

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED HOUSE
BILL NO. 1644

By: Ervin of the House

and

Robinson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to University Hospitals; amending Section 3, Chapter 330, O.S.L. 1993, as amended by Section 1, Chapter 263, O.S.L. 1995, Section 7, Chapter 330, O.S.L. 1993, as amended by Section 5, Chapter 283, O.S.L. 1994, Section 17, Chapter 330, O.S.L. 1993, and Section 4, Chapter 263, O.S.L. 1995, as amended by Section 6, Chapter 321, O.S.L. 1996 (63 O.S. Supp. 1996, Sections 3203, 3207, 3217 and 3225) and Section 3, Chapter 263, O.S.L. 1995 (63 O.S. Supp. 1996, Section 3224), as last amended by Section 15 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relate to the University Hospitals Authority Act; updating name of entity; clarifying indigent care requirement; clarifying definition; updating name of entity; giving the University Hospitals Trust authorization to file certain applications with the Supreme Court; clarifying certain real property title requirements; modifying required contents of certain agreements; clarifying the method by which major decisions are resolved by certain entity; modifying what constitutes a major decision; requiring certain proposed agreements to be approved by the Supreme Court; providing procedures; making certain judgments incontestable; defining term; amending 43A O.S. 1991, Section 3-701, which relates to inmate medical and surgical care; updating name of facility; authorizing certain units of the Department of Human Services to enter into contracts and perform certain services for the Oklahoma Medical Center; amending 56 O.S. 1991, Section 300, which relates to the Oklahoma Medical Center; modifying the scope of the Oklahoma Medical Center; amending 74 O.S. 1991, Section 7052, as amended by Section 17, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1996, Section 7052), which relates to the Medical Technology and Research Authority of Oklahoma; updating name of entity; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 330, O.S.L. 1993, as amended by Section 1, Chapter 263, O.S.L. 1995 (63 O.S. Supp. 1996, Section 3203), is amended to read as follows:

Section 3203. A. The purposes of the University Hospitals Authority Act are to provide for an effective and efficient administration, to ensure a dependable source of funding, and to effectuate the mission and purposes of the University Hospitals Authority. The mission and purposes of the University Hospitals ~~Authority~~ are to serve as general hospitals, to serve as teaching and training facilities for students enrolled at the University of Oklahoma, to serve as a site for conducting medical and biomedical research by faculty members of the University of Oklahoma Health Sciences Center and to provide care for the medically indigent. The University Hospitals shall maintain a close affiliation with the University of Oklahoma Health Sciences Center and shall coordinate their operations and activities in a cooperative manner. In addition, the University Hospitals Authority shall provide indigent and nonindigent patient care, as more fully described herein.

B. The Legislature finds that the needs of the citizens of this state and the needs of the University of Oklahoma Health Sciences Center will be best served if the University Hospitals are operated by a separate ~~authority~~ Authority charged with the mission of operating or leasing the operations of the teaching hospitals for the benefit of the colleges of the University of Oklahoma Health Sciences Center and providing care for the medically indigent.

C. The University Hospitals Authority, by receiving the assets and operating obligations, shall ensure that the costs of delivering medically indigent care continue to be subsidized in excess of the state reimbursement for the medically indigent, consistent with the teaching hospitals' past policy and performance and that of the University of Oklahoma Health Sciences Center. The Authority shall make or cause to be made every reasonable effort to continue the hospitals' historic commitment to the provision of uncompensated care and that the allocation and

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investment of resources shall be made with a view to maximizing the hospitals' long-term ability to provide uncompensated care, except as may be modified by changes in federal or state law. The University Hospitals Authority shall ensure that indigent care provided by the ~~University Hospitals~~ Oklahoma Medical Center during a fiscal year shall be equal to or exceed one hundred twenty percent (120%) of the annual appropriation to the University Hospitals Authority for indigent care. The level of indigent care provided shall be based on Medicare costs as determined by the most recent report filed by any operating entity of the University Hospitals with the federal Health Care Finance Administration.

D. As used in this section, "indigent care" means charity care, Medicaid contractual allowances, all debt arising from accounts for which there is no third-party coverage including services provided to the Department of Corrections pursuant to Section 3-701 of Title 43A of the Oklahoma Statutes and Department of Mental Health and Substance Abuse Services as otherwise required by law. For purposes of this subsection, third-party coverage shall not include Medicaid coverage.

