

**Department of State Health Services
Council Agenda Memo for State Health Services Council
September 5-6, 2012**

Agenda Item Title: New rule concerning the Public Health Funding and Policy Committee

Agenda Number: 5.b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Regional and Local Health Services (RLHS) Division is responsible for providing staff support to the Public Health Funding and Policy Committee. The RLHS Division provides central oversight to the operation of eight health service regions, coordinates cross-cutting program issues and operational matters with the regions, and serves as the agency liaison with local health departments. The division works with local public health entities, health service regions, and local communities to build and maintain capacity to provide essential public health services responsive to local needs.

The budget and source of funding for the RLHS Division is general revenue and federal funds. No funds are available specifically to the Public Health Funding and Policy Committee. Members do not receive compensation or reimbursement for travel expenses and DSHS uses existing staff and equipment to provide support to the committee.

Summary:

The purpose of the new rule is to specify the roles, responsibilities, and procedures for the Public Health Funding and Policy Committee as it provides advice and assistance to DSHS regarding local public health funding and policy. The new rule implements Senate Bill (SB) 969, 82nd Legislature, Regular Session, 2011, that directed the DSHS Commissioner to establish the committee and appoint nine members from regional health directors, local health entities, public health authorities, and schools of public health.

The committee has the following general duties as specified in SB 969:

- define the core public health services a local health entity should provide in a county or municipality;
- evaluate public health in the state and identify initiatives for areas that need improvement;
- identify all funding sources available for use by local health entities to perform core public health functions;
- establish public health policy priorities for the state; and
- at least annually, make recommendations to DSHS regarding
 - the use and allocation of funds available exclusively to local health entities to perform core public health functions;
 - ways to improve the overall public health of citizens in the state;
 - methods for transitioning from a contractual relationship to a cooperative-agreement relationship between DSHS and the local health entities; and
 - methods for fostering a continuous collaborative relationship between DSHS and the local health entities.

The proposed rule will impact committee members by specifying attendance requirements, officer appointment and duties, conduct and procedures for meetings, and standards of conduct for members.

Key Health Measures:

The committee provides a means of involving key stakeholders in setting public health policy priorities for the state. The committee also provides advice and assistance to DSHS in the organization and funding of local public health and the relationship between local public health entities and DSHS.

It is expected that the rule will allow the committee to carry out these responsibilities in an efficient and accountable manner by providing operating standards for committee meetings and membership. The outcome of the rule will be measured by the committee's completion of the statutory requirements concerning frequency of meetings, public testimony at meetings, and reports to DSHS.

Summary of Input from Stakeholder Groups:

The Public Health Funding and Policy Committee reviewed the proposed rule language at the October 24, 2011, and December 5, 2011, meetings. Committee members suggested two minor changes to the rule to clarify the purpose of the committee and the reporting requirements. Those changes have been incorporated into the new rule. The public had opportunities to provide comment at the committee meetings, but there was no testimony on the draft rule.

Proposed Motion:

Motion to recommend HHSC approval for publication of the rule contained in agenda item #5.b.

Approved by Assistant Commissioner/Director: Paul McGaha, DO, MPH **Date:** 8/13/2012

Presenter: Paul McGaha, DO, MPH **Program:** Acting Assistant Commissioner, Regional & Local Health Services **Phone No.:** 713-767-3000

Approved by CCEA: Carolyn Bivens **Date:** 8/09/2012

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 85. Health Authorities
Subchapter A. Local Public Health
New §85.2

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §85.2, concerning the Public Health Funding and Policy Committee.

BACKGROUND AND PURPOSE

The 82nd Texas Legislature, Regular Session, 2011, passed Senate Bill 969, which amended the Health and Safety Code by adding new Chapter 117. Chapter 117 establishes the Public Health Funding and Policy Committee (committee) within the department. The chapter requires the committee to define the core public health services a local health entity should provide in a county or municipality; evaluate public health in the state and identify initiatives for areas that need improvement; identify all funding sources available for use by local health entities to perform core public health functions; and establish public health policy priorities for the state. At least annually, the committee is to make recommendations to the department regarding the use and allocation of funds available exclusively to local health entities to perform core public health functions; ways to improve the overall public health of citizens in the state; methods for transitioning from a contractual relationship to a cooperative-agreement relationship between the department and the local health entities; and methods for fostering a continuous collaborative relationship between the department and the local health entities.

The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees. Government Code, §2110.005, requires the Executive Commissioner, by rule, to state the purpose and tasks of the committee and to describe the manner in which the committee shall report to the department. The Executive Commissioner proposes new §85.2 to comply with those requirements and to provide other operational standards for the committee.

SECTION-BY-SECTION SUMMARY

New §85.2 stipulates the basis for the committee's creation, applicable law, purpose, tasks, abolition of the committee under the Texas Sunset Act, composition, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports, and reimbursement for expenses.

FISCAL NOTE

Paul McGaha, Acting Assistant Commissioner, Regional and Local Health Services Division, has determined that for each year of the first five years that the section will be in effect, there

will be no fiscal implications to state or local governments as a result of enforcing and administering the rule as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. McGaha has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the rule as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the rule.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dr. McGaha has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the rule. The public benefit of the new rule will be to specify the roles, responsibilities, and procedures of the committee as the committee provides advice and assistance to the department regarding local public health funding and policy.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Carolyn Bivens, Center for Consumer and External Affairs, Mail Code 1911, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 776-2370; or by email to carolyn.bivens@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, Chapter 117, which directs the establishment of the Public Health Funding and Policy Committee; Government Code, §2110.005, which requires a state agency to develop tasks and methods of reporting for advisory committees that report to that agency; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Government Code, Chapters 531 and 2110, and Health and Safety Code, Chapters 117 and 1001.

