

1 SB429
2 168683-3
3 By Senators Reed, Marsh and Waggoner
4 RFD: Health and Human Services
5 First Read: 30-APR-15

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to universities; to enact the University
12 Authority Act of 2015, in order to authorize universities
13 operating schools of medicine to form a new type of public
14 corporation to be called an authority; to provide for
15 definitions; to express legislative intent; to establish a
16 procedure for incorporation of authorities by universities; to
17 prescribe the requirements for articles of incorporation of an
18 authority; to establish a procedure for amending articles of
19 incorporation of an authority; to prescribe requirements for
20 and powers of a board of directors of an authority; to
21 prescribe requirements for and powers of officers of an
22 authority; to prescribe powers of an authority, which includes
23 the power to form university affiliates; to authorize
24 authorities to exercise their powers even if the exercise of
25 such powers would be deemed anticompetitive or monopolistic
26 under federal or state antitrust laws; to grant authorities
27 the power of eminent domain; to authorize authorities to issue

1 obligations such as bonds, notes and other evidences of
2 indebtedness; to authorize liens on the revenues and assets of
3 an authority or a university affiliate; to provide that
4 obligations of an authority are not debts or other obligations
5 of the state, any university, or any other governmental entity
6 or public corporation; to provide that neither the state nor
7 the sponsoring university shall act to impair the obligations
8 of an authority; to provide that obligations issued by an
9 authority are legal investments for trustees and other
10 fiduciaries in the state; to authorize certain remedies upon
11 default by an authority with respect to its obligations; to
12 exempt authorities and university affiliates from state
13 taxation, and to exempt indebtedness issued by an authority or
14 university affiliate from state taxation; to require each
15 authority to provide annual audits to the sponsoring
16 university; to authorize other public entities in the state to
17 support authorities or university affiliates with tax revenue
18 or otherwise; to make further findings with respect to
19 competitive impact and antitrust immunity of authorities and
20 university affiliates; to clarify that this act is not intended
21 to extend sovereign immunity where otherwise not applicable
22 under existing law or to restrict sovereign immunity where
23 otherwise applicable under existing law; to provide that
24 authorities and university affiliates may be entitled to the
25 damage limitation provisions of the Code of Alabama 1975, only
26 under specified circumstances; to provide for the interaction
27 of other laws of the state with the provisions of this act; to

1 provide for reincorporation of certain existing public
2 corporations as authorities under this act; to provide for
3 disposition of excess revenues of an authority; to provide a
4 procedure for dissolution of an authority; to require all
5 assets of an authority to be distributed to the sponsoring
6 university that formed the authority upon dissolution of the
7 authority; to provide that the provisions of this act are
8 cumulative; and to provide the provisions of this act are
9 severable.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. This act shall be known and may be cited
12 as the "University Authority Act of 2015."

13 Section 2. For purposes of this act, the following
14 terms shall have the following meanings:

15 (1) ACADEMIC MEDICAL CENTER. The teaching, research
16 and clinical facilities provided, established, or operated by
17 a university that operates a school of medicine.

18 (2) AUTHORITY. A public corporation organized
19 pursuant to the provisions of this act.

20 (3) BOARD. The board of directors of an authority.

21 (4) DIRECTOR. A member of the board of an authority.

22 (5) GOVERNMENTAL ENTITY. Includes the state, a
23 county, a municipality, or any department, agency, board, or
24 commission of the state, a county or a municipality.

25 (6) HEALTH CARE FACILITY. All property or rights in
26 property, real or personal, tangible or intangible, useful to

1 an authority in its operations, including without limitation,
2 the following:

3 a. Facilities necessary or desirable to the
4 operation of an academic medical center, one or more health
5 sciences schools, hospitals, public health care clinics,
6 treatment centers, emergency facilities, outpatient
7 facilities, laboratories, service or support facilities, and
8 any other facilities related to the operation of any of the
9 foregoing.

10 b. Biomedical or public health research
11 establishments of any type.

12 c. Ambulance, helicopter, and other similar
13 facilities and services for the transportation of sick or
14 injured persons.

15 d. Land necessary or desirable to any of the
16 foregoing, whether presently or in the future.

17 e. Machinery, equipment, furniture, and fixtures
18 useful or desirable in the operation of any of the foregoing.

19 Health care facilities may serve physical or mental
20 health. A determination by a board that an asset constitutes a
21 health care facility shall be conclusive, absent manifest
22 error.

23 (7) HEALTH SCIENCES SCHOOL. Any school of medicine,
24 dentistry, nursing, pharmacy, optometry, ophthalmology, and
25 any other health care-related educational program operated or
26 provided by a university in this state.

1 (8) INDEBTEDNESS. Bonds, notes, certificates of
2 indebtedness, debt securities, capital lease agreements, or
3 any other evidence of indebtedness.

4 (9) NONPROFIT ORGANIZATION. Any nonprofit
5 corporation, limited liability company, partnership, or other
6 form of business organization in which no part of the income
7 or profit is distributable to any individual or entity other
8 than a university, an authority, a governmental entity, a
9 public corporation, or a nonprofit corporation that is an
10 organization described in Section 501(c)(3) of the Internal
11 Revenue Code.

12 (10) PUBLIC CORPORATION. A public corporation
13 organized by the state, a county, or a municipality, whether
14 acting alone or jointly, pursuant to state law.

15 (11) SECURITY DOCUMENT. A trust indenture, loan
16 agreement, lease agreement, mortgage, security instrument or
17 agreement, or other document securing any indebtedness or
18 other obligation of an authority in favor of the holder or
19 holders of any such indebtedness or other obligation or a
20 trustee for such holders.

