

AMENDED IN SENATE JUNE 25, 1996

AMENDED IN ASSEMBLY MAY 8, 1996

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 similar health care 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 *decision to consent, conditionally 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



1 purposes set forth in the articles of incorporation of  
2 nonprofit entities.

3 (b) The public is the beneficiary of the trust on which  
4 charitable, nonprofit health facilities hold their assets.

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

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

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

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

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

31 SEC. 2. A heading of Article 1 (commencing with  
32 Section 5910) is added to Chapter 9 of Part 2 of Division  
33 2 of Title 1 of the Corporations Code, to read:

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Article 1. General Provisions

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37 SEC. 3. Section 5913 of the Corporations Code is  
38 amended to read:

39 5913. Except for an agreement or transaction subject  
40 to Section 5914, a corporation must give written notice to



1 the Attorney General 20 days before it sells, leases,  
2 conveys, exchanges, transfers or otherwise disposes of all  
3 or substantially all of its assets unless the transaction is in  
4 the usual and regular course of its activities or unless the  
5 Attorney General has given the corporation a written  
6 waiver of this section as to the proposed transaction.

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

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11 Article 2. Health Facilities

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

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

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

30 (b) The notice to the Attorney General provided for  
31 in this section shall include and contain the information  
32 the Attorney General determines is required.

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

39 5915. Within 60 days of the receipt of the written  
40 notice required by Section 5914, the Attorney General



1 shall notify the public benefit corporation in writing of  
2 the decision to consent *to, give conditional consent to,* or  
3 not consent to the agreement or transaction. The  
4 Attorney General may extend this period for one  
5 additional 45-day period, provided the extension is  
6 necessary to obtain information pursuant to subdivision  
7 (a) of Section 5919.

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

19 5917. The Attorney General shall have discretion to  
20 consent *to, give conditional consent to,* or not consent to  
21 any such agreement or ~~transaction.~~ ~~The Attorney~~  
22 ~~General may make his or her consent subject to any terms~~  
23 ~~or conditions the Attorney General deems appropriate.~~  
24 ~~transaction described in subdivision (a) of Section 5914.~~  
25 In making the determination, the Attorney General ~~may~~  
26 *shall* consider any factors that the Attorney General  
27 deems relevant, including, but not limited to, whether  
28 any of the following apply:

29 (a) The terms and conditions of the agreement or  
30 transaction are fair and reasonable to the nonprofit public  
31 benefit corporation.

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

34 (c) Any agreement or transaction that is subject to this  
35 article is at fair market value. In this regard, “fair market  
36 value” means the most likely price that the assets being  
37 sold would bring in a competitive and open market under  
38 all conditions requisite to a fair sale, the buyer and seller,  
39 each acting prudently, knowledgeably and in their own



1 best interest, and a reasonable time being allowed for  
2 exposure in the open market.

3 (d) The market value has been manipulated by the  
4 actions of the parties in a manner that causes the value of  
5 the assets to decrease.

6 (e) The proposed use of the proceeds from the  
7 agreement or transaction is consistent with the charitable  
8 trust on which the assets are held by the health facility or  
9 by the affiliated nonprofit health system.

10 (f) The agreement or transaction involves or  
11 constitutes any breach of trust.

12 (g) The Attorney General has been provided,  
13 pursuant to Section 5250, with sufficient information and  
14 data by the nonprofit public benefit corporation to  
15 evaluate adequately the agreement or transaction or the  
16 effects thereof on the public.

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

20 (i) The proposed agreement or transaction is in the  
21 public interest.

22 5918. The Attorney General may adopt regulations  
23 implementing this article.

24 5919. (a) Within the time periods designated in  
25 Section 5915 and relating to those factors specified in  
26 Section 5917, the Attorney General may do the following:

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

30 (2) In his or her sole discretion, contract with experts  
31 or consultants to assist in reviewing the proposed  
32 agreement or transaction.

33 (b) Contract costs shall not exceed an amount that is  
34 reasonable and necessary to conduct the review and  
35 evaluation. Any contract entered into under this section  
36 shall be on a noncompetitive bid basis and shall be exempt  
37 from Chapter 2 (commencing with Section 10290) of Part  
38 2 of Division 2 of the Public Contract Code. The nonprofit  
39 public benefit corporation, upon request, shall pay the  
40 Attorney General promptly for all contract costs.



1 (c) The Attorney General shall be entitled to  
2 reimbursement from the nonprofit public benefit  
3 corporation for all actual, reasonable, direct costs  
4 incurred in reviewing, evaluating, and making the  
5 determination referred to in this article, including  
6 administrative costs. The nonprofit public benefit  
7 corporation shall promptly pay the Attorney General,  
8 upon request, for all such costs.

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