

## **CHAPTER 23-35 PUBLIC HEALTH UNITS**

### **23-35-01. Definitions. (Effective through August 31, 2022)**

As used in this chapter, unless the context otherwise requires:

1. "Board of health" means a district, county, city, or tribal board of health.
2. "Department" means the state department of health.
3. "Governing body" means, as applicable, a city commission, city council, board of county commissioners, joint board of county commissioners, or tribal council.
4. "Health district" means an entity formed under section 23-35-04 or 23-35-05.
5. "Joint board of county commissioners" means the boards of county commissioners of two or more counties acting together in joint session.
6. "Local health officer" means the health officer of a public health unit.
7. "Public health department" means a city, county, or tribal health department formed under this chapter.
8. "Public health unit" means the local organization formed under this chapter to provide public health services in a city, county, or designated multicounty or city-county area, or Indian reservation. The term includes a city public health department, county public health department, tribal health department, and a health district.

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### **23-35-02. Public health units. (Effective through August 31, 2022)**

All land in the state must be in a public health unit before January 1, 2001. The health council may issue rules defining the core functions a public health unit shall undertake.

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#### **23-35-02.1. Tribal health units.**

An Indian nation that occupies a reservation the external boundaries of which border more than four counties may form a health district or public health department as provided in this chapter. A tribal public health unit and bordering public health units shall collaborate regarding the provision of public health services. If an individual who is not an enrolled member of an Indian tribe of the Indian reservation that forms a tribal public health unit is a party to a civil action in which the tribal public health unit is also a party, that individual may bring the action in or move the action to tribal court or district court.

### **23-35-02.2. Public health units to adopt onsite wastewater recycling treatment guide.**

Each public health unit shall adopt the statewide technical guide for onsite wastewater recycling treatment technologies and sewage distribution technologies established by the onsite wastewater recycling technical committee.

### **23-35-02.3. Onsite wastewater recycling technical committee - Appointment - Duties.**

1. The onsite wastewater recycling technical committee consists of:
  - a. Three representatives from local public health units appointed by the governor from a list of names forwarded by local public health units;
  - b. Four individuals who must be installers appointed by the governor. The governor shall appoint the individuals from a list of names forwarded by a professional onsite wastewater recycling association. For purposes of this section, an installer means an individual licensed by a local public health unit to install onsite wastewater sewage treatment systems; and
  - c. One individual who must be a licensed environmental health practitioner appointed by the governor from a list of names forwarded by a professional onsite wastewater recycling association.
2. The director of the department of environmental quality or the director's designee shall provide input at the request of the committee.
3. The terms of the committee members are for four years, and members may be reappointed.
4. The committee shall:
  - a. Meet at the call of at least three of the members.
  - b. Create a statewide technical guide for onsite wastewater recycling treatment technologies and sewage distribution technologies.
  - c. Recommend standards and procedures for issuing an installer license.
  - d. Recommend continuing education requirements for installer license renewal.
  - e. Recommend reasonable fees for issuing or renewing an installer license.

### **23-35-03. Boards of health.**

1. The department shall advise boards of health.
2. A city's, county's, or tribe's governing body may establish a public health unit by creating and appointing a board of health, which in the case of a city, may be composed of the city's governing body, or in the case of a tribe, may be composed of the tribal council or governing body. A board of health must have at least five members.
  - a. In the case of a board of health created by a joint board of county commissioners, each county in the health district must have at least one representative on the board; each county of over fifteen thousand population must have an additional representative for each fifteen thousand population or major fraction of that number; and in a health district of fewer than five counties, each county must have at least one representative on the district board of health, and the additional representatives selected to constitute the minimum five-member board must be equitably apportioned among the counties on a population basis.
  - b. In the case of a joint city-county health district composed of only one county and having at least one city over fifteen thousand population, each city having a population over fifteen thousand must have a representative on the district board of health for each fifteen thousand population or major fraction of that number, and the remaining population of the county, exclusive of the populations of cities with more than fifteen thousand each, must have a representative on the district board of health for each fifteen thousand population or major fraction of that number, or at least one member if the remaining population is less than fifteen thousand.
3. The initial members of any board of health appointed by a governing body must be appointed for terms as follows: at least one for one year, one for two years, one for three years, one for four years, and one for five years. If a board has more than five

members, the members must be appointed for staggered terms. All subsequent appointments are for five-year terms. Each board member shall serve until a successor is appointed and qualified. If a vacancy occurs, the appointing government authority shall appoint a member for the remainder of the unexpired term. Each appointee shall qualify by filing the oath of office. A board of health may not be all male or all female. If the members of a governing body serve on a board of health or if an employee of a governing body serves on a board of health, this subsection does not apply to those governing body members and that employee.

