

Bill No. CS for SB 1190

Barcode 872144

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

On page 5, line 13, delete that line

and insert:

Section 2. The Legislature finds that it is necessary to clarify that a public agency may sell its interest in a public hospital to a private corporation or other private entity and to establish that such a sale results in the privatization of the hospital enterprise. The Legislature finds that the sale of a hospital by a public agency to a private corporation or other private entity purchaser under this section is a complete sale when: the public agency retains no ownership interest in the hospital enterprise or the hospital facility, regardless of who owns the underlying property; the private corporation or other private entity has the complete responsibility for operation and maintenance of the hospital facility; the private corporation or other private entity receives no funds from the public agency seller other than by contract for services provided to patients for

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1 whom the public agency has responsibility to pay for medical
2 or hospital services; the public agency makes no substantial
3 investment or loan to the private corporation or other private
4 entity; the private corporation or other private entity is not
5 created by the public agency; and the private corporation or
6 other private entity operates primarily for its own financial
7 interests as opposed to those of the public agency. The
8 Legislature further finds that a complete sale of the hospital
9 under such circumstances eliminates any argument that the
10 private corporation or other private entity continues to
11 perform any governmental or public function; that the public
12 agency retains any financial interest in the private purchaser
13 or the hospital; that the private purchaser is an integral
14 part in the public agency's decisionmaking process or that the
15 private entity is an "agency" or is "acting on behalf of a
16 public agency" as those terms are used in statute. The
17 Legislature further finds that the recognition of such sales
18 as being complete sales of the formerly public hospital to a
19 private corporation or other private entity is a public
20 necessity so that private entities that purchase public
21 hospitals are allowed to operate without unnecessary public
22 interference. Some recent court decisions, however, have found
23 that a private corporation or other private entity that
24 purchases a public hospital is still a public agency for some
25 purposes and have failed to recognize that the public agency
26 does not retain any control over the private entity or the
27 formerly public hospital following the complete sale of a
28 public hospital to a private corporation or other private
29 entity. Therefore, the Legislature finds that it is a
30 necessity to confirm its intent that a private corporation or
31 other private entity that purchases a formerly public hospital

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1 through a complete sale is not a public agency for any
2 purpose. To find otherwise would place such a private
3 corporation or other private entity that purchases a public
4 hospital at a competitive disadvantage compared to other
5 private entities that own private hospitals that were not
6 formerly public hospitals and would serve as a disincentive
7 for the purchase of a public hospital. Public agencies choose
8 to sell their public hospitals to private corporations or
9 other private entities when the public entity is no longer
10 able to operate the hospital in a fiscally responsible manner
11 and when taxpayers would otherwise be required to finance the
12 operations of the hospital beyond indigent care. If a private
13 corporation or other private entity that purchases a public
14 hospital is treated as a public agency, then public agencies
15 may find it difficult, if not impossible, to find a private
16 corporation or other private entity that is willing to
17 purchase a public hospital. This could force the public agency
18 to close the hospital, which would result in a reduction in
19 health care services to the public, or continue operating the
20 hospital using public tax dollars to subsidize recurring
21 losses. Neither of these options is in the best interest of
22 the public. Thus, the Legislature finds that a private
23 corporation or other private entity that purchases a public
24 hospital and the purchase agreement for that hospital meets
25 the requirements established herein, regardless of whether the
26 corporation had previously leased that public hospital, that
27 private corporation or other private entity is not a public
28 agency for any purpose and does not act on behalf of the
29 public agency.

30 Section 3. This act shall take effect upon becoming a
31 law and shall apply to each private corporation or other

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1 private entity that has purchased a public hospital regardless
2 of whether such purchase occurred prior to the effective date
3 of this act.

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 1, line 11, following the semicolon

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10 insert:

11 providing legislative findings and intent with
12 respect to the effect of the sale of a public
13 hospital to a private purchaser; providing
14 applicability, including retroactive
15 applicability;

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