

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representative(s) Pickens offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5
6 Section 1. Subsection (8) is added to section 155.40,
7 Florida Statutes, to read:

8 155.40 Sale or lease of county, district, or municipal
9 hospital.--

10 (8) (a) If a public hospital is sold by a public agency to
11 a private corporation or other private entity pursuant to this
12 section or pursuant to a special act of the Legislature and the
13 purchase agreement provides that:

14 1. The private corporation or other private entity
15 purchaser acquires 100 percent ownership in the hospital
16 enterprise;

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17 2. The private corporation or other private entity
18 purchases the physical plant of the hospital facility and has
19 complete responsibility for the operation and maintenance of the
20 facility, regardless of ownership of the underlying real
21 property;

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

24 4. The private corporation or other private entity
25 purchaser receives no funding from the public agency seller
26 other than by contract for services rendered to patients for
27 whom the public agency seller has the responsibility to pay for
28 hospital or medical care;

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

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

33 7. The private corporation or other private entity
34 purchaser operates primarily for its own financial interests and
35 not primarily for the interests of the public agency,

36
37 then such a sale shall be considered a complete sale of the
38 public agency's interest in the hospital.

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

41 1. A transfer of a governmental function from the county,
42 district, or municipality to the private corporation or other
43 private entity purchaser;

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

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

48 4. Making the private corporation or other private entity
49 purchaser an integral part of the public agency's decisionmaking
50 process; or

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

54 Section 2. The Legislature finds that it is necessary to
55 clarify that a public agency may sell its interest in a public
56 hospital to a private corporation or other private entity and to
57 establish that such a sale results in the privatization of the
58 hospital enterprise. The Legislature finds that the sale of a
59 hospital by a public agency to a private corporation or other
60 private entity purchaser under this section is a complete sale
61 where: the public agency retains no ownership interest in the
62 hospital enterprise or the hospital facility, regardless of who
63 owns the underlying property; the private corporation or other
64 private entity has the complete responsibility for operation and
65 maintenance of the hospital facility; the private corporation or
66 other private entity receives no funds from the public agency
67 seller other than by contract for services provided to patients
68 for whom the public agency has responsibility to pay for medical
69 or hospital services; the public agency makes no substantial
70 investment or loan to the private corporation or other private
71 entity; the private corporation or other private entity is not
72 created by the public agency; and the private corporation or
73 other private entity operates primarily for its own financial
74 interests as opposed to those of the public agency. The

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75 Legislature further finds that a complete sale of the hospital
76 under such circumstances eliminates any argument that the
77 private corporation or other private entity continues to perform
78 any governmental or public function, that the public agency
79 retains any financial interest in the private purchaser or the
80 hospital, that the private purchaser is an integral part in the
81 public agency's decisionmaking process, or that the private
82 entity is an "agency" or is "acting on behalf of a public
83 agency" as those terms are used in statute. The Legislature
84 further finds that the recognition of such sales as being
85 complete sales of the formerly public hospital to a private
86 corporation or other private entity is a public necessity so
87 that private entities that purchase public hospitals are allowed
88 to operate without unnecessary public interference. Some recent
89 court decisions, however, have found that a private corporation
90 or other private entity that purchases a public hospital is
91 still a public agency for some purposes and have failed to
92 recognize that the public agency does not retain any control
93 over the private entity or the formerly public hospital
94 following the complete sale of a public hospital to a private
95 corporation or other private entity. Therefore, the Legislature
96 finds that it is a necessity to confirm its intent that a
97 private corporation or other private entity that purchases a
98 formerly public hospital through a complete sale is not a public
99 agency for any purpose. To find otherwise would place such a
100 private corporation or other private entity that purchases a
101 public hospital at a competitive disadvantage compared to other
102 private entities that own private hospitals that were not
103 formerly public hospitals and would serve as a disincentive for
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104 the purchase of a public hospital. Public agencies choose to
105 sell their public hospitals to private corporations or other
106 private entities when the public entity is no longer able to
107 operate the hospital in a fiscally responsible manner and where
108 taxpayers would otherwise be required to finance the operations
109 of the hospital beyond indigent care. If a private corporation
110 or other private entity that purchases a public hospital is
111 treated as a public agency, then public agencies may find it
112 difficult, if not impossible, to find a private corporation or
113 other private entity that is willing to purchase a public
114 hospital. This could force the public agency to close the
115 hospital, which would result in a reduction in health care
116 services to the public, or continue operating the hospital using
117 public tax dollars to subsidize recurring losses. Neither of
118 these options is in the best interest of the public. Thus, the
119 Legislature finds that if a private corporation or other private
120 entity purchases a public hospital and the purchase agreement
121 for that hospital meets the requirements established under this
122 act, regardless of whether the corporation had previously leased
123 that public hospital, that private corporation or other private
124 entity is not a public agency for any purpose and does not act
125 on behalf of the public agency.

126 Section 3. This act shall take effect upon becoming a law
127 and shall apply to each private corporation or other private
128 entity that has purchased a public hospital, regardless of
129 whether such purchase occurred prior to the effective date of
130 this act.

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133 ===== T I T L E A M E N D M E N T =====

134 Remove the entire title and insert:

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136 A bill to be entitled

137 An act relating to the sale or lease of a county,
138 district, or municipal hospital; amending s. 155.40, F.S.;
139 providing conditions under which the sale of a public
140 hospital by a public agency to a private corporation or
141 other private entity is considered a complete sale of the
142 public agency's interest in the hospital; providing
143 construction; providing legislative findings; providing
144 applicability; providing an effective date.