

Rep. Barbara Flynn Currie

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1

AMENDMENT TO SENATE BILL 2194

2

AMENDMENT NO. _____. Amend Senate Bill 2194, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5

"ARTICLE 1. CIGARETTE MACHINE OPERATORS' OCCUPATION TAX ACT

6

Section 1-1. Short title. This Act may be cited as the
7 Cigarette Machine Operators' Occupation Tax Act.

8

Section 1-5. Definitions. As used in this Act:

9

"Business" means any trade, occupation, activity or
10 enterprise engaged in for the purpose of selling cigarettes in
11 this State.

12

"Cigarette" means any roll for smoking made wholly or in
13 part of tobacco, irrespective of size or shape and whether or
14 not such tobacco is flavored, adulterated or mixed with any
15 other ingredient, and the wrapper or cover of which is made of

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paper or any other substance or material except tobacco.

2

"Cigarette machine" means any machine, equipment or device
3 used to make or fabricate cigarettes.

15 covering the preceding calendar month. The return shall
16 disclose the wholesale price for all tobacco products and the
17 quantity of moist snuff sold or otherwise disposed of and other
18 information that the Department may reasonably require. The
19 return shall be filed upon a form prescribed and furnished by
20 the Department.

21 At the time when any return of any distributor is due to be
22 filed with the Department, the distributor shall also remit to
23 the Department the tax liability that the distributor has
24 incurred for transactions occurring in the preceding calendar
25 month.

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1 (Source: P.A. 89-21, eff. 6-6-95.)

2 Section 5-55. The Property Tax Code is amended by changing
3 Section 15-10 and by adding Section 15-86 as follows:

4 (35 ILCS 200/15-10)

5 Sec. 15-10. Exempt property; procedures for certification.

6 (a) All property granted an exemption by the Department
7 pursuant to the requirements of Section 15-5 and described in
8 the Sections following Section 15-30 and preceding Section
9 16-5, to the extent therein limited, is exempt from taxation.
10 In order to maintain that exempt status, the titleholder or the
11 owner of the beneficial interest of any property that is exempt
12 must file with the chief county assessment officer, on or
13 before January 31 of each year (May 31 in the case of property
14 exempted by Section 15-170), an affidavit stating whether there
15 has been any change in the ownership or use of the property, ~~or~~
16 the status of the owner-resident, the satisfaction by a
17 relevant hospital entity of the condition for an exemption
18 under Section 15-86, or that a disabled veteran who qualifies
19 under Section 15-165 owned and used the property as of January
20 1 of that year. The nature of any change shall be stated in the
21 affidavit. Failure to file an affidavit shall, in the
22 discretion of the assessment officer, constitute cause to

23 terminate the exemption of that property, notwithstanding any
24 other provision of this Code. Owners of 5 or more such exempt

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1 parcels within a county may file a single annual affidavit in
2 lieu of an affidavit for each parcel. The assessment officer,
3 upon request, shall furnish an affidavit form to the owners, in
4 which the owner may state whether there has been any change in
5 the ownership or use of the property or status of the owner or
6 resident as of January 1 of that year. The owner of 5 or more
7 exempt parcels shall list all the properties giving the same
8 information for each parcel as required of owners who file
9 individual affidavits.

10 (b) However, titleholders or owners of the beneficial
11 interest in any property exempted under any of the following
12 provisions are not required to submit an annual filing under
13 this Section:

14 (1) Section 15-45 (burial grounds) in counties of less
15 than 3,000,000 inhabitants and owned by a not-for-profit
16 organization.

17 (2) Section 15-40.

18 (3) Section 15-50 (United States property).

19 (c) If there is a change in use or ownership, however,
20 notice must be filed pursuant to Section 15-20.

21 (d) An application for homestead exemptions shall be filed
22 as provided in Section 15-170 (senior citizens homestead
23 exemption), Section 15-172 (senior citizens assessment freeze
24 homestead exemption), and Sections 15-175 (general homestead
25 exemption), 15-176 (general alternative homestead exemption),
26 and 15-177 (long-time occupant homestead exemption),

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1 respectively.

2 (e) For purposes of determining satisfaction of the

3 condition for an exemption under Section 15-86:

4 (1) The "year for which exemption is sought" is the
5 year prior to the year in which the affidavit is due.

