



2023-2024 General Assembly

HOUSE BILL 259: 2023 Appropriations Act, Sec. 4.10: Transformational Investments in North Carolina Health

Committee:
Introduced by:
Analysis of: Sec. 4.10 of S.L. 2023-134

Date: November 13, 2023
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Staff Attorney

OVERVIEW: *Section 4.10 of S.L. 2023-134 recodifies many of the existing provisions relating to the University of North Carolina Health Care System and the East Carolina University Health Care System. It expands some of those provisions, giving the Board of Directors and Chancellor more authority, and it allows the UNC System to purchase insurance or self-insure against medical malpractice claims. It clarifies that the UNC System is a State agency and states that employees of both systems hired on or after January 1, 2024, are ineligible to participate in the Teachers' and State Employees' Retirement System. Finally, the act makes conforming changes throughout the General Statutes, appropriates \$420 million to the NC Care Initiative, and contains reporting requirements.*

The appropriation and reporting provisions became effective July 1, 2023. The remaining provisions became effective October 3, 2023.

CURRENT LAW: When necessary, current law will be underlined in the Bill Analysis section.

BILL ANALYSIS:

CLARIFICATION OF THE AUTHORITY OF THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM AND EAST CAROLINA UNIVERSITY HEALTH CARE OPERATIONS

Section 4.10 of S.L. 2023-134 repeals the current statutes creating the UNC Health Care System (G.S. 116-37) and regulating its use of funds (G.S. 116-37.2) as well as the statutes creating the ECU School of Medicine (G.S. 116-40.4) and regulating certain ECU personnel (G.S. 116-40.6) and replaces them with a new framework as Article 37 (University of North Carolina Health Care System) and Article 39 (East Carolina University Health Care Operations) of Chapter 116 (Higher Education) of the General Statutes.

Article 37, Part 1: University of North Carolina Health Care System

G.S. 116-350. Definitions creates definitions for "Board," "Board of Directors," Chief Executive Officer," "Component Unit," System Affiliate," "The University of North Carolina Health Care System," and "System."

G.S. 116-350.5. University of North Carolina Health Care System provides for the establishment of the UNC Health Care System (System) and its governance by the Board of Directors of the University of North Carolina Health Care System (Board). The Board is tasked with governing and administering the UNC Hospitals at Chapel Hill, clinical patient care programs at the UNC School of Medicine, other entities

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assigned by the General Assembly, and other entities the Board can establish within the limits of its statutory power. The Board can adopt policies as necessary to perform its duties. This section is somewhat similar to current law in G.S. 116-37(a); however, the new language allows the Board to govern "entities...the General Assembly can assign to the System" and specifies that the System is a State agency.

G.S. 116-350.10. Board of Directors. The Board must meet every 60 days or on the call of the chair. Board decisions can be appealed to the Board of Governors. The Board is comprised of 25 members as follows:

- Five ex officio members: (1) the UNC President or President's designee, (2) the CEO of the System, (3) the Chancellor of UNC Chapel Hill, and (4-5) two individuals designated by the CEO of the System.
- Eight members at large, four appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives and four appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate. One member recommended by each chamber will be appointed each year.
- Twelve members at large appointed by President of the University of North Carolina. These members must be approved by the Board of Governors.

This section is substantially similar to current law in G.S. 116-37(b).

G.S. 116-350.12. Operational principles of the Board of Directors. This section requires the members of the Board to act as fiduciaries and adhere to the highest standard of conduct. It also clarifies that the authority of the Board members is collective, not individual.

G.S. 116-350.15. Powers and duties of the Board of Directors. The Board can authorize any component unit of the System to enter contracts, and it can also enter into agreements with constituent institutions of the UNC System. The Board also has the following powers, with the limitation that it could not relinquish more than 50% of control of UNC Hospitals or the System to any other entity:

- Construct, plan, create, equip, operate, and maintain healthcare facilities.
- Collect and manage receipts.
- Issue bonds and notes.
- Acquire and dispose of real property.
- Enter into agreements with other healthcare entities.
- Obtain insurance.
- Invest funds.
- Exercise the powers granted to municipal hospitals under Article 2 of Chapter 131E.
- Have the powers of a body corporate and politic.

Current statutory law does not explicitly state the powers of the Board.

G.S. 116-350.20. Reports due from the Board. The President and CEO of the University of North Carolina must report annually on the operations and financial affairs of the System to the Joint Legislative Commission on Governmental Operations and Board of Governors. This section is substantially similar to current law in G.S. 116-37(g).

