INTRODUCED

February 20, 2018

**S. 1026**

Introduced by Senators Timmons, Martin and Corbin

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Read the first time February 20, 2018.

**A** **BILL**

TO REPEAL SECTION 4 OF ACT 432 OF 1947, AS AMENDED BY SECTION 2 OF ACT 105 OF 2013; TO AMEND ACT 432 OF 1947, AS LAST AMENDED BY ACT 105 OF 2013, BY ADDING A NEW SECTION, TO PROVIDE FOR THE DUTIES OF THE GREENVILLE HEALTH SYSTEM BOARD OF TRUSTEES; TO AMEND ACT 432 OF 1947, AS LAST AMENDED BY ACT 105 OF 2013, BY ADDING A NEW SECTION, TO PROVIDE FOR THE APPOINTMENT OF AN INTERIM PRESIDENT AND TO PROVIDE DUTIES, TO PROVIDE FOR A NEWLY FORMED 501(c)(3) AND ITS DUTIES, TO PROVIDE FOR THE DISTRIBUTION OF THE ACCRUED INTEREST INCOME FROM MONIES, AND TO PROVIDE FOR THE ELECTION OF BOARD MEMBERS AND FOR THEIR TERMS; TO AMEND ACT 432 OF 1947, AS LAST AMENDED BY ACT 105 OF 2013, BY ADDING A NEW SECTION, TO PROVIDE THAT GREENVILLE HEALTH SYSTEM SHALL ENGAGE IN AND ESTABLISH A COMPETITIVE BIDDING PROCESS; TO AMEND ACT 432 OF 1947, AS LAST AMENDED BY ACT 105 OF 2013, BY ADDING A NEW SECTION, TO PROVIDE FOR THE DISTRIBUTION OF ALL MONIES COLLECTED FROM THE SALE OF THE ASSETS; TO PROVIDE THAT NO PUBLIC MONIES OR ASSETS MAY BE EXPENDED OR LIQUIDATED TO PURSUE LEGAL CHALLENGES RELATED TO THIS ACT; TO PROVIDE THAT THE PERSONS HOLDING EXECUTIVE POSITIONS WITHIN THE 501(c)(3) ORGANIZATIONS SHALL VACATE ALL OFFICE SPACE CONTROLLED BY GREENVILLE HEALTH SYSTEM; TO REPEAL ANY PROVISION IN CONFLICT WITH THE PROVISIONS OF THIS ACT; TO PROVIDE THAT, UPON FINAL DISTRIBUTION OF THE ASSETS, ACT 432 OF 1947 AND ALL AMENDMENTS TO THE ACT ARE REPEALED WITH EXCEPTIONS; AND TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE VOID IF THE SOUTH CAROLINA SUPREME COURT PUBLISHES AN OPINION DETERMINING THAT THE BOARD OF TRUSTEES OPERATED WITHIN ITS LEGAL AUTHORITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. SECTION 4 of Act 432 of 1947, as amended by SECTION 2 of Act 105 of 2013, is repealed.

SECTION 2. Act 432 of 1947, as last amended by Act 105 of 2013, is amended by adding an appropriately numbered new SECTION to read:

“SECTION ( ).Pursuant to this act, the Greenville Health System Board of Trustees must terminate the Master Affiliation Agreement and Lease between the Greenville Health System and the Upstate Affiliate Organization and unwind contracts entered into with other health systems outside of the Greenville Health System because the Board’s actions regarding the Master Affiliation Agreement and Lease were ultra vires. Further, the Board is authorized and empowered to do all things necessary or convenient to facilitate the unrestricted sale of all system assets for a maximum monetary value in a manner set forth under the provisions of this act.”

SECTION 3. Act 432 of 1947, as last amended by Act 105 of 2013, is further amended by adding an appropriately numbered new SECTION to read:

“SECTION ( ). A. The Greenville County Legislative Delegation shall appoint an interim president to serve as the president of Greenville Health System. The interim president is responsible for the continued daily operations of the Greenville Health System. Within thirty days of appointment, the interim president shall work with the Greenville County Legislative Delegation to make recommendations for a five‑member Strategic Committee for the purpose of hiring specialized legal counsel and an investment banker or strategic advisory firm to manage the sale of all Greenville Health System assets.

