

1 SB243
2 173341-1
3 By Senator Reed
4 RFD: Health and Human Services
5 First Read: 16-FEB-16

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8 SYNOPSIS: This bill would authorize public
9 universities operating schools of medicine to form
10 a new type of public corporation to be called an
11 authority.

12 This bill would provide procedures for the
13 incorporation, reincorporation, and dissolution of
14 an authority.

15 This bill would prescribe powers of an
16 authority, including the power to form university
17 affiliates, the power of eminent domain, and the
18 power to incur indebtedness.

19 This bill would authorize an authority to
20 exercise its powers even if doing so would be
21 deemed anticompetitive or monopolistic under
22 federal or state antitrust laws.

23 This bill would authorize liens on the
24 revenues and assets of an authority or university
25 affiliate.

26 This bill would exempt an authority and
27 university affiliate from state taxation and exempt

1 indebtedness issued by an authority or university
2 affiliate from state taxation.

3 This bill would make further findings with
4 respect to the application and effect of this act
5 on existing law.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to universities; to enact the University
12 Authority Act of 2016, to authorize public universities
13 operating schools of medicine to form a new type of public
14 corporation to be called an authority; to express legislative
15 intent; to establish procedures for incorporation of
16 authorities by universities; to prescribe requirements for and
17 powers of a board of directors and officers of an authority;
18 to prescribe powers of an authority, which includes the power
19 to form university affiliates; to authorize authorities to
20 exercise their powers even if the exercise of such powers
21 would be deemed anticompetitive or monopolistic under federal
22 or state antitrust laws; to grant authorities the power of
23 eminent domain; to authorize authorities to issue obligations
24 such as bonds, notes, and other evidences of indebtedness; to
25 authorize liens on the revenues and assets of an authority or
26 a university affiliate; to provide that obligations of an
27 authority are not debts or other obligations of the state, any

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited
3 as the "University Authority Act of 2016."

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

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

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

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

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

13 (5) GOVERNMENTAL ENTITY. Any of the state, a county,
14 a municipality, or any department, agency, board, or
15 commission of the state, a county, or a municipality.

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

20 a. Facilities necessary or desirable to the
21 operation of an academic medical center, one or more health
22 sciences schools, hospitals, public health care clinics,
23 treatment centers, emergency facilities, outpatient
24 facilities, laboratories, service or support facilities, and
25 any other facilities related to the operation of any of the
26 foregoing.

1 b. Biomedical or public health research
2 establishments of any type.

3 c. Ambulance, helicopter, and other similar
4 facilities and services for the transportation of sick or
5 injured persons.

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

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

10 Health care facilities may serve physical or mental
11 health. A determination by a board that an asset constitutes a
12 health care facility shall be conclusive, absent manifest
13 error.

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

18 (8) INDEBTEDNESS. Bonds, notes, certificates of
19 indebtedness, debt securities, capital lease agreements, or
20 any other evidence of indebtedness.

21 (9) NONPROFIT ORGANIZATION. Any nonprofit
22 corporation, limited liability company, partnership, or other
23 form of business organization in which no part of the income
24 or profit is distributable to any individual or entity other
25 than a university, an authority, a governmental entity, a
26 public corporation, or a nonprofit corporation that is an

1 organization described in Section 501(c)(3) of the Internal
2 Revenue Code.

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

6 (11) SECURITY DOCUMENT. A trust indenture, loan
7 agreement, lease agreement, mortgage, security instrument or
8 agreement, or other document securing any indebtedness or
9 other obligation of an authority in favor of the holder or
10 holders of any such indebtedness or other obligation or a
11 trustee for such holders.

12 (12) SPONSORING UNIVERSITY. The university that
13 authorizes the incorporation of an authority.

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

16 (14) UNIVERSITY AFFILIATE. Any public corporation or
17 nonprofit organization that is controlled, directly or
18 indirectly, by a university or an authority. A university or
19 authority controls a public corporation or nonprofit
20 organization if it: Owns a majority of any stock, membership
21 interests, partnership interests, or other similar interests,
22 if any, in such entity; has the right or power to appoint a
23 majority of the members of the governing body of the entity;
24 and has the right to distribution of a majority of the assets
25 of the entity upon dissolution. A university or authority may
26 control an entity directly or indirectly through one or more
27 entities each of which qualifies as a university affiliate.

