

26:2H-7.11

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2014 **CHAPTER:** 82

NJSA: 26:2H-7.11 (Allows charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital)

BILL NO: A3423 (Substituted for S2510)

SPONSOR(S) Burzichelli and others

DATE INTRODUCED: June 16, 2014

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 18, 2014

SENATE: December 18, 2014

DATE OF APPROVAL: December 26, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

A3423

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

S2510

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2014, CHAPTER 82, *approved December 26, 2014*
Assembly, No. 3423 (*Second Reprint*)

1 AN ACT concerning certain hospital transactions and amending
2 P.L.2000, c.143.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.2000, c.143 (C.26:2H-7.11) is amended to
8 read as follows:

9 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-
10 1 et seq.) concerning certificate of need and licensure requirements,
11 a nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-
12 1 et seq.) shall satisfy the requirements of **[this act]** P.L.2000,
13 c.143 (C.26:2H-7.10 et seq.) before applying to the Superior Court
14 of New Jersey for approval prior to entering into a transaction that
15 results in the acquisition of the hospital as defined in **[this act]**
16 P.L.2000, c.143 (C.26:2H-7.10 et seq.). The proposed acquisition
17 shall be subject to the prior review of the Attorney General, in
18 consultation with the Commissioner of Health, pursuant to the
19 provisions of this section. The Attorney General shall review the
20 application in furtherance of his common law responsibilities as
21 protector, supervisor, and enforcer of charitable trusts and
22 charitable corporations.

23 For the purposes of **[sections 2 and 3 of this act]** P.L.2000,
24 c.143 (C.26:2H-7.10 et seq.), "acquisition" means the purchase,
25 lease, exchange, conversion, restructuring, merger, division,
26 consolidation, transfer of control, or other disposition of a
27 substantial amount of assets or operations, whether through a single
28 transaction or series of transactions, with one or more persons or
29 entities.

30 **[This act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall not apply
31 to a nonprofit hospital if the proposed acquisition is in the usual and
32 regular course of its activities and the Attorney General has given
33 the nonprofit hospital a written waiver as to the proposed
34 acquisition. As used in this section, a proposed acquisition is not in
35 the usual and regular course of a nonprofit hospital's activities if it
36 effects a fundamental corporate change that involves transfer of
37 ownership or control of charitable assets or a change of the
38 nonprofit hospital's mission or purpose.

39 a. (1) Within five working days of submitting an application
40 pursuant to this section, the nonprofit hospital shall publish a notice

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted October 23, 2014.

²Assembly amendments adopted in accordance with Governor's
recommendations December 11, 2014.

1 of the proposed acquisition, in a form approved by the Attorney
2 General, in a newspaper of general circulation in the service area of
3 the hospital once per week for three weeks. The notice shall state
4 the names of the parties to the agreement, describe the contents of
5 the application to the Attorney General, and state the date by which
6 a person may submit written comments about the application to the
7 Attorney General.

8 (2) Within 30 days after receipt of an initial application, the
9 Attorney General shall advise the applicant in writing whether the
10 application is complete, and, if not, shall specify what additional
11 information is required.

12 (3) The Attorney General shall, upon receipt of the information
13 requested, notify the applicant in writing of the date of completion
14 of the application.

15 b. Within 90 days of the date of completion of the application,
16 the Attorney General, in consultation with the Commissioner of
17 Health, shall review the application and support the proposed
18 acquisition, with or without any specific modifications, or, if the
19 Attorney General finds that it is not in the public interest, oppose
20 the proposed acquisition. The Attorney General or commissioner
21 may, for good cause, extend the time for review of an application
22 submitted pursuant to this section.

23 The proposed acquisition shall not be considered to be in the
24 public interest unless the Attorney General determines that
25 appropriate steps have been taken to safeguard the value of the
26 charitable assets of the hospital and to ensure that any proceeds
27 from the proposed acquisition are irrevocably dedicated for
28 appropriate charitable health care purposes; and the Commissioner
29 of Health determines that the proposed transaction is not likely to
30 result in the deterioration of the quality, availability, or accessibility
31 of health care services in the affected communities.

32 c. In determining whether the acquisition meets the criteria of
33 subsection b. of this section, the Attorney General shall consider:

34 (1) Whether the acquisition is permitted under the "New Jersey
35 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
36 and other applicable State statutes governing nonprofit **】**entities,
37 trusts, or charities**】** corporations;

38 (2) Whether the nonprofit hospital exercised due diligence in
39 deciding to effectuate the acquisition, selecting the other party to
40 the acquisition and negotiating the terms and conditions of the
41 acquisition;

42 (3) The procedures used by the nonprofit hospital in making its
43 decision, including whether appropriate expert assistance was used;

44 (4) Whether **】**conflict**】** conflicts of interest **】**was**】** were
45 disclosed, including, but not limited to, conflicts of interest related
46 to board members of, executives of, and experts retained by, the
47 nonprofit hospital, purchaser, or other parties to the acquisition;

1 (5) Whether any management contract under the acquisition is
2 for reasonable fair value;

3 (6) Whether the acquisition proceeds will be used for
4 appropriate charitable health care purposes consistent with the
5 nonprofit hospital's original purpose or for the support and
6 promotion of health care, and whether the proceeds will be
7 controlled as charitable funds independently of the purchaser or
8 parties to the acquisition; and

9 (7) Any other criteria the Attorney General establishes by
10 regulation to determine whether the proposed acquisition is in the
11 public interest.

12 d. In determining whether an acquisition by any person or
13 entity other than a corporation organized in this State for charitable
14 purposes under Title 15A of the New Jersey Statutes meets the
15 criteria of subsection b. of this section, the Attorney General shall
16 consider, in addition to the criteria set forth in subsection c., the
17 following criteria:

18 (1) Whether the nonprofit hospital will receive full and fair
19 market value for its assets. The Attorney General may employ, at
20 the nonprofit hospital's expense, reasonably necessary expert
21 assistance in making this determination;

22 (2) Whether charitable funds are placed at unreasonable risk, if
23 the acquisition is financed in part by the nonprofit hospital;

24 (3) Whether a right of first refusal has been retained to
25 repurchase the assets by a successor nonprofit corporation or
26 foundation if, following the acquisition, the hospital is subsequently
27 sold to, acquired by, or merged with another entity;

28 (4) Whether the nonprofit hospital established appropriate
29 criteria in deciding to pursue a conversion in relation to carrying out
30 its mission and purposes;

31 (5) Whether the nonprofit hospital considered the proposed
32 conversion as the only alternative or as the best alternative in
33 carrying out its mission and purposes;

34 (6) Whether the nonprofit hospital exercised due care in
35 assigning a value to the existing hospital and its charitable assets in
36 proceeding to negotiate the proposed conversion;

37 (7) Whether officers, directors, board members, or senior
38 management will receive future contracts in existing, new, or
39 affiliated hospitals or foundations; and

40 (8) Any other criteria the Attorney General establishes by
41 regulation to determine whether a proposed acquisition by any
42 person or entity other than a corporation organized in this State for
43 charitable purposes under Title 15A of the New Jersey Statutes is in
44 the public interest.

