

Act No. 273
Public Acts of 1988
Approved by the Governor
July 15, 1988
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**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Reps. Richard A. Young, Ostling, Sitz, Barns, Keith, Lynn Owen, DeMars and Dobronski

ENROLLED HOUSE BILL No. 5755

AN ACT to amend section 9 of Act No. 47 of the Public Acts of 1945, entitled as amended "An act to authorize 2 or more cities, townships, and villages, or any combination of cities, townships, and villages, to incorporate a hospital authority for planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating 1 or more community hospitals and related buildings or structures and related facilities; to provide for the sale, lease, or other transfer of a hospital owned by a hospital authority to a nonprofit corporation established under the laws of this state for no or nominal monetary consideration; to define hospitals and community hospitals; to provide for changes in the membership therein; to authorize the cities, townships, and villages to levy taxes for community hospital purposes; to provide for the issuance of bonds; to provide for the pledge of assessments; to provide for borrowing money for operation and maintenance and issuing notes for operation and maintenance; to validate elections heretofore held and notes heretofore issued; to validate bonds heretofore issued; to authorize condemnation proceedings; to grant certain powers of a body corporate; and to validate and ratify the organization, existence, and membership of entities acting as hospital authorities under the act and the actions taken by hospital authorities and by the members of the hospital authorities," as amended by Act No. 117 of the Public Acts of 1987, being section 331.9 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 9 of Act No. 47 of the Public Acts of 1945, as amended by Act No. 117 of the Public Acts of 1987, being section 331.9 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 9. (1) For purposes of a hospital authority established pursuant to this act, the hospital board may purchase, lease, accept by gift or devise, or condemn private property. The hospital board may sell, exchange or otherwise transfer, lease, hold, manage, and control any property, asset, or hospital owned by the hospital board. Subject to subsections (2) and (14), any sale, exchange, transfer, or lease of any property, asset, or hospital shall be for its market value and the money so received shall be retained by the hospital authority. If acquired by condemnation, Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.25 of the Michigan Compiled Laws and the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, shall apply.

(2) A hospital authority whose jurisdiction has a member population of less than 300,000 may, by resolution, provide for the sale, lease, or other transfer of a hospital owned by the hospital board, under this section. The resolution shall include a copy of the document proposed to effect the sale, lease, or other transfer. If a hospital authority passes such a resolution, the hospital authority also shall provide by resolution for a public vote of the electors at large of all cities, villages, and townships in the hospital authority on the question of the sale, lease, or other transfer of the hospital. The election shall be conducted in the same manner as provided in section 4 for

the approval of an additional tax for capital improvements. If the sale, lease, or other transfer of the hospital is approved by a majority of the voters, the hospital board may sell, lease, or otherwise transfer any hospital owned by the hospital board on any terms and conditions considered reasonable by the hospital board, including a sale, lease, or other transfer for no or nominal monetary consideration, subject to subsections (6) to (8) and all of the following conditions:

(a) The sale, lease, or other transfer shall be to a nonprofit corporation established pursuant to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws, and organized specifically for the ownership and operation of the hospital. The nonprofit corporation shall meet both of the following requirements:

(i) At the time of the sale, lease, or other transfer or within 6 months after the date of the sale, lease, or other transfer, be an entity exempt from federal income tax under section 501(c) of the internal revenue code or a comparable successor provision.

(ii) At the time of the sale, lease, or other transfer, the majority of the members of the board of directors of the nonprofit corporation shall also be members of the board of the hospital authority.

(b) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation shall at all times require that the nonprofit corporation operate the hospital as a nonprofit community hospital open to the general public which serves the general population residing in the service area of the hospital authority.

(c) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation shall at all times require that the nonprofit corporation shall not sell, lease, or otherwise transfer the hospital without the express consent of the hospital authority and the approval by a majority of the voters as required in this subsection for the sale, lease, or other transfer of a hospital from the hospital board to a nonprofit corporation. If the hospital is sold, leased, or otherwise transferred pursuant to this subdivision, the sale, lease, or other transfer shall be for market value and the proceeds of the transaction shall be turned over to the hospital authority.