1 Notwithstanding control by a university or authority, an
2 entity is not a university affiliate if any individual or
3 for-profit entity owns any interest in the entity or has the
4 right or power to appoint one or more members of the governing
5 body of the entity or if the mission of the entity is not
6 consistent with the public health mission of a university.

7 Section 3. (a) The Legislature hereby finds and
8 declares:

9 (1) Universities and academic medical centers
10 promote the public health of the people of the state and serve
11 a critical public health purpose of the state by providing
12 medical education, biomedical and public health research, and
13 clinical care.

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

17 (3) Universities and academic medical centers
18 promote public health not only in the communities where the
19 academic medical center is located, but also in other areas of
20 the state where the knowledge and skill of its research and
21 clinical care programs are applied to community and rural
22 health needs. Universities may also find it advantageous to
23 provide health care facilities in such areas through joint
24 ownership and operation in collaboration with local
25 governmental entities, public corporations, and nonprofit
26 organizations.

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

4 (5) As a result of national health care trends,
5 universities and academic medical centers face challenges in
6 the operation of financially viable health care facilities and
7 programs and fulfilling their public health mission. Those
8 trends include the formation of health care networks and
9 delivery systems to deliver health care in a more
10 cost-effective manner.

11 (6) In comparison to private corporate health
12 systems, universities and academic medical centers often are
13 at a competitive disadvantage as a result of limitations on
14 their ability to form networks and delivery systems and
15 otherwise collaborate with other health care providers to form
16 joint ventures or other entities with shared ownership.

17 (7) Universities may find it advantageous to
18 organize separate authorities under this act to own or operate
19 health care facilities or to collaborate with other health
20 care providers through the formation of joint ventures or
21 other entities with shared ownership.

22 (8) Existing legislation authorizing the formation
23 or organization of entities by universities to engage in
24 health care delivery does not meet the special needs of
25 universities.

26 (9) When exercising their powers as provided herein
27 with respect to the operation and management of health care

1 facilities, engaging in health care delivery, and facilitating
2 educational instruction, authorities and their university
3 affiliates further the public health mission of the state.

4 (b) This act provides for the creation of
5 authorities that will more effectively advance and facilitate
6 the public health mission of the state and its universities.
7 To that end, the Legislature further finds and declares the
8 following:

9 (1) Authorities organized under this act and
10 university affiliates are performing essential public
11 functions on behalf of the state and its universities, and the
12 privileges and benefits provided to authorities organized
13 under this act and university affiliates are in furtherance of
14 the public health of the people of the state and the public
15 policy of the state.

16 (2) This act authorizes universities and authorities
17 to collaborate with all types of health care providers in the
18 pursuit of the public health mission of universities,
19 including for-profit, governmental, and nonprofit providers;
20 provided, however, that entities resulting from collaboration
21 with for-profit health care providers shall not qualify as
22 university affiliates under this act.

23 (3) If a university or authority controls an entity
24 that qualifies as a university affiliate under this act, this
25 act also extends to such university affiliate certain
26 specified privileges and benefits available to authorities.

1 (c) It is therefore the intent of the Legislature by
2 the passage of this act to promote the public health of the
3 people of the state by authorizing universities in the state
4 to form authorities. To that end, this act invests each
5 authority organized hereunder with all powers that may be
6 necessary or desirable to further the public health mission of
7 universities in the state and shall be liberally construed in
8 conformity with this intent.

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

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

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

18 (3) Authorization to proceed to form the proposed
19 authority by executing the articles of incorporation approved
20 by the sponsoring university and filing the same with the
21 Secretary of State.

22 (b) A university may incorporate more than one
23 authority if it determines that each authority promotes the
24 public health mission of the university.

25 Section 5. (a) In addition to any other matters
26 relating to the authority that the sponsoring university may
27 choose to insert and that are not inconsistent with state law,

1 the articles of incorporation of an authority shall include
2 the following provisions:

3 (1) The name of the authority, which shall include
4 the word "Authority" and shall include words identifying the
5 sponsoring university.

