



King County
King County Board of Health
Staff Report

Agenda item No: 9
Rule & Regulation No.: BOH22-02

Date: May 19, 2022
Prepared by: Sam Porter

Subject

A proposed rule and regulation relating to the membership of the King County Board of Health.

Summary

Rule and Regulation BOH 22-02 would amend Board of Health Code Title 2 sections pertaining to membership, chair, vice-chairs, and quorum and voting to be in alignment with state law amended by Engrossed Second Substitute House Bill 1152¹ (HB 1152), King County Ordinance 19418², and the Washington State Board of Health Proposed Rule for chapter 246-90 Washington Administrative Code.

Background

HB 1152. In 2021, the Washington State Legislature passed HB 1152. The passage of HB 1152 requires four primary changes to the King County Board of Health (KC Board):

1. There must be an equal number of elected to nonelected members;
2. One nonelected member must be selected by the American Indian Health Commission (AIHC);
3. The remaining nonelected members must be recruited and selected by the KC Board from the following three categories: public health, health care facilities, and providers; consumers of public health; and other community stakeholders; and
4. The nonelected members would have voting power on all matters except those pertaining to setting or modifying permit, licensing, and application fees.

HB 1152 directs the Washington State Board of Health (State Board) to promulgate rules regarding the selection and appointment process for nonelected members. The State Board filed a CR-102 Proposed Rule on February 25, 2022 with the state code reviser for chapter 246-

¹ HB 1152, <https://app.leg.wa.gov/billsummary?BillNumber=1152&Year=2021&Initiative=false>

² Ordinance 19418, <https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=5475295&GUID=417B17D2-08B5-4B44-903E-FAA656495BFF&Options=Advanced&Search=&FullText=1>

90 WAC.³ Based on their estimated rulemaking timeline, the State Board indicates that this rule will be effective July 1, 2022.⁴ All other changes resulting from HB 1152 go into effect July 1, 2022. This Proposed Rule-Making Order is discussed below.

Ordinance 19418. King County Council Ordinance 19418 adopted on April 5, 2022, effectuates changes to the composition of the KC Board beginning on January 1, 2023, as listed in the four bullets above. All existing elected member positions were retained on the board; therefore, eight additional nonelected member positions were created in alignment with state law. These new positions would replace the existing Health Professional positions on the board. These new nonelected positions would include the AIHC selection and seven members selected by the KC Board from the three categories described in bullet 3 above. Ordinance 19418 requires there to be one alternate each for King County and City of Seattle members, and two alternates for members represented by the Sound Cities Association. Ordinance 19418 requires an equal number of nonelected alternates as there are electeds with one of those four representing the AIHC.

Ordinance 19418 set appointment procedures, term structure and compensation for nonelected Board members. The Ordinance states that no later than October 28, 2022, the KC Board shall transmit to King County Council a resolution naming their nonelected candidate selections and the AIHC candidate selections along with the name, biography, application materials and confirmation that each board member candidate selection meets the qualifications and requirements of state law and were recruited in accordance with the State Board rules. The Council would then take action to appoint the candidate selections.

In accordance with Ordinance 19418 full terms for nonelected Board members would be three years with initial terms as follows: two members serve a one-year term, three members serve a two-year term, and three members serve a three-year term. Members would be eligible to serve a total of three full terms. Regardless of length, initial terms would be considered a full term when determining eligibility for future terms.

Ordinance 19418 allows for compensation to be paid to nonelected regular and alternate members of the Board who are not being compensated for their participation through their employer. The rate of compensation is \$225 per full board meeting attended, not to exceed that amount each month. Beginning January 1, 2024, and each year thereafter, the compensation amount would be automatically adjusted annually at the rate equivalent to the twelve-month change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the Seattle-Tacoma-Bellevue Statistical Metropolitan

³ Proposed Rulemaking, Chapter 246-90 WAC, submitted to the Washington Code Reviser, February 25, 2022 (WSR 22-06-063) <https://sboh.wa.gov/sites/default/files/2022-03/LBOH%20CR-102%20WSR%202206063.pdf>

⁴ Washington State Board of Health Current Rules and Activity, Local Board of Health Composition: <https://sboh.wa.gov/rulemaking/current-rules-and-activity/local-board-health-composition>

Area (CPI-U). If the twelve-month change in the CPI-U is negative, there would not be an adjustment.