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G.S. 116-350.25. System officers and their staff. There are two system officers, a CEO and a President of UNC Hospitals. The Board, Board of Trustees, and Chancellor of UNC Chapel Hill must adopt a search process for the CEO, identify two or more qualified individuals, and submit those names to the UNC President, who will nominate one to be CEO, subject to approval by the Board of Governors. The CEO will nominate an individual to be President of UNC Hospitals, subject to election by the Board. The Board will also elect administrative staff as necessary. This section is substantially similar to current law in G.S. 116-37(c).

G.S. 116-350.30. Personnel. Individuals who are employed by the System, but not System affiliates, are considered State employees; however, the Board can determine the terms and conditions of the employment of those employees, including benefit plans and programs. These employees are only subject to the political activity, equal employment, personnel record privacy, and whistleblowing provisions of the State Human Resources Act. The Board can employ faculty and staff of the UNC School of Medicine, but those individuals remain subject to the policies established by the Board of Governors. State employees who were employed by the System immediately prior to January 1, 2024, have the right to continued state employment and participation in the Teachers' and State Employees' Retirement System.

This section differs from the current law in G.S. 116-37(d). Under that subsection, there is no distinction made between System and System affiliate employees. Subsection (d) also confers several powers, including fixing pay schedules, creating rules for leave, and setting office hours, that are not mentioned in the new G.S. 116-350.30.

G.S. 116-350.35. Finances. The System and UNC Hospitals are not subject to the provisions of the State Budget Act (except for General Fund Appropriations) or the Office of the State Controller. They are subject to the authority of the Office of the State Auditor. The CEO can expend System funds for the direct benefit of a patient in certain circumstances if the CEO determines expending those funds will result in a financial benefit to the System.

G.S. 116-350.40. Regulation of UNC Hospitals funds. This section defines "funds" to include gifts or grants to UNC Hospitals, fees for healthcare services, money from the sale of real property, and money raised by the issuance of bonds. The Board is responsible for the use and custody of those funds, and they are deemed appropriated by the General Assembly. These funds are supplemental to any additional monies appropriated to the System by the General Assembly. The funds are subject to the oversight of the State Auditor, and UNC Hospitals must submit any reports deemed necessary by the Board. This section is substantially similar to current law in G.S. 116-37.2.

G.S. 116-350.45. Purchases. The Board must establish policies for the purchasing requirements of the System, notwithstanding the contracting provisions of Chapter 143. The initial policies and any subsequent changes must be submitted to the Division of Purchase and Contract. This section is substantially similar to current law in G.S. 116-37(h).

G.S. 116-350.50. Real property. The Board must establish policies for the acquisition and disposal of real property. This portion of G.S. 116-350.50 is somewhat similar to G.S. 116-37(i); however current law does not permit the System to encumber real property, and there is no similar prohibition in the new G.S. 116-350.50. The Board can, subject to rules generally applicable to hospital construction, performance bond requirements, design requirements, and local code enforcement, adopt policies governing the design and construction of buildings, infrastructure, and utilities for the System. This portion of G.S. 116-350.50 is a departure from current law. Currently, G.S. 116-37(j) requires the Board to submit construction polices to the Office of State Construction, but does not require compliance with rules generally applicable to hospital construction, performance bond requirements, design requirements, and local code enforcement.

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G.S. 116-350.55. Bond and notes. In accordance with the provisions governing the issuance of special bonds for improvements to UNC facilities in Chapter 116D, the System can issue bonds with the same powers and for the same purposes as permitted to the Board of Governors. The approval of the Director of the Budget, or any other department, division, commission, board, bureau, or state agency is not necessary for the issuance of these bonds. The real property of the state cannot be pledged as security for any note or bond. There are currently no statutory provisions regarding the System's power to issue bonds.

G.S. 116-350.60. Nonprofit merger authority. The System can merge with any domestic nonprofit corporation, subject to most of the requirements in the statutes providing for the merger of nonprofit corporations with unincorporated entities. The System is deemed an unincorporated entity for purposes of this section. There are currently no statutory provisions addressing this issue.

G.S. 116-350.65. Public records. Patient records, strategic initiative records, and consultations with the Joint Legislative Commission on Governmental Operations are not considered public records under Chapter 132. There are currently no statutory provisions addressing this issue.

Article 37, Part 2: Liability Insurance or Self-Insurance

G.S. 116-350.100. Authorization to secure insurance or provide self-insurance. The Board can purchase private insurance or self-insure against malpractice claims made against healthcare practitioners employed by the System.

