

1999 HOUSE POLITICAL SUBDIVISIONS

HB 1347

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1347

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-5-99

Tape Number	Side A	Side B	Meter #
1	x		2.5-18.3
Committee Clerk Signature <i>Pam Dever</i>			

Minutes:

BILL SUMMARY: Relating to proposed agreements and transactions by nonprofit hospitals.

Chairman Froseth opened the hearing.

Arnold "Chip" Thomas, N.D. Healthcare Assoc. : testified in support of HB1347 and brought additional amendments with him. (See attached testimony) 2.5-6.5

Chairman Froseth : How many profit and nonprofit hospitals do we have?

Mr. Thomas: N.D. has 41 nonprofit and 2 for profit hospitals. Dakota Heartland in Fargo, and UniMed in Minot are sponsored by investor owned corporations. This bill is designed for the future anticipatory transactions.

Vice Chair Maragos : I was wondering if this bill was a result of the UniMed transactions, which moved UniMed from nonprofit to profit.

Mr. Thomas : There is no linkage. We have been talking about drafting a bill during the last session already, which was before the UniMed transactions. We studied other states legislation, too, and that helped us draft this bill.

Rep. Delmore : What would happen if the attorney general stopped the transaction. Is there a way to still go through.

Mr. Thomas : You can still go through the courts. We are attempting to minimize the use of the courts to help regulate transactions. Here are the rules of the road to help with the hospital transactions.

Rep. Ekstrom :10.5 Fargo is now getting a third hospital, due to the fallout.

Chairman Froseth : This bill is important, because if people give to a foundation and think their money is going to nonprofit, then the hospital changes to for profit; the people want to know that the money will go where they intended. Not to the owners of the corporation. This clears up those kinds of problems.

Dave Huey, Atty. General Office-Litigation for Consumer Protection Division : 12.9 testified in support of the bill. I have had the responsibility for the attorney general's activities in the area of nonprofit corporations. The attorney general is a constitutional office. The office goes back to England as a traditional common law authority. The authority is sometimes called supervisory authority. We view this bill as establishing a statutory procedure on how we exercise our responsibilities. We worked with the hospital association. The last three items on the amendments are not necessary.

Vice Chair Maragos :17.8 Everything on page 6, is that right?

Mr. Thomas : Deleting the language on page 6 is my error. I was out of town and missed some communication. Please delete that language in the amendments I brought.

Chairman Froseth : Any testimony in opposition? Hearing none, hearing closed. What are committee wishes. Rep. Koppelman made a motion to adopt amendments. Rep. Rose seconded the motion. A VOICE VOTE was held and all were YES. Amendments passed.

ACTION: Vice Chair Maragos made a motion of DO PASS as amended and Rep. Delmore seconded the motion. 13 YES & 0 NO with 2 ABSENT. Passed. Rep. Rose will carry bill.

Additional proposed amendments to HB 1347

Page 3, line 11, replace "sixty" with "ninety"

Page 3, line 15, after the period insert "The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order."

Page 3, line 17, after "organizations" insert "serving the same or similar charitable purposes"

Page 4, line 11, after the first "the" insert "charitable"

Page 5, line 14, replace "If" with "Before" and replace "decides to approve, deny, or take" with "approves, denies, or takes".

Page 5, line 24, replace "; by writing" with "The Attorney General shall also provide written notice of the meeting"

Page 5, line 25, replace the underscored semicolon with an underscored comma and remove "by writing"

Page 6, line 5, after "transaction" insert "within the time period"

Page 6, line 6, replace "does not constitute" with "constitutes" and remove "and does not prevent the attorney"

Page 6, line 7, remove "general from taking other action"

Re-number accordingly.

February 5, 1999

VK
2/5/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1347 2-8-99 PS

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Renumber accordingly

Please type or use black pen to complete

Date 2-5-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1347

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on _____
- Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number 90117.0201

Action Taken Do Pass as amended

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser	/	
Vice Chair Maragos	/				
Rep. Delmore	/				
Rep. Disrud	/				
Rep. Eckre					
Rep. Ekstrom	/				
Rep. Glassheim	/				
Rep. Gunter	/				
Rep. Johnson, N	/				
Rep. Koppelman	/				
Rep. Niemeier					
Rep. Rose	/				
Rep. Severson	/				
Rep. Thoreson, B	/				

Total 13 0
(Yes) (No)

Absent 2

Floor Assignment Rep. Rose

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGH PENCIL OR PENCIL ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1347: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1347 was placed on the Sixth order on the calendar.

