



# SENATE BILL 743: Transformational Investments in NC Health.

2023-2024 General Assembly

<b>Committee:</b>	Senate Pensions and Retirement and Aging	<b>Date:</b>	April 25, 2023
<b>Introduced by:</b>	Sens. Hise, Krawiec	<b>Prepared by:</b>	Jason Moran-Bates Staff Attorney
<b>Analysis of:</b>	Second Edition		

**OVERVIEW:** Senate Bill 743 would recodify many of the existing provisions relating to the University of North Carolina Health Care System. It would also expand some of those provisions, giving the Board of Directors more authority, and allowing the System to purchase insurance or self-insure against medical malpractice claims. Employees hired on or after November 1, 2023, would be ineligible to participate in the Teachers' and State Employees' Retirement System. Finally, the bill would make conforming changes throughout the General Statutes.

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

## BILL ANALYSIS:

### PART I. CLARIFICATION OF THE AUTHORITY OF THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM

Senate Bill 743 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) and replaces them with a new framework as Article 37 (University of North Carolina Health Care System) of Chapter 116 (Higher Education) of the General Statutes.

#### Article 37, Part 1

**G.S. 116-350. Definitions** would create 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** would provide 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 would be tasked with governing and administering the UNC Hospitals at Chapel Hill, clinical patient care programs at the UNC School of Medicine, other entities assigned by the General Assembly, and other entities the Board may establish within the limits of its statutory power. The Board may 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 may 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 may be appealed to the Board of Governors. The Board would be comprised of 24 members as follows:

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- Four 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) the President of UNC Hospitals.
- 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 Prop Tempore of the Senate.
- Twelve members at large appointed by the Board of Governors after consultation with the President of the University of North Carolina.

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

**G.S. 116-350.15. Powers and duties of the Board of Directors.** The Board would be able to authorize any component unit of the System to enter into contracts, and it may also enter into agreement with constituent institutions of the UNC System. The Board would also have 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).

**G.S. 116-350.25. System officers and their staff.** There would be 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, would be considered State employees; however, the Board would determine the terms and conditions of the employment of those employees, including benefit plans and programs. These employees would only be subject to the political activity, equal employment, personnel record privacy, and whistleblowing provisions of the State Human Resources Act. The Board may employ faculty and staff of the UNC School of Medicine, but those individuals would remain subject to the policies established by the Board

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of Governors. State employees who were employed by the System immediately prior to November 1, 2023, would 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. 116-350.40. Regulation of UNC Hospitals funds.** This section would define "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 would be 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 may, 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.

**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 may 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 may 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 would be 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 would not be considered public records under Chapter 132. There are currently no statutory provisions addressing this issue.

**G.S. 116-350.70. State action.** When the Board enters into cooperative agreements with any other entity for the provision of health care, its activities constitute state action for the purposes of antitrust law,

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making it immune to suit for antitrust violations. There are currently no statutory provisions addressing this issue.

## **Article 37, Part 2 (Insurance Provisions)**

Part 2 of Senate Bill 743 would allow the Board to purchase insurance or self-insure against liability incurred in the process of providing healthcare. If the Board self-insures, it may 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. The fund may be terminated when other arrangements to satisfy future and existing claims have been made. The Board may adopt rules to run a program of self-insurance and may also create an Insurance Trust Fund Council to administer any insurance trust fund. Claims may be defended by the Attorney General's office or private counsel if the Attorney General cannot handle the case. The state does not waive sovereign immunity by authorizing the insurance provisions of Article 37, and all records relating to the insurance program are not public records under Chapter 132. There are currently no statutory provisions addressing this issue.

## **PART II. CONFORMING CHANGES**

Part II of Senate Bill 743 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).

**G.S. 135-1. Definitions.** The definition of "employee" in the TSERS statute is amended to exclude employees of the UNC Health Care System who are not eligible for TSERS under G.S. 135-5.5.

**G.S. 135-5.5. Employees of the University of North Carolina Health Care System.** This is a new section dealing with the ability of System employees to participate in TSERS. Individuals who are employed before November 1, 2023, and who are members of TSERS or the Optional Retirement System authorized under G.S. 135-5.1 will retain membership in their system unless opting to do otherwise. Employees hired on or after November 1, 2023, cannot be members of TSERS, but the System must offer them membership in the Optional Retirement System, or similar benefit created under the Board's authority. Individuals who were employees prior to November 1, 2023, who quit and are rehired after November 1, 2023, will be considered new hires for purposes of retirement eligibility.

**EFFECTIVE DATE:** This bill would become effective July 1, 2023.