

AMENDED IN ASSEMBLY APRIL 18, 1996

AMENDED IN ASSEMBLY APRIL 10, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3101**

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**Introduced by Assembly Member Isenberg**  
**(Principal coauthor: Assembly Member Knowles)**  
(Principal coauthors: Senators Killea and Kopp)  
**(Coauthors: Assembly Members Davis, Ducheny,**  
**Goldsmith, and Morrow)**

February 23, 1996

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An act to amend Section 5913 of, to add a heading of Article 1 (commencing with Section 5910) to, and to add Article 2 (commencing with Section 5914) to, Chapter 9 of Part 2 of Division 2 of Title 1 of, the Corporations Code, relating to public benefit corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3101, as amended, Isenberg. Public benefit corporations: health facilities: sale of assets.

Existing law provides that a public benefit corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board of directors and the members of the corporation and by any other person whose approval is required by the articles, except as specified. Existing law requires a public benefit corporation to give written notice to the Attorney General 20 days before it sells, leases, conveys,

exchanges, transfers, or otherwise disposes of all or substantially all of its assets, except as specified.

This bill would subject a public benefit corporation that is a health facility or provides health care of any kind to additional requirements prior to the corporation entering into any agreement or transaction to sell, transfer, lease, exchange, option, convey, or otherwise dispose of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity, *unless the agreement or transaction is in the usual and regular course of the activities of the corporation or unless the Attorney General has given the corporation a written waiver as the proposed agreement or transaction.*

The bill would require the corporation to notify the Attorney General. The bill would require the Attorney General to conduct a public ~~hearing~~ *meeting* and to consent or not consent to the agreement or transaction. The bill would authorize the Attorney General to adopt regulations, to contract with, consult, and receive advice from any state agency, and to contract with experts or consultants.

The bill would require the public benefit corporation to reimburse the ~~state agencies~~ *Attorney General* for ~~their~~ costs in complying with its provisions, upon request of the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of
- 2 the following:
- 3 (a) Charitable, nonprofit health facilities, including
- 4 nonprofit hospitals, hold all of their assets in trust, and
- 5 those assets are irrevocably dedicated, as a condition of
- 6 their tax-exempt status, to the specific charitable
- 7 purposes set forth in the articles of incorporation of
- 8 nonprofit entities.
- 9 (b) The public is the beneficiary of the trust on which
- 10 charitable, nonprofit health facilities hold their assets.



1 (c) Charitable, nonprofit health facilities have a  
2 substantial and beneficial effect on the provision of health  
3 care to the people of California, providing as part of their  
4 charitable mission uncompensated care to uninsured  
5 low-income families and under-compensated care to the  
6 poor, elderly, and disabled.

7 (d) Transfers of the assets of nonprofit, charitable  
8 health facilities to the for-profit sector, such as by sale,  
9 joint venture, or other sharing of assets, directly affect the  
10 charitable use of those assets and may affect the  
11 availability of community health care services.

12 (e) The state Attorney General is entrusted by law to  
13 bring actions on behalf of the public in the event of a  
14 breach of the charitable trust of a nonprofit entity and to  
15 represent the public in the sale or other transfer of the  
16 assets of a nonprofit entity.

17 (f) It is in the best interests of the public to ensure that  
18 the public interest is fully protected whenever the assets  
19 of a charitable nonprofit health facility are transferred  
20 out of the charitable trust and to a for-profit or mutual  
21 benefit entity.

22 (g) The consent of the state Attorney General shall be  
23 required for any transaction involving a nonprofit,  
24 charitable health facility when a material amount of the  
25 charitable assets are transferred to a for-profit or mutual  
26 benefit entity.

27 SEC. 2. A heading of Article 1 (commencing with  
28 Section 5910) is added to Chapter 9 of Part 2 of Division  
29 2 of Title 1 of the Corporations Code, to read:

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31 Article 1. General Provisions

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33 SEC. 3. Section 5913 of the Corporations Code is  
34 amended to read:

35 5913. Except for a ~~corporation~~ *an agreement or*  
36 *transaction* subject to Section 5914, a corporation must  
37 give written notice to the Attorney General 20 days  
38 before it sells, leases, conveys, exchanges, transfers or  
39 otherwise disposes of all or substantially all of its assets  
40 unless the transaction is in the usual and regular course



1 of its activities or unless the Attorney General has given  
2 the corporation a written waiver of this section as to the  
3 proposed transaction.

4 SEC. 4. Article 2 (commencing with Section 5914) is  
5 added to Chapter 9 of Part 2 of Division 2 of the  
6 Corporations Code, to read:

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Article 2. Health Facilities

10 5914. (a) Any public benefit corporation that is a  
11 health facility, as defined in Section 1250 of the Health  
12 and Safety Code, or is a facility that provides health care  
13 of any kind, shall be required to provide written notice to,  
14 and to obtain the written consent of, the Attorney  
15 General prior to entering into any agreement or  
16 transaction to do either of the following:

17 (1) Sell, transfer, lease, exchange, option, convey, or  
18 otherwise dispose of, its assets to a for-profit corporation  
19 or entity or to a mutual benefit corporation or entity  
20 when a material amount of the assets of the public benefit  
21 corporation are involved in the agreement or transaction.