6 (2) The name of the sponsoring university and the
7 date on which the governing body of the sponsoring university
8 adopted a resolution authorizing the organization of the
9 authority.

10 (3) The name and address of the registered agent of
11 the authority.

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

14 (5) A statement that the authority shall exercise
15 all powers provided by law, unless the exercise by the
16 authority of any of its powers hereunder is limited in any
17 way, in which case a statement of such limitations on the
18 powers of the authority shall be included.

19 (6) A statement that the duration of existence of
20 the authority shall be perpetual, unless the sponsoring
21 university authorizes a shorter duration.

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

26 (8) Provisions for appointing or removing directors
27 of the authority, subject to the provisions of Section 7;

1 provided, however, that if no such provisions are specified in
2 the articles of incorporation, all directors of an authority
3 shall be appointed or elected by the sponsoring university and
4 shall be subject to removal by the sponsoring university at
5 any time, with or without cause.

6 (b) The articles of incorporation shall be executed
7 as provided in the resolution authorizing incorporation of the
8 authority.

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

12 (1) A certified copy of the resolution of the
13 sponsoring university authorizing the incorporation of the
14 authority.

15 (2) A certificate of the Secretary of State
16 confirming that the name proposed for the authority is not
17 identical to that of any other corporation organized under
18 state law or so nearly similar thereto as to lead to confusion
19 and uncertainty.

20 (d) Upon the filing for record of the articles of
21 incorporation and the documents required by subsection (c)
22 with the Secretary of State, the authority shall come into
23 existence and shall constitute a public corporation under the
24 name set forth in its articles of incorporation. The Secretary
25 of State shall thereupon issue a certificate of incorporation
26 to the authority and shall record the articles of
27 incorporation in an appropriate book in his or her office.

1 Section 6. (a) The articles of incorporation of any
2 authority may be amended by filing articles of amendment with
3 the Secretary of State, but only with the approval of both the
4 board of the authority and the sponsoring university, in the
5 manner provided in this section.

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

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

10 (2) After the adoption by the board of a resolution
11 approving articles of amendment, the authority shall file with
12 the sponsoring university a written request for adoption of a
13 resolution approving the proposed amendment.

14 (3) As promptly as may be practicable after the
15 receipt of the request from the authority, the sponsoring
16 university shall review the application and shall adopt a
17 resolution either approving or denying the articles of
18 amendment as proposed by the authority.

19 (c) Within 30 days following the approval of the
20 articles of amendment by the sponsoring university, the
21 president or vice president of the authority shall sign and
22 file for record in the office of the Secretary of State the
23 following items:

24 (1) The original articles of amendment.

25 (2) A certified copy of each resolution approving
26 the articles of amendment.

1 (d) Upon the filing for record of the documents
2 required by subsection (c), the articles of amendment shall
3 become effective. The Secretary of State shall thereupon
4 record the articles of amendment in an appropriate book in his
5 or her office.

6 (e) The articles of amendment of an authority may
7 amend and restate the articles of incorporation of an
8 authority if approved in accordance with this section.

9 (f) Notwithstanding the provisions of this section,
10 the name and address of the registered agent of an authority
11 may be changed by the authority without following the
12 procedure set forth in this section. An authority may use any
13 appropriate form promulgated by the Secretary of State for
14 this purpose.

15 Section 7. (a) Each authority shall have a board of
16 directors composed of the number of directors provided in the
17 articles of incorporation.

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

20 (c) Except for ex-officio directors specified in the
21 articles of incorporation, all directors of an authority shall
22 be elected or appointed by the sponsoring university. The
23 articles of incorporation may provide that specified officers
24 or employees of the sponsoring university shall be ex-officio
25 directors of an authority, so long as a majority of the
26 directors are elected or appointed by the sponsoring
27 university.

1 (d) The articles of incorporation may provide that a
2 governmental entity, a public corporation, or a nonprofit
3 organization may nominate one or more directors of an
4 authority, provided that the number of directors elected or
5 appointed by the sponsoring university without nomination may
6 never be less than a majority of the directors, and the
7 sponsoring university shall not be required to elect or
8 appoint any such nominee. If the sponsoring university does
9 not elect or appoint a nominee, the nominating entity shall
10 provide an alternate nominee for consideration by the
11 sponsoring university.

