AMENDED IN ASSEMBLY AUGUST 24, 2010

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 9, 2010

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 13, 2010

SENATE BILL No. 1240

Introduced by Senator Corbett

February 19, 2010

An act to amend Section 32126 of, and to add Section 32121.6 to, the Health and Safety Code, relating to local health care districts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1240, as amended, Corbett. Local health care districts: operation of facility by another entity.

Existing law, the Local Health Care District Law, provides for the formation of local health care districts and, until January 1, 2011, authorizes each local district to transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. Commencing January 1, 2011, existing law, instead, restricts these transfers only to nonprofit corporations.

This bill would, notwithstanding any provision of law, require, with certain exceptions, when a district is under contract with a public or private entity to operate a district facility, the district and the public or private entity that operates the district facility to (1) require that assets of any facility within the geographic boundaries of the district and owned by the district be used exclusively for the benefit of a facility owned by the district, except as specified, (2) require the hospital and the operating entity to annually undergo an independent financial audit and that the resulting report be made public, and (3) preclude, in the case of a subsequent sale of the facility or any assets of the district to the operating entity, any losses incurred by the entity in the operation of the facility from being used as a credit against the purchase price of the facility or other district assets.

Existing law permits a health care district board of directors to provide for the operation and maintenance through tenants of the whole or any part of a hospital acquired or constructed by it, and for that purpose may enter into a lease agreement that it believes will best serve the interest of the district.

This bill would, instead, permit those lease agreements only to the extent that the agreement does not provide benefits to the tenants beyond those reasonably necessary to ensure the operation of the hospital for the benefit of the district and allow the tenant to recoup its capital investments made during the lease agreement.

By requiring that districts comply with these requirements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would incorporate additional changes in Section 32126 of the Health and Safety Code, proposed by S.B. 894, to be operative only if S.B. 894 and this bill are both chaptered and become effective on or before January 1, 2011, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 32121.6 is added to the Health and Safety Code, to read:

32121.6. (a) Notwithstanding any provision of law, when a district is under contract with another public or private entity to operate one or more of its health facilities, the district and the public or private entity that operates the district facility shall comply with all of the following requirements:

(1) Except as authorized by Section 32126, assets of any facility owned by the district, including, but not limited to, all revenues from the sale or investment of any asset of the facility and all net operating income, shall be used exclusively for the benefit of a facility within the geographic boundaries of the district and owned by the district.

(2) The hospital and the operating entity shall annually undergo an independent financial audit and the resulting report shall be made public by the district.

(3) (A) In the case of a subsequent sale of the hospital facility or any other assets of the district to the operating entity, any losses incurred by the entity in the operation of the facility shall not be used as a credit against the purchase price of the facility or other district assets.

(B) This paragraph does not apply to a sale of a hospital facility that is otherwise in compliance with paragraph (1) of subdivision (p) of Section 32121.

(b) Subdivision (a) does not apply to a local health care district and a nonprofit corporation that meet all of the following criteria:

(1) The district has a contract with the tax-exempt nonprofit corporation, qualified under Section 501(c)(3) of the Internal Revenue Code.

(2) The nonprofit corporation operates one or more general acute care hospitals, as defined in subdivision (a) of Section 1250, that are the subject of the contract.

(3) The general acute care hospital or hospitals that are operated by the nonprofit corporation are owned by the district.

(4) The district is the nonprofit corporation's sole corporate member.

SEC. 2. Section 32126 of the Health and Safety Code, as added by Section 5 of Chapter 194 of the Statutes of 2005, is amended to read:

32126. (a) The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the district, only to the extent that the agreement does not provide benefits to the tenants beyond those reasonably necessary to ensure the operation of the hospital for the benefit of the district and allows the tenant to recoup its capital investments made during the lease agreement. A lease entered into with one or more nonprofit corporations for the operation of 50 percent or more of the district's hospital, or that is part of, or contingent upon, a transfer of 50 percent or more of the district's assets, in sum or by increment, as described in subdivision (p) of Section 32121, shall be subject to the requirements of subdivision (p) of Section 32121. Any lease for the operation of any hospital shall require the tenant or lessee to conform to, and abide by, Section 32128. No lease for the operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

(b) Notwithstanding any other provision of law, a sublease, an assignment of an existing lease, or the release of a tenant or lessee from obligations under an existing lease in connection with an assignment of an existing lease shall not be subject to the requirements of subdivision (p) of Section 32121 so long as all of the following conditions are met:

(1) The sublease or assignment of the existing lease otherwise remains in compliance with subdivision (a).

(2) The district board determines that the total consideration that the district shall receive following the assignment or sublease, or as a result thereof, taking into account all monetary and other tangible and intangible consideration to be received by the district, including, without limitation, all benefits to the communities served by the district, is no less than the total consideration that the district would have received under the existing lease.

(3) The existing lease was entered into on or before July 1, 1984, upon approval of the board of directors following solicitation and review of no less than five offers from prospective tenants.

(4) If substantial amendments are made to an existing lease in connection with the sublease or assignment of that existing lease, the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) A health care district shall report to the Attorney General within 30 days of any lease of district assets to one or more nonprofit corporations, the type of transaction and the entity to whom the assets were leased.

(d) This section shall become operative on January 1, 2011.

SEC. 2.5. Section 32126 of the Health and Safety Code, as amended by Section 4 of Chapter 194 of the Statutes of 2005, is amended to read:

32126. (a) The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the district, *only to the extent that the agreement does not provide benefits to the tenants beyond those reasonably necessary to ensure the operation of the hospital for the benefit of the district and allows the tenant to recoup its capital investments made during the lease agreement*. A lease entered into with one or more *nonprofit* corporations for the operation of 50 percent or more of the district's hospital, or that is part of, or contingent upon, a transfer of 50 percent or more of the district's assets, in sum or by increment, as described in subdivision (p) of Section 32121, shall be subject to the requirements of subdivision (p) of Section 32121. Any lease for the operation of any hospital shall require the tenant or lessee to conform to, and abide by, Section 32128. No lease for the operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

(b) Notwithstanding any other provision of law, a sublease, an assignment of an existing lease, or the release of a tenant or lessee from obligations under an existing lease in connection with an assignment of an existing lease shall not be subject to the requirements of subdivision (p) of Section 32121 so long as all of the following conditions are met:

(1) The sublease or assignment of the existing lease otherwise remains in compliance with subdivision (a).

(2) The district board determines that the total consideration that the district shall receive following the assignment or sublease, or as a result thereof, taking into account all monetary and other tangible and intangible consideration to be received by the district including, without limitation, all benefits to the communities served

by the district, is no less than the total consideration that the district would have received under the existing lease.

(3) The existing lease was entered into on or before July 1, 1984, upon approval of the board of directors following solicitation and review of no less than five offers from prospective tenants.

(4) If substantial amendments are made to an existing lease in connection with the sublease or assignment of that existing lease, the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) A health care district shall report to the Attorney General, within 30 days of any lease of district assets to one or more corporations, the type of transaction and the entity to whom the assets were leased.

~~(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.~~

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 32126 of the Health and Safety Code proposed by both this bill and SB 894. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 32126 of the Health and Safety Code, and (3) this bill is enacted after SB 894, in which case Section 2 of this bill shall not become operative.

~~SEC. 3.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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