

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 551

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

Sponsors: Senator Hartsell.

Referred to: Health Care.

April 12, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPROVE THE QUALITY AND ACCOUNTABILITY OF THE PUBLIC  
3 HEALTH SYSTEM, TO REORGANIZE THE DIVISION OF PUBLIC HEALTH, AND  
4 TO STRENGTHEN THE PUBLIC HEALTH INFRASTRUCTURE BY THE  
5 DEVELOPMENT AND IMPLEMENTATION OF REGIONAL PUBLIC HEALTH  
6 AUTHORITIES.

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

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

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

16 The General Assembly of North Carolina enacts:

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

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

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

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

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

35 "Article 1C.

36 "State Public Health Authority.

37 "§ 130A-33.60. Title and purpose.



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

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

6       **"§ 130A-33.61. State Public Health Authority.**

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

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

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

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

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

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

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

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

47       **"§ 130A-33.62. Powers and duties of Authority Board.**

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

- 50           (1)   Protect and promote the public health. The board shall have the authority to  
51 adopt rules necessary for that purpose.

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

1 Authority will determine the length of the lease. No lease executed under this subsection shall  
2 be deemed to convey a freehold interest.

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

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

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

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

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

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

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

47 **"§ 130A-33.63. Powers and duties – Institute for Public Health Improvement executive**  
48 **director.**

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

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

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

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

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

7           **(3)**     To disseminate public health information and to promote the benefits of  
8 good health;

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

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

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

13       "§ 130A-46. Institute for Public Health Improvement and Regional Public Health  
14 Authorities – established.

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

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

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

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

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

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

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

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

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

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

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

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