

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 597  
Committee Substitute Favorable 4/28/97  
Senate Judiciary Committee Substitute Adopted 6/9/97

Short Title: Municipal Hospital/Lease Venture.

(Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED  
AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL  
AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-6 reads as rewritten:

**"§ 131E-6. Definitions.**

As used in this Part, unless otherwise specified:

- (1) 'City', as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and 'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

- 1           (2) 'Community general hospital' means a short-term nonfederal hospital  
2           that provides diagnostic and therapeutic services to patients for a variety  
3           of medical conditions, both surgical and nonsurgical, such services  
4           being available for use primarily by residents of the community in  
5           which it is located.
- 6           (3) 'Corporation, foreign or domestic, authorized to do business in North  
7           Carolina' means a corporation for profit or having a capital stock which  
8           is created and organized under Chapter 55 of the General Statutes or any  
9           other general or special act of this State, or a foreign corporation which  
10          has procured a certificate of authority to transact business in this State  
11          pursuant to Article 10 of Chapter 55 of the General Statutes.
- 12          (4) ~~'Hospital facility' means any type of hospital; facility operated in  
13          connection with a hospital such as a clinic, including mental health  
14          clinics; nursing, convalescent, or rehabilitative facility; public health  
15          center; or any facility of a local health department. The term 'hospital  
16          facility' also includes related facilities such as laboratories, outpatient  
17          departments, housing and training facilities for nurses and other health  
18          care professionals, central service facilities operated in connection with  
19          hospitals, and all equipment necessary for its operation. one or more  
20          buildings, structures, additions, extensions, improvements or other  
21          facilities, whether or not located on the same site or sites, machinery,  
22          equipment, furnishings or other real or personal property suitable for  
23          health care or medical care; and includes, without limitation, general  
24          hospitals; chronic disease, maternity, mental, tuberculosis and other  
25          specialized hospitals; nursing homes, including skilled nursing facilities  
26          and intermediate care facilities; adult care homes for the aged and  
27          disabled; public health center facilities; housing or quarters for local  
28          public health departments; facilities for intensive care and self-care;  
29          clinics and outpatient facilities; clinical, pathological and other  
30          laboratories; health care research facilities; laundries; residences and  
31          training facilities for nurses, interns, physicians and other staff  
32          members; food preparation and food service facilities; administrative  
33          buildings, central service and other administrative facilities;  
34          communication, computer and other electronic facilities; fire-fighting  
35          facilities; pharmaceutical and recreational facilities; storage space; X  
36          ray, laser, radiotherapy and other apparatus and equipment;  
37          dispensaries; utilities; vehicular parking lots and garages; office  
38          facilities for hospital staff members and physicians; and such other  
39          health and hospital facilities customarily under the jurisdiction of or  
40          provided by hospitals, or any combination of the foregoing, with all  
41          necessary, convenient or related interests in land, machinery, apparatus,  
42          appliances, equipment, furnishings, appurtenances, site preparation,  
43          landscaping, and physical amenities.~~

1           (4.1) 'Hospital land' means air and ground rights to real property held either  
2           in fee or by lease by a municipality, with all easements, rights-of-way,  
3           appurtenances, landscaping, and physical amenities such as utilities,  
4           parking lots, and garages, but excluding other improvements to land  
5           described in subsection (4) of this section and G.S. 131E-16(15).

6           (5) 'Municipality' means any county, city, or other political subdivision of  
7           this State, or any hospital district created under Part C of this Article.

8           (6) 'Nonprofit association' or 'nonprofit corporation' means any association  
9           or corporation from which no part of the net earnings inures or may  
10          lawfully inure to the benefit of a private shareholder or individual."

11          Section 2. G.S. 131E-13 reads as rewritten:

12        **"§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit**  
13        **corporations or other business entities by municipalities and hospital**  
14        **authorities.**

15        (a) A municipality or hospital authority as defined in G.S. 131E-16(14), may  
16        lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic,  
17        authorized to do business in North Carolina, subject to these conditions, which shall be  
18        included in the lease, agreement of sale, or agreement of conveyance:

19           (1) The corporation shall continue to provide the same or similar clinical  
20           hospital services to its patients in medical-surgery, obstetrics, pediatrics,  
21           outpatient and emergency treatment, including emergency services for  
22           the indigent, that the hospital facility provided prior to the lease, sale, or  
23           conveyance. These services may be terminated only as prescribed by  
24           Certificate of Need Law prescribed in Article 9 of Chapter 131E of the  
25           General Statutes, or, if Certificate of Need Law is inapplicable, by  
26           review procedure designed to guarantee public participation pursuant to  
27           rules adopted by the Secretary of the Department of Human Resources.

