

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 597
Committee Substitute Favorable 4/28/97

Short Title: Municipal Hospital Lease/Venture.

(Public)

Sponsors:

Referred to:

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL
3 AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 131E-6 reads as rewritten:

6 "**§ 131E-6. Definitions.**

7 As used in this Part, unless otherwise specified:

8 (1) 'City,' as defined in G.S. 160A-1(2), means a municipal corporation
9 organized under the laws of this State for the better government of the
10 people within its jurisdiction and having the powers, duties, privileges,
11 and immunities conferred by law on cities, towns, and villages. The
12 term 'city' does not include counties or municipal corporations
13 organized for a special purpose under any statute or law. The word 'city'
14 is interchangeable with the words 'town' and 'village' and shall mean
15 any city as defined in this subdivision without regard to the terminology
16 employed in charters, local acts, other portions of the General Statutes,
17 or local customary usage.

18 (2) 'Community general hospital' means a short-term nonfederal hospital
19 that provides diagnostic and therapeutic services to patients for a variety

1 of medical conditions, both surgical and nonsurgical, such services
2 being available for use primarily by residents of the community in
3 which it is located.

4 (3) 'Corporation, foreign or domestic, authorized to do business in North
5 Carolina' means a corporation for profit or having a capital stock which
6 is created and organized under Chapter 55 of the General Statutes or any
7 other general or special act of this State, or a foreign corporation which
8 has procured a certificate of authority to transact business in this State
9 pursuant to Article 10 of Chapter 55 of the General Statutes.

10 (4) ~~'Hospital facility' means any type of hospital; facility operated in~~
11 ~~connection with a hospital such as a clinic, including mental health~~
12 ~~clinics; nursing, convalescent, or rehabilitative facility; public health~~
13 ~~center; or any facility of a local health department. The term 'hospital~~
14 ~~facility' also includes related facilities such as laboratories, outpatient~~
15 ~~departments, housing and training facilities for nurses and other health~~
16 ~~care professionals, central service facilities operated in connection with~~
17 ~~hospitals, and all equipment necessary for its operation. one or more~~
18 ~~buildings, structures, additions, extensions, improvements or other~~
19 ~~facilities, whether or not located on the same site or sites, machinery,~~
20 ~~equipment, furnishings or other real or personal property suitable for~~
21 ~~health care or medical care; and includes, without limitation, general~~
22 ~~hospitals; chronic disease, maternity, mental, tuberculosis and other~~
23 ~~specialized hospitals; nursing homes, including skilled nursing facilities~~
24 ~~and intermediate care facilities; adult care homes for the aged and~~
25 ~~disabled; public health center facilities; housing or quarters for local~~
26 ~~public health departments; facilities for intensive care and self-care;~~
27 ~~clinics and outpatient facilities; clinical, pathological and other~~
28 ~~laboratories; health care research facilities; laundries; residences and~~
29 ~~training facilities for nurses, interns, physicians and other staff~~
30 ~~members; food preparation and food service facilities; administrative~~
31 ~~buildings, central service and other administrative facilities;~~
32 ~~communication, computer and other electronic facilities; fire-fighting~~
33 ~~facilities; pharmaceutical and recreational facilities; storage space; X~~
34 ~~ray, laser, radiotherapy and other apparatus and equipment;~~
35 ~~dispensaries; utilities; vehicular parking lots and garages; office~~
36 ~~facilities for hospital staff members and physicians; and such other~~
37 ~~health and hospital facilities customarily under the jurisdiction of or~~
38 ~~provided by hospitals, or any combination of the foregoing, with all~~
39 ~~necessary, convenient or related interests in land, machinery, apparatus,~~
40 ~~appliances, equipment, furnishings, appurtenances, site preparation,~~
41 ~~landscaping, and physical amenities.~~

42 (4.1) 'Hospital land' means air and ground rights to unimproved real property
43 held either in fee or by lease, with all easements, rights-of-way,

1 appurtenances, landscaping, and physical amenities such as utilities,
2 parking lots, and garages, but excluding other improvements to land
3 described in subsection (4) of this section and G.S. 131E-16(15).

4 (5) 'Municipality' means any county, city, or other political subdivision of
5 this State, or any hospital district created under Part C of this Article.

