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BILL ANALYSIS

MAR 03 1988

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Michigan State Capitol

Senate Bill 266 (as enrolled) (Public Act 229 of 1987)

Senate Bill 267 (as enrolled) (Public Act 230 of 1987)

Sponsor: Senator Harry Gast

Senate Committee: Health Policy

House Committee: Public Health

Date Completed: 1-21-88

**RATIONALE**

Approximately 12 county hospitals in the State currently operate under Public Act 350 of 1913, which enables counties to establish and maintain public hospitals, or Public Act 109 of 1945, which permits boards of supervisors of certain counties to acquire, establish, maintain, and operate hospitals, county general hospitals, and sanitoriae (Those hospitals are located in Alpena, Baraga, Branch, Dickinson, Gogebic, Luce, Iron, Mecosta, Schoolcraft, Manistee, Berrien, and Menominee Counties.) Some people contend that these statutes are out of date and should be updated to permit county hospitals to contend with the operational pressures that these county hospitals face in today's competitive health care market.

**CONTENT****Senate Bill 266**

Senate Bill 266 would amend the Revenue Bond Act to specify that a public improvement that was a hospital or other health care facility could provide medical care to the indigent without charge or at reduced rates and could provide medical care without charge to comply with conditions for the receipt of a grant or contribution from a public or private donor.

The bill also would include: "a county or nonprofit subsidiary county health facilities corporation incorporated as provided in the proposed County Health Facilities Act" (Senate Bill 267) within the definition of a "public corporation"; and "health care facilities" within the definition of "public improvements". The bill also would amend the definition of "governing body" to include the board of trustees for a county health facilities corporation and the nonprofit subsidiary board for a nonprofit subsidiary county health facilities corporation.

The bill is tie-barred to Senate Bill 267 or an equivalent House Bill.

MCL 141.103 and 141.118

**Senate Bill 267**

Senate Bill 267 would create the "County Health Facilities Act" to permit a county board of commissioners to incorporate a county public hospital organized under Public Act 350 of 1913 or Public Act 109 of 1945; allow a county board of commissioners to prohibit incorporation of a county public hospital; prohibit counties from incorporating county medical facilities; provide for incorporation to be accomplished by approval of articles of incorporation by resolution of the county commissioners; permit the board of trustees of a

corporation to incorporate one or more subsidiary corporations; provide for the appointment of members of the corporation's board of trustees or subsidiary board by the county commissioners; permit a corporation or subsidiary to borrow money and issue bonds; provide for the reorganization and transfer of ownership or operation of a health care facility to a nonprofit health care organization or to a public authority; provide that a county, corporation, or subsidiary would not be able to enter into a contract or other agreement, as specified in the bill, with a contractor or transferee to continue operation of a health facility unless the county, corporation, or subsidiary agreed to retain the employees and continue all collective bargaining agreements or agreed to certain other conditions; allow a corporation to indemnify corporate trustees, officers, and employees; and provide for the dissolution of any corporation or subsidiary corporation.

**Incorporation**

- The county board of commissioners of a county not having a county public hospital could incorporate one or more corporations.
- The question of establishing a corporation would have to be presented to county electors at a special or regular county election. (This would not apply to counties that established a county public hospital under either Public Act 350 of 1913 or Public Act 109 of 1945; owned and operated a county hospital or health facility under those Acts; or had a population of 100,000 or more.)
- Ninety days after the bill's effective date, any county public hospital organized under Public Act 350 of 1913 or Public Act 109 of 1945 would be considered a corporation incorporated under the bill.
- A county board of commissioners could prohibit incorporation by passing a resolution within 90 days after the bill's effective date. The resolution would be in effect for one year and would have to be renewed yearly to continue the prohibition of incorporation. If the commissioners failed to renew the resolution, the county public hospital automatically would be incorporated.
- Any county public hospital that continuously operated for at least 15 years and functioned under Public Act 350 and Public Act 109 but was unable to document compliance with certain sections of those Acts would be considered a corporation.
- Any county owning a county hospital pursuant to Public Act 350 of 1913 or Public Act 109 of 1945 could organize health care facilities, other than county medical care facilities, as a corporation by adopting articles of

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incorporation without a vote of the county electors.

- Each corporation would be successor to the county public hospital and would maintain: the terms of office for trustees; all rights, privileges, immunities, and franchises; all personal property; and debts due of the predecessor hospital. All interests and licenses of the county public hospital would be transferred and title to any real estate vested in the county or county public hospital would not revert or be impaired.
- Incorporation would be accomplished by approval of articles of incorporation by resolution of the county board of commissioners, except as provided in the bill. Incorporation of a subsidiary corporation would be accomplished by approval of articles of resolution of the board of trustees of the parent corporation.

#### Corporation Responsibilities

- Each corporation would be the owner of all money and other property deposited in the county treasury credited to the hospital fund and be entitled to all interest.
- Each corporation would be the employer of all persons formerly employed by the county public hospital and would not be subject to greater obligations with respect to terms and conditions of employment.
- Each corporation would be responsible and liable for all liabilities and obligations of the county hospital it succeeded.
- Each corporation or subsidiary corporation would have the power to sue or be sued. A debt, claim, liability, or other obligation incurred by the corporation or subsidiary corporation would not be a liability against the county or parent corporation or another subsidiary corporation. Powers of the corporation or subsidiary corporation would be vested in the board of trustees or subsidiary board.
- The powers be specified for the county health facility corporation and the subsidiary corporation board, including acquiring and disposing of property; providing insurance and indemnification programs for the corporation and its employees; borrowing money and entering into related financial transactions; and transferring real or personal property to subsidiary corporations or parent corporations.
- Counties could acquire health care facilities, borrow money and issue bonds; transfer or make available health care facilities and other real and personal property to a corporation or subsidiary corporation; loan money to a corporation or subsidiary corporation from general funds or from funds not raised by county taxes; appropriate money and transfer money to one or more corporations or subsidiary corporations for acquisition or improvements to health care facilities; assess taxes for the acquisition, construction, and operation of health care facilities without a vote of county electors; and appropriate money from the county's general fund without limitation.

#### Board of Trustees

- Appointment of board members would remain within the province of the county board of commissioners, and appointment of board members would be not only for the principal health facilities corporation but also for subsidiary corporations.
- The powers and duties of the health facility corporation and subsidiary corporation board would be enumerated.
- The board of trustees and subsidiary board could enter into agreements for the reorganization and transfer of ownership or operation of their health care facilities to a nonprofit health care organization or to a public authority.
- The board of trustees and subsidiary board could borrow money and issue notes for meeting current operating and maintenance expenses of their health care facilities and health services.

#### Corporation Obligations

- A corporation or subsidiary corporation could, subject to approval of the county board of commissioners, borrow money, issue bonds, and exercise powers provided in the Revenue Bond Act.
- Liability for the payment of the bonds would not become a liability of a county unless the county pledged its full faith and credit to guarantee the corporate obligation, and proceeds of corporation obligations, investment earnings, and other funds set aside for bond retirement, interest payment or related expenses would be held in trust for the protection of the bond holders.
- A corporation or subsidiary corporation or persons executing corporate obligations would not be personally liable on the notes or corporation obligations by reason of issuance.
- The State Department of Treasury would be required to approve corporate obligations prior to their issuance.

#### Indemnification

- A corporation could indemnify corporate trustees, officers, and employees for personal liability and could purchase and maintain insurance to accomplish this.

#### Dissolution

- Dissolution of any corporation or subsidiary corporation would require a two-thirds vote of the county commissioners and the board of trustees of the corporation. Upon dissolution, all assets would rest with the county.

#### Repealer

- Public Act 350 of 1913 and Public Act 109 of 1945 would be repealed.

#### Incorporation

Any county board of commissioners of a county that did not have a county public hospital, on the effective date of the bill, could incorporate one or more corporations, under the proposed Act. A "corporation" would mean a public county health facilities corporation incorporated under the proposed Act or created under Public Act 350 of the 1913 or Public Act 109 of 1945. "County public hospital" would mean a public corporation organized and existing or purportedly organized and existing under Public Act 350 of 1913 or Public Act 109 of 1945, on the effective date of the bill.