21 (12) SPONSORING UNIVERSITY. The university that
22 authorized the incorporation of an authority.

23 (13) UNIVERSITY. A public university in the state
24 that operates a school of medicine.

25 (14) UNIVERSITY AFFILIATE. Any public corporation or
26 nonprofit organization that is controlled, directly or
27 indirectly, by a university or an authority. A university or

1 authority controls a public corporation or nonprofit
2 organization if it owns a majority of any stock, membership
3 interests, partnership interests or other similar interests,
4 if any, in such entity, has the right or power to appoint a
5 majority of the members of the governing body of the entity,
6 and has the right to distribution of a majority of the assets
7 of the entity upon dissolution. A university or authority may
8 control an entity directly or indirectly through one or more
9 entities each of which qualifies as a university affiliate.
10 Notwithstanding control by a university or authority, an
11 entity is not a university affiliate if any individual or
12 for-profit entity owns any interest in, or has the right or
13 power to appoint members of the governing body of the entity,
14 or the mission of the entity is not consistent with the public
15 health mission of a university.

16 Section 3. (a) The Legislature hereby finds and
17 declares:

18 (1) Universities and academic medical centers
19 promote the public health of the people of the state and serve
20 a critical public health purpose of the state by providing
21 medical education, biomedical and public health research, and
22 clinical care.

23 (2) Universities and academic medical centers are
24 critical providers of highly specialized clinical care not
25 generally available at other hospitals.

26 (3) Universities and academic medical centers
27 promote public health not only in the communities where the

1 academic medical center is located, but also in other areas of
2 the state where the knowledge and skill of its research and
3 clinical care programs are applied to community and rural
4 health needs. Universities may also find it advantageous to
5 provide health care facilities in such areas through joint
6 ownership and operation in collaboration with local
7 governmental entities, public corporations and nonprofit
8 organizations.

9 (4) Clinical facilities of universities serve a
10 critical role in providing charity care or other uncompensated
11 health care services to indigent patients.

12 (5) As a result of national health care trends,
13 universities and academic medical centers face challenges in
14 the operation of financially viable health care facilities and
15 programs and fulfilling their public health mission. Those
16 trends include the formation of health care networks and
17 delivery systems to deliver health care in a more
18 cost-effective manner.

19 (6) In comparison to private corporate health
20 systems, universities and academic medical centers often are
21 at a competitive disadvantage as a result of limitations on
22 their ability to form networks and delivery systems and
23 otherwise collaborate with other health care providers to form
24 joint ventures or other entities with shared ownership.

25 (7) Universities may find it advantageous to
26 organize separate authorities under this act to own or operate
27 health care facilities or to collaborate with other health

1 care providers through the formation of joint ventures or
2 other entities with shared ownership.

3 (8) Existing legislation authorizing the formation
4 or organization of entities by universities to engage in
5 health care delivery does not meet the special needs of
6 universities.

7 (9) When exercising their powers as provided herein
8 with respect to the operation and management of health care
9 facilities, engaging in health care delivery, and facilitating
10 educational instruction, authorities and their university
11 affiliates further the public health mission of the state.

12 (b) This act provides for the creation of
13 authorities that will more effectively advance and facilitate
14 the public health mission of the state and its universities.
15 To that end, the Legislature further finds and declares the
16 following:

17 (1) Authorities organized under this act and
18 university affiliates are performing essential public
19 functions on behalf of the state and its universities, and the
20 privileges and benefits provided to authorities organized
21 under this act and university affiliates are in furtherance of
22 the public health of the people of the state and the public
23 policy of the state.

24 (2) This act authorizes universities and authorities
25 to collaborate with all types of health care providers in the
26 pursuit of the public health mission of universities,
27 including for-profit, governmental, and nonprofit providers;

1 provided, however, that entities resulting from collaboration
2 with for-profit health care providers shall not qualify as
3 university affiliates under this act.

4 (3) If a university or authority controls an entity
5 that qualifies as a university affiliate under this act, this
6 act also extends to such university affiliate certain
7 specified privileges and benefits available to authorities.

8 (c) It is therefore the intent of the Legislature by
9 the passage of this act to promote the public health of the
10 people of the state by authorizing universities in the state
11 to form authorities. To that end, this act invests each
12 authority organized hereunder with all powers that may be
13 necessary or desirable to further the public health mission of
14 universities in the state and shall be liberally construed in
15 conformity with this intent.

16 Section 4. (a) In order to incorporate an authority,
17 the sponsoring university shall adopt a resolution containing
18 at least the following provisions:

19 (1) A finding that it is necessary, desirable, and
20 in the best interests of the sponsoring university that the
21 proposed authority be incorporated.

22 (2) Approval of the form of articles of
23 incorporation, which shall comply with the provisions of
24 Section 5 of this act.

25 (3) Authorization to proceed to form the proposed
26 authority by executing the articles of incorporation approved

1 by the sponsoring university and filing the same with the
2 Secretary of State.

3 (b) A university may incorporate more than one
4 authority if it determines that each authority promotes the
5 public health mission of the university.

6 Section 5. (a) In addition to any other matters
7 relating to the authority that the sponsoring university may
8 choose to insert and that are not inconsistent with this act
9 or with state law, the articles of incorporation of an
10 authority shall include the following provisions:

11 (1) The name of the authority, which shall include
12 the word "Authority" and shall include words identifying the
13 sponsoring university.