Page 3, line 11, replace "sixty" with "ninety"

Page 3, line 15, after the underscored period insert "The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order."

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Renumber accordingly

1999 SENATE HUMAN SERVICES

HB 1347

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1347

Senate Human Services Committee

Conference Committee

Hearing Date MARCH 9, 1999

Tape Number	Side A	Side B	Meter #
1	X		
Committee Clerk Signature <i>Carol Kolodziejchuk</i>			

Minutes:

The committee was called to order with all senators present.

The hearing was opened on HB1347.

REPRESENTATIVE KLEIN, sponsor of bill, explained it. Minot had a hospital run by the Order of Franciscans since its inception and it was sold to a for-profit company. In the process it was discovered there was no procedure to track the assets of this not-for-profit company and what should stay in the community. In this particular case Minot and Kenmare were not slighted. There was considerable amount of money left in foundations which the community people are controlling and are using it for community things. This bill will now set up a procedure on how to do this should it happen again.

ARNOLD THOMAS, Pres. of ND Health Care Assoc, supports bill in written testimony.

SENATOR KILZER: Why was the Attorney General involved when the Dept of Health oversees not-for-profit? MR. THOMAS answered that in looking at other states procedures this was a competent way of accomplishing this. This responsibility resides with the Attorney

General now; the bill only states that it will be the AG responsibility. No change of

responsibility. SENATOR DEMERS: Have you had a problem with transactions that have

occurred. MR. THOMAS: No, not at all. We have learned from Fargo and Minot transactions and picked the best from each. It is important that the assets sold are evaluated accurately.

SENATOR DEMERS: Can the Attorney General stop the transaction. MR. THOMAS: Yes,

then it would proceed to the courts. The process cannot be slowed down. SENATOR

DEMERS: Isn't this similar to certificate of needs? MR. THOMAS stated that this is a process.

SENATOR THANE asked if private funds contributed could be questioned. MR. THOMAS:

Unrestricted funds are to apply as they see fit; restricted funds have to be satisfied. SENATOR

KILZER: What happens when Hill Burton funds are accepted by hospital. MR. THOMAS:

Any outstanding Hill Burton funds would have to be addressed. These are Federal funds and need to be thoroughly addressed.

JAMES FLEMING, Ass't Attorney General, supports bill in written testimony. It is the duty of the Attorney General to insure practice of nonprofit organizations for good of public. If they are

not in agreement with the sale; judiciary will be involved. Articles are set up to keep funds in

area of institution. Bill follows model of several other states. SENATOR FISCHER asked if

restrictions were put on Fargo. MR. FLEMING answered that restrictions were already in their

articles. SENATOR FISCHER: Is this an ongoing thing; years after the transaction? MR.

FLEMING: No, but we do have ability to go and check.

Page 3

Senate Human Services Committee

Bill/Resolution Number HB1347

Hearing Date MARCH 9, 1999

DAVID HEWING, Attorney General's Office, answered SENATOR FISCHER's question regarding Fargo. The surrounding area in Fargo includes the Valley, Eastern ND and Western Minnesota. In Kenmare the area is much smaller.

There was no neutral or opposing testimony to this bill.

The hearing was closed on HB1347.

Discussion was held.

SENATOR DEMERS moved a DO PASS. SENATOR FISCHER seconded it. Roll call vote carried 6-0-0. SENATOR DEMERS will carry the bill.

Date: 3/9/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1347

Senate HUMAN SERVICES COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Sen DeMers Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Lee	✓				
Senator DeMers	✓				
Senator Mutzenberger	✓				

Total 6 (yes) 0 (no)

Absent 0

Floor Assignment Sen DeMers

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 9, 1999 1:19 p.m.

Module No: SR-42-4339
Carrier: DeMers
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1347, as engrossed: Human Services Committee (Sen. Thane, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1347 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1347



Vision

The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission

The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

TESTIMONY FOR HB 1347

Mr. Chairman, members of the Political Subdivisions Committee, my name is Arnold Thomas. I am the President of the North Dakota Healthcare Association (NDHA). I appear before you today on behalf of the Association in support of HB 1347.

North Dakota has 41 not-for-profit community hospitals. While it would be nice to think that none of them will ever be sold or otherwise subject to merger or acquisition, the reality is that two have already been sold and in the future, any one of the others could also be subject to such transactions. House Bill 1347 helps us prepare for that possibility.

Like more than 30 other states, we need to make sure that when a for profit corporation buys or merges with a not-for-profit hospital, there is a mechanism in place to safeguard the charitable assets for the good of our citizens, to safeguard the continued access of local citizens to essential health care services, and to ensure that the proceeds of the transaction are used to continue the provision of appropriate charitable care.

