



1997 SENATE BILL 365

November 26, 1997 - Introduced by Senators ROSENZWEIG, MOEN, RUDE, DECKER, ROESSLER, HUELSMAN, DARLING and PLACHE, cosponsored by Representatives HUBER, UNDERHEIM, ROBSON, URBAN, HANSON, ALBERS, SPRINGER, BOCK, JOHNSRUD, MEYER, LA FAVE, WARD, R. YOUNG, MUSSER, KRUG, DOBYNS, NOTESTEIN, GOETSCH, J. LEHMAN, GUNDERSON, HASENOHRL, POWERS, PLOUFF, GRONEMUS and ZIEGELBAUER, by request of Attorney General James Doyle. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

1 **AN ACT to amend** 50.35; and **to create** 165.40 of the statutes; **relating to:**
2 acquisition of a hospital owned by a nonprofit corporation, a city, a county, the
3 state or the University of Wisconsin Hospitals and Clinics Authority.

Analysis by the Legislative Reference Bureau

This bill establishes regulation of the sale or lease of certain hospitals. Under the bill, a person may not buy or lease on a long-term basis a hospital or system of hospitals owned by a nonprofit corporation, city or county, the state or the University of Wisconsin Hospitals and Clinics Authority, unless the attorney general first reviews and approves an application concerning the sale or lease. Hospitals that are owned by a nonprofit corporation and are to be sold or leased to a state or local agency or, under certain conditions, to another nonprofit corporation are exempted from these requirements.

The bill creates requirements for the application concerning the sale or lease of a hospital that the purchaser or lessee must submit to the attorney general, and establishes procedures to provide notice and review of the proposed acquisition. The attorney general must hold a public meeting in the community served by the hospital on the sale or lease proposed by the applicant. Further, the bill specifies standards for review by the attorney general and provides that, if the attorney general disapproves an application, either the proposed seller or lessor or a participant in the public meeting who has certain legal interest in the hospital may bring an action in circuit court for a declaratory judgment as to whether the standards for review are met. If a hospital that is subject to review is sold or leased without review and

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approval or after disapproval, the attorney general must so notify the department of health and family services (DHFS) and DHFS must deny application for or suspend or revoke any issued certificate of approval for the hospital.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 50.35 of the statutes is amended to read:

2 **50.35 Application and approval.** Application for approval to maintain a
3 hospital shall be made to the department on forms provided by the department. On
4 receipt of an application, the department shall issue a certificate of approval if the
5 applicant and hospital facilities meet the requirements established by the
6 department. This approval shall be in effect until, for just cause and in the manner
7 herein prescribed, it is suspended or revoked. The certificate of approval may be
8 issued only for the premises and persons or governmental unit named in the
9 application and is not transferable or assignable. The department shall withhold,
10 suspend or revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but
11 otherwise may not withhold, suspend or revoke approval unless for a substantial
12 failure to comply with ss. 50.32 to 50.39 or the rules and standards adopted by the
13 department, after giving a reasonable notice, a fair hearing and a reasonable
14 opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be
15 considered to be a substantial failure to comply under this section.

16 **SECTION 2.** 165.40 of the statutes is created to read:

17 **165.40 Acquisition of hospitals. (1) DEFINITIONS.** In this section:

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1 (a) "Acquisition" means the long-term leasing of a hospital or a system of
2 hospitals, or the acquiring by a person of an ownership or controlling interest in a
3 hospital or a system of hospitals that results in one of the following:

- 4 1. A change of at least 20% ownership or control.
- 5 2. Possession by the person of at least 50% ownership or control.

6 (b) "Hospital" has the meaning given in s. 50.33 (2).

7 (c) "Local agency" means an agency of a county, city, village or town.

8 (d) "Nonprofit corporation" has the meaning given in s. 181.02 (8).

9 (e) "Person" means an individual, sole proprietorship, partnership, association,
10 limited liability company, corporation or joint stock company, lessee, trustee or
11 receiver.

12 (f) "State agency" has the meaning given in s. 16.004 (12) (a), except that it
13 includes the University of Wisconsin Hospitals and Clinics Authority.

14 (g) "Working day" has the meaning given in s. 227.01 (14).