(d) If the hospital authority has ever levied an additional tax for capital improvements under section 4, then the hospital authority shall pay back to each member unit of the hospital authority, upon such terms and conditions as may be agreed upon by the hospital board and each member unit, an amount equal to all such taxes for capital improvement collected within the 60 months immediately preceding the sale, lease, or other transfer with respect to property located in the member unit, and any remaining uncollected portion of the tax levy shall not then be collected.

(e) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation shall at all times require that the nonprofit corporation adopt and carry out policies designed to ensure both of the following:

(i) That hospital care is provided to a reasonable degree to indigent persons in the corporation's hospital service area free of charge.

(ii) That the hospital complies with the requirement of section 20201(2)(a) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20201 of the Michigan Compiled Laws, that patients not be denied appropriate care on the basis of source of payment.

(3) As used in subsection (2), "hospital" includes all property, real and personal, tangible and intangible, including without limitation cash and accounts receivable, used in the operation and management of the hospital.

(4) If self-liquidating bonds have been issued by the hospital authority pursuant to this act, and if the bonds are outstanding, a lease of a hospital as provided for in subsection (2), with or without a transfer to the nonprofit corporation at the expiration of the lease term and with or without monetary consideration, shall not be construed as a violation of this act or of any bond resolution or ordinance adopted pursuant to this act if the lease does all of the following:

(a) Requires the lessee to pay rent to the hospital authority in an amount sufficient to pay the principal and interest obligations of the bonds as they become due.

(b) Requires the lessee to maintain the various bond funds as required by this act and by the bond resolution or ordinance.

(c) Provides for the continuation of the lien created by this act and by the bond resolution or ordinance upon the net revenues of the hospital.

(d) Requires the lessee to operate the hospital in a manner consistent with the bond resolution or ordinance.

(5) If self-liquidating bonds have been issued by the hospital authority pursuant to this act, and if the bonds are outstanding, a sale of a hospital as provided for in subsection (2) shall not be construed as a violation of this act or of any bond resolution or ordinance adopted pursuant to this act if all of the following conditions are met:

(a) The outstanding bonds are defeased.

(b) Defeasance of the existing bonded indebtedness is accomplished by depositing sufficient cash or United States treasury obligations, or both, in escrow in an amount sufficient, including interest to be earned on the funds and obligations placed in escrow, to provide for payment of all interest, principal, and premium, if any, when and as due on the outstanding bonds, including final payment. As used in this subdivision, "final payment" means the final payment due at the maturity of the bonds or upon the redemption of the bonds prior to maturity on a date on which the bonds are callable for redemption if irrevocable arrangements have been made to call the bonds for redemption on that date.

(c) The contract of sale contains provisions implementing this subsection.

(6) Subject to subsection (9), if a hospital authority passes a resolution providing for an election pursuant to subsection (2), the legislative body of a city, village, or township participating in the hospital authority may, within 90 days after the date the resolution is passed by the hospital authority, pass a resolution to withdraw from membership in the authority. If the resolution to withdraw as a member of the authority is passed by the legislative body, the election provided for in subsection (2) shall not be held unless a majority of the hospital authority board concurs in the withdrawal of that member unit. If the board concurs in the withdrawal, the withdrawal shall be effective on the date of the sale, lease, or other transfer of the hospital after the election provided for in subsection (2). After the effective date of the withdrawal, the withdrawing member unit shall not be subject to any tax levy or other request for funds made by the hospital authority under this act or otherwise, and shall not be entitled to any of the assets of the hospital authority.