6 (2) The "hospital year" is the fiscal year of the
7 relevant hospital entity, or the fiscal year of one of the
8 hospitals in the hospital system if the relevant hospital
9 entity is a hospital system with members with different
10 fiscal years, that ends in the year prior to the year in
11 which the affidavit is due. However, if that fiscal year
12 ends 3 months or less before the date on which the
13 affidavit is due, the relevant hospital entity shall file
14 an interim affidavit based on the currently available
15 information, and shall file a supplemental affidavit
16 within 90 days of date on which the application was due, if
17 the information in the relevant hospital entity's audited
18 financial statements changes the interim affidavit's
19 statement concerning the entity's compliance with the
20 calculation required by Section 15-86.

21 (3) The affidavit shall be accompanied by an exhibit
22 prepared by the relevant hospital entity showing (A) the
23 value of the relevant hospital entity's services and
24 activities, if any, under items (1) through (7) of
25 subsection (e) of Section 15-86, stated separately for each
26 item, and (B) the value relating to the relevant hospital

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1 entity's estimated property tax liability under paragraphs
2 (A), (B), and (C) of item (1) of subsection (g) of Section
3 15-86; under paragraphs (A), (B), and (C) of item (2) of
4 subsection (g) of Section 15-86; and under item (3) of
5 subsection (g) of Section 15-86.

6 (Source: P.A. 95-644, eff. 10-12-07.)

7 (35 ILCS 200/15-86 new)
8 Sec. 15-86. Exemptions related to access to hospital and
9 health care services by low-income and underserved
10 individuals.

11 (a) The General Assembly finds:
12 (1) Despite the Supreme Court's decision in *Provena*
13 *Covenant Medical Center v. Dept. of Revenue*, 236 Ill.2d
14 368, there is considerable uncertainty surrounding the
15 test for charitable property tax exemption, especially
16 regarding the application of a quantitative or monetary
17 threshold. In *Provena*, the Department stated that the
18 primary basis for its decision was the hospital's
19 inadequate amount of charitable activity, but the
20 Department has not articulated what constitutes an
21 adequate amount of charitable activity. After *Provena*, the
22 Department denied property tax exemption applications of 3
23 more hospitals, and, on the effective date of this
24 amendatory Act of the 97th General Assembly, at least 20
25 other hospitals are awaiting rulings on applications for

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1 property tax exemption.
2 (2) In *Provena*, two Illinois Supreme Court justices
3 opined that, "setting a monetary or quantum standard is a
4 complex decision which should be left to our legislature,
5 should it so choose". The Appellate Court in *Provena*
6 stated: "The language we use in the State of Illinois to
7 determine whether real property is used for a charitable
8 purpose has its genesis in our 1870 Constitution. It is
9 obvious that such language may be difficult to apply to the
10 modern face of our nation's health care delivery systems".
11 The court noted the many significant changes in the health
12 care system since that time, but concluded that taking
13 these changes into account is a matter of public policy,
14 and "it is the legislature's job, not ours, to make public
15 policy".
16 (3) It is essential to ensure that tax exemption law
17 relating to hospitals accounts for the complexities of the
18 modern health care delivery system. Health care is moving
19 beyond the walls of the hospital. In addition to treating
20

21 individual patients, hospitals are assuming responsibility
22 for improving the health status of communities and
23 populations. Low-income and underserved communities
24 benefit disproportionately by these activities.

25 (4) The Supreme Court has explained that: "the
26 fundamental ground upon which all exemptions in favor of
charitable institutions are based is the benefit conferred

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1 upon the public by them, and a consequent relief, to some
2 extent, of the burden upon the state to care for and
3 advance the interests of its citizens". Hospitals relieve
4 the burden of government in many ways, but most
5 significantly through their participation in and
6 substantial financial subsidization of the Illinois
7 Medicaid program, which could not operate without the
8 participation and partnership of Illinois hospitals.

