



May 12, 2022

To Whom It May Concern,

The Washington State Board of Health (Board) adopted rules to establish chapter 246-90 WAC, Local Board of Health Membership, at their April 13, 2022 meeting. Chapter 246-90 WAC outlines requirements for the selection and appointment process for nonelected members of local boards of health.

Purpose of Rulemaking

The purpose of this rulemaking is to establish a new chapter of rule, chapter 246-90 WAC, to provide local governments with a standard process for 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 candidate recruitment and selection and provide the public with an understanding of the process for how they may apply for nonelected member positions.

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

The Board worked in collaboration with community members, local health jurisdictions, and county elected officials to draft the rules.

Based on these reasons, the Board voted to adopt new rules to update chapter 246-90 WAC. The adopted rules will become effective July 1, 2022. A copy of the adopted rules is attached.

Changes to the Proposed Rules

The adopted rules are different from the text of the proposed rule as it was published in the Washington State Register 22-06-063. The following clarifying and non-substantive changes were made to the proposed rules upon adoption:

- **WAC 246-90-005 Purpose, scope, and applicability of chapter.** In subsection (1), an oxford comma was added for clarity. In subsection (2), parts (c) and (d), the term “district” was added for clarity.
- **WAC 246-90-015 Local boards of health – Nonelected members.** In subsections (1) and (2), amendments were made to clarify tribal representation requirements by citing directly to applicable statutes.
- **WAC 246-90-035 Local boards of health – Nonelected members – Exceptions.** In subsection (1), edits were made to fix a grammatical error.

Comments on Proposed Rules

The Board received four written comments during the formal public comment period and received verbal testimony from one person at the public rules hearing held on April 13, 2022. The following table is a summary of comments received on the proposed rules and the Board’s response:

Comments on the Proposed Rule	
Public Comment	State Board of Health Action
I only hope there is representation by people with varying views of issues and concerns. The whole Board cannot think the same way or the same thing. That’s not diverse and doesn’t represent the community nor is that fair or unbiased. What is the cost to this update if the members have their expenses reimbursed?	No change. Reimbursement of member expenses is outside the Board’s scope of authority. While the proposed rules mirror language from E2SHB 1152 about inclusion of compensation information in local ordinances, the decision whether to compensate or reimburse expenses for nonelected members of local boards of health is up to the county legislative authority.
While the specifications within the WACs appear inarguably fair and diverse in the make-up of our local boards, the issue still at hand is that these representatives will be chosen by our County Commissioners. Therefore, all power and choice lie in the hands of a few individuals who do not necessarily represent all of the community members. I do not think appointment of local board members should be left to the majority vote of the county commissioners. I would like to see a more diverse representation of elected officials on our board and assisting with these decisions.	No change. E2SHB 1152 requires local board of health members be approved by a majority vote of the board of county commissioners. The Board does not have statutory authority to change this decision-making process.
WAC 246-90-025, number 5 currently reads: “A local board of health shall also assess whether the applicant identifies with a historically underrepresented community when being considered as a non-elected member representing consumers of public health.” This should be stricken and replaced with the following or similar standard nondiscrimination language: “A local board of health shall not discriminate potential applicants based on the basis of race, color, religion (creed), gender, gender expression, age, national origin	No change. Local governments are subject to chapter 49.60 RCW, which prohibits discrimination based on race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. The provisions of chapter 49.60 RCW apply to selection of

(ancestry), disability, marital status, sexual orientation, or military status.”	potential applicants for local boards of health. WAC 246-90-025(5) as proposed is intended to ensure local boards of health consider applicants with a diversity of expertise and lived experience.
In WAC 246-90-015(2) change “usual and accustomed areas” to “ceded lands” and include the following language in the section “For those counties or health districts that have multiple Tribes and/or a 501(c)(3) organization, they must include a representative from each of the tribes and 501(c)(3) organization. 501(c)(3) shall have the same meaning as Urban Indian Organizations as defined under RCW 43.71B.010 (20).”	Upon adoption, the Board amended WAC 246-90-015 to omit language regarding requirements for tribal representatives on local boards of health and instead cite applicable statutes for clarity. The Board does not have statutory authority to determine the recruitment, selection, or appointment process for tribal representatives on local boards of health.

Remaining Public Opposition to the Rule

The Board does not anticipate any remaining public opposition to the adopted rule. However, the Board anticipates continued opposition to the implementation timeline for local health jurisdictions under E2SHB 1152. This is outside the scope of the Board’s authority.

Any person may petition the adoption or amendment of these rules in accordance with RCW 34.05.330.

Any questions regarding this rule adoption should be directed to LBOHComposition@sboh.wa.gov.

Respectfully,



Michelle A. Davis
Executive Director