

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, F.S.;  
 4           providing conditions under which the sale of a public  
 5           hospital by a public agency to a private corporation or  
 6           other private entity is considered a complete sale of the  
 7           public agency's interest in the hospital; providing  
 8           construction; providing legislative findings; providing  
 9           applicability; providing an effective date.

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

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 13           Section 1. Subsection (8) is added to section 155.40,  
 14 Florida Statutes, to read:

15           155.40 Sale or lease of county, district, or municipal  
 16 hospital.--

17           (8) (a) If a public hospital is sold by a public agency to  
 18 a private corporation or other private entity pursuant to this  
 19 section or pursuant to a special act of the Legislature and the  
 20 purchase agreement provides that:

21           1. The private corporation or other private entity  
 22 purchaser acquires 100 percent ownership in the hospital  
 23 enterprise;

24           2. The private corporation or other private entity  
 25 purchases the physical plant of the hospital facility and has  
 26 complete responsibility for the operation and maintenance of the

27 | facility, regardless of ownership of the underlying real  
 28 | property;  
 29 | 3. The public agency seller retains no control over  
 30 | decisionmaking or policymaking for the hospital;  
 31 | 4. The private corporation or other private entity  
 32 | purchaser receives no funding from the public agency seller  
 33 | other than by contract for services rendered to patients for  
 34 | whom the public agency seller has the responsibility to pay for  
 35 | hospital or medical care;  
 36 | 5. The public agency seller makes no substantial  
 37 | investment in or loans to the private entity;  
 38 | 6. The private corporation or other private entity  
 39 | purchaser was not created by the public entity seller; and  
 40 | 7. The private corporation or other private entity  
 41 | purchaser operates primarily for its own financial interests and  
 42 | not primarily for the interests of the public agency,  
 43 |  
 44 | then such a sale shall be considered a complete sale of the  
 45 | public agency's interest in the hospital.  
 46 | (b) A complete sale of a hospital as described in this  
 47 | subsection shall not be construed as:  
 48 | 1. A transfer of a governmental function from the county,  
 49 | district, or municipality to the private corporation or other  
 50 | private entity purchaser;  
 51 | 2. Constituting a financial interest of the public agency  
 52 | in the private corporation or other private entity purchaser;

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

55        4. Making the private corporation or other private entity  
56 purchaser an integral part of the public agency's decisionmaking  
57 process; or

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

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

80 other private entity operates primarily for its own financial  
81 interests as opposed to those of the public agency. The  
82 Legislature further finds that a complete sale of the hospital  
83 under such circumstances eliminates any argument that the  
84 private corporation or other private entity continues to perform  
85 any governmental or public function, that the public agency  
86 retains any financial interest in the private purchaser or the  
87 hospital, that the private purchaser is an integral part in the  
88 public agency's decisionmaking process, or that the private  
89 entity is an "agency" or is "acting on behalf of a public  
90 agency" as those terms are used in statute. The Legislature  
91 further finds that the recognition of such sales as being  
92 complete sales of the formerly public hospital to a private  
93 corporation or other private entity is a public necessity so  
94 that private entities that purchase public hospitals are allowed  
95 to operate without unnecessary public interference. Some recent  
96 court decisions, however, have found that a private corporation  
97 or other private entity that purchases a public hospital is  
98 still a public agency for some purposes and have failed to  
99 recognize that the public agency does not retain any control  
100 over the private entity or the formerly public hospital  
101 following the complete sale of a public hospital to a private  
102 corporation or other private entity. Therefore, the Legislature  
103 finds that it is a necessity to confirm its intent that a  
104 private corporation or other private entity that purchases a  
105 formerly public hospital through a complete sale is not a public  
106 agency for any purpose. To find otherwise would place such a

107 private corporation or other private entity that purchases a  
108 public hospital at a competitive disadvantage compared to other  
109 private entities that own private hospitals that were not  
110 formerly public hospitals and would serve as a disincentive for  
111 the purchase of a public hospital. Public agencies choose to  
112 sell their public hospitals to private corporations or other  
113 private entities when the public entity is no longer able to  
114 operate the hospital in a fiscally responsible manner and where  
115 taxpayers would otherwise be required to finance the operations  
116 of the hospital beyond indigent care. If a private corporation  
117 or other private entity that purchases a public hospital is  
118 treated as a public agency, then public agencies may find it  
119 difficult, if not impossible, to find a private corporation or  
120 other private entity that is willing to purchase a public  
121 hospital. This could force the public agency to close the  
122 hospital, which would result in a reduction in health care  
123 services to the public, or continue operating the hospital using  
124 public tax dollars to subsidize recurring losses. Neither of  
125 these options is in the best interest of the public. Thus, the  
126 Legislature finds that if a private corporation or other private  
127 entity purchases a public hospital and the purchase agreement  
128 for that hospital meets the requirements established under this  
129 act, regardless of whether the corporation had previously leased  
130 that public hospital, that private corporation or other private  
131 entity is not a public agency for any purpose and does not act  
132 on behalf of the public agency.

133 |           Section 3. This act shall take effect upon becoming a law  
134 | and shall apply to each private corporation or other private  
135 | entity that has purchased a public hospital, regardless of  
136 | whether such purchase occurred prior to the effective date of  
137 | this act.