14 (2) The name of the sponsoring university and the
15 date on which the governing body of the sponsoring university
16 adopted a resolution authorizing the organization of the
17 authority.

18 (3) The name and address of the registered agent of
19 the authority.

20 (4) A statement that the authority is organized
21 pursuant to the provisions of this act.

22 (5) A statement that the authority shall exercise
23 all powers provided by law, unless the exercise by the
24 authority of any of its powers hereunder is limited in any
25 way, in which case a statement of such limitations on the
26 powers of the authority shall be included.

1 (6) A statement that the duration of existence of
2 the authority shall be perpetual, unless the sponsoring
3 university authorizes a shorter duration.

4 (7) The number of directors, which shall be an odd
5 number not less than three, and the duration of their
6 respective terms of office, which shall not be in excess of
7 six years.

8 (8) Provisions for appointing or removing directors
9 of the authority, subject to the provisions of Section 7;
10 provided, however, that if no such provisions are specified in
11 the articles of incorporation, all directors of an authority
12 shall be appointed or elected by the sponsoring university and
13 shall be subject to removal by the sponsoring university at
14 any time, with or without cause.

15 (b) The articles of incorporation shall be executed
16 as provided in the resolution authorizing incorporation of the
17 authority.

18 (c) When the articles of incorporation are filed for
19 record with the Secretary of State, there shall be attached to
20 it all of the following:

21 (1) A certified copy of the resolution of the
22 sponsoring university authorizing the incorporation of the
23 authority.

24 (2) A certificate of the Secretary of State
25 confirming that the name proposed for the authority is not
26 identical to that of any other corporation organized under

1 state law or so nearly similar thereto as to lead to confusion
2 and uncertainty.

3 (d) Upon the filing for record of the articles of
4 incorporation and the documents required by subsection (c)
5 with the Secretary of State, the authority shall come into
6 existence and shall constitute a public corporation under the
7 name set forth in its articles of incorporation. The Secretary
8 of State shall thereupon issue a certificate of incorporation
9 to the authority and shall record the articles of
10 incorporation in an appropriate book in his or her office.

11 Section 6. (a) The articles of incorporation of any
12 authority may be amended by filing articles of amendment with
13 the Secretary of State, but only with the approval of both the
14 board of the authority and the sponsoring university, in the
15 manner provided in this section.

16 (b) In order to amend the articles of incorporation,
17 the following steps shall be completed:

18 (1) The board of the authority shall first adopt a
19 resolution proposing articles of amendment.

20 (2) After the adoption by the board of a resolution
21 approving articles of amendment, the authority shall file with
22 the sponsoring university a written request for adoption of a
23 resolution approving the proposed amendment.

24 (3) As promptly as may be practicable after the
25 receipt of the request from the authority, the sponsoring
26 university shall review the application and shall adopt a

1 resolution either approving or denying the articles of
2 amendment as proposed by the authority.

3 (c) Within 30 days following the approval of the
4 articles of amendment by the sponsoring university, the
5 president or vice president of the authority shall sign and
6 file for record in the office of the Secretary of State the
7 following items:

8 (1) The original articles of amendment.

9 (2) A certified copy of each resolution approving
10 the articles of amendment.

11 (d) Upon the filing for record of the articles of
12 amendment and the documents required by subsection (c) of this
13 section, the articles of amendment shall become effective. The
14 Secretary of State shall thereupon record the articles of
15 amendment in an appropriate book in his or her office.

16 (e) The articles of amendment of an authority may
17 amend and restate the articles of incorporation of an
18 authority if approved in accordance with this section.

19 (f) Notwithstanding the provisions of this section,
20 the name and address of the registered agent of an authority
21 may be changed by the authority without following the
22 procedure set forth in this section. An authority may use any
23 appropriate form promulgated by the Secretary of State for
24 this purpose.

25 Section 7. (a) Each authority shall have a board of
26 directors composed of the number of directors provided in the
27 articles of incorporation.

1 (b) All powers of an authority shall be exercised by
2 the board or pursuant to its authorization.

3 (c) Except for ex-officio directors specified in the
4 articles of incorporation, all directors of an authority shall
5 be elected or appointed by the sponsoring university. The
6 articles of incorporation may provide that specified officers
7 or employees of the sponsoring university shall be ex-officio
8 directors of an authority, so long as a majority of the
9 directors are elected or appointed by the sponsoring
10 university.

11 (d) The articles of incorporation may provide that a
12 governmental entity, a public corporation, or a nonprofit
13 organization may nominate one or more directors of an
14 authority, provided that the number of directors elected or
15 appointed by the sponsoring university without nomination may
16 never be less than a majority of the directors, and the
17 sponsoring university shall not be required to elect or
18 appoint any such nominee. If the sponsoring university does
19 not elect or appoint a nominee, the nominating entity shall
20 provide an alternate nominee for consideration by the
21 sponsoring university.

22 (e) Unless the articles of incorporation provide the
23 method for removing directors, directors may be removed by the
24 sponsoring university at any time, with or without cause.

25 (f) If, at the expiration of any term of office of
26 any director, a successor has not been elected or appointed as
27 provided in the articles of incorporation, then the director

1 whose term of office has expired shall continue to hold office
2 until his or her successor is elected or appointed.

3 (g) Each director shall serve without compensation
4 but may be reimbursed for expenses actually incurred by him or
5 her in connection with the performance of his or her duties.

6 (h) A majority of directors shall constitute a
7 quorum for the transaction of business of the board, and any
8 meeting of the board may be adjourned from time to time by a
9 majority of the directors present. No vacancy in the
10 membership of the board shall impair the right of a quorum to
11 exercise all the powers and perform all the duties of the
12 board.