6 (6) 'Nonprofit association' or 'nonprofit corporation' means any association
7 or corporation from which no part of the net earnings inures or may
8 lawfully inure to the benefit of a private shareholder or individual."

9 Section 2. G.S. 131E-13 reads as rewritten:

10 **"§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit**
11 **corporations or other business entities by municipalities and hospital**
12 **authorities.**

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

17 (1) The corporation shall continue to provide the same or similar clinical
18 hospital services to its patients in medical- surgery, obstetrics,
19 pediatrics, outpatient and emergency treatment, including emergency
20 services for the indigent, that the hospital facility provided prior to the
21 lease, sale, or conveyance. These services may be terminated only as
22 prescribed by Certificate of Need Law prescribed in Article 9 of Chapter
23 131E of the General Statutes, or, if Certificate of Need Law is
24 inapplicable, by review procedure designed to guarantee public
25 participation pursuant to rules adopted by the Secretary of the
26 Department of Human Resources.

27 (2) The corporation shall ensure that indigent care is available to the
28 population of the municipality or area served by the hospital authority at
29 levels related to need, as previously demonstrated and determined
30 mutually by the municipality or hospital authority and the corporation.

31 (3) The corporation shall not enact financial admission policies that have
32 the effect of denying essential medical services or treatment solely
33 because of a patient's immediate inability to pay for the services or
34 treatment.

35 (4) The corporation shall ensure that admission to and services of the
36 facility are available to beneficiaries of governmental reimbursement
37 programs (Medicaid/Medicare) without discrimination or preference
38 because they are beneficiaries of those programs.

39 (5) The corporation shall prepare an annual report that shows compliance
40 with the requirements of the lease, sale, or conveyance.

41 The corporation shall further agree that if it fails to substantially comply with these
42 conditions, or if it fails to operate the facility as a community general hospital open to the
43 general public and free of discrimination based on race, creed, color, sex, or national

1 origin unless relieved of this responsibility by operation of law, or if the corporation
2 dissolves without a successor corporation to carry out the terms and conditions of the
3 lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the
4 hospital facility, including the building, land and equipment associated with the hospital,
5 shall revert to the municipality or hospital authority or successor entity originally
6 conveying the hospital; provided that any building, land, or equipment associated with
7 the hospital facility that the corporation has constructed or acquired since the sale may
8 revert only upon payment to the corporation of a sum equal to the cost less depreciation
9 of the building, land, or equipment.

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

14 ~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall~~
15 ~~apply to leases, sales or conveyances under this section.~~

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

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

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

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

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

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

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

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

1 of the public hearings shall be given by publication at least 10 days
2 before the hearing. The notice shall state that copies of proposals for
3 lease or purchase are available to the public.

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

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

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

21 (e) Notwithstanding the provisions of subsections (c) and (d) of this section or
22 G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may
23 lease or sublease hospital land to a corporation or other business entity, whether for profit
24 or not for profit, and may participate as an owner, joint venturer, or other equity
25 participant with a corporation or other business entity for the development, construction,
26 and operation of medical office buildings and other health care or hospital facilities, so
27 long as the municipality, hospital authority, or other entity continues to maintain hospital
28 facilities as required by subsection (a) of this section or as required by G.S. 131E-23(c).

29 (f) A municipality, public hospital, or hospital authority may permit or consent to
30 the pledge of hospital land or leasehold estates to facilitate the development, construction,
31 and operation of medical office buildings and other health care or hospital facilities. A
32 municipality, public hospital, or hospital authority also may, as lessee, enter into master
33 leases or agreements to fund for temporary vacancies relating to hospital land or hospital
34 facilities for use in the provision of health care.

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

37 Section 3. G.S. 131E-16 reads as rewritten:

38 "**§ 131E-16. Definitions.**

39 As used in this Part, unless otherwise specified:

40 (1) 'Board of county commissioners' means the legislative body charged
41 with governing the county.