Washington State Board of Health Rules. The Washington State Board of Health is directed by HB 1152 to promulgate rules establishing requirements for the recruitment, selection, and appointment process of nonelected members of local boards of health. On February 25, 2022, the State Board filed a CR-102 Proposed Rule with the state code reviser for Chapter 246-90 WAC.⁵ According to the estimated rulemaking timeline provided by the State Board these rules are anticipated to be effective July 1, 2022, which is the same day HB 1152 becomes effective.⁶

The proposed rule provides general guidance for how local boards of health should conduct their recruitment of new nonelected members. Currently the rule states that local boards must actively recruit applicants in a way that solicits a broad pool of candidates representing a diversity of expertise and lived experience, local boards must provide reasonable advanced notice for applicants, post vacancy announcements in public places in all geographic regions represented by the Board, in the newspaper of record for the county, and make announcements available in languages upon request. Additionally, local boards must work with local community organizations to distribute vacancy notices. The rule encourages local boards to work with those organizations to identify potential applicants for nonelected positions.

The proposed rule allows the KC Board to use their discretion regarding whether to require nonelected members serving in the other community stakeholder or public health, health care facilities, and provider positions to reside within King County. Nonelected members representing the consumer category are required to reside in King County. The proposed rule requires that all applicants for nonelected positions be interviewed in a panel format by the Board using a standard set of questions. The nonelected members selection process must be consistent with the Open Public Meetings Act.⁷

When assessing candidates for nonelected positions, the proposed rule requires that local boards take into consideration the following:

- 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 conflicts of interest;
- d. The applicant's demonstrated commitment to public health;
- e. Whether the applicant represents a diversity of expertise and lived experience;
- f. Whether the applicant represents the geographic diversity of the community; and

⁵ Proposed Rulemaking, Chapter 246-90 WAC, submitted to the Washington Code Reviser, February 25, 2022 (WSR 22-06-063) <https://sboh.wa.gov/sites/default/files/2022-03/LBOH%20CR-102%20WSR%202206063.pdf>

⁶ Washington State Board of Health *Composition of Local Board of Health* Rule Timeline, <https://sboh.wa.gov/sites/default/files/2022-01/WSBOH-LocalBoardOfHealthRuleTimeline.pdf>

⁷ Chapter 42.30 RCW

- g. Whether the applicant identifies with a historically underrepresented community.

Analysis

Proposed Rule & Regulation BOH22-02 would align BOH Code with state law, King County Code, and the pending State Board of Health rule previously described in this staff report. If adopted, the KC Board would have a total of sixteen members with half of those being nonelecteds who represent public health, health care facilities and providers; consumers of public health; other community stakeholders, and a tribal representative selected by the AIHC. Nonelected members other than the AIHC member would be recruited and selected by the KC Board. All nonelected members would be confirmed by the King County Council. The changes to membership in Proposed R&R BOH22-02 would be effective January 1, 2023.

The following provides a summary of key sections of the proposed rule and regulation BOH22-02 included as Attachment 1 of this staff report:

- **Section 1** – This section amends BOH Code 2.04.020 pertaining to membership. This section retains the existing eight elected members and replaces the health professional members with eight nonelected members for a total board of sixteen members. All regular members would have equal voting power on all issues except those pertaining to fees in accordance with RCW 70.05.035. The membership included in Section 1 is described in Table 1 below and is in alignment with KC Council Ordinance 19418 and HB 1152. Table 2 provides more detail on the categories in RCW 70.05.035(1)(a).

