



114164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2011	.	
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The Committee on Community Affairs (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (4) of section 155.40, Florida Statutes, are amended, subsections (5) through (8) are renumbered as subsections (14) through (17), respectively, and new subsections (5) through (13) are added to that section, to read:

155.40 Sale or lease of county, district, or municipal hospital; effect of sale.—

(1) In order for ~~that~~ citizens and residents of the state



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13 ~~to may~~ receive quality health care, any county, district, or
14 municipal hospital organized and existing under the laws of this
15 state, acting by and through its governing board, may ~~shall have~~
16 ~~the authority to~~ sell or lease such hospital to a for-profit or
17 not-for-profit Florida corporation, and enter into leases or
18 other contracts with a for-profit or not-for-profit Florida
19 corporation for the purpose of operating and managing such
20 hospital and any or all of its facilities of whatsoever kind and
21 nature. The term of any such lease, contract, or agreement and
22 the conditions, covenants, and agreements to be contained
23 therein shall be determined by the governing board of such
24 ~~county, district, or municipal~~ hospital. The governing board of
25 the hospital must find that the sale, lease, or contract is in
26 the best interests of the public and must state the basis of
27 such finding. The sale or lease of such hospital is subject to
28 approval by a circuit court. ~~If the governing board of a county,~~
29 ~~district, or municipal hospital decides to lease the hospital,~~
30 ~~it must give notice in accordance with paragraph (4) (a) or~~
31 ~~paragraph (4) (b).~~

32 (4) If ~~In the event~~ the governing board of a county,
33 district, or municipal hospital determines that it is no longer
34 in the public interest to own or operate such hospital and
35 elects to consider a sale or lease of the hospital to a third
36 party, the governing board must first determine whether there
37 are any qualified purchasers or lessees. In the process of
38 evaluating any potential purchasers or lessees ~~elects to sell or~~
39 ~~lease the hospital,~~ the board shall:

40 (a) ~~Negotiate the terms of the sale or lease with a for-~~
41 ~~profit or not-for-profit Florida corporation and Publicly~~



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42 advertise the meeting at which the proposed sale or lease will
43 be considered by the governing board of the hospital in
44 accordance with s. 286.0105; or

45 (b) Publicly advertise the offer to accept proposals in
46 accordance with s. 255.0525 and receive proposals from all
47 interested and qualified purchasers and lessees.

48
49 Any sale or lease must be for fair market value, and ~~any sale or~~
50 ~~lease~~ must comply with all applicable state and federal
51 antitrust laws. For the purposes of this section, the term "fair
52 market value" means the price that a seller is willing to accept
53 and a buyer is willing to pay on the open market and in an arm's
54 length transaction.

55 (5) A determination by a governing board to accept a
56 proposal for sale or lease must state, in writing, the findings
57 and basis for supporting the determination.

58 (a) The findings must include, but need not be limited to,
59 the governing board's determination that the proposal:

60 1. Represents fair market value.

61 2. Affects whether there will be a reduction or elimination
62 of ad valorem or other tax revenues to support the hospital.

63 3. Ensures that quality health care will continue to be
64 provided to all residents of the affected community,
65 particularly to the indigent, the uninsured, and the
66 underinsured.

67 4. Is otherwise in compliance with paragraph (9) (a).

68 (b) The findings must be accompanied by all information and
69 documents relevant to the governing board's determination,
70 including, but not limited to:



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- 71 1. The names and addresses of all parties to the
72 transaction.
- 73 2. The location of the hospital and all related facilities.
- 74 3. A description of the terms of all proposed agreements.
- 75 4. A copy of the proposed sale or lease agreement and any
76 related agreements, including, but not limited to, leases,
77 management contracts, service contracts, and memoranda of
78 understanding.
- 79 5. The estimated total value associated with the proposed
80 agreement and the proposed acquisition price and other
81 consideration.
- 82 6. Any valuations of the hospital's assets prepared during
83 the 3 years immediately preceding the proposed transaction date.
- 84 7. Any financial or economic analysis and report from any
85 expert or consultant retained by the governing board.
- 86 8. A fairness evaluation by an independent expert in such
87 transactions.
- 88 9. Copies of all other proposals and bids the governing
89 board may have received or considered in compliance with
90 subsection (4).
- 91 (6) Within 120 days before the anticipated closing date of
92 the proposed transaction, the governing board shall make
93 publicly available all findings and documents required under
94 subsection (5) and publish a notice of the proposed transaction
95 in one or more newspapers of general circulation in the county
96 in which the majority of the physical assets of the hospital are
97 located. The notice must include the names of the parties
98 involved and the means by which a person may submit written
99 comments about the proposed transaction to the governing board



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100 and may obtain copies of the findings and documents required
101 under subsection (5).

