

By the Committee on Community Affairs; and Senator Atwater

578-2369-06

1 A bill to be entitled
2 An act relating to the sale or lease of a
3 county, district, or municipal hospital;
4 amending s. 155.40, F.S.; providing for the
5 effect of the sale of a public hospital to a
6 private purchaser; providing that the purchaser
7 of a public hospital is not acting on behalf of
8 the public entity seller and is not an agency
9 within the meaning of ch. 119, F.S., unless the
10 sale document expressly provides to the
11 contrary; providing an effective date.

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

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15 Section 1. Section 155.40, Florida Statutes, is
16 amended to read:

17 155.40 Sale or lease of county, district, or municipal
18 hospital; effect of sale.--

19 (1) In order that citizens and residents of the state
20 may receive quality health care, any county, district, or
21 municipal hospital organized and existing under the laws of
22 this state, acting by and through its governing board, shall
23 have the authority to sell or lease such hospital to a
24 for-profit or not-for-profit Florida corporation, and enter
25 into leases or other contracts with a for-profit or
26 not-for-profit Florida corporation for the purpose of
27 operating and managing such hospital and any or all of its
28 facilities of whatsoever kind and nature. The term of any
29 such lease, contract, or agreement and the conditions,
30 covenants, and agreements to be contained therein shall be
31 determined by the governing board of such county, district, or

1 municipal hospital. The governing board of the hospital must
2 find that the sale, lease, or contract is in the best
3 interests of the public and must state the basis of such
4 finding. If the governing board of a county, district, or
5 municipal hospital decides to lease the hospital, it must give
6 notice in accordance with paragraph (4)(a) or paragraph
7 (4)(b).

8 (2) Any such lease, contract, or agreement made
9 pursuant hereto shall:

10 (a) Provide that the articles of incorporation of such
11 for-profit or not-for-profit corporation be subject to the
12 approval of the board of directors or board of trustees of
13 such hospital;

14 (b) Require that any not-for-profit corporation become
15 qualified under s. 501(c)(3) of the United States Internal
16 Revenue Code;

17 (c) Provide for the orderly transition of the
18 operation and management of such facilities;

19 (d) Provide for the return of such facility to the
20 county, municipality, or district upon the termination of such
21 lease, contract, or agreement; and

22 (e) Provide for the continued treatment of indigent
23 patients pursuant to the Florida Health Care Responsibility
24 Act and pursuant to chapter 87-92, Laws of Florida.

25 (3) Any sale, lease, or contract entered into pursuant
26 to this section prior to the effective date of this act must
27 have complied with the requirements of subsection (2) in
28 effect at the time of the sale, lease, or contract. It is the
29 intent of the Legislature that this section does not impose
30 any further requirements with respect to the formation of any
31 for-profit or not-for-profit Florida corporation, the

1 | composition of the board of directors of any Florida
2 | corporation, or the manner in which control of the hospital is
3 | transferred to the Florida corporation.

4 | (4) In the event the governing board of a county,
5 | district, or municipal hospital elects to sell or lease the
6 | hospital, the board shall:

7 | (a) Negotiate the terms of the sale or lease with a
8 | for-profit or not-for-profit Florida corporation and publicly
9 | advertise the meeting at which the proposed sale or lease will
10 | be considered by the governing board of the hospital in
11 | accordance with s. 286.0105; or

12 | (b) Publicly advertise the offer to accept proposals
13 | in accordance with s. 255.0525 and receive proposals from all
14 | interested and qualified purchasers.

15 |
16 | Any sale must be for fair market value, and any sale or lease
17 | must comply with all applicable state and federal antitrust
18 | laws.

19 | (5) In the event a hospital operated by a for-profit
20 | or not-for-profit Florida corporation receives annually more
21 | than \$100,000 in revenues from the county, district, or
22 | municipality that owns the hospital, the Florida corporation
23 | must be accountable to the county, district, or municipality
24 | with respect to the manner in which the funds are expended by
25 | either:

26 | (a) Having the revenues subject to annual
27 | appropriations by the county, district, or municipality; or

28 | (b) Where there is a contract to provide revenues to
29 | the hospital, the term of which is longer than 12 months, the
30 | governing board of the county, district, or municipality must
31 |

1 | be able to modify the contract upon 12 months notice to the
2 | hospital.

3 |
4 | A not-for-profit corporation that is subject to this
5 | subsection and that does not currently comply with the
6 | accountability requirements in this subsection shall have 12
7 | months after the effective date of this act to modify any
8 | contracts with the county, district, or municipality in a
9 | manner that is consistent with this subsection.

10 | (6) Unless otherwise expressly stated in the lease
11 | documents, the transaction involving the ~~sale or~~ lease of a
12 | hospital shall not be construed as:

13 | (a) A transfer of a governmental function from the
14 | county, district, or municipality to the private ~~purchaser or~~
15 | lessee;

16 | (b) Constituting a financial interest of the public
17 | lessor in the private lessee; or

18 | (c) Making a private lessee an integral part of the
19 | public lessor's decisionmaking process.

20 | (7) The lessee of a hospital, under ~~pursuant to~~ this
21 | section or any special act of the Legislature, operating under
22 | a lease ~~is shall not be construed to be~~ "acting on behalf of"
23 | the lessor as that term is used in statute, unless the lease
24 | document expressly provides to the contrary.

25 | (8) Unless otherwise expressly stated in the sale
26 | documents, the transaction involving the sale of a hospital
27 | shall not be construed as:

28 | (a) A transfer of a governmental function from the
29 | county, district, or municipality to the private purchaser;

30 | (b) Constituting a financial interest of the public
31 | seller in the private purchaser; or

1 (c) Making a private purchaser an integral part of the
2 public seller's decisionmaking process.

3 (9)(a) The purchaser of a hospital, under this section
4 or any special act of the Legislature, operating after a sale
5 of the hospital is not "acting on behalf of" the seller as
6 that term is used in statute, unless the sale document
7 expressly provides to the contrary.

8 (b) The purchaser of a hospital, under this section or
9 any special act of the Legislature, operating after a sale of
10 the hospital shall not be construed as an "agency" within the
11 meaning of s. 119.011(2), unless the sale document expressly
12 provides to the contrary.

13 Section 2. This act shall take effect July 1, 2006.

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15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 Senate Bill 1190

18 The committee substitute (CS) revises provisions relating to
19 the sale of a public hospital to a private party to provide
20 that, unless expressly stated in the sale documents, the sale
21 of the hospital shall not be construed as: a transfer of a
22 governmental function from the county, district, or
23 municipality to the private purchaser; constituting a
24 financial interest of the public seller in the private
25 purchaser, or making a private purchaser an integral part of
26 the public seller's decision-making process. Under this CS, a
27 purchaser, operating after the sale of a hospital, is not
28 "acting on behalf of" the seller and is not an agency within
29 the meaning of that term as used in ch. 119, F.S., the Public
30 Records Law, unless the sale document expressly provides to
31 the contrary.

The CS deletes language that revised subsection (7) of s.
155.40, F.S., to specify that a purchaser of a public hospital
shall not be construed to be "acting on behalf of" the lessor
unless the lease document expressly provides to the contrary.
It also deletes language that provided that the purchaser of a
hospital, pursuant to s. 155.40, F.S., or any special act of
the Legislature, may not be construed to be "acting on behalf
of" the seller as that term is used in statute, unless the
purchase document expressly provides to the contrary.