13 (i) The board shall adopt and maintain bylaws, not
14 inconsistent with the provisions of this act or its articles
15 of incorporation, for the regulation and conduct of its
16 affairs and the operation of the authority. The bylaws of the
17 board may provide for such committees as the board deems
18 necessary or desirable, including without limitation an
19 executive committee that is empowered to act on behalf of the
20 board. The bylaws may authorize telephonic or video conference
21 meetings of the board or any committee of the board.

22 (j) The board shall hold regular meetings at such
23 times as may be provided in the bylaws of the authority, and
24 may hold other meetings at any time and from time to time upon
25 such notice as may be required by the bylaws of the authority.

26 (k) All resolutions adopted by the board shall
27 constitute actions of the authority, and all proceedings of

1 the board shall be reduced to writing, shall be signed by the
2 secretary of the authority, and shall be recorded in permanent
3 physical or electronic storage. Copies of the proceedings,
4 when certified by the secretary of an authority, shall be
5 received in all courts as prima facie evidence of the matters
6 and things therein certified.

7 Section 8. (a) The officers of an authority shall
8 consist of a president, a vice president, a secretary, a
9 treasurer, and other officers and assistant officers as the
10 board deems necessary or desirable. The president and the vice
11 president of the authority shall be a member of the board. The
12 secretary, the treasurer, and any other officers of the
13 authority need not be a director.

14 (b) The president and the vice president of the
15 authority shall be elected by the board as provided in the
16 bylaws of the authority, and the secretary, the treasurer, and
17 the other officers of the authority shall be elected by or
18 pursuant to the authorization of the board for such terms as
19 it deems advisable.

20 (c) The duties of the president, vice president,
21 secretary and treasurer shall be those as are customarily
22 performed by such officers in nonprofit corporations. The
23 duties of any other officers of the authority shall be
24 prescribed by the board or pursuant to its authorization.

25 Section 9. (a) An authority shall have and may
26 exercise any power granted nonprofit corporations under Title
27 10A, Code of Alabama 1975, together with all powers incidental

1 thereto or necessary or desirable to the discharge thereof,
2 including, without limitation, the following specific powers:

3 (1) To adopt, maintain, and amend bylaws and a
4 corporate seal.

5 (2) To sue and, subject to the limitations herein,
6 be sued; provided, however, that no authority entitled to
7 sovereign immunity shall be denied such immunity.

8 (3) To acquire, construct, equip, and operate those
9 health care facilities it considers necessary or desirable.

10 (4) To enter into contracts and agreements, borrow
11 money, incur indebtedness, and issue bonds, notes, debt
12 securities, or any other evidence of indebtedness.

13 (5) To pledge the general credit of the authority or
14 any revenues or income of the authority to repayment of any of
15 its indebtedness.

16 (6) To mortgage or pledge its health care facilities
17 or its other assets or any part thereof, whether then owned or
18 thereafter acquired, as security for its indebtedness.

19 (7) To lend money to, to assume the indebtedness of,
20 or to guarantee the indebtedness of any other authority,
21 governmental entity, public corporation, or nonprofit
22 organization.

23 (8) To create, establish, acquire, operate, or
24 support subsidiaries and affiliates, either for-profit or
25 nonprofit, to assist an authority in fulfilling its purposes.

26 (9) To participate as a shareholder in a
27 corporation, as a joint venturer in a joint venture, as a

1 general or limited partner in a general or limited
2 partnership, as a member of a nonprofit corporation, or as a
3 member of any other lawful form of business organization, that
4 provides health care or engages in activities related thereto;
5 provided, however, that a business organization with
6 for-profit ownership shall not qualify as a university
7 affiliate under this act.

8 (10) To make and arrange for loans, contributions to
9 capital, and other debt and equity financing for the
10 activities of any lawful form of business organization of
11 which the authority is a member, and to guarantee loans and
12 any other obligations for such purpose.

13 (11) To enter into any swap agreement, subject to
14 the requirements of Article 3 of Chapter 1 of Title 41, Code
15 of Alabama 1975.

16 (12) To provide for and support the educational
17 programs of any university or any other two-year college or
18 four-year college or university in the state.

19 (13) To establish, collect, and alter charges for
20 services rendered and supplies furnished by it.

21 (14) To contract for or to accept any gifts, grants,
22 endowments, or any other aid in any form from the federal
23 government, a governmental entity, or any public corporation,
24 or any other source, or any combination thereof, and to comply
25 with the terms and conditions thereof.

26 (15) To invest its funds in any investment
27 authorized by the sponsoring university for investment of its

1 own funds or in any investment permitted or authorized for
2 state-regulated insurance companies, including, without
3 limitation, investments permitted for domestic insurers and
4 health maintenance organizations pursuant to Title 27, Code of
5 Alabama 1975.

6 (16) To seek protection of the federal bankruptcy
7 laws by filing a petition in any United States Bankruptcy
8 Court located in the state.

9 (17) To organize, or to own an interest in, any
10 other corporation, partnership, limited liability company,
11 joint venture, or other form of business organization, whether
12 for-profit or nonprofit, in furtherance of its public health
13 mission.

14 (18) To engage in arrangements, contracts,
15 information sharing, and other collaborative activities with
16 public or private entities and individuals, including, without
17 limitation: joint ventures, joint purchasing arrangements,
18 joint negotiations with physicians, hospitals and payors
19 (whether such negotiations result in separate or combined
20 agreements), leases, and agreements which involve delivery
21 system network creation or operation.