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

15 (f) If, at the expiration of any term of office of
16 any director, a successor has not been elected or appointed as
17 provided in the articles of incorporation, then the director
18 whose term of office has expired shall continue to hold office
19 until his or her successor is elected or appointed.

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

23 (h) A majority of directors shall constitute a
24 quorum for the transaction of business of the board, and any
25 meeting of the board may be adjourned from time to time by a
26 majority of the directors present. No vacancy in the
27 membership of the board shall impair the right of a quorum to

1 exercise all the powers and perform all the duties of the
2 board.

3 (i) The board shall adopt and maintain bylaws, not
4 inconsistent with the provisions of this act or the
5 authority's articles of incorporation, for the regulation and
6 conduct of its affairs and the operation of the authority. The
7 bylaws of the board may provide for such committees as the
8 board deems necessary or desirable, including without
9 limitation an executive committee that is empowered to act on
10 behalf of the board. The bylaws may authorize telephonic or
11 video conference meetings of the board or any committee of the
12 board.

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

17 (k) All resolutions adopted by the board shall
18 constitute actions of the authority, and all proceedings of
19 the board shall be reduced to writing, shall be signed by the
20 secretary of the authority, and shall be recorded in permanent
21 physical or electronic storage. Copies of the proceedings,
22 when certified by the secretary of an authority, shall be
23 received in all courts as prima facie evidence of the matters
24 and things therein certified.

25 Section 8. (a) The officers of an authority shall
26 consist of a president, a vice president, a secretary, a
27 treasurer, and other officers and assistant officers as the

1 board deems necessary or desirable. The president and the vice
2 president of the authority shall be a member of the board. The
3 secretary, the treasurer, and any other officers of the
4 authority need not be a director.

5 (b) The president and the vice president of the
6 authority shall be elected by the board as provided in the
7 bylaws of the authority, and the secretary, the treasurer, and
8 the other officers of the authority shall be elected by or
9 pursuant to the authorization of the board for such terms as
10 it deems advisable.

11 (c) The duties of the president, vice president,
12 secretary, and treasurer shall be those as are customarily
13 performed by such officers in nonprofit corporations. The
14 duties of any other officers of the authority shall be
15 prescribed by the board or pursuant to its authorization.

16 Section 9. (a) An authority shall have and may
17 exercise any power granted nonprofit corporations under Title
18 10A, Code of Alabama 1975, together with all powers incidental
19 thereto or necessary or desirable to the discharge thereof,
20 including, without limitation, the following specific powers:

21 (1) To adopt, maintain, and amend bylaws and a
22 corporate seal.

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

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

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

4 (5) To pledge the general credit of the authority or
5 any revenues or income of the authority to repayment of any of
6 its indebtedness.

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

10 (7) To lend money to, to assume the indebtedness of,
11 or to guarantee the indebtedness of any other authority,
12 governmental entity, public corporation, or nonprofit
13 organization.

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

17 (9) To participate as a shareholder in a
18 corporation, as a joint venturer in a joint venture, as a
19 general or limited partner in a general or limited
20 partnership, as a member of a nonprofit corporation, or as a
21 member of any other lawful form of business organization, that
22 provides health care or engages in activities related thereto;
23 provided, however, that a business organization with
24 for-profit ownership shall not qualify as a university
25 affiliate under this act.

26 (10) To make and arrange for loans, contributions to
27 capital, and other debt and equity financing for the

1 activities of any lawful form of business organization of
2 which the authority is a member, and to guarantee loans and
3 any other obligations for such purpose.

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

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

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

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

17 (15) To invest its funds in any investment
18 authorized by the sponsoring university for investment of its
19 own funds or in any investment permitted or authorized for
20 state-regulated insurance companies, including, without
21 limitation, investments permitted for domestic insurers and
22 health maintenance organizations pursuant to Title 27, Code of
23 Alabama 1975.

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

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

6 (18) To engage in arrangements, contracts,
7 information sharing, and other collaborative activities with
8 public or private entities and individuals, including, without
9 limitation: joint ventures, joint purchasing arrangements,
10 joint negotiations with physicians, hospitals and payors
11 (whether such negotiations result in separate or combined
12 agreements), leases, and agreements which involve delivery
13 system network creation or operation.

