

2 **SHB 1058** - S AMD - 444

3 By Senators Deccio, Snyder, Wood, Wojahn, Franklin, Benton,
4 Fairley and Strannigan

5 ADOPTED 4/17/97

6 On page 1 after line 17, insert the following:

7 NEW SECTION. **Sec. 2.** The health of the people of our state is a
8 most important public concern. The state has an interest in assuring
9 the continued existence of accessible, affordable health care
10 facilities that are responsive to the needs of the communities in which
11 they exist. The state also has a responsibility to protect the public
12 interest in nonprofit hospitals and to clarify the responsibilities of
13 local public hospital district boards with respect to public hospital
14 district assets by making certain that the charitable and public assets
15 of those hospitals are managed prudently and safeguarded consistent
16 with their mission under the laws governing nonprofit and municipal
17 corporations.

18 NEW SECTION. **Sec. 3.** The definitions in this section apply
19 throughout this chapter unless the context clearly requires otherwise.

20 (1) "Department" means the Washington state department of health.

21 (2) "Hospital" means any entity that is: (a) Defined as a hospital
22 in RCW 70.41.020 and is required to obtain a license under RCW
23 70.41.090; or (b) a psychiatric hospital required to obtain a license
24 under chapter 71.12 RCW.

25 (3) "Acquisition" means an acquisition by a person of an interest
26 in a nonprofit hospital, whether by purchase, merger, lease, gift,
27 joint venture, or otherwise, that results in a change of ownership or
28 control of twenty percent or more of the assets of the hospital, or
29 that results in the acquiring person holding or controlling fifty
30 percent or more of the assets of the hospital, but acquisition does not
31 include an acquisition if the acquiring person: (a) Is a nonprofit
32 corporation having a substantially similar charitable health care
33 purpose as the nonprofit corporation from whom the hospital is being
34 acquired, or is a government entity; (b) is exempt from federal income
35 tax under section 501(c)(3) of the internal revenue code or as a

1 government entity; and (c) will maintain representation from the
2 affected community on the local board of the hospital.

3 (4) "Nonprofit hospital" means a hospital owned by a nonprofit
4 corporation organized under Title 24 RCW.

5 (5) "Person" means an individual, a trust or estate, a partnership,
6 a corporation including associations, limited liability companies,
7 joint stock companies, and insurance companies.

8 NEW SECTION. **Sec. 4.** (1) A person may not engage in the
9 acquisition of a nonprofit hospital without first having applied for
10 and received the approval of the department under this chapter.

11 (2) An application must be submitted to the department on forms
12 provided by the department, and at a minimum must include: The name of
13 the hospital being acquired, the name of the acquiring person or other
14 parties to the acquisition, the acquisition price, a copy of the
15 acquisition agreement, a financial and economic analysis and report
16 from an independent expert or consultant of the effect of the
17 acquisition under the criteria in section 8 of this act, and all other
18 related documents. The applications and all related documents are
19 considered public records for purposes of chapter 42.17 RCW.

20 (3) The department shall charge an applicant fees sufficient to
21 cover the costs of implementing this chapter. The fees must include
22 the cost of the attorney general's opinion under section 7 of this act.
23 The department shall transfer this portion of the fee, upon receipt, to
24 the attorney general.

25 NEW SECTION. **Sec. 5.** (1) The department, in consultation with the
26 attorney general, shall determine if the application is complete for
27 the purposes of review. The department may find that an application is
28 incomplete if a question on the application form has not been answered
29 in whole or in part, or has been answered in a manner that does not
30 fairly meet the question addressed, or if the application does not
31 include attachments of supporting documents as required by section 4 of
32 this act. If the department determines that an application is
33 incomplete, it shall notify the applicant within fifteen working days
34 after the date the application was received stating the reasons for its
35 determination of incompleteness, with reference to the particular
36 questions for which a deficiency is noted.

1 (2) Within five working days after receipt of a completed
2 application, the department shall publish notice of the application in
3 a newspaper of general circulation in the county or counties where the
4 hospital is located and shall notify by first class United States mail,
5 electronic mail, or facsimile transmission, any person who has
6 requested notice of the filing of such applications. The notice must
7 state that an application has been received, state the names of the
8 parties to the agreement, describe the contents of the application, and
9 state the date by which a person may submit written comments about the
10 application to the department.