22 (b) Nothing herein shall be construed as granting to
23 an authority the power to levy any taxes.

24 (c) Nothing herein shall be construed as authorizing
25 an authority to convey substantially all of its assets in a
26 single transaction or series of transactions without
27 authorization from the sponsoring university.

1 (d) Any of the powers granted hereunder may be
2 exercised by an authority in such manner as it may determine
3 to be consistent with the purposes of this act,
4 notwithstanding that as a consequence of such exercise of
5 powers it engages in, activities may be deemed anticompetitive
6 or result in the acquisition or maintenance of monopoly power
7 in some relevant market within the meaning of state and
8 federal antitrust laws and notwithstanding that these
9 activities may have the effect of displacing competition in
10 the provision of hospital, physician, or other health
11 care-related services.

12 Section 10. An authority shall have, in addition to
13 all other powers granted by this act, the same power of
14 eminent domain as is vested by law in any municipality.

15 Section 11. (a) An authority from time to time may
16 borrow money or incur indebtedness and issue bonds, notes or
17 other evidence of indebtedness in such principal amounts as
18 the board determines by resolution to be necessary, desirable,
19 and in the best interests of the authority in order to provide
20 funds to carry out its corporate powers. Indebtedness may be
21 incurred for any lawful purpose of the authority, including,
22 without limitation, any of the following:

23 (1) Indebtedness to finance the acquisition or
24 construction of health care facilities.

25 (2) Indebtedness to provide working capital or funds
26 for operating expenses.

1 (3) Indebtedness to refund, extend, refinance, or
2 restructure any indebtedness of the authority or any
3 indebtedness assumed or guaranteed by the authority.

4 (b) Indebtedness may be any of the following or any
5 combination thereof:

6 (1) A general obligation of the authority to the
7 payment of which its full faith and credit is pledged.

8 (2) Payable solely out of specific revenues of the
9 authority or any of its facilities.

10 (3) Secured by a pledge of any tax levied by a
11 governmental entity that has been made available to an
12 authority or any of its facilities.

13 (c) Indebtedness may provide for any of the
14 following or any combination thereof:

15 (1) Provide for no interest.

16 (2) Provide for current interest.

17 (3) Provide for capitalized interest.

18 (4) Provide for accretion or other increase in
19 principal amount in lieu of interest.

20 (d) Any resolution authorizing the issuance of any
21 indebtedness shall create a contract with the holders of the
22 indebtedness issued thereby.

23 (e) Evidence of indebtedness shall be executed and
24 delivered as provided in the resolution of the board
25 authorizing the same.

1 (f) Indebtedness may be sold at public or private
2 sale or in exchange for indebtedness of the authority at such
3 price or on such terms as the board shall determine.

4 (g) All indebtedness of an authority shall be
5 subject to redemption or prepayment on such terms as the board
6 shall determine.

7 (h) No indebtedness of an authority shall mature
8 more than 40 years from the date of issuance, without regard
9 to whether the indebtedness is refunding, extending,
10 refinancing, or restructuring existing indebtedness.

11 (i) The authority may, subject to security documents
12 or other agreements with holders as may then exist, purchase
13 its indebtedness in the open market, through intermediaries or
14 directly from the holder of an obligation, with any funds
15 available therefor. Any obligation so purchased may be
16 cancelled by the authority or may be resold, as authorized by
17 the board.

18 Section 12. (a) Any pledge of any revenues of an
19 authority or university affiliate, including, without
20 limitation, tax revenues made available to an authority, shall
21 be valid and binding from the time it is made, and the
22 revenues or taxes so pledged and thereafter received by the
23 authority shall immediately become subject to the lien of that
24 pledge without any physical delivery thereof or further act.
25 The lien of that pledge shall be valid and binding against all
26 parties having claims of any kind against the authority,
27 irrespective of whether the parties have actual notice

1 thereof. The resolution, indenture, or other financing
2 document establishing a pledge of revenues may provide that
3 the lien established extends, on a pari passu basis, to any
4 additional indebtedness issued as a parity obligation in
5 accordance with the terms of the financing document.

6 (b) Any security document relating to any real
7 property, personal property, fixtures, or other tangible
8 property of an authority may be filed in the office of the
9 judge of probate of the county in which the property to be
10 secured is located, and the lien of the security document
11 shall be valid and binding against all parties having claims
12 of any kind against the authority, irrespective of whether any
13 person has actual notice thereof, from the time the security
14 document is so filed, with respect to all property subject
15 thereto, including, without limitation, after-acquired
16 property.

17 Section 13. (a) All agreements and covenants
18 undertaken, and all indebtedness issued, by an authority shall
19 be solely and exclusively an obligation of the authority and,
20 except as otherwise provided in a written agreement in
21 accordance with Section 18, shall not create an obligation or
22 debt of the state, any university, or any other governmental
23 entity or public corporation within the meaning of any
24 constitutional or statutory provision.

25 (b) Neither the directors nor any officer of an
26 authority executing indebtedness issued pursuant to this act

1 shall be personally liable for such indebtedness by reason of
2 the execution or issuance thereof.

3 (c) The state and the sponsoring university do
4 hereby pledge to and agree with the holders of any
5 indebtedness issued under this act that neither the state nor
6 the university will limit or alter the rights hereby vested in
7 the authority to fulfill the terms of any indebtedness or
8 related security documents made with the holders thereof or in
9 any way impair the rights and remedies of the holders until
10 such indebtedness, together with the interest thereon, and all
11 costs and expenses in connection with any action or proceeding
12 by or on behalf of the holders, are fully met and discharged.
13 An authority is authorized to include this pledge and
14 agreement of this state in any agreement with the holders of
15 its indebtedness.