4. A board of health shall meet at least quarterly. Special meetings may be held at any time at the call of the president.
5. Except if the governing body serves as the board of health, at the first meeting after appointment, and annually, the members of a board of health shall organize by electing a president, a vice president, and other officers the board considers necessary. If there is a treasurer and the treasurer is not a public employee, the treasurer must be bonded in an amount fixed by the board. If the health officer is not appointed to the board, the health officer does not have a vote in matters of the board. The office of secretary and treasurer may be combined.
6. The appointing authority shall establish the rate of compensation for board members and actual expenses incurred by board members may be reimbursed at the official reimbursement rates of the appointing authority.

**23-35-04. Health districts - Formation - Contracting for services.**

1. Upon the adoption of a resolution, the governing body may form a single county, multicounty, city-county, or tribal health district.
2. Notwithstanding this chapter, in a county without a countywide public health unit, the board of county commissioners, upon adoption of a resolution, may contract with a city that has a public health department to provide health services to the county and in the cities throughout the county which do not have a public health unit. The contract must comply with chapter 54-40.3. When a contract is executed, any provision of this chapter relating to organizing district boards of health does not apply, and the city public health department shall exercise all the necessary powers and duties of a public health unit under this chapter. The department shall treat a county with a contract under this subsection as a public health unit.

**23-35-05. Health districts - Expansion - Merger.**

1. Upon adoption of a resolution, a county that is not included in any public health unit may request inclusion as a part of an existing health district. Upon receipt of a request to become part of an existing health district, the district board of health shall consider the request and, if the board approves the request by a majority vote, shall submit the matter to each county in the health district. If a majority of the counties approve the request by a majority vote, the requesting county becomes a part of the health district.
2. Upon expansion of a health district under this section, the number of board of health members must be adjusted to allow the added county the same proportion of members allowed to member cities and counties of the existing health district as determined under this chapter.
3. Any two or more health districts may merge into a single health district upon a majority vote of the respective boards of health and a majority vote of the governing body of each county. The assets of each merging health district become the property of the newly created health district. Board of health membership of a new health district must be determined under section 23-35-03, unless otherwise decided by the board. The new health district maintains the same authority and powers of the previous health districts. The mill levy of the newly created health district is not limited by the old mill levy but may not exceed the amount allowed under section 23-35-07, unless one or more of the combining entities was previously levying more than five mills, in which case the mill levy for property within the former entity that was levying more than five

mills may not exceed the cap, expressed in mills, as previously authorized for that entity.

4. Upon adoption of a health district plan by two or more counties, the joint board of county commissioners shall appoint a district board of health.

**23-35-06. Health districts - Dissolution - Withdrawal.**

1. Except for a tribal health district, if a health district has been in operation for two years, the district may be dissolved as provided for under this section. If a petition is filed with the county auditor of each county of a health district which is signed by qualified electors of that county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of dissolution must be presented to the qualified electors in each county in the district at the next election held in each county in the district. If a majority of the votes cast on the question in a majority of the counties favor dissolution, the health district is dissolved on the second January first following the election. If a majority of the votes cast on the question in a majority of the counties are against dissolution, no other election on this issue may be held for two years.
2. If a health district has been in operation for two years, any county may withdraw from the district as provided under this section. If a petition is filed with the withdrawing county's auditor which is signed by qualified electors of the county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of withdrawal must be presented to the qualified electors in the county at the next election in the county. If a majority of the votes cast on the question favor withdrawing from the district, the county is withdrawn from the district on the second January first following the election. If a majority of the votes cast on the question are against withdrawal, no other election on this issue may be held for two years.
3. A tribal health district may be dissolved by the tribal council or governing body at any time.

