

1 SB429
2 168310-1
3 By Senators Reed, Marsh, and Waggoner
4 RFD: Health and Human Services
5 First Read: 30-APR-15

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8 SYNOPSIS: This bill would authorize a public
9 university in the state that operates a school of
10 medicine to organize and establish public
11 corporations to own and operate health care
12 facilities or to collaborate with other health care
13 providers.

14 This bill would provide procedures for the
15 incorporations, reincorporation, and dissolution of
16 authorities by a university.

17 This bill would provide for a board of
18 directors to direct the operations of an authority
19 established under this act.

20 This bill would also authorize these
21 authorities to have any power granted nonprofit
22 corporations, the power of eminent domain as is
23 vested by law in any municipality, and the power to
24 incur indebtedness.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 Relating to medical schools; to authorize a public
4 university in the state that operates a school of medicine to
5 organize and establish public corporations to own and operate
6 health care facilities or to collaborate with other health
7 care providers; to provide procedures for the incorporations,
8 reincorporation, and dissolution of authorities by a
9 university; to provide for a board of directors to direct the
10 operations of an authority established under this act; and to
11 authorize these authorities to have any power granted
12 nonprofit corporations, the power of eminent domain as is
13 vested by law in any municipality, and the power to incur
14 indebtedness.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

1 (5) GOVERNMENTAL ENTITY. Includes the state, a
2 county, a municipality, or any department, agency, board, or
3 commission of the state, a county or a municipality.

4 (6) HEALTH CARE FACILITY. All property or rights in
5 property, real or personal, tangible or intangible, useful to
6 an authority in its operations, including without limitation,
7 the following:

8 a. Facilities necessary or desirable to the
9 operation of an academic medical center, one or more health
10 sciences schools, hospitals, public health care clinics,
11 treatment centers, emergency facilities, outpatient
12 facilities, laboratories, service or support facilities, and
13 any other facilities related to the operation of any of the
14 foregoing.

15 b. Biomedical or public health research
16 establishments of any type.

17 c. Ambulance, helicopter, and other similar
18 facilities and services for the transportation of sick or
19 injured persons.

20 d. Land necessary or desirable to any of the
21 foregoing, presently or in the future.

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

24 Health care facilities may serve physical or mental
25 health. A determination by a board that an asset constitutes a
26 health care facility shall be conclusive, absent manifest
27 error.

1 (7) HEALTH SCIENCES SCHOOL. Any school of medicine,
2 dentistry, nursing, pharmacy, ophthalmology, and any other
3 health care-related educational program operated or provided
4 by a university in this state.

5 (8) INDEBTEDNESS. Bonds, notes, certificates of
6 indebtedness, debt securities, capital lease agreements, or
7 any other evidence of indebtedness.

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

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

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

25 (12) SPONSORING UNIVERSITY. The university that
26 authorized the incorporation of an authority.

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

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

21 Section 3. (a) The Legislature hereby finds and
22 declares:

23 (1) Universities and academic medical centers
24 promote the public health of the people of the state and serve
25 a critical public health purpose of the state by providing
26 medical education, biomedical and public health research, and
27 clinical care.

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

4 (3) Universities and academic medical centers
5 promote public health not only in the communities where the
6 academic medical center is located, but also in other areas of
7 the state where the knowledge and skill of its research and
8 clinical care programs are applied to community and rural
9 health needs. Universities may also find it advantageous to
10 provide health care facilities in such areas through joint
11 ownership and operation in collaboration with local
12 governmental entities, public corporations and nonprofit
13 organizations.

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

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

24 (6) In comparison to private corporate health
25 systems, universities and academic medical centers often are
26 at a competitive disadvantage as a result of limitations on
27 their ability to form networks and delivery systems and

1 otherwise collaborate with other health care providers to form
2 joint ventures or other entities with shared ownership.

3 (7) Universities may find it advantageous to
4 organize separate authorities under this act to own or operate
5 health care facilities or to collaborate with other health
6 care providers through the formation of joint ventures or
7 other entities with shared ownership.

