

By Senator Klein

28-374-98

1 A bill to be entitled
2 An act relating to hospitals; creating the
3 "Community Hospital Protection Act"; providing
4 for the sale, lease, exchange, conveyance,
5 merger, or other transfer of the assets or
6 management authority of a nonprofit hospital to
7 a for-profit enterprise; providing legislative
8 intent; providing definitions; providing
9 prerequisites to such a transfer, including the
10 provision by the nonprofit hospital of certain
11 statements and notice, and the conduct of
12 public hearings; providing for the Attorney
13 General or a state attorney to challenge such a
14 proposed transaction through an action for
15 declaratory judgment; providing a statement of
16 circumstances in which a court may declare the
17 transaction wholly or partly invalid; providing
18 limitations upon the applicability of the act;
19 providing an effective date.

20
21 WHEREAS, the Legislature recognizes that nonprofit
22 hospitals perform valuable services to their communities, and

23 WHEREAS, nonprofit hospitals are often established or
24 supported through charitable contributions and grants,
25 including donations of money, valuables, and services
26 performed by community volunteers, and

27 WHEREAS, nonprofit hospitals are recognized as
28 community assets that are exempt from a multitude of local,
29 state, and federal taxes, and

30 WHEREAS, transfers of the assets or management control
31 of nonprofit hospitals to for-profit enterprises raise the

1 very real concern that services performed by nonprofit
2 hospitals will be terminated or the cost of providing those
3 services will be shifted to the taxpayers of the affected
4 community, and

5 WHEREAS, the Legislature recognizes the need of the
6 affected community to make a reasonable evaluation of the
7 fairness and effects of a proposed transfer of its nonprofit
8 hospital to a for-profit enterprise before such transfer is
9 consummated, NOW, THEREFORE,

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Sale, lease, exchange, conveyance, merger,
14 or other transfer of the assets or management authority of a
15 nonprofit hospital to a for-profit enterprise.--

16 (1) This section may be cited as the "Community
17 Hospital Protection Act."

18 (2) It is the intent of the Legislature that all
19 proposed transfers involving 30 percent or more of the gross
20 assets or management authority of a nonprofit hospital to a
21 for-profit enterprise be made public so that the affected
22 community may reasonably evaluate the fairness and effects of
23 such transfers before they are consummated. It is the further
24 intent of the Legislature to make such proposed transfers
25 public by requiring nonprofit hospitals to give public notice
26 at least 60 days before the transfers are consummated and to
27 make all records relating to such transfers available for
28 public inspection and copying.

29 (3) As used in this section, the term:

30 (a) "Affected community" means the geographical area
31 consisting of a county or counties that are served by, or

1 receive the benefit of the services provided by, a nonprofit
2 hospital.

3 (b) "Nonprofit hospital" means a nonprofit entity that
4 is tax-exempt under 26 U.S.C. s. 501(c)(3) and is organized
5 under the laws of this state, or authorized to transact
6 business in this state, for the purpose of providing hospital
7 care or similar services to the community.

8 (c) "Consummated" means, with respect to a
9 transaction, that there has been created a legally enforceable
10 right to a specific performance of the transaction.

11 (d) "For-profit enterprise" means an individual,
12 partnership, corporation, trust, foundation, joint business
13 venture, or other for-profit entity that conducts business or
14 provides services and is organized, or is authorized, to do
15 business in this state and whose income or profit is
16 distributable to its members, partners, shareholders,
17 directors, or officers. The term excludes a governmental
18 agency or other entity that is under the control of the state
19 or one of its political subdivisions.

20 (d) "Public inspection period" means the 60 days
21 immediately following the date of publication by a nonprofit
22 hospital of the first advertisement that conforms to the
23 provisions of this section and that notifies the public of a
24 proposed transaction. During this period, the proposed
25 transaction may not be consummated.

26 (e) "Transaction" means an action by a nonprofit
27 hospital to:

28 1. Sell, lease, exchange, convey, merge, or otherwise
29 transfer control of 30 percent or more of its current gross
30 assets in a single transaction or a series of related
31 transactions to a for-profit enterprise;

1 2. Grant or transfer control of 30 percent or more of
2 the votes on its board of directors or board of trustees in a
3 single transaction or a series of related transactions to a
4 for-profit enterprise; or

5 3. Enter into a joint venture, joint operating
6 agreement, management agreement, partnership, or other
7 business agreement that transfers 30 percent or more of the
8 nonprofit hospital's management authority in a single
9 transaction or a series of related transactions to a
10 for-profit enterprise.

