



Bill Number: H.B. 2067

Biggs Floor Amendment

Reference to: House engrossed bill

Amendment drafted by:

FLOOR AMENDMENT EXPLANATION

States that absent express legislative approval, the Board of Regents shall not serve directly or indirectly as the governing body of a non-profit corporation that leases property from the board for the purposes of operating a health care institution. The Board of Regents shall not remove or replace a majority of the members of the board of directors for the nonprofit corporation or exercise similar control over that nonprofit corporation.

The amendment removes the Board of Regents direct authority and/or delegation of powers to that nonprofit corporation.

Establishes that beginning July 1, 2011, a new governing board of directors for the nonprofit corporation consists of the following membership:

- a chief executive officer of the nonprofit corporation;
- a chief financial officer of the nonprofit corporation;
- the dean of the university of Arizona college of medicine;
- the president of the university of Arizona
- one department chairperson from the University of Arizona College of Medicine (Governor appointment)
- one member of the faculty medical staff of the hospital (Governor appointment)
- 12 independent community board members consisting of four appointments made by the Governor, four by the Speaker of the House and four by the Senate President.

Successors to the appointed board members will be appointed by the board of directors of the nonprofit corporation. The appointed members shall serve a four year term.

Specifies that the board of directors shall ensure that the nonprofit corporation fulfills the educational or research purposes and goals of a hospital affiliated with the University of Arizona.

Contains legislative intent language stating that the board of directors established by this enactment is to be operated exclusively for charitable, scientific and educational purposes. The Board shall promote the delivery of medical and health care services and be operated to perform the functions of, or to carry out the purposes of, the university of Arizona and its college of medicine.

Contains a savings clause specifying that the act does not affect contracts executed before the effective date of the legislation.

Contains a retroactive effective date of June 30, 2011.

Amendment explanation prepared by Melissa Taylor

4/13/2011

BIGGS FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2067
(Reference to House engrossed bill)

1 Page 1, after line 19, insert:

2 "5. ENTER INTO AGREEMENTS PURSUANT TO SECTION 15-1637, SUBSECTION G,
3 PARAGRAPH 1.

4 Sec. 2. Section 15-1625, Arizona Revised Statutes, is amended to read:
5 15-1625. General powers of board as body corporate; prohibition

6 A. The Arizona board of regents is a body corporate with perpetual
7 succession. The board has jurisdiction and control over the universities.

8 B. The board may:

9 1. Adopt a corporate seal.

10 2. Contract.

11 3. Sue and be sued.

12 4. Purchase, receive, hold, make and take leases and long-term leases
13 of and sell real and personal property for the benefit of this state and for
14 the use of the institutions under its jurisdiction.

15 C. ABSENT EXPRESS AUTHORIZATION BY THE LEGISLATURE, THE BOARD SHALL
16 NOT SERVE DIRECTLY OR INDIRECTLY AS THE GOVERNING BODY OF A NONPROFIT
17 CORPORATION THAT LEASES PROPERTY FROM THE BOARD PURSUANT TO SECTION 15-1637
18 OR FROM ANY CORPORATE MEMBER OR SUBSIDIARY OF THAT NONPROFIT CORPORATION, OR
19 HAVE THE RIGHT TO APPOINT, REMOVE OR REPLACE A MAJORITY OF THE MEMBERS OF THE
20 BOARD OF DIRECTORS OF THAT NONPROFIT CORPORATION OR OTHERWISE EXERCISE
21 SIMILAR CONTROL, DOMINION OR APPROVAL RIGHTS, WHETHER BY CONTRACT OR
22 OTHERWISE, OVER THAT NONPROFIT CORPORATION.

23 Sec. 3. Section 15-1637, Arizona Revised Statutes, is amended to read:

24 15-1637. Lease of property for health care institution;
25 requirements; conditions; reports; directors,
26 members and officers of nonprofit corporation;
27 definition

28 A. The Arizona board of regents may lease real property, improvements
29 or personal property owned by the board to a nonprofit corporation as lessee
30 for purposes of operating a health care institution as defined in section

1 36-401. If the board leases such property for such purposes, whether title
2 to improvements on the property rests in the board or in the lessee, the
3 lease agreement and any amendments, renewals or extensions of the agreement
4 shall be deemed binding and effective according to its terms. If, under the
5 provisions of the lease, improvements or personal property related to the
6 operation of a health care institution are conveyed to the nonprofit
7 corporation, they shall be presumed to have been conveyed for their then fair
8 market value.