15 **(2) PROHIBITION; APPROVAL REQUIRED.** (a) Except as provided in sub. (5), no
16 person may engage in the acquisition of a hospital or a system of hospitals owned by
17 any of the following unless the person has first received review and approval of an
18 application concerning the acquisition under this section from the attorney general:

- 19 1. A nonprofit corporation.
- 20 2. A city.
- 21 3. A county.
- 22 4. The state.
- 23 5. The University of Wisconsin Hospitals and Clinics Authority.

24 (b) If the proposed acquisition under this subsection is for a system of hospitals,
25 the person who proposes to engage in the acquisition shall provide notice of the

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1 impending acquisition to the attorney general at least 30 days before the offer to
2 purchase or lease is made. The attorney general shall, within 5 days after receipt
3 of the notice, determine and notify the person as to whether a single application for
4 the system or an application for each hospital within the system shall be submitted
5 for review. If the attorney general determines that an application for each hospital
6 within the system shall be submitted, no submitted application is complete until all
7 complete applications for the hospitals within the system are submitted.

8 **(3) APPLICATION REVIEW BY THE ATTORNEY GENERAL; PROCEDURES.** (a) An
9 application for review by the attorney general that is required under sub. (2) shall,
10 at the time the offer to purchase or lease is made, be submitted to the attorney
11 general on a form that is provided by the attorney general. The application shall
12 include all of the following:

- 13 1. The name of the seller or lessor.
- 14 2. The name of the purchaser or lessee and, if applicable, other parties to the
15 acquisition.
- 16 3. The terms of the proposed agreement.
- 17 4. The sale price or rental charges.
- 18 5. A copy of the acquisition agreement.
- 19 6. A financial and economic analysis and report by an independent expert or
20 consultant of the effect of the acquisition under the standards specified in sub. (4).

21 (b) An application and all documents related to the application, as specified in
22 par. (a), are public records for the purposes of subch. II of ch. 19.

23 (c) 1. Within 5 working days after receipt of a completed application under par.
24 (a), the attorney general shall do all of the following:

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1 a. Have notice of the application published as a class 2 notice, under ch. 985,
2 in a newspaper having general circulation in the community or communities in
3 which the hospital or system of hospitals to be sold or leased is located.

4 b. Notify by 1st class mail any person who has requested that the attorney
5 general provide notice of the filing of hospital acquisition review applications.

6 2. Notice or a notification under subd. 1. shall state all of the following:

7 a. That a hospital acquisition review application has been received.

8 b. The names of the parties to the acquisition.

9 c. The contents of the hospital acquisition review application.

10 d. The date by which a person may submit written comments about the hospital
11 acquisition review application to the attorney general.

12 e. That a public meeting will be held on the acquisition proposed by the
13 application, the time and location of the meeting and the fact that any person may
14 file written comments or exhibits for the meeting or may appear and make a
15 statement at the meeting.

16 (d) Not later than 30 days after receipt of a completed application under sub.
17 (2) (a), or as soon as practicable but not more than 120 days after receipt of a
18 completed application under sub. (2) (b), and after giving 10 working days' notice, the
19 attorney general shall hold a public meeting at a location that, at a minimum, is in
20 the community served by the hospital, on the acquisition proposed by the application.
21 If the proposed acquisition is for a system of hospitals, a public meeting shall be held
22 in each community served by the system. Any person may file written comments or
23 exhibits for the meeting or may appear and make a statement at the meeting.

24 (e) The attorney general shall establish and maintain a summary of written
25 and oral comments made for or at the public meeting, including all questions posed,

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1 and shall require answers of the appropriate parties. The summary and answers
2 shall be filed in the office of the attorney general and in the public library of the public
3 library system for the community served by the hospital and a copy shall be available
4 upon request to the attorney general.

5 (f) The attorney general may subpoena additional information or witnesses,
6 require and administer oaths, require sworn statements, take depositions and use
7 related discovery procedures for purposes of the meeting under par. (d) and otherwise
8 during performance of a review under this subsection.

9 (g) Within 60 days after receipt of a completed application under sub. (2) (a) or
10 as soon as practicable but not more than 150 days after receipt of a completed
11 application under sub. (2) (b), the attorney general shall review the application in
12 accordance with the standards specified in sub. (4) and shall approve or disapprove
13 the application. The attorney general may not make its decision based on any
14 condition that is not directly related to the standards under sub. (4).