11 NEW SECTION. **Sec. 6.** During the course of review under this
12 chapter, the department shall conduct one or more public hearings, at
13 least one of which must be in the county where the hospital to be
14 acquired is located. At the hearings, anyone may file written comments
15 and exhibits or appear and make a statement. The department may
16 subpoena additional information or witnesses, require and administer
17 oaths, require sworn statements, take depositions, and use related
18 discovery procedures for purposes of the hearing and at any time prior
19 to making a decision on the application.

20 A hearing must be held not later than forty-five days after receipt
21 of a completed application. At least ten days' public notice must be
22 given before the holding of a hearing.

23 NEW SECTION. **Sec. 7.** (1) The department shall provide the
24 attorney general with a copy of a completed application upon receiving
25 it. The attorney general shall review the completed application, and
26 within forty-five days of the first public hearing held under section
27 6 of this act shall provide a written opinion to the department as to
28 whether or not the acquisition meets the requirements for approval in
29 section 8 of this act.

30 (2) The department shall review the completed application to
31 determine whether or not the acquisition meets the requirements for
32 approval in sections 8 and 9 of this act. Within thirty days after
33 receiving the written opinion of the attorney general under subsection
34 (1) of this section, the department shall:

35 (a) Approve the acquisition, with or without any specific
36 modifications or conditions; or

37 (b) Disapprove the acquisition.

1 (3) The department may not make its decision subject to any
2 condition not directly related to requirements in section 8 or 9 of
3 this act, and any condition or modification must bear a direct and
4 rational relationship to the application under review.

5 (4) A person engaged in an acquisition and affected by a final
6 decision of the department has the right to an adjudicative proceeding
7 under chapter 34.05 RCW. The opinion of the attorney general provided
8 under subsection (1) of this section may not constitute a final
9 decision for purposes of review.

10 (5) The department or the attorney general may extend, by not more
11 than thirty days, any deadline established under this chapter one time
12 during consideration of any application, for good cause.

13 NEW SECTION. **Sec. 8.** The department shall only approve an
14 application if the parties to the acquisition have taken the proper
15 steps to safeguard the value of charitable assets and ensure that any
16 proceeds from the acquisition are used for appropriate charitable
17 health purposes. To this end, the department may not approve an
18 application unless, at a minimum, it determines that:

19 (1) The acquisition is permitted under chapter 24.03 RCW, the
20 Washington nonprofit corporation act, and other laws governing
21 nonprofit entities, trusts, or charities;

22 (2) The nonprofit corporation that owns the hospital being acquired
23 has exercised due diligence in authorizing the acquisition, selecting
24 the acquiring person, and negotiating the terms and conditions of the
25 acquisition;

26 (3) The procedures used by the nonprofit corporation's board of
27 trustees and officers in making its decision fulfilled their fiduciary
28 duties, that the board and officers were sufficiently informed about
29 the proposed acquisition and possible alternatives, and that they used
30 appropriate expert assistance;

31 (4) No conflict of interest exists related to the acquisition,
32 including, but not limited to, conflicts of interest related to board
33 members of, executives of, and experts retained by the nonprofit
34 corporation, acquiring person, or other parties to the acquisition;

35 (5) The nonprofit corporation will receive fair market value for
36 its assets. The attorney general or the department may employ, at the
37 expense of the acquiring person, reasonably necessary expert assistance

1 in making this determination. This expense must be in addition to the
2 fees charged under section 4 of this act;

3 (6) Charitable funds will not be placed at unreasonable risk, if
4 the acquisition is financed in part by the nonprofit corporation;

5 (7) Any management contract under the acquisition will be for fair
6 market value;

7 (8) The proceeds from the acquisition will be controlled as
8 charitable funds independently of the acquiring person or parties to
9 the acquisition, and will be used for charitable health purposes
10 consistent with the nonprofit corporation's original purpose, including
11 providing health care to the disadvantaged, the uninsured, and the
12 underinsured and providing benefits to promote improved health in the
13 affected community;

14 (9) Any charitable entity established to hold the proceeds of the
15 acquisition will be broadly based in and representative of the
16 community where the hospital to be acquired is located, taking into
17 consideration the structure and governance of such entity; and

18 (10) A right of first refusal to repurchase the assets by a
19 successor nonprofit corporation or foundation has been retained if the
20 hospital is subsequently sold to, acquired by, or merged with another
21 entity.

