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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 35 (as passed by the Senate)**Sponsor: Senator Ed Fredricks****Committee: Health Policy****Date Completed: 6-8-87****RATIONALE**

Public Act 47 of 1945 regulates hospital authorities, which are the entities formed when two or more cities, villages, or townships band together for the purpose of owning and operating a hospital. Since an authority is comprised of municipalities, an authority-owned hospital is designated as a "public agency" and cannot own corporate stock or engage in economic joint ventures. In addition, an authority-owned hospital cannot operate off-site facilities such as laboratories and clinics. Some contend that such restrictions leave community/authority-owned hospitals at an economic disadvantage, since private and nonprofit hospitals are not restricted in these ways, and thus enjoy a competitive edge over their publicly-owned counterparts within the increasingly competitive health care industry. Prohibitive costs combined with industry developments such as diagnostically related groups (DRGs) and increased outpatient care have fueled competition, and, some contend, this trend has increased the necessity for diversification and innovation within the health care industry. These are just the kinds of activities, however, that are prohibited for publicly-owned hospitals. In order for publicly-owned hospitals to survive and to continue providing health care to their communities, some have proposed that the hospitals be sold, leased, or formed into nonprofit corporations.

CONTENT

Senate Bill 35 would amend Public Act 47 of 1945 to allow a public community hospital established by a hospital authority under that Act, whose jurisdiction had a population under 300,000, to be sold, leased, or transferred to a nonprofit corporation. The bill also would set requirements for the nonprofit corporation, set conditions for the sale or lease, provide for the withdrawal from the hospital authority, and provide that labor agreements would not be affected by the sale, lease, or transfer of a hospital.

Sale, Lease, Transfer of a Hospital

A hospital authority, whose jurisdiction had a member population of less than 300,000, could provide, by resolution, for the sale, lease, or transfer of a hospital owned by the hospital board. The resolution would be required to include a copy of the document proposed to effect the sale, lease, or other transfer.

If a hospital authority passed such a resolution, the authority would have to provide by resolution for a public vote of the electors at large of all cities, villages, and townships in the hospital authority on the question of the sale, lease, or transfer of the hospital. The election would be conducted in the same manner as an election for the approval of an additional tax for capital improvements.

If the sale, lease, or transfer of the hospital were approved by a majority of the voters, the hospital board could sell, lease, or transfer any hospital owned by the board on any terms and conditions considered reasonable by the board, including a sale, lease, or other transfer for no or nominal monetary consideration subject to conditions described below.

Under the bill, a hospital could be sold, transferred, or leased only to a nonprofit corporation that met each of the following conditions:

- The nonprofit corporation had been established under the Nonprofit Corporation Act and organized specifically for the ownership and operation of the hospital.
- Within six months after the date of the sale, lease, or transfer, it would be an entity exempt from Federal income tax under Section 501(C) of the Internal Revenue Code or a successor provision.
- At the time of the sale, lease, or transfer, the majority of the members of the board of directors of the nonprofit corporation were also members of board of the hospital authority.
- Hospital care would be provided to a reasonable degree to indigent persons in the service area free of charge.
- Patients would not be denied appropriate care on the basis of source of payment.

The corporation's articles of incorporation and the contractual agreement with the hospital authority would have to require that the corporation operate the hospital as a nonprofit community hospital open to the general public to serve the population living within the area of the hospital authority. The corporation could not sell, lease, or transfer the hospital without the consent of the hospital authority and the approval of a majority of voters residing in the municipalities that were participants in the authority. The sale, lease, or transfer of a hospital under these conditions would have to be for market value, and the proceeds would have to be given to the hospital authority.

Property Taxes: Hospital Authority

Currently, the legislative bodies of local governments belonging to an authority may levy .4 of one mill of property tax to operate a community hospital. An additional two mills may be levied for up to 10 years for capital improvements if approved by the voters of the local government.

The bill provides that, if a tax had been levied for the hospital, the authority would be required to refund to each member unit of the authority an amount equal to all taxes for capital improvement purposes collected within the five years preceding the sale, lease, or transfer. In addition,

S.B. 35 (6-8-87)

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any uncollected portion of the tax levy would remain uncollected.

Conditions of Sale or Lease: Bonds

If self-liquidating bonds had been issued by the hospital authority under Public Act 47 and were outstanding, the lease of a hospital could not be construed as a violation of the Act or of any resolution or ordinance regarding bonds if the lease did all of the following:

- Required the nonprofit corporation to pay rent to the hospital authority in an amount sufficient to pay the bond obligations as they came due.
- Required the nonprofit corporation to maintain the various bond funds.
- Required the nonprofit corporation to operate the hospital in a manner consistent with the bond ordinance or resolution.
- Provided for the continuation of the lien upon the net revenues of the hospital created by the bond ordinance or resolution.