8 (8) Existing legislation authorizing the formation
9 or organization of entities by universities to engage in
10 health care delivery does not meet the special needs of
11 universities.

12 (9) When exercising their powers as provided herein
13 with respect to the operation and management of health care
14 facilities, engaging in health care delivery, and facilitating
15 educational instruction, authorities and their university
16 affiliates further the public health mission and act as an
17 agency or instrumentality of the sponsoring university and as
18 a political subdivision of the state.

19 (b) This act provides for the creation of
20 authorities that will be instrumentalities of the state and
21 more effectively advance and facilitate the public health
22 mission of universities. To that end, the Legislature further
23 finds and declares the following:

24 (1) Authorities organized under this act and
25 university affiliates are performing essential public
26 functions on behalf of the state and its universities, and the
27 privileges and benefits provided to authorities organized

1 under this act and university affiliates are in furtherance of
2 the public health of the people of the state and the public
3 policy of the state.

4 (2) This act authorizes universities and authorities
5 to collaborate with all types of health care providers in the
6 pursuit of the public health mission of universities,
7 including for-profit, governmental, and nonprofit providers;
8 provided, however, that entities resulting from collaboration
9 with for-profit health care providers may not qualify as
10 university affiliates under this act.

11 (3) If a university or authority controls an entity
12 that qualifies as a university affiliate under this act, this
13 act also extends to such university affiliate certain
14 specified privileges and benefits available to authorities.

15 (c) It is therefore the intent of the Legislature by
16 the passage of this act to promote the public health of the
17 people of the state by authorizing universities in the state
18 to form authorities. To that end, this act invests each
19 authority organized hereunder with all powers that may be
20 necessary or desirable to further the public health mission of
21 universities in the state and shall be liberally construed in
22 conformity with this intent.

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

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

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

7 (3) Authorization to proceed to form the proposed
8 authority by executing the articles of incorporation approved
9 by the sponsoring university and filing the same with the
10 Secretary of State.

11 (b) A university may incorporate more than one
12 authority if it determines that each authority promotes the
13 public health mission of the university.

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

19 (1) The name of the authority, which shall include
20 the word "Authority" and may include words identifying the
21 sponsoring university.

22 (2) The name of the sponsoring university and the
23 date on which the governing body of the sponsoring university
24 adopted a resolution authorizing the organization of the
25 authority.

26 (3) The name and address of the registered agent of
27 the authority.

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

3 (5) A statement that the authority shall exercise
4 all powers provided by law, unless the exercise by the
5 authority of any of its powers hereunder is limited in any
6 way, in which case a statement of such limitations on the
7 powers of the authority shall be included.

8 (6) A statement that the duration of existence of
9 the authority shall be perpetual, unless the sponsoring
10 university authorizes a shorter duration.

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

15 (8) Provisions for appointing or removing directors
16 of the authority, subject to the provisions of Section 7;
17 provided, however, that if no such provisions are specified in
18 the articles of incorporation, all directors of an authority
19 shall be appointed or elected by the sponsoring university and
20 shall be subject to removal by the sponsoring university at
21 any time, with or without cause.

22 (b) The articles of incorporation shall be executed
23 as provided in the resolution authorizing incorporation of the
24 authority.

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

1 (1) A certified copy of the resolution of the
2 sponsoring university authorizing the incorporation of the
3 authority.

4 (2) A certificate of the Secretary of State
5 confirming that the name proposed for the authority is not
6 identical to that of any other corporation organized under
7 state law or so nearly similar thereto as to lead to confusion
8 and uncertainty.

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

17 Section 6. (a) The articles of incorporation of any
18 authority may be amended by filing articles of amendment with
19 the Secretary of State, but only with the approval of both the
20 board of the authority and the sponsoring university, in the
21 manner provided in this section.

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

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

26 (2) After the adoption by the board of a resolution
27 approving articles of amendment, the authority shall file with

1 the sponsoring university a written request for adoption of a
2 resolution approving the proposed amendment.

3 (3) As promptly as may be practicable after the
4 receipt of the request from the authority, the sponsoring
5 university shall review the application and shall adopt a
6 resolution either approving or denying the articles of
7 amendment as proposed by the authority.

