

AMENDED IN SENATE MARCH 31, 2011

AMENDED IN SENATE MARCH 9, 2011

SENATE BILL

No. 134

Introduced by Senator Corbett

January 27, 2011

An act to amend Section 32121 of the Health and Safety Code, relating to health care districts.

LEGISLATIVE COUNSEL'S DIGEST

SB 134, as amended, Corbett. Health care districts: transfers of assets.

Existing law authorizes a health care district to transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district to one or more nonprofit corporations to operate and maintain the assets. Existing law deems a transfer of 50% or more of the district's assets to be for the benefit of the communities served only upon the occurrence of specified conditions.

This bill would include among the above-described conditions the inclusion within the transfer agreement of the appraised fair market value of any asset transferred to the nonprofit corporation, *as specified*.

Existing law requires, prior to the transfer of 50% or more of the district's assets, the board to, by resolution, submit a measure to the voters of the district for approval.

This bill would require the resolution to include specified information.

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

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

SECTION 1. Section 32121 of the Health and Safety Code, as amended by Section 25.4 of Chapter 699 of the Statutes of 2010, is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those

1 offices, and to determine the number of, and appoint, all officers
2 and employees and to fix their compensation. The officers and
3 employees shall hold their offices or positions at the pleasure of
4 the boards of directors.

5 (i) To do any and all things that an individual might do that are
6 necessary for, and to the advantage of, a health care facility and a
7 nurses' training school, or a child care facility for the benefit of
8 employees of the health care facility or residents of the district.

9 (j) To establish, maintain, and operate, or provide assistance in
10 the operation of, one or more health facilities or health services,
11 including, but not limited to, outpatient programs, services, and
12 facilities; retirement programs, services, and facilities; chemical
13 dependency programs, services, and facilities; or other health care
14 programs, services, and facilities and activities at any location
15 within or without the district for the benefit of the district and the
16 people served by the district.

17 "Health care facilities," as used in this subdivision, means those
18 facilities defined in subdivision (b) of Section 32000.1 and
19 specifically includes freestanding chemical dependency recovery
20 units. "Health facilities," as used in this subdivision, may also
21 include those facilities defined in subdivision (d) of Section 15432
22 of the Government Code.

23 (k) To do any and all other acts and things necessary to carry
24 out this division.

25 (l) To acquire, maintain, and operate ambulances or ambulance
26 services within and without the district.

27 (m) To establish, maintain, and operate, or provide assistance
28 in the operation of, free clinics, diagnostic and testing centers,
29 health education programs, wellness and prevention programs,
30 rehabilitation, aftercare, and any other health care services provider,
31 groups, and organizations that are necessary for the maintenance
32 of good physical and mental health in the communities served by
33 the district.

34 (n) To establish and operate in cooperation with its medical
35 staff a coinsurance plan between the hospital district and the
36 members of its attending medical staff.

37 (o) To establish, maintain, and carry on its activities through
38 one or more corporations, joint ventures, or partnerships for the
39 benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five 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).

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

1 (iii) The transfer agreement provides that all assets transferred
2 to the nonprofit corporation, and all assets accumulated by the
3 corporation during the term of the transfer agreement arising out
4 of, or from, the operation of the transferred assets, are to be
5 transferred back to the district upon termination of the transfer
6 agreement, including any extension of the transfer agreement.

7 (iv) The transfer agreement commits the nonprofit corporation
8 to operate and maintain the district's health care facilities and its
9 assets for the benefit of the communities served by the district.

10 (v) The transfer agreement requires that any funds received
11 from the district at the outset of the agreement or any time
12 thereafter during the term of the agreement be used only to reduce
13 district indebtedness, to acquire needed equipment for the district
14 health care facilities, to operate, maintain, and make needed capital
15 improvements to the district's health care facilities, to provide
16 supplemental health care services or facilities for the communities
17 served by the district, or to conduct other activities that would
18 further a valid public purpose if undertaken directly by the district.

19 (vi) The transfer agreement includes the appraised fair market
20 value, from an independent consultant with expertise in methods
21 of appraisal and valuation and in accordance with applicable
22 governmental and industry standards for appraisal and valuation,
23 of any asset transferred pursuant to this paragraph.

24 *(vii) The appraisal that is used to determine the fair market*
25 *value that is included within the transfer agreement is performed*
26 *within the six months preceding the date on which the district*
27 *approves the transfer agreement.*

28 (B) A transfer of 10 percent or more but less than 50 percent of
29 the district's assets, in sum or by increment, pursuant to this
30 paragraph shall be deemed to be for the benefit of the communities
31 served by the district only if both of the following occur:

32 (i) The transfer agreement and all arrangements necessary
33 thereto are fully discussed in advance of the district board decision
34 to transfer the assets of the district in at least two properly noticed
35 open and public meetings in compliance with Section 32106 and
36 the Ralph M. Brown Act (Chapter 9 (commencing with Section
37 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

38 (ii) The transfer agreement meets all of the requirements of
39 clauses (iii) to (v), inclusive, of subparagraph (A).

