SFA BILL ANALYSIS

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House Bill 5755 (as reported without amendment)
Sponsor: Representative Richard A. Young
House Committee: Appropriations
Senate Committee: Appropriations

Date Completed: 7-6-88

RATIONALE

Public Act 47 of 1945 regulates hospital authorities, which are formed when two or more cities, villages, or townships band together for the purpose of owning and operating a hospital. Since an authority is composed of municipalities, an authority-owned hospital is considered a public agency and cannot own stock or engage in economic joint ventures. An authority-owned hospital also cannot operate off-site facilities such as laboratories and clinics. Some contend that such restrictions leave authority-owned hospitals at an economic disadvantage, since private and nonprofit hospitals are not similarly restricted, and thus enjoy an edge over their publicly owned counterparts within the increasingly competitive health care industry. Recognizing this, the Legislature enacted Public Act 117 of 1987 to allow nine hospital authorities, that each have a member population under 300,000, to sell, lease, or transfer a hospital within the authority to a nonprofit corporation. Limiting this legislation to authorities under 300,000 population excluded only the People's Community Hospital Authority, which consists of five community hospitals and a freestanding ambulatory care center in eastern Washtenaw County and western, downriver Wayne County. Reportedly, at the time Public Act 117 was being enacted, this authority had not decided whether it should sell its assets or reorganize into a private, nonprofit, tax-exempt corporation, but has since decided that its best course of action would be to affiliate with a tertiary facility, and has entered into an affiliation agreement with Oakwood Health Services Corporation, contingent upon the passage of enabling legislation.

CONTENT

The bill would amend Public Act 47 of 1945 to allow a hospital authority with a member population over 300,000 to provide for the sale, lease, or other transfer of a hospital to a nonprofit corporation. The bill also would:

- **Provide for the sale, lease, or transfer to be by resolution adopted by a majority vote of the hospital board, and on any terms considered reasonable by the board, including sale, lease, or transfer for nominal or no monetary consideration.**
- **Provide for the hospital to be open to the public, and for the provision of care without regard to source of payment.**
- **Require consent of the hospital authority for the sale of transferred assets.**
- **Provide for the validity of self-liquidating bonds issued by the hospital authority.**
- **Allow a municipality to withdraw from the hospital authority.**
- **Provide for the continuity of labor agreements and employee representation.**

The nonprofit corporation would have to be organized specifically for the ownership and operation of the hospital. At the time of, or within six months after the sale, lease, or transfer, the corporation would have to be exempt from Federal income tax. The articles of incorporation of the nonprofit corporation and the contractual arrangements between it and the hospital authority would at all times have to require the following:

- That the corporation operate the hospital as a nonprofit community health facility that was open to the general public and served the general population residing in the hospital authority's service area.
- That the corporation not sell all of the transferred assets without the express consent of the authority and the approval by a majority of the voters in an election conducted in the same manner as provided under the Act for the approval of an additional tax for capital improvements. If all of the transferred assets were sold, the sale would have to be for market value and the proceeds would have to be turned over to the hospital authority and used for health care needs within its service area.
- That the corporation adopt and carry out policies designed to ensure that the hospital complies with the Public Health Code requirement that patients not be denied appropriate care on the basis of source of payment.

If self-liquidating bonds had been issued by the hospital authority, and if the bonds were outstanding, a sale, lease, or transfer of the hospital could not be construed as a violation of the Act or of any bond resolution or ordinance adopted under the Act if the outstanding bonds were defeased (cancelled), and defeasance of the existing bonded indebtedness were accomplished by depositing sufficient cash or U.S. Treasury obligations, or both, in escrow in an amount sufficient to pay all interest, principal, and premium, when and as due on the bonds, including final payment. The bill would define "final payment".

If a hospital authority passed a resolution providing for the sale, lease, or transfer of a hospital, the legislative body of a city, village, or township participating in the hospital authority could, within 60 days after the resolution was passed, pass a resolution to withdraw from membership in the authority. If such a resolution were adopted, the resolution adopted by the hospital authority would not be effective until a majority of the hospital authority board concurred in the withdrawal of that municipality. If the

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sale, lease, or transfer were not carried out, however, the resolution to withdraw and the hospital authority's resolution of concurrence in the withdrawal would be void.

Upon the sale, lease, or transfer of a hospital authority, the nonprofit corporation would have to assume and be bound be any existing labor agreement applicable to the hospital, for the remainder of the term of the agreement. A representative of the employees or a group of employees would continue to represent the employees or group of employees when they became employees of the nonprofit corporation or subsequent profit entity. This would not limit the rights of the hospital employees, under applicable law, to assert that a bargaining representative protected by this provision was no longer their representative.

MCL 331.9

FISCAL IMPACT

House Bill 5755 would have no fiscal impact on the State. The bill could have an impact on the finances of Wayne County communities in the authority. The actual impact would depend on the implementation of the transfer.

ARGUMENTS

Supporting Argument

Essentially, the bill would enable People's Community Hospital Authority to reorganize into a private, nonprofit, tax-exempt corporation, and thus survive recent, significant changes in the health care industry. Reportedly, the authority has experienced sizable staff reductions during the past three years, and a study of the authority projected that it will begin to lose money from operations by 1989, with the loss increasing substantially in 1990. These losses and reductions are the outcome of declining utilization within the hospital industry, that is, fewer patients requiring inpatient hospital services. The increased competition within the health care market has motivated the authority and Oakwood Hospital to attempt to maintain an adequate supply of primary, acute, and tertiary services for persons in their respective service areas. To develop a tertiary facility, Oakwood Hospital needs additional primary and acute care facilities, and the authority needs to affiliate with a tertiary care facility and to upgrade its medical staff. Through their proposed affiliation agreement, each institution believes it would achieve its goals: Oakwood and the new corporation would use all facilities now owned and operated separately by the parties, as part of a total health care delivery system, and the infusion of capital would allow the authority to improve its facilities and provide training to upgrade its medical staff.

At the same time, the bill would safeguard the interests of the residents of the authority's community-participants. A municipality could withdraw from the authority if the authority approved the sale, lease, or transfer of a hospital to a nonprofit corporation. Before all the transferred assets of the nonprofit corporation could be sold, a majority of the voters would have to approve the sale. If the authority had issued outstanding bonds, the corporation would have to deposit in escrow sufficient assets to cover bond obligations.

Opposing Argument

The bill would give away far too much without adequately compensating the authority's membership. In the first place, the bill would allow the authority to remain in existence and require its consent for the new corporation to sell <u>all</u> of the transferred assets. No such approval would be required, however, if the corporation decided to sell any or nearly all of its holdings. As a result, the corporation could unload unwanted but valuable properties, keep the rest, and pocket a substantial, taxpayer-funded difference. Further, the transfer of assets to the corporation would include a surplus of some $23 million, which would be available to pay $19 million of tax-anticipation bonds that relied on an annual .4- (now .2-) mill tax levy to member communities' residents (according to the <u>Wyandotte News-Herald</u>). Instead of making the authority competitive in today's health-care market, the bill would strip the people of their personally financed hospitals and services and deny them a fair payment in return.

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