Any county owning and operating a county hospital pursuant to charter or any statute other than Public Act 350 of 1913 or Public Act 109 of 1945 could organize any or all of the health care facilities, other than county medical care facilities, as a corporation by the adoption and filing of articles of incorporation in accordance with the bill and without a vote of the county electors.

"Health care facilities" would mean buildings, structures, or equipment suitable and intended for, or incidental or ancillary to, use in providing health services, including, but not limited to hospitals, hospital long-term care units; infirmaries; sanatoria; nursing homes; medical care facilities; outpatient clinics; ambulatory care facilities; surgical and diagnostic facilities; hospices; clinical laboratories; shared service facilities; laundries; meeting rooms; classrooms and other educational facilities; students', nurses', interns' or physicians' residences; administration buildings; facilities for use as or by health maintenance organizations; facilities for ambulance operations, advanced mobile emergency care services, and limited advanced mobile emergency care services; research facilities; facilities for the care of dependent children; maintenance, storage, and utility facilities; parking lots and structures; garages; office facilities in which not less than 80% of the net leasable space was intended for lease to or other use by direct providers of

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health care; facilities for the temporary lodging of outpatients or families of patients; residential facilities for use by the aged or disabled; and all necessary, useful, or related equipment, furnishings, and appurtenances and all lands necessary or convenient as sites for the foregoing.

#### Elections

Except as provided in the bill and in counties having a population of 100,000 or more, the question of establishing a corporation would have to be presented to the county electors at a special or regular county election prior to incorporation. The election proceedings would have to be conducted in accordance with the Michigan Election Law.

An election would have to be held at the same places in the county for the election of county officers and the vote would have to be canvassed in the same manner as for county officers. The ballots would have to be printed with the statement:

"Shall the county of \_\_\_\_\_ establish a county health facilities corporation in accordance with the terms of the county health facilities corporations act?"

"Yes\_\_\_\_\_ No\_\_\_\_\_".

#### Incorporation of Current County Hospitals

Ninety days after the effective date of the bill, a county public hospital organized and existing under Public Act 350 of 1913 or Public Act 109 of 1945 on the effective date of the bill would be considered to be a corporation incorporated and existing under the proposed Act without the adoption or filing of articles of incorporation, without a vote of county electors, and without diminishing the terms of office of persons serving as trustees.

A county public hospital would not be considered a corporation incorporated and existing under the proposed Act upon the expiration of the 90-day period, if, within the 90 days, the county board of commissioners passed a resolution that prohibited incorporation of the county public hospital. The resolution would be in effect for not more than 12 months after the date of passage. Before the end of 12 months, and every year thereafter, the county board of commissioners could pass a resolution prohibiting incorporation of the county public hospital. If the county commissioners failed to pass a succeeding resolution before the end of the 12-month period, the county public hospital automatically would be incorporated. The county commissioners could adopt articles of incorporation for the corporation in accordance with the bill. Until such articles were in effect, the provisions of the proposed Act would be considered to constitute the articles of incorporation.

Until articles of incorporation providing different numbers of trustees and terms of office were in effect, corporations governed by Public Act 350 would have a board of nine trustees serving six-year terms. Corporations governed by Public Act 109 would have a board of five trustees serving three-year terms. "Board of trustees" would mean the board of trustees of a corporation created under or governed by the proposed Act.

Unless a resolution prohibiting incorporation of the county public hospital had been passed, any county hospital that had operated continuously for at least 15 years immediately preceding the effective date of the proposed Act and that had functioned or purported to function under Public Act 350 or Public Act 109, but was unable to document compliance with certain provisions of those Acts, would be considered to be a corporation. All actions taken by its board of trustees would be validated, ratified, and confirmed, provided the county public hospital filed a

notice of intention to use this provision with the county board of commissioners and the county clerk within 90 days after the bill took effect. If necessary, the board of trustees could be reconstituted without diminishing the trustees' terms of office. Ninety days after the effective date of the proposed Act, unless a resolution prohibiting incorporation of the county public hospital had been passed, each of these corporations would be considered:

- To be the successor to the county public hospital. The trustees' terms of office would have to continue. The corporation would have all of the rights, privileges, immunities, and franchises of its predecessor county public hospital, all personal property, all debts, and all "choses in action" (rights recoverable in a lawsuit). All interests and licenses would be considered transferred to and vested in the corporation, and would not be considered to have undergone any change of ownership for the purpose of any law or regulation. The fiscal year of any county public hospital would not be considered to have ended because the bill took effect. Title to, or any interest in, real estate would not revert or be impaired because a corporation succeeded a county public hospital.
- To be the owner of all money and other property deposited in the county treasury to the credit of the hospital fund, and entitled to all interest and other earnings accruing on those funds. The corporation would be the owner of all other personal property used exclusively by or for the county public hospital. The county treasurer would be required to arrange for the prompt transfer of money and property to the corporation.
- To be the employer of all persons formerly employed by the county public hospital, and would be required to assume and be bound by any labor agreement in existence on the bill's effective date and applicable to the county public hospital. The corporation would not be subject to any greater obligations with respect to the terms, conditions, or duration of employment than was the county public hospital. A representative of the employees who was entitled to represent the employees under Public Act 336 of 1947 would continue to be the employees' representative. This provision 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 the employees' representative.
- To be responsible and liable for all liabilities and obligations of the county public hospital. A claim existing or an action or proceeding pending by or against a county public hospital could be prosecuted by the succeeding corporation in the name of the county public hospital or the corporation. The rights of creditors and any lien on the property of a county or county public hospital existing after the bill's effective date would not be impaired.

#### Incorporation by the County Commissioners, Corporation Trustees

If a majority of all votes cast on the question were in favor of establishing a corporation, or if no vote of the electors were required, the county board of commissioners could incorporate a corporation. The board of trustees of a corporation could incorporate one or more subsidiary corporations. The county board or board of trustees would be required to adopt a suitable name for any corporation or subsidiary corporation, respectively, that it incorporated. Except as already provided in the bill, an incorporation would have to be accomplished by approval of articles of incorporation by resolution of the county commissioners. The incorporation of a subsidiary

corporation would have to be accomplished by approval of articles of incorporation by resolution of the board of trustees of the parent corporation.

"Subsidiary board" would mean the board of trustees of a subsidiary corporation. "Subsidiary corporation" would mean a subsidiary county health facilities corporation incorporated under the proposed Act.

#### Articles of Incorporation

The articles of incorporation would have to set forth:

- The name of the corporation or subsidiary corporation.
- The purposes for the corporation's or subsidiary's creation, which could include all of the purposes for which a corporation or subsidiary corporation could be organized under the bill.
- The number, terms, and manner of selection of the officers of the corporation's or subsidiary's board of trustees or subsidiary board, which would have to include a chairperson and a secretary, and a general description of their powers and duties.
- The date upon which the incorporation would become effective.
- The name of the newspaper in which the articles of incorporation would have to be published.

The articles of incorporation of a corporation could specify transactions otherwise within the powers of its board of trustees, which would require approval by resolution of the county board of commissioners, and also could contain other matters considered expedient to be included in the articles.

The articles of incorporation of a subsidiary corporation also would have to contain the name of the corporation acting as its parent, and would have to specify the size of the subsidiary board in accordance with the bill. These articles could specify transactions otherwise within the powers of the subsidiary board, which would require approval by resolution of the trustees of its designated parent corporation.

The articles of incorporation of a corporation would have to be executed in duplicate by the chairperson of the county commissioners or other designated commissioner, or of a subsidiary corporation by the chairperson of the board of trustees of the parent corporation or other designated trustee.

The articles then would have to be delivered to the county clerk who would be required to file one copy in his or her office and the other with the secretary of the corporation or subsidiary corporation when a secretary was selected. The county clerk would have to cause a copy of the articles be published once in a newspaper circulating in the county, be accompanied by a statement of the right to question the validity of the incorporation in court. The county clerk would be required to file one printed copy of the articles with the Secretary of State and one in his or her office.

The incorporation would become effective at the time provided in the articles. The validity of incorporation would be presumed conclusively unless questioned in a court of competent jurisdiction within 60 days after a certified copy was filed with the Secretary of State.

