

1 SB167
2 116078-1
3 By Senators Keahey, Bedford and Smitherman
4 RFD: Governmental Affairs
5 First Read: 12-JAN-10

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8 SYNOPSIS: This bill would abolish the State Health
9 Planning and Development Board and provide for the
10 appointment of a new board. The bill would also
11 authorize members to be terminated for cause as
12 established by rule of the board.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Section 22-21-260, as last amended by Act
19 2009-492 of the 2009 Regular Session (Acts 2009, p. 906), of
20 the Code of Alabama 1975, relating to the State Health
21 Planning and Development Board, to abolish the existing board
22 and to provide for the appointment of a new board; and to
23 provide for the termination of members under certain
24 conditions.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 22-21-260, as last amended by Act
2 2009-492 of the 2009 Regular Session (Acts 2009, p. 906), of
3 the Code of Alabama 1975, is amended to read as follows:

4 "§22-21-260.

5 "As used in this article, the following words and
6 terms, and the plurals thereof, shall have the meanings
7 ascribed to them in this section, unless otherwise required by
8 their respective context:

9 "(1) ACQUISITION. Obtaining the legal equitable
10 title to a freehold or leasehold estate or otherwise obtaining
11 the substantial benefit of such titles or estates, whether by
12 purchase, lease, loan or suffrage, gift, devise, legacy,
13 settlement of a trust or means whatever, and shall include any
14 act of acquisition. The term "acquisition" shall not mean or
15 include any conveyance, or creation of any lien or security
16 interest by mortgage, deed of trust, security agreement, or
17 similar financing instrument, nor shall it mean or include any
18 transfer of title or rights as a result of the foreclosure, or
19 conveyance or transfer in lieu of the foreclosure, of any such
20 mortgage, deed of trust, security agreement, or similar
21 financing instrument, nor shall it mean or include any gift,
22 devise, legacy, settlement of trust, or other transfer of the
23 legal or equitable title of an interest specified hereinabove
24 by a natural person to any member of such person's immediate
25 family. For the purposes of this section "immediate family"
26 shall mean the spouse of the grantor or transferor and any
27 other person related to the grantor or transferor to the

1 fourth degree of kindred as such degrees are computed
2 according to law.

3 "(2) APPLICANT. Any person, as defined in this
4 section, who files an application for a certificate of need.

5 "(2.1) CAMPUS. The contiguous real property,
6 contained within a single county, which is owned or leased by
7 a health care facility and upon which is located the buildings
8 and any other real property used by the health care facility
9 to provide existing institutional health services which are
10 subject to review.

11 "(3) CAPITAL EXPENDITURE. An expenditure, including
12 a force account expenditure (i.e., an expenditure for a
13 construction project undertaken by the health care facility as
14 its own contractor), which, under generally accepted
15 accounting principles, is not properly chargeable as an
16 expense of operation and maintenance and which satisfies any
17 of the following:

18 "a. Exceeds two million dollars (\$2,000,000) indexed
19 annually for inflation for major medical equipment; eight
20 hundred thousand dollars (\$800,000) for new annual operating
21 costs indexed annually for inflation; four million dollars
22 (\$4,000,000) indexed annually for inflation for any other
23 capital expenditure. The index referenced in this paragraph
24 shall be the Consumer Price Index Market Basket Professional
25 Medical Services index as published by the U.S. Department of
26 Labor, Bureau of Labor Statistics. The SHPDA shall publish
27 this index information to the general public.

1 "b. Changes the bed capacity of the facility with
2 respect to which such expenditure is made.

3 "c. Substantially changes the health services of the
4 facility with respect to which such expenditure is made.

5 "(4) CONSTRUCTION. Actual commencement, with bona
6 fide intention of completing the construction, or completion
7 of the construction, erection, remodeling, relocation,
8 excavation, or fabrication of any real property constituting a
9 facility under this article, and the term construct shall mean
10 and include any act of construction. "Ground breaking
11 ceremony," "receipt of bids," "receipt of quotation," or
12 similar action that will permit unilateral termination without
13 penalty shall not be considered construction.