9 (5) Working with the Illinois hospital community and
10 other interested parties, the General Assembly has
11 developed a comprehensive combination of related
12 legislation that addresses hospital property tax
13 exemption, significantly increases access to free health
14 care for indigent persons, and strengthens the Medical
15 Assistance program. It is the intent of the General
16 Assembly to establish a new category of ownership for
17 charitable property tax exemption to be applied to
18 not-for-profit hospitals and hospital affiliates in lieu
19 of the existing ownership category of "institutions of
20 public charity". It is also the intent of the General
21 Assembly to establish quantifiable standards for the
22 issuance of charitable exemptions for such property. It is
23 not the intent of the General Assembly to declare any
24 property exempt ipso facto, but rather to establish
25 criteria to be applied to the facts on a case-by-case
26 basis.

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1 (b) For the purpose of this Section and Section 15-10, the
2 following terms shall have the meanings set forth below:

3 (1) "Hospital" means any institution, place, building,
4 buildings on a campus, or other health care facility
5 located in Illinois that is licensed under the Hospital
6 Licensing Act and has a hospital owner.

7 (2) "Hospital owner" means a not-for-profit
8 corporation that is the titleholder of a hospital, or the
9 owner of the beneficial interest in an Illinois land trust
10 that is the titleholder of a hospital.

11 (3) "Hospital affiliate" means any corporation,
12 partnership, limited partnership, joint venture, limited
13 liability company, association or other organization,
14 other than a hospital owner, that directly or indirectly
15 controls, is controlled by, or is under common control with
16 one or more hospital owners and that supports, is supported
17 by, or acts in furtherance of the exempt health care
18 purposes of at least one of those hospital owners'
19 hospitals.

20 (4) "Hospital system" means a hospital and one or more
21 other hospitals or hospital affiliates related by common
22 control or ownership.

23 (5) "Control" relating to a hospital owners, hospital
24 affiliates, or hospital systems means possession, direct
25 or indirect, of the power to direct or cause the direction
26 of the management and policies of the entity, whether

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1 through ownership of assets, membership interest, other
2 voting or governance rights, by contract or otherwise.

3 (6) "Hospital applicant" means a hospital owner or
4 hospital affiliate that files an application for a property
5 tax exemption pursuant to Section 15-5 and this Section.
6

7 (7) "Relevant hospital entity" means (A) the hospital
8 owner, in the case of a hospital applicant that is a
9 hospital owner, and (B) at the election of a hospital
10 applicant that is a hospital affiliate, either (i) the
11 hospital affiliate or (ii) the hospital system to which the
12 hospital applicant belongs, including any hospitals or
13 hospital affiliates that are related by common control or
14 ownership.

15 (8) "Subject property" means property for which a
16 hospital applicant files an application for an exemption
17 pursuant to Section 15-5 and this Section.

18 (9) "Hospital year" means the fiscal year of the
19 relevant hospital entity, or the fiscal year of one of the
20 hospital owners in the hospital system if the relevant
21 hospital entity is a hospital system with members with
22 different fiscal years, that ends in the year for which the
23 exemption is sought.

24 (c) A hospital applicant satisfies the conditions for an
25 exemption under this Section with respect to the subject
26 property, and shall be issued a charitable exemption for that
 property, if the value of services or activities listed in

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1 subsection (e) for the hospital year equals or exceeds the
2 relevant hospital entity's estimated property tax liability,
3 as determined under subsection (g), for the year for which
4 exemption is sought. For purposes of making the calculations
5 required by this subsection (c), if the relevant hospital
6 entity is a hospital owner that owns more than one hospital,
7 the value of the services or activities listed in subsection
8 (e) shall be calculated on the basis of only those services and
9 activities relating to the hospital that includes the subject
10 property, and the relevant hospital entity's estimated
11 property tax liability shall be calculated only with respect to
12 the properties comprising that hospital. In the case of a
13 multi-state hospital system or hospital affiliate, the value of
14

15 the services or activities listed in subsection (e) shall be
16 calculated on the basis of only those services and activities
17 that occur in Illinois and the relevant hospital entity's
18 estimated property tax liability shall be calculated only with
19 respect to its property located in Illinois.