**23-35-07. Health district funds - Financial report.**

1. Except for a tribal health district, a district board of health shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit this budget to the joint board of county commissioners for approval. In the year for which the levy is sought, a district board of health, except for a tribal health district, seeking approval of a property tax levy under this chapter must file with the county auditor of each county within the health district, at a time and in a format prescribed by the county auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the health district during that year. The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the taxable valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district, except as otherwise permitted under subsection 3 of section 23-35-05. Within ten days after approval by the joint board of county commissioners, the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies of the counties. The budget, not including gifts, grants, donations, and contributions, may not exceed the amount that can be raised by a levy of five mills on the taxable valuation, subject to public hearing in each county in the health district at least fifteen days before an action taken by the joint board of county commissioners. Action taken by the joint board of county commissioners must be based on the record, including comments received at the public hearing. A levy under this section is not subject to the limitation on the county tax levy for general and special county purposes. The amount derived by a levy under this section must be placed in the health district fund. The health district fund must be deposited with and disbursed by the treasurer of the district board of health. Each county in a health district quarterly shall remit and make

settlements with the treasurer. Any funds remaining in the fund at the end of any fiscal year may be carried over to the next fiscal year.

2. Except for a tribal health district, the district board of health, or the president and secretary of the board when authorized or delegated by the board, shall audit all claims against the health district fund. The treasurer shall pay all claims from the health district fund. The district board of health shall approve or ratify all claims at the board's quarterly meetings.

### **23-35-08. Boards of health - Powers and duties.**

Except when in conflict with a local ordinance or a civil service rule within a board of health's jurisdiction, or a tribal code, ordinance, or policy, each board of health:

1. Shall keep records and make reports required by the department.
2. Shall prepare and submit a public health unit budget.
3. Shall audit, allow, and certify for payment expenses incurred by a board of health in carrying into effect this chapter.
4. May accept and expend any gift, grant, donation, or other contribution offered to aid in the work of the board of health or public health unit.
5. May make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety.
6. May establish by rule a schedule of reasonable fees that may be charged for services rendered. Services may not be withheld due to an inability to pay any fees established under this subsection. If a tribal board of health establishes fees for services rendered, the fees may not exceed the highest corresponding fee of any of the public health units that border the tribal public health unit.
7. May make rules in a health district or county public health department, as the case may be, and in the case of a city public health department may recommend to the city's governing body ordinances for the protection of public health and safety.
8. May adopt confinement, decontamination, and sanitary measures in compliance with chapter 23-07.6 which are necessary when an infectious or contagious disease exists.
9. May make and enforce an order in a local matter if an emergency exists.
10. May inquire into any nuisance, source of filth, or cause of sickness.
11. Except in the case of an emergency, may conduct a search or seize material located on private property to ascertain the condition of the property as the condition relates to public health and safety as authorized by an administrative search warrant issued under chapter 29-29.1.
12. May abate or remove any nuisance, source of filth, or cause of sickness when necessary to protect the public health and safety.
13. May supervise any matter relating to preservation of life and health of individuals, including the supervision of any water supply and sewage system.
14. May isolate, kill, or remove any animal affected with a contagious or infectious disease if the animal poses a material risk to human health and safety.
15. Shall appoint a local health officer.
16. May employ any person necessary to effectuate board rules and this chapter.
17. If a public health unit is served by a part-time local health officer, the board of health may appoint an executive director. An executive director is subject to removal for cause by the board of health. The board of health may assign to the executive director the duties of the local health officer, and the executive director shall perform these duties under the direction of the local health officer.
18. May contract with any person to provide the services necessary to carry out the purposes of the board of health.
19. Shall designate the location of a local health officer's office and shall furnish the office with necessary equipment.
20. May provide for personnel the board of health considers necessary.
21. Shall set the salary of the local health officer, the executive director, and any assistant local health officer and shall set the compensation of any other public health unit personnel.

22. Shall pay for necessary travel of the local health officer, the local health officer's assistants, and other personnel in the manner and to the extent determined by the board.