8 (c) Within 30 days following the approval of the
9 articles of amendment by the sponsoring university, the
10 president or vice president of the authority shall sign and
11 file for record in the office of the Secretary of State the
12 following items:

13 (1) The original articles of amendment.

14 (2) A certified copy of each resolution approving
15 the articles of amendment.

16 (d) Upon the filing for record of the articles of
17 amendment and the documents required by subsection (c) of this
18 section, the articles of amendment shall become effective. The
19 Secretary of State shall thereupon record the articles of
20 amendment in an appropriate book in his or her office.

21 (e) The articles of amendment of an authority may
22 amend and restate the articles of incorporation of an
23 authority if approved in accordance with this section.

24 (f) Notwithstanding the provisions of this section,
25 the name and address of the registered agent of an authority
26 may be changed by the authority without following the
27 procedure set forth in this section. An authority may use any

1 appropriate form promulgated by the Secretary of State for
2 this purpose.

3 Section 7. (a) Each authority shall have a board of
4 directors composed of the number of directors provided in the
5 articles of incorporation.

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

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

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

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

4 (f) If, at the expiration of any term of office of
5 any director, a successor has not been elected or appointed as
6 provided in the articles of incorporation, then the director
7 whose term of office has expired shall continue to hold office
8 until his or her successor is elected or appointed.

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

12 (h) A majority of directors shall constitute a
13 quorum for the transaction of business of the board, and any
14 meeting of the board may be adjourned from time to time by a
15 majority of the directors present. No vacancy in the
16 membership of the board shall impair the right of a quorum to
17 exercise all the powers and perform all the duties of the
18 board.

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

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

5 (k) All resolutions adopted by the board shall
6 constitute actions of the authority, and all proceedings of
7 the board shall be reduced to writing, shall be signed by the
8 secretary of the authority, and shall be recorded in permanent
9 physical or electronic storage. Copies of the proceedings,
10 when certified by the secretary of an authority, shall be
11 received in all courts as prima facie evidence of the matters
12 and things therein certified.

13 Section 8. (a) The officers of an authority shall
14 consist of a president, a vice president, a secretary, a
15 treasurer, and other officers and assistant officers as the
16 board deems necessary or desirable. The president and the vice
17 president of the authority shall be a member of the board. The
18 secretary, the treasurer, and any other officers of the
19 authority need not be a director.

20 (b) The president and the vice president of the
21 authority shall be elected by the board as provided in the
22 bylaws of the authority, and the secretary, the treasurer, and
23 the other officers of the authority shall be elected by or
24 pursuant to the authorization of the board for such terms as
25 it deems advisable.

26 (c) The duties of the president, vice president,
27 secretary and treasurer shall be those as are customarily

1 performed by such officers in nonprofit corporations. The
2 duties of any other officers of the authority shall be
3 prescribed by the board or pursuant to its authorization.

4 Section 9. (a) An authority shall have and may
5 exercise any power granted nonprofit corporations under Title
6 10A, Code of Alabama 1975, together with all powers incidental
7 thereto or necessary or desirable to the discharge thereof,
8 including, without limitation, the following specific powers:

9 (1) To adopt, maintain, and amend bylaws and a
10 corporate seal.

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

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

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

19 (5) To pledge the general credit of the authority or
20 any revenues or income of the authority to repayment of any of
21 its indebtedness.

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

25 (7) To lend money to, to assume the indebtedness of,
26 or to guarantee the indebtedness of any other authority,

1 governmental entity, public corporation, or nonprofit
2 organization.

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

6 (9) To participate as a shareholder in a
7 corporation, as a joint venturer in a joint venture, as a
8 general or limited partner in a general or limited
9 partnership, as a member of a nonprofit corporation, or as a
10 member of any other lawful form of business organization, that
11 provides health care or engages in activities related thereto;
12 provided, however, that a business organization with
13 for-profit ownership shall not qualify as a university
14 affiliate under this act.