9 B. Any lease agreement entered into pursuant to subsection A of this
10 section ~~may~~, at the discretion of the Arizona board of regents, **MAY** contain
11 provisions requiring the nonprofit corporation to acquire the approval of the
12 Arizona board of regents ~~prior to~~ **BEFORE** entering into any business
13 transactions that ~~may~~ **COULD REASONABLY BE EXPECTED TO MATERIALLY AND**
14 adversely affect the interests of this state or that are contained in
15 subsection G, paragraph 2 of this section. The Arizona board of regents shall
16 specify in the lease agreement the type and nature of such transactions ~~which~~
17 **THAT** require prior approval of the board.

18 C. To satisfy the requirements of section 103 of the internal revenue
19 code, as defined in section 43-105, any nonprofit corporation ~~which~~ **THAT** is a
20 lessee as described in subsection A of this section is declared to be:

21 1. A validly organized and existing body politic and corporate
22 exercising its powers for the benefit of the people, to improve their health
23 and welfare and to increase their prosperity.

24 2. Engaged in a purpose essential to public health care.

25 3. Performing an essential governmental function.

26 D. Any nonprofit corporation ~~which~~ **THAT** is a lessee as described in
27 subsection A of this section is exempt from property taxation by this state
28 or any agency or subdivision of this state and possesses and may exercise
29 ~~only those powers of the Arizona board of regents which are delegated to the~~
30 ~~nonprofit corporation by the Arizona board of regents and~~ **ALL OF THE POWERS**
31 ~~which~~ **THAT** are necessary to satisfy the requirements of section 103 of the
32 internal revenue code, as defined in section 43-105, as specified in the
33 terms, conditions, restrictions and agreements of the lease agreement. These
34 powers are in addition to all those powers granted to a nonprofit corporation
35 by title 10, chapters 24 through 40.

1 E. Any nonprofit corporation ~~which~~ THAT is a lessee as described in
2 subsection A of this section may issue bonds and incur obligations and pledge
3 its revenues as security for the payment of the bonds or other obligations
4 for health care institutional purposes to the extent provided by the lease
5 agreement or amendments, renewals or extensions of the agreement. ~~Nothing in~~
6 This section shall NOT be construed to authorize the incurrence of a debt by
7 the state within the meaning of any constitutional restriction on debt.

8 F. Except as provided in subsection G of this section, any nonprofit
9 corporation ~~which~~ THAT is a lessee as described in subsection A of this
10 section may acquire by purchase, lease or otherwise, and may operate, other
11 health care institutions and real and personal property for purposes of
12 providing products and services related to the operation of health care
13 institutions owned, leased or operated by it. Such acquisition or operation
14 does not affect the powers, rights, privileges or immunities conferred on
15 such nonprofit corporation by this section.

16 G. ~~No~~ ANY nonprofit corporation ~~which~~ THAT is a lessee as described in
17 subsection A of this section shall NOT:

18 1. ~~Until September 1, 1986~~ Enter into any agreement with a county or a
19 nonprofit corporation to which property is conveyed pursuant to section
20 11-256.03, subsection A if the agreement provides for the conveyance of any
21 ownership interest whatever in the nonprofit corporation to which property is
22 conveyed pursuant to section 11-256.03, subsection A or in the property
23 described in section 11-256.03, subsection A UNLESS THE AGREEMENT IS REVIEWED
24 BY THE JOINT COMMITTEE ON CAPITAL REVIEW. ~~After August 31, 1986 any such~~
25 ~~agreement must be approved by the Arizona board of regents and the~~
26 ~~legislature.~~ This subsection does not prevent the grant of an option to
27 purchase such property, ~~provided that the option may not be exercised before~~
28 ~~September 1, 1986~~ and the exercise of the option must be ~~approved by the~~
29 ~~Arizona board of regents and the legislature~~ REVIEWED BY THE JOINT COMMITTEE
30 ON CAPITAL REVIEW. ~~Under no circumstances shall any~~ State general fund
31 monies SHALL NOT be used to acquire any interest in such property.

32 2. Own, lease, manage or operate any other health care institution or
33 other real or personal property unless such acquisition, management or
34 operation either:

35 (a) Relates to and furthers the educational or research purposes and
36 goals of ~~the~~ A HOSPITAL AFFILIATED WITH THE university of Arizona ~~hospital~~.

1 (b) Promotes the efficient and economical operation of ~~the~~ A HOSPITAL
2 AFFILIATED WITH THE university of Arizona ~~hospital~~ or any other health care
3 institution acquired pursuant to paragraph 1 of this subsection.