15 (h) If the attorney general disapproves an application under par. (g), any of the
16 following may bring an action in circuit court for a declaratory judgment under s.
17 806.04 as to whether the proposed acquisition meets the standards under sub. (4):

18 1. The applicant.

19 2. Any person who submitted comments under par. (d) and who has a legal
20 interest in a hospital for which acquisition is proposed or in another hospital that has
21 contracted for the provision of essential health services with the hospital for which
22 acquisition is proposed.

23 **(4) APPLICATION REVIEW BY THE ATTORNEY GENERAL; STANDARDS.** The attorney
24 general shall approve an application if he or she finds that the following standards
25 are met:

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1 (a) That the acquisition is permitted under ch. 181 or any other statute that
2 governs nonprofit entities.

3 (b) That the hospital exercised due diligence in deciding to sell or lease,
4 selecting the purchaser or lessee and negotiating the terms and conditions of the sale
5 or lease.

6 (c) That the procedure used by the seller or lessor in making its decision to sell
7 or lease was adequate, including whether the seller or lessor used appropriate expert
8 assistance. The attorney general may employ, at the purchaser's or lessee's expense,
9 reasonably necessary expert assistance in considering evidence under this
10 paragraph.

11 (d) That conflict of interest was disclosed, including conflicts of interest related
12 to members of the board of directors of, executives of or experts retained by the seller
13 or lessor, the purchaser or lessee or other parties to the acquisition.

14 (e) That charitable funds are not placed at unreasonable risk, if the acquisition
15 is a sale that is financed in part by the seller.

16 (f) That any management contract under the acquisition is for reasonably fair
17 value.

18 (g) That the sale or rental proceeds will be used for appropriate charitable
19 health care purposes, including health promotion, in the community affected by the
20 acquisition and that the proceeds will be controlled as charitable funds
21 independently of the purchaser or parties to the acquisition.

22 (h) That, if the hospital is sold, a right of first refusal is retained to repurchase
23 the assets by a successor nonprofit corporation, by the city, county or state or by the
24 University of Wisconsin Hospitals and Clinics Authority if the hospital is
25 subsequently sold to, acquired by or merged with another entity.

SENATE BILL 365**SECTION 2**

1 **(5) EXEMPTIONS.** The acquisition, by one of the following, of a hospital or system
2 of hospitals owned by a nonprofit corporation is exempt from the application of this
3 section:

4 (a) A state agency.

5 (b) A local agency.

6 (c) Another nonprofit corporation, to which all of the following apply:

7 1. The nonprofit corporation has a charitable health care purpose that is
8 substantially similar to the corporation that owns the hospital or system of hospitals.

9 2. The nonprofit corporation is an organization described in section 501 (c) (3)
10 of the Internal Revenue Code that is exempt from federal income tax under section
11 501 (a) of the Internal Revenue Code.

12 3. The nonprofit corporation maintains on the board of directors of the acquired
13 hospital or system of hospitals representation from the community affected by the
14 acquisition.

15 **(6) DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATE OF APPROVAL.** (a) No
16 certificate of approval to maintain a hospital may be issued under s. 50.35 and a
17 certificate of approval that has been issued under that section shall be suspended or
18 revoked if any of the following occurs:

19 1. Acquisition of a hospital that is subject to sub. (2) is made without approval
20 by the attorney general.

21 2. Acquisition of a hospital that is subject to sub. (2) is made after the attorney
22 general has disapproved an application for the acquisition under sub. (4) and, if an
23 action under s. 806.04 is brought, after a judicial determination is made under s.
24 806.04 that the proposed acquisition does not meet the standards specified in sub.
25 (4) (a) to (h).

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1 (b) If the attorney general is aware that a violation of par. (a) 1. or 2. has
2 occurred, he or she shall notify the department of health and family services for
3 appropriate action under s. 50.35.

4 **(7) ATTORNEY GENERAL; AUTHORITY.** Nothing in this section or in s. 50.35 limits
5 the authority of the attorney general to act with respect to an acquisition, including
6 the authority of the attorney general to act under 15 USC 26, ch. 133 or other state
7 law.

SECTION 3. Initial applicability.

8
9 (1) **ACQUISITIONS OF HOSPITALS.** This act first applies to offers to purchase or
10 lease hospitals that are made on the effective date of this subsection.

11 (END)