45 e. In the Attorney General's review of the proposed acquisition,
46 the Attorney General may assess the entity proposing to acquire the
47 nonprofit hospital for reasonable costs related to the review, as
48 determined by the Attorney General to be necessary. Reasonable

1 costs may include expert review of the acquisition and a process for
2 educating the public about the acquisition and obtaining public
3 input.

4 f. The Attorney General and the Commissioner of Health shall,
5 during the course of the review pursuant to this section, hold at least
6 one public hearing in which any person may file written comments
7 and exhibits or appear and make a statement. The public hearing
8 may, if the Attorney General and commissioner so agree, be
9 conducted jointly. The commissioner may satisfy the requirements
10 of this subsection by conducting a public hearing in conjunction
11 with the certificate of need review process pursuant to P.L.1971,
12 c.136 (C.26:2H-1 et seq.). The Attorney General or the
13 commissioner may subpoena additional information or witnesses,
14 including, but not limited to, information about any transaction that
15 is collateral to the proposed acquisition and any related documents,
16 require and administer oaths, require sworn statements, take
17 depositions, and use related discovery procedures for purposes of
18 the hearing and at any time prior to completing the review of the
19 proposed acquisition.

20 The Attorney General shall make the information received
21 pursuant to this section, and the Department of Health shall make
22 any information in its records relating to the proposed acquisition,
23 available for inspection at no cost to the public.

24 The public hearing shall be held no later than 60 days after the
25 date that an application from a nonprofit hospital is deemed
26 complete by the Attorney General. Public notice of the hearing
27 shall be provided at least two weeks in advance of the date of the
28 hearing.

29 g. In a proposed acquisition subject to review under subsection
30 d. of this section, the Attorney General, after consultation with the
31 principal parties to the transaction, shall make a determination as to
32 the amount of assets which the nonprofit hospital shall set aside as a
33 charitable obligation, based on the full and fair market value of the
34 hospital at the time of the proposed acquisition as determined by the
35 Attorney General.

36 h. Upon execution of a proposed acquisition subject to review
37 under subsection d. of this section, the amount determined by the
38 Attorney General to be set aside as a charitable obligation shall be
39 placed in a nonprofit charitable trust or one or more existing or
40 newly established tax-exempt charitable organizations operating
41 pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission and
42 grant-making functions of any charitable entity that receives assets
43 pursuant to subsection g. of this section shall be dedicated to
44 serving the health care needs of the community historically served
45 by the predecessor nonprofit hospital. Any charitable entity that
46 receives assets pursuant to subsection g. of this section, the
47 directors, officers, and trustees of any such charitable entity, and the
48 assets of any such charitable entity, including any stock involved in

1 the acquisition, shall be independent of any influence or control by
2 the acquiring entity, its directors, officers, trustees, subsidiaries, or
3 affiliates.

4 (1) The governance of the charitable trust that results from the
5 acquisition or of any newly established charitable organization that
6 is to receive charitable assets pursuant to subsection g. of this
7 section shall be subject to review and approval by the Attorney
8 General. The governance of any existing charitable organization
9 that is to receive charitable assets pursuant to subsection g. of this
10 section shall be subject to review by the Attorney General. The
11 governance of the charitable trust or the charitable organization
12 shall be broadly based, and neither the trust or organization nor any
13 officer, director, or senior manager of the trust or organization shall
14 be affiliated with the acquiring entity and no officer, director, or
15 senior manager of the trust or organization shall be a full-time
16 employee of State government. No officer, director, or senior
17 manager of the trust or organization shall have been a director,
18 officer, agent, trustee, or employee of the nonprofit hospital during
19 the three years immediately preceding the effective date of the
20 acquisition, unless that person can demonstrate to the satisfaction of
21 the Attorney General that the person's assumption of the position of
22 officer, director, or senior manager of the trust or organization
23 would not constitute a breach of fiduciary duty or other conflict of
24 interest.

25 (2) The governing body of the charitable trust or organization
26 shall establish or demonstrate that it has in place, as the case may
27 be, a mechanism to avoid conflicts of interest and to prohibit grants
28 that benefit the board of directors and management of the acquiring
29 entity or its affiliates or subsidiaries.

30 (3) The governing body of the charitable trust or organization
31 shall provide the Attorney General with an annual report which
32 shall include an audited financial statement and a detailed
33 description of its grant-making and other charitable activities
34 related to its use of the charitable assets received pursuant to **[this**
35 **act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.). The annual report
36 shall be made available to the public at both the Attorney General's
37 office and the office of the charitable trust or organization. Nothing
38 contained in **[this act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall
39 affect the obligations of an entity possessing endowment funds
40 under P.L.1975, c.26 (C.15:18-15 et seq.).

41 (4) Upon notice to, and upon the recommendation of, the
42 Attorney General, in the case of a nonprofit hospital previously
43 acquired ²at any time after November 2, 2000² by any person or
44 entity other than a corporation organized in this State for charitable
45 purposes under Title 15A of the New Jersey Statutes in accordance
46 with P.L.2000, c.143 (C.26:2H-7.10 et seq.), which is subsequently
47 acquired by a ²charitable entity that operates a² nonprofit hospital

1 ¹that in purpose, form and function is equivalent to the previously
2 acquired nonprofit hospital and serves the same population served
3 by the previously acquired nonprofit hospital¹ , any remaining
4 charitable assets that were placed in a nonprofit charitable entity
5 pursuant to subsection h. of this section ²[and that remain in the
6 possession of the charitable entity]² shall be subject to review by
7 the Superior Court to determine whether allocating such assets to
8 the ²[acquiring]² nonprofit ²charitable entity acquiring the
9 previously acquired nonprofit² hospital would be more consistent
10 with the previously acquired nonprofit hospital's original purpose.

11 ²For purposes of this subsection, "remaining charitable assets"
12 means charitable assets that were placed in a nonprofit charitable
13 entity pursuant to this subsection that:

14 remain in the possession of the charitable entity and have not
15 been disbursed by that entity and already used for the purpose of
16 serving the health care needs of the community historically served
17 by the predecessor nonprofit hospital; or

18 have at any time before, on or after the effective date of P.L. ,
19 c. (C.) (pending before the Legislature as this bill) been
20 transferred by the nonprofit charitable entity to a donor-advised
21 fund, or to any other entity, to use as recommended or as required
22 by the nonprofit charitable entity, and have not been disbursed by
23 that fund or entity and already used for the purpose of serving the
24 health care needs of the community historically served by the
25 predecessor nonprofit hospital.²

26 i. (1) The entity acquiring the nonprofit hospital, if determined
27 to be necessary by the Commissioner of Health, shall provide funds,
28 in an amount determined by the Commissioner of Health, for the
29 hiring by the Department of Health of an independent health care
30 access monitor to monitor and report quarterly to the Department of
31 Health on community health care access by the entity, including
32 levels of uncompensated care for indigent persons provided by the
33 entity. The funding shall be provided for three years after the date
34 of the acquisition. The entity acquiring the hospital shall provide
35 the monitor with appropriate access to the entity's records in order
36 to enable the monitor to fulfill this function.

