

FIRST REGULAR SESSION

# SENATE BILL NO. 443

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SILVEY.

Read 1st time February 28, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1910S.01I

## AN ACT

To amend chapter 96, RSMo, by adding thereto one new section relating to an election for a charter hospital to be governed by Missouri's nonprofit corporation law, with an emergency clause.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 96, RSMo, is amended by adding thereto one new section, to be known as section 96.229, to read as follows:

**96.229. 1. On or after January 1, 2013, a city in which a hospital is located that:**

**(1) Is organized and operated under this chapter;**

**(2) Has not accepted appropriated funds from the city during the prior twenty years; and**

**(3) Is licensed by the department of health and senior services for two hundred fifty beds or more pursuant to sections 197.010 to 197.120,**

**shall not have authority to sell, lease, or otherwise transfer all or any portion of the assets of the hospital to, or cause a merger or consolidation with, any other person or entity.**

**2. A hospital described under subsection 1 of this section may become a public benefit corporation governed by chapter 355 upon a majority vote of the people voting on the issue or upon adoption of a resolution by a majority vote of the board of trustees. For purposes of this section, the term "public benefit corporation" shall have the meaning as such term is defined in subdivision (28) of section 355.066.**

**3. On or after January 1, 2013, the board of trustees of a hospital described under subsection 1 of this section may adopt a resolution, by a majority vote of the board, to become a public benefit corporation**

21 governed by the provisions of chapter 355. No less than twenty days  
22 prior to the vote by the board of trustees on such resolution, the board  
23 of trustees shall provide notice of such intended vote to the residents  
24 of the city in which the hospital is located in a newspaper of general  
25 circulation in the area where published. The board shall further make  
26 available, upon request, to the residents of such city such  
27 nonconfidential financial, operational, strategic, and other information  
28 about the hospital, prepared by independent third parties, to enable  
29 the residents of such city to make an informed judgment as to the  
30 current financial and operational strengths of the hospital and the  
31 ability of the hospital to sustain such strengths in the future as a public  
32 benefit corporation. Unless the resolution provides otherwise, at any  
33 time before filing by the secretary of state of the articles of  
34 incorporation for the hospital, the conversion of the hospital to a public  
35 benefit corporation may be abandoned, subject to any contractual  
36 rights and in accordance with any procedure set forth in the resolution  
37 adopted by the board of trustees or, if none is set forth, with the  
38 subsequent approval of a majority of the board of trustees.

39 4. As an alternative to the procedure described in subsection 3  
40 of this section, whenever the governing body of the city in which the  
41 hospital described in subsection 1 of this section is located receives a  
42 petition, signed by five percent of the registered voters of such city  
43 voting in the last city election, calling for the hospital to become a  
44 public benefit corporation, the governing body shall submit to the  
45 voters of such city the question of whether to have the hospital become  
46 a public benefit corporation. If a majority of the votes cast on the  
47 proposal by the registered voters voting thereon are in favor of the  
48 proposal, the board of trustees shall comply with the requirements of  
49 subsections 5 to 11 of this section and the provisions of subsection 11  
50 of this section shall apply to the hospital. In the event that a majority  
51 of voters voting on such question do not vote in favor, no further  
52 petition shall be accepted, nor shall any vote on such question be held,  
53 until no earlier than five years following the date of the previous vote  
54 on such question.

55 5. The conversion of the hospital from a hospital organized and  
56 operated under this chapter to a public benefit corporation shall not  
57 become effective unless and until the payment of any interest and

58 principal of any outstanding valid revenue bond of the city secured by  
59 hospital property and incurred for the purposes specified in section  
60 96.222, shall have been satisfied in full or otherwise provided for  
61 pursuant to a written agreement between the board of trustees and the  
62 holder or holders of such bonds.

63       6. Assets donated to the board of trustees of the hospital  
64 pursuant to section 96.210, or initially acquired by the city in which the  
65 hospital is located, prior to the hospital becoming a public benefit  
66 corporation, for use by the hospital, including any replacements,  
67 substitutions, conversions, or proceeds thereof, shall continue to be  
68 used to provide health care services in the city and in the geographic  
69 region previously served by the hospital, except as otherwise  
70 prescribed by the terms of the deed, gift, devise, or bequest.

71       7. Following the passage of the resolution or ballot question  
72 provided under this section, the board of trustees shall give the  
73 attorney general written notice of the planned conversion to a public  
74 benefit corporation. The notice shall include a copy of the proposed  
75 articles of incorporation drafted in conformance with subsection 8 of  
76 this section, the resolution described in subsection 3 of this section, if  
77 applicable, and evidence which demonstrates provision for the  
78 satisfaction of any bond or bonds described under subsection 5 of this  
79 section. The conversion shall not become effective until twenty days  
80 after the board of trustees has given the written notice required by this  
81 subsection to the attorney general or until the attorney general has  
82 consented in writing to, or indicated in writing that he or she will take  
83 no action with respect to, the conversion, whichever is earlier.