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

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

20 (d) Any of the powers granted hereunder may be
21 exercised by an authority in such manner as it may determine
22 to be consistent with the purposes of this act,
23 notwithstanding that, as a consequence of such exercise of
24 powers it engages in, activities may be deemed anticompetitive
25 or result in the acquisition or maintenance of monopoly power
26 in some relevant market within the meaning of state and
27 federal antitrust laws and notwithstanding that these

1 activities may have the effect of displacing competition in
2 the provision of hospital, physician, or other health
3 care-related services.

4 Section 10. An authority shall have, in addition to
5 all other powers granted by this act, the same power of
6 eminent domain as is vested by law in the sponsoring
7 university under Section 18-1A-295, Code of Alabama 1975.

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

16 (1) Indebtedness to finance the acquisition or
17 construction of health care facilities.

18 (2) Indebtedness to provide working capital or funds
19 for operating expenses.

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

23 (b) Indebtedness may be any of the following or any
24 combination thereof:

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

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

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

6 (c) Indebtedness may provide for any of the
7 following or any combination thereof:

8 (1) Provide for no interest.

9 (2) Provide for current interest.

10 (3) Provide for capitalized interest.

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

13 (d) Any resolution authorizing the issuance of any
14 indebtedness shall create a contract with the holders of the
15 indebtedness issued thereby.

16 (e) Evidence of indebtedness shall be executed and
17 delivered as provided in the resolution of the board
18 authorizing the same.

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

22 (g) All indebtedness of an authority shall be
23 subject to redemption or prepayment on such terms as the board
24 shall determine.

25 (h) No indebtedness of an authority shall mature
26 more than 40 years from the date of issuance, without regard

1 to whether the indebtedness is refunding, extending,
2 refinancing, or restructuring existing indebtedness.

3 (i) The authority may, subject to security documents
4 or other agreements with holders as may then exist, purchase
5 its indebtedness in the open market, through intermediaries or
6 directly from the holder of an obligation, with any funds
7 available therefor. Any obligation so purchased may be
8 cancelled by the authority or may be resold, as authorized by
9 the board.

10 Section 12. (a) Any pledge of any revenues of an
11 authority or university affiliate, including, without
12 limitation, tax revenues made available to an authority, shall
13 be valid and binding from the time it is made, and the
14 revenues or taxes so pledged and thereafter received by the
15 authority shall immediately become subject to the lien of that
16 pledge without any physical delivery thereof or further act.
17 The lien of that pledge shall be valid and binding against all
18 parties having claims of any kind against the authority,
19 irrespective of whether the parties have actual notice
20 thereof. The resolution or security document establishing a
21 pledge of revenues may provide that the lien established
22 extends, on a pari passu basis, to any additional indebtedness
23 issued as a parity obligation in accordance with the terms of
24 the financing document.

25 (b) Any security document relating to any real
26 property, personal property, fixtures, or other tangible
27 property of an authority may be filed in the office of the

1 judge of probate of the county in which the property to be
2 secured is located, and the lien of the security document
3 shall be valid and binding against all parties having claims
4 of any kind against the authority, irrespective of whether any
5 person has actual notice thereof, from the time the security
6 document is so filed, with respect to all property subject
7 thereto, including, without limitation, after-acquired
8 property.

9 Section 13. (a) All agreements and covenants
10 undertaken, and all indebtedness issued, by an authority shall
11 be solely and exclusively an obligation of the authority and,
12 except as otherwise provided in a written agreement in
13 accordance with Section 18, shall not create an obligation or
14 debt of the state, any university, or any other governmental
15 entity or public corporation within the meaning of any
16 constitutional or statutory provision.

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

21 (c) The state and the sponsoring university do
22 hereby pledge to and agree with the holders of any
23 indebtedness issued under this act that neither the state nor
24 the sponsoring university will limit or alter the rights
25 hereby vested in the authority to fulfill the terms of any
26 indebtedness or related security documents made with the
27 holders thereof or in any way impair the rights and remedies

1 of the holders until such indebtedness, together with the
2 interest thereon, and all costs and expenses in connection
3 with any action or proceeding by or on behalf of the holders,
4 are fully met and discharged. An authority is authorized to
5 include this pledge and agreement of this state or sponsoring
6 university in any agreement with the holders of its
7 indebtedness.