16 Section 14. Indebtedness issued under the provisions
17 of this act is hereby made a legal investment for savings
18 banks and insurance companies organized under state law and
19 for trustees, executors, administrators, guardians, persons,
20 or organizations acting in a fiduciary capacity, unless
21 otherwise directed by a court having jurisdiction or by a
22 document providing fiduciary authority. Any governmental
23 entity or public corporation is authorized, in its discretion,
24 to invest any available funds in securities of the authority.

25 Section 15. (a) If there should be any default in
26 the payment of the principal of, or interest on, any
27 indebtedness issued under this act or of any agreements

1 contained in any security document, and the period for cure of
2 the default has passed, then the holder of the indebtedness
3 and the trustee under any security document, or any one or
4 more of them, subject to the terms of the financing documents
5 authorizing the indebtedness or any security document
6 applicable thereto:

7 (1) May, by mandamus, injunction, or other
8 proceedings, compel performance of any covenant or agreement
9 of the authority contained in any applicable resolution or
10 security document by its board or its officers.

11 (2) May be entitled to a judgment against the
12 authority for the principal of and interest on the
13 indebtedness so in default, together with all reasonable costs
14 of collection.

15 (3) May, in the event the indebtedness is secured by
16 a mortgage on, or security interest in, any physical
17 properties of the authority, foreclose the mortgage or pledge,
18 exercise any powers of sale contained in the security
19 documents or exercise any possessory or other similar rights
20 as are provided for in the financing documents or security
21 document applicable to the indebtedness.

22 (4) Regardless of the sufficiency of the security
23 for the obligation in default, may be entitled to the
24 appointment of a receiver upon order of a court of competent
25 jurisdiction who shall, upon such appointment, assume all
26 powers granted in the applicable financing documents or
27 security document applicable to the obligation in default,

1 provided that the income derived from any activity undertaken
2 by a receiver under this section shall be expended solely in
3 accordance with the applicable provisions of any orders of the
4 court by which such receiver is appointed, and absent judicial
5 direction, of the applicable financing document or security
6 document applicable to the obligation in default.

7 (b) The remedies specified in this section shall be
8 cumulative to all other remedies that may otherwise be
9 available, by law or contract, for the benefit of the holders
10 of indebtedness of an authority.

11 Section 16. Notwithstanding any provision of law to
12 the contrary:

13 (1) Any indebtedness issued by an authority or a
14 university affiliate, and the income therefrom, including any
15 profit from the sale thereof, shall be exempt from taxation by
16 the state or other governmental entity of the state.

17 (2) All properties of an authority or a university
18 affiliate, whether real, personal, or mixed, and the income
19 therefrom, shall be exempt from any and all taxation by any
20 governmental entity.

21 (3) An authority shall not be obligated to pay or
22 allow to be paid any fees, taxes, costs, or charges of any
23 nature to the Secretary of State or to any judge of probate of
24 any county in respect of the filing or recording of any
25 document.

26 (4) The gross proceeds of the sale of any property
27 used in the business or activities of an authority, or in the

1 acquisition, construction, renovation, or equipping of any
2 health care facilities for an authority or a university
3 affiliate, regardless of whether the sale is made directly to
4 an authority or to a university affiliate or to any contractor
5 or agent thereof, shall be exempt from all sales and use taxes
6 levied by any governmental entity, including, without
7 limitation, any similar privilege, license, or excise tax.

8 Section 17. (a) Each authority shall engage a firm
9 or firms of certified public accountants to conduct an annual
10 audit of the financial affairs of the authority. Each audit
11 shall be conducted in accordance with generally accepted
12 accounting principles.

13 (b) The board shall submit all audits required by
14 subsection (a) to the sponsoring university as promptly as
15 practicable after the end of each fiscal year of the
16 authority.

17 Section 18. (a) The state, any university, any
18 governmental entity, and any public corporation is hereby
19 authorized to give, transfer, convey, or sell to any authority
20 or a university affiliate, with or without consideration:

21 (1) Any of its health care facilities and other
22 properties, real or personal, and any funds and assets,
23 tangible or intangible, relative to the ownership or operation
24 of any such health care facilities, including any certificates
25 of need, assurances of need, or other similar rights
26 appertaining or ancillary thereto, irrespective of whether
27 they have been exercised; and

1 (2) Any taxes, revenues, or funds owned or
2 controlled by it.

3 (b) The state, any governmental entity, any
4 university, or any public corporation may pledge its full
5 faith and credit to or for the benefit of an authority or a
6 university affiliate or may pledge any revenues that it is
7 legally entitled to pledge to or for the benefit of an
8 authority or university affiliate.

9 (c) An authority or university affiliate shall
10 constitute a "hospital corporation" as that term is used in
11 Title 22, Chapter 21, Article 4, Division 2, Code of Alabama
12 1975, and any county otherwise authorized to do so may
13 designate any authority or university affiliate as the agency
14 of that county to acquire, construct, equip, operate, and
15 maintain public hospital facilities in that county. The
16 authority shall, if so designated, receive the proceeds from
17 any special public hospital tax available in that county.

18 Section 19. In support of and in furtherance of the
19 powers granted in Section 9 of this act, the Legislature
20 hereby finds and declares all of the following:

21 (1) Authorities organized under this act and its
22 university affiliates are performing essential public
23 functions on behalf of the state, the sponsoring university,
24 and other governmental entities in the state.