11 (4)(a) When a nonprofit hospital proposes to enter
12 into a transaction, before providing notice under paragraph
13 (b), the nonprofit hospital must:

14 1. Obtain one or more written reports by an
15 independent expert or experts assessing the following aspects
16 of the proposed transaction:

17 a. Whether the nonprofit hospital is receiving fair
18 market value for any assets or management authority involved
19 in the proposed transaction, together with a detailed
20 valuation of such assets or management authority and a
21 detailed analysis of all competing offers, if any, made to the
22 nonprofit hospital; and

23 b. Whether the proposed transaction was negotiated at
24 arm's length and is fair to the affected community from both a
25 financial and community-service standpoint;

26 2. Obtain a written report by an expert assessing
27 whether the proposed use of the proceeds of the proposed
28 transaction is consistent with the general donative intent of
29 the benefactors and the charitable mission of the nonprofit
30 hospital and whether there are sufficient safeguards to ensure
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1 that restricted-use funds are segregated and used for their
2 intended purpose;

3 3. Obtain signed affidavits regarding conflicts of
4 interest from each member of its board of directors or board
5 of trustees and each executive director, chief operating
6 officer, chief executive officer, and chief financial officer
7 of the nonprofit hospital. These affidavits must disclose
8 whether the affiant has been offered or has accepted, orally
9 or in writing, any personal or familial benefit, including a
10 promise of future employment, stock options, or other
11 contractual rights, from a for-profit enterprise or any entity
12 affiliated with a for-profit enterprise. In addition, the
13 affiants must disclose whether they have been offered or have
14 accepted, orally or in writing, any position with a
15 foundation, trust, corporation, or other entity that will
16 direct the use of any part of the proceeds of the proposed
17 transaction or otherwise will function as a successor to the
18 nonprofit hospital; and

19 4. State in writing whether there are any contractual
20 or other agreements with a for-profit enterprise regarding
21 future use of the assets or future exercise of the management
22 authority involved in the proposed transaction and, if so,
23 what penalties are available if the for-profit enterprise does
24 not comply with those agreements.

25 (b) After complying with paragraph (a), a nonprofit
26 hospital must provide notice that describes clearly and
27 concisely the nature of the proposed transaction; the parties
28 to the transaction; the date, time, and location of the public
29 hearings required by this section; and, for purposes of public
30 examination and copying, the location of all records related
31 to the proposed transaction. The notice must be provided:

1 1. Before the public inspection period commences, to
2 the state attorney in the area where the nonprofit hospital
3 maintains its principal place of business and to the Attorney
4 General.

5 2. To the affected community by placing two
6 advertisements in a newspaper of general paid circulation
7 which is published in the county or municipality of the
8 affected community and is of general interest and readership
9 in the county or municipality of the affected community, and
10 which is not a newspaper of limited subject matter, under
11 chapter 50. The two advertisements must be published no less
12 than 3 weeks apart; the first must appear before the public
13 inspection period commences, and the other must appear at
14 least 30 days before the end of the public inspection period.
15 The required advertisements must be no less than 2 columns
16 wide by 10 inches long in a standard-size or a tabloid-size
17 newspaper, and the headline in the advertisement must be in
18 type no smaller than 18 points. The advertisements must not
19 be placed in that portion of the newspaper where legal notices
20 and classified advertisements appear. When possible, the
21 advertisements must appear in a newspaper that is published at
22 least 5 days a week unless the only newspaper in the affected
23 community is published less frequently than 5 days a week.
24 The advertisements must be in substantially the following
25 form:

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27 NOTICE OF ...(TYPE OF TRANSACTION)... INVOLVING SUBSTANTIAL
28 ...(ASSETS OR MANAGEMENT AUTHORITY)... OF ...(NAME OF
29 NONPROFIT HOSPITAL).... The ...(name of nonprofit hospital)...
30 proposes to ...(clear, concise description of proposed
31 transaction, including the name of the for-profit

1 enterprise)... in no fewer than ...(60 or 30 days, as
2 appropriate)... after the date of this notice. Records
3 relating to this proposed transaction are available for public
4 inspection and copying during regular business hours at
5 ...(location).... Public hearings regarding this proposed
6 transaction will be held ...(date, time, and location)...., at
7 which knowledgeable representatives of ...(name of nonprofit
8 hospital)... will be available to explain the proposed
9 transaction and respond to questions or comments regarding the
10 nature, purpose, and effects of the proposed transaction.