15 (10) To make and arrange for loans, contributions to
16 capital, and other debt and equity financing for the
17 activities of any lawful form of business organization of
18 which the authority is a member, and to guarantee loans and
19 any other obligations for such purpose.

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

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

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

1 (14) To contract for or to accept any gifts, grants,
2 endowments, or any other aid in any form from the federal
3 government, a governmental entity, or any public corporation,
4 or any other source, or any combination thereof, and to comply
5 with the terms and conditions thereof.

6 (15) To invest its funds in any investment
7 authorized by the sponsoring university for investment of its
8 own funds or in any investment permitted or authorized for
9 state-regulated insurance companies, including, without
10 limitation, investments permitted for domestic insurers and
11 health maintenance organizations pursuant to Title 27, Code of
12 Alabama 1975.

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

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

21 (18) To engage in arrangements, contracts,
22 information sharing, and other collaborative activities with
23 public or private entities and individuals, including, without
24 limitation: joint ventures, joint purchasing arrangements,
25 joint negotiations with physicians, hospitals and payors
26 (whether such negotiations result in separate or combined

1 agreements), leases, and agreements which involve delivery
2 system network creation or operation.

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

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

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

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

23 Section 11. (a) An authority from time to time may
24 borrow money or incur indebtedness and issue bonds, notes or
25 other evidence of indebtedness in such principal amounts as
26 the board determines by resolution to be necessary, desirable,
27 and in the best interests of the authority in order to provide

1 funds to carry out its corporate powers. Indebtedness may be
2 incurred for any lawful purpose of the authority, including,
3 without limitation, any of the following:

4 (1) Indebtedness to finance the acquisition or
5 construction of health care facilities.

6 (2) Indebtedness to provide working capital or funds
7 for operating expenses.

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

11 (b) Indebtedness may be any of the following:

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

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

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

19 (c) Indebtedness may do any of the following or any
20 combination thereof:

21 (1) Provide for no interest.

22 (2) Provide for current interest.

23 (3) Provide for capitalized interest.

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

1 (d) Any resolution authorizing the issuance of any
2 indebtedness shall create a contract with the holders of the
3 indebtedness issued thereby.

4 (e) Evidence of indebtedness shall be executed and
5 delivered as provided in the resolution of the board
6 authorizing the same.

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

10 (g) All indebtedness of an authority shall be
11 subject to redemption or prepayment on such terms as the board
12 shall determine.

13 (h) No indebtedness of an authority shall mature
14 more than 40 years from the date of issuance, without regard
15 to whether the indebtedness is refunding, extending,
16 refinancing, or restructuring existing indebtedness.

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

24 Section 12. (a) Any pledge of any revenues of an
25 authority or university affiliate, including, without
26 limitation, tax revenues made available to an authority, shall
27 be valid and binding from the time it is made, and the

1 revenues or taxes so pledged and thereafter received by the
2 authority shall immediately become subject to the lien of that
3 pledge without any physical delivery thereof or further act.
4 The lien of that pledge shall be valid and binding against all
5 parties having claims of any kind against the authority,
6 irrespective of whether the parties have actual notice
7 thereof. The resolution, indenture, or other financing
8 document establishing a pledge of revenues may provide that
9 the lien established extends, on a pari passu basis, to any
10 additional indebtedness issued as a parity obligation in
11 accordance with the terms of the financing document.

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

23 Section 13. (a) All agreements and covenants
24 undertaken, and all indebtedness issued, by an authority shall
25 be solely and exclusively an obligation of the authority and,
26 except as otherwise provided in a written agreement in
27 accordance with Section 18, shall not create an obligation or

1 debt of the state, any university, or any other governmental
2 entity or public corporation within the meaning of any
3 constitutional or statutory provision.

4 (b) Neither the directors nor any officer of an
5 authority executing indebtedness issued pursuant to this act
6 shall be personally liable for such indebtedness by reason of
7 the execution or issuance thereof.