25 (2) The nature and scope of the powers conferred on
26 authorities and their university affiliates by this act are
27 such as may compel each authority and each university

1 affiliate, in the course of exercising its powers or by virtue
2 of such exercise of such powers, to engage in activities
3 itself or in collaboration with public or private entities and
4 individuals that may be characterized as anticompetitive or
5 may result in the acquisition or maintenance of monopoly power
6 within the meaning of state and federal antitrust laws or
7 otherwise may have the effect of displacing competition in the
8 provision of hospital, physician, or other health care-related
9 services.

10 (3) In carrying out its public health mission
11 through the exercise of the powers granted by this act,
12 including, without limitation, the collaborative activities
13 expressly authorized by this act, an authority and its
14 university affiliates, as well as the public or private
15 entities and individuals with which they collaborate, shall be
16 immunized from liability under the federal and state antitrust
17 laws to the fullest extent allowed by law.

18 (4) As an expression of the public policy of the
19 state with respect to the displacement of competition in the
20 field of health care, each authority and each university
21 affiliate, when exercising its powers under this act, acts as
22 an agency or instrumentality of its university and as a
23 political subdivision of the state, and as such, neither an
24 authority nor its university affiliate shall be subject to
25 what has come to be known in relevant antitrust jurisprudence
26 as "active supervision" by the state in order to enjoy

1 immunity from the application of state and federal antitrust
2 laws.

3 Section 20. (a) This act is not intended to extend
4 or grant sovereign immunity to any authority or university
5 affiliate that is not entitled to sovereign immunity under
6 applicable law. Nor is this act intended to limit or remove
7 sovereign immunity for any authority or university affiliate
8 that is entitled to sovereign immunity under applicable law.

9 (b) An authority or university affiliate not
10 entitled to sovereign immunity shall be entitled to the
11 benefits of the damage limitation for tort actions provided in
12 Chapter 93 of Title 11 of the Code of Alabama 1975, if such
13 authority or university affiliate meets both of the following
14 requirements:

15 (1) An entity that is a "governmental entity" within
16 the meaning of Section 11-93-1(1) participates in the
17 organization of such authority or university affiliate. A
18 governmental entity participates in the organization of an
19 authority or university affiliate if such governmental entity
20 enters into an affiliation agreement or similar agreement with
21 a university providing for the organization of such authority
22 or university affiliate.

23 (2) Such authority or university affiliate receives
24 public support for its operations, including, without
25 limitation a. taxes allocated to such authority or university
26 affiliate or b. appropriations from the state or any other

1 governmental entity that benefit such authority or university
2 affiliate.

3 (c) As further evidence of the intent expressed in
4 this act, the Legislature declares that:

5 (1) An authority or university affiliate described
6 in subsection (b) of Section 20 shall constitute a
7 "governmental entity" within the meaning of Section 11-93-1,
8 Code of Alabama 1975.

9 (2) Claims for money damages against an authority or
10 university affiliate described in subsection (b) of Section 20
11 shall constitute "claims" within the meaning of Section
12 11-93-1, Code of Alabama 1975.

13 Section 21. Notwithstanding any other provision of
14 law to the contrary:

15 (1) Each authority shall be exempt from all laws of
16 the state governing usury or prescribing or limiting interest
17 rates, including, without limitation, the provisions of Title
18 8, Chapter 8, Code of Alabama 1975.

19 (2) Authorities, university affiliates, members of
20 the governing bodies of authorities and university affiliates,
21 and officers and employees of authorities and university
22 affiliates shall not be subject to state ethics laws,
23 including, without limitation, the provisions of Title 36,
24 Chapter 25, Code of Alabama 1975.

25 (3) Meetings of the board of an authority and any
26 committee thereof shall not be subject to public meeting or

1 notice requirements, including, without limitation, the
2 provisions of Title 36, Chapter 25A, Code of Alabama 1975.

3 (4) Deposits of authorities and university
4 affiliates are entitled to the benefits of the Security for
5 Alabama Funds Enhancement Act, codified at Title 41, Chapter
6 14A, Code of Alabama 1975, and therefore, authorities and
7 university affiliates are each a covered public entity as such
8 term is used in that act.

9 (5) Authorities and university affiliates shall not
10 be subject to the competitive bid laws of the state,
11 including, without limitation, the provisions of Title 41,
12 Chapter 16, Articles 2, 3, and 3A, Code of Alabama 1975.

13 (6) Authorities and university affiliates shall not
14 be subject to examination by the state Department of Examiners
15 of Public Accounts.

16 (7) Authorities, university affiliates, and the
17 employees thereof shall not be required to participate in any
18 retirement plan, public pension plan, or health insurance plan
19 administered by the state, or any agency of the state, unless
20 an authority or university affiliate elects to join the plan
21 and is otherwise eligible under applicable law to join the
22 plan.

23 (8) No expenditure authorized or permitted by the
24 provisions of this act shall be considered to be a lending of
25 credit or a granting of public money or thing of value to or
26 in aid of any individual, association, or corporation within
27 the meaning of any constitutional or statutory provision.

1 (9) Records of authorities and university affiliates
2 shall not be public writings or public records, as such terms
3 are used in Section 36-12-40 and Section 41-1-13, Code of
4 Alabama 1975, respectively.

5 (10) For purposes of The Volunteer Service Act, an
6 authority shall be considered a governmental entity, and a
7 university affiliate shall be considered a nonprofit
8 organization so as to provide volunteers with the protections
9 of Section 6-5-336, Code of Alabama 1975. Terms used in this
10 subdivision shall have the meanings assigned in Section
11 6-5-336, Code of Alabama 1975.

