

AMENDED IN ASSEMBLY MAY 8, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996
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CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3101

**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

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 *similar* 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 *of these requirements* as to 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 meeting and to *notify the corporation in writing of his or her* 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 Attorney General for 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 an agreement or transaction subject
36 to Section 5914, a corporation must give written notice to
37 the Attorney General 20 days before it sells, leases,
38 conveys, exchanges, transfers or otherwise disposes of all
39 or substantially all of its assets unless the transaction is in
40 the usual and regular course of its activities or unless the



1 Attorney General has given the corporation a written
2 waiver of this section as to the proposed transaction.

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

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Article 2. Health Facilities

9 5914. (a) Any public benefit corporation that is a
10 health facility, as defined in Section 1250 of the Health
11 and Safety Code, or is a facility that provides *similar*
12 health care ~~of any kind~~, shall be required to provide
13 written notice to, and to obtain the written consent of, the
14 Attorney General prior to entering into any agreement
15 or transaction to do either of the following:

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

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

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

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

34 5915. Within ~~90~~ 60 days of the receipt of the written
35 notice required by Section 5914, the Attorney General
36 shall notify the public benefit corporation *in writing* of
37 the decision to consent or not consent to the agreement
38 or transaction. The Attorney General may extend this
39 period for one additional ~~60-day period~~. *45-day period*,



1 *provided the extension is necessary to obtain information*
2 *pursuant to subdivision (a) of Section 5919.*

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

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

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

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

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

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

39 (e) The proposed use of the proceeds from the
40 agreement or transaction is consistent with the charitable



1 trust on which the assets are held by the health facility or
2 by the affiliated nonprofit health system.

3 (f) The agreement or transaction involves or
4 constitutes any breach of trust.

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

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

13 (i) The proposed agreement or transaction is in the
14 public interest.

15 5918. The Attorney General may adopt regulations
16 implementing this article.

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

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

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

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

34 (c) The Attorney General shall be entitled to
35 reimbursement from the nonprofit public benefit
36 corporation for all actual, reasonable, direct costs
37 incurred in reviewing, evaluating, and making the
38 determination referred to in this article, including
39 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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