4 H. A nonprofit corporation ~~which~~ THAT is a lessee as described in
5 subsection A of this section may manage and operate property described in
6 section 11-256.03, subsection A subject to the restrictions of subsection G
7 of this section. Any management or operation agreement shall provide that
8 the nonprofit corporation ~~which~~ THAT is a lessee as described in subsection A
9 of this section shall not be liable for any bonds or other obligation of any
10 kind relating to the ownership or operation of the property described in
11 section 11-256.03, subsection A incurred before the property is conveyed to
12 such nonprofit corporation in accordance with subsection G of this section.

13 I. A health care institution ~~which~~ THAT is the subject of a lease
14 agreement as described in subsection A of this section is subject to section
15 15-1630.

16 J. A nonprofit corporation ~~which~~ THAT is a lessee as described in
17 subsection A of this section shall make semiannual progress reports as to its
18 financial status and deliver them on January 1 and July 1 of each year to the
19 Arizona board of regents, the president of the senate, the speaker of the
20 house of representatives and the governor. The nonprofit corporation shall
21 present an independently audited financial statement to the auditor general
22 within ninety days ~~of~~ AFTER the close of the previous fiscal year. The
23 auditor general shall review such statements and transmit them together with
24 a report to officers entitled to receive progress reports by this subsection.

25 K. Any nonprofit corporation ~~which~~ THAT is a lessee as described in
26 subsection A of this section shall:

27 1. Be organized ~~as a~~ AND HAVE AS ITS CORPORATE MEMBERS, IF ANY, ONLY
28 ENTITIES ORGANIZED AS nonprofit ~~corporation~~ CORPORATIONS pursuant to title
29 10, chapters 24 through 40 ~~only upon the approval of the Arizona board of~~
30 ~~regents~~. ANY CORPORATE MEMBER OF WHOLLY OWNED SUBSIDIARIES OF THE NONPROFIT
31 CORPORATION, IF ANY, SHALL HAVE A GOVERNING BOARD THAT IS COMPOSED IN THE
32 SAME MANNER SPECIFIED IN THIS SUBSECTION.

33 2. UNTIL JUNE 30, 2011, be governed by a board of directors, the
34 members of which are appointed by the Arizona board of regents, provided that
35 no more than forty-nine per cent of the members of such board of directors of
36 the nonprofit corporation shall be officers or employees of this state and of

1 such forty-nine per cent only two members of such board of directors may be
2 members of the Arizona board of regents. Members of the Arizona board of
3 regents who are appointed to the board of directors of such nonprofit
4 corporation shall be residents of different counties unless all members of
5 the board of regents are residents of the same county.

6 3. BEGINNING JULY 1, 2011, BE GOVERNED BY A BOARD OF DIRECTORS
7 COMPOSED OF THE FOLLOWING MEMBERS:

8 (a) THE CHIEF EXECUTIVE OFFICER OF THE NONPROFIT CORPORATION.

9 (b) THE CHIEF FINANCIAL OFFICER OF THE NONPROFIT CORPORATION.

10 (c) THE DEAN OF THE UNIVERSITY OF ARIZONA COLLEGE OF MEDICINE.

11 (d) THE PRESIDENT OF THE UNIVERSITY OF ARIZONA.

12 (e) ONE DEPARTMENT CHAIRPERSON FROM THE UNIVERSITY OF ARIZONA COLLEGE
13 OF MEDICINE, WHO IS INITIALLY APPOINTED BY THE GOVERNOR AND WHO IS
14 SUBSEQUENTLY APPOINTED BY THE BOARD OF DIRECTORS OF THE NONPROFIT
15 CORPORATION.

16 (f) ONE MEMBER OF THE FACULTY MEDICAL STAFF OF THE HOSPITAL OR
17 HOSPITALS OPERATED BY THE NONPROFIT CORPORATION, WHO IS INITIALLY APPOINTED
18 BY THE GOVERNOR AND WHO IS SUBSEQUENTLY APPOINTED BY THE BOARD OF DIRECTORS
19 OF THE NONPROFIT CORPORATION.

