

Local Board of Health Bylaws: Legal Red Flags

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Introduction

1. Are North Carolina local boards of health required to adopt bylaws?

No. No statute, rule, or accreditation benchmark requires local boards of health in North Carolina to adopt bylaws.

2. Are local boards of health allowed to adopt bylaws?

Yes.

3. If local boards do adopt bylaws, are there any requirements regarding the bylaws?

Yes. The accreditation rules state, “If the local board of health has bylaws describing its operating procedures, the bylaws shall comply with state law.” 10A NCAC 48B.1301 (Benchmark 34, Activity 1).

4. If a board of health chooses to have bylaws, what types of things might those bylaws include?

This is up to the local board. Some things that are often included in bylaws are:

- The titles and roles of the board’s officers
- The titles and roles of any standing committees
- Procedures for the election of officers
- Procedures for the conduct of meetings
- Procedures for amending the bylaws

5. Is it a good idea to restate the requirements of the NC General Statutes in a board of health’s bylaws?

It’s unnecessary – your board is bound by the statutes regardless of whether they are quoted in your bylaws. Furthermore, public health laws can and do change. If you quote statutes in your bylaws, someone will need to take responsibility for ensuring that the bylaws are amended when changes occur.

Red Flag Category #1: Bylaws that Conflict with NC's Open Meetings Law

Example 1: The Board of Health shall comply with the North Carolina Open Meetings Law. Closed sessions will be permitted to discuss the following subject matters ... (5) Negotiations, contracts, conditions, assignments, regulations, and disciplinary matters relating to health department employees.

The open meetings law permits closed sessions to consider the qualifications, performance, character, etc. of specific public officers and employees. It also permits developing a negotiating position for an employment contract. It does not permit discussions of general personnel policy.

Example 2: Between regularly scheduled meetings and as needed, the health director shall conduct a poll of board of health members by telephone on certain non-controversial issues that may arise from time to time that concern the operation and well-being of the health department. Such a poll shall constitute a valid and appropriate method of conducting votes on such interim matters. All decisions made by telephone poll must be ratified by the board of health at its next regularly scheduled meeting.

The court of appeals has held that polling members in this fashion violates the open meetings law.

Example 3: A special or emergency meeting may be called by the board's chairperson, or by any three board members, when such meeting is necessary to address unexpected circumstances that require immediate consideration.

An "emergency meeting" under the open meetings law is one that is necessary to address unexpected circumstances that require immediate action by the board. A "special meeting," however, can be called for any purpose.

Example 4: All meetings shall provide at least three days' notice by any usual means to each local newspaper, local wire service, local radio station, and local television station that has filed a meeting notice request with the board's secretary.

This requires more notice than is required by the open meetings law. That law does not require any special notice at all of regular meetings; rather, the board is to file its schedule of regular meetings with the clerk to the board of county commissioners, and that is the only notice required of regular meetings. [Note: A district board of health may file its schedule of regular meetings with the board's secretary (the local health director).] In addition, with special meetings, the law requires only 48 hours public notice, but not only by sending notice to those who have requested it (all – not just news media) but also by posting on the public

body's principal bulletin board. Finally, the law permits emergency meetings as quickly as the board can get together, with the only public notice going to the local news media.

Example 5: A board of health member may vote through a proxy declaration if the member is unable to attend the meeting.

Governmental bodies may not allow proxy voting, unless specifically permitted to do so by statute.

Example 6: At each regular meeting, the board shall provide a public comment period as required by state law.

State law requires a public comment period for boards of county commissioners, city councils, and school boards. Such a period is not required for boards of health, although nothing prohibits a board from instituting such a practice.

Red Flag Category #2: Bylaws that Conflict with NC Public Health Laws

Example 7: By majority vote of a quorum present at a regular meeting, the county board of health may remove a member for cause. Causes for removal shall include but not be limited to physical or mental incapacity to perform duties, conflict of interest between personal monetary gain and discharge of public business, and felony conviction in any state or federal court.

County boards of health lack the authority to remove their own members—that authority belongs to the county commissioners. GS 130A-35. [*Note:* District boards of health and public health authority boards may remove their own members. GS 130A-37(h) (districts); 130A-45.1(j) (PHAs).] The causes for which board members may be removed are specified in the county, district, and public health authority statutes and are the same for all types of boards. The example includes some causes for removal that are not included in the statutes.

Example 8: Each member shall be granted two consecutive absences from regularly scheduled board meetings. The board chairman shall notify a member who has a third consecutive absence of the member's pending dismissal from the board of health. The correspondence shall inform the member of the right of appeal.

A district board of health or public health authority board could do this, but not a county board of health. Members of county boards of health may be removed only by the commissioners, not the board itself. GS 130A-35(g).

Example 9: Members of the county board of health shall serve three-year terms. Except for the county commissioner member, no member shall serve for more than two consecutive terms.

GS 130A-35 permits members to serve up to the three consecutive three-year terms and—more importantly—gives the power of appointing members to the county commissioners, not the board of health. As the appointing body, the commissioners could choose to limit board members to two three-year terms, but the board of health cannot impose this limitation on the commissioners through its bylaws.

Example 10: The board of commissioners of each county in the district shall appoint one county commissioner to the board. Those commissioners shall appoint the remaining members, which shall include a licensed physician, a licensed dentist, a licensed veterinarian, a licensed optometrist, a licensed pharmacist, a registered nurse, a professional engineer, and eleven at-large members.

GS 130A-37 limits district boards of health to 15 members, unless the board of commissioners of each county in the district adopts a resolution increasing the membership to a maximum of 18 members. By calling for 11 at-large members, this bylaw provides for a minimum of 20 members in the smallest possible district (two counties).

Example 11: The county commissioners shall consult with the local board of health before appointing new board of health members.

Although it may be customary for the local board of health to recommend appointees to the commissioners, the commissioners are not required to consult with the board of health and the board cannot impose this requirement upon the commissioners through its bylaws.

Example 12: The Board of Health may enter contracts with any governmental or private agency or with any person for the provision or receipt of public health services.

Boards of health do not have contracting authority. The local health director has contracting authority which is subject to the authority of the county

commissioners. GS 130A-41(b)(13). [*Note:* Public health authority boards have contracting authority. GS 130A-45.3(a)(12).]

Example 13: The Board of Health, after consulting with the board of county commissioners, shall appoint a local health director. The State Health Director has concurrent authority over such appointment.

The second sentence misstates the law. The State Health Director ordinarily is not involved in the appointment of the local health director. There are two exceptions: (1) if a prospective appointee has a master's degree in a field other than public health, the local board of health must forward the candidate's materials to the State Health Director so that she may determine whether the candidate meets the statutory educational requirements; (2) if the local board of health fails to appoint a director who meets the statutory qualifications within 60 days after the creation of a vacancy, the State Health Director may appoint someone to serve until the board appoints a local health director. GS 130A-40.

Example 14: Except for codes and standards adopted by reference, all rules adopted, amended, or repealed by the board of health must meet the procedural requirements of GS 130A-39.

All rules adopted, amended or repealed by a local board of health must meet the procedural requirements of GS 130A-39(d) and (e). There is no exception for codes and standards adopted by reference.

Example 15: Fees imposed by the board of health shall be based on a plan recommended by the local health director and approved by the local board of health and the board of county commissioners, except for fees pertaining to the on-site wastewater program.

GS 130A-39(g) requires fees to be based on a plan recommended by the local health director and approved by the local board of health and the board of commissioners (or all applicable boards for a district health department). There is no exception for fees pertaining to the on-site wastewater program.