

By Senator Garcia

40-00447-12

2012464

1 A bill to be entitled
2 An act relating to the sale or lease of a county,
3 district, or municipal hospital; amending s. 155.40,
4 F.S.; providing that the sale or lease of a county,
5 district, or municipal hospital is subject to approval
6 by the registered voters or by the circuit court;
7 requiring the hospital governing board to determine by
8 certain public advertisements whether there are
9 qualified purchasers or lessees before the sale or
10 lease of such hospital; defining the term "fair market
11 value"; requiring the board to state in writing
12 specified criteria forming the basis of its acceptance
13 of a proposal for sale or lease of the hospital;
14 providing for publication of notice; authorizing
15 submission of written statements of opposition to a
16 proposed transaction, and written responses thereto,
17 within a certain timeframe; requiring the board to
18 file a petition for approval with the circuit court
19 and receive approval before any transaction is
20 finalized; specifying information to be included in
21 such petition; providing for the circuit court to
22 issue an order requiring all interested parties to
23 appear before the court under certain circumstances;
24 requiring the clerk of the court to publish the copy
25 of the order in certain newspapers at specified times;
26 providing that certain parties are made parties to the
27 action by the publication of the order; granting the
28 circuit court jurisdiction to approve the sale or
29 lease of a county, district, or municipal hospital

40-00447-12

2012464

30 based on specified criteria; providing for a party to
31 seek judicial review; requiring that the reviewing
32 court affirm the judgment of the circuit court unless
33 the decision is arbitrary, capricious, or not in
34 compliance with the act; requiring the board to pay
35 costs associated with the petition for approval unless
36 a party contests the action; providing an exemption
37 for certain sale or lease transactions completed
38 before a specified date; amending s. 395.3036, F.S.;
39 conforming cross-references; providing an effective
40 date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Subsections (1) and (4) of section 155.40,
45 Florida Statutes, are amended, present subsections (5) through
46 (8) of that section are renumbered as subsections (14) through
47 (17), respectively, and new subsections (5) through (13) are
48 added to that section, to read:

49 155.40 Sale or lease of county, district, or municipal
50 hospital; effect of sale.—

51 (1) In order for ~~that~~ citizens and residents of the state
52 to ~~may~~ receive quality health care, any county, district, or
53 municipal hospital organized and existing under the laws of this
54 state, acting by and through its governing board, may ~~shall have~~
55 ~~the authority to~~ sell or lease such hospital to a for-profit or
56 not-for-profit Florida corporation, and enter into leases or
57 other contracts with a for-profit or not-for-profit Florida
58 corporation for the purpose of operating and managing such

40-00447-12

2012464

59 hospital and any or all of its facilities of whatsoever kind and
60 nature. The term of any such lease, contract, or agreement and
61 the conditions, covenants, and agreements to be contained
62 therein shall be determined by the governing board of such
63 ~~county, district, or municipal~~ hospital. The governing board of
64 the hospital must find that the sale, lease, or contract is in
65 the best interests of the public and must state the basis of
66 such finding. The sale or lease of such hospital is subject to
67 approval by a majority vote of the registered voters in the
68 county, district, or municipality or, in the alternative,
69 approval by a circuit court. ~~If the governing board of a county,~~
70 ~~district, or municipal hospital decides to lease the hospital,~~
71 ~~it must give notice in accordance with paragraph (4)(a) or~~
72 ~~paragraph (4)(b).~~

73 (4) ~~If In the event~~ the governing board of a county,
74 district, or municipal hospital determines that it is no longer
75 in the public interest to own or operate such hospital and
76 elects to consider a sale or lease of the hospital to a third
77 party, the governing board must first determine whether there
78 are any qualified purchasers or lessees. In the process of
79 evaluating any potential purchasers or lessees ~~elects to sell or~~
80 ~~lease the hospital,~~ the board shall:

81 (a) ~~Negotiate the terms of the sale or lease with a for-~~
82 ~~profit or not-for-profit Florida corporation and Publicly~~
83 advertise the meeting at which the proposed sale or lease will
84 be considered by the governing board of the hospital in
85 accordance with s. 286.0105; or

86 (b) Publicly advertise the offer to accept proposals in
87 accordance with s. 255.0525 and receive proposals from all

40-00447-12

2012464

88 interested and qualified purchasers and lessees.

89
90 Any sale or lease must be for fair market value, and ~~any sale or~~
91 ~~lease~~ must comply with all applicable state and federal
92 antitrust laws. For the purposes of this section, the term "fair
93 market value" means the price that a seller is willing to accept
94 and a buyer is willing to pay on the open market and in an arms-
95 length transaction.