11 (c) A nonprofit hospital shall permit public
12 inspection at no cost, and copying at the rate set forth in s.
13 119.07(1) during the public inspection period, of all relevant
14 records relating to the transaction, including, but not
15 limited to, records setting forth the terms, conditions, and
16 structure of the transaction; written reports of experts;
17 relevant financial records of the nonprofit hospital;
18 affidavits required by this section; records relating to
19 agreements disclosed in any affidavit required by this
20 section; all minutes of those portions of meetings of the
21 board of directors or trustees during which the proposed
22 transaction was considered and any reports or other materials
23 presented at those meetings; and offers by other outside
24 interests, for-profit and nonprofit, that are reasonably
25 related to the proposed transaction. These records must be
26 made available to the public in a single location during
27 regular business hours in the locale where the nonprofit
28 hospital maintains its principal place of business.

29 (d) A community organization must hold no fewer than 2
30 public hearings in the affected community during the public
31 inspection period at times and locations that are reasonably

1 convenient for members of the affected community to attend and
2 be heard. At these meetings, knowledgeable representatives of
3 the nonprofit hospital must be available to explain the
4 proposed transaction and respond to questions or comments
5 regarding the nature, purpose, and effects of the proposed
6 transaction.

7 (5) Only the Attorney General or state attorney, on
8 behalf of the affected community, may challenge a proposed
9 transaction by bringing an action for declaratory judgment
10 under chapter 86, Florida Statutes, in the circuit court. In
11 such an action, the court may address issues that might be
12 brought before it in a common law cy-pres action. The court
13 may declare that the proposed transaction is valid or that any
14 part of it is invalid and may not be consummated, or it may
15 establish a mechanism to monitor future compliance by the
16 for-profit enterprise with the terms of the transaction, or it
17 may order any other equitable or legal relief necessary to
18 ensure that the proposed transaction is fair to the affected
19 community, upon a finding that:

20 (a) The nonprofit hospital failed to substantially
21 comply with this section;

22 (b) The nonprofit hospital will not receive fair
23 market value for the assets or management authority involved
24 in the proposed transaction;

25 (c) The proposed transaction is not the product of an
26 arm's-length negotiation; there exists a material conflict of
27 interest relating to the proposed transaction; or there has
28 been a material breach of fiduciary duty;

29 (d) The proceeds from the proposed transaction will
30 not be applied in a manner consistent with the general
31 donative intent of the benefactors and the charitable mission

1 of the nonprofit hospital, or there are insufficient
2 safeguards to ensure that any restricted-use funds are
3 segregated and used for their intended purpose; or

4 (f) The proposed transaction is fundamentally unfair
5 and not in the best interests of the affected community.

6 (6) This section does not contravene or limit state or
7 federal antitrust laws or the existing authority of the
8 Attorney General or a state attorney to protect the public
9 interest in matters relating to charitable trusts.

10 Section 2. This act shall take effect October 1, 1998.

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13 SENATE SUMMARY

14 Creates the "Community Hospital Protection Act." Provides
15 for the sale, lease, exchange, conveyance, merger, or
16 other transfer of the assets or management authority of a
17 nonprofit hospital to a for-profit enterprise. Provides
18 legislative intent. Provides definitions. Provides
19 prerequisites to such a transfer, including the provision
20 by the nonprofit hospital of certain statements and
21 notice, and the conduct of public hearings. Provides for
22 the Attorney General or a state attorney to challenge
23 such a proposed transaction through an action for
24 declaratory judgment. States the circumstances in which a
25 court may declare the transaction wholly or partly
26 invalid. Provides that the act does not contravene or
27 limit antitrust laws or the existing authority of the
28 Attorney General or a state attorney to protect the
29 public interest in matters relating to charitable trusts.
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