22 NEW SECTION. **Sec. 9.** The department shall only approve an
23 application if the acquisition in question will not detrimentally
24 affect the continued existence of accessible, affordable health care
25 that is responsive to the needs of the community in which the hospital
26 to be acquired is located. To this end, the department shall not
27 approve an application unless, at a minimum, it determines that:

28 (1) Sufficient safeguards are included to assure the affected
29 community continued access to affordable care, and that alternative
30 sources of care are available in the community should the acquisition
31 result in a reduction or elimination of particular health services;

32 (2) The acquisition will not result in the revocation of hospital
33 privileges;

34 (3) Sufficient safeguards are included to maintain appropriate
35 capacity for health science research and health care provider
36 education;

37 (4) The acquiring person and parties to the acquisition are
38 committed to providing health care to the disadvantaged, the uninsured,

1 and the underinsured and to providing benefits to promote improved
2 health in the affected community. Activities and funding provided
3 under section 8(8) of this act may be considered in evaluating
4 compliance with this commitment; and

5 (5) Sufficient safeguards are included to avoid conflict of
6 interest in patient referral.

7 NEW SECTION. **Sec. 10.** (1) The secretary of state may not accept
8 any forms or documents in connection with any acquisition of a
9 nonprofit hospital until the acquisition has been approved by the
10 department under this chapter.

11 (2) The attorney general may seek an injunction to prevent any
12 acquisition not approved by the department under this chapter.

13 NEW SECTION. **Sec. 11.** The department shall require periodic
14 reports from the nonprofit corporation or its successor nonprofit
15 corporation or foundation and from the acquiring person or other
16 parties to the acquisition to ensure compliance with commitments made.
17 The department may subpoena information and documents and may conduct
18 onsite compliance audits at the acquiring person's expense.

19 If the department receives information indicating that the
20 acquiring person is not fulfilling commitments to the affected
21 community under section 9 of this act, the department shall hold a
22 hearing upon ten days' notice to the affected parties. If after the
23 hearing the department determines that the information is true, it may
24 revoke or suspend the hospital license issued to the acquiring person
25 pursuant to the procedure established under RCW 70.41.130, refer the
26 matter to the attorney general for appropriate action, or both. The
27 attorney general may seek a court order compelling the acquiring person
28 to fulfill its commitments under section 9 of this act.

29 NEW SECTION. **Sec. 12.** The attorney general has the authority to
30 ensure compliance with commitments that inure to the public interest.

31 NEW SECTION. **Sec. 13.** An acquisition of a hospital completed
32 before the effective date of this act and an acquisition in which an
33 application for a certificate of need under chapter 70.38 RCW has been
34 granted by the department before the effective date of this act is not
35 subject to this chapter.

1 NEW SECTION. **Sec. 14.** No provision of this chapter derogates from
2 the common law or statutory authority of the attorney general.

3 NEW SECTION. **Sec. 15.** The department may adopt rules necessary to
4 implement this chapter and may contract with and provide reasonable
5 reimbursement to qualified persons to assist in determining whether the
6 requirements of sections 8 and 9 have been met.

7 **Sec. 16.** RCW 70.44.007 and 1982 c 84 s 12 are each amended to read
8 as follows:

9 As used in this chapter, the following words (~~(shall)~~) have the
10 meanings indicated:

11 (1) (~~The words~~) "Other health care facilities" (~~(shall)~~) means
12 nursing home, extended care, long-term care, outpatient and
13 rehabilitative facilities, ambulances, and such other facilities as are
14 appropriate to the health needs of the population served.

15 (2) (~~The words~~) "Other health care services" (~~(shall)~~) means
16 nursing home, extended care, long-term care, outpatient,
17 rehabilitative, health maintenance, and ambulance services and such
18 other services as are appropriate to the health needs of the population
19 served.

20 (3) "Public hospital district" or "district" means public health
21 care service district.

