Portneuf Medical Center set off a fierce debate in the Pocatello community when its Board of Governors said the county-owned hospital may need to become a private entity.

Portneuf was in the middle of a hospital expansion and had already raised the revenue bonds for its first phase of construction when, in April 2006, the Idaho Supreme Court handed down a decision threatening the hospital's ability to finish the project, according to the hospital's attorney, Russ Wight.

In the case, Frazier vs. City of Boise, the court held that cities and counties cannot issue bonds to buy equipment or build infrastructure or city and county buildings without two-thirds voter approval, unless it involves an emergency, such as an imminent health and safety hazard or legal obligation.

The decision applies to county hospitals like Portneuf because they have taxing authority, even though according to Portneuf's Web site the hospital has not had to levy taxes since the 1970s and it plans to use revenues generated by hospital operations to pay back all bonds it uses to finance construction.

"If you read the Frazier case literally, they have to have a vote just to purchase an X-ray machine," said Steve Millard, president of the Idaho Hospital Association.

Portneuf's construction project, which would consolidate its two campuses, would cost $200 million. At least three private companies, including Capella, a Tennessee-based for-profit health-care chain backed by a private equity firm, have offered to buy or lease Portneuf. Many doctors and residents of the community didn't like the idea of the hospital becoming a for-profit entity and wrote numerous letters to the editor of the local newspaper, the Idaho State Journal.

The hospital's Board of Governors recommended that the hospital convert itself into a 501(c)3 nonprofit, like Saint Alphonsus and St. Luke's in Boise. The Bannock County Commissioners will make the final decision about any changes to Portneuf's structure or ownership. A citizens' panel is weighing all the options and the county is expected to make a decision by the middle of June, Wight said.

Other Idaho hospitals may have to consider a similar change to for-profit or nonprofit status, Millard said. For now, they're weighing other options, including a constitutional amendment or another test case before the Idaho Supreme Court.

The legislative route
The Idaho Hospital Association is considering asking the Legislature to put a constitutional amendment measure on the ballot "that would allow the kind of things to go on that were going on before Frazier," Millard said.

In the 2007 Legislature, legislation proposed by the Association of Idaho Cities that would just have created a task force to study the issue failed to even get a hearing. A constitutional amendment would likely be a tougher sell.

But Millard said he's hopeful that a task force will still be appointed this year. Senate President Pro Tem Robert Geddes and Speaker of the House Lawrence Denney have the option to do so at a Legislative Council meeting May 17.

The legal route
The IHA and the Idaho Health Facilities Authority are mulling a possible new test case for the Idaho Supreme Court.

Though Supreme Court justices were disinclined to revisit the Frazier decision when attorneys for the Idaho Association of Cities filed a friend of the court brief asking them to clarify the decision, the situation might be different for hospitals because past case law contradicts Frazier on the question of whether hospitals can make purchases through the Health Facilities Authority.

In Board of County Commissioners vs. Idaho Health Facilities Authority, the court determined that the IHFA had the authority to issue bonds on behalf of Idaho hospitals without seeking a two-thirds vote, according to Neil P. Moss, executive director of the IHFA.

No decision has been made about a test case, Moss said. For now, his agency is issuing bonds only to private nonprofit hospitals.
Either option could take at least two years to resolve, Millard said. Portneuf Medical Center couldn’t wait that long, Wight said. It was the first county hospital to be hit by the ruling because it was already mid-expansion, and it can’t afford to let the project stall while construction costs go up, he said. “We really need to keep the inertia moving.”

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