

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5227

55th Legislature
1997 Regular Session

Passed by the Senate April 27, 1997
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 27, 1997
YEAS 82 NAYS 16

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5227** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5227

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

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; amending RCW
2 70.44.007, 70.44.240, and 70.44.300; adding a new section to chapter
3 70.44 RCW; adding a new chapter to Title 70 RCW; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** The health of the people of our state is a
7 most important public concern. The state has an interest in assuring
8 the continued existence of accessible, affordable health care
9 facilities that are responsive to the needs of the communities in which
10 they exist. The state also has a responsibility to protect the public
11 interest in nonprofit hospitals and to clarify the responsibilities of
12 local public hospital district boards with respect to public hospital
13 district assets by making certain that the charitable and public assets
14 of those hospitals are managed prudently and safeguarded consistent
15 with their mission under the laws governing nonprofit and municipal
16 corporations.

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

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

2 (2) "Hospital" means any entity that is: (a) Defined as a hospital
3 in RCW 70.41.020 and is required to obtain a license under RCW
4 70.41.090; or (b) a psychiatric hospital required to obtain a license
5 under chapter 71.12 RCW.

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

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

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

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

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

36 (3) The department shall charge an applicant fees sufficient to
37 cover the costs of implementing this chapter. The fees must include
38 the cost of the attorney general's opinion under section 6 of this act.

1 The department shall transfer this portion of the fee, upon receipt, to
2 the attorney general.

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

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

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

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

1 NEW SECTION. **Sec. 6.** (1) The department shall provide the
2 attorney general with a copy of a completed application upon receiving
3 it. The attorney general shall review the completed application, and
4 within forty-five days of the first public hearing held under section
5 5 of this act shall provide a written opinion to the department as to
6 whether or not the acquisition meets the requirements for approval in
7 section 7 of this act.

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

13 (a) Approve the acquisition, with or without any specific
14 modifications or conditions; or

15 (b) Disapprove the acquisition.

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

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

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

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

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

37 (2) The nonprofit corporation that owns the hospital being acquired
38 has exercised due diligence in authorizing the acquisition, selecting

1 the acquiring person, and negotiating the terms and conditions of the
2 acquisition;

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

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 8.** The department shall only approve an
37 application if the acquisition in question will not detrimentally
38 affect the continued existence of accessible, affordable health care

1 that is responsive to the needs of the community in which the hospital
2 to be acquired is located. To this end, the department shall not
3 approve an application unless, at a minimum, it determines that:

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

8 (2) The acquisition will not result in the revocation of hospital
9 privileges;

10 (3) Sufficient safeguards are included to maintain appropriate
11 capacity for health science research and health care provider
12 education;

13 (4) The acquiring person and parties to the acquisition are
14 committed to providing health care to the disadvantaged, the uninsured,
15 and the underinsured and to providing benefits to promote improved
16 health in the affected community. Activities and funding provided
17 under section 7(8) of this act may be considered in evaluating
18 compliance with this commitment; and

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

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

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

27 NEW SECTION. **Sec. 10.** The department shall require periodic
28 reports from the nonprofit corporation or its successor nonprofit
29 corporation or foundation and from the acquiring person or other
30 parties to the acquisition to ensure compliance with commitments made.
31 The department may subpoena information and documents and may conduct
32 onsite compliance audits at the acquiring person's expense.

33 If the department receives information indicating that the
34 acquiring person is not fulfilling commitments to the affected
35 community under section 8 of this act, the department shall hold a
36 hearing upon ten days' notice to the affected parties. If after the
37 hearing the department determines that the information is true, it may

1 revoke or suspend the hospital license issued to the acquiring person
2 pursuant to the procedure established under RCW 70.41.130, refer the
3 matter to the attorney general for appropriate action, or both. The
4 attorney general may seek a court order compelling the acquiring person
5 to fulfill its commitments under section 8 of this act.

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

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

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

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

19 **Sec. 15.** RCW 70.44.007 and 1982 c 84 s 12 are each amended to read
20 as follows:

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

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

27 (2) (~~The words~~) "Other health care services" (~~shall~~) means
28 nursing home, extended care, long-term care, outpatient,
29 rehabilitative, health maintenance, and ambulance services and such
30 other services as are appropriate to the health needs of the population
31 served.

32 (3) "Public hospital district" or "district" means public health
33 care service district.

1 **Sec. 16.** RCW 70.44.240 and 1982 c 84 s 19 are each amended to read
2 as follows:

3 Any public hospital district may contract or join with any other
4 public hospital district, any publicly owned hospital, any nonprofit
5 hospital, any corporation, any other legal entity, or individual to
6 acquire (~~(or provide services or facilities)~~), own, operate, manage, or
7 provide any hospital or other health care facilities or hospital
8 services or other health care services to be used by individuals,
9 districts, hospitals, or others, including the providing of health
10 maintenance services. If a public hospital district chooses to
11 contract or join with another party or parties pursuant to the
12 provisions of this chapter, it may do so through the establishment of
13 a nonprofit corporation, partnership, limited liability company, or
14 other legal entity of its choosing in which the public hospital
15 district and the other party or parties participate. The governing
16 body of such legal entity shall include representatives of the public
17 hospital district, including members of the public hospital district's
18 board of commissioners. A public hospital district contracting or
19 joining with another party pursuant to the provisions of this chapter
20 may appropriate funds and may sell, lease, or otherwise provide
21 property, personnel, and services to the legal entity established to
22 carry out the contract or joint activity.

