

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 conditions that
7 must be met in order for a sale to be
8 considered a complete sale; providing
9 legislative findings and intent with respect to
10 the effect of the sale of a public hospital to
11 a private purchaser; providing applicability,
12 including retroactive applicability; providing
13 an effective date.

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

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17 Section 1. Section 155.40, Florida Statutes, is
18 amended to read:19 155.40 Sale or lease of county, district, or municipal
20 hospital; effect of sale.--21 (1) In order that citizens and residents of the state
22 may receive quality health care, any county, district, or
23 municipal hospital organized and existing under the laws of
24 this state, acting by and through its governing board, shall
25 have the authority to sell or lease such hospital to a
26 for-profit or not-for-profit Florida corporation, and enter
27 into leases or other contracts with a for-profit or
28 not-for-profit Florida corporation for the purpose of
29 operating and managing such hospital and any or all of its
30 facilities of whatsoever kind and nature. The term of any
31 such lease, contract, or agreement and the conditions,

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

10 (2) Any such lease, contract, or agreement made
11 pursuant hereto shall:

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

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

19 (c) Provide for the orderly transition of the
20 operation and management of such facilities;

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

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

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

1 any further requirements with respect to the formation of any
2 for-profit or not-for-profit Florida corporation, the
3 composition of the board of directors of any Florida
4 corporation, or the manner in which control of the hospital is
5 transferred to the Florida corporation.

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

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

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

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18 Any sale must be for fair market value, and any sale or lease
19 must comply with all applicable state and federal antitrust
20 laws.

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

28 (a) Having the revenues subject to annual
29 appropriations by the county, district, or municipality; or

30 (b) Where there is a contract to provide revenues to
31 the hospital, the term of which is longer than 12 months, the

1 governing board of the county, district, or municipality must
2 be able to modify the contract upon 12 months notice to the
3 hospital.

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

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

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

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

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

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

26 (8)(a) If whenever the sale of a public hospital by a
27 public agency to a private corporation or other private entity
28 pursuant to this section or pursuant to a special act of the
29 Legislature reflects that:

1 1. The private corporation or other private entity
2 purchaser acquires 100 percent ownership in the hospital
3 enterprise;

4 2. The private corporation or other private entity
5 purchases the physical plant of the hospital facility and has
6 complete responsibility for the operation and maintenance of
7 the facility, regardless of ownership of the underlying real
8 property;

9 3. The public agency seller retains no control over
10 decisionmaking or policymaking for the hospital;

11 4. The private corporation or other private entity
12 purchaser receives no funding from the public agency seller
13 other than by contract for services rendered to patients for
14 whom the public agency seller has the responsibility to pay
15 for hospital or medical care;

16 5. The public agency seller makes no substantial
17 investment in or loans to the private entity;

18 6. The private corporation or other private entity
19 purchaser was not created by the public entity seller; and

20 7. The private corporation or other private entity
21 purchaser operates primarily for its own financial interests
22 and not primarily for the interests of the public agency,

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24 such a sale shall be considered a complete sale of the public
25 agency's interest in the hospital.

26 (b) A complete sale of a hospital as described in this
27 subsection shall not be construed as:

28 1. A transfer of a governmental function from the
29 county, district, or municipality to the private corporation
30 or other private entity purchaser;

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1 2. Constituting a financial interest of the public
2 agency in the private corporation or other private entity
3 purchaser;

4 3. Making the private corporation or other private
5 entity purchaser an "agency" as that term is used in statutes;

6 4. Making the private corporation or other private
7 entity purchaser an integral part of the public agency's
8 decisionmaking process; or

9 5. Indicating that the private corporation or other
10 private entity purchaser is "acting on behalf of a public
11 agency" as that term is used in statute.

12 Section 2. The Legislature finds that it is necessary
13 to clarify that a public agency may sell its interest in a
14 public hospital to a private corporation or other private
15 entity and to establish that such a sale results in the
16 privatization of the hospital enterprise. The Legislature
17 finds that the sale of a hospital by a public agency to a
18 private corporation or other private entity purchaser under
19 this section is a complete sale when: the public agency
20 retains no ownership interest in the hospital enterprise or
21 the hospital facility, regardless of who owns the underlying
22 property; the private corporation or other private entity has
23 the complete responsibility for operation and maintenance of
24 the hospital facility; the private corporation or other
25 private entity receives no funds from the public agency seller
26 other than by contract for services provided to patients for
27 whom the public agency has responsibility to pay for medical
28 or hospital services; the public agency makes no substantial
29 investment or loan to the private corporation or other private
30 entity; the private corporation or other private entity is not
31 created by the public agency; and the private corporation or

1 other private entity operates primarily for its own financial
2 interests as opposed to those of the public agency. The
3 Legislature further finds that a complete sale of the hospital
4 under such circumstances eliminates any argument that the
5 private corporation or other private entity continues to
6 perform any governmental or public function; that the public
7 agency retains any financial interest in the private purchaser
8 or the hospital; that the private purchaser is an integral
9 part in the public agency's decisionmaking process or that the
10 private entity is an "agency" or is "acting on behalf of a
11 public agency" as those terms are used in statute. The
12 Legislature further finds that the recognition of such sales
13 as being complete sales of the formerly public hospital to a
14 private corporation or other private entity is a public
15 necessity so that private entities that purchase public
16 hospitals are allowed to operate without unnecessary public
17 interference. Some recent court decisions, however, have found
18 that a private corporation or other private entity that
19 purchases a public hospital is still a public agency for some
20 purposes and have failed to recognize that the public agency
21 does not retain any control over the private entity or the
22 formerly public hospital following the complete sale of a
23 public hospital to a private corporation or other private
24 entity. Therefore, the Legislature finds that it is a
25 necessity to confirm its intent that a private corporation or
26 other private entity that purchases a formerly public hospital
27 through a complete sale is not a public agency for any
28 purpose. To find otherwise would place such a private
29 corporation or other private entity that purchases a public
30 hospital at a competitive disadvantage compared to other
31 private entities that own private hospitals that were not

1 formerly public hospitals and would serve as a disincentive
2 for the purchase of a public hospital. Public agencies choose
3 to sell their public hospitals to private corporations or
4 other private entities when the public entity is no longer
5 able to operate the hospital in a fiscally responsible manner
6 and when taxpayers would otherwise be required to finance the
7 operations of the hospital beyond indigent care. If a private
8 corporation or other private entity that purchases a public
9 hospital is treated as a public agency, then public agencies
10 may find it difficult, if not impossible, to find a private
11 corporation or other private entity that is willing to
12 purchase a public hospital. This could force the public agency
13 to close the hospital, which would result in a reduction in
14 health care services to the public, or continue operating the
15 hospital using public tax dollars to subsidize recurring
16 losses. Neither of these options is in the best interest of
17 the public. Thus, the Legislature finds that a private
18 corporation or other private entity that purchases a public
19 hospital and the purchase agreement for that hospital meets
20 the requirements established herein, regardless of whether the
21 corporation had previously leased that public hospital, that
22 private corporation or other private entity is not a public
23 agency for any purpose and does not act on behalf of the
24 public agency.

25 Section 3. This act shall take effect upon becoming a
26 law and shall apply to each private corporation or other
27 private entity that has purchased a public hospital regardless
28 of whether such purchase occurred prior to the effective date
29 of this act.

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