Table 1.
Membership as it appears in Section 1 of Proposed R&R BOH22-02

Elected Members	Nonelected Members
King County	AIHC Selection
King County	Category in RCW 70.05.035(1)(a)
King County	Category in RCW 70.05.035(1)(a)
City of Seattle	Category in RCW 70.05.035(1)(a)
City of Seattle	Category in RCW 70.05.035(1)(a)
City of Seattle	Category in RCW 70.05.035(1)(a)
Sound City Association	Category in RCW 70.05.035(1)(a)
Sound City Association	Category in RCW 70.05.035(1)(a)
<i>King County Alternate</i>	<i>Alternate: AIHC</i>
<i>Seattle Alternate</i>	<i>Alternate: Public health, health care facilities, and providers</i>
<i>SCA Alternate</i>	<i>Alternate: Consumers of public health</i>
<i>SCA Alternate</i>	<i>Alternate: Other community stakeholders</i>

Table 2.
Three Categories for Nonelected Members in RCW 70.05.035

Public Health Providers and Facilities	Consumers of Public Health	Other Community Stakeholders
<p>People practicing or employed in the county who are:</p> <ul style="list-style-type: none"> ▪ Medical ethicists, ▪ Epidemiologists, ▪ Experienced in environmental health, ▪ Community health workers, ▪ Individuals with master's degrees or higher in public health or the equivalent, ▪ Employees of a hospital located in the county, ▪ Physicians or osteopathic physicians, ▪ Advanced registered nurse, ▪ Registered nurses, ▪ Physician assistants or osteopathic physician assistants, ▪ Dentists, ▪ Naturopaths, or ▪ Pharmacists. 	<p>County residents who self-identify as:</p> <ul style="list-style-type: none"> ▪ Having faced significant health inequities, ▪ Having lived experiences with public health-related programs such as: <ul style="list-style-type: none"> ▪ Special supplemental nutrition program for women, infants, and children (WIC), ▪ Supplemental nutrition program (SNAP), ▪ Home visiting, or ▪ Treatment services. 	<p>People representing the following types of organizations operating in the county:</p> <ul style="list-style-type: none"> ▪ Community-based organizations or nonprofits working with populations experiencing health inequities in the county, ▪ Active, reserve, or retired armed services members, ▪ The business community, or ▪ The environmental public health regulated community.

Section 1 of Rule and Regulation BOH22-02 also acknowledges the compensation for nonelected members who are not being otherwise compensated for their participation on the Board provided for in Ordinance 19418.

- **Section 2** – This section amends BOH Code 2.04.035 pertaining to the Chair of the Board. This section would state that the Chair of the Board would be required to be selected from among the King County Council representatives on the KC Board in accordance with Ordinance 19418. This section also removes reference to the previous selection process of health professionals on the board.
- **Section 3** – This section amends BOH Code 2.04.045 pertaining to the Vice Chairs on the Board. This section would state that there shall be one Vice Chair representing the elected officials on the Board and one representing non-elected members.
- **Section 4** – This section amends BOH Code 2.04.165 pertaining to quorum and voting. This section would state that a quorum would consist of nine members and nine

affirmative votes would be needed to adopt legislation on any matter not relating to the setting or modification of permit, licensing, and application fees. In accordance with RCW 70.05.035, matters pertaining to fees shall only be determined by the elected officials on the Board. For meetings solely to decide any matter related to fees a quorum shall be five of the elected members on the Board; an affirmative vote of five of those members is required to adopt fee-related legislation.

- **Section 5** – This section establishes the effective date as January 1, 2023.
- **Section 6** – This section includes a severability clause that states if any portion of the rule is held invalid the remainder of the rule is not affected.

The King County Prosecuting Attorney's Office Civil Division has reviewed the proposed rule and regulation.

Amendments

There are three line amendments and two title amendments to BOH22-02 described below.

- Amendment 1: Technical amendment recommended by the Code Reviser to correct references to the Rules and Regulations being amended by BOH22-02.
- Amendment 2: Line amendment to add BOH Rule 5 pertaining to the agenda and require that if a hybrid meeting is being held information be included in the agenda regarding how to access the meeting remotely.
- Amendment 3: Line amendment to add subsection G to BOH 2.04.165 that is missing from the underlying R&R and amend subsection G to allow for hybrid meetings.
- Title Amendment T1: Title amendment making technical corrections to the title and state that the rule also pertains to hybrid meetings. This title amendment would apply if Amendment 2 fails.
- Title Amendment T2: Title amendment making technical corrections to the title, state that the rule also pertains to hybrid meetings, and adding Rule 5 to the title. This title amendment would apply if Amendment 2 passes.

Attachments

1. Proposed Rule & Regulation BOH22-02.