37 To prevent the duplication of any information already reported
38 by the entity, the monitor shall, to the extent possible, utilize data
39 already provided by the entity to the Department of Health.

40 No personal identifiers shall be attached to any of the records
41 obtained by the monitor, and all such records shall be subject to the
42 privacy and confidentiality provisions of medical records provided
43 by law.

44 (2) Following the monitoring period, or in the event that no
45 monitoring period is established, if the Commissioner of Health
46 receives information indicating that the acquiring entity is not
47 fulfilling its commitment to the affected service area pursuant to

1 **【this act】** P.L.2000, c.143 (C.26:2H-7.10 et seq.) and determines
2 that the information is true, the commissioner shall order the
3 acquiring entity to comply with a corrective action plan. The
4 commissioner shall retain oversight of the acquiring entity's
5 obligations under the corrective action plan for as long as necessary
6 to ensure compliance with **【this act】** P.L.2000, c.143 (C.26:2H-7.10
7 et seq.).

8 j. The trustees and senior managers of the nonprofit hospital
9 are prohibited from investing in the acquiring entity for a period of
10 three years following the acquisition.

11 k. No director, officer, agent, trustee, or employee of the
12 nonprofit hospital shall benefit directly or indirectly from the
13 acquisition, including the receipt of any compensation directly
14 related to the proposed acquisition.

15 l. Upon completion by the Attorney General of the review of
16 the application required by **【this act】** P.L.2000, c.143 (C.26:2H-
17 7.10 et seq.), the nonprofit hospital shall apply to the Superior
18 Court for approval of the proposed acquisition. In that proceeding,
19 the Attorney General shall advise the court as to whether the
20 Attorney General supports or opposes the proposed acquisition,
21 with or without any specific modifications, and the basis for that
22 position. Any person who filed a written comment or exhibit or
23 appeared and made a statement in the public hearing held by the
24 Attorney General pursuant to subsection f. of this section shall be
25 considered a party to the proceeding, including consumers or
26 community groups representing the citizens of the State.

27 m. Notwithstanding the provisions of subsections a. and f. of
28 this section to the contrary, in the event that the Attorney General or
29 the Commissioner of Health determines that a proposed acquisition
30 should be considered on an expedited basis in order to preserve the
31 quality of health care provided to the community, the Attorney
32 General and the commissioner may combine the public notice about
33 the acquisition with the notice for a public hearing as required in
34 subsections a. and f., respectively, and may reduce the period of
35 time required for notice, as necessary. In considering a proposed
36 acquisition on an expedited basis, the Attorney General and
37 commissioner may agree to reduce the period of time for review of
38 a completed application to less than 90 days.

39 n. The Attorney General, in consultation with the
40 Commissioner of Health, shall adopt regulations pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.) to carry out the purposes of **【this act】** P.L.2000, c.143
43 (C.26:2H-7.10 et seq.).

44 (cf: P.L.2012, c.17, s.173)

45

46 2. This act shall take effect immediately.

1

2

3

4

5

6

Allows charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital.

ASSEMBLY, No. 3423

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 16, 2014

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblywoman CELESTE M. RILEY

District 3 (Cumberland, Gloucester and Salem)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Senators Sweeney and Allen

SYNOPSIS

Allows charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/24/2014)

1 AN ACT concerning certain hospital transactions and amending
2 P.L.2000, c.143.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.2000, c.143 (C.26:2H-7.11) is amended to
8 read as follows:

9 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-
10 1 et seq.) concerning certificate of need and licensure requirements,
11 a nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-
12 1 et seq.) shall satisfy the requirements of **[this act]** P.L.2000,
13 c.143 (C.26:2H-7.10 et seq.) before applying to the Superior Court
14 of New Jersey for approval prior to entering into a transaction that
15 results in the acquisition of the hospital as defined in **[this act]**
16 P.L.2000, c.143 (C.26:2H-7.10 et seq.). The proposed acquisition
17 shall be subject to the prior review of the Attorney General, in
18 consultation with the Commissioner of Health, pursuant to the
19 provisions of this section. The Attorney General shall review the
20 application in furtherance of his common law responsibilities as
21 protector, supervisor, and enforcer of charitable trusts and
22 charitable corporations.

23 For the purposes of **[sections 2 and 3 of this act]** P.L.2000,
24 c.143 (C.26:2H-7.10 et seq.), "acquisition" means the purchase,
25 lease, exchange, conversion, restructuring, merger, division,
26 consolidation, transfer of control, or other disposition of a
27 substantial amount of assets or operations, whether through a single
28 transaction or series of transactions, with one or more persons or
29 entities.

30 **[This act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall not apply
31 to a nonprofit hospital if the proposed acquisition is in the usual and
32 regular course of its activities and the Attorney General has given
33 the nonprofit hospital a written waiver as to the proposed
34 acquisition. As used in this section, a proposed acquisition is not in
35 the usual and regular course of a nonprofit hospital's activities if it
36 effects a fundamental corporate change that involves transfer of
37 ownership or control of charitable assets or a change of the
38 nonprofit hospital's mission or purpose.

39 a. (1) Within five working days of submitting an application
40 pursuant to this section, the nonprofit hospital shall publish a notice
41 of the proposed acquisition, in a form approved by the Attorney
42 General, in a newspaper of general circulation in the service area of
43 the hospital once per week for three weeks. The notice shall state
44 the names of the parties to the agreement, describe the contents of
45 the application to the Attorney General, and state the date by which

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 a person may submit written comments about the application to the
2 Attorney General.

3 (2) Within 30 days after receipt of an initial application, the
4 Attorney General shall advise the applicant in writing whether the
5 application is complete, and, if not, shall specify what additional
6 information is required.

7 (3) The Attorney General shall, upon receipt of the information
8 requested, notify the applicant in writing of the date of completion
9 of the application.

10 b. Within 90 days of the date of completion of the application,
11 the Attorney General, in consultation with the Commissioner of
12 Health, shall review the application and support the proposed
13 acquisition, with or without any specific modifications, or, if the
14 Attorney General finds that it is not in the public interest, oppose
15 the proposed acquisition. The Attorney General or commissioner
16 may, for good cause, extend the time for review of an application
17 submitted pursuant to this section.

18 The proposed acquisition shall not be considered to be in the
19 public interest unless the Attorney General determines that
20 appropriate steps have been taken to safeguard the value of the
21 charitable assets of the hospital and to ensure that any proceeds
22 from the proposed acquisition are irrevocably dedicated for
23 appropriate charitable health care purposes; and the Commissioner
24 of Health determines that the proposed transaction is not likely to
25 result in the deterioration of the quality, availability, or accessibility
26 of health care services in the affected communities.