(7) Subject to subsection (9) and except as otherwise provided in this subsection, if a hospital authority passes a resolution providing for an election pursuant to subsection (2), the legislative body of a city, village, or township participating in the hospital authority may, within 90 days after the date the resolution is passed by the hospital authority, provide by resolution for a public vote of the electors of the city, village, or township on the question of the withdrawal of that unit from membership in the hospital authority. The election shall be held at the same time as the at large election held under subsection (2) and conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If an election is called by a member unit under this subsection, its vote shall be a separate vote for that unit on the question of withdrawal from the hospital authority. However, an election under this subsection or under subsection (2) shall not be conducted unless the hospital board has by majority vote consented to the withdrawal of the member unit which has resolved to hold an election on the question of withdrawal from the authority under this subsection. If the board concurs in the withdrawal, the withdrawal shall be effective on the date of the sale, lease, or other transfer of the hospital after the election provided for in subsection (2). After the effective date of the withdrawal, the withdrawing member unit shall not be subject to any tax levy or other request for funds made by the hospital authority under this act or otherwise, and shall not be entitled to any of the assets of the hospital authority.

(8) Subject to subsection (9) and except as otherwise provided in this subsection, if a hospital authority passes a resolution providing for an election pursuant to subsection (2), the electors of a city, village, or township participating in the hospital authority may, by petition signed by a number of qualified and registered electors residing within the city, village, or township equal to not less than 5% of the number of votes cast by the qualified and registered electors in that city, village, or township for secretary of state at the last general election in which a secretary of state was elected, require a public vote of the electors in that city, village, or township on the question of the withdrawal of that unit from membership in the hospital authority. The petitions shall be submitted to the clerk of the city, village, or township within 90 days after the passage of the resolution by the hospital authority providing for an election pursuant to subsection (2). If a sufficient number of signatures are submitted, the clerk of the city, village, or township shall take the steps necessary to provide for an election. The election shall be held at the same time as the at large election held under subsection (2) and conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If an election is required in a member unit under this subsection, its vote shall be a separate vote for that unit on the question of withdrawal from the hospital authority. However, an election under this subsection or under subsection (2) shall not be conducted unless by a majority vote the hospital board has consented to the withdrawal of the member unit. If the board concurs in the withdrawal, the withdrawal shall be effective on the date of the sale, lease, or other transfer of the hospital after the election provided for in subsection (2). After the effective date of the withdrawal, the withdrawing member unit shall not be subject to any tax levy or other request for funds made by the hospital authority under this act or otherwise, and shall not be entitled to any of the assets of the hospital authority.

(9) If, at the election held pursuant to subsection (2), a majority of the electors at large do not vote to approve the sale, lease, or other transfer of the hospital to a nonprofit corporation, a resolution passed under subsection (6) or an election held under subsection (7) or (8) to withdraw a city, village, or township from participation in the hospital authority shall be void.

(10) An election held under subsection (8) shall take precedence over a resolution passed under subsection (6).

(11) For a lease or other transfer of a hospital pursuant to subsection (2), the total bonded indebtedness of the hospital after the lease or transfer shall not be increased so as to exceed 60% of the total asset value of the hospital without a majority vote of the members serving on the hospital authority board. As used in this subsection and subsection (12), "total asset value" means the total value of the various assets of the hospital, including assets to be constructed or acquired by means of the additional proposed bonded indebtedness, as shown on an audited financial statement which includes all bonded indebtedness of the hospital.

(12) For a lease or other transfer of a hospital pursuant to subsection (2), the total bonded indebtedness of the hospital after the lease or transfer shall not be increased so as to exceed 80% of the total asset value of the hospital unless authorized at a general or special election and approved by a majority vote of the total qualified and registered electors voting on the question in each city, village, and township participating in the hospital authority. The election shall be conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements.

(13) Upon the sale, lease, or other transfer of a hospital under this section, the nonprofit corporation or subsequent profit entity shall assume and be bound by any existing labor agreement applicable to the hospital, for the remainder of the term of the agreement. A representative of the employees or a group of employees who is entitled to represent the employees or group of employees under Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws, shall continue to be the representative of the employees or group of employees if the employees become employees of the nonprofit corporation or subsequent profit entity. This subsection does not limit the rights of the hospital employees, under applicable law, to assert that a bargaining representative protected by this subsection is no longer the representative of the employees.

