may be judged to determine whether committee review under Subsection (3)(d)(i) should be delayed until after the application is submitted because the application is required to be submitted under a timetable that makes committee review before it is submitted impracticable if the submission deadline is to be met.

(d) (i) The committee shall review the goals and budget for each reviewable application:

(A) before the application is submitted, except for an expedited application; and

(B) for an expedited application, after the application is submitted but before funds from the federal grant for which the application was submitted are disbursed or encumbered.

(ii) Funds from a federal grant under a reviewable application may not be disbursed or

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encumbered before the goals and budget for the federal grant are established by:

(A) a two-thirds vote of the committee, following the committee review under Subsection (3)(d)(i); or

(B) if two-thirds of the committee cannot agree on the goals and budget, the chair of the health advisory council, after consultation with the committee in a manner that the committee determines.

(e) An exempt application is exempt from the requirements of Subsection (3)(d).

(f) The department may use money from a federal grant to pay administrative costs incurred in implementing this Subsection (3).

(g) When evaluating a policy or rule that affects a local health department, the committee shall determine:

(i) whether the department has the authority to promulgate the policy or rule;

(ii) an estimate of the cost a local health department will bear to comply with the policy or rule;

(iii) whether there is any funding provided to a local health department to implement the policy or rule; and

(iv) whether the policy or rule is still needed.

(h) Before November 1 of each year, the department shall provide a report to the Administrative Rules Review and General Oversight Committee regarding the determinations made under Subsection (3)(g).