14 "(5) FIRM COMMITMENT or OBLIGATION. Any of the
15 following:

16 "a. Any executed, enforceable, unconditional written
17 agreement or contract not subject to unilateral cancellation
18 for the acquisition or construction of a health care facility
19 or purchase of equipment therefor.

20 "b. Actual construction of facilities peculiarly
21 adapted to the furnishing of one or more particular services
22 and with the bona fide intention of furnishing such service or
23 services.

24 "c. Any executed, unconditional written agreement
25 not subject to unilateral cancellation for the bona fide
26 purpose of furnishing one or more services.

1 "(6) HEALTH CARE FACILITY. General and specialized
2 hospitals, including tuberculosis, psychiatric, long-term
3 care, and other types of hospitals, and related facilities
4 such as, laboratories, out-patient clinics, and central
5 service facilities operated in connection with hospitals;
6 skilled nursing facilities; intermediate care facilities;
7 skilled or intermediate care units operated in veterans'
8 nursing homes and veterans' homes, owned or operated by the
9 State Department of Veterans' Affairs, as these terms are
10 described in Chapter 5A (commencing with Section 31-5A-1) of
11 Title 31, rehabilitation centers; public health centers;
12 facilities for surgical treatment of patients not requiring
13 hospitalization; kidney disease treatment centers, including
14 free-standing hemodialysis units; community mental health
15 centers and related facilities; alcohol and drug abuse
16 facilities; facilities for the developmentally disabled;
17 hospice service providers; and home health agencies and health
18 maintenance organizations. The term health care facility shall
19 not include the offices of private physicians or dentists,
20 whether for individual or group practices and regardless of
21 ownership, or Christian Science sanatoriums operated or listed
22 and certified by the First Church of Christ, Scientist,
23 Boston, Massachusetts, or a veterans' nursing home or
24 veterans' home owned or operated by the State Department of
25 Veterans' Affairs, not to exceed 150 beds to be built in Bay
26 Minette, Alabama, and a veterans' nursing home or veterans'
27 home owned or operated by the State Department of Veterans'

1 Affairs not to exceed 150 beds to be built in Huntsville,
2 Alabama, for which applications for federal funds under
3 federal law are being considered by the U.S. Department of
4 Veterans' Affairs prior to March 18, 1993.

5 "(7) HEALTH SERVICE AREA. A geographical area
6 designated by the Governor, as being appropriate for effective
7 planning and development of health services.

8 "(8) HEALTH SERVICES. Clinically related (i.e.,
9 diagnostic, curative, or rehabilitative) services, including
10 alcohol, drug abuse, and mental health services customarily
11 furnished on either an in-patient or out-patient basis by
12 health care facilities, but not including the lawful practice
13 of any profession or vocation conducted independently of a
14 health care facility and in accordance with applicable
15 licensing laws of this state.

16 "(9) INSTITUTIONAL HEALTH SERVICES. Health services
17 provided in or through health care facilities or health
18 maintenance organizations, including the entities in or
19 through which such services are provided.

20 "(9.1) MAJOR MEDICAL EQUIPMENT. Medical clinical
21 equipment intended for use in the diagnosis or treatment of
22 medical conditions, which is used to provide institutional
23 health services of a health care facility which are subject to
24 review, and which expenditure exceeds the thresholds
25 referenced in this section and in Section 22-21-263.

26 "(10) MODERNIZATION. The alteration, repair,
27 remodeling, and renovation of existing buildings, including

1 equipment within the existing buildings. Modernization does
2 not include the replacement of existing buildings which are
3 used by a health care facility to provide institutional health
4 services which are subject to review and does not include the
5 replacement of major medical equipment.