28           (2) The corporation shall ensure that indigent care is available to the  
29           population of the municipality or area served by the hospital authority at  
30           levels related to need, as previously demonstrated and determined  
31           mutually by the municipality or hospital authority and the corporation.

32           (3) The corporation shall not enact financial admission policies that have  
33           the effect of denying essential medical services or treatment solely  
34           because of a patient's immediate inability to pay for the services or  
35           treatment.

36           (4) The corporation shall ensure that admission to and services of the  
37           facility are available to beneficiaries of governmental reimbursement  
38           programs (Medicaid/Medicare) without discrimination or preference  
39           because they are beneficiaries of those programs.

40           (5) The corporation shall prepare an annual report that shows compliance  
41           with the requirements of the lease, sale, or conveyance.

42          The corporation shall further agree that if it fails to substantially comply with these  
43          conditions, or if it fails to operate the facility as a community general hospital open to the

1 general public and free of discrimination based on race, creed, color, sex, or national  
2 origin unless relieved of this responsibility by operation of law, or if the corporation  
3 dissolves without a successor corporation to carry out the terms and conditions of the  
4 lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the  
5 hospital facility, including the building, land and equipment associated with the hospital,  
6 shall revert to the municipality or hospital authority or successor entity originally  
7 conveying the hospital; provided that any building, land, or equipment associated with  
8 the hospital facility that the corporation has constructed or acquired since the sale may  
9 revert only upon payment to the corporation of a sum equal to the cost less depreciation  
10 of the building, land, or equipment.

11 This section shall not apply to leases, sales, or conveyances of nonmedical services or  
12 commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus  
13 hospital property that is not required in the delivery of necessary hospital services at the  
14 time of the lease, sale, or conveyance.

15 ~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall~~  
16 ~~apply to leases, sales or conveyances under this section.~~

17 (b) In the case of a sale or conveyance, if either general obligation bonds or  
18 revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the  
19 time of sale or conveyance, then the corporation shall agree to the following:

20 By the effective date of sale or conveyance, the corporation shall place into an escrow  
21 fund money or direct obligations of, or obligations the principal of and interest on which,  
22 are unconditionally guaranteed by the United States of America (as approved by the  
23 Local Government Commission), the principal of and interest on which, when due and  
24 payable, will provide sufficient money to pay the principal of and the interest and  
25 redemption premium, if any, on all bonds then outstanding to the maturity date or dates  
26 of such bonds or to the date or dates specified for the redemption thereof. The corporation  
27 shall furnish to the Local Government Commission such evidence as the Commission  
28 may require that the securities purchased will satisfy the requirements of this section. A  
29 hospital which has placed funds in escrow to retire outstanding general obligation or  
30 revenue bonds, as provided in this section, shall not be considered a public hospital, and  
31 G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

32 No bonds, notes or other evidences of indebtedness shall be issued by a municipality  
33 or hospital authority to finance equipment for or the acquisition, extension, construction,  
34 reconstruction, improvement, enlargement, or betterment of any hospital facility if the  
35 facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do  
36 business in North Carolina.

37 (c) In the case of a lease, the municipality or hospital authority shall determine the  
38 length of the lease. No lease executed under this section shall be deemed to convey a  
39 freehold interest. Any sublease or assignment of the lease shall be subject to the  
40 conditions prescribed by this section. If the term of the lease is more than 10 years, and  
41 either general obligation bonds or revenue bonds issued for the benefit of the hospital to  
42 be leased are outstanding at the time of the lease, then the corporation shall agree to the  
43 following:

1 By the effective date of the lease, the corporation shall place into an escrow fund  
2 money or direct obligations of, or obligations the principal of and interest on which, are  
3 unconditionally guaranteed by the United States of America (as approved by the Local  
4 Government Commission), the principal of and interest on which, when due and payable,  
5 will provide sufficient money to pay the principal of and the interest and redemption  
6 premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds  
7 or to the date or dates specified for the redemption thereof. The corporation shall furnish  
8 to the Local Government Commission such evidence as the Commission may require that  
9 the securities purchased will satisfy the requirements of this section.

10 No bonds, notes or other evidences of indebtedness shall be issued by a municipality  
11 or hospital authority to finance equipment for or the acquisition, extension, construction,  
12 reconstruction, improvement, enlargement, or betterment of any hospital facility when  
13 the facility is leased to a corporation, foreign or domestic, authorized to do business in  
14 North Carolina.

