Coates' Canons Blog: Organizational Options for Local Public Health Agencies in North Carolina, Part 2: Proposed Legislation

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Article: https://canons.sog.unc.edu/organizational-options-for-local-public-health-agencies-in-north-carolina-part-2-proposed-legislation/

This entry was posted on June 28, 2011 and is filed under Agency Administration, Boards Of Public Health, Public Health

UPDATE: Legislation changing the organizational and governance options for NC local public health agencies was enacted in June 2012. The legislation, commonly calledHouse Bill 438, is summarizedhere. When I wrote this post I focused mostly on a different bill (S 433). I noted H 438 but stated that it applied only to New Hanover county, which was initially the case. However, during the 2012 legislative session, H 438 ended up being the vehicle for many of the S 433 provisions that are described in this post, and it was made applicable to the whole state. (The full history of this legislation's interesting and unusual course is availablehere.) More information and resources about the implementation of this legislation in North Carolina is available on theconsolidated human services section of the SOG'sNC public health law website.

North Carolina counties have a statutory duty to provide public health services to their residents. Counties do this by creating or joining some form of local health department. Yesterday, I wrote about the different types of local health departments that counties can operate or participate in under current state law. Today's post describes proposed legislation that could change the options that are available to counties in the future.

During the session that ended June 18, the General Assembly considered several bills that addressed how local public health agencies may be organized. Three bills addressed county-level consolidation of human services (social services, mental health, and public health), and two made various proposals to promote or require the delivery of public health services through multi-county regions or districts. None of the bills was enacted, but three passed their chamber of introduction before the June 9 crossover deadline and therefore remain eligible for consideration during the 2011-12 legislative session.

Two of the bills that made crossover (H 438 and S 433) would allow more counties to form consolidated human services agencies, and/or to abolish existing local human services boards and transfer their duties to county commissioners. I will refer to those bills as the "consolidation bills." One of the bills (S 552) would promote the development of regional public health authorities or multi-county district health departments. I will use the term "regionalization bill" to refer to that proposal. (Another bill that included a regionalization component, S 551, was never discussed by the committee to which it was referred.) On June 14, a House committee combined parts of the consolidation and regionalization bills into a single bill, the fourth edition of S 433. I've called that the "combined bill" and described it last. During the last week of the session it appeared that the combined bill was on the verge of passing. However, no final action was taken.

The Consolidation Bills (S 433 and H 438)

As I explained in yesterday's post, **GS 153A-77**gives counties with populations exceeding 425,000 two options that are not available to smaller counties. First, it allows them to form a consolidated human services agency, combining social services, mental health, and public health into a single agency governed by a consolidated human services board. Second, it permits county commissioners to abolish any or all of their local human services boards (including the board of health) and to transfer the duties of the abolished board(s) to the board of county commissioners.

The first consolidation bill introduced this session was **House Bill 438**, which would give the New Hanover county commissioners the authority to exercise the options in GS 153A-77. The bill would do this by adding a provision to make

the statute applicable to “coastal counties with a population in excess of 200,000.” At present, New Hanover is the only coastal county with a population that large. H 438 proposes no further changes to GS 153A-77 (most notably, the population for non-coastal counties would remain at 425,000). It passed the House on April 14 and was referred to the Senate Committee on State and Local Government. It was not discussed further before the legislature’s June 18 adjournment.

Senate Bill 433was introduced as a consolidation bill, though it later became the combined bill described below. The original version of the bill proposed to rewrite GS 153A-77 to do three things: (1) remove the population threshold, thus allowing any county to create a consolidated human services agency or transfer the powers and duties of human services boards to the county commissioners; (2) allow a board of county commissioners that forms a consolidated human services agency to elect to make the agency’s employees subject to the State Personnel Act; and (3) allow the commissioners of a county that forms a consolidated human services agency to choose to permit the consolidated human services board to appoint and supervise the agency director (under current law, the county manager appoints and supervises the director).

S 433 was amended several times during the Senate’s deliberations. Early in the process, there was a good bit of discussion about a federal law that requires agencies administering specified programs to have merit personnel systems meeting certain criteria. Consolidated human services agencies administer programs that are subject to that law. The State Personnel Act (SPA) creates a merit system that satisfies the federal law’s requirements, but a question arose about whether current county personnel policies do so, and the bill as proposed would allow a county to choose whether to make consolidated agencies’ employees subject to the SPA or to keep them under county policies. This issue was resolved by an amendment clarifying that all consolidated human services agencies must comply with the federal laws and rules regarding merit personnel systems. Thus, as amended the bill would permit a county that forms a consolidated human services agency to elect to place its employees under the SPA or under county policies that comply with the federal merit system requirements.

Two other changes were made to S 433 before it passed the Senate. First, a committee substitute for the bill included a section amending **GS 153A-76**, which addresses county commissioners’ authority to organize county government. Presently, the law prohibits the board of commissioners from changing the composition or manner of selection of local boards of health and social services. The proposed amendment would remove that prohibition from the statute. However, it is unclear what effect such a change would have on commissioners’ authority with respect to those boards, as their composition and manner of selection are specifically prescribed by the General Assembly in other statutes [**GS 130A-35** (county boards of health); **GS Ch. 108A, Art. 1, Pt. 1** (county social services boards)]. Second, an amendment adopted during the Senate floor debate removed the option for a county to permit a consolidated human services board to appoint and supervise the consolidated agency’s director.