27 c. In determining whether the acquisition meets the criteria of
28 subsection b. of this section, the Attorney General shall consider:

29 (1) Whether the acquisition is permitted under the "New Jersey
30 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
31 and other applicable State statutes governing nonprofit ~~entities,~~
32 trusts, or charities] corporations;

33 (2) Whether the nonprofit hospital exercised due diligence in
34 deciding to effectuate the acquisition, selecting the other party to
35 the acquisition and negotiating the terms and conditions of the
36 acquisition;

37 (3) The procedures used by the nonprofit hospital in making its
38 decision, including whether appropriate expert assistance was used;

39 (4) Whether ~~conflict~~ conflicts of interest ~~was~~ were
40 disclosed, including, but not limited to, conflicts of interest related
41 to board members of, executives of, and experts retained by, the
42 nonprofit hospital, purchaser, or other parties to the acquisition;

43 (5) Whether any management contract under the acquisition is
44 for reasonable fair value;

45 (6) Whether the acquisition proceeds will be used for
46 appropriate charitable health care purposes consistent with the
47 nonprofit hospital's original purpose or for the support and
48 promotion of health care, and whether the proceeds will be

1 controlled as charitable funds independently of the purchaser or
2 parties to the acquisition; and

3 (7) Any other criteria the Attorney General establishes by
4 regulation to determine whether the proposed acquisition is in the
5 public interest.

6 d. In determining whether an acquisition by any person or
7 entity other than a corporation organized in this State for charitable
8 purposes under Title 15A of the New Jersey Statutes meets the
9 criteria of subsection b. of this section, the Attorney General shall
10 consider, in addition to the criteria set forth in subsection c., the
11 following criteria:

12 (1) Whether the nonprofit hospital will receive full and fair
13 market value for its assets. The Attorney General may employ, at
14 the nonprofit hospital's expense, reasonably necessary expert
15 assistance in making this determination;

16 (2) Whether charitable funds are placed at unreasonable risk, if
17 the acquisition is financed in part by the nonprofit hospital;

18 (3) Whether a right of first refusal has been retained to
19 repurchase the assets by a successor nonprofit corporation or
20 foundation if, following the acquisition, the hospital is subsequently
21 sold to, acquired by, or merged with another entity;

22 (4) Whether the nonprofit hospital established appropriate
23 criteria in deciding to pursue a conversion in relation to carrying out
24 its mission and purposes;

25 (5) Whether the nonprofit hospital considered the proposed
26 conversion as the only alternative or as the best alternative in
27 carrying out its mission and purposes;

28 (6) Whether the nonprofit hospital exercised due care in
29 assigning a value to the existing hospital and its charitable assets in
30 proceeding to negotiate the proposed conversion;

31 (7) Whether officers, directors, board members, or senior
32 management will receive future contracts in existing, new, or
33 affiliated hospitals or foundations; and

34 (8) Any other criteria the Attorney General establishes by
35 regulation to determine whether a proposed acquisition by any
36 person or entity other than a corporation organized in this State for
37 charitable purposes under Title 15A of the New Jersey Statutes is in
38 the public interest.

39 e. In the Attorney General's review of the proposed acquisition,
40 the Attorney General may assess the entity proposing to acquire the
41 nonprofit hospital for reasonable costs related to the review, as
42 determined by the Attorney General to be necessary. Reasonable
43 costs may include expert review of the acquisition and a process for
44 educating the public about the acquisition and obtaining public
45 input.

46 f. The Attorney General and the Commissioner of Health shall,
47 during the course of the review pursuant to this section, hold at least
48 one public hearing in which any person may file written comments

1 and exhibits or appear and make a statement. The public hearing
2 may, if the Attorney General and commissioner so agree, be
3 conducted jointly. The commissioner may satisfy the requirements
4 of this subsection by conducting a public hearing in conjunction
5 with the certificate of need review process pursuant to P.L.1971,
6 c.136 (C.26:2H-1 et seq.). The Attorney General or the
7 commissioner may subpoena additional information or witnesses,
8 including, but not limited to, information about any transaction that
9 is collateral to the proposed acquisition and any related documents,
10 require and administer oaths, require sworn statements, take
11 depositions, and use related discovery procedures for purposes of
12 the hearing and at any time prior to completing the review of the
13 proposed acquisition.

14 The Attorney General shall make the information received
15 pursuant to this section, and the Department of Health shall make
16 any information in its records relating to the proposed acquisition,
17 available for inspection at no cost to the public.

18 The public hearing shall be held no later than 60 days after the
19 date that an application from a nonprofit hospital is deemed
20 complete by the Attorney General. Public notice of the hearing
21 shall be provided at least two weeks in advance of the date of the
22 hearing.

23 g. In a proposed acquisition subject to review under subsection
24 d. of this section, the Attorney General, after consultation with the
25 principal parties to the transaction, shall make a determination as to
26 the amount of assets which the nonprofit hospital shall set aside as a
27 charitable obligation, based on the full and fair market value of the
28 hospital at the time of the proposed acquisition as determined by the
29 Attorney General.

30 h. Upon execution of a proposed acquisition subject to review
31 under subsection d. of this section, the amount determined by the
32 Attorney General to be set aside as a charitable obligation shall be
33 placed in a nonprofit charitable trust or one or more existing or
34 newly established tax-exempt charitable organizations operating
35 pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission and
36 grant-making functions of any charitable entity that receives assets
37 pursuant to subsection g. of this section shall be dedicated to
38 serving the health care needs of the community historically served
39 by the predecessor nonprofit hospital. Any charitable entity that
40 receives assets pursuant to subsection g. of this section, the
41 directors, officers, and trustees of any such charitable entity, and the
42 assets of any such charitable entity, including any stock involved in
43 the acquisition, shall be independent of any influence or control by
44 the acquiring entity, its directors, officers, trustees, subsidiaries, or
45 affiliates.

46 (1) The governance of the charitable trust that results from the
47 acquisition or of any newly established charitable organization that
48 is to receive charitable assets pursuant to subsection g. of this

1 section shall be subject to review and approval by the Attorney
2 General. The governance of any existing charitable organization
3 that is to receive charitable assets pursuant to subsection g. of this
4 section shall be subject to review by the Attorney General. The
5 governance of the charitable trust or the charitable organization
6 shall be broadly based, and neither the trust or organization nor any
7 officer, director, or senior manager of the trust or organization shall
8 be affiliated with the acquiring entity and no officer, director, or
9 senior manager of the trust or organization shall be a full-time
10 employee of State government. No officer, director, or senior
11 manager of the trust or organization shall have been a director,
12 officer, agent, trustee, or employee of the nonprofit hospital during
13 the three years immediately preceding the effective date of the
14 acquisition, unless that person can demonstrate to the satisfaction of
15 the Attorney General that the person's assumption of the position of
16 officer, director, or senior manager of the trust or organization
17 would not constitute a breach of fiduciary duty or other conflict of
18 interest.