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

21 Section 14. Indebtedness issued under the provisions
22 of this act is hereby made a legal investment for savings
23 banks and insurance companies organized under state law and
24 for trustees, executors, administrators, guardians, persons,
25 or organizations acting in a fiduciary capacity, unless
26 otherwise directed by a court having jurisdiction or by a
27 document providing fiduciary authority. Any governmental

1 entity or public corporation is authorized, in its discretion,
2 to invest any available funds in securities of the authority.

3 Section 15. (a) If there should be any default in
4 the payment of the principal of, or interest on, any
5 indebtedness issued under this act or of any agreements
6 contained in any security document, and the period for cure of
7 the default has passed, then the holder of the indebtedness
8 and the trustee under any security document, or any one or
9 more of them, subject to the terms of the financing documents
10 authorizing the indebtedness or any security document
11 applicable thereto:

12 (1) May, by mandamus, injunction, or other
13 proceedings, compel performance of any covenant or agreement
14 of the authority contained in any applicable resolution or
15 security document by its board or its officers.

16 (2) May be entitled to a judgment against the
17 authority for the principal of and interest on the
18 indebtedness so in default, together with all reasonable costs
19 of collection.

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

1 (4) Regardless of the sufficiency of the security
2 for the obligation in default, may be entitled to the
3 appointment of a receiver upon order of a court of competent
4 jurisdiction who shall, upon such appointment, assume all
5 powers granted in the applicable financing documents or
6 security document applicable to the obligation in default,
7 provided that the income derived from any activity undertaken
8 by a receiver under this section shall be expended solely in
9 accordance with the applicable provisions of any orders of the
10 court by which such receiver is appointed, and absent judicial
11 direction, of the applicable financing document or security
12 document applicable to the obligation in default.

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

17 Section 16. Notwithstanding any provision of law to
18 the contrary:

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

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

1 (3) An authority shall not be obligated to pay or
2 allow to be paid any fees, taxes, costs, or charges of any
3 nature to the Secretary of State or to any judge of probate of
4 any county in respect of the filing or recording of any
5 document.

6 (4) The gross proceeds of the sale of any property
7 used in the business or activities of an authority, or in the
8 acquisition, construction, renovation, or equipping of any
9 health care facilities for an authority or a university
10 affiliate, regardless of whether the sale is made directly to
11 an authority or to a university affiliate or to any contractor
12 or agent thereof, shall be exempt from all sales and use taxes
13 levied by any governmental entity, including, without
14 limitation, any similar privilege, license, or excise tax.

15 Section 17. (a) Each authority shall engage a firm
16 or firms of certified public accountants to conduct an annual
17 audit of the financial affairs of the authority. Each audit
18 shall be conducted in accordance with generally accepted
19 accounting principles.

20 (b) The board shall submit all audits required by
21 subsection (a) to the sponsoring university as promptly as
22 practicable after the end of each fiscal year of the
23 authority.

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

1 (1) Any of its health care facilities and other
2 properties, real or personal, and any funds and assets,
3 tangible or intangible, relative to the ownership or operation
4 of any such health care facilities, including any certificates
5 of need, assurances of need, or other similar rights
6 appertaining or ancillary thereto, irrespective of whether
7 they have been exercised; and

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

10 (b) The state, any governmental entity, any
11 university, or any public corporation may pledge its full
12 faith and credit to or for the benefit of an authority or a
13 university affiliate or may pledge any revenues that it is
14 legally entitled to pledge to or for the benefit of an
15 authority or university affiliate.

16 (c) An authority or university affiliate shall
17 constitute a "hospital corporation" as that term is used in
18 Title 22, Chapter 21, Article 4, Division 2, Code of Alabama
19 1975, and any county otherwise authorized to do so may
20 designate any authority or university affiliate as the agency
21 of that county to acquire, construct, equip, operate, and
22 maintain public hospital facilities in that county. The
23 authority shall, if so designated, receive the proceeds from
24 any special public hospital tax available in that county.

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

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

5 (2) The nature and scope of the powers conferred on
6 authorities and their university affiliates by this act are
7 such as may compel each authority and each university
8 affiliate, in the course of exercising its powers or by virtue
9 of such exercise of such powers, to engage in activities
10 itself or in collaboration with public or private entities and
11 individuals that may be characterized as anticompetitive or
12 may result in the acquisition or maintenance of monopoly power
13 within the meaning of state and federal antitrust laws or
14 otherwise may have the effect of displacing competition in the
15 provision of hospital, physician, or other health care-related
16 services.