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

17 Section 15. (a) If there should be any default in
18 the payment of the principal of, or interest on, any
19 indebtedness issued under this act or of any agreements
20 contained in any security document, and the period for cure of
21 the default has passed, then the holder of the indebtedness
22 and the trustee under any security document, or any one or
23 more of them, subject to the terms of the financing documents
24 authorizing the indebtedness or any security document
25 applicable thereto:

26 (1) May, by mandamus, injunction, or other
27 proceedings, compel performance of any covenant or agreement

1 of the authority contained in any applicable resolution or
2 security document by its board or its officers.

3 (2) May be entitled to a judgment against the
4 authority for the principal of and interest on the
5 indebtedness so in default, together with all reasonable costs
6 of collection.

7 (3) May, in the event the indebtedness is secured by
8 a mortgage on, or security interest in, any physical
9 properties of the authority, foreclose the mortgage or pledge,
10 exercise any powers of sale contained in the security
11 documents, or exercise any possessory or other similar rights
12 as are provided for in the financing documents or security
13 document applicable to the indebtedness.

14 (4) Regardless of the sufficiency of the security
15 for the obligation in default, may be entitled to the
16 appointment of a receiver upon order of a court of competent
17 jurisdiction who shall, upon such appointment, assume all
18 powers granted in the applicable financing documents or
19 security document applicable to the obligation in default,
20 provided that the income derived from any activity undertaken
21 by a receiver under this section shall be expended solely in
22 accordance with the applicable provisions of any orders of the
23 court by which such receiver is appointed, and absent judicial
24 direction, of the applicable financing document or security
25 document applicable to the obligation in default.

26 (b) The remedies specified in this section shall be
27 cumulative to all other remedies that may otherwise be

1 available, by law or contract, for the benefit of the holders
2 of indebtedness of an authority.

3 Section 16. Notwithstanding any provision of law to
4 the contrary:

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

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

13 (3) An authority shall not be obligated to pay or
14 allow to be paid any fees, taxes, costs, or charges of any
15 nature to the Secretary of State or to any judge of probate of
16 any county in respect of the filing or recording of any
17 document.

18 (4) The gross proceeds of the sale of any property
19 used in the business or activities of an authority, or in the
20 acquisition, construction, renovation, or equipping of any
21 health care facilities for an authority or a university
22 affiliate, regardless of whether the sale is made directly to
23 an authority or to a university affiliate or to any contractor
24 or agent thereof, shall be exempt from all sales and use taxes
25 levied by any governmental entity, including, without
26 limitation, any similar privilege, license, or excise tax.

1 Section 17. (a) Each authority shall engage a firm
2 or firms of certified public accountants to conduct an annual
3 audit of the financial affairs of the authority. Each audit
4 shall be conducted in accordance with generally accepted
5 accounting principles.

6 (b) The board shall submit all audits required by
7 subsection (a) to the sponsoring university as promptly as
8 practicable after the end of each fiscal year of the
9 authority.

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

14 (1) Any of its health care facilities and other
15 properties, real or personal, and any funds and assets,
16 tangible or intangible, relative to the ownership or operation
17 of any such health care facilities, including any certificates
18 of need, assurances of need, or other similar rights
19 appertaining or ancillary thereto, irrespective of whether
20 they have been exercised; and

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

23 (b) The state, any governmental entity, any
24 university, or any public corporation may pledge its full
25 faith and credit to or for the benefit of an authority or a
26 university affiliate or may pledge any revenues that it is

1 legally entitled to pledge to or for the benefit of an
2 authority or university affiliate.

3 (c) An authority or university affiliate shall
4 constitute a "hospital corporation" as that term is used in
5 Title 22, Chapter 21, Article 4, Division 2, Code of Alabama
6 1975, and any county otherwise authorized to do so may
7 designate any authority or university affiliate as the agency
8 of that county to acquire, construct, equip, operate, and
9 maintain public hospital facilities in that county. The
10 authority shall, if so designated, receive the proceeds from
11 any special public hospital tax available in that county.