#### Amended Articles of Incorporation

The articles of incorporation of a corporation could be amended by resolution approved by a majority of the county commissioners, and could be amended for a subsidiary corporation by approval of a majority of the trustees serving on the board of trustees of the parent corporation.

The county clerk would be required to file certified copies of any amendment in his or her office, with the Secretary of State, and with the secretary or the corporation of subsidiary corporation. The amendment would be effective upon filing with the Secretary of State, unless a later effective date was specified in the resolution adopting the amendment.

Articles of incorporation could be amended to include any provision that lawfully could be included in articles of incorporation initially adopted under the bill at the time the amendment was approved, and could provide for the alteration or changing of the name, structure, organization, purposes, powers, programs, or activities of the corporation or subsidiary corporation. An amendment would not impair the obligation of a corporation obligation, bond, note, or contract.

#### Board of Trustees and Subsidiary Board

Each board of trustees and subsidiary board would have to consist of at least five and not more than 15 trustees. The exact number of trustees and their terms of office would have to be specified in the articles of incorporation or as provided in the bill. Terms of office would:

- Begin on January 1, except for the initial appointments to the board and subsidiary boards of newly incorporated corporations and subsidiary corporations.
- Be staggered so that an approximately equal number of terms expired at the end of each year or each two years. Terms could be fixed so that the shortest terms did not expire until the end of the second year following incorporation.

All trustees would be required to serve until their successors were appointed.

In the case of corporations governed by Public Act 350 of 1913 on the effective date of the bill, the chief executive of the corporation would be required to serve as a member of the board of trustees until and unless the adopted articles of incorporation provided otherwise, and in other cases the chief executive officer would be eligible to serve.

#### Appointment of Trustees

Upon incorporation of a corporation, the county board of commissioners would be required to appoint the trustees. Adoption of articles of incorporation for a corporation that succeeded a county public hospital organized and existing under Public Act 350 or Public Act 109 on the effective date of the bill would not constitute incorporation for purposes of this provision. The terms of office of trustees serving on the board of such a county public hospital would not be diminished, except that the adopted articles could prospectively establish new lengths of terms for the trustees, and could alter prospectively the board size.

Upon incorporation of a subsidiary corporation and during the September preceding the expiration of all terms of office of trustees of corporations and subsidiary corporations, the board of trustees of the corporation or parent corporation would be required to submit to the board of commissioners the names of three qualified nominees for each new or expiring term, other than the term of the chief executive officer on the board of trustees. The county commissioners, at a meeting in that or the following month, would be required to consider the nominations and make appointments for the board of trustees or subsidiary board from among the persons nominated. The county commissioners would not be required to fill a position with one of the three persons nominated, but if they declined to do so, they would have

to request that the board of trustees provide three additional nominees for the position within 30 days, continuing to do so until the position was filled.

All trustees would have to be chosen from among the citizens at large of the county with reference to their fitness to such office, but not more than one-third of the trustees serving at any time could be direct providers of health care. Trustees of the parent corporation, including its chief executive officer, and the chief executive officer of a subsidiary corporation would be eligible for appointment to a subsidiary board and such offices would not be considered to be incompatible. Trustees would be eligible for reappointment.

Before the tenth day after commencement of their term of office, trustees would have to qualify by taking the oath of civil officers.

#### Removal from Office

Any trustee of a corporation could be removed from office for cause by majority vote of the county board of commissioners or by vote of a majority of the board of trustees of the corporation. Any trustees of a subsidiary corporation could be removed from office for cause either by vote either of a majority of the county board of commissioners or of the board of trustees of the parent corporation. "Cause" would include, but not be limited to, incompetency to exercise duties properly; official misconduct; or habitual or willful neglect of duty, including but not limited to, failure to attend meetings, including committee meetings, in accordance with standards determined from time to time by the board of trustees.

A trustee could not be removed from office on grounds of misconduct or neglect unless the trustee first had been served with a notice of hearing and a copy of the asserted ground for removal, and was given full opportunity to be heard, either in person or by counsel, before a vote was taken on the question of removal from office.

#### Business of the Board

A majority of the trustees serving on a board or subsidiary board would constitute a quorum for the transaction of business of the corporation or subsidiary corporation, respectively. Except as provided in the bill, actions taken by a board of trustees or subsidiary board would have to be by a vote of a majority of the members serving on the board.

A board of trustees or subsidiary board would be subject to the Freedom of Information Act. This provision would not abrogate any confidentiality provisions established by State or Federal law, including, but not limited to, those pertaining to the provision or review of health services.

Each trustee of a corporation or subsidiary corporation could receive compensation as established by the county board of commissioners for services as a trustee, including, but not limited to, attendance at meetings of the board of trustees or subsidiary board, or the board's committees, and per diem travel expenses, at rates approved by the county board of commissioners. A trustee could receive reimbursement for other necessary expenses that were properly substantiated and approved by the board of trustees or subsidiary board. A corporation or subsidiary corporation could provide travel and accident insurance for its trustees.

A bond would not be required for trustees or officers of corporations or subsidiary corporations.

#### Conflict of Interest

Trustees would be considered public servants subject to Public Act 317 of 1968 (which relates to the conduct of public servants in respect to governmental decisions and contracts with public entities), to the extent provided in that Act, and subject to any other applicable law with respect to conflict of interest.

A board of trustees could establish policies and procedures for a corporation and any subsidiary corporations requiring periodic disclosure of relationships that could give rise to conflicts of interest. A board could require that a trustee who had a direct interest in any matter before a corporation or subsidiary corporation disclose the trustee's interest and any reasons reasonably known to the trustee why the transaction could not be in the best interest of the corporation or the subsidiary corporation before the corporation or subsidiary took any action with respect to the matter. The disclosure would have to become part of the record of the corporation's or subsidiary's proceedings.

#### Corporation and Subsidiary Corporation

Each corporation and subsidiary corporation organized or existing under the proposed Act would be a body corporate with the power to sue and be sued and to adopt an official seal and alter it at its discretion.

A debt, claim, liability, corporate obligation, note, bond, or other obligation incurred by a corporation or a subsidiary corporation after the effective date of the bill would not be a liability or debt of or enforceable against the county, except as specifically otherwise provided by written agreement of the county approved by its board of commissioners. Such a liability or obligation incurred by a subsidiary corporation would not be a liability or debt of or enforceable against its parent corporation or another subsidiary corporation nor would any such debt, claim or liability incurred by a corporation be a liability or debt of or enforceable against its subsidiaries, except as specifically otherwise provided in writing by the corporation or subsidiary corporation charged.

"Corporate obligation" would mean a bond, note, or any other legal instrument issued by a corporation or subsidiary corporation pursuant to the bill which evidenced indebtedness of a corporation or a subsidiary corporation, including principal, interest, and premiums, if any. Notes issued pursuant to the bill would not be considered to be corporate obligations.

#### Powers of Corporation, Subsidiary Corporation

Each corporation and subsidiary corporation would possess all of the powers needed to carry out its incorporation. Those powers would be vested in and exercised by its board of trustees or subsidiary board. The enumeration of any powers in the bill would not be considered a limitation on the general powers of the corporation or subsidiary corporation.

Each corporation, and subsidiary corporation with approval of its parent corporation, could adopt and amend one or more sets of bylaws consistent with the applicable provisions of the bill, the Open Meetings Act, its articles of incorporation, and other applicable law providing for conduct of its affairs and operation of its activities and health care facilities, which could include, but not be limited to, provisions with respect to:

- The frequency, call, and conduct of meetings of the board of trustees or subsidiary board.

- The powers and responsibilities of officers, including the chief executive officer.
- The size, manner of appointment, and term of committees, which could include, except as otherwise provided in the bylaws, persons who were not trustees, and the purposes and powers of the committees. Responsibility could be assigned to committees for monitoring implementation of policies adopted by the board or subsidiary board and for the formulation of budgets, plans, and policies and the development of other recommendations for adoption by the board. Committees would not be empowered to exercise governmental or proprietary authority or to perform a governmental or proprietary function.
- Procedures for appointment, removal, and discipline of medical staff or other direct providers of health care and for delineation of their clinical privileges, together with provisions for the organization of staff for reviewing and improving the health services provided, and for administrative and other purposes.