22 **Sec. 17.** RCW 70.44.240 and 1982 c 84 s 19 are each amended to read
23 as follows:

24 Any public hospital district may contract or join with any other
25 public hospital district, any publicly owned hospital, any nonprofit
26 hospital, any corporation, any other legal entity, or individual to
27 acquire (~~(or provide services or facilities)~~), own, operate, manage, or
28 provide any hospital or other health care facilities or hospital
29 services or other health care services to be used by individuals,
30 districts, hospitals, or others, including the providing of health
31 maintenance services. If a public hospital district chooses to
32 contract or join with another party or parties pursuant to the
33 provisions of this chapter, it may do so through the establishment of
34 a nonprofit corporation, partnership, limited liability company, or
35 other legal entity of its choosing in which the public hospital
36 district and the other party or parties participate. The governing

1 body of such legal entity shall include representatives of the public
2 hospital district, including members of the public hospital district's
3 board of commissioners. A public hospital district contracting or
4 joining with another party pursuant to the provisions of this chapter
5 may appropriate funds and may sell, lease, or otherwise provide
6 property, personnel, and services to the legal entity established to
7 carry out the contract or joint activity.

8 **Sec. 18.** RCW 70.44.300 and 1984 c 103 s 4 are each amended to read
9 as follows:

10 (1) The board of commissioners of any public hospital district may
11 sell and convey at public or private sale real property of the district
12 ~~((which))~~ if the board ~~((has determined))~~ determines by resolution that
13 the property is no longer required for public hospital district
14 purposes or determines by resolution that the sale of the property will
15 further the purposes of the public hospital district. ~~((Such sale and~~
16 ~~conveyance may be by deed or real estate contract.))~~

17 (2) Any sale of district real property authorized pursuant to this
18 section shall be preceded, not more than one year prior to the date of
19 sale, by market value appraisals by three licensed real estate brokers
20 or professionally designated real estate appraisers as defined in RCW
21 74.46.020 or three independent experts in valuing health care property,
22 selected by the board of commissioners, and no sale shall take place if
23 the sale price would be less than ninety percent of the average of such
24 appraisals.

25 (3) When the board of commissioners of any public hospital district
26 proposes a sale of district real property pursuant to this section and
27 the value of the property exceeds one hundred thousand dollars, the
28 board shall publish a notice of its intention to sell the property.
29 The notice shall be published at least once each week during two
30 consecutive weeks in a legal newspaper of general circulation within
31 the public hospital district. The notice shall describe the property
32 to be sold and designate the place where and the day and hour when a
33 hearing will be held. The board shall hold a public hearing upon the
34 proposal to dispose of the public hospital district property at the
35 place and the day and hour fixed in the notice and consider evidence
36 offered for and against the propriety and advisability of the proposed
37 sale.

1 (4) If in the judgment of the board of commissioners of any
2 district the sale of any district real property not needed for public
3 hospital district purposes would be facilitated and greater value
4 realized through use of the services of licensed real estate brokers,
5 a contract for such services may be negotiated and concluded. The fee
6 or commissions charged for any broker service shall not exceed seven
7 percent of the resulting sale price for a single parcel. No licensed
8 real estate broker or professionally designated real estate appraisers
9 as defined in RCW 74.46.020 or independent expert in valuing health
10 care property selected by the board to appraise the market value of a
11 parcel of property to be sold may be a party to any contract with the
12 public hospital district to sell such property for a period of three
13 years after the appraisal.

14 NEW SECTION. Sec. 19. A new section is added to chapter 70.44 RCW
15 to read as follows:

16 (1) When evaluating a potential acquisition, the commissioners
17 shall determine their compliance with the following requirements:

18 (a) That the acquisition is authorized under chapter 70.44 RCW and
19 other laws governing public hospital districts;

20 (b) That the procedures used in the decision-making process allowed
21 district officials to thoroughly fulfill their due diligence
22 responsibilities as municipal officers, including those covered under
23 chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW
24 prohibiting malfeasance of public officials;

25 (c) That the acquisition will not result in the revocation of
26 hospital privileges;

27 (d) That sufficient safeguards are included to maintain appropriate
28 capacity for health science research and health care provider
29 education;

30 (e) That the acquisition is allowed under Article VIII, section 7
31 of the state Constitution, which prohibits gifts of public funds or
32 lending of credit and Article XI, section 14, prohibiting private use
33 of public funds;

34 (f) That the public hospital district will retain control over
35 district functions as required under chapter 70.44 RCW and other laws
36 governing hospital districts;

1 (g) That the activities related to the acquisition process complied
2 with chapters 42.17 and 42.32 RCW, governing disclosure of public
3 records, and chapter 42.30 RCW, governing public meetings;

4 (h) That the acquisition complies with the requirements of RCW
5 70.44.300 relating to fair market value; and

6 (i) Other state laws affecting the proposed acquisition.