96 (5) A determination by a governing board to accept a
97 proposal for sale or lease must state, in writing, the findings
98 and basis for supporting the determination.

99 (a) The findings and basis for supporting the governing
100 board's determination must include, but need not be limited to,
101 a balanced consideration of the following factors:

102 1. The proposal represents fair market value, or if the
103 proposal does not represent fair market value, a detailed
104 explanation of why the public interest is served by the
105 acceptance of less than fair market value.

106 2. Whether the proposal will result in a reduction or
107 elimination of ad valorem or other tax revenues to support the
108 hospital.

109 3. Whether the proposal includes an enforceable commitment
110 that existing programs and services and quality health care will
111 continue to be provided to all residents of the affected
112 community, particularly to the indigent, the uninsured, and the
113 underinsured.

114 4. Whether the proposal is otherwise in compliance with
115 subsections (6) and (7).

116 (b) The findings must be accompanied by all information and

40-00447-12

2012464

117 documents relevant to the governing board's determination,
118 including, but not limited to:

119 1. The names and addresses of all parties to the
120 transaction.

121 2. The location of the hospital and all related facilities.

122 3. A description of the terms of all proposed agreements.

123 4. A copy of the proposed sale or lease agreement and any
124 related agreements, including, but not limited to, leases,
125 management contracts, service contracts, and memoranda of
126 understanding.

127 5. The estimated total value associated with the proposed
128 agreement and the proposed acquisition price and other
129 consideration.

130 6. Any valuations of the hospital's assets prepared during
131 the 3 years immediately preceding the proposed transaction date.

132 7. Any financial or economic analysis and report from any
133 expert or consultant retained by the governing board.

134 8. A fairness evaluation by an independent expert in such
135 transactions.

136 9. Copies of all other proposals and bids the governing
137 board may have received or considered in compliance with
138 subsection (4).

139 (6) Within 120 days before the anticipated closing date of
140 the proposed transaction, the governing board shall make
141 publicly available all findings and documents required under
142 subsection (5) and publish a notice of the proposed transaction
143 in one or more newspapers of general circulation in the county
144 in which the majority of the physical assets of the hospital are
145 located. The notice must include the names of the parties

40-00447-12

2012464

146 involved and the means by which a person may submit written
147 comments about the proposed transaction to the governing board
148 and obtain copies of the findings and documents required under
149 subsection (5).

150 (7) Within 20 days after the date of publication of the
151 public notice, any interested person may submit to the governing
152 board a detailed written statement of opposition to the
153 transaction. If a written statement of opposition has been
154 submitted, the governing board or the proposed purchaser or
155 lessee may submit a written response to the interested party
156 within 10 days after the written statement of opposition due
157 date.

158 (8) A governing board of a county, district, or municipal
159 hospital may not enter into a sale or lease of a hospital
160 facility without first receiving approval by a majority vote of
161 the registered voters in the county, district, or municipality
162 or, in the alternative, approval from a circuit court.

163 (a) The governing board shall file a petition in a circuit
164 court seeking approval of the proposed transaction at least 30
165 days after publication of the notice of the proposed
166 transaction. The petition must be filed in the circuit in which
167 the majority of the physical assets of the hospital are located.

168 (b) The petition for approval filed by the governing board
169 must include all findings and documents required under
170 subsection (5) and certification by the governing board of
171 compliance with all requirements of this section.

172 (c) A circuit court has jurisdiction to approve the sale or
173 lease of a county, district, or municipal hospital.

174 (9) Upon the filing of a petition for approval, the court

40-00447-12

2012464

175 shall issue an order requiring all interested parties to appear
176 at a designated time and place within the circuit where the
177 petition is filed and show why the petition should not be
178 granted. For purposes of this subsection, the term "interested
179 parties" includes any party submitting a proposal for sale or
180 lease of the county, district, or municipal hospital, as well as
181 the governing board.

182 (a) Before the date set for the hearing, the clerk shall
183 publish a copy of the order in one or more newspapers of general
184 circulation in the county in which the majority of the physical
185 assets of the hospital are located at least once each week for 2
186 consecutive weeks, commencing with the first publication, which
187 must be at least 20 days before the date set for the hearing. By
188 these publications, all interested parties are made parties
189 defendant to the action and the court has jurisdiction of them
190 to the same extent as if named as defendants in the petition and
191 personally served with process.

