



House of Representatives

General Assembly

File No. 704

February Session, 2014

Substitute House Bill No. 5257

House of Representatives, April 29, 2014

The Committee on Appropriations reported through REP. WALKER of the 93rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING HOSPITAL EMPLOYEES AND HOSPITAL CONVERSIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section
2 and section 2 of this act:

3 (1) "Affected community" means the city or town in which a
4 hospital is located and the cities or towns whose inhabitants are
5 regularly served by the hospital;

6 (2) "Conversion" means any transfer by a person or persons of the
7 assets or operation of a nonprofit hospital to a person or persons that is
8 organized or operated for profit, and any transfer by a person or
9 persons of the assets or operation of a for-profit hospital to a person or
10 persons that is organized or operated as a nonprofit, that results in (A)
11 a change in the ownership, control or possession of not less than
12 twenty per cent of (i) the voting rights or interests in the hospital, or
13 (ii) the assets of the hospital; (B) a person previously unaffiliated with

14 the hospital possessing not less than ten per cent of (i) the voting rights
15 or interests in the hospital, or (ii) the assets of the hospital; or (C) the
16 removal, addition or substitution of a person holding an ownership or
17 membership interest in the hospital that results in a previously
18 unaffiliated person gaining or acquiring a controlling interest or
19 controlling vote in the hospital;

20 (3) "Person" means any individual, trust or estate, firm, partnership,
21 corporation, limited liability company or other entity, including the
22 state and any political subdivision thereof; and

23 (4) "Transfer" has the same meaning as provided in section 19a-486
24 of the general statutes.

25 (b) Prior to undergoing a conversion, the hospital and the person or
26 persons seeking the assets or operation or a change in control of
27 operations of such hospital shall enter into a written memorandum of
28 understanding to preserve community benefits in the affected
29 community. The memorandum of understanding shall require the
30 person or persons seeking the assets or operation or a change in
31 control of operations of such hospital to: (1) Maintain the current rates
32 of pay and current benefits of all employees employed at such hospital
33 at the time of conversion; (2) recognize any labor organizations
34 representing employees employed at such hospital at the time of
35 conversion; (3) honor any collective bargaining agreements entered
36 into between a labor organization and such hospital; (4) maintain
37 staffing levels at the time of conversion for (A) in the case of a
38 nonprofit hospital, not less than three years following the date the
39 Attorney General and Commissioner of Public Health have approved
40 the conversion pursuant to section 19a-486b of the general statutes, or
41 (B) in the case of a for-profit hospital, not less than three years
42 following the consummation of the conversion; and (5) follow best
43 practices for staffing levels to assure patient care and safety.

44 (c) Prior to undergoing a conversion, the city or town in which such
45 hospital is located shall hold not less than three public hearings. The
46 public hearings shall be open to all members of the public in the

47 affected community and shall include, but not be limited to: (1) A
 48 discussion of the conversion and the person or persons seeking the
 49 assets or operation or a change in control of operations of such
 50 hospital; (2) a summary of the potential impact of the proposed
 51 conversion on employment at such hospital; and (3) an opportunity to
 52 question representatives of such hospital and the person or persons
 53 seeking the assets or operation or a change in control of operations of
 54 such hospital about any relevant concerns. Not less than fourteen days
 55 prior to each hearing, notice of the time and place of the hearing shall
 56 be publicized in one or more newspapers of general circulation in the
 57 affected community. Each public hearing shall take place (A) in the
 58 case of a nonprofit hospital, at least sixty days before a certificate of
 59 need application is filed with the Department of Public Health
 60 pursuant to section 19a-486a of the general statutes, or (B) in the case of
 61 a for-profit hospital, at least sixty days prior to the consummation of
 62 the conversion.

63 Sec. 2. (NEW) (*Effective from passage*) Not later than thirty days after
 64 undergoing a conversion, the person or persons having acquired
 65 possession of the assets or operation of the hospital shall submit a five-
 66 year strategic plan to the Department of Public Health and the Labor
 67 Department detailing how employment may be affected by decisions
 68 to grow or reduce health care services at the hospital.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

APP *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 15 \$	FY 16 \$
Various Municipalities	STATE MANDATE - Cost	Less than \$1,000	Less than \$1,000

Explanation

The bill requires municipalities effected by the conversion of a hospital from either non-profit to for-profit, or for-profit to non-profit, to: 1) hold at least three public hearings regarding the conversion and; 2) to post notice of each public hearing in at least one newspaper.

There is a minimal cost, estimated to be less than \$5,000, to hold three public hearings, assuming they are held separately from hearings that would have occurred anyway. This cost could be incurred across multiple fiscal years, based on the timing of the public hearings, and it would vary based on how a town conducts its public hearings. Towns incur the cost of publishing legal notices for the hearings, and may also incur costs associated with transcription services, and overtime for maintenance, clerical, or public safety workers.