1 (C) Before the district transfers, pursuant to this paragraph, 50
2 percent or more of the district's assets to one or more nonprofit
3 corporations, in sum or by increment, the elected board shall, by
4 resolution, submit to the voters of the district a measure proposing
5 the transfer. The resolution shall identify the asset proposed to be
6 transferred, its appraised fair market value, and the amount of
7 consideration that the district is to receive in exchange for the
8 transfer. *The appraisal shall be performed by an independent*
9 *consultant with expertise in methods of appraisal and valuation*
10 *and in accordance with applicable governmental and industry*
11 *standards for appraisal and valuation within the six months*
12 *preceding the date on which the district approves the resolution.*
13 The measure shall be placed on the ballot of a special election held
14 upon the request of the district or the ballot of the next regularly
15 scheduled election occurring at least 88 days after the resolution
16 of the board. If a majority of the voters voting on the measure vote
17 in its favor, the transfer shall be approved. The campaign disclosure
18 requirements applicable to local measures provided under Chapter
19 4 (commencing with Section 84100) of Title 9 of the Government
20 Code shall apply to this election.

21 (D) Notwithstanding the other provisions of this paragraph, a
22 hospital district shall not transfer any portion of its assets to a
23 private nonprofit organization that is owned or controlled by a
24 religious creed, church, or sectarian denomination in the absence
25 of adequate consideration.

26 (3) If the district board has previously transferred less than 50
27 percent of the district's assets pursuant to this subdivision, before
28 any additional assets are transferred, the board shall hold a public
29 hearing and shall make a public determination that the additional
30 assets to be transferred will not, in combination with any assets
31 previously transferred, equal 50 percent or more of the total assets
32 of the district.

33 (4) The amendments to this subdivision made during the
34 1991–92 Regular Session, the amendments made to this subdivision
35 and to Section 32126 made during the 1993–94 Regular Session,
36 and the amendments made to this subdivision during the 2011–12
37 Regular Session, shall only apply to transfers made on or after the
38 effective dates of the acts amending this subdivision. The
39 amendments to this subdivision made during those sessions shall
40 not apply to either of the following:

1 (A) A district that has discussed and adopted a board resolution
2 prior to September 1, 1992, that authorizes the development of a
3 business plan for an integrated delivery system.

4 (B) A lease agreement, transfer agreement, or both between a
5 district and a nonprofit corporation that were in full force and effect
6 as of September 1, 1992, for as long as that lease agreement,
7 transfer agreement, or both remain in full force and effect.

8 (5) Notwithstanding paragraph (4), if substantial amendments
9 are proposed to be made to a transfer agreement described in
10 subparagraph (A) or (B) of paragraph (4), the amendments shall
11 be fully discussed in advance of the district board's decision to
12 adopt the amendments in at least two properly noticed open and
13 public meetings in compliance with Section 32106 and the Ralph
14 M. Brown Act (Chapter 9 (commencing with Section 54950) of
15 Part 1 of Division 2 of Title 5 of the Government Code).

16 (6) Notwithstanding paragraphs (4) and (5), a transfer agreement
17 described in subparagraph (A) or (B) of paragraph (4) that provided
18 for the transfer of less than 50 percent of a district's assets shall
19 be subject to the requirements of this subdivision when subsequent
20 amendments to that transfer agreement would result in the transfer,
21 in sum or by increment, of 50 percent or more of a district's assets
22 to the nonprofit corporation.

23 (7) For purposes of this subdivision, a "transfer" means the
24 transfer of ownership of the assets of a district. A lease of the real
25 property or the tangible personal property of a district shall not be
26 subject to this subdivision except as specified in Section 32121.4
27 and as required under Section 32126.

28 (8) Districts that request a special election pursuant to paragraph
29 (1) or (2) shall reimburse counties for the costs of that special
30 election as prescribed pursuant to Section 10520 of the Elections
31 Code.

32 (9) (A) Nothing in this section, including subdivision (j), shall
33 be construed to permit a local district to obtain or be issued a single
34 consolidated license to operate a separate physical plant as a skilled
35 nursing facility or an intermediate care facility that is not located
36 within the boundaries of the district.