23 **Sec. 17.** RCW 70.44.300 and 1984 c 103 s 4 are each amended to read
24 as follows:

25 (1) The board of commissioners of any public hospital district may
26 sell and convey at public or private sale real property of the district
27 (~~(which)~~) if the board (~~(has determined)~~) determines by resolution that
28 the property is no longer required for public hospital district
29 purposes or determines by resolution that the sale of the property will
30 further the purposes of the public hospital district. (~~(Such sale and~~
31 conveyance may be by deed or real estate contract.))

32 (2) Any sale of district real property authorized pursuant to this
33 section shall be preceded, not more than one year prior to the date of
34 sale, by market value appraisals by three licensed real estate brokers
35 or professionally designated real estate appraisers as defined in RCW
36 74.46.020 or three independent experts in valuing health care property,
37 selected by the board of commissioners, and no sale shall take place if

1 the sale price would be less than ninety percent of the average of such
2 appraisals.

3 (3) When the board of commissioners of any public hospital district
4 proposes a sale of district real property pursuant to this section and
5 the value of the property exceeds one hundred thousand dollars, the
6 board shall publish a notice of its intention to sell the property.
7 The notice shall be published at least once each week during two
8 consecutive weeks in a legal newspaper of general circulation within
9 the public hospital district. The notice shall describe the property
10 to be sold and designate the place where and the day and hour when a
11 hearing will be held. The board shall hold a public hearing upon the
12 proposal to dispose of the public hospital district property at the
13 place and the day and hour fixed in the notice and consider evidence
14 offered for and against the propriety and advisability of the proposed
15 sale.

16 (4) If in the judgment of the board of commissioners of any
17 district the sale of any district real property not needed for public
18 hospital district purposes would be facilitated and greater value
19 realized through use of the services of licensed real estate brokers,
20 a contract for such services may be negotiated and concluded. The fee
21 or commissions charged for any broker service shall not exceed seven
22 percent of the resulting sale price for a single parcel. No licensed
23 real estate broker or professionally designated real estate appraisers
24 as defined in RCW 74.46.020 or independent expert in valuing health
25 care property selected by the board to appraise the market value of a
26 parcel of property to be sold may be a party to any contract with the
27 public hospital district to sell such property for a period of three
28 years after the appraisal.

29 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.44 RCW
30 to read as follows:

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

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

35 (b) That the procedures used in the decision-making process allowed
36 district officials to thoroughly fulfill their due diligence
37 responsibilities as municipal officers, including those covered under

1 chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW
2 prohibiting malfeasance of public officials;

3 (c) That the acquisition will not result in the revocation of
4 hospital privileges;

5 (d) That sufficient safeguards are included to maintain appropriate
6 capacity for health science research and health care provider
7 education;

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

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

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

18 (h) That the acquisition complies with the requirements of RCW
19 70.44.300 relating to fair market value; and

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

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

25 (3)(a) Prior to approving the acquisition of a district hospital,
26 the board of commissioners of the hospital district shall obtain a
27 written opinion from a qualified independent expert or the Washington
28 state department of health as to whether or not the acquisition meets
29 the standards set forth in section 8 of this act.

30 (b) Upon request, the hospital district and the person seeking to
31 acquire its hospital shall provide the department or independent expert
32 with any needed information and documents. The department shall charge
33 the hospital district for any costs the department incurs in preparing
34 an opinion under this section. The hospital district may recover from
35 the acquiring person any costs it incurs in obtaining the opinion from
36 either the department or the independent expert. The opinion shall be
37 delivered to the board of commissioners no later than ninety days after
38 it is requested.

1 (c) Within ten working days after it receives the opinion, the
2 board of commissioners shall publish notice of the opinion in at least
3 one newspaper of general circulation within the hospital district,
4 stating how a person may obtain a copy, and giving the time and
5 location of the hearing required under (d) of this subsection. It
6 shall make a copy of the report and the opinion available to anyone
7 upon request.

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

12 (4)(a) For purposes of this section, "acquisition" means an
13 acquisition by a person of any interest in a hospital owned by a public
14 hospital district, whether by purchase, merger, lease, or otherwise,
15 that results in a change of ownership or control of twenty percent or
16 more of the assets of a hospital currently licensed and operating under
17 RCW 70.41.090. Acquisition does not include an acquisition where the
18 other party or parties to the acquisition are nonprofit corporations
19 having a substantially similar charitable health care purpose,
20 organizations exempt from federal income tax under section 501(c)(3) of
21 the internal revenue code, or governmental entities. Acquisition does
22 not include an acquisition where the other party is an organization
23 that is a limited liability corporation, a partnership, or any other
24 legal entity and the members, partners, or otherwise designated
25 controlling parties of the organization are all nonprofit corporations
26 having a charitable health care purpose, organizations exempt from
27 federal income tax under section 501(c)(3) of the internal revenue
28 code, or governmental entities. Acquisition does not include
29 activities between two or more governmental organizations, including
30 organizations acting pursuant to chapter 39.34 RCW, regardless of the
31 type of organizational structure used by the governmental entities.

32 (b) For purposes of this subsection (4), "person" means an
33 individual, a trust or estate, a partnership, a corporation including
34 associations, a limited liability company, a joint stock company, or an
35 insurance company.

36 NEW SECTION. **Sec. 19.** If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 20.** Sections 1 through 14 of this act
4 constitute a new chapter in Title 70 RCW.

5 NEW SECTION. **Sec. 21.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

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