E. The Board of Regents of the University of Oklahoma shall retain full power to govern the personnel, curriculum and facilities of the University of Oklahoma.

SECTION 2. AMENDATORY Section 7, Chapter 330, O.S.L. 1993, as amended by Section 5, Chapter 283, O.S.L. 1994 (63 O.S. Supp. 1996, Section 3207), is amended to read as follows:

Section 3207. A. There is hereby created the University Hospitals Authority, an agency of the State of Oklahoma, a body corporate and politic, with powers of government and with the authority to exercise the rights, privileges and functions as specified in the University Hospitals Authority Act. The University Hospitals Authority is an agency of the State of Oklahoma covered by the Governmental Tort Claims Act.

B. The Authority shall consist of six (6) members as follows:

1. One member shall be appointed by the Governor, with the advice and consent of the Senate;

2. One member shall be appointed by the President Pro Tempore of the Senate;

3. One member shall be appointed by the Speaker of the House of Representatives;

4. One member shall be the Director for Human Services or the director of the successor organization responsible for Medicaid, or his or her designee;

5. One member shall be the Provost of the University of Oklahoma Health Sciences Center; and

6. The Chief Executive Officer of the University Hospitals Authority who shall be an ex officio, nonvoting member.

C. All members shall be appointed by June 1, 1993. Of the members of the Authority initially appointed, the member appointed by the President Pro Tempore of the Senate shall serve a term of one (1) year; the member appointed by the Speaker of the House of Representatives shall serve a term of two (2) years; and the member appointed by the Governor shall serve a term of three (3) years. Successors shall be appointed for terms of three (3) years.

D. Each member of the Authority, prior to appointment, shall be a resident of the state and a qualified elector.

E. Members shall be removable only for cause by the appointing authority. Any vacancy occurring on the Authority shall be filled by the original appointing authority.

F. The members of the Authority shall serve without compensation but may be reimbursed for all actual and necessary travel expenses incurred in performance of their duties in accordance with the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

G. All members of the Authority and administrative personnel of the Authority shall be subject to the provisions of the Oklahoma Ethics Commission Act, Section 4200 et seq. of Title 74 of the Oklahoma Statutes.

H. A quorum of the Authority shall be three (3) voting members. Members shall elect a chair and vice chair for the

Authority from among its members. The chair must be an appointed member of the Authority.

I. The Authority shall be subject to the Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, except as otherwise provided by this act. Any information submitted to or compiled by the Authority except for budgetary information related to appropriations or the appropriations process with respect to the marketing plans, financial statements, trade secrets, research concepts, methods or products, or any other proprietary information of the Authority, persons, firms, associations, partnerships, agencies, corporations, institutions of higher education, nonprofit research institutions or other entities shall be confidential, except to the extent that the person or entity which provided such information or which is the subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the Authority.

SECTION 3. AMENDATORY Section 17, Chapter 330, O.S.L. 1993 (63 O.S. Supp. 1996, Section 3217), is amended to read as follows:

Section 3217. The University Hospitals Authority ~~is~~ authorized to or the University Hospitals Trust may file an application with the Supreme Court of the State of Oklahoma for approval of any bonds to be issued under the provisions of the University Hospitals Authority Act, and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine such application. The Supreme Court shall give such applications precedence over the other business of the Court and consider and determine the validity of the bonds and consider the application and any protest which may be filed thereto. Notice of the hearing on each application shall be given by notice published in a newspaper of general circulation in this state that on a day named the Authority or the Trust will ask the Court to hear the application and approve the bonds. Such notice shall inform all interested parties that they may file a protest against the

issuance of the bonds, may be present at the hearing, and may contest the legality thereof. Such notice shall be published one time, not less than ten (10) days prior to the date named for the hearing and the hearing may be adjourned from time to time in the discretion of the Court. If the Court is satisfied that the bonds have been properly authorized in accordance with the University Hospitals Authority Act, and that when issued such bonds will constitute valid obligations in accordance with their terms, the Court shall render its written opinion approving the bonds and shall fix the time within which the petition for rehearing may be filed. The decision of the Court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the ~~authority~~ Authority or the Trust, its officers and agents, and thereafter the bonds so approved and the revenues pledged to their payment shall be incontestable in any court in the State of Oklahoma.

