

1 SB369
2 212331-1
3 By Senator Singleton
4 RFD: Healthcare
5 First Read: 01-APR-21

SYNOPSIS: Under existing law, health care authorities organized under the Health Care Authorities Act of 1982 are local governmental entities organized as political subdivisions of the state to provide hospital and health care services to local communities.

This bill would require the active outside medical staff having hospital privileges to practice medicine at a hospital operated by a health care authority to approve any exclusive contract for group physician services or any decision to close any existing medical staff department at the hospital.

A BILL
TO BE ENTITLED
AN ACT

Relating to hospitals operated by public health care authorities; to amend Section 22-21-318 of the Code of Alabama

1 1975, to require the active outside medical staff having
2 hospital privileges to practice medicine at a hospital
3 operated by a health care authority to approve any exclusive
4 contract for group physician services or any decision to close
5 any existing medical staff department at the hospital.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 22-21-318 of the Code of Alabama
8 1975, is amended to read as follows:

9 "§22-21-318.

10 "(a) In addition to all other powers granted
11 elsewhere in this article, and subject to the express
12 provisions of its certificate of incorporation, an authority
13 shall have the following powers, together with all powers
14 incidental thereto or necessary to the discharge thereof in
15 corporate form:

16 "(1) To have succession by its corporate name for
17 the duration of time, which may be in perpetuity, specified in
18 its certificate of incorporation or until dissolved as
19 provided in Section 22-21-3397.

20 "(2) To sue and be sued in its own name in civil
21 suits and actions, and to defend suits and actions against it,
22 including suits and actions ex delicto and ex contractu,
23 subject, however, to the provisions of Chapter 93 of Title 11,
24 which chapter is hereby made applicable to the authority7.

25 "(3) To adopt and make use of a corporate seal and
26 to alter the same at pleasure7.

1 "(4) To adopt, alter, amend and repeal bylaws,
2 regulations and rules, not inconsistent with the provisions of
3 this article or its certificate of incorporation, for the
4 regulation and conduct of its affairs and business7.

5 "(5) To acquire, construct, reconstruct, equip,
6 enlarge, expand, alter, repair, improve, maintain, equip,
7 furnish, and operate health care facilities at such place or
8 places, within and without the boundaries of its authorizing
9 subdivisions and within and without the state, as it considers
10 necessary or advisable7.

11 "(6) To lease or otherwise make available any health
12 care facilities or other of its properties and assets to such
13 persons, firms, partnerships, associations, or corporations
14 and on such terms as the board deems to be appropriate, to
15 charge and collect rent or other fees or charges therefor and
16 to terminate any such lease or other agreement upon the
17 failure of the lessee or other party thereto to comply with
18 any of its obligations thereunder7.

19 "(7) To receive, acquire, take and hold (whether by
20 purchase, gift, transfer, foreclosure, lease, devise, option,
21 or otherwise) real and personal property of every description,
22 or any interest therein, and to manage, improve and dispose of
23 the same by any form of legal conveyance or transfer; provided
24 however, that the authority shall not, without the prior
25 approval of the governing body of each authorizing
26 subdivision, have the power to dispose of (i) substantially
27 all its assets, or (ii) any health care facilities the

1 disposition of which would materially and significantly reduce
2 or impair the level of hospital or health care services
3 rendered by the authority; and provided further, that the
4 foregoing proviso shall not be construed to require the prior
5 approval of any such governing body for the mortgage or pledge
6 of all or substantially all its assets or of any of its health
7 care facilities, for the foreclosure of any such mortgage or
8 pledge or for any sale or other disposition thereunder7.

9 "(8) To mortgage, pledge7 or otherwise convey its
10 property and its revenues from any source7.

11 "(9) To borrow money in order to provide funds for
12 any lawful corporate function, use or purpose and, in evidence
13 of such borrowing, to sell and issue interest-bearing
14 securities in the manner provided and subject to the
15 limitations set forth hereinafter7.

16 "(10) To pledge for payment of any of its securities
17 any revenues7 (including proceeds from any hospital tax to
18 which it may be entitled)7 and to mortgage or pledge any or
19 all of its health care facilities or other assets or
20 properties or any part or parts thereof, whether then owned or
21 thereafter acquired, as security for the payment of the
22 principal of and the interest and premium, if any, on any
23 securities so issued and any agreements made in connection
24 therewith7.

