

---

**SUBSTITUTE SENATE BILL 5227**

---

**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Deccio, Franklin, Patterson, Prentice, Benton, Wojahn and Long)

Read first time 02/27/97.

1 AN ACT Relating to nonprofit hospital sales; adding a new section  
2 to chapter 70.44 RCW; adding a new chapter to Title 70 RCW; and  
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The health of the people of our state is a  
6 most important public concern. The state has an interest in assuring  
7 the continued existence of accessible, affordable health care  
8 facilities that are responsive to the needs of the communities in which  
9 they exist. The state also has a responsibility to protect the public  
10 interest in nonprofit hospitals by making certain that the charitable  
11 assets of those hospitals are managed prudently and in accordance with  
12 the requirements of chapter 24.03 RCW.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires otherwise.

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

16 (2) "Hospital" means any entity that is: (a) Defined as a hospital  
17 in RCW 70.41.020 and is required to obtain a license under RCW

1 70.41.090; or (b) a psychiatric hospital required to obtain a license  
2 under chapter 71.12 RCW.

3 (3) "Acquisition" means an acquisition by a person of an interest  
4 in a nonprofit hospital, whether by purchase, merger, lease, gift,  
5 joint venture, or otherwise, that results in a change of ownership or  
6 control of twenty percent or more of the assets of the hospital, or  
7 that results in the acquiring person holding or controlling fifty  
8 percent or more of the assets of the hospital, but acquisition does not  
9 include an acquisition if the acquiring person: (a) Is a nonprofit  
10 corporation having a substantially similar charitable health care  
11 purpose as the nonprofit corporation from whom the hospital is being  
12 acquired, or is a government entity; (b) is exempt from federal income  
13 tax under section 501(c)(3) of the internal revenue code or as a  
14 government entity; and (c) will maintain representation from the  
15 affected community on the local board of the hospital.

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

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

21 NEW SECTION. **Sec. 3.** (1) A person may not engage in the  
22 acquisition of a nonprofit hospital without first having applied for  
23 and received the approval of the department under this chapter.

24 (2) An application must be submitted to the department on forms  
25 provided by the department, and at a minimum must include: The name of  
26 the hospital being acquired, the name of the acquiring person or other  
27 parties to the acquisition, the acquisition price, a copy of the  
28 acquisition agreement, a financial and economic analysis and report  
29 from an independent expert or consultant of the effect of the  
30 acquisition under the criteria in section 7 of this act, and all other  
31 related documents. The applications and all related documents are  
32 considered public records for purposes of chapter 42.17 RCW.

33 (3) The department shall charge an applicant fees sufficient to  
34 cover the costs of implementing this chapter. The fees must include  
35 the cost of the attorney general's opinion under section 6 of this act.  
36 The department shall transfer this portion of the fee, upon receipt, to  
37 the attorney general.

1        NEW SECTION.    **Sec. 4.**    (1) The department, in consultation with the  
2 attorney general, shall determine if the application is complete for  
3 the purposes of review. The department may find that an application is  
4 incomplete if a question on the application form has not been answered  
5 in whole or in part, or has been answered in a manner that does not  
6 fairly meet the question addressed, or if the application does not  
7 include attachments of supporting documents as required by section 3 of  
8 this act. If the department determines that an application is  
9 incomplete, it shall notify the applicant within fifteen working days  
10 after the date the application was received stating the reasons for its  
11 determination of incompleteness, with reference to the particular  
12 questions for which a deficiency is noted.

13        (2) Within five working days after receipt of a completed  
14 application, the department shall publish notice of the application in  
15 a newspaper of general circulation in the county or counties where the  
16 hospital is located and shall notify by first class United States mail,  
17 electronic mail, or facsimile transmission, any person who has  
18 requested notice of the filing of such applications. The notice must  
19 state that an application has been received, state the names of the  
20 parties to the agreement, describe the contents of the application, and  
21 state the date by which a person may submit written comments about the  
22 application to the department.

23        NEW SECTION.    **Sec. 5.**    During the course of review under this  
24 chapter, the department shall conduct one or more public hearings, at  
25 least one of which must be in the county where the hospital to be  
26 acquired is located. At the hearings, anyone may file written comments  
27 and exhibits or appear and make a statement. The department may  
28 subpoena additional information or witnesses, require and administer  
29 oaths, require sworn statements, take depositions, and use related  
30 discovery procedures for purposes of the hearing and at any time prior  
31 to making a decision on the application.

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

35        NEW SECTION.    **Sec. 6.**    (1) The department shall provide the  
36 attorney general with a copy of a completed application upon receiving  
37 it. The attorney general shall review the completed application, and

1 within forty-five days of the first public hearing held under section  
2 5 of this act shall provide a written opinion to the department as to  
3 whether or not the acquisition meets the requirements for approval in  
4 section 7 of this act.

5 (2) The department shall review the completed application to  
6 determine whether or not the acquisition meets the requirements for  
7 approval in sections 7 and 8 of this act. Within thirty days after  
8 receiving the written opinion of the attorney general under subsection  
9 (1) of this section, the department shall:

10 (a) Approve the acquisition, with or without any specific  
11 modifications or conditions; or

12 (b) Disapprove the acquisition.

13 (3) The department may not make its decision subject to any  
14 condition not directly related to requirements in section 7 or 8 of  
15 this act, and any condition or modification must bear a direct and  
16 rational relationship to the application under review.