(14) A hospital authority whose jurisdiction has a member population of more than 300,000 may, by resolution adopted by a majority vote of the hospital board, provide for the sale, lease, or other transfer of a hospital owned by the hospital board on any terms and conditions considered reasonable by the hospital board, including sale, lease, or other transfer for no or nominal monetary consideration, subject to all of the following terms and conditions:

(a) The sale, lease, or other transfer shall be to a nonprofit corporation established pursuant to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws, and organized specifically for the ownership and operation of the hospital. The nonprofit corporation shall at the time of the sale, lease, or other transfer or within 6 months after the date of the sale, lease, or other transfer, be an entity exempt from federal income tax under section 501(c) of the internal revenue code or a comparable successor provision.

(b) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation shall at all times require that the nonprofit corporation operate the hospital as a nonprofit community health facility open to the general public that serves the general population residing in the service area of the hospital authority.

(c) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation shall at all times require that the nonprofit corporation shall not sell all of the transferred assets without the express consent of the hospital authority and the approval by a majority of the voters in an election conducted in the same manner as provided in section 4 for the approval of an additional tax for capital improvements. If all of the transferred assets are sold pursuant to this subdivision, the sale shall be for market value and the proceeds of the transaction shall be turned over to the hospital authority and used for health care needs within the service area of the hospital authority.

(d) The articles of incorporation of the nonprofit corporation and the contractual arrangements between the hospital authority and the nonprofit corporation shall at all times require that the nonprofit corporation adopt and carry out policies designed to ensure that the hospital complies with the requirement of section 20201(2)(a) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20201 of the Michigan Compiled Laws, that patients not be denied appropriate care on the basis of source of payment.

(15) As used in subsection (14), "hospital" includes all property, real and personal, tangible and intangible, including without limitation cash, accounts receivable, and pension reserves used in the operation and management of 1 or more hospitals.

(16) If self-liquidating bonds have been issued by the hospital authority pursuant to this act, and if the bonds are outstanding, a sale, lease, or other transfer of a hospital as provided for in subsection (14) shall not be construed as a violation of this act or of any bond resolution or ordinance adopted pursuant to this act if all of the following conditions are met:

(a) The outstanding bonds are defeased.

(b) Defeasance of the existing bonded indebtedness is accomplished by depositing sufficient cash or United States treasury obligations, or both, in escrow in an amount sufficient, including interest to be earned on the funds and obligations placed in escrow, to provide for payment of all interest, principal, and premium, if any, when and as due on the outstanding bonds, including final payment. As used in this subdivision, "final

payment” means the final payment due at the maturity of the bonds or upon the redemption of the bonds prior to maturity on a date on which the bonds are callable for redemption if irrevocable arrangements have been made to call the bonds for redemption on that date.

(17) If a hospital authority passes a resolution providing for the sale, lease, or other transfer of a hospital as provided in subsection (14), the legislative body of a city, village, or township participating in the hospital authority may, within 60 days after the resolution is passed by the hospital authority, pass a resolution to withdraw from membership in the authority. If a legislative body of a member city, village, or township in the authority passes such a resolution, the resolution adopted by the hospital authority under subsection (14) shall not be effective until a majority of the hospital authority board concurs in the withdrawal of that city, village, or township. However, if the sale, lease, or other transfer of the hospital is not carried out, the resolution to withdraw and the hospital authority’s resolution of concurrence in the withdrawal are void.

(18) Upon the sale, lease, or other transfer of a hospital under subsection (14), the nonprofit corporation shall assume and be bound by any existing labor agreement applicable to the hospital, for the remainder of the term of the agreement. A representative of the employees or a group of employees under Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws, shall continue to be the representative of the employees or group of employees when the employees become employees of the nonprofit corporation or subsequent profit entity. This subsection does not limit the rights of the hospital employees, under applicable law, to assert that a bargaining representative protected by this subsection is no longer the representative of the employees.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.