SECTION 4. AMENDATORY Section 3, Chapter 263, O.S.L. 1995 (63 O.S. Supp. 1996, Section 3224), as last amended by Section 15 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 3224. A. The State of Oklahoma expressly approves the creation of a public trust to be denominated the "University Hospitals Trust", of which the State of Oklahoma shall be the beneficiary, provided such approval shall be contingent upon the following conditions being satisfied:

1. Finalizing of the Declaration of Trust;
2. Adoption of the Declaration of Trust by an official action of the trustees of the Trust;
3. Submission of the Trust for acceptance of the beneficial interest and approval as required by Section 177 of Title 60 of the Oklahoma Statutes; and
4. The approved Declaration of Trust shall:
 - a. clearly state that the principal purpose of the University Hospitals Trust is to effectuate the purposes of the University Hospitals Authority as

established in the University Hospitals Authority Act,

- b. except as otherwise provided by law, provide that the fee simple title to real property held by the University Hospitals Authority shall not be transferred, conveyed, or assigned to the University Hospitals Trust without the express consent of the Legislature as the governing entity of the beneficiary pursuant to Section 176 of Title 60 of the Oklahoma Statutes,
- c. provide that any indebtedness incurred by the University Hospitals Trust or the trustees of the Trust shall not be secured with or create a lien upon real property to which title is held by the University Hospitals Authority and shall not involve the bonding capacity of the University Hospitals Authority,
- d. provide that the trust estate of the University Hospitals Trust shall not include fee simple title ~~to real property to which fee simple title is held~~ owned by the University Hospitals Authority,
- e. clearly state that the creation of the University Hospitals Trust shall not in any way reduce, limit or interfere with the power granted to the University Hospitals Authority in the University Hospitals Authority Act,
- f. provide that any lease or contractual agreement involving use of the real property to which title is held by the University Hospitals Authority and any improvements thereto shall contain a provision and covenants requiring the proper maintenance and upkeep of the real property and improvements,
- g. provide that the trustees of the University Hospitals Trust shall be the acting members of the University Hospitals Authority as provided in the University Hospitals Authority Act, and

h. provide that the trustees of the University Hospitals Trust shall have the duty to submit an annual report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and members of the Task Force created by subsection D of this section. The report shall be submitted by January 1 of each year and shall include an account of all operations, actions of the Trust, account of all revenue received and disbursed by the Trust for the previous fiscal year. The report shall also provide a complete accounting of how the Trust meets its primary function of effectuating the purposes of the University Hospitals Authority, as established in the University Hospitals Authority Act. The Trust shall meet with the Task Force created in subsection D of this section to review the contents of the annual report.

B. The University Hospitals Trust shall require any agreements which it enters into with any entity pursuant to Section 3226 of this title for the operations of facilities leased by the University Hospitals Authority to the Trust to include, but not be limited to:

1. The inclusion of four of the five members of the Trust as four of the five members representing the State of Oklahoma ~~in a~~ as state appointees to the governing entity committee created pursuant to a proposed agreement;

2. Binding arbitration shall not be involved in such agreements for resolving issues under consideration by the governing ~~entity~~ committee; and

3. Major decisions ~~to~~ shall be resolved by the governing committee, and approval of any major decision by the governing committee must include the approval of a majority of the state appointees and the approval of a majority of the members of the private entity appointees to the governing committee. Major decisions shall include, ~~but not be limited to:~~

- a. approval of the annual operating and capital budgets,
- b. sale or disposition of assets that individually have a fair market value over Two Hundred Fifty Thousand Dollars (\$250,000.00), ~~and~~
- c. ~~significant program changes at the University Hospitals~~ the termination or transfer or material addition or material diminution of medical services at the Oklahoma Medical Center related to and part of a teaching program of the University of Oklahoma Health Sciences Center, and
- d. other major decisions as may be agreed upon by the Trust and the private entity.

C. To the extent it is determined by legislative enactment that the Trust has expended funds in contravention of its mission as set forth in this section, the Trust shall remit, upon thirty (30) days' written notice from the University Hospitals Authority, such sum or sums to the University Hospitals Authority.

D. There is hereby created the "University Hospitals Trust Legislative Advisory Task Force".

1. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint three legislators from their respective legislative bodies, provided that they shall each appoint one member from the minority party.

2. The chair and vice-chair position shall rotate between the House of Representatives and Senate, provided that the Speaker shall appoint the initial chair whose term shall expire on the first day of the First Regular Session of the Forty-sixth Oklahoma Legislature. The chair and vice-chair shall rotate on the first day of the first regular sessions of subsequent legislatures.