"Direct provider of health care" would mean a person or organization whose primary current activity was the provision of health services to individuals, including a person or organization licensed, certified, or registered under the Public Health Code, and a professional corporation or other public or private organization composed of or employing direct providers of health care.

"Health services" would mean one or more of the following:

- Diagnosis and medical and surgical treatment by direct providers of health care of persons suffering from illness, injury, and disability, including persons suffering from tuberculosis and other contagious and infectious diseases, and persons requiring maternity care, rehabilitation, psychiatric care, or substance abuse services; dentistry and related services; podiatric medicine and surgery; optometric services; psychological services; skilled, basic, and visiting nursing services and home health services; ambulance operations; advanced mobile emergency care services and limited advanced emergency services; physical, respiratory, and occupational therapy; health maintenance services; services for the prevention of illness, injury, and disability and for the promotion, maintenance, and improvement of public health and welfare; food services and care for dependent children, the disabled, and the elderly; and social work and chaplaincy services in conjunction with other health services.
- Conduct of or participation in programs for the education and training of health services personnel, including undergraduate, internship, residency, postgraduate, and continuing education programs for physicians; schools and other training programs for nurses, technicians, therapists, pharmacists, and other health services personnel; and in-service education of employees of health care facilities.
- Research relating to the cause, prevention, and treatment of illness, injury, and disability, and the protection, promotion, or improvement of public health and welfare.
- The purposes, organization, and control of auxiliaries and other voluntary organizations supporting the work of the corporation or subsidiary corporation.

Without limiting the powers described in the bill, each board of trustees or subsidiary board, consistent with its articles of incorporation and subject to applicable licensing and other regulatory requirements, could do any or all of the following:

- Establish, modify, discontinue, operate, and manage health services, either alone or in conjunction with other entities.

- Select physicians and other direct providers of health care for membership on the corporation's medical staff, delineate the clinical privileges of direct providers of health care within the corporation's facilities, and provide for the termination, suspension, or restriction of medical staff membership and clinical privileges. In making appointments and reappointments to the medical staff and in granting or withdrawing clinical privileges, the boards would be required to consider training, experience, and other professional qualifications, and could also consider health status, professional liability coverage, the character and capacity of the health care facilities, the needs of the community, and other factors the boards considered appropriate.
- Provide for the organization of physicians and other direct health care providers into a medical staff and establish additional procedures for review of the professional practices in its health care facilities pursuant to the Public Health Code and other applicable law.
- Establish reasonable rules and regulations for the provision of health services in its health care facilities, for the use of its health care facilities by patients, visitors, and others, and for management of its business and affairs.
- Employ a chief executive officer and other employees; establish policies with respect to duties, qualifications, compensation, benefits, and other terms of employment; provide for participation by employees in retirement or pension plans, or participate in other public programs for the provision of retirement or pension benefits; establish rules for a system of civil service; and enter into collective bargaining and other agreements with respect to these matters. Each corporation and subsidiary corporation would be considered to be a public employer separate from the county.
- Establish reasonable fees and charges for the use of its health care facilities for health services it provided, and provide policies for the care of those unable to pay fully for their care at reduced rates or without charge.
- Enter into contracts and participate in programs with Federal and State government, insurers, "health care corporations", health maintenance organizations, prudent purchaser arrangements, alternative health care delivery and financing systems, employers, individuals, and other public and private entities for the provision of health services and for the payment for health services furnished on any basis considered appropriate by the board of trustees and subsidiary board. This would include, but not be limited to, payment prospectively or retrospectively determined based upon its full or discounted rates and charges or costs, or based upon fixed rates per individual, group, visit, procedure, or other unit of service. "Health care corporation" would mean a health care corporation incorporated under the Nonprofit Health Care Corporation Reform Act (i.e., Blue Cross and Blue Shield of Michigan).
- Make and execute contracts, leases, and other agreements or instruments necessary to fulfill its purposes, including but not limited to exclusive and nonexclusive contracts or leases with direct health care providers for providing health services to patients or the operation of health care facilities or departments of health care facilities on its behalf and contracts, leases, agreements, and other instruments relating to the joint conduct of health services and the operation of programs for sharing goods, services, or facilities, with other direct providers of health care.
- Appoint one or more attorneys to serve as legal advisors and representatives.

Each board of trustees or subsidiary board consistent with its articles of incorporation, subject to applicable licensing

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and other regulatory requirements, could do any or all of the following:

- Establish sites for its health care facilities inside or outside the county and relocate its health care facilities in the same municipality or elsewhere.
- Acquire by purchase, gift, devise, lease, sublease, installment purchase agreement, land contract, or option, or by any other means, hold and own in its own name health care facilities and interests and other real and personal property, including but not limited to, interests in condominiums, and property subject to mortgages, security interests, or other liens, necessary to fulfill its purposes; and, for the purpose of condemnation, proceed under the Uniform Condemnation Procedures Act or other applicable statute.
- Construct, add to, repair, remodel, renovate, equip, and re-equip health care facilities and establish rules, regulations, or policies conforming with applicable law with respect to competitive bidding, advertising, advertising for bids and letting contracts. The right to reject any and all bids would be reserved.
- Dispose of its real and personal property by sale, lease, sublease, installment sale agreement, land contract, or other lawful means.
- Purchase, contract for, or acquire administrative, management, and other services from the county and from other sources and sell these services to the county and to other public and private persons.
- Apply for, negotiate, receive, and accept gifts or grants of money, property, services, or other aid offered or made available to it, and comply, subject to provisions of the bill and other applicable law, with the terms of such gifts, grants, or other aid.
- Provide insurance or reinsurance, obtain indemnification, or establish programs or trusts for self-insurance against loss in connection with its assets or any liability in connection with its activities. The insurance, reinsurance, indemnification, or self-insurance would be in forms and amounts, and from sources it considered appropriate.
- Invest funds not immediately required for its purposes, funds accumulated to provide retirement or pension benefits, endowment funds created for charitable or educational purposes, and other funds in any manner in which a county could then lawfully invest such property and loan its funds in furtherance of its purposes.
- Borrow money from the county in accordance with the bill and enter into agreements for the repayment of the loans.
- Grant mortgages, security interests, and other liens in its real and personal property, sell and lease back its real and personal property, and pledge its property or revenues in furtherance of its purposes.
- Guarantee bonds, notes, and other obligations of the county undertaken for its benefit and grant mortgages, security interests, and other liens in its real and personal property and pledge its property or revenues to secure obligations of the county undertaken for its benefit, with or without guaranteeing the obligations.
- Transfer real or personal property to subsidiary corporations or parent corporations in furtherance of its purposes or the purposes of the subsidiary or parent corporations, with or without monetary consideration, and transfer to the county money and other real and personal property not required to carry out its purposes.
- Guarantee corporate obligations, bonds, notes, and other obligations of a subsidiary corporation or a parent corporation.
- Grant mortgages, security interests, or other liens in its real and personal property and pledge its property or

revenues to secure corporate obligations, bonds, notes, or other obligations of one or more of its subsidiary corporations or its parent corporation, with or without guaranteeing such obligations.

#### County Powers

A county could do all of the following, subject to applicable licensing and regulatory requirements:

- Acquire health care facilities by purchase, gift, devise, lease, sublease, installment purchase agreement, land contract, option, or other means; construct, add to, repair, remodel, renovate, equip, and re-equip health care facilities for use by a corporation or a subsidiary corporation; borrow money and issue bonds in accordance with Public Act 118 of 1923; enter into contracts of lease pursuant to Public Act 31 of the First Extra Session of 1948; or enter into obligations pursuant to other applicable laws. Whether or not permitted by law, a county would not be able to borrow funds from, lease property from, or acquire property pursuant to a lease purchase agreement with a local hospital authority incorporated under the Hospital Finance Authority Act. A county also could not receive the proceeds of bonds issued by such a local hospital authority, except as consideration for property transferred by the county to a third party. Any bonding proposal requiring approval of county electors could be presented at the same election provided for in the bill.
- Transfer or make available health care facilities and other real and personal property to a corporation or a subsidiary corporation by sale, lease, sublease, installment sale agreement, contract, or other means on such terms, with or without monetary consideration, as the county board of commissioners approved. A health care facility owned and operated by a corporation or a subsidiary corporation would not be considered to be owned or operated by the county.
- Grant mortgages, security interests, and other liens in, pledge or sell and lease back its interests in health care facilities and other real and personal property in order to secure bonds, notes, or other obligations of a corporation or subsidiary corporation, upon terms approved by the county commissioners. The amount of the bonds, notes, or other obligations would not be included in computing the net bonded indebtedness of the county for debt limitations imposed by any constitutional, statutory, or charter provision unless the full faith and credit of the county were pledged to the payment of the bond, note, or other obligation.
- Guarantee any corporate obligation, bond, note, or other obligation of a corporation or subsidiary corporation on terms approved by the county commissioners, and pledge specified revenues or assets of the county or the full faith and credit of the county to the payment of such guaranty. The resolution of the county commissioners would have to contain a proviso that it would not become effective and binding upon the county until it had been approved by a majority of the county electors. The amount of obligations secured by a guaranty that pledged the full faith and credit of the county would have to be included in computing the net bonded indebtedness of the county for the purposes of debt limitations imposed by any constitutional, statutory, or charter provision.
- Loan to a corporation or subsidiary corporation money from its general fund or from funds not raised by county taxation available to it for acquisition of or improvements to health care facilities, operation of health services, or other purposes, and enter into agreements with the borrowing corporation or subsidiary for the repayment



or such loans for not more than 30 years, with or without security.

- Appropriate and transfer money to one or more corporations or subsidiary corporations established by the county for the acquisition of or improvements to health care facilities, operation of health services, or any other purposes of the corporations. The total sums appropriated each year from the county general fund could not exceed 5% of the general fund, but the 5% would be in addition to any taxes and appropriations to satisfy county indebtedness under bonds, notes, or guarantees described in the bill. Money could be appropriated from funds not raised by county taxation available to the county for such purposes without limit. Notwithstanding this provision, a county with a county public hospital organized and operated under Public Act 109 of 1945 on the effective date of the bill could assess taxes not to exceed in any one year one mill on each dollar of assessed valuation of the county for acquisition, construction, and operation of any health care facility without a vote of county electors, and could appropriate money from its general fund for such purposes without limitation.
- Enter into agreements or arrangements for a corporation or a subsidiary corporation to provide health services to county employees, dependents of county employees, indigents, or others.
- Sell to, contract for, or make available to corporations or subsidiary corporations established by the county, administrative, management, and other services needed to fulfill the corporation's or subsidiary's purposes, and purchase services from a corporation or subsidiary corporation as required for any county purpose.

#### Reorganization and Transfer

Subject to applicable licensing and regulatory requirements, and subject to any approvals required in the bill, each board of trustees and subsidiary board could enter into and carry out agreements for the reorganization and the transfer of ownership or operation of some or all of its health care facilities and related assets or health services to a nonprofit health care organization or to a public authority on behalf of a nonprofit health care organization by sale, installment sales agreement, land contract, lease, lease with an option to purchase, sublease, contract, option, or any other means. "Nonprofit health care organization" would mean a public body organized and existing under the laws of this State and authorized to provide health services, or a nonprofit corporation incorporated under the Nonprofit Corporation Act, or a not-for-profit corporation incorporated under the laws of another state and qualified to do business in this State, which was organized and operated exclusively for charitable, scientific, educational, or religious purposes and authorized to provide health services, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In establishing the terms of reorganization, the board of trustees or subsidiary board could take into account, in addition to any monetary consideration for the transfer, one or more of the following:

- The ability and willingness of the nonprofit health care organization to continue to provide health services to residents of the county.
- The assumption by the nonprofit health care organization of liabilities, obligations, and risks associated with ownership or operation of the health care facilities and health services transferred, including those associated with outstanding bonds, notes and obligations, pension, retirement, and other benefits for employees and former employees and conditions attached to public and private grants.

- The willingness and ability of the nonprofit health care organization to provide services to those unable to pay fully for their care.
- The elimination of or reduction in support required for the health care facilities or health services from tax revenues or other public sources.
- The ability and willingness of the nonprofit health care corporation to expand or improve the health care facilities or the health services being transferred.
- Other factors bearing on the health and welfare of the residents of the county as the board of trustees or subsidiary board considered appropriate.

A board of trustees or subsidiary board could accept secured or unsecured notes, bonds, or obligations given by or on behalf of a nonprofit health care organization or such other forms of payment as it considered appropriate in satisfaction of any monetary consideration provided under an agreement for reorganization pursuant to the bill.

Any board of trustees or subsidiary board transferring health care facilities would have to require, for a term not less than 30 years, that use of the transferred health care facilities would be open to all regardless of race, religion, color, national origin, sex, age, handicap, marital status, sexual preference, or source of payment, and that the nonprofit health care organization acquiring such health care facilities would have to provide an equal opportunity for employment, without discrimination as to race, religion, color, national origin, sex, age, handicap, marital status, or sexual preference.

Any transfer made by a subsidiary board in reliance upon this provision could be made only with prior approval of the board of trustees of its parent corporation. Any transfer by a corporation or a subsidiary corporation in reliance on this provision could be made only with prior approval of the county commissioners, if either of the following applied:

- The health care facilities or health services to be transferred provided more than 10% of the gross revenues of the corporation or subsidiary corporation making the transfer in accordance with generally accepted accounting principles, in either of the two full fiscal years of the corporation or subsidiary completed immediately preceding the date of the transfer.
- A majority of the governing body of the nonprofit health care organization acquiring the health care facilities or health services was composed of persons who were also serving as trustees of the corporation or the subsidiary making the transfer.

Notwithstanding any other provision, no transfer could be made so as to impair the obligation of the corporation or the subsidiary corporation with respect to any outstanding corporate obligation, bond, note, or contract.

#### Continuance of Bargaining Agreements

A county, corporation, or subsidiary would not be able to enter into a contract, lease, agreement, transfer, or other arrangement authorized under certain provisions in the bill with a contractor or transferee under which the contractor or transferee agreed or could reasonably be expected to continue the operation of the "affected health care facility" in order to provide health services unless the county, corporation, or subsidiary agreed to retain the employees of the affected health care facility and continue all collective bargaining agreements covering employees or unless the contractor or transferee agreed to all of the following:

- That all collective bargaining agreements in effect and covering employees of the "affected health care facility" would be continued in full force and effect by the contractor or transferee.

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- That all employees of such health care facility would be employed by the contractor or transferee and would not be replaced with new employees, except in accordance with applicable collective bargaining agreements and with policies applicable to the affected facility that existed on the date of the contract, lease, agreement, transfer, or other arrangement.
- That the contractor or transferee would continue the terms and conditions of employment of the facility's employees.
- That the contractor or transferee would grant recognition to each collective bargaining agent of the employees which had representation rights on the date of the contract, agreement, or other arrangement. A contract, lease, agreement, transfer, or other arrangement, however, could permit such modifications of the contractor's or transferee's obligations as required to conform to an order of the National Labor Relations Board in appropriate proceedings.

These provisions would not limit the employees' rights, under applicable law, to assert that their bargaining representative no longer represented them.

If a county, corporation, or subsidiary entered into an agreement providing for a transaction that was subject to these provisions, an employee of the affected health care facility or the collective bargaining agent would have standing to begin an action in circuit court for the county to determine if the transaction were in compliance with these provisions, if the action were begun within 90 days after written notice by the county, corporation, or subsidiary to the employees and collective bargaining agent of the affected health care facility of the execution of the agreement. If the court determined that the agreement was not in compliance with these provisions and if the county, corporation, or the subsidiary and the contractor or transferee did not agree to amendments that would make the agreement in compliance with the bill's provisions, the court would be required to declare the agreement void and of no effect and provide for rescission of the transactions provided for under the agreement.

An employee of a county public hospital or other health care facility who, on the effective date of the bill, participated in the Federal old age, survivors, and disability insurance benefits program through a voluntary agreement made pursuant to the Social Security Act, would continue to participate in the program if the individual were employed by a corporation or subsidiary corporation pursuant to the bill.

"Affected health care facility" would mean a health care facility or part or department of such a facility that regularly employed five or more persons on a full-time basis or the equivalent which was the subject of any transaction made pursuant to certain provisions in the bill.