B. In addition to the duties prescribed in subsection A, the interim president shall create a newly formed 501(c)(3) to be called the Greenville Health Foundation, or similar title. The new entity shall be responsible for distributing accrued interest income from monies from the sale of the assets as prescribed by law. One‑third of this distribution must be used to assist socioeconomically disadvantaged populations within the community. The new entity shall be comprised of an eleven‑member board. Board members must be recommended by the interim president to the Greenville County Legislative Delegation and must be approved by the delegation. All recommendations to the board shall take into account race, gender, expertise, and other qualifications that may be pertinent to service on the board so that members are mindful, to the greatest extent possible, of the needs of all segments of the population of Greenville County. Board members shall serve initial terms as follows: three members shall serve for a term of three years; four members shall serve for a term of four years; and four members shall serve for a term of five years. Thereafter, the board will be appointed by the Greenville County Legislative Delegation, as positions become available, for three‑year terms.”

SECTION 4. Act 432 of 1947, as last amended by Act 105 of 2013, is further amended by adding an appropriately numbered new SECTION to read:

“SECTION ( ). A. Greenville Health System shall engage in a competitive bidding process for the purpose of selling the assets of the system. To facilitate the sale, the interim president shall submit recommendations of individuals with experience in health care administration, law, investment banking, mergers and acquisitions, or other related fields to the Greenville County Legislative Delegation. From these names, the delegation shall form a five-person Strategic Committee to engage specialized legal counsel and an investment banking or strategic advisory firm to assist the committee in developing and executing the bidding and transaction process.

B. The Strategic Committee shall require the investment bank or strategic advisory firm to conduct a thorough review of the financial and operating performance of the hospital system and to evaluate markets and growth opportunities available to a buyer. The Strategic Committee shall request that the bank or firm handle the following:

1. develop a preliminary valuation of the system’s assets;

2. prepare a confidential information memorandum to provide to all interested parties that sign a non‑disclosure agreement;

3. identify and prequalify all parties to be contacted for bidding;

4. develop information required of interested parties, including, but not limited to, the form of consideration, operating history of similar facilities, commitment to maintain services, intent to grow services, and maintenance of charity care policies;

5. review a range of transaction structures;

6. solicit initial bids;

7. prepare a management meeting for interested parties sufficiently satisfying initial bid requirements;

8. organize, supervise, and manage all due diligence between the interested parties and Greenville Health System;

9. negotiate financial and non‑financial terms with bidding finalists;

10. advise the Strategic Committee, interim president, and Board of Directors of the merits and risks of the final proposals;

11. work with special counsel to negotiate the letter of intent and definitive agreements with the selected bidder;

12. present information to the Board of Directors regarding the bidding process and negotiations;

13. render a fairness opinion to the Board of Directors;

14. supervise the confirmatory due diligence with the selected bidder;

15. assist in closing the transaction; and

16. provide assistance in any other matters relevant to facilitating the sale of the system’s assets.

C. The Greenville County Legislative Delegation shall have final approval of the sale of the system’s assets.”

SECTION 5. Act 432 of 1947, as last amended by Act 105 of 2013, is further amended by adding an appropriately numbered new SECTION to read:

“SECTION ( ). All monies collected from the sale of the assets of the Greenville Health System shall be distributed as follows:

A. All bonds, any necessary costs to complete defeasance transactions, revenues, or general obligations shall be paid to satisfy any debt incurred by the Greenville Health System prior to entering into the Master Affiliation Agreement and Lease. This amount shall be distributed before the remainder of the funds is disbursed.

B. Up to twenty million dollars may be used to satisfy any unwinding costs associated with contracts entered into with other health systems outside of the Greenville Health System.