3. Members of the Task Force shall be reimbursed by their respective legislative bodies for necessary duties related to the Task Force pursuant to Section 456 of Title 74 of the Oklahoma Statutes.

4. The purpose of the Task Force is to provide a means of communication between the Legislature and the University Hospitals

Trust. The Trust shall invite members to attend meetings of the Trust. Task Force members shall be able to participate in discussions of the Trust in an advisory capacity.

SECTION 5. AMENDATORY Section 4, Chapter 263, O.S.L. 1995, as amended by Section 6, Chapter 321, O.S.L. 1996 (63 O.S. Supp. 1996, Section 3225), is amended to read as follows:

Section 3225. A. Contingent upon the creation of the University Hospitals Trust as provided in Section 3224 of this title, the Trust, prior to acceptance, shall submit to the Contingency Review Board for review ~~any the proposed contractual~~ agreement regarding the lease and operations of the University Hospitals to any entity authorized to transact business in the state and an independent statement as to the fairness of said ~~contractual~~ proposed agreement for the State of Oklahoma. The Contingency Review Board shall upon receipt of the proposed agreement meet within fifteen (15) business days to review the proposed agreement; and unless the Contingency Review Board disapproves the proposed agreement, the proposed agreement may be executed, but no lease of the University Hospitals shall become effective until after Supreme Court approval pursuant to subsection B of this section.

B. 1. If a proposed agreement is not disapproved by the Contingency Review Board pursuant to subsection A of this section, the University Hospitals Authority and University Hospitals Trust, within thirty (30) calendar days after the time for Contingency Review Board action has expired, may file a petition with the Supreme Court of Oklahoma for a declaratory judgment determining the validity of the proposed agreement. The review of the Court shall be based upon the exercise of any of the powers, rights, privileges, and functions conferred upon the Authority or the University Hospitals Trust, as applicable, under the University Hospitals Authority Act and Oklahoma laws. Exclusive original jurisdiction is conferred upon the Supreme Court to hear and determine such petitions. The Supreme Court shall give such petitions precedence over other business of the Court except habeas corpus proceedings.

2. Notice of the hearing of such a petition shall be given by a notice published in a newspaper of general circulation in this state that on a day specified the Supreme Court will hear the petition to approve the proposed agreement and enter a declaratory judgment. The notice shall be published one time not less than ten (10) days prior to the date specified for the hearing. The notice shall inform property owners, taxpayers, citizens, and all persons having or claiming any right, title, or interest in the proposed agreement or properties or funds to be affected by the implementation of the proposed agreement, or affected in any way thereby, that they may file protests against the approval of the proposed agreement, and be present at the hearing to contest the legality of the proposed agreement. The hearing may be adjourned from time to time at the discretion of the Court.

3. If the Court is satisfied that the proposed agreement is in accordance with the University Hospitals Authority Act and Oklahoma laws, the Court shall enter a declaratory judgment approving and declaring the proposed agreement to be valid and conclusive as to the Authority, the Trust, and all other parties to the proposed agreement; and, upon petition of the Authority, shall issue an order permanently enjoining all persons described in the notice required by this subsection from thereafter instituting any action or proceeding contesting the validity of the proposed agreement. A declaratory judgment rendered pursuant to this subsection shall have the force and effect of a final judgment or decree and shall be incontestable in any court in this state.

4. As used in the University Hospitals Authority Act, "proposed agreement" means one or more contracts regarding the lease and operations of the University Hospitals and all other agreements contemplated by or referred to in the contract regarding such lease and operations.

SECTION 6. AMENDATORY 43A O.S. 1991, Section 3-701, is amended to read as follows:

Section 3-701. It shall be the responsibility of the Department of Mental Health and Substance Abuse Services, within
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facilities and professional capabilities, to provide at Griffin Memorial Hospital, Norman, Oklahoma, such medical and surgical inpatient and outpatient care as may be required by inmates from the several correctional institutions that are properly referred to the hospital by the Department of Corrections. The Department of Mental Health and Substance Abuse Services may refer to the ~~Oklahoma Memorial Hospital~~ University Hospitals, and the latter shall accept those correctional inmate patients who are beyond the facilities and professional capability of Griffin Memorial Hospital. The Department of Corrections shall be responsible for transporting to, from, and between hospitals and for providing such physical security of correctional inmate patients as may be required beyond that security normal to hospital operation. The Department of Corrections shall immediately remove from the hospital those inmate patients as they are discharged by the hospital. The hospital services provided by Griffin Memorial Hospital and the ~~Oklahoma Memorial Hospital~~ University Hospitals shall be without cost to the Department of Corrections.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 162.5 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Institutional Maintenance and Construction Unit and the Architecture and Engineering Planning Unit of the Department of Human Services, or its successors, shall have authority to submit bids and enter into contracts with and to perform services for the Oklahoma Medical Center for construction and remodeling projects that fall within the scope of services of the Unit or its successors.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 300, is amended to read as follows:

Section 300. The Oklahoma Medical Center shall include the ~~Oklahoma Memorial~~ University Hospital, the Children's Hospital of Oklahoma, the O'Donaghue Rehabilitation Institution ~~and~~, the Child Study Center, and any other institutions operated by a private entity under a joint operating agreement in which any of the state

institutions listed in this section are leased to a private entity pursuant to the University Hospitals Authority Act.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 7052, as amended by Section 17, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1996, Section 7052), is amended to read as follows:

Section 7052. A. There is hereby created a body corporate and politic to be known as the "Medical Technology and Research Authority of Oklahoma", and by that name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the state, and the exercise by the Authority of the powers conferred by this act shall be deemed to be essential governmental functions of the state with all the attributes thereof. Provided, however, the Authority is authorized to carry liability insurance to the extent authorized by the Authority, and in addition thereto it shall be subject to the workers' compensation laws of the State of Oklahoma the same as a private employer.

B. The Authority shall consist of two (2) ex officio members and six (6) appointed members. Each ex officio member and each appointed member shall have one (1) vote for purposes of conducting the business of the Authority. One ex officio member shall be the President of the University of Oklahoma, or the designee of the same. One ex officio member shall be the Chief Executive Officer of the University Hospitals Authority, or the designee of same. The six appointed members shall serve overlapping terms and shall be chosen as follows: two (2) members shall be appointed by the Governor; one member shall be appointed by the Speaker of the House of Representatives; one member shall be appointed by the President Pro Tempore of the Senate; one member shall be appointed by the President of the University of Oklahoma; and one member shall be appointed by the Director of the Department of Human Services. The appointed members shall be residents of the state, and shall have been qualified electors therein for a period of at least one (1) year preceding their appointment. Appointed members initially appointed shall continue in office for terms of from three (3) to seven (7) years,

respectively, from the date of their appointment, and thereafter until their respective successors shall be duly appointed and qualified, with the term of each initially appointed member to be designated by the Governor at the time of the appointment, with one member to be appointed to a three-year term, one member to be appointed to a four-year term, one member to be appointed to a five-year term, one member to be appointed to a six-year term, and two (2) members to be appointed to a seven-year term; but their successors shall each be appointed for a term of seven (7) years, except that any person appointed to fill a vacancy shall serve only for the unexpired term. At the expiration of any term, the person holding such office shall continue to serve until such person's duly appointed successor shall be appointed and qualified. Any member of the Authority shall be eligible for reappointment, and no member shall be removed from office except for good cause shown.

C. The Authority shall elect one of its members as chairman and another as vice-chairman, and also shall elect a secretary, treasurer and such other officers as the Authority may deem appropriate. A majority of the members of the Authority (exclusive of vacancies) shall constitute a quorum and the vote of a majority of the members (exclusive of vacancies) shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

D. Before the issuance of any improvement revenue bonds under the provisions of this act, each member of the Authority shall execute a surety bond in the penal sum of Twenty-five Thousand Dollars (\$25,000.00) and the secretary and treasurer shall execute a surety bond in the penal sum of One Hundred Thousand Dollars (\$100,000.00), each such surety bond to be conditioned upon the faithful performance of the duties of his or her office, to be executed by a surety company authorized to transact business in the State of Oklahoma as surety, and to be filed in the office of the Secretary of State.

E. The members of the Authority shall not be entitled to compensation for their services, but each member shall be reimbursed for actual expenses necessarily incurred in the performance of duties on behalf of the Authority, provided that members of the Authority shall be compensated for their travel expenses pursuant to the State Travel Reimbursement Act. All expenses incurred in carrying out the provisions of this act shall be payable solely from funds provided under the authority of this act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which monies shall have been provided under the authority of this act.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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