37 (B) Notwithstanding subparagraph (A), Eastern Plumas Health
38 Care District may obtain and be issued a single consolidated license
39 to operate a separate physical plant as a skilled nursing facility or
40 an intermediate care facility that is located on the campus of the

1 Sierra Valley District Hospital. This subparagraph shall have no
2 application to any other district and is intended only to address the
3 urgent need to preserve skilled nursing or intermediate care services
4 within the rural County of Sierra.

5 (C) Subparagraph (B) shall only remain operative until the Sierra
6 Valley District Hospital is annexed by the Eastern Plumas Health
7 Care District. In no event shall the Eastern Plumas Health Care
8 District increase the number of licensed beds at the Sierra Valley
9 District Hospital during the operative period of subparagraph (B).

10 (10) A transfer of any of the assets of a district to one or more
11 nonprofit corporations to operate and maintain the assets shall not
12 be required to meet paragraphs (1) to (9), inclusive, of this
13 subdivision if all of the following conditions apply at the time of
14 the transfer:

15 (A) The district has entered into a loan that is insured by the
16 State of California under Chapter 1 (commencing with Section
17 129000) of Part 6 of Division 107.

18 (B) The district is in default of its loan obligations, as determined
19 by the Office of Statewide Health Planning and Development.

20 (C) The Office of Statewide Health Planning and Development
21 and the district, in their best judgment, agree that the transfer of
22 some or all of the assets of the district to a nonprofit corporation
23 or corporations is necessary to cure the default, and will obviate
24 the need for foreclosure. This cure of default provision shall be
25 applicable prior to the office foreclosing on district hospital assets.
26 After the office has foreclosed on district hospital assets, or
27 otherwise taken possession in accordance with law, the office may
28 exercise all of its powers to deal with and dispose of hospital
29 property.

30 (D) The transfer and all arrangements necessary thereto are
31 discussed in advance of the transfer in at least one properly noticed
32 open and public meeting in compliance with Section 32106 and
33 the Ralph M. Brown Act (Chapter 9 (commencing with Section
34 54950) of Part 1 of Division 2 of Title 5 of the Government Code).
35 The meeting referred to in this paragraph shall be noticed and held
36 within 90 days of notice in writing to the district by the office of
37 an event of default. If the meeting is not held within this 90-day
38 period, the district shall be deemed to have waived this requirement
39 to have a meeting.

1 (11) If a transfer under paragraph (10) is a lease, the lease shall
2 provide that the assets shall revert to the district at the conclusion
3 of the leasehold interest. If the transfer is a sale, the proceeds shall
4 be used first to retire the obligation insured by the office, then to
5 retire any other debts of the district. After providing for debts, any
6 remaining funds shall revert to the district.

7 (12) A health care district shall report to the Attorney General,
8 within 30 days of any transfer of district assets to one or more
9 nonprofit or for-profit corporations, the type of transaction and the
10 entity to whom the assets were transferred or leased.

11 (q) To contract for bond insurance, letters of credit, remarketing
12 services, and other forms of credit enhancement and liquidity
13 support for its bonds, notes, and other indebtedness and to enter
14 into reimbursement agreements, monitoring agreements,
15 remarketing agreements, and similar ancillary contracts in
16 connection therewith.

17 (r) To establish, maintain, operate, participate in, or manage
18 capitated health care service plans, health maintenance
19 organizations, preferred provider organizations, and other managed
20 health care systems and programs properly licensed by the
21 Department of Insurance or the Department of Managed Care, at
22 any location within or without the district for the benefit of
23 residents of communities served by the district. However, that
24 activity shall not be deemed to result in, or constitute, the giving
25 or lending of the district's credit, assets, surpluses, cash, or tangible
26 goods to, or in aid of, any person, association, or corporation in
27 violation of Section 6 of Article XVI of the California Constitution.

28 Nothing in this section shall be construed to authorize activities
29 that corporations and other artificial legal entities are prohibited
30 from conducting by Section 2400 of the Business and Professions
31 Code.

32 Any agreement to provide health care coverage that is a health
33 care service plan, as defined in subdivision (f) of Section 1345,
34 shall be subject to Chapter 2.2 (commencing with Section 1340)
35 of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

36 A district shall not provide health care coverage for any
37 employee of an employer operating within the communities served
38 by the district, unless the Legislature specifically authorizes, or
39 has authorized in this section or elsewhere, the coverage.

- 1 Nothing in this section shall be construed to authorize any district
- 2 to contribute its facilities to any joint venture that could result in
- 3 transfer of the facilities from district ownership.
- 4 (s) To provide health care coverage to members of the district's
- 5 medical staff, employees of the medical staff members, and the
- 6 dependents of both groups, on a self-pay basis.