25 "(11) To provide instruction and training for, and
26 to contract for the instruction and training of, nurses,

1 technicians, and other technical, professional, and
2 paramedical personnel.

3 "(12) To select and appoint medical and dental staff
4 members and others licensed to practice the healing arts and
5 to delineate and define the privileges granted each such
6 individual.

7 "(13) To affiliate with, and to contract to provide
8 training and clinical experience for students of, other
9 institutions.

10 "(14) To contract for the operation of any
11 department, section, equipment, or holdings of the authority,
12 and to enter into agreements with any person, firm, or
13 corporation for the management by said person, firm, or
14 corporation on behalf of the authority of any of its
15 properties or for the more efficient or economical performance
16 of clerical, accounting, administrative, and other functions
17 relating to its health care facilities.

18 "(15) To establish, collect, and alter charges for
19 services rendered and supplies furnished by it.

20 "(16) To make all needful or appropriate rules and
21 regulations for the conduct of any health care facilities and
22 other properties owned or operated by it and to alter such
23 rules and regulations.

24 "(17) To provide for such insurance as the business
25 of the authority may require.

26 "(18) To receive and accept from any source aid or
27 contributions in the form of money, property, labor, or other

1 things of value, to be held, used, and applied to carry out
2 the purposes of this article, subject to any lawful condition
3 upon which any such aid or contributions may be given or
4 made.

5 "(19) To cooperate with the State Board of Health
6 and the State Department of Mental Health and to make
7 contracts with either of said agencies respecting the
8 operation of any health care facilities or other properties
9 owned or operated by it, whether as an agent for either or
10 both of said agencies or otherwise.

11 "(20) To enter into contracts with, to accept aid,
12 loans, and grants from, to cooperate with and to do any and
13 all things not specifically prohibited by this article or the
14 constitution of the state that may be necessary in order to
15 avail itself of the aid and cooperation of the United States
16 of America, the state, any county or municipality, or any
17 agency, instrumentality, or political subdivision of any of
18 the foregoing in furtherance of the purposes of this article;
19 to give such assurances, contractual or otherwise, to or for
20 the benefit of any of the foregoing as may be required in
21 connection with, or as conditions precedent to the receipt of,
22 any such aid, loan, or grant; and to take such action not in
23 violation of law as may be necessary in order to qualify the
24 authority to receive funds appropriated by any of the
25 foregoing.

26 "(21) To give such assurances, contractual, or
27 otherwise, and to make such commitments and agreements as may

1 be necessary or desirable to preclude the exercise of any
2 rights of recovery with respect to, or the forfeiture of title
3 to, any of its health care facilities or other property or any
4 health care facilities or other property proposed to be
5 acquired by it7.

6 "(22) To make and alter rules and regulations for
7 the treatment of indigent patients7.

8 "(23) To assume any obligations of any entity that
9 conveys and transfers to the authority any health care
10 facilities or other property, or interest therein, provided
11 that such obligations appertain to the health care facilities,
12 property, or interest so conveyed and transferred to the
13 authority7.

14 "(24) To assume, establish, fund, and maintain
15 retirement, pension or other employee benefit plans for its
16 employees7.

17 "(25) To appoint, employ, contract with, and provide
18 for the compensation of, such employees and agents, including,
19 but not limited to, architects, attorneys, consultants,
20 engineers, accountants, financial experts, fiscal agents, and
21 such other advisers, consultants, and agents as the business
22 of the authority may require7.

23 "(26) To invest, in any trust fund established under
24 and subject to the general laws of the state for investment or
25 self-insurance purposes with investment authority as may be
26 authorized by law for such trusts, any funds of the authority
27 available therefor7.

1 "(27) To the extent permitted by its contracts with
2 the holders of its securities, to purchase securities out of
3 any of its funds or ~~moneys~~ monies available therefor and to
4 hold, cancel, or resell such securities.