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

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

19 (2) The nature and scope of the powers conferred on
20 authorities and their university affiliates by this act are
21 such as may compel each authority and each university
22 affiliate, in the course of exercising its powers or by virtue
23 of such exercise of such powers, to engage in activities
24 itself or in collaboration with public or private entities and
25 individuals that may be characterized as anticompetitive or
26 may result in the acquisition or maintenance of monopoly power
27 within the meaning of state and federal antitrust laws or

1 otherwise may have the effect of displacing competition in the
2 provision of hospital, physician, or other health care-related
3 services.

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

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

23 Section 20. (a) This act is not intended to extend
24 or grant sovereign immunity to any authority or university
25 affiliate that is not entitled to sovereign immunity under
26 applicable law. Nor is this act intended to limit or remove

1 sovereign immunity for any authority or university affiliate
2 that is entitled to sovereign immunity under applicable law.

3 (b) An authority or university affiliate not
4 entitled to sovereign immunity shall be entitled to the
5 benefits of the damage limitation for tort actions provided in
6 Chapter 93 of Title 11 of the Code of Alabama 1975, if the
7 authority or university affiliate meets both of the following
8 requirements:

9 (1) An entity that is a governmental entity within
10 the meaning of Section 11-93-1, Code of Alabama 1975,
11 participates in the organization of the authority or
12 university affiliate. A governmental entity participates in
13 the organization of an authority or university affiliate if
14 the governmental entity enters into an affiliation agreement
15 or similar agreement with a university providing for the
16 organization of the authority or university affiliate.

17 (2) The authority or university affiliate receives
18 public support for its operations, including, without
19 limitations, taxes allocated to the authority or university
20 affiliate, or appropriations from the state or any other
21 governmental entity that benefit the authority or university
22 affiliate.

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

25 (1) An authority or university affiliate described
26 in subsection (b) constitutes a "governmental entity" within
27 the meaning of Section 11-93-1, Code of Alabama 1975.

1 (2) Claims for money damages against an authority or
2 university affiliate described in subsection (b) constitutes
3 "claims" within the meaning of Section 11-93-1, Code of
4 Alabama 1975.

5 Section 21. Notwithstanding any other provision of
6 law to the contrary:

7 (1) Each authority shall be exempt from all laws of
8 the state governing usury or prescribing or limiting interest
9 rates, including, without limitation, the provisions of Title
10 8, Chapter 8, Code of Alabama 1975.

11 (2) Authorities, university affiliates, members of
12 the governing bodies of authorities and university affiliates,
13 and officers and employees of authorities and university
14 affiliates shall not be subject to state ethics laws,
15 including, without limitation, the provisions of Title 36,
16 Chapter 25, Code of Alabama 1975.

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

21 (4) Deposits of authorities and university
22 affiliates are entitled to the benefits of the Security for
23 Alabama Funds Enhancement Act, codified at Title 41, Chapter
24 14A, Code of Alabama 1975, and therefore, authorities and
25 university affiliates are each a covered public entity as such
26 term is used in that act.

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

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

8 (7) Authorities, university affiliates, and the
9 employees thereof shall not be required to participate in any
10 retirement plan, public pension plan, or health insurance plan
11 administered by the state, or any agency of the state, unless
12 an authority or university affiliate elects to join the plan
13 and is otherwise eligible under applicable law to join the
14 plan.

15 (8) No expenditure authorized or permitted by the
16 provisions of this act shall be considered to be a lending of
17 credit or a granting of public money or thing of value to or
18 in aid of any individual, association, or corporation within
19 the meaning of any constitutional or statutory provision.

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

24 (10) For purposes of The Volunteer Service Act, an
25 authority shall be considered a governmental entity, and a
26 university affiliate shall be considered a nonprofit
27 organization so as to provide volunteers with the protections

1 of Section 6-5-336, Code of Alabama 1975. Terms used in this
2 subdivision shall have the meanings assigned in Section
3 6-5-336, Code of Alabama 1975.

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

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

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

13 (2) The public corporation was incorporated with the
14 approval of a university.