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

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

25 NEW SECTION. **Sec. 7.** The department shall only approve an  
26 application if the parties to the acquisition have taken the proper  
27 steps to safeguard the value of charitable assets and ensure that any  
28 proceeds from the acquisition are used for appropriate charitable  
29 health purposes. To this end, the department may not approve an  
30 application unless, at a minimum, it determines that:

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

34 (2) The nonprofit corporation that owns the hospital being acquired  
35 has exercised due diligence in authorizing the acquisition, selecting  
36 the acquiring person, and negotiating the terms and conditions of the  
37 acquisition;

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

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

10 (5) The nonprofit corporation will receive fair market value for  
11 its assets. The attorney general or the department may employ, at the  
12 expense of the acquiring person, reasonably necessary expert assistance  
13 in making this determination. This expense must be in addition to the  
14 fees charged under section 3 of this act;

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

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

19 (8) The proceeds from the acquisition will be controlled as  
20 charitable funds independently of the acquiring person or parties to  
21 the acquisition, and will be used for charitable health purposes  
22 consistent with the nonprofit corporation's original purpose, including  
23 providing health care to the disadvantaged, the uninsured, and the  
24 underinsured and providing benefits to promote improved health in the  
25 affected community;

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

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

34 NEW SECTION. **Sec. 8.** The department shall only approve an  
35 application if the acquisition in question will not detrimentally  
36 affect the continued existence of accessible, affordable health care  
37 that is responsive to the needs of the community in which the hospital

1 to be acquired is located. To this end, the department shall not  
2 approve an application unless, at a minimum, it determines that:

3 (1) Sufficient safeguards are included to assure the affected  
4 community continued access to affordable care;

5 (2) The acquiring person and parties to the acquisition are  
6 committed to providing health care to the disadvantaged, the uninsured,  
7 and the underinsured and to providing benefits to promote improved  
8 health in the affected community. Activities and funding provided  
9 under section 7(8) of this act may be considered in evaluating  
10 compliance with this commitment; and

11 (3) Sufficient safeguards are included to avoid conflict of  
12 interest in patient referral if health care providers will be offered  
13 the opportunity to invest or own an interest in the acquiring person or  
14 an entity related to the person.

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

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

21 NEW SECTION. **Sec. 10.** The department shall require periodic  
22 reports from the nonprofit corporation or its successor nonprofit  
23 corporation or foundation and from the acquiring person or other  
24 parties to the acquisition to ensure compliance with commitments made.  
25 The department may subpoena information and documents and may conduct  
26 onsite compliance audits at the acquiring person's expense.

27 If the department receives information indicating that the  
28 acquiring person is not fulfilling commitments to the affected  
29 community under section 8 of this act, the department shall hold a  
30 hearing upon ten days' notice to the affected parties. If after the  
31 hearing the department determines that the information is true, it may  
32 revoke or suspend the hospital license issued to the acquiring person  
33 pursuant to the procedure established under RCW 70.41.130, refer the  
34 matter to the attorney general for appropriate action, or both. The  
35 attorney general may seek a court order compelling the acquiring person  
36 to fulfill its commitments under section 8 of this act.

1        NEW SECTION.    **Sec. 11.**    The attorney general has the authority to  
2    ensure compliance with commitments that inure to the public interest.

3        NEW SECTION.    **Sec. 12.**    An acquisition of a hospital completed  
4    before the effective date of this act and an acquisition in which an  
5    application for a certificate of need under chapter 70.38 RCW has been  
6    granted by the department before the effective date of this act is not  
7    subject to this chapter.

8        NEW SECTION.    **Sec. 13.**    No provision of this chapter derogates from  
9    the common law or statutory authority of the attorney general.

10       NEW SECTION.    **Sec. 14.**    The department may adopt rules necessary to  
11    implement this chapter and may contract with and provide reasonable  
12    reimbursement to qualified persons to assist in determining whether the  
13    requirements of sections 7 and 8 have been met.

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

16        (1) The board of commissioners of any public hospital district may  
17    authorize the acquisition of district real or personal property only  
18    upon the approval of a majority of the voters in the district at any  
19    general or special election called for that purpose.

20        (2)(a) Prior to the election held under subsection (1) of this  
21    section, the board of commissioners of the hospital district shall  
22    request a written opinion from the Washington state department of  
23    health as to whether or not the acquisition meets the standards set  
24    forth in section 8 of this act.

25        (b) Upon request, the hospital district and the party seeking to  
26    acquire its property shall provide the department with any needed  
27    information and documents. The department may charge the party seeking  
28    to acquire the district property a fee equal to the cost of preparing  
29    the opinion. The opinion shall be delivered to the board of  
30    commissioners no later than ninety days after it is requested.

31        (c) Within five working days after the opinion is received, the  
32    board of commissioners shall publish notice of the opinion in at least  
33    one newspaper of general circulation in the hospital district, stating  
34    how a person may obtain a copy. A copy of the opinion shall be made  
35    available to anyone upon request. An election under subsection (1) of

1 this section may be held no earlier than thirty days after notice of  
2 the opinion is published.

3 (3) For purposes of this section, "acquisition" means the  
4 acquisition by anyone of district real or personal property, whether by  
5 purchase, merger, lease, gift, joint venture, or otherwise, that  
6 results in a change of ownership or control of twenty percent or more  
7 of the assets of the district, or that results in the acquiring person  
8 holding or controlling fifty percent or more of the assets of the  
9 district.

10 NEW SECTION. **Sec. 16.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 17.** Sections 1 through 14 of this act  
15 constitute a new chapter in Title 70 RCW.

16 NEW SECTION. **Sec. 18.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and takes effect  
19 immediately.

--- END ---