6 "(11) PERSON. Any person, firm, partnership,
7 association, joint venture, or corporation, the State of
8 Alabama and its political subdivisions or parts thereof, and
9 any agencies or instrumentalities and any combination of
10 persons herein specified, but person shall not include the
11 United States or any agency or instrumentality thereof, except
12 in the case of voluntary submission to the regulations
13 established by this article.

14 "(12) RURAL HEALTH CARE PROVIDER/APPLICANT/HOSPITAL.
15 A provider or applicant or hospital which is designated by the
16 United States government Health Care Financing Administration
17 as rural.

18 "(13) STATE HEALTH PLAN. A comprehensive plan which
19 is prepared triennially and reviewed at least annually and
20 revised as necessary by the Statewide Health Coordinating
21 Council, with the assistance of the State Health Planning and
22 Development Agency, and approved by the Governor.

23 "The Statewide Health Coordinating Council shall
24 meet at least annually to determine whether revisions for the
25 State Health Plan are necessary. If the Statewide Health
26 Coordinating Council fails to meet and to review or revise the
27 State Health Plan on an annual basis, there shall be no fees

1 required on all certificate of need applications filed with
2 the Certificate of Need Review Board until the Statewide
3 Health Coordinating Council meets and reviews or revises the
4 State Health Plan. For purposes of this paragraph, the annual
5 meeting of the Statewide Health Coordinating Council shall
6 occur on or before August 1 of each calendar year.

7 "The State Health Plan shall provide for the
8 development of health programs and resources to assure that
9 quality health services will be available and accessible in a
10 manner which assures continuity of care, at reasonable costs,
11 for all residents of the state. Nothing in this section should
12 be construed as permitting expenditures for facilities,
13 services, or equipment which are inconsistent with the State
14 Health Plan.

15 "(14) STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
16 (SHPDA). An agency of the State of Alabama ~~which~~ to be known
17 as the State Health Planning and Development Agency (SHPDA) is
18 designated by the Governor as the sole State Health Planning
19 and Development Agency. The SHPDA shall be governed by the
20 board, which shall consist of three consumers, three
21 providers, and three representatives of the Governor who all
22 shall serve four-year staggered terms and all be appointed by
23 the Governor. Immediately after the effective date of the act
24 adding this language, the existing board shall be abolished
25 and the Governor shall appoint new members to the board. The
26 Governor may appoint the current members to new terms under
27 this subdivision. One of the consumers shall serve for a term

1 of two years, one shall serve a term of three years, and one
2 shall serve a term of four years. One of the provider members
3 shall serve for a term of two years, one shall serve a term of
4 three years, and one shall serve a term of four years. One of
5 the representatives of the Governor shall serve a term of two
6 years, one shall serve a term of three years, and one shall
7 serve a term of four years. Thereafter, all terms shall be for
8 four years. Members of the board may only serve two
9 consecutive terms. All board members shall be residents of
10 Alabama and the composition of the board shall reflect the
11 racial, gender, geographic, urban/rural, and economic
12 diversity of the state. Vacancies shall be filled with a
13 member from the same group as the member whose position became
14 vacant by appointment by the Governor to fill the unexpired
15 term. Board membership may only be terminated by death,
16 resignation, or for cause. The definition of cause as provided
17 herein shall be defined by rules adopted pursuant to the
18 Alabama Administrative Procedure Act. Where used in this
19 article, the terms, "state agency," and the "SHPDA," shall be
20 synonymous and may be used interchangeably.

21 "(15) STATEWIDE HEALTH COORDINATING COUNCIL. A
22 council, appointed by the Governor, established pursuant to
23 Sections 22-4-7 and 22-4-8 to advise the State Health Planning
24 and Development Agency on matters relating to health planning
25 and resource development and to perform other functions as may
26 be delegated to it, to include an annual review of the State
27 Health Plan.

1 "(16) TO OFFER. When used in connection with health
2 services, a health care facility or health maintenance
3 organization that holds itself out as capable of providing, or
4 as having the means for the provision of, specified health
5 services."

6 Section 2. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.