

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS55223-SQ-17 (03/28)

Short Title: Establish State Public Health Authority. (Public)

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE QUALITY AND ACCOUNTABILITY OF THE PUBLIC HEALTH SYSTEM, TO REORGANIZE THE DIVISION OF PUBLIC HEALTH, AND TO STRENGTHEN THE PUBLIC HEALTH INFRASTRUCTURE BY THE DEVELOPMENT AND IMPLEMENTATION OF REGIONAL PUBLIC HEALTH AUTHORITIES.

Whereas, North Carolina has a rich local public health heritage and wishes to continue that heritage by strengthening the State's public health infrastructure; and

Whereas, the public health system must respond to new serious public health emergencies, significant changes in population, decreasing funding, and significant variations in public health protection between counties and regions; and

Whereas, the mission of protecting and promoting the health of the public can most efficiently and effectively be addressed through the coordinated efforts of State and local public health agencies and the collaboration of the public and private sectors within the public health system; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) All programs in the Division of Public Health in the Department of Health and Human Services are abolished except as provided in subsection (b) of this section. This act creates the North Carolina Public Health Authority which shall have administrative direction over the Division of Public Health and the Institute for Public Improvement.

SECTION 1.(b) The following programs shall remain in the Division of Public Health in the Department of Health and Human Services and shall be administered by the State Health Director:

- (1) State Lab.
- (2) Vital Records.
- (3) Medical Examiner.
- (4) Public Health Emergency Response.

SECTION 2. All functions, powers, duties, and obligations previously vested in the Division of Environmental Health in the Department of Environment and Natural Resources is transferred to and vested in the Division of Public Health in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6.

SECTION 3. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 1C.



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"State Public Health Authority.

"§ 130A-33.60. Title and purpose.

(a) This Article shall be known and may be cited as the 'State Public Health Authority Act.'

(b) It is the policy of the General Assembly that the State Public Health Authority should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities as conferred upon by law.

"§ 130A-33.61. State Public Health Authority.

(a) Creation. – The State Public Health Authority is created as a body corporate and politic having the powers and jurisdiction as provided under this Chapter or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority shall be located within the Department of Health and Human Services, but shall exercise all of its powers subject to and under the direct supervision of the Authority Board.

(b) Authority Board. – The State Public Health Authority shall be governed by a 13-member Authority Board consisting of four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, four members appointed by the Governor, and the Secretary of Health and Human Services. Each appointing authority shall appoint members who reside in one of the four regional public health authorities of the State. The Chair of the Authority shall be selected by the Authority Board.

(c) Staggered Terms. – Two of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, two of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and three of the initial appointments of the Governor shall be appointed to terms ending January 14, 2015. Two of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, two of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of the initial appointments of the Governor shall be appointed to terms ending January 14, 2013. The Secretary of Health and Human Services shall serve as an ex officio nonvoting member of the Board. Thereafter, at the expiration of each stipulated term of office, all appointments shall be to a term of four years from the date of the expiration of the term.

(d) Vacancies. – All members of the Authority Board shall remain in office until their successors are appointed and qualified. The original appointing authority may appoint a member to serve out the unexpired term of any member.

(e) Removal of Board Members. – Each member of the Authority Board, notwithstanding subsection (c) of this section, shall serve at the pleasure of the appointing authority. The Chair of the Authority serves at the pleasure of the Authority Board.

(f) Conflicts of Interest, Ethics. – Members of the Authority Board shall be subject to the provisions of G.S. 136-13, 136-13.1, and 136-14.

(g) Compensation. – The appointed members of the Authority Board shall receive no salary for their services but shall be entitled to receive per diem and travel allowances in accordance with the provisions of G.S. 138-5 and G.S. 138-6 as appropriate.

(h) Bylaws. – The Authority Board shall adopt, change, or amend bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational, staffing, and administrative matters as the Authority Board may determine.

"§ 130A-33.62. Powers and duties of Authority Board.