"Contractor" would mean an entity which entered into a contract or other agreement with a county, corporation, or subsidiary corporation to provide health services or the management, administration, or operation of a health care facility or department of a health care facility, pursuant to certain provisions of the bill. "Contractor" would include a corporation, county, or subsidiary corporation.

"Transferee" would mean an entity which received, accepted, or came into possession or an ownership or leasehold interest in a health care facility, department of a health care facility, or other real or personal assets of a health care facility pursuant to provisions of the bill. "Transferee" would include a corporation, county, or subsidiary corporation.

### Financing

A board of trustees or subsidiary board could borrow money and issue notes, which would mature not more than 18 months from the date of their issuance, for meeting current operating and maintenance expenses of its health care facilities and health services. The resolution authorizing the issuance of notes:

- Would have to provide for the pledging of income and revenues of the corporation or subsidiary for payment of the notes.
- Could provide for a special sinking fund into which there would be paid as collected, a sufficient fund from the revenues of the corporation or subsidiary corporation to retire the principal and interest of the notes at or before maturity.
- Could provide for the mortgaging, pledging, or granting of security interests or other liens in other assets of the corporation or subsidiary as additional security for the payment of the notes.

Except to the extent the county pledged its full faith and credit to guarantee payment of notes, those notes would not be subject to the Municipal Finance Act.

A corporation or subsidiary corporation, subject to approval of the county commissioners, could borrow money, issue bonds, and exercise the powers provided in the Revenue Bond Act, or issue bonds, notes, or other obligations pursuant to other applicable law. Whether or not permitted by law, a corporation or subsidiary would not be able to borrow funds from, lease property from, or acquire property pursuant to a lease purchase agreement with a local hospital authority incorporated under the Hospital Finance Authority Act. A corporation or subsidiary also would not be able to receive the bonds issued by such a local hospital authority, except as consideration for property transferred by the corporation or subsidiary to a third party.

### Financial Powers of a Corporation, Subsidiary Corporation

Subject to approvals required in the bill, a corporation or subsidiary corporation could do any or all of the following:

- Borrow money and issue one or more series of its corporate obligations in order to finance all or part of the project costs of health facilities. "Project costs" would mean the total of the reasonable or necessary costs incurred for carrying out the acquisition, construction, repair, remodeling, equipping, or re-equipping of health care facilities. These would include, but would not be limited to, the following costs: studies, surveys, plans, and specifications; architectural and engineering services; fees, charges, and expenses incurred in obtaining permits, approvals, and licenses for the acquisition, and initial operation of the health care construction, financing, facilities; legal, organizational, marketing, and other special services; acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; rehabilitation, construction, repair, or remodeling of existing buildings; interest and carrying charges during construction and before full earnings are achieved but for a period not to exceed three years after the date of the corporate obligations; operating expenses before full earnings are achieved, but for a period not to exceed one year following completion of construction; and reasonable reserves for payment of principal and interest on corporation obligations, not exceeding 15% of the principal amount of the corporate obligations. Project costs would also include reimbursement of a corporation or a subsidiary for any of the foregoing costs

span prior to issuance and delivery of the corporate obligations.

- Borrow money and issue one or more series of corporate obligations to refinance, refund, or refund in advance any indebtedness of a corporation or subsidiary corporation or any existing indebtedness of the county undertaken for the benefit of the corporation or the subsidiary.

Corporate obligations could be issued to refinance, refund, or refund in advance outstanding indebtedness for any one or more of the following purposes:

- To reduce the total amount of the debt service costs that would be payable over the term of the outstanding indebtedness.
- To reduce the present value of the debt service costs that would be payable over the term of the outstanding indebtedness.
- To produce a repayment schedule for the corporate obligations more favorable to the issuer than the payment schedule on the bonds that were being refinanced, refunded, or refunded in advance.
- To secure the release of the county from any indebtedness or guaranty undertaken on behalf of the corporation or the subsidiary corporation or to secure terms for any such indebtedness or guaranty more favorable to the county.
- To enable the corporation or the subsidiary corporation to issue corporate obligations for the purposes of borrowing money and issuing one or more series of its corporation obligations in order to finance all or part of the project costs of health care facilities.
- To enable the corporation or the subsidiary to provide adequate security for the corporation obligations being issued.
- To eliminate restrictions or requirements determined by the corporation or the subsidiary corporation to be excessively burdensome to it or to the county.
- To pay when due outstanding corporation obligations or indebtedness incurred by a corporation or subsidiary or by a county on behalf of a corporation or subsidiary.

Corporation obligations issued for refinancing and refunding purposes could be issued whether or not: the indebtedness to be refinanced or refunded had matured, was redeemable on the date of issuance of the corporation obligations, or was subject to redemption prior to maturity. Refunding corporation obligations would not be issued unless the issuing corporation or subsidiary corporation determined that there would be sufficient assets or revenues to pay when due the principal or interest on the refunding corporation obligations, other costs, expenses, and charges in connection with the issuance of the refunding corporation obligations and any charges or obligations of the corporation or subsidiary corporation that could be prior or equal to the refunding corporation obligations.

Outstanding indebtedness being refinanced, refunded or refunded in advance could be called for redemption before maturity on the first possible date, or could be allowed to remain outstanding beyond the first possible date or redemption, either to a later redemption date or to maturity.

Corporation obligations issued for refinancing, refunding, or refunding in advance outstanding indebtedness could not exceed the amount of principal, interest and redemption premium, if any, of the indebtedness to be refinanced, refunded, or refunded in advance, that had not been paid or provided for, plus additional amounts that could be required to carry out the purposes of the refinancing and refunding described in the bill plus the marketing, financing, legal, and other costs incurred or to

be incurred in connection with the refinancing, refunding, or refunding in advance and the issuance of the corporation obligations, including costs of funding reserves and paying capitalized interest on the corporation obligations for a period that would not exceed one year after issuance of the corporation obligations.

The determination of the board of trustees or subsidiary board with respect to the necessity of refinancing, refunding, or refunding in advance, the expediency of refinancing, refunding, or refunding in advance, the sufficiency in assets and revenues to meet corporation obligations and the adequacy of security would be conclusive, except with respect to the approval of the Department of Treasury when prior approval was required.

Except as expressly provided by the corporation or subsidiary or as otherwise provided in the bill, every issue of its corporation obligations would be general obligations of the issuing corporation or subsidiary payable out of any properties, revenues, or money available to the corporation or subsidiary, including without limitation, revenues derived from the operation of health services; from the operation, lease, or disposition of health care facilities and other properties; from gifts or grants available for these purposes, from amounts borrowed, including refinancings or refundings, from the proceeds of health care facilities and other assets and from investment earnings from any of those sources, subject only to agreements with holders of particular corporation obligations or holders of other notes and obligations mortgaging, pledging, or granting security interests or other liens in particular properties, revenues, or money.

A corporation obligation would be neither an obligation nor a debt of the county for any constitutional, charter or statutory limitation unless the county had pledged its full faith and credit to the guaranty of such corporation obligation pursuant to provisions in the bill. A corporation obligation would not constitute a debt of or in any way obligate the State.

A resolution authorizing issuance of corporation obligations could contain provisions, which would be part of the contract with the holders of such corporation obligations, as to:

- Use and disposition of net revenues derived from the operation of health care facilities and provision of health services, including the pledging or creation and perfection of security interests and other liens in such net revenues and investment earnings and profits to pay principal or interest on the corporation obligations, the creation of reserves or sinking funds and the regulation and disposition of reserves and sinking funds.
- Operation, management, and control of health care facilities and health services provided by the corporation or subsidiary corporation, including the granting of mortgages, deeds of trusts, security interests, and other liens in health care facilities and other property, which could include additions, improvements, or extensions made after issuance to secure payment of principal and interest on the corporation obligations.
- Limitations on the purposes to which the proceeds of corporation obligations could be applied and pledging those proceeds to secure payment of principal and interest on the corporation obligations.
- Limitations on the issuance of additional corporation obligations and other indebtedness, and the terms and conditions upon which additional corporation obligations and other indebtedness could be issued.
- Insurance to be maintained with respect to health care facilities and health services or alternatives and the

collection, use, and disposition of the proceeds of insurance.