84       8. (1) Upon completion of the twenty-day time period specified  
85 in subsection 7 of this section, the board of trustees shall deliver for  
86 filing with the secretary of state the articles of incorporation of the  
87 hospital as prescribed in section 355.096, applicable to public benefit  
88 corporations. The articles of incorporation shall provide that the  
89 principal purpose of the public benefit corporation shall be the  
90 establishment, equipping, operating, and maintaining by purchase,  
91 lease, construction, or otherwise of a health care facility or facilities in  
92 the city in which the voters elected to levy a tax under section 96.150  
93 for the care and treatment of the sick, disabled, and infirm persons.

94       (2) The articles of incorporation shall also include provisions

95 that prohibit the board of trustees, for a period of fifteen years  
96 following the filing of the articles of incorporation by the secretary of  
97 state, from entering into any transaction which would result in the  
98 selling, leasing, or otherwise transferring all or substantially all of the  
99 assets of the hospital to, or merging or consolidating with, a for profit  
100 corporation, limited liability company, general or limited partnership,  
101 or any other person or entity which is not exempt from income taxation  
102 under the internal revenue laws of the United States and of the state  
103 of Missouri. The articles of incorporation shall further include  
104 provisions that allow the board of trustees to enter into any such  
105 transaction after the conclusion of such fifteen-year period upon  
106 approval by a majority of the registered voters of the city in which the  
107 hospital is located at an election held on such question.

108       9. Unless a delayed effective date is specified, the conversion of  
109 the hospital to a public benefit corporation shall begin when the  
110 articles of incorporation are filed by the secretary of state.

111       10. Following the filing by the secretary of state of the articles  
112 of incorporation for the hospital, the board of trustees, as comprised  
113 immediately prior to such filing, shall constitute the initial board of  
114 trustees of the resulting public benefit corporation. The initial board  
115 of trustees shall adopt bylaws of the public benefit corporation  
116 pursuant to chapter 355; provided, however, that, at all times, the  
117 number of the authorized members of the board of trustees of the  
118 resulting public benefit corporation shall be no fewer than fifteen  
119 trustees. A majority of the positions on the board of trustees shall be  
120 allocated to individuals who shall be residents of the county in which  
121 such hospital is located and no less than one-half of such county  
122 residents shall be residents of the city in which such hospital is  
123 located. The power to appoint trustees, fill vacancies, set  
124 compensation, and to remove trustees shall be vested in the board of  
125 trustees of the resulting public benefit corporation.

126       11. The filing by the secretary of state of the articles of  
127 incorporation for the hospital shall have the following effects:

128       (1) The hospital shall cease to be organized and operated  
129 pursuant to the provisions of this chapter except as to the provisions  
130 of this section;

131       (2) The hospital shall possess all rights, privileges, immunities,

132 powers, and franchises possessed by the board of trustees of the  
133 hospital prior to such filing and shall be subject to all restrictions,  
134 disabilities, and duties of the board of trustees of such hospital prior  
135 to such filing to the extent that such rights, privileges, immunities,  
136 powers, franchises, restrictions, disabilities, and duties are applicable  
137 to the form of existence of the hospital as a public benefit corporation;

138 (3) All rights, causes of action, property, and assets of any kind  
139 or description, whether real, personal, tangible, or intangible, of the  
140 board of trustees of the hospital prior to such filing, and all debts due  
141 on whatever account to the board of trustees of the hospital prior to  
142 such filing, including all causes of action belonging to the board of  
143 trustees of the hospital, shall be deemed to remain vested in the  
144 hospital after such filing without further act or deed;

145 (4) Title to all real or personal property and any interest therein  
146 vested in the board of trustees of the hospital shall not revert or be in  
147 any way impaired by reason of such filing;

148 (5) The hospital shall thereafter be responsible and liable for all  
149 valid liabilities and obligations of the board of trustees of the hospital  
150 prior to such filing, subject to the hospital's right to assert all valid  
151 defenses and claims of the board of trustees of the hospital which  
152 existed prior to such filing; and

153 (6) Neither the rights of creditors nor any liens on the property  
154 of the hospital shall be impaired by such filing.

Section B. Because of the need to ensure local hospitals can continue the  
2 purpose of providing the best care and treatment of the sick, disabled, and infirm  
3 persons as decided on by the people in the affected community, section A of this  
4 act is deemed necessary for the immediate preservation of the public health,  
5 welfare, peace and safety, and is hereby declared to be an emergency act within  
6 the meaning of the constitution, and section A of this act shall be in full force and  
7 effect upon its passage and approval.

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