G.S. 116-350.105. Establishment and administration of self-insurance trust funds; rules and regulations; defense of actions against covered persons; application of G.S. 143-300.6. If the Board elects to self-insure, it can establish trust accounts for that purpose. These accounts are not subject to regulation by the Commissioner of Insurance. The Board can establish a trust fund council to administer the trust accounts. The Attorney General's Office can defend suits filed against the System.

G.S. 116-350.110. Funding of Self-Insurance program. If the Board self-insures, it can establish trust accounts for that purpose, with an initial funding amount of at least \$300,000. Additional annual contributions must be made on the advice of an actuary, but must be at least 150% of the amount paid for claims the previous year until an actuary determines a lesser amount is adequate.

G.S. 116-350.115. Termination of fund. The fund can be terminated when other arrangements to satisfy future and existing claims have been made.

G.S. 116-350.120. Sovereign immunity. Nothing in this act waives sovereign immunity.

G.S. 116-350.125. Confidentiality of records. No records relating to the liability insurance program will be considered public records.

G.S. 116-350.130. Further action. The Board can take all actions necessary to effectuate this act.

G.S. 116-350.135. Appropriation. The funds described in this act are deemed appropriated.

Article 39: East Carolina University of East Carolina Health Care Operations

G.S. 116-360.5. Definitions. This section creates definitions for "Board of Trustees," "Career State employee status," "Chancellor," "ECU Dental School Clinical Operations," "Medical Faculty Practice Plan," "President," and "School of Medicine."

G.S. 116-360.10. East Carolina University School of Medicine; establishment; mission. This section allows the ECU Board of Trustees to create a medical school with a mission to promote the health and

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welfare of citizens of North Carolina, with a focus on rural areas. The establishment language in this section is substantively identical to G.S. 116-40.4. The mission statement language is new law.

G.S. 116-360.15. Personnel and operations. Employees who are employed by the ECU Medical Faculty Practice Plan (Practice Plan) and the ECU Dental School are state employees. These employees are only subject to the political activity, equal employment, personnel record privacy, and whistleblowing provisions of the State Human Resources Act. The Chancellor can employ faculty and staff of the ECU School of Medicine, but those individuals remain subject to faculty policies of ECU. State employees who were employed by the System immediately prior to January 1, 2024, have the right to continued state employment and participation in the Teachers' and State Employees' Retirement System.

G.S. 116-360.20. Finances. The ECU School of Medicine, Practice Plan, and Dental School are not subject to the provisions of the State Budget Act (except for General Fund Appropriations) or the Office of the State Controller. They are subject to the authority of the Office of the State Auditor. The ECU School of Medicine must request, on a regular basis, funds the School earns from Medicare reimbursements for education costs. Those funds are deemed appropriated on receipt.

G.S. 116-360.25. Purchases. The Chancellor must establish policies for the purchasing requirements of the Medical School, Dental School, and Practice Plan, notwithstanding the contracting provisions of Chapter 143. The initial policies and any subsequent changes must be submitted to the Division of Purchase and Contract.

G.S. 116-360.30. Public records. Records related to research, patient care, strategic planning, and consultations with the Joint Legislative Commission on Governmental Operations are not public records.

G.S. 116-360.35. Real property. The Chancellor must establish policies for the acquisition and disposal of real property. The Chancellor can, subject to rules generally applicable to hospital construction, performance bond requirements, design requirements, and local code enforcement, adopt policies governing the design and construction of buildings, infrastructure, and utilities.

CONFORMING CHANGES

Section 4.10 of S.L. 2023-134 makes conforming changes throughout the General Statutes. Most of those changes are technical in nature, but some have a more substantive impact to the Teachers' and State Employees' Retirement System (TSERS).

Individuals who are employees of the UNC System, ECU Medical School, ECU Dental School, or ECU Practice Plan prior to January 1, 2024, and who are members of TSERS or the UNC or ECU Optional Retirement Program (ORP) will remain in TSERS or the ORP unless they make a one-time irrevocable decision to participate in a similar retirement system (SRS).

Employees hired after January 1, 2024, are not eligible for TSERS and can choose between ORP or SRS. Individuals who were employed prior to January 1, 2024, but left employment and are rehired after that date will be treated as if they were hired after January 1, 2024.

APPROPRIATIONS AND REPORTING REQUIREMENTS

Section 4.10 of S.L. 2023-134 appropriates \$420,000,000 for the NC Care Initiative and requires ECU Health and the System to report on the NC Care Initiative to the Senate Committee on Appropriations/Base Budget, the House Appropriations Committee, and the Fiscal Research Division by April 1, 2024, and every six months thereafter.

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EFFECTIVE DATE: The appropriation and reporting provisions became effective July 1, 2023. The remaining provisions became effective October 3, 2023.