**23-35-09. Abatement and removal of nuisance, source of filth, and cause of sickness.**

1. If necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness, the board of health shall serve notice on the owner or occupant of the property requiring the owner or occupant, at the owner's or occupant's expense, to remove or abate the nuisance, source of filth, or cause of sickness within a time specified by the board, not exceeding thirty days. If the owner or occupant fails to comply with the notice to remove or abate or if the nuisance, source of filth, or cause of sickness exists on property of nonresident owners or on property the owners of which cannot be found, the board of health may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the appropriate city or county, which shall charge the expense against the lot, piece, or parcel of land on which the work is done.
2. The governing body of the city or county may levy and assess against the property the cost of the removal or destruction of a nuisance, source of filth, or cause of sickness, and the member of the governing body who is responsible for streets shall return and file the assessment in the office of the auditor of the city or county. The auditor shall publish, in the same manner as provided under section 40-22-06, the amount of the assessment together with a notice of the time and location the governing body will meet to consider the approval of the assessment. Each assessment must be recorded, collected, and paid as other taxes are recorded, collected, and paid.
3. If a board of health determines it necessary for the preservation of public health to enter any building within the board's jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into the building, the local health officer, or a designated agent of the local health officer, may make a complaint under oath to a district judge within the jurisdiction of the board of health stating the facts in the case which the local health officer, or a designated agent of the local health officer, has knowledge. If a warrant is issued and if requested by a board of health, a county sheriff or city police department shall provide assistance to that public health unit in any action to search or seize material in or on any private property to destroy, remove, or prevent the nuisance, source of filth, or cause of sickness, if there is probable cause to believe a public health hazard or public health nuisance exists on or in that property, and shall carry out any other preventive measures the public health unit requests. For purposes of this subsection, a request from a public health unit means a request for assistance which is specific to a public health nuisance and is not a continuous request for assistance.

**23-35-10. District boards of health - Acquiring and disposing of property.**

1. A district board of health may acquire by lease, purchase, construction, or gift for district health office use and control property for all purposes authorized by law or necessary to the exercise of the powers granted in this chapter. The district board of health may finance the purchase, construction, or equipping of a building on owned or leased property for the use and purpose for which the health district is formed and carry out the functions of the health district in either of the following ways:
  - a. The district board of health may issue and sell bonds in an aggregate amount not exceeding two times the authorized tax revenues of the district for the year in which the bonds are to be issued and sold; or
  - b. The district board of health may mortgage or otherwise encumber the building constructed in an amount not exceeding two times the authorized tax revenue of the district for the year in which the construction is to be commenced.
2. Bonds issued under this section and income under this section are exempt from any taxes except inheritance, estate, and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as under this section, is

neither an obligation or an indebtedness of this state nor of the counties or cities comprising the district board of health. Any indebtedness under this section may be foreclosed in any manner provided by law. The district board of health may convey or transfer property acquired as provided under this section. If, upon dissolution of a health district, any balance remains in the health district fund after all obligations have been paid, the balance must be transferred to the general fund of the counties comprising the health district in proportion to the assessed valuation most recently used in preparing the health district budget under this chapter. If any county in the district withdraws from a health district, any assets and inventory of supplies and equipment located in the county for use in health district programs and services remain the property of the district for use elsewhere in the district.

#### **23-35-11. Budget.**

A city, county, or health district, as the case may be, shall prepare a county public health unit budget for the next fiscal year at the time and in the manner a county budget is adopted and submit the budget to the board of county commissioners for approval, shall prepare a city public health unit budget for the next fiscal year and submit the budget to the governing body of the city for approval, or shall prepare a district budget as provided under this chapter. In the case of a city board of health, the board shall certify the expenses to the governing body for payment out of the general fund of the city. The governing body or auditor shall audit any expenses incurred in quarantining or disinfecting any property outside an incorporated city and shall pay for any expenses out of the general fund of the county.

#### **23-35-12. Local health officers.**

1. A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body of the appropriate city, county, or district board of health. At the next meeting of the city's or county's governing body or district board of health, the governing body or district board of health shall declare the office vacant and may appoint another physician to fill the unexpired term, or shall report the matter to the board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.
2. Within the jurisdiction of the board of health, a local health officer:
  - a. Shall keep a record of the official acts of the local health officer.
  - b. Shall enforce every law and rule relating to preservation of life and health of individuals.
  - c. May exercise the powers and duties of the board of health under the supervision of the board of health.
  - d. May make sanitary inspections of any place within the jurisdiction in which the local health officer finds a probability a health-threatening condition exists.
  - e. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
  - f. May enforce school cleanliness; inspect any school that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.
  - g. May take any action necessary for the protection of public health and safety.
  - h. May determine when confinement and decontamination is necessary for the safety of the public. The local health officer may establish confinements consistent with procedures provided under chapter 23-07.6 and perform any acts required for decontamination when necessary.

- i. Shall maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.
  - j. May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.
3. A local health officer may request the assistance of a county sheriff or city health department in the same manner as provided under subsection 3 of section 23-35-09.

**23-35-13. Penalty.**

A person who violates any order, ordinance, or rule prescribed by any board of health or health officer or any rule adopted under this chapter is guilty of a class B misdemeanor.