

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 458*
Committee Substitute Favorable 4/25/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H458-PCS30802-RF-48

Short Title: Public Hospital Conveyances. (Public)

Sponsors:

Referred to:

April 1, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE LAWS RELATING TO THE SALE, LEASE, OR
3 CONVEYANCE OF A PUBLIC HOSPITAL.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 131E-6(3) reads as rewritten:

6 "(3) "Corporation, foreign or domestic, authorized to do business in North
7 Carolina" ~~means~~ means any of the following:

8 a. A corporation for profit or having a capital stock which is created
9 and organized under Chapter 55 of the General Statutes or any other
10 general or special act of this State, or a State.

11 b. A foreign corporation which has procured a certificate of authority to
12 transact business in this State pursuant to Article 10 of Chapter 55 of
13 the General Statutes.

14 c. A limited liability company formed under Chapter 57D of the
15 General Statutes.

16 d. A foreign limited liability company that has procured a certificate of
17 authority to transact business in this State pursuant to Article 7 of
18 Chapter 57D of the General Statutes."

19 **SECTION 2.** G.S. 131E-6(4) reads as rewritten:

20 "(4) "Hospital facility" means any one or more buildings, structures, additions,
21 extensions, improvements or other facilities, and any property interest
22 therein, whether or not located on the same site or sites, machinery,
23 equipment, furnishings or other real or personal property suitable for health
24 care or medical care; and includes, without limitation, general hospitals;
25 chronic disease, maternity, mental, tuberculosis and other specialized
26 hospitals; nursing homes, including skilled nursing facilities and
27 intermediate care facilities; adult care homes for the aged and disabled;
28 public health center facilities; housing or quarters for local public health
29 departments; facilities for intensive care and self-care; clinics and outpatient
30 facilities; clinical, pathological and other laboratories; health care research
31 facilities; laundries; residences and training facilities for nurses, interns,
32 physicians and other staff members; food preparation and food service
33 facilities; administrative buildings, central service and other administrative
34 facilities; communication, computer and other electronic facilities;
35 fire-fighting facilities; pharmaceutical and recreational facilities; storage



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1 space; X ray, laser, radiotherapy and other apparatus and equipment;
2 dispensaries; utilities; vehicular parking lots and garages; office facilities for
3 hospital staff members and physicians; and such other health and hospital
4 facilities customarily under the jurisdiction of or provided by hospitals, or
5 any combination of the foregoing, with all necessary, convenient or related
6 interests in land, machinery, apparatus, appliances, equipment, furnishings,
7 appurtenances, site preparation, landscaping, and physical amenities."

8 **SECTION 3.(a)** G.S. 131E-8(a) reads as rewritten:

9 "(a) A municipality as defined in G.S. 131E-6(5) or hospital authority as defined in
10 G.S. 131E-16(14), upon such terms and conditions as it deems wise, with or without monetary
11 consideration, may sell or convey to a nonprofit corporation organized under Chapter 55A of
12 the General Statutes any rights of ownership the municipality or hospital authority has in a
13 hospital facility including the building, land and equipment associated with the hospital, if the
14 nonprofit corporation is legally committed to continue to operate the facility as a community
15 general hospital open to the general public, free of discrimination based upon race, creed, color,
16 sex or national origin. The nonprofit corporation shall also agree, as a condition of the
17 municipality or hospital authority's conveying ownership, to provide such services to indigent
18 patients as the municipality or hospital authority and the nonprofit corporation shall agree. The
19 nonprofit corporation shall further agree that should it fail to operate the facility as a
20 community general hospital open to the general public or should the nonprofit corporation
21 ~~dissolve~~ dissolve, or sell, lease, or convey the hospital facilities, without a successor nonprofit
22 corporation to carry out the terms and conditions of the agreement of conveyance, all
23 ownership rights in the hospital facility, including the building, land and equipment associated
24 with the hospital, shall revert to the municipality or hospital authority or successor entity
25 originally conveying the hospital."

26 **SECTION 3.(b)** G.S. 131E-8 is amended by adding a new subsection to read:

27 "(f) A nonprofit corporation may sell, lease, or convey a hospital facility acquired by
28 deed, lease, or conveyance pursuant to this section to a corporation, foreign or domestic,
29 authorized to do business in North Carolina, and a municipality or hospital authority may
30 release its reverter interest in the hospital facility imposed pursuant to this section in connection
31 with the sale, lease, or conveyance provided that its reverter interest is released in accordance
32 with the procedure set forth in G.S. 131E-13(d)(9) and the hospital facility is made subject to
33 the reverter set forth in G.S. 131E-13(a)."