As amended, S 433 passed the Senate on April 27. It was dormant in the House for some time, but during the last week of the session, a House committee considered and approved a committee substitute for the bill that retained the consolidation portions and added some provisions from S 552, a regionalization bill. At the end of this post, I’ll revisit S 433, but let’s turn now to a discussion of S 552.

The Regionalization Bill (S 552)

As originally introduced, **Senate Bill 552**would have created an incentive funding program for local health departments to form regional public health authorities composed of a minimum of 15 counties or containing a minimum population of 500,000 state residents. (A public health authority is a form of local health department—for more information about how it compares to traditional county or district health departments, see my **previous post**or **this document**.) The original version of S 552 was never discussed in committee. Instead, on June 6, the Senate Committee on Health Care discussed and approved a committee substitute for S 552 that included “carrot” and “stick” financial proposals to promote the formation of local health departments serving populations of 100,000 or more. Specifically, the second edition of S 552 proposed to:

- Create the Public Health Improvement Incentive Program to provide monetary incentives for counties to create or join multi-county district health departments or public health authorities serving populations of 100,000 or more. This was the carrot.
- By July 1, 2014, make state and federal funding for local health departments available only to accredited local health departments that serve populations of 100,000 or more (unless the State Health Director allowed an

exception to the population requirement for good cause shown). In addition, most departments would have to organize as a public health authority or a district health department, but a grandfather clause would have permitted consolidated human services agencies created before January 1, 2011 to retain funding. This was the stick.

Additional provisions would have: (1) required the counties comprising each local health department to appropriate a minimum amount of funding to the local health department; (2) rewritten the state law that establishes the mission and essential services of the public health system to conform with the state's local health department accreditation law, by reflecting the nationally recognized **ten essential public health services**that serve as the touchstone for the accreditation program; (3) directed the General Assembly's Program Evaluation Division to study the feasibility of transferring the Division of Public Health from the NC Department of Health and Human Services to the UNC Healthcare System; and (4) allocated $5 million for the incentive program.

The provisions outlined in the bullet points above proved quite controversial, especially the portions that would have required county health departments to meet minimum population requirements and reorganize into public health authorities or district health departments in order to retain funding. The bill was amended twice on the Senate floor to address the population requirement. First, the population threshold was dropped to 75,000 for both the Public Health Improvement Incentive Program (the carrot) and the July 2014 requirements for state and federal funding (the stick). A second amendment retained the 75,000 population threshold for the incentive program but eliminated it from the funding requirement.

As amended, the bill passed its third reading in the Senate on June 9. It was sent to the House and referred to the Committee on Health and Human Services. The House did not act on S 552, but portions of the bill were incorporated into a House committee substitute for S 433—the "combined bill."

The Combined Bill (S 433, Edition 4)

On June 14, the House adopted a committee substitute for S 433 that incorporated S 433's consolidated human services law changes and S 552's public health regionalization concepts into a single bill. A vote on the combined bill was originally scheduled for June 15, but the bill was withdrawn from the calendar, sent back to committee, and not acted upon further before adjournment.

The combined bill would remove the population threshold from GS 153A-77, thus allowing any county to create a consolidated human services agency or transfer the powers and duties of human services boards to the county commissioners. However, the combined bill would also provide incentives for counties to form public health authorities or district health departments serving populations of 75,000 or more. The bill thus offers competing choices for local public health service delivery. The creation of a county consolidated human services agency precludes the creation of a district health department or public health authority. The other option under GS 153A-77—direct commissioner control of human services boards—would not be precluded for a county that participated in the public health incentive program but it would be limited with respect to public health.

The combined bill also contained the provisions from previous versions of S 433 and S 552 that would:

- Allow a board of county commissioners that forms a consolidated human services agency to elect to make the agency's employees subject to the State Personnel Act.
- Clarify that consolidated human services agencies must comply with the federal laws and rules regarding merit personnel systems.
- Amend GS 153A-76 by deleting the provision that states that a board of county commissioners may not alter the composition or manner of selection of boards of health or social services.
- Require counties to appropriate funds to local health departments at levels equal to the amounts appropriated in fiscal year 2010-11.
- Rewrite the state's public health mission and essential services law to conform to the essential public health services reflected in the state local health department accreditation law.
- Study the feasibility of transferring the Division of Public Health from NC DHHS to UNC Healthcare.

Next Steps?

Having passed crossover, S 433, S 552, and H 438 all remain eligible for further consideration. I will not attempt to predict whether any of the bills will ultimately pass, but I am confident that the different policy choices the bills present will be the subject of much more discussion and debate in the months ahead. Issues likely to be the focus of discussion include:

- the pros and cons of county-level human services consolidation versus public health regionalization,
- whether local public health agencies should be governed directly by boards of county commissioners or by health boards appointed (in whole or part) by the commissioners,
- the local public health agency's role as a regulator as well as a service provider and how that fits into the human services model, and
- the role of the state Division of Public Health.

Stay tuned.

Links

- www.ncleg.net/Sessions/2011/Bills/House/PDF/H438v5.pdf
- lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/SummaryofSL2012-126.pdf
- www.sog.unc.edu/resources/microsites/nc-public-health-systems-research/legislative-updates
- www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/consolidated-human-services-agencies-chsas
- www.sog.unc.edu/resources/microsites/north-carolina-public-health-law
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-77
- 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-76
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-35
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=108A
- www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=s552&submitButton=Go
- canons.sog.unc.edu/?p=4840
- www.sog.unc.edu/sites/www.sog.unc.edu/files/additional_files/Summary-PHAs-Feb%202011%20revision.pdf
- www.cdc.gov/nphpsp/essentialServices.html
- www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S433v4.pdf