- The terms and conditions upon which the holders of corporation obligations, or a portion of the corporation obligations, or any trustees for such holders, would be entitled to appointment of a receiver by a court that had jurisdiction for the corporation or subsidiary or for all or part of the property of a corporation or subsidiary.
- The procedure by which the contract with the holders of corporation obligations could be amended or abrogated, the amount of corporation obligations, if any, whose holders would have to consent to an amendment or abrogation, and the manner in which a required consent could be given.
- Vesting in one or more trustees, which could be individuals or corporations domiciled or located within or outside the State, of property, rights, powers, remedies, and duties that were necessary or convenient, with or without the execution of a mortgage or deed of trust in favor of the trustee or trustees.
- Payment or rebate of investment earnings or profits on the proceeds of corporation obligations or on funds deposited for the payment of principal, interest, or premiums on corporation obligations to the issuing corporation or subsidiary corporation or its successor.
- Covenants and agreements to safeguard the corporation obligations not inconsistent with the bill and other applicable law.

Corporation obligations would have to be authorized by resolution adopted by a majority vote of the board of trustees of the corporation or subsidiary issuing corporation obligations. The resolution would not take effect until issuance of the obligations had been approved by a majority vote of the county board of commissioners and, in the case of a subsidiary corporation, by a majority vote of the board of trustees of the parent corporation. Approval of issuance of the corporation obligations could take place before or after adoption of the resolution authorizing issuance by the issuing corporation or subsidiary.

Corporation obligations would have to be dated; have such maturities; bear interest at such times and rates; be in such denominations; be in such form, either coupon, registered form, or both; be either certificate or book entry; carry registration privileges; be executed in such manner, be payable in such medium of payment; at place(s); and be subject to such terms of redemption and other terms as the resolution provided. Corporation obligations could be sold and remarketed by the corporation or subsidiary corporation, at public or private sale, at such prices, interest rates, and maturities as the corporation or subsidiary or its authorized officer or agent determined in accordance with limits established by the corporation or subsidiary. The corporation or subsidiary could authorize interest rates which were variable by reference to one or more interest rate indices designated by the corporation or subsidiary or to the rates of interest borne by one or more series of obligations of the State or United States, or to interest rates announced by the bank or savings and loan association organized under the laws of the United States or any state that the corporation or subsidiary designated. The corporation obligations could be sold at a discount and at an interest rate or rates which could be varied by an authorized officer or agent of the corporation or subsidiary within the limits established by the corporation or subsidiary as provided in the resolution. Corporation obligations could not be sold at a price which would make the interest costs on the money borrowed exceed 18% or the maximum interest rate then permitted by the Municipal Finance Act, whichever was greater.

To protect the rights of the holders of bonds or other obligations to be refunded, the proceeds of corporation obligations issued for refunding purposes and any other funds set aside for such purposes, and the investment earnings and profits, to the extent required to be held for future retirement of bonds or other obligations to be refunded, for interest or premiums, or for expenses relating to the refunding, would have to be held in trust by a qualified bank or savings and loan association organized under the laws of the United States or any state or the State Treasurer pursuant to a trust agreement with the corporation or subsidiary corporation issuing the refunding corporation obligation. This provision would not apply if the instruments governing the bonds or other obligation to be refunded required a different disposition of such funds, in which case the terms of the instruments would apply.

Proceeds of refunding corporation obligations not immediately required for the purposes of protecting the rights of bond holders could be invested pursuant to the trust agreement in direct obligations of the United States, or in obligations whose principal and interest were guaranteed by the United States. If the instruments governing the bonds or other obligations to be refunded provided for defeasance of security upon issuance of the refunding corporation obligation or contained different requirements for the investment of funds, the funds would have to be deposited and invested in accordance with the requirements of the instruments.

The provisions of this proposed Act, any resolution and any mortgage, deed of trust, or other security instrument would have to continue in effect until all principal and interest on the corporation obligations had been fully paid or payment had been duly provided for. Any resolution, mortgage, deed of trust, or other security instrument governing the issuance of or securing corporation obligations could provide terms under which it was enforceable by the holder or holders of corporation obligations or a trustee or trustees for their benefit by mandamus, foreclosure, or other appropriate action in any court of competent jurisdiction.

The resolution authorizing corporation obligations would have to state that they were issued pursuant to the proposed Act. That statement would be conclusive evidence of their validity and the regularity of their issuance.

Any pledge made by a corporation or a subsidiary corporation to secure corporation obligations would be valid and binding from the time the pledge was made. The money or property so pledged and received by the corporation or subsidiary immediately would be subject to the lien of the pledge without any physical delivery or further act. The lien of the pledge would be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the corporation or subsidiary, without regard to whether such parties had notice thereof. Neither the resolution nor any instrument by which a pledge was made would have to be recorded.

Neither the trustees of a corporation or subsidiary corporation nor any person executing notes or corporation obligations under the proposed Act would be liable personally on the notes or corporation obligations or be subject to any personal liability or accountability by reason of issuance.

The State would pledge and agree with the holders of notes and corporation obligations issued under the proposed Act, that the State would not limit or alter the rights vested in any corporation or subsidiary corporation

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to fulfill the terms of any agreements made with the holders, nor would in any way impair the rights and remedies of the holders until the notes or corporation obligations, together with their interest, with interest on any unpaid installments of interest, if applicable, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, would be fully met and discharged. Any corporation or subsidiary would be authorized to include this pledge and agreement of the State in any agreement with holders of such notes or corporation obligations.

Unless an exception from prior approval were available, corporation obligations would have to be approved by the Department of Treasury prior to their issuance but, except as provided in the bill, and except to the extent the county pledged its full faith and credit to guarantee payment of corporation obligations, would not otherwise be subject to the provisions of the Municipal Finance Act. Before approving issuance of corporation obligations, the Treasury Department would have to determine that the amount of the proposed issue was sufficient, but not excessive, that the revenue and properties obligated for the payment were sufficient, and that the corporation obligations and proceeds authorizing the corporation obligations complied with the proposed Act and other applicable law.

The requirement for obtaining prior approval of the Treasury Department before issuing corporation obligations under the proposed Act would be subject to Sections 10 and 11 of Chapter III of the Municipal Finance Act and the Treasury Department would have the same authority as provided in Section 11 of Chapter III of that Act to issue an order providing or denying an exception from the prior approval for corporation obligations authorized by it.

An order of the Treasury Department permitting the issuance of corporation obligations under the proposed Act or providing exemption from prior approval would not be considered to be an approval of the legality of such corporation obligations. The issuance of an order by the Treasury Department granting permission to issue any corporation obligation would imply that the Department had made a determination of facts or circumstances, had given such approvals, and had reached such opinions as were a necessary prerequisite to the issuance of that order.

Whether or not notes or corporation obligations issued pursuant to the bill were of such form or character as to be negotiable instruments under the Uniform Commercial Code, the notes and corporation obligations authorized to be issued under the bill would be negotiable instruments, within the meaning of and for all purposes of the Uniform Commercial Code, subject only to the provisions of the notes or corporation obligations for registration.

The notes and corporation obligations issued pursuant to the proposed Act would be securities in which all public officers and bodies of this State and all municipalities, municipal subdivisions, and public bodies corporate, all insurance companies and associations, and other persons carrying on the insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, credit unions, investment companies, personal representatives, administrators, conservators, guardians, executors, trustees and other fiduciaries, and all other persons who were authorized to invest in bonds or other obligations of the State, could properly and legally invest funds, including capital, in their control or belonging to them.

The bill specifies that the State "covenants" with the purchasers and all subsequent holders and transferees of

notes and corporation obligations issued pursuant to the proposed Act, in consideration of the acceptance of and payment for those notes and corporation obligations and the income on them, and all gifts, grants, revenues, receipts, and other money received or to be received, pledged to pay or secure the payment of the notes or corporation obligations, would be free and exempt from all State, city, county, or other taxation provided by the laws of this State, except for estate, inheritance and gift taxes, and taxes on transfers.

#### Annual Financial Reports and Audits

Each corporation and subsidiary corporation would be required to prepare and file with the State Treasurer annual financial reports and annual audits of their financial records in accordance with the Uniform Budgeting and Accounting Act. Copies of all financial reports and annual audits filed with the State Treasurer would have to be filed with the county clerk within the time prescribed by the Uniform Budgeting and Accounting Act, including extensions.