34 **SECTION 4.** G.S. 131E-13 reads as rewritten:

35 "**§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit**
36 **corporations or other business entities by municipalities and hospital**
37 **authorities.**

38 (a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell,
39 or convey any hospital facility, or part, or any rights of ownership that the municipality or
40 hospital authority has in a hospital facility or part thereof, to a corporation, foreign or domestic,
41 authorized to do business in North Carolina, subject to these conditions, which shall be
42 included in the lease, agreement of sale, or agreement of conveyance:

43 (1) The corporation shall continue to provide the same or similar clinical
44 hospital services to its patients in medical-surgery, obstetrics, pediatrics,
45 outpatient and emergency treatment, including emergency services for the
46 indigent, that the hospital facility provided prior to the lease, sale, or
47 conveyance. These services may be terminated only as prescribed by
48 Certificate of Need Law prescribed in Article 9 of Chapter 131E of the
49 General Statutes, or, if Certificate of Need Law is inapplicable, by review
50 procedure designed to guarantee public participation pursuant to rules
51 adopted by the Secretary of the Department of Health and Human Services.

- 1 (2) The corporation shall ensure that indigent care is available to the population
2 of the municipality or area served by the hospital authority at levels related
3 to need, as previously demonstrated and determined mutually by the
4 municipality or hospital authority and the corporation.
- 5 (3) The corporation shall not enact financial admission policies that have the
6 effect of denying essential medical services or treatment solely because of a
7 patient's immediate inability to pay for the services or treatment.
- 8 (4) The corporation shall ensure that admission to and services of the facility are
9 available to beneficiaries of governmental reimbursement programs
10 (Medicaid/Medicare) without discrimination or preference because they are
11 beneficiaries of those programs.
- 12 (5) The corporation shall prepare an annual report that shows compliance with
13 the requirements of the lease, sale, or conveyance.

14 The corporation shall further agree that if it or any successor in interest or title to the
15 hospital facility fails to substantially comply with these conditions, or if it or any successor in
16 interest or title to the hospital facility fails to operate the facility as a community general
17 hospital open to the general public and free of discrimination based on race, creed, color, sex,
18 or national origin unless relieved of this responsibility by operation of law, or if the corporation
19 dissolves without a successor corporation to carry out the terms and conditions of the lease,
20 agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital
21 facility, including the building, land and equipment associated with the hospital, shall revert to
22 the municipality or hospital authority or successor entity originally conveying the hospital;
23 provided that any building, land, or equipment associated with the hospital facility or any of its
24 successors that the corporation has constructed or acquired since the sale, lease, or
25 conveyance may revert only upon payment to the corporation or any successor in interest or
26 title to the hospital facility of a sum equal to the cost less depreciation of the building, land, or
27 equipment.

28 This section shall not apply to leases, sales, or conveyances of nonmedical services or
29 commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital
30 property that is not required in the delivery of necessary hospital services at the time of the
31 lease, sale, or conveyance.

32 (b) In the case of a sale or conveyance, if either general obligation bonds or revenue
33 bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or
34 conveyance, then the corporation shall agree to the following:

35 By the effective date of sale or conveyance, the corporation shall place into an escrow fund
36 money or direct obligations of, or obligations the principal of and interest on which, are
37 unconditionally guaranteed by the United States of America (as approved by the Local
38 Government Commission), the principal of and interest on which, when due and payable, will
39 provide sufficient money to pay the principal of and the interest and redemption premium, if
40 any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or
41 dates specified for the redemption thereof. The corporation shall furnish to the Local
42 Government Commission such evidence as the Commission may require that the securities
43 purchased will satisfy the requirements of this section. A hospital which has placed funds in
44 escrow to retire outstanding general obligation or revenue bonds, as provided in this section,
45 shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such
46 hospitals.

47 No bonds, notes or other evidences of indebtedness shall be issued by a municipality or
48 hospital authority to finance equipment for or the acquisition, extension, construction,
49 reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility
50 has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in
51 North Carolina.

1 (c) In the case of a lease, the municipality or hospital authority shall determine the
2 length of the lease. No lease executed under this section shall be deemed to convey a freehold
3 interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed
4 by this section. If the term of the lease is more than 10 years, and either general obligation
5 bonds or revenue bonds issued for the benefit of the hospital to be leased are outstanding at the
6 time of the lease, then the corporation shall agree to the following:

7 By the effective date of the lease, the corporation shall place into an escrow fund money or
8 direct obligations of, or obligations the principal of and interest on which, are unconditionally
9 guaranteed by the United States of America (as approved by the Local Government
10 Commission), the principal of and interest on which, when due and payable, will provide
11 sufficient money to pay the principal of and the interest and redemption premium, if any, on all
12 bonds then outstanding to the maturity date or dates of such bonds or to the date or dates
13 specified for the redemption thereof. The corporation shall furnish to the Local Government
14 Commission such evidence as the Commission may require that the securities purchased will
15 satisfy the requirements of this section.

16 No bonds, notes or other evidences of indebtedness shall be issued by a municipality or
17 hospital authority to finance equipment for or the acquisition, extension, construction,
18 reconstruction, improvement, enlargement, or betterment of any hospital facility when the
19 facility is leased to a corporation, foreign or domestic, authorized to do business in North
20 Carolina.