5 "(28) To make any expenditure of any ~~moneys~~ monies
6 under its control that would, if the authority were generally
7 subject to state corporate income taxation, be considered an
8 ordinary and necessary expense of the authority within the
9 meaning of Section 40-18-35 and applicable regulations
10 thereunder, and without limiting the generality of the
11 foregoing, to expend its ~~moneys~~ monies for the recruitment of
12 employees and physicians, dentists, and other health care
13 professionals and for the promotion of employee morale and
14 well-being; provided, however, that nothing herein contained
15 shall be construed to permit the authority (i) to increase the
16 compensation of any of its officers or employees on a
17 retroactive basis, (ii) to pay any extra compensation to any
18 of its officers or employees for services theretofore
19 rendered, (iii) to furnish free or below-cost office space to
20 any nonhospital-based physician, dentist, or other health care
21 professional for use in his or her private practice, or (iv)
22 to guarantee the income of any nonhospital-based physician,
23 dentist, or other health care professional in his or her
24 private practice.

25 "(29) To provide scholarships for students in
26 training for work in the duties peculiar to health care.

1 "(30) To enter into affiliation, cooperation,
2 territorial, management, or other similar agreements with
3 other institutions, (public or private), for the sharing,
4 division, allocation, or exclusive furnishing of services,
5 referral of patients, management of facilities, and other
6 similar activities.

7 "(31) To exercise all powers granted hereunder in
8 such manner as it may determine to be consistent with the
9 purposes of this article, notwithstanding that as a
10 consequence of such exercise of such powers it engages in
11 activities that may be deemed "anticompetitive" within the
12 contemplation of the antitrust laws of the state or of the
13 United States.

14 "(32) To enter into such contracts, agreements,
15 leases, and other instruments, and to take such other actions,
16 as may be necessary or convenient to accomplish any purpose
17 for which the authority was organized or to exercise any power
18 expressly granted hereunder.

19 "(b) Notwithstanding any other provision of this
20 subsection or any other provision of this article, any
21 exclusive contract for group physician services at a hospital
22 operated by the authority, or any subsidiary of the authority,
23 shall not be entered into nor shall any decision to close a
24 medically staffed department be effective at the hospital,
25 unless the contract or decision has been approved by a
26 majority vote of the active outside medical staff having
27 hospital privileges to practice medicine at the hospital by a

1 secret ballot of the medical staff of the hospital at an
2 executive session of the medical staff. The meeting shall be
3 held after one week's notice of the meeting and shall be
4 chaired by the longest-serving member of the active outside
5 medical staff or his or her designee. For the purposes of this
6 subsection, active outside medical staff does not include any
7 physician employed by the authority or having a contract as an
8 independent contractor of the authority. In addition, any
9 physician having a direct financial interest in the contract
10 or decision may not vote. Except as provided in this
11 subsection, any executory contract or decision entered into in
12 conflict with this subsection is void. This subsection does
13 not apply to any contract entered into prior to March 1, 2021.

14 ~~"(b)~~ (c) The Legislature hereby declares:

15 "(1) That any expenditure permitted by the
16 provisions of subdivision (28) of the preceding subsection (a)
17 of this section to be made by or on behalf of an authority
18 shall be deemed an expenditure of operating and maintaining
19 public hospitals and public health facilities for a public
20 purpose; and

21 "(2) That no expenditure permitted by the provisions
22 of said subdivision (28) to be made by or on behalf of an
23 authority shall be considered to be a lending of credit or a
24 granting of public money or thing of value to or in aid of any
25 individual, association, or corporation within the meaning of
26 any constitutional or statutory provision.

1 Nothing herein contained shall be construed as prohibiting or
2 rendering unlawful any otherwise lawful expenditure made by or
3 on behalf of an authority, solely because such expenditure is
4 not expressly permitted by the terms of said subdivision (28).

5 ~~"(c)~~ (d) As a basis for the power granted in
6 subdivision (31) of the preceding subsection (a), the
7 Legislature hereby:

8 "(1) Recognizes and contemplates that the nature and
9 scope of the powers conferred on authorities hereunder are
10 such as may compel each authority, in the course of exercising
11 its other powers or by virtue of such exercise of such powers,
12 to engage in activities that may be characterized as
13 "anticompetitive" within the contemplation of the antitrust
14 laws of the state or of the United States; and

15 "(2) Determines, as an expression of the public
16 policy of the state with respect to the displacement of
17 competition in the field of health care, that each authority,
18 when exercising its powers hereunder with respect to the
19 operation and management of health care facilities, acts as an
20 agency or instrumentality of its authorizing subdivisions and
21 as a political subdivision of the state.

22 ~~"(d)~~ (e) Nothing herein contained shall be construed
23 as granting to an authority the power to levy any taxes."

24 Section 2. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.