#### Indemnification

A corporation or subsidiary could indemnify any person who had been or was a party or was threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement and actually and reasonable incurred by the person in connection with the action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to have been in or not opposed to the best interests of the corporation or subsidiary corporation and the public, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that conduct was unlawful by reason of the fact that the person acted in any of the following capacities:

- Was or had been a trustee, officer, or employee of the corporation or the subsidiary corporation.
- Had served as a member of a committee of the medical staff or as a member or officer of a department or other administrative unit of a health care facility of a corporation or subsidiary charged with responsibility for reviewing the professional qualifications of applicants for employment, medical staff membership, or clinical privileges, for establishing, administering, or reviewing the professional standards applicable to health services provided by the corporation or subsidiary or provided by others in its health care facilities or for reviewing utilization of health services.
- Executed any note, bond, or corporation obligation on behalf of the corporation or subsidiary corporation.
- Served at the request of the corporation as a trustee, director, officer, employee, or agent of another public or private corporation, partnership, joint venture, trust, or other enterprise.

The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, would not of itself create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation and the public and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

Notwithstanding these provisions, no indemnification could be made with respect to any claim, issue, or matter arising from any threatened, pending, or completed action by the

corporation or subsidiary corporation as to which person would have been adjudged liable for negligence or misconduct in the performance of a duty to the corporation or subsidiary unless, and only to the extent that, the court in which the action or suit was brought determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person was fairly and reasonably entitled to indemnity for the expenses the court deemed proper.

A corporation or subsidiary could, pursuant to bylaw, contract, agreement, or resolution of its board of trustees or subsidiary board, obligate itself in advance to indemnify persons in accordance with provisions of the bill, could establish procedures for approval of indemnification in specific instances and could pay expenses incurred in defending a civil or criminal action, suit, or proceeding in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking on behalf of a person who could be entitled to indemnification to repay the amount unless it were ultimately determined that the person was entitled to be indemnified by the corporation or subsidiary.

A corporation or subsidiary corporation could purchase and maintain insurance on behalf of any person described in the bill against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person described in the bill whether or not the corporation would have the power to indemnify the person against that liability.

The powers conferred by the bill and the rights of indemnification which could be created pursuant to these provisions would be in addition to all powers and rights with respect to indemnification otherwise provided by law.

#### Dissolution of a Corporation

Any corporation which had completed the purposes for which it had been organized would be dissolved by the adoption of a resolution by the affirmative vote of two-thirds of the members serving on its board of trustees, approved by a majority of the county board of commissioners and filed with the Secretary of State. Unless a later date were specified in the resolution, the dissolution would be effective upon filing with the Secretary of State. Upon dissolution, all property of the corporation would be immediately vested in the county, without further act or deed, and the county would be liable for all undischarged debts and liabilities of the corporation.

Any subsidiary corporation which had completed the purposes for which it had been organized would be dissolved by the adoption of a resolution by the affirmative vote of two-thirds of the subsidiary board, approved by a majority of the board of trustees of its parent corporation and filed with the Secretary of State. Unless a later date were specified in the resolution, the dissolution would be effective upon filing with the Secretary of State. Upon dissolution, all property of the nonprofit subsidiary corporation would immediately be vested in its parent corporation, without further act or deed, and the parent corporation would be liable for all undischarged debts and liabilities of the subsidiary corporation.

Notwithstanding these provisions, a corporation or subsidiary could not dissolve as long as any notes or corporation obligations issued pursuant to the proposed Act remained outstanding, unless the dissolution were specifically authorized by the instruments governing the notes or corporation obligations.

All property of any corporation or nonprofit subsidiary corporation and its income and operation would be exempt from all taxation by the State or any taxing unit in the State.

The proposed Act would grant cumulative authority for the exercise of the various powers conferred in it, and neither the powers nor any notes or corporation obligations issued under the proposed Act would be affected or limited by any other statutory provision in force now or in the future, other than as could be provided in the proposed Act, "it being the purpose and intention of the proposed act to create full, separate, and complete additional powers".

The bill specifies that the enumeration in the proposed Act of powers of county public hospitals and county health facilities corporations and subsidiary county health facilities corporations and their respective boards of trustees and subsidiary boards would not mean that those powers were not reasonably inferable or otherwise authorized under Public Act 350 of 1913, or Public Act 109 of 1945, or that powers not enumerated in the proposed Act could not be exercised, so long as that exercise was consistent with the purposes of the proposed Act and not specifically prohibited by law.

The bill would take effect 60 days after the date it was enacted into law.

Legislative Analyst: L. Arasim

### **FISCAL IMPACT**

The bills should have no significant impact on State GF/GP expenditures either in terms of costs or savings. Any increases in health care services and therefore additional costs would probably be offset by increases in operating efficiencies and thus reduced costs, due to the replacement or upgrading of antiquated facilities and delivery systems.

An indeterminate amount of savings could accrue to certain counties to the extent that the transfer of health care facilities and services to a county nonprofit health care corporation reduced or eliminated the counties' financial obligations to operate or maintain these facilities or services.

Fiscal Analyst: J. Walker

### **ARGUMENTS**

#### ***Supporting Argument***

The statutes that govern county hospitals are more than 40 years old, in the case of Public Act 109, and more than 70 years old, in the case of Public Act 350. Over the years, the operation of hospitals has changed dramatically. Unfortunately, county hospitals established under these Acts have not been able to adjust to the changing health care industry because of the limiting provisions in these Acts. Furthermore, these hospitals generally are located in small towns that face losing their acute patient care facilities if action is not taken to allow the hospitals to compete in the health care market.

#### ***Supporting Argument***

County hospitals, like other government hospitals, confront declining property tax revenues, bonding limitations, geographic restrictions, cumbersome purchasing requirements, limitations on mergers and affiliations, and a host of other challenges. In addition, the limited wording of the Acts prevents county hospitals from diversifying into other health care areas, such as outpatient clinics and

means on wheels for aged and disabled persons; stifles growth, competitiveness, and long-term financial stability; and restricts statutory authority to borrow money. Because of these difficulties, some county hospitals have been sold or incorporated, or have taken actions that were not legal under the current Acts, in a desperate attempt to change their financial situation. Senate Bill 267 would provide relief in these areas as well as give county hospitals more flexibility in their operations in order to stay alive. Thus, the bill would enhance the corporate powers of county hospitals by allowing the hospitals to become separate and distinct entities for financial and business reasons, but remain under county control.

### ***Supporting Argument***

Incorporation of a county hospital would not be automatic with the enactment of Senate Bill 267. A county board of commissioners would have 90 days after the effective date of the bill to decide whether or not its county hospital would be incorporated under the provisions of the bill. If the commissioners took no action, the hospital would be incorporated. The commissioners, however, could pass a resolution prohibiting incorporation. Every year thereafter, the commissioners would have to decide whether to incorporate. Thus, control of the hospital would remain with the commissioners, who are the elected representatives of the county residents.

### ***Opposing Argument***

Residents of counties that operate hospitals for years have supported these hospitals with their tax dollars. Under Senate Bill 267, counties would be giving away their hospitals, and would lose control over them.

**Response:** Under the bill, a county still would have control over its hospital because a county could modify the articles of incorporation to fit its needs, and the county board of commissioners would appoint members to the hospital boards and subsidiary boards. Thus, the hospital administration still would be answerable to the county. The effect of incorporation would not be to remove the hospital from county control would be to allow the hospital to be operated in a more competitive fashion.

### ***Opposing Argument***

County medical care facilities should be removed from Senate Bill 267, in order not to jeopardize their "maintenance of effort payments", which these facilities receive for caring for Medicaid and indigent patients. Incorporation of these facilities could result in a county's losing its share of the maintenance of effort payments from the Federal government that the county shares with the State. This could result in a loss of needed revenue.

**Response:** Incorporation of county medical care facilities, under the bill, would be optional. Thus, the county commissioners could decide if it would be more financially advantageous to incorporate and make up the possible loss of the maintenance of effort payments through operation of a subsidiary, or to maintain the current operation of the medical care facility and continue to receive the maintenance of effort payments.

Legislative Analyst: L. Arasim

Fiscal Analyst: J. Walker

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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.