21 (d) The municipality or hospital authority shall comply with the following procedures
22 before leasing, selling, or conveying a hospital facility, or part thereof:

- 23 (1) The municipality or hospital authority shall first adopt a resolution declaring
24 its intent to sell, lease, or convey all or part of the hospital facility or any
25 interest therein at a regular meeting on 10 days' public notice. Notice shall be
26 given by publication in one or more papers of general circulation in the
27 affected area describing the intent to lease, sell, or convey all or part of the
28 hospital facility involved, known potential buyers or lessees, a solicitation of
29 additional interested buyers or lessees and intent to negotiate the terms of the
30 lease or sale. Specific notice, given by certified mail, shall be given to the
31 local office of each state-supported program that has made a capital
32 expenditure in the hospital facility, to the Department of Health and Human
33 Services, and to the Office of State Budget and Management.
- 34 (2) At the meeting to adopt a resolution of intent, the municipality or hospital
35 authority shall request proposals for lease or purchase by direct solicitation
36 of at least five prospective lessees or buyers. The solicitation shall include a
37 copy of G.S. 131E-13.
- 38 (3) The municipality or hospital authority shall conduct a public hearing on the
39 resolution of intent not less than 15 days after its adoption. Notice of the
40 public hearing shall be given by publication at least 15 days before the
41 hearing. All interested persons shall be heard at the public hearing.
- 42 (4) Before considering any proposal to lease or purchase, the municipality or
43 hospital authority shall require information on charges, services, and
44 indigent care at similar facilities owned or operated by the proposed lessee
45 or buyer.
- 46 (5) Not less than 45 days after adopting a resolution of intent and not less than
47 30 days after conducting a public hearing on the resolution of intent, the
48 municipality or hospital authority shall conduct a public hearing on
49 proposals for lease or purchase that have been made. Notice of the public
50 hearings shall be given by publication at least 10 days before the hearing.

1 The notice shall state that copies of proposals for lease or purchase are
2 available to the public.

3 (6) The municipality or hospital authority shall make copies of the proposals to
4 lease or purchase available to the public at least 10 days before the public
5 hearing on the proposals.

6 (7) Not less than 60 days after adopting a resolution of intent, the municipality
7 or hospital authority at a regular meeting shall approve any lease, sale, or
8 conveyance by a resolution. The municipality or hospital authority shall
9 adopt this resolution only upon a finding that the lease, sale, or conveyance
10 is in the public interest after considering whether the proposed lease, sale, or
11 conveyance will meet the health-related needs of medically underserved
12 groups, such as low income persons, racial and ethnic minorities, and
13 handicapped persons. Notice of the regular meeting shall be given at least 10
14 days before the meeting and shall state that copies of the lease, sale, or
15 conveyance proposed for approval are available.

16 (8) At least 10 days before the regular meeting at which any lease, sale, or
17 conveyance is approved, the municipality or hospital authority shall make
18 copies of the proposed contract available to the public.

19 (9) Notwithstanding subdivisions (1) through (8) of this subsection, if the owner
20 or lessee of a hospital facility has requested the municipality or hospital
21 authority to release its reverter interest in the hospital facility or any part or
22 interest therein in connection with a proposed sale, lease, or conveyance of
23 the hospital facility, the municipality or hospital authority shall not be
24 required to solicit or request proposals as required by subdivisions (1) and
25 (2) of this subsection but shall request and consider only the proposal or
26 proposals presented to the municipality or hospital authority by the owner or
27 lessee of the hospital facility. The municipality or hospital authority may
28 only approve a proposal presented by the owner or lessee but shall not be
29 required to approve any proposal. Any release of a municipality's or hospital
30 authority's reverter interest shall be conditioned on the replacement of the
31 reverter interest released with the imposition of the reverter interest on the
32 hospital facility required by subsection (a) of this section.

33 (e) Notwithstanding the provisions of subsections (c) and (d) of this section or
34 G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease
35 or sublease hospital land to a for-profit or not-for-profit corporation or other ~~business~~-entity,
36 whether for profit or not for profit, and may participate as an owner, joint venturer, or other
37 equity participant with a for-profit or not-for-profit corporation or other ~~business~~-entity whether
38 for-profit or not-for-profit for the development, construction, and operation of medical office
39 buildings and other health care or hospital facilities, so long as the municipality, hospital
40 authority, or other entity continues to maintain its primary community general hospital facilities
41 as required by subsection (a) of this section.

42 (f) A municipality or hospital authority may permit or consent to the pledge of hospital
43 land or leasehold estates in hospital land to facilitate the development, construction, and
44 operation of medical office buildings and other health care or hospital facilities. A municipality
45 or hospital authority also may, as lessee, enter into master leases or agreements to fund for
46 temporary vacancies relating to hospital land or hospital facilities for use in the provision of
47 health care.

48 (g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall
49 apply to leases, subleases, sales, or conveyances under this Chapter."

50 **SECTION 5.** This act is effective when it becomes law and applies to sales, leases,
51 and conveyances occurring on or after that date. Any sale, lease, or conveyance in substantial

1 compliance with G.S. 131E-13(d)(9) that occurred prior to that date is affirmed and ratified and
2 shall be valid, effective, and enforceable.