
Coates' Canons Blog: County Commissioners and Local Boards of Health: What Would Pending Legislation Allow, and What Would it Mean?

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There has been a great deal of activity around local public health agency (LPHA) organization and governance during the 2011-12 legislative session. We at the SOG have blogged about it several times and we are posting regular legislative updates [here](#). At present, two nearly identical bills—**H 438** and **S 433**—have passed both chambers but need concurrence votes before they may be enacted. It's possible one of the bills will be enacted quite soon, so stay tuned to our legislative updates page for the latest developments.

At least half a dozen bills have addressed LPHA governance at some point during the 2011-12 legislative session. The bills have addressed different issues at different times, but one concept that has consistently surfaced has been the removal of the population threshold from **G.S. 153A-77**—the state law that presently allows a county with a population exceeding 425,000 to abolish any or all of its human services boards, including the board of health, and transfer the powers and duties of the abolished board(s) to the county commissioners. (The law also allows a county meeting the population threshold to create a consolidated human services agency, but that's not what this post is about. For more about consolidated human services agencies, see [here](#) and [here](#).) At present, North Carolina has three counties with populations exceeding 425,000: Guilford, Mecklenburg, and Wake. Mecklenburg county has exercised its authority under existing law to abolish its board of health. If the population threshold is removed, any county could take this action.

What would it mean for the county commissioners if the board of health were abolished? What new powers and duties would the board acquire?

First, the current versions of both H 438 and S 433 would require the board of commissioners to appoint an advisory committee with the same membership that presently is required for a county board of health: a physician, a dentist, an optometrist, a veterinarian, a registered nurse, a pharmacist, a county commissioner, a professional engineer, and three representatives of the general public.

Next, the commissioners themselves would assume the role and charge of a local board of health, which by **law** is to be responsible for protecting and promoting the public's health within its jurisdiction. To carry out that role, the board of commissioners would acquire the following powers and duties related to public health and the operation of the local public health agency:

Appointment of the local health director. A local board of health appoints a local health director after consultation with the county commissioners. If the county commissioners abolish the board and assume its duties, the commissioners will be responsible for appointing the local health director. In most cases, the local health director must meet minimum education and experience requirements. More information about local health director qualifications, powers and duties is available [here](#).

Policy-making authority for the department. The board of county commissioners would become the policy-making body for the local public health agency.

Rule-making authority for public health throughout the jurisdiction, including within municipalities. Local boards of health have the authority to adopt rules to protect and promote the public's health within their jurisdictions. The rule-making authority of a local board of health differs from the ordinance-adopting authority of boards of commissioners in significant ways:

- When a board of health adopts public health rules, its territorial jurisdiction exceeds that of a board of county commissioners exercising ordinance-making authority. Typically, county ordinances apply only in the unincorporated areas of the county, not inside the municipalities (unless the municipalities consent to be governed by the county ordinance). However, a board of health rule applies throughout the board of health's territorial jurisdiction—including within municipal borders.
- A board of health's authority to adopt rules is limited to matters related to public health, and has other limits imposed by law. At least some of these limits would apply to the board of commissioners if it chose to adopt a local public health rule.
- There are statutory procedures regarding notice to the public that must be followed when a public health rule is adopted, and they differ from the procedures for adoption of county ordinances.
- When a board of commissioners acting as a board of health adopts a public health rule, the options for enforcing the rule are different from those available to a traditional board of health.

A board of county commissioners that has assumed the powers and duties of a local board of health would therefore need to determine and document when it was exercising its general ordinance-making authority versus its public health rule-making authority, to ensure proper procedures are followed and any limits to the authority are observed. For more information about local board of health rule-making authority and its limits, see this **bulletin**.

Adjudicatory body for public health. The board of county commissioners would acquire the power and duty to adjudicate disputes pertaining to the local agency's application of local board of health rules or the imposition of administrative penalties by the local health director. For example, if the local health director imposed a fine on a restaurant for failing to comply with the state law governing smoking in public places and the restaurant appealed the fine, the board of county commissioners would hear the appeal and issue a decision.

Imposing fees for public health services. A local board of health has limited authority to impose fees for services rendered by the local public health agency, with the approval of the board of county commissioners. State law prohibits fees for some services and requires the state to approve local fees in some cases. (More information about these limitations is available **here**.) Fees must be deposited into the local agency's account and expended for public health purposes. A board of county commissioners acting as the board of health would have the authority to impose these fees, subject to any applicable limitations in state law.

Duties related to accreditation. A North Carolina **law** requires each local public health agency to obtain and maintain accreditation. As part of the accreditation process, the local board of health must satisfy at least six of eight benchmarks—a duty the county commissioners would acquire. To satisfy a benchmark, the department must demonstrate satisfactory completion of a list of activities associated with the benchmark. The benchmarks for boards of health are:

- Exercising the public health rule-making authority.
- Assuring a fair and equitable adjudication process.
- Training regarding board of health service.
- Assuring the development, implementation, and evaluation of local public health services and programs.
- Participating in the establishment of public health goals and objectives.
- Assuring the availability of resources to implement the essential public health services.
- Advocating in the community on behalf of public health.
- Promoting the development of public health partnerships.

The above discussion highlights some of the main changes that would occur in a county that abolished its board of health, but what would remain the same?

First, the county would still be subject to a **state law** that requires counties to provide public health services by operating or participating in a LPHA, or contracting with the state. Therefore, a county that abolished its board of health would likely

still operate a county health department or a consolidated human services agency. (Contracting with the state to provide services within the county is also an option, but it has not been exercised by any county in decades.)

Second, the particular services provided by the LPHA would be determined in large part by state laws and state and federal funding streams, and would be subject to state oversight. More information about the laws affecting local public health services is available [here](#).

Finally, the status of the county's LPHA employees would not be affected by the act of abolishing the local board of health. County health department employees are appointed by the local health director and are subject to the State Personnel Act, and would remain so even if the board of health were abolished. However, if the population threshold is removed from G.S. 153A-77, the county could choose also to create a consolidated human services agency. Employees of consolidated agencies are appointed by the consolidated human services director with the county manager's approval. Under present law, they are not covered by the State Personnel Act. However, both H 438 and S 433 contain a provision that would require consolidated human services agencies to have merit personnel systems that comply with any applicable federal laws. As one way of meeting this requirement, county commissioners would be authorized to elect to make the employees subject to the State Personnel Act. More information about LPHA employees is available [here](#).

Links

- www.sog.unc.edu/resources/microsites/nc-public-health-systems-research/legislative-updates
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=h438
- www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=s433
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-77
- canons.sog.unc.edu/?p=6674
- www.sog.unc.edu/resources/faq-collections/types-local-public-health-agencies-consolidated-human-services-agencies
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-39
- www.sog.unc.edu/resources/faq-collections/key-players-nc-local-public-health-local-health-directors
- sogpubs.unc.edu/electronicversions/pdfs/hlb81.pdf
- www.sog.unc.edu/warehouse-documents/introduction-local-public-health-services-north-carolina
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-34.1
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-34
- www.sog.unc.edu/resources/faq-collections/legal-and-policy-context-local-public-health-services
- www.sog.unc.edu/resources/faq-collections/legal-and-policy-context-local-public-health-agency-employees