Legend: (Proposed New Rule)
Regular Print = Proposed new language

§85.2. Public Health Funding and Policy Committee.

(a) The committee.

(1) The Public Health Funding and Policy Committee (committee) shall be appointed under and governed by this section.

(2) The committee is established under the Health and Safety Code, Chapter 117, which requires the Commissioner of the Department of State Health Services (commissioner) to establish the Public Health Funding and Policy Committee.

(b) Applicable law. The committee is subject to the Health and Safety Code, Chapter 117, and Government Code, Chapter 2110, concerning state agency advisory councils.

(c) Purpose. The purpose of the committee is to provide policy level advice and assistance to the Department of State Health Services (department) in the organization and funding of local public health in Texas and the relationship between local public health entities and the department.

(d) Tasks. As required by the Health and Safety Code, §117.101, the committee shall:

(1) define the core public health services a local health entity should provide in a county or municipality;

(2) evaluate public health in this state and identify initiatives for areas that need improvement;

(3) identify all funding sources available for use by local health entities to perform core public health functions;

(4) establish public health policy priorities for this state; and

(5) at least annually, make formal recommendations to the department regarding:

(A) the use and allocation of funds available exclusively to local health entities to perform core public health functions;

(B) ways to improve the overall public health of citizens in this state;

(C) methods for transitioning from a contractual relationship between the department and the local health entities to a cooperative-agreement relationship between the department and the local health entities; and

(D) methods for fostering a continuous collaborative relationship between the department and the local health entities.

(6) The committee shall carry out any other tasks assigned by the commissioner.

(e) Committee abolished. As required by the Health and Safety Code, §117.002, the committee shall be subject to the Texas Sunset Act, Government Code, Chapter 325. Unless continued in existence as provided by the Government Code, Chapter 325, the committee is abolished and this section expires September 1, 2023.

(f) Composition. As required by the Health and Safety Code, §117.052, the committee shall be composed of nine members, appointed by the commissioner to include:

(1) two regional health directors, each of whom is serving as a health authority in a municipality or county;

(2) one local health entity representative of a municipality or county with a population of 50,000 or less;

(3) one local health entity representative from a municipality or county with a population greater than 50,000 but less than 250,000;

(4) one local health entity representative from a municipality or county with a population of at least 250,000;

(5) two local health entity representatives, each of whom serves in a municipality or county as the health authority; and

(6) two representatives of schools of public health at institutions of higher education in this state.

(g) Terms of Office. As required by the Health and Safety Code, §117.053, the term of office of each member shall be six years.

(1) Committee members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(2) If a vacancy occurs on the committee, a person shall be appointed to fill the vacancy for the unexpired term in the same manner as the original appointment.

(h) Officers. As required by the Health and Safety Code, §117.055, the committee shall select from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer shall serve until December 31 of each even-numbered year. The assistant presiding officer shall serve until December 31 of each odd-numbered year.

Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is elected by the committee.

(2) The presiding officer shall preside at all committee meetings which he or she attends, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the council. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(4) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. As required by the Health and Safety Code, §117.056, the committee shall meet as necessary to conduct committee business.

(1) The committee shall meet at least quarterly, or more frequently, at the call of the presiding officer.

(2) To ensure appropriate representation from all areas of this state, the committee may meet by videoconference or telephone conference call. A meeting held by videoconference or telephone conference call under this subsection must comply with the requirements applicable to a telephone conference call under Government Code, §551.125(c), (d), (e), and (f). Government Code, §551.125(b) and §551.127 do not apply to the committee.

(3) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(4) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(5) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(6) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members and subcommittee members shall attend meetings of subcommittees to which the members and subcommittee members are assigned.

(1) A member shall notify the presiding officer, or appropriate department staff, if he or she is unable to attend a scheduled meeting.

(2) It shall be grounds for removal from the committee if a member or subcommittee member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, absence from more than half of the committee and subcommittees meetings during a calendar year, or absence from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department. In accordance with the Health and Safety Code, §117.104, using existing personnel and videoconferencing equipment, local health entities, or their designees, may assist the committee in the performance of its duties under this section.

(l) Procedures. Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the council and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer also may appoint nonmembers of the committee to serve on subcommittees, subject to the approval of the commissioner.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The Health and Human Services Commission (commission), the State Health Services Council (council), the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member or subcommittee member except when a statement or action is in pursuit of specific instructions from the commission, council, department, or committee.

(2) The committee and its members or subcommittee members may not participate in legislative activity in the name of the commission, the council, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member or subcommittee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member or subcommittee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member or subcommittee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member or subcommittee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter, but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to department. The committee shall file an annual written report with the department.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the

committee by the council, the status of any rules which were recommended by the committee to the council, and anticipated activities of the committee for the next year.

(2) The report shall identify all costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding fiscal year and shall be filed with the council each January. The report shall be signed by the presiding officer.

(p) In accordance with the Health and Safety Code, §117.1033, beginning in 2012, not later than November 30 of each year the committee shall file a report on the implementation of the Health and Safety Code, Chapter 117 with the governor, the lieutenant governor, and the speaker of the house of representatives.

(q) Reimbursement for expenses. In accordance with the Health and Safety Code, §117.054, a committee member is not entitled to compensation for service on the committee and is not entitled to reimbursement for any travel expenses.