19 (2) The governing body of the charitable trust or organization
20 shall establish or demonstrate that it has in place, as the case may
21 be, a mechanism to avoid conflicts of interest and to prohibit grants
22 that benefit the board of directors and management of the acquiring
23 entity or its affiliates or subsidiaries.

24 (3) The governing body of the charitable trust or organization
25 shall provide the Attorney General with an annual report which
26 shall include an audited financial statement and a detailed
27 description of its grant-making and other charitable activities
28 related to its use of the charitable assets received pursuant to **[this**
29 **act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.). The annual report
30 shall be made available to the public at both the Attorney General's
31 office and the office of the charitable trust or organization. Nothing
32 contained in **[this act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall
33 affect the obligations of an entity possessing endowment funds
34 under P.L.1975, c.26 (C.15:18-15 et seq.).

35 (4) Upon notice to, and upon the recommendation of, the
36 Attorney General, in the case of a nonprofit hospital previously
37 acquired by any person or entity other than a corporation organized
38 in this State for charitable purposes under Title 15A of the New
39 Jersey Statutes in accordance with P.L.2000, c.143 (C.26:2H-7.10 et
40 seq.), which is subsequently acquired by a nonprofit hospital, any
41 remaining charitable assets that were placed in a charitable entity
42 pursuant to subsection h. of this section and that remain in the
43 possession of the charitable entity shall be subject to review by the
44 Superior Court to determine whether allocating such assets to the
45 acquiring nonprofit hospital would be more consistent with the
46 previously acquired nonprofit hospital's original purpose.

47 i. (1) The entity acquiring the nonprofit hospital, if determined
48 to be necessary by the Commissioner of Health, shall provide funds,

1 in an amount determined by the Commissioner of Health, for the
2 hiring by the Department of Health of an independent health care
3 access monitor to monitor and report quarterly to the Department of
4 Health on community health care access by the entity, including
5 levels of uncompensated care for indigent persons provided by the
6 entity. The funding shall be provided for three years after the date
7 of the acquisition. The entity acquiring the hospital shall provide
8 the monitor with appropriate access to the entity's records in order
9 to enable the monitor to fulfill this function.

10 To prevent the duplication of any information already reported
11 by the entity, the monitor shall, to the extent possible, utilize data
12 already provided by the entity to the Department of Health.

13 No personal identifiers shall be attached to any of the records
14 obtained by the monitor, and all such records shall be subject to the
15 privacy and confidentiality provisions of medical records provided
16 by law.

17 (2) Following the monitoring period, or in the event that no
18 monitoring period is established, if the Commissioner of Health
19 receives information indicating that the acquiring entity is not
20 fulfilling its commitment to the affected service area pursuant to
21 **【this act】** P.L.2000, c.143 (C.26:2H-7.10 et seq.) and determines
22 that the information is true, the commissioner shall order the
23 acquiring entity to comply with a corrective action plan. The
24 commissioner shall retain oversight of the acquiring entity's
25 obligations under the corrective action plan for as long as necessary
26 to ensure compliance with **【this act】** P.L.2000, c.143 (C.26:2H-7.10
27 et seq.).

28 j. The trustees and senior managers of the nonprofit hospital
29 are prohibited from investing in the acquiring entity for a period of
30 three years following the acquisition.

31 k. No director, officer, agent, trustee, or employee of the
32 nonprofit hospital shall benefit directly or indirectly from the
33 acquisition, including the receipt of any compensation directly
34 related to the proposed acquisition.

35 l. Upon completion by the Attorney General of the review of
36 the application required by **【this act】** P.L.2000, c.143 (C.26:2H-
37 7.10 et seq.), the nonprofit hospital shall apply to the Superior
38 Court for approval of the proposed acquisition. In that proceeding,
39 the Attorney General shall advise the court as to whether the
40 Attorney General supports or opposes the proposed acquisition,
41 with or without any specific modifications, and the basis for that
42 position. Any person who filed a written comment or exhibit or
43 appeared and made a statement in the public hearing held by the
44 Attorney General pursuant to subsection f. of this section shall be
45 considered a party to the proceeding, including consumers or
46 community groups representing the citizens of the State.

47 m. Notwithstanding the provisions of subsections a. and f. of
48 this section to the contrary, in the event that the Attorney General or

1 the Commissioner of Health determines that a proposed acquisition
2 should be considered on an expedited basis in order to preserve the
3 quality of health care provided to the community, the Attorney
4 General and the commissioner may combine the public notice about
5 the acquisition with the notice for a public hearing as required in
6 subsections a. and f., respectively, and may reduce the period of
7 time required for notice, as necessary. In considering a proposed
8 acquisition on an expedited basis, the Attorney General and
9 commissioner may agree to reduce the period of time for review of
10 a completed application to less than 90 days.

11 n. The Attorney General, in consultation with the
12 Commissioner of Health, shall adopt regulations pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
14 seq.) to carry out the purposes of **[this act]** P.L.2000, c.143
15 (C.26:2H-7.10 et seq.).
16 (cf: P.L.2012, c.17, s.173)

17

18 2. This act shall take effect immediately.

19

20

21

STATEMENT

22

23 This bill would allow the charitable assets set aside from the sale
24 of a nonprofit hospital to a for-profit entity to be allocated to a
25 successor nonprofit hospital acquiring the for-profit hospital,
26 according to a recommendation of the Attorney General and
27 determination by the Superior Court.

28 Under the "Community Health Care Assets Protection Act," the
29 Attorney General must determine an amount of assets to be set
30 aside as a charitable obligation when a for-profit corporation or out-
31 of-State nonprofit corporation acquires a nonprofit hospital, based
32 on the full and fair market value of the hospital at the time of the
33 acquisition. This charitable obligation must be placed in a
34 nonprofit charitable trust whose mission is to serve the health care
35 needs of the community historically served by the predecessor
36 nonprofit hospital.

37 The purpose of the bill is to allow charitable assets that are set
38 aside as a charitable obligation in this manner to be returned to the
39 hospital, if it is subsequently acquired by another nonprofit hospital.
40 The reversion of assets to the hospital would occur upon the
41 recommendation of the Attorney General and the determination by
42 the Superior Court that the allocation of the assets to the acquiring
43 nonprofit hospital would be more consistent with the original
44 nonprofit hospital's purpose.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3423

STATE OF NEW JERSEY

DATED: JUNE 26, 2014

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3423.

This bill would allow the charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital, according to a recommendation of the Attorney General and determination by the Superior Court.

Under the “Community Health Care Assets Protection Act,” P.L.2000, c.143 (C.26:2H-7.10 et seq.), the Attorney General must determine an amount of assets to be set aside as a charitable obligation when a for-profit corporation or out-of-State nonprofit corporation acquires a nonprofit hospital, based on the full and fair market value of the hospital at the time of the acquisition. This charitable obligation must be placed in a nonprofit charitable trust whose mission is to serve the health care needs of the community historically served by the predecessor nonprofit hospital.