- 1 (2) 'Bonds' means any bonds or notes issued by the hospital authority
2 pursuant to this Part and the Local Government Finance Act, Chapter
3 159 of the General Statutes.
- 4 (3) 'City' means any city or town which is, or is about to be, included in the
5 territorial boundaries of a hospital authority when created hereunder.
- 6 (4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the
7 city, or the officers thereof charged with the duties customarily imposed
8 on the clerk and mayor, respectively.
- 9 (5) 'City council' means the legislative body, council, board of
10 commissioners, board of trustees, or other body charged with governing
11 the city or town.
- 12 (6) 'Commissioner' means one of the members of a hospital authority
13 appointed in accordance with the provisions of this Part.
- 14 (7) 'Community general hospital' means a short-term nonfederal hospital
15 that provides diagnostic and therapeutic services to patients for a variety
16 of medical conditions, both surgical and nonsurgical, such services
17 being available for use primarily by residents of the community in
18 which it is located.
- 19 (8) 'Contract' means any agreement of a hospital authority with or for the
20 benefit of an obligee whether contained in a resolution, trust indenture,
21 mortgage, lease, bond or other instrument.
- 22 (9) 'Corporation, foreign or domestic, authorized to do business in North
23 Carolina' means a corporation for profit or having a capital stock which
24 is created and organized under Chapter 55 of the General Statutes or any
25 other general or special act of this State, or a foreign corporation which
26 has procured a certificate of authority to transact business in this State
27 pursuant to Article 10 of Chapter 55 of the General Statutes.
- 28 (10) 'County' means the county which is, or is about to be, included in the
29 territorial boundaries of a hospital authority when created hereunder.
- 30 (11) 'County clerk' and 'chairman of the board of county commissioners'
31 means the clerk and chairman, respectively, of the county or the officers
32 thereof charged with the duties customarily imposed on the clerk and
33 chairman, respectively.
- 34 (12) 'Federal government' means the United States of America, or any
35 agency, instrumentality, corporate or otherwise, of the United States of
36 America.
- 37 (13) 'Government' means the State and federal governments and any
38 subdivision, agency or instrumentality, corporate or otherwise, of either
39 of them.
- 40 (14) 'Hospital authority' means a public body and a body corporate and
41 politic organized under the provisions of this Part.
- 42 (15) 'Hospital facilities' means any one or more buildings, structures,
43 additions, extensions, improvements or other facilities, whether or not

1 located on the same site or sites, machinery, equipment, furnishings or
2 other real or personal property suitable for health care or medical care;
3 and includes, without limitation, general hospitals; chronic disease,
4 maternity, mental, tuberculosis and other specialized hospitals; nursing
5 homes, including skilled nursing facilities and intermediate care
6 facilities; adult care homes for the aged and disabled; public health
7 center facilities; housing or quarters for local public health departments;
8 facilities for intensive care and self-care; clinics and outpatient facilities;
9 clinical, pathological and other laboratories; health care research
10 facilities; laundries; residences and training facilities for nurses, interns,
11 physicians and other staff members; food preparation and food service
12 facilities; administrative buildings, central service and other
13 administrative facilities; communication, computer and other electronic
14 facilities; fire-fighting facilities; pharmaceutical and recreational
15 facilities; storage space; X ray, laser, radiotherapy and other apparatus
16 and equipment; dispensaries; utilities; vehicular parking lots and
17 garages; office facilities for hospital staff members and physicians; and
18 such other health and hospital facilities customarily under the
19 jurisdiction of or provided by hospitals, or any combination of the
20 foregoing, with all necessary, convenient or related interests in land,
21 machinery, apparatus, appliances, equipment, furnishings,
22 appurtenances, site preparation, landscaping and physical amenities.

23 (15.1) 'Hospital land' means air and ground rights to unimproved real
24 property held either in fee or by lease, with all easements, rights-
25 of-way, appurtenances, landscaping, and physical amenities such
26 as utilities, parking lots, and garages, but excluding other
27 improvements to land described in G.S. 131E-6(4) and
28 subsection (15) of this section.

29 (16) 'Municipality' means any county, city, town or incorporated village,
30 other than a city as defined above, which is located within or partially
31 within the territorial boundaries of an authority.

32 (17) 'Real property' means lands, lands under water, structures, and any and
33 all easements, franchises and incorporeal hereditaments and every estate
34 and right therein, legal and equitable, including terms for years and liens
35 by way of judgment, mortgage or otherwise.

36 (18) 'State' means the State of North Carolina."

37 Section 4. This act is effective when it becomes law.