15 (c) In order to reincorporate a qualifying public
16 corporation as an authority, the following steps shall be
17 completed:

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

21 (2) After the adoption by the board of a resolution
22 approving articles of reincorporation, the qualifying public
23 corporation shall file with the sponsoring university a
24 written request for adoption of a resolution approving the
25 proposed reincorporation.

26 (3) As promptly as may be practicable after the
27 receipt of the application from the qualifying public

1 corporation, the university that formed the qualifying public
2 corporation shall review the application and shall adopt a
3 resolution either approving or denying the articles of
4 reincorporation as proposed by the authority.

5 (d) Within 30 days following the approval of the
6 articles of reincorporation by the university that formed the
7 qualifying public corporation, the president or vice president
8 of the authority shall sign and file for record in the office
9 of the Secretary of State all of the following items:

10 (1) The original articles of reincorporation.

11 (2) A certified copy of each resolution approving
12 the articles of reincorporation.

13 (3) A certificate of the Secretary of State
14 confirming that the name proposed for the authority is not
15 identical to that of any other corporation organized under
16 state law or so nearly similar thereto as to lead to confusion
17 and uncertainty.

18 (e) Upon the filing for record of the articles of
19 reincorporation and the documents required by subsection (d),
20 the articles of reincorporation shall become effective and the
21 authority shall immediately be vested with all powers and
22 privileges of this act. The Secretary of State shall thereupon
23 record the articles of reincorporation in an appropriate book
24 in his or her office.

25 (f) A university may not reincorporate a public
26 corporation without the consent of the board of directors of
27 the public corporation.

1 (g) The articles of reincorporation of an authority
2 may amend and restate the articles of incorporation of the
3 qualifying public corporation if approved in accordance with
4 this section.

5 (h) Reincorporation of a qualifying public
6 corporation as an authority shall not impair the rights of
7 creditors nor impair the provisions of any contract of a
8 reincorporated public corporation. Upon reincorporation, all
9 assets, liabilities, certificates of need, permits, licenses,
10 or governmental approvals shall immediately transfer from the
11 reincorporated public corporation and vest in the authority.
12 Upon notice of reincorporation, all state regulatory bodies
13 shall cooperate with the authority in order to transfer all
14 certificates of need, permits, licenses, or governmental
15 approvals from the reincorporated public corporation to the
16 authority.

17 Section 23. No part of the net earnings of an
18 authority remaining after payment of its expenses shall inure
19 to the benefit of any person other than a university, a
20 governmental entity, a political corporation, or any nonprofit
21 corporation that is an organization described in Section
22 501(c)(3) of the Internal Revenue Code.

23 Section 24. (a) At any time when an authority does
24 not have any indebtedness or other contractual or legal
25 obligations outstanding, an authority may be dissolved by
26 filing articles of dissolution with the Secretary of State,
27 but only with the approval of both the board of the authority

1 and the sponsoring university in the manner provided in this
2 section.

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

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

7 (2) After the adoption by the board of a resolution
8 approving articles of dissolution, the authority shall file
9 with the sponsoring university a written request to the
10 sponsoring university for adoption of a resolution approving
11 dissolution of the authority.

12 (3) As promptly as may be practicable after the
13 receipt of the application from the authority, the sponsoring
14 university shall review the application, and its governing
15 body shall adopt a resolution either approving or denying
16 dissolution of the authority.

17 (c) Within 30 days following the approval of
18 dissolution of an authority by the sponsoring university, the
19 president or vice president of the authority shall sign and
20 file for record in the office of Secretary of State the
21 original articles of dissolution and a certified copy of each
22 resolution approving the articles of dissolution.

23 (d) Upon the filing for record of the articles of
24 dissolution and the documents required by subsection (c) of
25 this section, the articles of dissolution shall become
26 effective. The Secretary of State shall thereupon record the

1 articles of dissolution in an appropriate book in his or her
2 office.

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

5 (f) Upon dissolution of the authority, title to all
6 assets of the authority shall vest in the sponsoring
7 university

8 Section 25. The provisions of this act are
9 cumulative and shall not be deemed to repeal existing laws,
10 except to the extent such laws are clearly inconsistent with
11 the provisions of this act.

12 Section 26. The provisions of this act are
13 severable. If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 which remains.

16 Section 27. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.