7 (2) The commissioners shall also determine whether the public
8 hospital district should retain a right of first refusal to repurchase
9 the assets by the public hospital district if the hospital is
10 subsequently sold to, acquired by, or merged with another entity.

11 (3)(a) Prior to approving the acquisition of a district hospital,
12 the board of commissioners of the hospital district shall obtain a
13 written opinion from a qualified independent expert or the Washington
14 state department of health as to whether or not the acquisition meets
15 the standards set forth in section 9 of this act.

16 (b) Upon request, the hospital district and the person seeking to
17 acquire its hospital shall provide the department or independent expert
18 with any needed information and documents. The department shall charge
19 the hospital district for any costs the department incurs in preparing
20 an opinion under this section. The hospital district may recover from
21 the acquiring person any costs it incurs in obtaining the opinion from
22 either the department or the independent expert. The opinion shall be
23 delivered to the board of commissioners no later than ninety days after
24 it is requested.

25 (c) Within ten working days after it receives the opinion, the
26 board of commissioners shall publish notice of the opinion in at least
27 one newspaper of general circulation within the hospital district,
28 stating how a person may obtain a copy, and giving the time and
29 location of the hearing required under (d) of this subsection. It
30 shall make a copy of the report and the opinion available to anyone
31 upon request.

32 (d) Within thirty days after it received the opinion, the board of
33 commissioners shall hold a public hearing regarding the proposed
34 acquisition. The board of commissioners may vote to approve the
35 acquisition no sooner than thirty days following the public hearing.

36 (4)(a) For purposes of this section, "acquisition" means an
37 acquisition by a person of any interest in a hospital owned by a public
38 hospital district, whether by purchase, merger, lease, or otherwise,
39 that results in a change of ownership or control of twenty percent or

1 more of the assets of a hospital currently licensed and operating under
2 RCW 70.41.090. Acquisition does not include an acquisition where the
3 other party or parties to the acquisition are nonprofit corporations
4 having a substantially similar charitable health care purpose,
5 organizations exempt from federal income tax under section 501(c)(3) of
6 the internal revenue code, or governmental entities. Acquisition does
7 not include an acquisition where the other party is an organization
8 that is a limited liability corporation, a partnership, or any other
9 legal entity and the members, partners, or otherwise designated
10 controlling parties of the organization are all nonprofit corporations
11 having a charitable health care purpose, organizations exempt from
12 federal income tax under section 501(c)(3) of the internal revenue
13 code, or governmental entities. Acquisition does not include
14 activities between two or more governmental organizations, including
15 organizations acting pursuant to chapter 39.34 RCW, regardless of the
16 type of organizational structure used by the governmental entities.

17 (b) For purposes of this subsection (4), "person" means an
18 individual, a trust or estate, a partnership, a corporation including
19 associations, a limited liability company, a joint stock company, or an
20 insurance company.

21 NEW SECTION. **Sec. 20.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 21.** Sections 2 through 15 of this act
26 constitute a new chapter in Title 70 RCW.

27 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 immediately."

31 Renumber the sections consecutively and correct any internal
32 references accordingly.

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2 By Senators Deccio, Snyder, Wood, Wojahn, Franklin, Benton,
3 Fairley and Strannigan

4 ADOPTED 4/17/97

5 On page 1, line 1 of the title, after "to", strike all material
6 through and including "in".

7 On page 1, line 3 of the title, after "hospitals, strike "and".

8 On page 1, line 3 of the title, after "70.41.150" insert "
9 70.44.007; 70.44.240; 70.44.300; adding a new section to chapter 70.44
10 RCW; adding a new chapter to Title 70 RCW; and declaring an emergency".

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