The purpose of the bill is to allow charitable assets that are set aside as a charitable obligation in this manner to be returned to the hospital, if it is subsequently acquired by another nonprofit hospital. The reversion of assets to the hospital would occur upon the recommendation of the Attorney General and the determination by the Superior Court that the allocation of the assets to the acquiring nonprofit hospital would be more consistent with the original nonprofit hospital’s purpose.

STATEMENT TO
ASSEMBLY, No. 3423

with Assembly Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: OCTOBER 23, 2014

This bill would allow the charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital, according to a recommendation of the Attorney General and determination by the Superior Court.

Under these floor amendments the bill would apply when the original hospital is acquired by a nonprofit hospital that in purpose, form and function is equivalent to the previously acquired nonprofit hospital and serves the same population served by the previously acquired nonprofit hospital.

SENATE, No. 2510

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED OCTOBER 14, 2014

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator DIANE B. ALLEN

District 7 (Burlington)

SYNOPSIS

Allows charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/24/2014)

1 AN ACT concerning certain hospital transactions and amending
2 P.L.2000, c.143.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.2000, c.143 (C.26:2H-7.11) is amended to
8 read as follows:

9 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-
10 1 et seq.) concerning certificate of need and licensure requirements,
11 a nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-
12 1 et seq.) shall satisfy the requirements of **[this act]** P.L.2000,
13 c.143 (C.26:2H-7.10 et seq.) before applying to the Superior Court
14 of New Jersey for approval prior to entering into a transaction that
15 results in the acquisition of the hospital as defined in **[this act]**
16 P.L.2000, c.143 (C.26:2H-7.10 et seq.). The proposed acquisition
17 shall be subject to the prior review of the Attorney General, in
18 consultation with the Commissioner of Health, pursuant to the
19 provisions of this section. The Attorney General shall review the
20 application in furtherance of his common law responsibilities as
21 protector, supervisor, and enforcer of charitable trusts and
22 charitable corporations.

23 For the purposes of **[sections 2 and 3 of this act]** P.L.2000,
24 c.143 (C.26:2H-7.10 et seq.), "acquisition" means the purchase,
25 lease, exchange, conversion, restructuring, merger, division,
26 consolidation, transfer of control, or other disposition of a
27 substantial amount of assets or operations, whether through a single
28 transaction or series of transactions, with one or more persons or
29 entities.

30 **[This act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall not apply
31 to a nonprofit hospital if the proposed acquisition is in the usual and
32 regular course of its activities and the Attorney General has given
33 the nonprofit hospital a written waiver as to the proposed
34 acquisition. As used in this section, a proposed acquisition is not in
35 the usual and regular course of a nonprofit hospital's activities if it
36 effects a fundamental corporate change that involves transfer of
37 ownership or control of charitable assets or a change of the
38 nonprofit hospital's mission or purpose.

39 a. (1) Within five working days of submitting an application
40 pursuant to this section, the nonprofit hospital shall publish a notice
41 of the proposed acquisition, in a form approved by the Attorney
42 General, in a newspaper of general circulation in the service area of
43 the hospital once per week for three weeks. The notice shall state
44 the names of the parties to the agreement, describe the contents of
45 the application to the Attorney General, and state the date by which

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 a person may submit written comments about the application to the
2 Attorney General.

3 (2) Within 30 days after receipt of an initial application, the
4 Attorney General shall advise the applicant in writing whether the
5 application is complete, and, if not, shall specify what additional
6 information is required.

7 (3) The Attorney General shall, upon receipt of the information
8 requested, notify the applicant in writing of the date of completion
9 of the application.

10 b. Within 90 days of the date of completion of the application,
11 the Attorney General, in consultation with the Commissioner of
12 Health, shall review the application and support the proposed
13 acquisition, with or without any specific modifications, or, if the
14 Attorney General finds that it is not in the public interest, oppose
15 the proposed acquisition. The Attorney General or commissioner
16 may, for good cause, extend the time for review of an application
17 submitted pursuant to this section.

18 The proposed acquisition shall not be considered to be in the
19 public interest unless the Attorney General determines that
20 appropriate steps have been taken to safeguard the value of the
21 charitable assets of the hospital and to ensure that any proceeds
22 from the proposed acquisition are irrevocably dedicated for
23 appropriate charitable health care purposes; and the Commissioner
24 of Health determines that the proposed transaction is not likely to
25 result in the deterioration of the quality, availability, or accessibility
26 of health care services in the affected communities.

27 c. In determining whether the acquisition meets the criteria of
28 subsection b. of this section, the Attorney General shall consider:

29 (1) Whether the acquisition is permitted under the "New Jersey
30 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
31 and other applicable State statutes governing nonprofit ~~entities,~~
32 trusts, or charities corporations;

33 (2) Whether the nonprofit hospital exercised due diligence in
34 deciding to effectuate the acquisition, selecting the other party to
35 the acquisition and negotiating the terms and conditions of the
36 acquisition;

37 (3) The procedures used by the nonprofit hospital in making its
38 decision, including whether appropriate expert assistance was used;

39 (4) Whether ~~conflict~~ conflicts of interest ~~was~~ were
40 disclosed, including, but not limited to, conflicts of interest related
41 to board members of, executives of, and experts retained by, the
42 nonprofit hospital, purchaser, or other parties to the acquisition;

43 (5) Whether any management contract under the acquisition is
44 for reasonable fair value;

45 (6) Whether the acquisition proceeds will be used for
46 appropriate charitable health care purposes consistent with the
47 nonprofit hospital's original purpose or for the support and
48 promotion of health care, and whether the proceeds will be

1 controlled as charitable funds independently of the purchaser or
2 parties to the acquisition; and

3 (7) Any other criteria the Attorney General establishes by
4 regulation to determine whether the proposed acquisition is in the
5 public interest.

6 d. In determining whether an acquisition by any person or
7 entity other than a corporation organized in this State for charitable
8 purposes under Title 15A of the New Jersey Statutes meets the
9 criteria of subsection b. of this section, the Attorney General shall
10 consider, in addition to the criteria set forth in subsection c., the
11 following criteria:

12 (1) Whether the nonprofit hospital will receive full and fair
13 market value for its assets. The Attorney General may employ, at
14 the nonprofit hospital's expense, reasonably necessary expert
15 assistance in making this determination;

16 (2) Whether charitable funds are placed at unreasonable risk, if
17 the acquisition is financed in part by the nonprofit hospital;

18 (3) Whether a right of first refusal has been retained to
19 repurchase the assets by a successor nonprofit corporation or
20 foundation if, following the acquisition, the hospital is subsequently
21 sold to, acquired by, or merged with another entity;

22 (4) Whether the nonprofit hospital established appropriate
23 criteria in deciding to pursue a conversion in relation to carrying out
24 its mission and purposes;

25 (5) Whether the nonprofit hospital considered the proposed
26 conversion as the only alternative or as the best alternative in
27 carrying out its mission and purposes;

28 (6) Whether the nonprofit hospital exercised due care in
29 assigning a value to the existing hospital and its charitable assets in
30 proceeding to negotiate the proposed conversion;

31 (7) Whether officers, directors, board members, or senior
32 management will receive future contracts in existing, new, or
33 affiliated hospitals or foundations; and

34 (8) Any other criteria the Attorney General establishes by
35 regulation to determine whether a proposed acquisition by any
36 person or entity other than a corporation organized in this State for
37 charitable purposes under Title 15A of the New Jersey Statutes is in
38 the public interest.