15 (d) The municipality or hospital authority shall comply with the following  
16 procedures before leasing, selling, or conveying a hospital facility, or part thereof:

- 17 (1) The municipality or hospital authority shall first adopt a resolution  
18 declaring its intent to sell, lease, or convey the hospital facility at a  
19 regular meeting on 10 days' public notice. Notice shall be given by  
20 publication in one or more papers of general circulation in the affected  
21 area describing the intent to lease, sell, or convey the hospital facility  
22 involved, known potential buyers or lessees, a solicitation of additional  
23 interested buyers or lessees and intent to negotiate the terms of the lease  
24 or sale. Specific notice, given by certified mail, shall be given to the  
25 local office of each state-supported program that has made a capital  
26 expenditure in the hospital facility, to the Department of Human  
27 Resources, and to the Office of State Budget and Management.
- 28 (2) At the meeting to adopt a resolution of intent, the municipality or  
29 hospital authority shall request proposals for lease or purchase by direct  
30 solicitation of at least five prospective lessees or buyers. The solicitation  
31 shall include a copy of G.S. 131E-13.
- 32 (3) The municipality or hospital authority shall conduct a public hearing on  
33 the resolution of intent not less than 15 days after its adoption. Notice of  
34 the public hearing shall be given by publication at least 15 days before  
35 the hearing. All interested persons shall be heard at the public hearing.
- 36 (4) Before considering any proposal to lease or purchase, the municipality  
37 or hospital authority shall require information on charges, services, and  
38 indigent care at similar facilities owned or operated by the proposed  
39 lessee or buyer.
- 40 (5) Not less than 45 days after adopting a resolution of intent and not less  
41 than 30 days after conducting a public hearing on the resolution of  
42 intent, the municipality or hospital authority shall conduct a public  
43 hearing on proposals for lease or purchase that have been made. Notice

1 of the public hearings shall be given by publication at least 10 days  
2 before the hearing. The notice shall state that copies of proposals for  
3 lease or purchase are available to the public.

4 (6) The municipality or hospital authority shall make copies of the  
5 proposals to lease or purchase available to the public at least 10 days  
6 before the public hearing on the proposals.

7 (7) Not less than 60 days after adopting a resolution of intent, the  
8 municipality or hospital authority at a regular meeting shall approve any  
9 lease, sale, or conveyance by a resolution. The municipality or hospital  
10 authority shall adopt this resolution only upon a finding that the lease,  
11 sale, or conveyance is in the public interest after considering whether  
12 the proposed lease, sale, or conveyance will meet the health-related  
13 needs of medically underserved groups, such as low income persons,  
14 racial and ethnic minorities, and handicapped persons. Notice of the  
15 regular meeting shall be given at least 10 days before the meeting and  
16 shall state that copies of the lease, sale, or conveyance proposed for  
17 approval are available.

18 (8) At least 10 days before the regular meeting at which any lease, sale, or  
19 conveyance is approved, the municipality or hospital authority shall  
20 make copies of the proposed contract available to the public.

21 (e) Notwithstanding the provisions of subsections (c) and (d) of this section or  
22 G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may  
23 lease or sublease hospital land to a corporation or other business entity, whether for profit  
24 or not for profit, and may participate as an owner, joint venturer, or other equity  
25 participant with a corporation or other business entity for the development, construction,  
26 and operation of medical office buildings and other health care or hospital facilities, so  
27 long as the municipality, hospital authority, or other entity continues to maintain its  
28 primary community general hospital facilities as required by subsection (a) of this  
29 section.

30 (f) A municipality or hospital authority may permit or consent to the pledge of  
31 hospital land or leasehold estates in hospital land to facilitate the development,  
32 construction, and operation of medical office buildings and other health care or hospital  
33 facilities. A municipality or hospital authority also may, as lessee, enter into master  
34 leases or agreements to fund for temporary vacancies relating to hospital land or hospital  
35 facilities for use in the provision of health care.

36 (g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes  
37 shall apply to leases, subleases, sales, or conveyances under this Chapter."

38 Section 3. G.S. 131E-16 reads as rewritten:

39 "**§ 131E-16. Definitions.**

40 As used in this Part, unless otherwise specified:

41 (1) 'Board of county commissioners' means the legislative body charged  
42 with governing the county.