17 (3) In carrying out its public health mission
18 through the exercise of the powers granted by this act,
19 including, without limitation, the collaborative activities
20 expressly authorized by this act, an authority and its
21 university affiliates, as well as the public or private
22 entities and individuals with which they collaborate, shall be
23 immune from liability under the federal and state antitrust
24 laws to the fullest extent allowed by law.

25 (4) As an expression of the public policy of the
26 state with respect to the displacement of competition in the
27 field of health care, each authority and each university

1 affiliate, when exercising its powers under this act, acts as
2 an agency or instrumentality of its university and as a
3 political subdivision of the state, and as such, neither an
4 authority nor its university affiliate shall be subject to
5 what has come to be known in relevant antitrust jurisprudence
6 as "active supervision" by the state in order to enjoy
7 immunity from the application of state and federal antitrust
8 laws.

9 Section 20. (a) The Legislature finds and determines
10 that authorities and university affiliates promote the public
11 health of the state and, by providing this essential public
12 function on behalf of the state and the sponsoring university,
13 they function as agencies and instrumentalities of the state,
14 the sponsoring university, and other governmental entities in
15 the state.

16 (b) The Legislature intends that authorities and
17 university affiliates functioning as agencies and
18 instrumentalities of the state and the sponsoring university
19 shall enjoy the benefits of sovereign immunity to the fullest
20 extent permitted by law.

21 (c) To the extent sovereign immunity is not
22 available for an authority or university affiliate, the
23 Legislature intends that such authorities and university
24 affiliates shall enjoy the benefits of the damage limitation
25 for tort actions provided in Title 11, Chapter 93, Code of
26 Alabama 1975. Accordingly, any claim against an authority or
27 university affiliate, or any employee of an authority or a

1 university affiliate, shall be subject to the limitations
2 imposed by Title 11, Chapter 93, Code of Alabama 1975.

3 (d) As further evidence of the intent expressed in
4 this act, the Legislature hereby provides that:

5 (1) Such authorities and governmental entities shall
6 constitute governmental entities within the meaning of Section
7 11-93-1, Code of Alabama 1975.

8 (2) Officers, directors and employees of such
9 authorities and university affiliates shall be employees
10 within the meaning of Section 11-93-1, Code of Alabama 1975.

11 (3) Claims for money damages against authorities,
12 university affiliates and the officers, directors and
13 employees thereof shall constitute claims within the meaning
14 of Section 11-93-1, Code of Alabama 1975.

15 Section 21. Notwithstanding any other provision of
16 law to the contrary:

17 (1) Each authority shall be exempt from all laws of
18 the state governing usury or prescribing or limiting interest
19 rates, including, without limitation, the provisions of Title
20 8, Chapter 8, Code of Alabama 1975.

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

1 (3) Meetings of the board of an authority and any
2 committee thereof shall not be subject to public meeting or
3 notice requirements, including, without limitation, the
4 provisions of Title 36, Chapter 25A, Code of Alabama 1975.

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

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

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

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

25 (8) No expenditure authorized or permitted by the
26 provisions of this act shall be considered to be a lending of
27 credit or a granting of public money or thing of value to or

1 in aid of any individual, association, or corporation within
2 the meaning of any constitutional or statutory provision.

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

7 (10) For purposes of The Volunteer Service Act, an
8 authority shall be considered a governmental entity, and a
9 university affiliate shall be considered a nonprofit
10 organization so as to provide volunteers with the protections
11 of Section 6-5-336, Code of Alabama 1975. Terms used in this
12 subdivision shall have the meanings assigned in Section
13 6-5-336, Code of Alabama 1975.

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

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

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

23 (2) The public corporation was incorporated with the
24 approval of a university.

25 (c) In order to reincorporate a qualifying public
26 corporation as an authority, the following steps shall be
27 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 severable. If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 which remains.

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