39 e. In the Attorney General's review of the proposed acquisition,
40 the Attorney General may assess the entity proposing to acquire the
41 nonprofit hospital for reasonable costs related to the review, as
42 determined by the Attorney General to be necessary. Reasonable
43 costs may include expert review of the acquisition and a process for
44 educating the public about the acquisition and obtaining public
45 input.

46 f. The Attorney General and the Commissioner of Health shall,
47 during the course of the review pursuant to this section, hold at least
48 one public hearing in which any person may file written comments

1 and exhibits or appear and make a statement. The public hearing
2 may, if the Attorney General and commissioner so agree, be
3 conducted jointly. The commissioner may satisfy the requirements
4 of this subsection by conducting a public hearing in conjunction
5 with the certificate of need review process pursuant to P.L.1971,
6 c.136 (C.26:2H-1 et seq.). The Attorney General or the
7 commissioner may subpoena additional information or witnesses,
8 including, but not limited to, information about any transaction that
9 is collateral to the proposed acquisition and any related documents,
10 require and administer oaths, require sworn statements, take
11 depositions, and use related discovery procedures for purposes of
12 the hearing and at any time prior to completing the review of the
13 proposed acquisition.

14 The Attorney General shall make the information received
15 pursuant to this section, and the Department of Health shall make
16 any information in its records relating to the proposed acquisition,
17 available for inspection at no cost to the public.

18 The public hearing shall be held no later than 60 days after the
19 date that an application from a nonprofit hospital is deemed
20 complete by the Attorney General. Public notice of the hearing
21 shall be provided at least two weeks in advance of the date of the
22 hearing.

23 g. In a proposed acquisition subject to review under subsection
24 d. of this section, the Attorney General, after consultation with the
25 principal parties to the transaction, shall make a determination as to
26 the amount of assets which the nonprofit hospital shall set aside as a
27 charitable obligation, based on the full and fair market value of the
28 hospital at the time of the proposed acquisition as determined by the
29 Attorney General.

30 h. Upon execution of a proposed acquisition subject to review
31 under subsection d. of this section, the amount determined by the
32 Attorney General to be set aside as a charitable obligation shall be
33 placed in a nonprofit charitable trust or one or more existing or
34 newly established tax-exempt charitable organizations operating
35 pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission and
36 grant-making functions of any charitable entity that receives assets
37 pursuant to subsection g. of this section shall be dedicated to
38 serving the health care needs of the community historically served
39 by the predecessor nonprofit hospital. Any charitable entity that
40 receives assets pursuant to subsection g. of this section, the
41 directors, officers, and trustees of any such charitable entity, and the
42 assets of any such charitable entity, including any stock involved in
43 the acquisition, shall be independent of any influence or control by
44 the acquiring entity, its directors, officers, trustees, subsidiaries, or
45 affiliates.

46 (1) The governance of the charitable trust that results from the
47 acquisition or of any newly established charitable organization that
48 is to receive charitable assets pursuant to subsection g. of this

1 section shall be subject to review and approval by the Attorney
2 General. The governance of any existing charitable organization
3 that is to receive charitable assets pursuant to subsection g. of this
4 section shall be subject to review by the Attorney General. The
5 governance of the charitable trust or the charitable organization
6 shall be broadly based, and neither the trust or organization nor any
7 officer, director, or senior manager of the trust or organization shall
8 be affiliated with the acquiring entity and no officer, director, or
9 senior manager of the trust or organization shall be a full-time
10 employee of State government. No officer, director, or senior
11 manager of the trust or organization shall have been a director,
12 officer, agent, trustee, or employee of the nonprofit hospital during
13 the three years immediately preceding the effective date of the
14 acquisition, unless that person can demonstrate to the satisfaction of
15 the Attorney General that the person's assumption of the position of
16 officer, director, or senior manager of the trust or organization
17 would not constitute a breach of fiduciary duty or other conflict of
18 interest.

19 (2) The governing body of the charitable trust or organization
20 shall establish or demonstrate that it has in place, as the case may
21 be, a mechanism to avoid conflicts of interest and to prohibit grants
22 that benefit the board of directors and management of the acquiring
23 entity or its affiliates or subsidiaries.

24 (3) The governing body of the charitable trust or organization
25 shall provide the Attorney General with an annual report which
26 shall include an audited financial statement and a detailed
27 description of its grant-making and other charitable activities
28 related to its use of the charitable assets received pursuant to **[this**
29 **act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.). The annual report
30 shall be made available to the public at both the Attorney General's
31 office and the office of the charitable trust or organization. Nothing
32 contained in **[this act]** P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall
33 affect the obligations of an entity possessing endowment funds
34 under P.L.1975, c.26 (C.15:18-15 et seq.).

35 (4) Upon notice to, and upon the recommendation of, the
36 Attorney General, in the case of a nonprofit hospital previously
37 acquired by any person or entity other than a corporation organized
38 in this State for charitable purposes under Title 15A of the New
39 Jersey Statutes in accordance with P.L.2000, c.143 (C.26:2H-7.10 et
40 seq.), which is subsequently acquired by a nonprofit hospital, any
41 remaining charitable assets that were placed in a charitable entity
42 pursuant to subsection h. of this section and that remain in the
43 possession of the charitable entity shall be subject to review by the
44 Superior Court to determine whether allocating such assets to the
45 acquiring nonprofit hospital would be more consistent with the
46 previously acquired nonprofit hospital's original purpose.

47 i. (1) The entity acquiring the nonprofit hospital, if
48 determined to be necessary by the Commissioner of Health, shall

1 provide funds, in an amount determined by the Commissioner of
2 Health, for the hiring by the Department of Health of an
3 independent health care access monitor to monitor and report
4 quarterly to the Department of Health on community health care
5 access by the entity, including levels of uncompensated care for
6 indigent persons provided by the entity. The funding shall be
7 provided for three years after the date of the acquisition. The entity
8 acquiring the hospital shall provide the monitor with appropriate
9 access to the entity's records in order to enable the monitor to fulfill
10 this function.

11 To prevent the duplication of any information already reported
12 by the entity, the monitor shall, to the extent possible, utilize data
13 already provided by the entity to the Department of Health.

14 No personal identifiers shall be attached to any of the records
15 obtained by the monitor, and all such records shall be subject to the
16 privacy and confidentiality provisions of medical records provided
17 by law.