22 (2) Transfer control, responsibility, or governance of  
23 a material amount of the assets or operations of the  
24 nonprofit public benefit corporation to any for-profit  
25 corporation or entity or to any mutual benefit corporation  
26 or entity.

27 (b) The notice to the Attorney General provided for  
28 in this section shall include and contain the information  
29 the Attorney General determines is required.

30 (c) *This section shall not apply to a public benefit*  
31 *corporation if the agreement or transaction is in the usual*  
32 *and regular course of its activities or if the Attorney*  
33 *General has given the corporation a written waiver of this*  
34 *section as to the proposed agreement or transaction.*

35 5915. Within 90 days of the receipt of the written  
36 notice required by Section 5914, the Attorney General  
37 shall notify the public benefit corporation of the decision  
38 to consent or not consent to the agreement or transaction.  
39 The Attorney General may extend this period for one  
40 additional 60-day period.



1 5916. Prior to issuing any written decision referred to  
2 in Section 5915, the Attorney General shall conduct one  
3 or more public ~~hearings~~ *meetings, one of which shall be*  
4 *in the county in which the facility is located,* to hear  
5 comments from interested parties. At least 14 days before  
6 conducting the public ~~hearing~~ *meeting,* the Attorney  
7 General shall provide written notice of the time and place  
8 of the ~~hearing~~ *meeting* through publication in one or  
9 more newspapers of general circulation in the affected  
10 community *and to the board of supervisors of the county*  
11 *in which the facility is located.*

12 5917. The Attorney General shall have discretion to  
13 consent or not consent to any such agreement or  
14 transaction. The Attorney General may make his or her  
15 consent subject to any terms or conditions the Attorney  
16 General deems appropriate. In making the  
17 determination, the Attorney General may consider any  
18 factors that the Attorney General deems relevant,  
19 including, but not limited to, whether any of the following  
20 apply:

21 (a) The terms and conditions of the agreement or  
22 transaction are fair and reasonable to the nonprofit public  
23 benefit corporation.

24 (b) The agreement or transaction will result in  
25 inurement to any private person or entity.

26 (c) Any agreement or transaction that is subject to this  
27 article ~~shall be~~ *is* at fair market value. In this regard, “fair  
28 market value” means the most likely price that the assets  
29 being sold would bring in a competitive and open market  
30 under all conditions requisite to a fair sale, the buyer and  
31 seller, each acting prudently, knowledgeably and in their  
32 own best interest, and a reasonable time being allowed  
33 for exposure in the open market.

34 (d) The market value has been manipulated by the  
35 actions of the parties in a manner that causes the value of  
36 the assets to decrease.

37 (e) The proposed use of the proceeds from the  
38 agreement or transaction is consistent with the charitable  
39 trust on which the assets are held *by the health facility or*  
40 *by the affiliated nonprofit health system.*



1 (f) The agreement or transaction involves or  
2 constitutes any breach of trust.

3 (g) The Attorney General has been provided,  
4 pursuant to Section 5250, with sufficient information and  
5 data by the nonprofit public benefit corporation to  
6 evaluate adequately the agreement or transaction or the  
7 effects thereof on the public.

8 (h) The agreement or transaction may create a  
9 significant effect on the availability or accessibility of  
10 health care services to the affected community.

11 (i) The proposed agreement or transaction is in the  
12 public interest.

13 5918. The Attorney General may adopt regulations  
14 implementing this article.

15 5919. (a) Within the time periods designated in  
16 Section 5915 and relating to those factors specified in  
17 Section 5917, the Attorney General may do the following:

18 (1) Contract with, consult, and receive advice from  
19 any state agency on those terms and conditions that the  
20 Attorney General deems appropriate.

21 (2) In his or her sole discretion, contract with experts  
22 or consultants to assist in reviewing the proposed  
23 agreement or transaction.

24 (b) Contract costs shall not exceed an amount that is  
25 reasonable and necessary to conduct the review and  
26 evaluation. Any contract entered into under this section  
27 shall be on a noncompetitive bid basis and shall be exempt  
28 from Chapter 2 (commencing with Section 10290) of Part  
29 2 of Division 2 of the Public Contract Code. The nonprofit  
30 public benefit corporation, upon request, shall pay the  
31 Attorney General promptly for all contract costs.

32 (c) The Attorney General shall be entitled to  
33 reimbursement from the nonprofit public benefit  
34 corporation for all actual, reasonable, *direct* costs  
35 incurred in reviewing, evaluating, and making the  
36 determination referred to in this article, including  
37 administrative costs. The nonprofit public benefit



1 corporation shall promptly pay the Attorney General,  
2 upon request, for all such costs.

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