In a case in which self-liquidating bonds issued by the hospital authority were outstanding, the sale of a hospital could not be construed as a violation of Public Act 47 or of any bond resolution or ordinance regarding bonds if all of the following conditions were met:

- The outstanding bonds were "defeased" (i.e., cancelled).
- Defeasance were accomplished by the deposit of funds in escrow, in an amount sufficient to pay the bond obligations.
- The contract of sale contained provisions implementing defeasance.

If a hospital were leased or transferred under the bill, the total bonded indebtedness of the hospital after the lease or transfer could not be increased beyond 60% of the total asset value of the hospital without a majority vote of the hospital authority board, or beyond 80% without approval of the voters in each city, village, and township participating in the hospital authority.

Withdrawal from the Hospital Authority

The bill would provide the following three methods for a member community to withdraw from the hospital authority:

- By a resolution passed by a majority vote of the legislative body of a city, village, or township.
- By a majority vote of the electors of a city, village, or township on a ballot proposal called for by a resolution of the legislative body of the city, village, or township.
- By a majority vote of the electors of a city, village, or township on a ballot proposal initiated by a petition signed by a number of qualified voters equal to at least 5% of the votes cast in the local unit for Secretary of State at the last general election.

Initiation of each of these methods of withdrawal would have to occur within 90 days after the passage of the resolution by the hospital authority calling for an election on the question of a sale, lease, or transfer. The elections required by the two latter methods of withdrawal would be held concurrently with the election called for by the hospital authority and would take precedence over a local legislative resolution to withdraw. All three methods of withdrawal would be dependent upon the concurrence of a majority of the hospital authority board. If a majority of electors did not approve the sale, lease, or transfer of a hospital, any resolution or election calling for withdrawal from participation in a hospital authority would be considered void.

Labor Agreements The bill provides that labor agreements applicable to a hospital would not be affected by the sale, lease, or other transfer of a hospital to a nonprofit corporation or subsequent profit entity for the remainder of the term of agreement.

MCL 331.3 and 331.9

FISCAL IMPACT

The bill would result in no fiscal impact to the State and an indeterminate impact on local governmental units which are members of a hospital authority. The impact on the local units of government would depend on the number of hospital authority-owned hospitals which are leased, sold, or transferred and the amount of special hospital authority revenues raised in the 60 months prior to the transfer, sale, or lease, which would be required to be returned to the local units. There would also be a small administrative cost for any election held pursuant to this bill.

ARGUMENTS

Supporting Argument

Developments in the health care industry in recent years have increased the competitive nature of the industry. Changes in the way hospitals are reimbursed for their services (i.e., the predominance of the use of DRGs rather than "cost based" payment) and the types of services supplied (e.g., outpatient surgery, ambulatory care, and outpatient services) have greatly affected the way hospitals must operate. Such developments have given rise to a need for diversification and innovation in the health care field. Under current law, publicly-owned hospitals are barred from a wide range of diversification options--operation of off-premises facilities such as clinics, medical laboratories, and nursing homes as well as joint economic ventures such as the development of homes for the elderly. By allowing the sale, lease, or transfer of an authority-owned hospital to a nonprofit corporation, the bill would give hospital authorities many opportunities to develop and to compete.

Supporting Argument

The bill would provide sufficient safeguards against side-stepping the wishes of the residents of the community-participants of the hospital authority. Before a hospital could be sold, leased, transferred, or transformed, the authority would be required to secure the approval of the voters of the affected municipalities. In addition, the nonprofit corporation would have to repay to the municipalities the amount of any taxes collected over the last five years and would have to deposit into escrow sufficient funds to cover bond obligations.

Supporting Argument

Any reorganization that was a result of a sale, lease, transfer, or transformation to a nonprofit corporation would not affect labor agreements between employees and a hospital. The bill provides that any such agreements would remain intact for the remainder of the agreement period.

Response: Some believe that the bill would not go far enough to protect the interests of a hospital's employees. They contend that the bill fails to address the state of contractual agreements between the hospital and employees, such as those involving pensions, pay rates, and benefit packages. The bill merely would require the nonprofit corporation or subsequent entity to abide by an existing labor agreement and only for the term of that agreement. Once an agreement expired, employees could face major changes in their employment agreements.

Opposing Argument

Why convert public assets into private assets? The construction and operation of these facilities were funded through the use of tax revenue and should be governed by the community. The provisions of the bill would turn over public assets to private, self-interested parties. It would be a case of robbing from the public coffers.

Response: The bill would provide for repayment of tax revenue and bond obligations to local units. In addition, the sale, lease, transfer, or transformation of a hospital to a nonprofit corporation would have to be approved by the voters of the participating communities. Finally, the major benefit to the public would come in the form of a better, more efficient, more up-to-date hospital.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.