12 Section 22. (a) Any public corporation that meets
13 the criteria specified in subsection (b) may reincorporate as
14 an authority under this act, and become subject to and
15 governed by this act, as provided in this section.

16 (b) A public corporation may reincorporate under
17 this section if it satisfies both of the following:

18 (1) The public corporation is a health care
19 authority incorporated or reincorporated under Title 22,
20 Chapter 21, Articles 11 and 11A, Code of Alabama 1975.

21 (2) The public corporation was incorporated with the
22 approval of a university.

23 (c) In order to reincorporate a qualifying public
24 corporation as an authority, the following steps shall be
25 completed:

1 (1) The board of directors of the qualifying public
2 corporation shall first adopt a resolution proposing articles
3 of reincorporation.

4 (2) After the adoption by the board of a resolution
5 approving articles of reincorporation, the qualifying public
6 corporation shall file with the sponsoring university a
7 written request for adoption of a resolution approving the
8 proposed reincorporation.

9 (3) As promptly as may be practicable after the
10 receipt of the application from the qualifying public
11 corporation, the university that formed the qualifying public
12 corporation shall review the application and shall adopt a
13 resolution either approving or denying the articles of
14 reincorporation as proposed by the authority.

15 (d) Within 30 days following the approval of the
16 articles of reincorporation by the university that formed the
17 qualifying public corporation, the president or vice president
18 of the authority shall sign and file for record in the office
19 of the Secretary of State all of the following items:

20 (1) The original articles of reincorporation.

21 (2) A certified copy of each resolution approving
22 the articles of reincorporation.

23 (3) A certificate of the Secretary of State
24 confirming that the name proposed for the authority is not
25 identical to that of any other corporation organized under
26 state law or so nearly similar thereto as to lead to confusion
27 and uncertainty.

1 (e) Upon the filing for record of the articles of
2 reincorporation and the documents required by subsection (d),
3 the articles of reincorporation shall become effective and the
4 authority shall immediately be vested with all powers and
5 privileges of this act. The Secretary of State shall thereupon
6 record the articles of amendment in an appropriate book in his
7 or her office.

8 (f) A university may not reincorporate a public
9 corporation without the consent of the board of directors of
10 the public corporation.

11 (g) The articles of reincorporation of an authority
12 may amend and restate the articles of incorporation of the
13 qualifying public corporation if approved in accordance with
14 this section.

15 (h) Reincorporation of a qualifying public
16 corporation as an authority shall not impair the rights of
17 creditors nor impair the provisions of any contract of a
18 reincorporated public corporation. Upon reincorporation, all
19 assets, liabilities, certificates of need, permits, licenses,
20 or governmental approvals shall immediately transfer from the
21 reincorporated public corporation and vest in the authority.
22 Upon notice of reincorporation, all state regulatory bodies
23 shall cooperate with the authority in order to transfer all
24 certificates of need, permits, licenses, or governmental
25 approvals from the reincorporated public corporation to the
26 authority.

1 Section 23. No part of the net earnings of an
2 authority remaining after payment of its expenses shall inure
3 to the benefit of any person other than a university, a
4 governmental entity, a political corporation, or any nonprofit
5 corporation that is an organization described in Section
6 501(c) (3) of the Internal Revenue Code.

7 Section 24. (a) At any time when an authority does
8 not have any indebtedness or other contractual or legal
9 obligations outstanding, an authority may be dissolved by
10 filing articles of dissolution with the Secretary of State,
11 but only with the approval of both the board of the authority
12 and the sponsoring university in the manner provided in this
13 section.

14 (b) In order to dissolve an authority, the following
15 steps shall be completed:

16 (1) The board shall first adopt a resolution
17 proposing dissolution of the authority.

18 (2) After the adoption by the board of a resolution
19 approving articles of dissolution, the authority shall file
20 with the sponsoring university a written request to the
21 sponsoring university for adoption of a resolution approving
22 dissolution of the authority.

23 (3) As promptly as may be practicable after the
24 receipt of the application from the authority, the sponsoring
25 university shall review the application, and its governing
26 body shall adopt a resolution either approving or denying
27 dissolution of the authority.

1 (c) Within 30 days following the approval of
2 dissolution of an authority by the sponsoring university, the
3 president or vice president of the authority shall sign and
4 file for record in the office of Secretary of State the
5 original articles of dissolution and a certified copy of each
6 resolution approving the articles of dissolution.

7 (d) Upon the filing for record of the articles of
8 dissolution and the documents required by subsection (c) of
9 this section, the articles of dissolution shall become
10 effective. The Secretary of State shall thereupon record the
11 articles of dissolution in an appropriate book in his or her
12 office.

13 (e) A sponsoring university may not dissolve an
14 authority without the consent of the board.

15 (f) Upon dissolution of the authority, title to all
16 assets of the authority shall vest in the sponsoring
17 university

18 Section 25. The provisions of this act are
19 cumulative and shall not be deemed to repeal existing laws,
20 except to the extent such laws are clearly inconsistent with
21 the provisions of this act.

22 Section 26. The provisions of this act are
23 severable. If any part of this act is declared invalid or
24 unconstitutional, that declaration shall not affect the part
25 which remains.

1 Section 27. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Health and Human Services..... 30-APR-15

Read for the second time and placed on the calen-
dar with 1 substitute and 1 amendment..... 07-MAY-15

Read for the third time and passed as amended 26-MAY-15

Yeas 20
Nays 3

Patrick Harris
Secretary