Other sections of our law already address the purchase of for profit corporations by not-for-profit corporations. House Bill 1347 deals exclusively **with** the case of a for profit corporation purchasing a not-for-profit corporation.

Any place you see the reference to “a corporation doing business as a hospital” read into that “a not-for-profit corporation doing business as a hospital.” Because this bill draft creates new sections to chapter 10-33, it is governed by the existing definitions of chapter 10-33. Chapter 10-33 deals solely with not-for-profit corporations and in 10-33-01(6) a “corporation” is **already** defined as a “not-for-profit corporation.”

The first three sections of the bill are what legislative council staff call technical amendments. They reconcile the new language in this bill with existing statutes. The substantive portion of the bill begins with section 4. It provides a not-for-

profit hospital must notify the attorney general if there is a pending sale, merger, or other acquisition. The notification must include the names and addresses of all involved parties, the terms of the agreement, a copy of the agreement, and information regarding whether an independent consultant has considered the degree to which the proposed agreement will serve the public interest.

Everything is on hold for 60 days to give the attorney general a chance to review the agreement. If the attorney general needs additional time, she may extend the review period for another 60 days.

During this 60 – 120 day review period, the attorney general can require the parties to provide any additional information and she can even hire an expert, at the expense of the not-for-profit hospital.

Beginning at the bottom of page 3, the attorney general is to ensure that the agreement is consistent with the fiduciary duties of the not-for-profit hospital and its board of directors. The attorney general is to determine whether appropriate steps have been taken to safeguard restricted assets. For example, someone might have willed the hospital a million dollars under the condition that the interest on the million dollars be used to support a well-baby clinic. Under the sale, there might no longer be a well baby clinic. Steps have to be taken to ensure that the million dollars are appropriately used or returned.

The attorney general is to determine whether appropriate steps have been taken to ensure that the proceeds of the sale are used for charitable purposes. If a hospital is sold for \$100 million, who gets the money? Generally, in such circumstances, a charitable foundation is established. Care needs to be taken to ensure that the foundation fulfills the charitable purpose of the hospital that was sold. Care is also required to ensure that no officer of the hospital in the transaction benefits personally.

Before the attorney general makes a final decision, she is to hold at least one public hearing. The public hearing or one of the public hearings, if there is more than one, must be held in the county in which the not-for-profit hospital is located. Section 6 of the bill addresses this requirement as well as the notice requirements.

If the attorney general finds that the agreement is not consistent with the fiduciary obligations of the not-for-profit hospital, she may stop the transaction. By the same token, she may not stall the transaction indefinitely. If the attorney general does not take action within the 60 – 120 day review period, she is deemed to have approved the agreement.

Unfortunately, in the drafting this was not appropriately communicated. The amendments that I have for you clarify this point and reflect discussion and agreement with the Attorney General Office.

The amendments would extend the initial review period from 60 to 90 days. They also permit an additional extension of time beyond the proposed 150 days with a joint agreement of the involved parties or the courts.

The remaining amendments are intended as non-substantive stylistic changes to the bill.

We ask the committee for a Do Pass with the offered amendments on HB 1347.

TESTIMONY ON BEHALF OF OFFICE OF ATTORNEY
GENERAL IN SUPPORT OF ENGROSSED HOUSE BILL 1347

March 9, 1999

James C. Fleming
Assistant Attorney General

Good morning, Chairman Thane and members of the Senate Human Services Committee. My name is Jim Fleming. Dave Huey and I are the assistant attorneys general who have been assigned to review the sale of charitable hospitals. I am appearing today on behalf of the Office of Attorney General in support of Engrossed House Bill 1347.

This bill codifies, with regard to nonprofit hospitals, the common law authority of the Office of Attorney General to monitor charitable organizations. The bill places in the North Dakota Century Code a workable process to use in fulfilling the obligations of the Office of Attorney General to review the sale or conversion of nonprofit hospitals. The bill also strikes a good balance between performing an adequate review and ensuring that the review process is completed in a timely fashion.

The Office of Attorney General supports this bill and asks for a "do pass" recommendation.

I would be happy to answer any questions the committee may have.



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During this 90 – 150 day review period, the attorney general can require the parties to provide any additional information and she can even hire an expert, at the expense of the not-for-profit hospital. The time period of 150 days may be further extended with a joint agreement of the parties or the courts.

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We ask the committee for a Do Pass on engrossed HB 1347.