20 Notwithstanding any other provisions of this Act, any
21 parcel or portion thereof, that is owned by a for-profit entity
22 whether part of the hospital system or not, or that is leased,
23 licensed or operated by a for-profit entity regardless of
24 whether healthcare services are provided on that parcel shall
25 not qualify for exemption. If a parcel has both exempt and
26 non-exempt uses, an exemption may be granted for the qualifying
portion of that parcel. In the case of parking lots and common

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1 areas serving both exempt and non-exempt uses those parcels or
2 portions thereof may qualify for an exemption in proportion to
3 the amount of qualifying use.

4 (d) The hospital applicant shall include information in its
5 exemption application establishing that it satisfies the
6 requirements of subsection (c). For purposes of making the
7 calculations required by subsection (c), the hospital
8 applicant may for each year elect to use either (1) the value
9 of the services or activities listed in subsection (e) for the
10 hospital year or (2) the average value of those services or
11 activities for the 3 fiscal years ending with the hospital
12 year. If the relevant hospital entity has been in operation for
13 less than 3 completed fiscal years, then the latter
14 calculation, if elected, shall be performed on a pro rata
15 basis.

16 (e) Services that address the health care needs of
17 low-income or underserved individuals or relieve the burden of
18 government with regard to health care services. The following
19 services and activities shall be considered for purposes of
20 making the calculations required by subsection (c):

21 (1) Charity care. Free or discounted services provided
22

23 pursuant to the relevant hospital entity's financial
24 assistance policy, measured at cost, including discounts
25 provided under the Hospital Uninsured Patient Discount
26 Act.

(2) Health services to low-income and underserved

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1 individuals. Other unreimbursed costs of the relevant
2 hospital entity for providing without charge, paying for,
3 or subsidizing goods, activities, or services for the
4 purpose of addressing the health of low-income or
5 underserved individuals. Those activities or services may
6 include, but are not limited to: financial or in-kind
7 support to affiliated or unaffiliated hospitals, hospital
8 affiliates, community clinics, or programs that treat
9 low-income or underserved individuals; paying for or
10 subsidizing health care professionals who care for
11 low-income or underserved individuals; providing or
12 subsidizing outreach or educational services to low-income
13 or underserved individuals for disease management and
14 prevention; free or subsidized goods, supplies, or
15 services needed by low-income or underserved individuals
16 because of their medical condition; and prenatal or
17 childbirth outreach to low-income or underserved persons.

18 (3) Subsidy of State or local governments. Direct or
19 indirect financial or in-kind subsidies of State or local
20 governments by the relevant hospital entity that pay for or
21 subsidize activities or programs related to health care for
22 low-income or underserved individuals.

23 (4) Support for State health care programs for
24 low-income individuals. At the election of the hospital
25 applicant for each applicable year, either (A) 10% of
26 payments to the relevant hospital entity and any hospital

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1 affiliate designated by the relevant hospital entity
2 (provided that such hospital affiliate's operations
3 provide financial or operational support for or receive
4 financial or operational support from the relevant
5 hospital entity) under Medicaid or other means-tested
6 programs, including, but not limited, to General
7 Assistance, the Covering ALL KIDS Health Insurance Act, and
8 the State Children's Health Insurance Program or (B) the
9 amount of subsidy provided by the relevant hospital entity
10 and any hospital affiliate designated by the relevant
11 hospital entity (provided that such hospital affiliate's
12 operations provide financial or operational support for or
13 receive financial or operational support from the relevant
14 hospital entity) to State or local government in treating
15 Medicaid recipients and recipients of means-tested
16 programs, including but not limited to General Assistance,
17 the Covering ALL KIDS Health Insurance Act, and the State
18 Children's Health Insurance Program. The amount of subsidy
19 for purpose of this item (4) is calculated in the same
20 manner as unreimbursed costs are calculated for Medicaid
21 and other means-tested government programs in the Schedule
22 H of IRS Form 990 in effect on the effective date of this
23 amendatory Act of the 97th General Assembly; provided,
24 however, that in any event unreimbursed costs shall be net
25 of fee-for-services payments, payments pursuant to an
26 assessment, quarterly payments, and all other payments

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1 included on the schedule H of the IRS form 990.
2 (5) Dual-eligible subsidy. The amount of subsidy
3 provided to government by treating dual-eligible
4 Medicare/Medicaid patients. The amount of subsidy for
5 purposes of this item (5) is calculated by multiplying the
6 relevant hospital entity's unreimbursed costs for
7 Medicare, calculated in the same manner as determined in
8

9 the Schedule H of IRS Form 990 in effect on the effective
10 date of this amendatory Act of the 97th General Assembly,
11 by the relevant hospital entity's ratio of dual-eligible
12 patients to total Medicare patients.