C. The remaining proceeds shall be evenly distributed in the following manner:

1. One‑fourth of the remaining proceeds shall be given to the State of South Carolina in the following amounts:

i. forty million dollars to purchase school buses as necessary to replace a critically aging fleet;

ii. twenty‑five million dollars to Greenville Technical College for the purpose of creating a scholarship to support workforce development;

iii. five million dollars to Greenville Technical College to create a workforce reentry center at the college, with the newly formed entity to offset expungement fees by fifty percent;

iv. ten million dollars to the South Carolina Department of Alcohol and Other Drug Abuse Services for science, technology, engineering, and mathematics‑based (STEM) K‑12 initiatives in Greenville County;

v. five million to the South Carolina Medical‑Legal Partnership in Greenville County; and

vi. all remaining funds allocated in five million dollar increments to Greenville County schools to provide support services to low income students and families and to charter schools in Greenville County in two million dollar increments, until the remaining funds have been expended.

2. One‑fourth of the remaining proceeds shall be distributed to the University of South Carolina School of Medicine Greenville to serve as an endowment for the purpose of educating, training, and growing the medical workforce in the Upstate. Five million dollars must be distributed to the Levi S. Kirkland, Sr., M.D. Scholarship Fund for the purpose of providing scholarships to students attending the University of South Carolina School of Medicine Greenville. Twenty‑five percent of these proceeds must be distributed to socioeconomically disadvantaged individuals or minorities.

3. One‑fourth of the remaining proceeds shall be distributed to the Greenville County Council in the following amounts:

i. Council must use sixty percent of the proceeds to offset residential property taxes for residential homes currently taxed at four percent for a period of five years;

ii. Council shall distribute fifty million dollars to facilitate affordable housing within the City of Greenville and Greenville County;

iii. Council shall distribute ten million dollars to the Greenville Area Development Corporation for the purpose of developing and supporting minority‑owned small businesses in Greenville County;

iv. Council shall distribute ten million dollars for the purpose of developing emerging and existing small businesses engaged in agriculture in Greenville County through low interest loans, grants, and a reduction of taxes and fees;

v. Council shall distribute five million dollars for construction of the Hampton Avenue bridge for vehicular and pedestrian traffic in the City of Greenville if the necessary approval is obtained from the required parties, and

vi. Remaining monies shall be distributed to fund projects around Greenville County to support the health‑related needs of all segments of the population considering factors including, but not limited to, race, gender, geographical distribution, socioeconomic status, and disadvantaged communities.

4. One‑fourth of the remaining proceeds shall be distributed to the newly formed 501(c)(3) created by the interim president, who is responsible for distributing the accrued interest income from monies from the sale of the assets as prescribed by law, for the purpose of serving the needs of all segments of the population of Greenville County. Of this amount, twenty‑five percent must be expended on socioeconomically disadvantaged and minority communities.”

SECTION 6. Upon the effective date of this act, no public monies or assets may be expended or liquidated for the purpose of pursuing legal challenges related to this act within a court of competent jurisdiction.

SECTION 7. The persons holding executive positions within the 501(c)(3) organizations, who unlawfully received governance authority under the Master Affiliation Agreement and Lease, shall vacate all office space controlled by Greenville Health System at the discretion of the newly appointed interim president.

SECTION 8. Any provision in conflict with the provisions of this act is repealed.

SECTION 9. Upon final distribution of the assets after a sale, Act 432 of 1947 and all amendments to the act are repealed, except for all provisions related to the newly formed entity responsible for distributing accrued interest income from monies from the sale of the assets as prescribed by law. The interim president shall become the executive director of the entity and serves at the pleasure of the Greenville County Legislative Delegation.

SECTION 10. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the delegation hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 11. If, within six months of the effective date of this act, the South Carolina Supreme Court publishes an opinion determining that the Master Affiliation Agreement and Lease entered into between the Greenville Health System and Upstate Affiliate Organization was within the scope of the Board of Trustees’ authority, then the provisions of this act are void.

SECTION 12. This act takes effect upon approval by the Governor.

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