

HB 711

2012

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

Page 1 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0711-00

HB 711

2012

29 | lease of a county, district, or municipal hospital
 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

HB 711

2012

57 | other contracts with a for-profit or not-for-profit Florida
 58 | corporation for the purpose of operating and managing such
 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

HB 711

2012

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
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

HB 711

2012

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
117 and 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
122 facilities.

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

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

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

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

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

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

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

140 (6) Within 120 days before the anticipated closing date of

HB 711

2012

141 the proposed transaction, the governing board shall make
142 publicly available all findings and documents required under
143 subsection (5) and publish a notice of the proposed transaction
144 in one or more newspapers of general circulation in the county
145 in which the majority of the physical assets of the hospital are
146 located. The notice must include the names of the parties
147 involved and the means by which a person may submit written
148 comments about the proposed transaction to the governing board
149 and obtain copies of the findings and documents required under
150 subsection (5).

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

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

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

HB 711

2012

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

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

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

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

193 (b) Any interested person may become a party to the action
194 by moving against or pleading to the petition at or before the
195 time set for the hearing. At the hearing, the court shall
196 determine all questions of law and fact and make such orders as

HB 711

2012

197 will enable it to properly consider and determine the action and
198 render a final judgment with the least possible delay.

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

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

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

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

213 (d) The governing board of the hospital publicly
214 advertised the offer to accept proposals in compliance with s.
215 255.0525.

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

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

224 (g) The seller or lessor will receive fair market value

HB 711

2012

225 for the assets, or if the sale or lease represents less than
226 fair market value, why the public interest will be served by
227 accepting less than fair market value.

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

233 (i) The proposed transaction will result in a reduction or
234 elimination of ad valorem or other taxes used to support the
235 hospital.

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

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

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

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

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

HB 711

2012

253 extension on or after March 9, 2011.

254 Section 2. Section 395.3036, Florida Statutes, is amended
255 to read:

256 395.3036 Confidentiality of records and meetings of
257 corporations that lease public hospitals or other public health
258 care facilities.—The records of a private corporation that
259 leases a public hospital or other public health care facility
260 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
261 and s. 24(a), Art. I of the State Constitution, and the meetings
262 of the governing board of a private corporation are exempt from
263 s. 286.011 and s. 24(b), Art. I of the State Constitution if
264 ~~when~~ the public lessor complies with the public finance
265 accountability provisions of s. 155.40(14) ~~155.40(5)~~ with
266 respect to the transfer of any public funds to the private
267 lessee and if ~~when~~ the private lessee meets at least three of
268 the five following criteria:

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

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

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

280 (4) The lease agreement does not expressly require the

HB 711

2012

281 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
282 286.011.

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

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