13 (6) Relief of the burden of government related to
14 health care of low-income individuals. Except to the extent
15 otherwise taken into account in this subsection, the
16 portion of unreimbursed costs of the relevant hospital
17 entity attributable to providing, paying for, or
18 subsidizing goods, activities, or services that relieve
19 the burden of government related to health care for
20 low-income individuals. Such activities or services shall
21 include, but are not limited to, providing emergency,
22 trauma, burn, neonatal, psychiatric, rehabilitation, or
23 other special services; providing medical education; and
24 conducting medical research or training of health care
25 professionals. The portion of those unreimbursed costs
26 attributable to benefiting low-income individuals shall be
determined using the ratio calculated by adding the

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1 relevant hospital entity's costs attributable to charity
2 care, Medicaid, other means-tested government programs,
3 disabled Medicare patients under age 65, and dual-eligible
4 Medicare/Medicaid patients and dividing that total by the
5 relevant hospital entity's total costs. Such costs for the
6 numerator and denominator shall be determined by
7 multiplying gross charges by the cost to charge ratio taken
8 from the hospitals most recently filed Medicare cost report
9 (CMS 2252-10 Worksheet C, Part I). In the case of emergency
10 services, the ratio shall be calculated using costs (gross
11 charges multiplied by the cost to charge ratio taken from
12 the hospitals most recently filed Medicare cost report (CMS
13 2252-10 Worksheet C, Part I)) of patients treated in the
14 relevant hospital entity's emergency department.

15 (7) Any other activity by the relevant hospital entity
16

17 that the Department determines relieves the burden of
 18 government or addresses the health of low-income or
 19 underserved individuals.

20 (f) For purposes of making the calculations required by
subsections (c) and (e):

21 (1) particular services or activities eligible for
 22 consideration under any of the paragraphs (1) through (7)
 23 of subsection (e) may not be counted under more than one of
 24 those paragraphs; and

25 (2) the amount of unreimbursed costs and the amount of
 26 subsidy shall not be reduced by restricted or unrestricted

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1 payments received by the relevant hospital entity as
 2 contributions deductible under Section 170(a) of the
 3 Internal Revenue Code.

4 (g) Estimation of Exempt Property Tax Liability. The
 5 estimated property tax liability used for the determination in
 6 subsection (c) shall be calculated as follows:

7 (1) "Estimated property tax liability" means the
 8 estimated dollar amount of property tax that would be owed,
 9 with respect to the exempt portion of each of the relevant
 10 hospital entity's properties that are already fully or
 11 partially exempt, or for which an exemption in whole or in
 12 part is currently being sought, and then aggregated as
 13 applicable, as if the exempt portion of those properties
 14 were subject to tax, calculated with respect to each such
 15 property by multiplying:

16 (A) the lesser of (i) the actual assessed value, if
 17 any, of the portion of the property for which an
 18 exemption is sought or (ii) an estimated assessed value
 19 of the exempt portion of such property as determined in
 20 item (2) of this subsection (g), by:

21 (B) the applicable State equalization rate
 22 (yielding the equalized assessed value), by

23 (C) the applicable tax rate.
 24

25 (2) The estimated assessed value of the exempt portion
 26 of the property equals the sum of (i) the estimated fair
 market value of buildings on the property, as determined in

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1 accordance with subparagraphs (A) and (B) of this item (2),
 2 multiplied by the applicable assessment factor, and (ii)
 3 the estimated assessed value of the land portion of the
 4 property, as determined in accordance with subparagraph
 5 (C).

6 (A) The "estimated fair market value of buildings
 7 on the property" means the replacement value of any
 8 exempt portion of buildings on the property, minus
 9 depreciation, determined utilizing the cost
 10 replacement method whereby the exempt square footage
 11 of all such buildings is multiplied by the replacement
 12 cost per square foot for Class A Average building found
 13 in the most recent edition of the Marshall & Swift
 14 Valuation Services Manual, adjusted by any appropriate
 15 current cost and local multipliers.