(a) The State Public Health Authority shall have all the powers necessary or convenient to carry out the purposes of this Article, including the following powers to:

- 1 (1) Protect and promote the public health. The board shall have the authority to
2 adopt rules necessary for that purpose.
- 3 (2) Construct, equip, operate, and maintain public health facilities.
- 4 (3) Use property owned or controlled by the Authority.
- 5 (4) Acquire real or personal property, including existing public health facilities,
6 by purchase, grant, gift, devise, lease or, with the permission of the county
7 commissioners, condemnation.
- 8 (5) Establish a fee schedule for services received from public health facilities
9 and make services available regardless of ability to pay.
- 10 (6) Appoint an executive director of the Institute of Public Health Improvement
11 to serve at the pleasure of the Authority Board.
- 12 (7) Establish a salary plan which shall set the salaries for employees of the
13 authority.
- 14 (8) To adopt and enforce a professional reimbursement policy which may
15 include the following provisions: (i) require that fees for the provision of
16 services received directly under the supervision of the Authority shall be
17 paid to the Authority, (ii) prohibit employees of the Authority from
18 providing services on a private basis which require the use of the resources
19 and facilities of the Authority, and (iii) provide that employees may not
20 accept dual compensation and dual employment unless they have the written
21 permission of the executive director.
- 22 (9) Delegate to its agents or employees any powers or duties as it may deem
23 appropriate.
- 24 (10) Employ its own counsel and legal staff.
- 25 (11) Adopt, amend, and repeal bylaws for the conduct of its business.
- 26 (12) Enter into contracts for necessary supplies, equipment, or services for the
27 operation of its business.
- 28 (13) Act as an agent for the federal, State, or local government in connection with
29 the acquisition, construction, operation, or management of a public health
30 facility, or any part thereof.
- 31 (14) Insure the property or the operations of the Authority against risks as the
32 Authority may deem advisable.
- 33 (15) Sue and be sued.
- 34 (16) Accept donations or money, personal property, or real estate for the benefit
35 of the Authority and to take title to the same from any person, firm,
36 corporation, or society.
- 37 (17) Appoint advisory boards, committees, and councils composed of qualified
38 and interested residents of the authority service area to study, interpret, and
39 advise the public health authority board.
- 40 (b) The State Public Health Authority shall have the power to establish and operate
41 health care networks and may contract with or enter into any arrangement with other public
42 health authorities or local health departments of this or other states, federal, or other public
43 agencies, or with any person, private organization, or nonprofit corporation or association for
44 the provision of public health services, including managed health care activities; provided,
45 however, that for the purposes of this subsection only, the Authority shall be permitted to and
46 shall comply with the requirements of Article 67 of Chapter 58 of the General Statutes to the
47 extent that such requirements apply to the activities undertaken by the Authority pursuant to
48 this subsection. The Authority may pay for or contribute its share of the cost of any such
49 contract or arrangement from revenues available for these purposes, including revenues arising
50 from the provision of public health services.

1 (c) The State Public Health Authority may lease any public health facility, or part, to a
2 nonprofit association on terms and conditions consistent with the purposes of this Article. The
3 Authority will determine the length of the lease. No lease executed under this subsection shall
4 be deemed to convey a freehold interest.

5 (d) The State Public Health Authority shall neither sell nor convey any rights of
6 ownership the county has in any public health facility, including the buildings, land, and
7 equipment associated with the facility, to any corporation or other business entity operated for
8 profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land, or
9 surplus equipment by the Authority to any corporation or other business entity operated for
10 profit. For purposes of this subsection, 'surplus' means any building, land, or equipment which
11 is not required for use in the delivery of public health care services by a public health facility at
12 the time of the sale or conveyance of ownership rights.

13 (e) The State Public Health Authority may lease any public health facility, or part, to
14 any corporation, foreign or domestic, authorized to do business in North Carolina on terms and
15 conditions consistent with the purposes of this Article and with G.S. 160A-272.

16 (f) The State Public Health Authority may exercise any or all of the powers conferred
17 upon it by this Article, either generally or with respect to any specific public health facility or
18 facilities, through or by designated agents, including any corporation or corporations which are
19 or shall be formed under the laws of this State.

20 (g) The Authority may contract to insure itself and any of its board members, agents, or
21 employees against liability for wrongful death or negligent or intentional damage to person or
22 property or against absolute liability for damage to person or property caused by an act or
23 omission of the Authority or of any of its board members, agents, or employees when acting
24 within the scope of their authority and the course of their employment. The board shall
25 determine what liabilities and what members, agents, and employees shall be covered by any
26 insurance purchased pursuant to this subsection.

27 Purchase of insurance pursuant to this subsection waives the Authority's governmental
28 immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise
29 of a governmental function. Participation in a local government risk pool pursuant to Article 23
30 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the
31 purposes of this section. By entering into an insurance contract with the Authority, an insurer
32 waives any defense based upon the governmental immunity of the Authority.

