

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 752 - HB 1680

April 3, 2009

SUMMARY OF BILL: Removes the current state action doctrine exemption from federal and state antitrust law for any private act metropolitan hospital authority that has 55 percent or more of the total hospital discharges within its county. The antitrust law exemption would remain in place for private act metropolitan hospitals in counties in which the private act metropolitan hospital is the only hospital provider.

ESTIMATED FISCAL IMPACT:

Decrease Local Revenue – Exceeds \$100,000

Increase Local Expenditures – Exceeds \$100,000*

Assumptions:

- In *Jackson, Tennessee Hospital Company, LLC v. West Tennessee Healthcare, Inc.*, 414 F.3d 608 (6th Cir. 2005), the U. S. Sixth Circuit Court of Appeals held that private act metropolitan hospitals are immune from federal and state antitrust liability under the state action doctrine. The state action doctrine exempts subdivisions of state government from antitrust liability when there is a clear state policy authorizing anticompetitive acts. *Id.* at 609. The case involved the Jackson-Madison County General Hospital District. *Id.*
- This bill would partially reverse the holding in this case by stating that state policy does not authorize anticompetitive acts by private metropolitan act hospital authorities in counties in which the hospital operated by the authority has 55 percent of the hospital discharges in the county. The exemption would remain for hospitals operated by these authorities in counties in which the authority's hospital is the only hospital provider.
- Anticompetitive acts by private act metropolitan hospitals are undertaken for the purpose of maximizing hospital utilization and revenue generated for the hospital. These acts are also undertaken to minimize the cost of the hospital's provider agreements. Preventing these acts will decrease local revenue generated by the hospital and will

increase local expenditures due to the higher cost of provider agreements.

- No direct cost impact on the TennCare program.
- There are a number of unknown factors that will affect the fiscal impact of the proposed legislation. An exact estimate is not possible but it is reasonably estimated to result in a decrease in local revenue exceeding \$100,000 and an increase in local expenditures exceeding \$100,000.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "James W. White". The signature is written in a cursive style with a large, sweeping initial "J".

James W. White, Executive Director

/kml