16 (B) Depreciation, for purposes of calculating the
 17 estimated fair market value of buildings on the
 18 property, is applied by utilizing a weighted mean life
 19 for the buildings based on original construction and
 20 assuming a 40-year life for hospital buildings and the
 21 applicable life for other types of buildings as
 22 specified in the American Hospital Association
 23 publication "Estimated Useful Lives of Depreciable
 24 Hospital Assets". In the case of hospital buildings,
 25 the remaining life is divided by 40 and this ratio is
 26 multiplied by the replacement cost of the buildings to

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1 obtain an estimated fair market value of buildings. If

2 a hospital building is older than 35 years, a remaining
3 life of 5 years for residual value is assumed; and if a
4 building is less than 8 years old, a remaining life of
5 32 years is assumed.

6 (C) The estimated assessed value of the land
7 portion of the property shall be determined by
8 multiplying (i) the per square foot average of the
9 assessed values of three parcels of land (not including
10 farm land, and excluding the assessed value of the
11 improvements thereon) reasonably comparable to the
12 property, by (ii) the number of square feet comprising
13 the exempt portion of the property's land square
14 footage.

15 (3) The assessment factor, State equalization rate,
16 and tax rate (including any special factors such as
17 Enterprise Zones) used in calculating the estimated
18 property tax liability shall be for the most recent year
19 that is publicly available from the applicable chief county
20 assessment officer or officers at least 90 days before the
21 end of the hospital year.

22 (4) The method utilized to calculate estimated
23 property tax liability for purposes of this Section 15-86
24 shall not be utilized for the actual valuation, assessment,
25 or taxation of property pursuant to the Property Tax Code.

26 (h) Application. Each hospital applicant applying for a

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1 property tax exemption pursuant to Section 15-5 and this
2 Section shall use an application form provided by the
3 Department. The application form shall specify the records
4 required in support of the application and those records shall
5 be submitted to the Department with the application form. Each
6 application or affidavit shall contain a verification by the
7 Chief Executive Officer of the hospital applicant under oath or
8 affirmation stating that each statement in the application or
9 affidavit and each document submitted with the application or

10

11 affidavit are true and correct. The records submitted with the
 12 application pursuant this Section shall include an exhibit
 13 prepared by the relevant hospital entity showing (A) the value
 14 of the relevant hospital entity's services and activities, if
 15 any, under paragraphs (1) through (7) of subsection (e) of this
 16 Section stated separately for each paragraph, and (B) the value
 17 relating to the relevant hospital entity's estimated property
 18 tax liability under subsections (g) (1) (A), (B), and (C),
 19 subsections (g) (2) (A), (B), and (C), and subsection (g) (3) of
 20 this Section stated separately for each item. Such exhibit will
 21 be made available to the public by the chief county assessment
 22 officer. Nothing in this Section shall be construed as limiting
 23 the Attorney General's authority under the Illinois False
 24 Claims Act.

25 (i) Nothing in this Section shall be construed to limit the
 26 ability of otherwise eligible hospitals, hospital owners,
hospital affiliates, or hospital systems to obtain or maintain

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1 property tax exemptions pursuant to a provision of the Property
 2 Tax Code other than this Section.

3 Section 5-60. The Illinois Public Aid Code is amended by
 4 changing Sections 5A-1, 5A-2, 5A-4, 5A-5, 5A-8, 5A-10, 5A-13,
 5 and 5A-14 and by adding Sections 5A-12.4 and 5A-15 as follows:

6 (305 ILCS 5/5A-1) (from Ch. 23, par. 5A-1)

7 Sec. 5A-1. Definitions. As used in this Article, unless
 8 the context requires otherwise:

9 ~~"Adjusted gross hospital revenue" shall be determined~~
 10 ~~separately for inpatient and outpatient services for each~~
 11 ~~hospital conducted, operated or maintained by a hospital~~
 12 ~~provider, and means the hospital provider's total gross~~
 13 ~~revenues less. (i) gross revenue attributable to non-hospital~~
 14 ~~based services including home dialysis services, durable~~
 15 ~~medical equipment, ambulance services, outpatient clinics and~~
 16 ~~any other non hospital based services as determined by the~~

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.".