- 1 (2) 'Bonds' means any bonds or notes issued by the hospital authority  
2 pursuant to this Part and the Local Government Finance Act, Chapter  
3 159 of the General Statutes.
- 4 (3) 'City' means any city or town which is, or is about to be, included in the  
5 territorial boundaries of a hospital authority when created hereunder.
- 6 (4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the  
7 city, or the officers thereof charged with the duties customarily imposed  
8 on the clerk and mayor, respectively.
- 9 (5) 'City council' means the legislative body, council, board of  
10 commissioners, board of trustees, or other body charged with governing  
11 the city or town.
- 12 (6) 'Commissioner' means one of the members of a hospital authority  
13 appointed in accordance with the provisions of this Part.
- 14 (7) 'Community general hospital' means a short-term nonfederal hospital  
15 that provides diagnostic and therapeutic services to patients for a variety  
16 of medical conditions, both surgical and nonsurgical, such services  
17 being available for use primarily by residents of the community in  
18 which it is located.
- 19 (8) 'Contract' means any agreement of a hospital authority with or for the  
20 benefit of an obligee whether contained in a resolution, trust indenture,  
21 mortgage, lease, bond or other instrument.
- 22 (9) 'Corporation, foreign or domestic, authorized to do business in North  
23 Carolina' means a corporation for profit or having a capital stock which  
24 is created and organized under Chapter 55 of the General Statutes or any  
25 other general or special act of this State, or a foreign corporation which  
26 has procured a certificate of authority to transact business in this State  
27 pursuant to Article 10 of Chapter 55 of the General Statutes.
- 28 (10) 'County' means the county which is, or is about to be, included in the  
29 territorial boundaries of a hospital authority when created hereunder.
- 30 (11) 'County clerk' and 'chairman of the board of county commissioners'  
31 means the clerk and chairman, respectively, of the county or the officers  
32 thereof charged with the duties customarily imposed on the clerk and  
33 chairman, respectively.
- 34 (12) 'Federal government' means the United States of America, or any  
35 agency, instrumentality, corporate or otherwise, of the United States of  
36 America.
- 37 (13) 'Government' means the State and federal governments and any  
38 subdivision, agency or instrumentality, corporate or otherwise, of either  
39 of them.
- 40 (14) 'Hospital authority' means a public body and a body corporate and  
41 politic organized under the provisions of this Part.
- 42 (15) 'Hospital facilities' means any one or more buildings, structures,  
43 additions, extensions, improvements or other facilities, whether or not

1 located on the same site or sites, machinery, equipment, furnishings or  
2 other real or personal property suitable for health care or medical care;  
3 and includes, without limitation, general hospitals; chronic disease,  
4 maternity, mental, tuberculosis and other specialized hospitals; nursing  
5 homes, including skilled nursing facilities and intermediate care  
6 facilities; adult care homes for the aged and disabled; public health  
7 center facilities; housing or quarters for local public health departments;  
8 facilities for intensive care and self-care; clinics and outpatient facilities;  
9 clinical, pathological and other laboratories; health care research  
10 facilities; laundries; residences and training facilities for nurses, interns,  
11 physicians and other staff members; food preparation and food service  
12 facilities; administrative buildings, central service and other  
13 administrative facilities; communication, computer and other electronic  
14 facilities; fire-fighting facilities; pharmaceutical and recreational  
15 facilities; storage space; X ray, laser, radiotherapy and other apparatus  
16 and equipment; dispensaries; utilities; vehicular parking lots and  
17 garages; office facilities for hospital staff members and physicians; and  
18 such other health and hospital facilities customarily under the  
19 jurisdiction of or provided by hospitals, or any combination of the  
20 foregoing, with all necessary, convenient or related interests in land,  
21 machinery, apparatus, appliances, equipment, furnishings,  
22 appurtenances, site preparation, landscaping and physical amenities.

23 (15.1) 'Hospital land' means air and ground rights to real property held  
24 either in fee or by lease by a hospital authority, with all  
25 easements, rights-of-way, appurtenances, landscaping, and  
26 physical amenities such as utilities, parking lots, and garages, but  
27 excluding other improvements to land described in G.S. 131E-  
28 6(4) and subsection (15) of this section.

29 (16) 'Municipality' means any county, city, town or incorporated village,  
30 other than a city as defined above, which is located within or partially  
31 within the territorial boundaries of an authority.

32 (17) 'Real property' means lands, lands under water, structures, and any and  
33 all easements, franchises and incorporeal hereditaments and every estate  
34 and right therein, legal and equitable, including terms for years and liens  
35 by way of judgment, mortgage or otherwise.

36 (18) 'State' means the State of North Carolina."

37 Section 4. This act is effective when it becomes law.