33 (h) If the Authority has waived its governmental immunity pursuant to subsection (g) of
34 this section, any person, or in the event of death, their personal representative, sustaining
35 damages as a result of an act or omission of the Authority or any of its board members, agents,
36 or employees, occurring in the exercise of a governmental function, may sue the authority for
37 recovery of damages. To the extent of the coverage of insurance purchased pursuant to
38 subsection (g) of this section, governmental immunity may not be a defense to the action.
39 Otherwise, however, the Authority has all defenses available to private litigants in any action
40 brought pursuant to this section without restriction, limitation, or other effect, whether the
41 defense arises from common law or by virtue of a statute.

42 Despite the purchase of insurance as authorized by subsection (g) of this section, the
43 liability of the Authority for acts or omissions occurring in the exercise of governmental
44 functions does not attach unless the plaintiff waives the right to have all issues of law or fact
45 relating to insurance in the action determined by a jury. The judge shall hear and determine
46 these issues without resort to a jury, and the jury shall be absent during any motion, argument,
47 testimony, or announcement of findings of fact or conclusions of law relating to these issues
48 unless the defendant requests a jury trial on them.

49 **"§ 130A-33.63. Powers and duties – Institute for Public Health Improvement executive**
50 **director.**

1 (a) The Institute for Public Health Improvement executive director is an employee of
2 the Authority Board and shall serve at the pleasure of the Authority Board.

3 (b) An executive director shall perform public health duties prescribed by and under the
4 supervision of the State Authority Board and shall be employed full time in the field of public
5 health.

6 (c) An executive director shall have the following powers and duties:

7 (1) To administer programs as directed by the Authority Board;

8 (2) To enforce the rules of the public health Authority Board;

9 (3) To disseminate public health information and to promote the benefits of
10 good health;

11 (6) To advise local officials concerning public health matters;

12 (7) To employ, discipline, and dismiss employees of the health authority."

13 **SECTION 4.** Article 2 of Chapter 130A of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 130A-46. Institute for Public Health Improvement and Regional Public Health**
16 **Authorities – established.**

17 (a) There is established under the State Public Health Authority, the Institute for Public
18 Health Improvement to administer all State and federal public health appropriations and grants
19 and provide public health administration through four regional public health authorities.

20 (b) The Board of Directors of the State Public Health Authority shall appoint the
21 Executive Director of the Institute for Public Health Improvement.

22 (c) There is established four regional public health authorities to administer the
23 provision of public health services to the citizens of North Carolina. The authorities shall be
24 located in Asheville, Kannapolis, Greenville, and Wilmington, and shall provide coverage to
25 the State's counties as follows:

26 (1) The regional public health authority in Asheville shall provide public health
27 administration and/or public health services to the following counties:
28 Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay,
29 Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell,
30 Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and
31 Yancey.

32 (2) The regional public health authority in Kannapolis shall provide public
33 health administration and/or public health services to the following counties:
34 Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham,
35 Cleveland, Davidson, Davie, Durham, Forsyth, Gaston, Guilford, Iredell,
36 Lee, Lincoln, Mecklenburg, Moore, Orange, Person, Randolph, Richmond,
37 Rockingham, Rowan, Stanly, Stokes, Surry, and Yadkin.

38 (3) The regional public health authority in Greenville shall provide public health
39 administration and/or public health services to the following counties:
40 Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Franklin,
41 Gates, Granville, Greene, Halifax, Hertford, Hyde, Johnston, Martin, Nash,
42 Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, Vance, Wake, Warren,
43 and Washington.

44 (4) The regional public health authority in Wilmington shall provide public
45 health administration and/or public health services to the following counties:
46 Bladen, Brunswick, Carteret, Columbus, Craven, Cumberland, Duplin,
47 Harnett, Hoke, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender,
48 Robeson, Sampson, Scotland, and Wayne.

49 (d) The authorities shall have the same powers and duties as provided in
50 G.S. 130A-45.3.

1 (e) A county may, in its sole discretion, select a regional public health authority to serve
2 as the public health department for the county."

3 **SECTION 5.** The Office of State Budget and Management shall transfer to the
4 State Public Health Authority any funds appropriated to the Department of Health and Human
5 Services for the 2011-2012 fiscal year or for the 2012-2013 fiscal year for the support of public
6 health programs abolished by the act. The State Public Health Authority shall allocate those
7 funds to the Institute for Public Health Improvement for administrative costs of the Institute
8 and for the support of the four regional public health authorities established under
9 G.S. 166-37.3.

10 **SECTION 6.** Notwithstanding any other provision of law, only health departments
11 accredited by the Local Health Department Accreditation Board established under
12 G.S. 130A-34.1 or operating as a regional public health authority are eligible to receive State
13 funds or federal funds as pass-through grants administered by State and local agencies unless
14 provided otherwise by federal law.

15 **SECTION 7.** This act becomes effective July 1, 2011.