192 (b) Any interested person may become a party to the action
193 by moving against or pleading to the petition at or before the
194 time set for the hearing. At the hearing, the court shall
195 determine all questions of law and fact and make such orders as
196 will enable it to properly consider and determine the action and
197 render a final judgment with the least possible delay.

198 (10) Upon conclusion of all hearings and proceedings, and
199 upon consideration of all evidence presented, the court shall
200 render a final judgment approving or denying the proposed
201 transaction and shall order the governing board to accept or
202 reject the proposal for the sale or lease of the county,
203 district, or municipal hospital. In reaching its final judgment,

40-00447-12

2012464

204 the court shall determine whether:

205 (a) The proposed transaction is permitted by law.

206 (b) The proposed transaction unreasonably excludes a
207 potential purchaser or lessee on the basis of being a for-profit
208 or a not-for-profit Florida corporation.

209 (c) The governing board of the hospital publicly advertised
210 the meeting at which the proposed transaction was considered by
211 the board in compliance with s. 286.0105.

212 (d) The governing board of the hospital publicly advertised
213 the offer to accept proposals in compliance with s. 255.0525.

214 (e) The governing board of the hospital exercised due
215 diligence in deciding to dispose of hospital assets, selecting
216 the proposed purchaser or lessee, and negotiating the terms and
217 conditions of the disposition.

218 (f) Any conflict of interest was disclosed, including, but
219 not limited to, conflicts of interest relating to members of the
220 governing board and experts retained by the parties to the
221 transaction.

222 (g) The seller or lessor will receive fair market value for
223 the assets, or if the sale or lease represents less than fair
224 market value, why the public interest will be served by
225 accepting less than fair market value.

226 (h) The acquiring entity has made an enforceable commitment
227 that existing programs and services and quality health care will
228 continue to be provided to all residents of the affected
229 community, particularly to the indigent, the uninsured, and the
230 underinsured.

231 (i) The proposed transaction will result in a reduction or
232 elimination of ad valorem or other taxes used to support the

40-00447-12

2012464

233 hospital.

234 (11) Any party to the action has the right to seek judicial
235 review in the appellate district where the petition for approval
236 was filed.

237 (a) All proceedings shall be instituted by filing a notice
238 of appeal or petition for review in accordance with the Florida
239 Rules of Appellate Procedure within 30 days after the date of
240 final judgment.

241 (b) In such judicial review, the reviewing court shall
242 affirm the judgment of the circuit court, unless the decision is
243 arbitrary, capricious, or not in compliance with this section.

244 (12) All costs shall be paid by the governing board, unless
245 an interested party contests the action, in which case the court
246 may assign costs to the parties.

247 (13) Any sale or lease completed before March 9, 2011, is
248 not subject to this section. Any lease that contained, on March
249 9, 2011, an option to renew or extend that lease upon its
250 expiration is not subject to this section upon renewal or
251 extension on or after March 9, 2011.

252 Section 2. Section 395.3036, Florida Statutes, is amended
253 to read:

254 395.3036 Confidentiality of records and meetings of
255 corporations that lease public hospitals or other public health
256 care facilities.—The records of a private corporation that
257 leases a public hospital or other public health care facility
258 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
259 and s. 24(a), Art. I of the State Constitution, and the meetings
260 of the governing board of a private corporation are exempt from
261 s. 286.011 and s. 24(b), Art. I of the State Constitution if

40-00447-12

2012464

262 ~~when~~ the public lessor complies with the public finance
263 accountability provisions of s. 155.40(14) ~~155.40(5)~~ with
264 respect to the transfer of any public funds to the private
265 lessee and if ~~when~~ the private lessee meets at least three of
266 the five following criteria:

267 (1) The public lessor that owns the public hospital or
268 other public health care facility was not the incorporator of
269 the private corporation that leases the public hospital or other
270 health care facility.

271 (2) The public lessor and the private lessee do not
272 commingle any of their funds in any account maintained by either
273 of them, other than the payment of the rent and administrative
274 fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.

275 (3) Except as otherwise provided by law, the private lessee
276 is not allowed to participate, except as a member of the public,
277 in the decisionmaking process of the public lessor.

278 (4) The lease agreement does not expressly require the
279 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
280 286.011.

281 (5) The public lessor is not entitled to receive any
282 revenues from the lessee, except for rental or administrative
283 fees due under the lease, and the lessor is not responsible for
284 the debts or other obligations of the lessee.

285 Section 3. This act shall take effect July 1, 2012.