The bill makes other changes to the process of hospital conversion. These changes have no fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5257*****AN ACT CONCERNING HOSPITAL EMPLOYEES AND HOSPITAL CONVERSIONS.*****SUMMARY:**

This bill sets requirements that a hospital and an entity seeking to convert it (“the purchaser”) to either a nonprofit or for-profit hospital must meet before and after undergoing the conversion process. Prior to the conversion, it requires the hospital and purchaser to enter into a memorandum of understanding (MOU) that, among other things, requires the purchaser to recognize the hospital’s unions and honor its collective bargaining agreements (see COMMENT). It also requires the hospital’s host municipality to hold three public hearings for the hospital and purchaser at least 60 days before they start the conversion.

Within 30 days after completing the conversion, the bill requires the purchaser to submit, to the departments of Labor and Public Health, a five-year strategic plan detailing how its decisions to change the hospital’s health care services could affect employment.

Under the bill, a hospital’s conversion occurs when a nonprofit hospital’s transfer of its assets or operation to a for-profit entity, or a for-profit hospital’s transfer of its assets or operation to a nonprofit entity, results in:

1. a change in the ownership, control, or possession of at least 20% of the (a) voting rights in the hospital or (b) hospital’s interests or assets (The bill does not define “voting rights in the hospital,” but presumably it refers to votes that can influence control over the hospital.);

2. a previously unaffiliated entity controlling at least 10% of the (a) voting rights in the hospital or (b) hospital's interests or assets; or
3. a change in the hospital's ownership or membership interest that gives a previously unaffiliated entity a controlling interest or vote in the hospital.

EFFECTIVE DATE: Upon passage

MEMORANDUM OF UNDERSTANDING

The bill requires a hospital and purchaser, before the conversion process, to enter into a written MOU to preserve community benefits in the hospital's host municipality and any other municipality regularly served by the hospital. The MOU must require the purchaser to:

1. maintain existing pay rates and benefits for employees employed at the hospital when it converts,
2. recognize any unions representing the hospital's employees when it converts,
3. honor the hospital's existing collective bargaining agreements,
4. follow best practices for staffing levels to assure patient care and safety, and
5. maintain the hospital's existing staffing levels for at least three years.

Under the bill, hospitals converting to for-profits must maintain staffing levels for at least three years after the conversion process required by law ends. Hospitals converting to nonprofits must maintain staffing levels for at least three years after the conversion is consummated (the law does not specify a procedure for for-profit hospitals converting to nonprofits).

It is unclear how such an MOU would be enforced once the conversion is complete, since the hospital will presumably no longer be a separate entity from the purchaser and thus unable to enforce the MOU's terms.

PUBLIC HEARINGS

The bill requires the hospital's host municipality to hold at least three public hearings before the hospital's conversion. For nonprofits converting to for-profits, the hearings must be no later than 60 days before the hospital and purchaser file a certificate of need application with the Department of Public Health (see "BACKGROUND"). The hearings for hospitals converting to nonprofits must be held at least 60 days before the conversion is consummated.

At least 14 days before each hearing, notice must be published (presumably, by the municipality) in a newspaper of general circulation in the hospital's host municipality and any other municipality whose inhabitants the hospital regularly serves. The hearing must include (1) a discussion of the conversion and the purchaser, (2) a summary of the proposed conversion's potential impact on employment at the hospital, and (3) an opportunity to question the purchaser's and hospital's representatives about any relevant concerns.

BACKGROUND

Conversion Process Required by Law

The law requires the public health commissioner or her designee and the attorney general (AG) to review and approve a nonprofit hospital's conversion to a for-profit entity (CGS §§ 19a-486 to 486h). Filing a certificate of need application with the Department of Public Health (DPH) is one of the initial steps the parties must take in the process. Before approving the conversion, DPH and the AG must hold a hearing and consider numerous factors, including whether (1) the hospital exercised due diligence in deciding to pursue a conversion, (2) the hospital will receive fair market value for its assets, and (3) the affected community is assured of continued access to affordable health

care.

Legislative History

The House referred the original bill (File 86) to the Appropriations Committee, which favorably reported a substitute that extends the bill’s requirements to include hospitals converting to nonprofits.

COMMENT

Federal Preemption

Under the Supremacy Clause of the U.S. Constitution, state law is preempted when Congress explicitly states its intent to regulate in the area (Art.VI). The National Labor Relations Act (29 USC §§151-169) and the National Labor Relations Board, which was created by the act, have jurisdiction over requirements for recognizing private-sector unions and determining if a collective bargaining agreement transfers to a successor employer. Because of this, the bill’s provisions requiring the purchaser to recognize the hospital’s unions and honor its collective bargaining agreements may be vulnerable to a legal challenge asserting they are preempted.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable
Yea 8 Nay 4 (03/11/2014)

Public Health Committee

Joint Favorable
Yea 17 Nay 6 (04/14/2014)

Appropriations Committee

Joint Favorable Substitute
Yea 33 Nay 16 (04/22/2014)