18 (2) Following the monitoring period, or in the event that no
19 monitoring period is established, if the Commissioner of Health
20 receives information indicating that the acquiring entity is not
21 fulfilling its commitment to the affected service area pursuant to
22 **【this act】** P.L.2000, c.143 (C.26:2H-7.10 et seq.) and determines
23 that the information is true, the commissioner shall order the
24 acquiring entity to comply with a corrective action plan. The
25 commissioner shall retain oversight of the acquiring entity's
26 obligations under the corrective action plan for as long as necessary
27 to ensure compliance with **【this act】** P.L.2000, c.143 (C.26:2H-7.10
28 et seq.).

29 j. The trustees and senior managers of the nonprofit hospital
30 are prohibited from investing in the acquiring entity for a period of
31 three years following the acquisition.

32 k. No director, officer, agent, trustee, or employee of the
33 nonprofit hospital shall benefit directly or indirectly from the
34 acquisition, including the receipt of any compensation directly
35 related to the proposed acquisition.

36 l. Upon completion by the Attorney General of the review of
37 the application required by **【this act】** P.L.2000, c.143 (C.26:2H-
38 7.10 et seq.), the nonprofit hospital shall apply to the Superior
39 Court for approval of the proposed acquisition. In that proceeding,
40 the Attorney General shall advise the court as to whether the
41 Attorney General supports or opposes the proposed acquisition,
42 with or without any specific modifications, and the basis for that
43 position. Any person who filed a written comment or exhibit or
44 appeared and made a statement in the public hearing held by the
45 Attorney General pursuant to subsection f. of this section shall be
46 considered a party to the proceeding, including consumers or
47 community groups representing the citizens of the State.

1 m. Notwithstanding the provisions of subsections a. and f. of
2 this section to the contrary, in the event that the Attorney General or
3 the Commissioner of Health determines that a proposed acquisition
4 should be considered on an expedited basis in order to preserve the
5 quality of health care provided to the community, the Attorney
6 General and the commissioner may combine the public notice about
7 the acquisition with the notice for a public hearing as required in
8 subsections a. and f., respectively, and may reduce the period of
9 time required for notice, as necessary. In considering a proposed
10 acquisition on an expedited basis, the Attorney General and
11 commissioner may agree to reduce the period of time for review of
12 a completed application to less than 90 days.

13 n. The Attorney General, in consultation with the
14 Commissioner of Health, shall adopt regulations pursuant to the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.) to carry out the purposes of **[this act]** P.L.2000,
17 c.143 (C.26:2H-7.10 et seq.).
18 (cf: P.L.2012, c.17, s.173)

19

20 2. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill would allow the charitable assets set aside from the sale
26 of a nonprofit hospital to a for-profit entity to be allocated to a
27 successor nonprofit hospital acquiring the for-profit hospital,
28 according to a recommendation of the Attorney General and
29 determination by the Superior Court.

30 Under the "Community Health Care Assets Protection Act," the
31 Attorney General must determine an amount of assets to be set
32 aside as a charitable obligation when a for-profit corporation or out-
33 of-State nonprofit corporation acquires a nonprofit hospital, based
34 on the full and fair market value of the hospital at the time of the
35 acquisition. This charitable obligation must be placed in a
36 nonprofit charitable trust whose mission is to serve the health care
37 needs of the community historically served by the predecessor
38 nonprofit hospital.

39 The purpose of the bill is to allow charitable assets that are set
40 aside as a charitable obligation in this manner to be returned to the
41 hospital, if it is subsequently acquired by another nonprofit hospital.
42 The reversion of assets to the hospital would occur upon the
43 recommendation of the Attorney General and the determination by
44 the Superior Court that the allocation of the assets to the acquiring
45 nonprofit hospital would be more consistent with the original
46 nonprofit hospital's purpose.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE, No. 2510

STATE OF NEW JERSEY

DATED: OCTOBER 16, 2014

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably Senate Bill No. 2510.

This bill would allow the charitable assets set aside from the sale of a nonprofit hospital to a for-profit entity to be allocated to a successor nonprofit hospital acquiring the for-profit hospital, according to a recommendation of the Attorney General and determination by the Superior Court.

Under the “Community Health Care Assets Protection Act,” P.L.2000, c.143 (C.26:2H-7.10 et seq.), the Attorney General must determine an amount of assets to be set aside as a charitable obligation when a for-profit corporation or out-of-State nonprofit corporation acquires a nonprofit hospital, based on the full and fair market value of the hospital at the time of the acquisition. This charitable obligation must be placed in a nonprofit charitable trust whose mission is to serve the health care needs of the community historically served by the predecessor nonprofit hospital.

The purpose of the bill is to allow charitable assets that are set aside as a charitable obligation in this manner to be returned to the hospital, if it is subsequently acquired by another nonprofit hospital. The reversion of assets to the hospital would occur upon the recommendation of the Attorney General and the determination by the Superior Court that the allocation of the assets to the acquiring nonprofit hospital would be more consistent with the original nonprofit hospital’s purpose.

ASSEMBLY BILL NO. 3423
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3423 (First Reprint) with my recommendations for reconsideration.

Under current law, a portion of the assets from the sale of a non-profit hospital to a for-profit entity may be placed in a charitable entity dedicated to serving the health care needs of the community. This bill would modify that requirement, and allow for the return of those assets if the hospital is re-acquired by a non-profit organization. I agree that allowing for the reacquisition of the remainder of these assets will help strengthen the mission of our non-profit hospitals, and the communities they serve. My modest recommendations would strengthen the bill and better ensure that the objectives of the Legislature are accomplished by clarifying the scope of applicability of the bill, while preserving the essential oversight functions of the Superior Court, and the Attorney General.

Accordingly, I herewith return Assembly Bill No. 3423 (First Reprint) and recommend that it be amended as follows:

- | | |
|--|--|
| <u>Page 6, Section 1, Line 37:</u> | After " <u>acquired</u> " insert "at any time after November 2, 2000" |
| <u>Page 6, Section 1, Line 40:</u> | After "a" insert "charitable" entity that operates a" |
| <u>Page 6, Section 1, Lines 45-46:</u> | Delete " <u>and that remain in the possession of the charitable entity</u> " |
| <u>Page 7, Section 1, Line 1:</u> | Delete " <u>acquiring</u> " |
| <u>Page 7, Section 1, Line 1:</u> | After " <u>nonprofit</u> " insert "charitable" entity acquiring the previously acquired nonprofit" |
| <u>Page 7, Section 1, Line 2:</u> | After " <u>purpose.</u> " insert "For purposes of this subsection, |

"remaining charitable assets" means charitable assets that were placed in a nonprofit charitable entity pursuant to this subsection that: (1) remain in the possession of the charitable entity and have not been disbursed by that entity and already used for the purpose of serving the health care needs of the community historically served by the predecessor nonprofit hospital; or (2) have at any time before, on or after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill) been transferred by the nonprofit charitable entity to a donor-advised fund, or to any other entity, to use as recommended or as required by the nonprofit charitable entity, and have not been disbursed by that fund or entity and already used for the purpose of serving the health care needs of the community historically served by the predecessor nonprofit hospital."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Paul B. Matey

Deputy Chief Counsel to the Governor