20 (g) TWELVE INDEPENDENT COMMUNITY BOARD MEMBERS, AS DEFINED IN THE
21 UNITED STATES INTERNAL REVENUE CODE, FOUR OF WHOM ARE INITIALLY APPOINTED BY
22 THE GOVERNOR, FOUR OF WHOM ARE INITIALLY APPOINTED BY THE PRESIDENT OF THE
23 SENATE AND FOUR OF WHOM ARE INITIALLY APPOINTED BY THE SPEAKER OF THE HOUSE
24 OF REPRESENTATIVES. THE GOVERNOR MAY USE ONE OF THE GOVERNOR'S FOUR INITIAL
25 APPOINTMENTS TO APPOINT HIMSELF OR HERSELF AS A NONVOTING MEMBER OF THE
26 BOARD. THE INITIAL MEMBERS APPOINTED PURSUANT TO THIS SUBDIVISION SHALL
27 ASSIGN THEMSELVES BY LOT TO TERMS OF TWO, THREE AND FOUR YEARS IN OFFICE.
28 ALL SUBSEQUENT MEMBERS APPOINTED PURSUANT TO THIS SUBDIVISION SERVE FOUR YEAR
29 TERMS OF OFFICE. THE INITIAL INDEPENDENT COMMUNITY BOARD MEMBERS SHALL BE
30 APPOINTED BY THE APPOINTING AUTHORITY SPECIFIED IN THIS SUBDIVISION, AND THE
31 SUCCESSORS OF THOSE INITIAL APPOINTEES SHALL BE SELECTED BY THE BOARD OF
32 DIRECTORS OF THE NONPROFIT CORPORATION. THE BOARD OF DIRECTORS SHALL ENSURE
33 THAT THE NONPROFIT CORPORATION FULFILLS THE EDUCATIONAL OR RESEARCH PURPOSES
34 AND GOALS OF A HOSPITAL AFFILIATED WITH THE UNIVERSITY OF ARIZONA.

1 ~~3.~~ 4. Be organized under articles of incorporation or bylaws approved
2 ~~by the Arizona board of regents which shall~~ THAT provide among other things
3 that:

4 (a) ~~No~~ Earnings of the nonprofit corporation shall NOT inure to the
5 benefit of or be distributable to its members, directors, officers or other
6 individuals, except that the nonprofit corporation shall be authorized to pay
7 reasonable compensation for services rendered to it by individuals other than
8 members of the board of directors of the nonprofit corporation acting solely
9 in such capacity, to reimburse expenses in connection with services rendered
10 to or expenses incurred on behalf of the nonprofit corporation and to make
11 payments and distributions in furtherance of the purposes of the nonprofit
12 corporation.

13 (b) ~~Upon~~ ON the dissolution or liquidation of the nonprofit
14 corporation, the board of directors of the nonprofit corporation shall, after
15 paying or making provision for the payment of all of the liabilities of the
16 nonprofit corporation, SHALL distribute all of the assets of the nonprofit
17 corporation to the Arizona board of regents or its successor.

18 ~~(c) Neither the articles of incorporation nor the bylaws of the~~
19 ~~nonprofit corporation shall be amended without the approval of the Arizona~~
20 ~~board of regents.~~

21 ~~(d)~~ (c) The board of directors of the nonprofit corporation may adopt
22 nondiscriminatory rules ~~and regulations~~ providing for the use of A HOSPITAL
23 AFFILIATED WITH the university of Arizona ~~hospital~~ by, and staff privileges
24 for, any persons licensed under title 32, chapter 7, 13 or 17 whether or not
25 such persons have a faculty teaching appointment with the school of medicine,
26 ~~providing, however, that such~~ IF THOSE rules ~~and regulations shall~~ contain
27 requirements sufficient to protect the educational and research purposes and
28 goals of A HOSPITAL AFFILIATED WITH the university of Arizona ~~hospital~~.

29 ~~L. No member of the Arizona board of regents who is also a member or~~
30 ~~director of a nonprofit corporation which is a lessee as described in~~
31 ~~subsection A of this section shall as a regent vote upon any matter~~
32 ~~pertaining to such a corporation as may come before the Arizona board of~~
33 ~~regents.~~

34 ~~M.~~ L. For the purposes of this section, "nonprofit corporation" means
35 a corporation as defined in section 10-3140.

1 Sec. 4. Intent

2 It is the intent of the legislature that the board of directors of the
3 nonprofit corporation that governs a hospital affiliated with the university
4 of Arizona ensures that the hospital be operated exclusively for charitable,
5 scientific and educational purposes. Specifically, the board shall promote
6 the delivery of medical and health care services and be operated to perform
7 the functions of, or to carry out the purposes of, the university of Arizona
8 and its college of medicine.

9 Sec. 5. Saving clause

10 This act does not affect any contracts that were executed pursuant to
11 section 15-1637, Arizona Revised Statutes, as amended by this act, before the
12 effective date of this act.

13 Sec. 6. Retroactivity

14 Section 15-1637, Arizona Revised Statutes, as amended by this act,
15 applies retroactively to from and after June 30, 2011."

16 Amend title to conform

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