102 (7) Within 20 days after the date of publication of the
103 public notice, any interested person may submit to the governing
104 board a detailed written statement of opposition to the
105 transaction. If a written statement of opposition has been
106 submitted, the governing board or the proposed purchaser or
107 lessee may submit a written response to the interested party
108 within 10 days after the written statement of opposition due
109 date.

110 (8) A governing board of a county, district, or municipal
111 hospital may not enter into a sale or lease of a hospital
112 facility without first receiving approval from a circuit court.

113 (a) The governing board shall file a petition in a circuit
114 court seeking approval of the proposed transaction at least 30
115 days after publication of the notice of the proposed
116 transaction. The petition must be filed in the circuit in which
117 the majority of the physical assets of the hospital are located.

118 (b) The petition for approval filed by the governing board
119 must include all findings and documents required under
120 subsection (5) and certification by the governing board of
121 compliance with all requirements of this section.

122 (c) Circuit courts have jurisdiction to approve the sale or
123 lease of a county, district, or municipal hospital.

124 (9) Upon the filing of a petition for approval, the court
125 shall issue an order requiring all interested parties to appear
126 at a designated time and place within the circuit where the
127 petition is filed and show why the petition should not be
128 granted.



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129 (a) Before the date set for the hearing, the clerk shall
130 publish a copy of the order in one or more newspapers of general
131 circulation in the county in which the majority of the physical
132 assets of the hospital are located at least once each week for 2
133 consecutive weeks, commencing with the first publication, which
134 must be at least 20 days before the date set for the hearing. By
135 these publications, all interested parties are made parties
136 defendant to the action and the court has jurisdiction of them
137 to the same extent as if named as defendants in the petition and
138 personally served with process.

139 (b) Any interested person may become a party to the action
140 by moving against or pleading to the petition at or before the
141 time set for the hearing. At the hearing, the court shall
142 determine all questions of law and fact and make such orders as
143 will enable it to properly consider and determine the action and
144 render a final judgment with the least possible delay.

145 (10) Upon conclusion of all hearings and proceedings, the
146 court shall render a final judgment approving or denying the
147 proposed transaction. In reaching its final judgment, the court
148 shall determine whether:

149 (a) The proposed transaction is permitted by law.

150 (b) The proposed transaction unreasonably excludes a
151 potential purchaser or lessee on the basis of being a for-profit
152 or a not-for-profit Florida corporation.

153 (c) The governing board of the hospital publicly advertised
154 the meeting at which the proposed transaction was considered by
155 the board in compliance with s. 286.0105.

156 (d) The governing board of the hospital publicly advertised
157 the offer to accept proposals in compliance with s. 255.0525.



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158 (e) The governing board of the hospital exercised due
159 diligence in deciding to dispose of hospital assets, selecting
160 the proposed purchaser or lessee, and negotiating the terms and
161 conditions of the disposition.

162 (f) Any conflict of interest was disclosed, including, but
163 not limited to, conflicts of interest relating to members of the
164 governing board and experts retained by the parties to the
165 transaction.

166 (g) The seller or lessor will receive fair market value for
167 the assets.

168 (h) The acquiring entity has made an enforceable commitment
169 to ensure that quality health care will continue to be provided
170 to all residents of the affected community, in particular the
171 indigent, the uninsured, and the underinsured.

172 (i) The proposed transaction will result in a reduction or
173 elimination of ad valorem or other taxes used to support the
174 hospital.

175 (11) Any party to the action has the right to seek judicial
176 review in the appellate district where the petition for approval
177 was filed.

178 (a) All proceedings shall be instituted by filing a notice
179 of appeal or petition for review in accordance with the Florida
180 Rules of Appellate Procedure within 30 days after the date of
181 final judgment.

182 (b) In such judicial review, the reviewing court shall
183 affirm the judgment of the circuit court, unless the decision is
184 arbitrary, capricious, or not in compliance with this section.

185 (12) All costs shall be paid by the governing board, unless
186 an interested party contests the action, in which case the court



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187 may assign costs to the parties.

188 (13) Any sale or lease completed before March 9, 2011, is
189 not subject to this section. Any lease that contained, on March
190 9, 2011, an option to renew or extend that lease upon its
191 expiration is not subject to this section upon renewal or
192 extension on or after March 9, 2011.

193 Section 2. Section 395.3036, Florida Statutes, is amended
194 to read:

195 395.3036 Confidentiality of records and meetings of
196 corporations that lease public hospitals or other public health
197 care facilities.—The records of a private corporation that
198 leases a public hospital or other public health care facility
199 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
200 and s. 24(a), Art. I of the State Constitution, and the meetings
201 of the governing board of a private corporation are exempt from
202 s. 286.011 and s. 24(b), Art. I of the State Constitution if
203 ~~when~~ the public lessor complies with the public finance
204 accountability provisions of s. 155.40(14) ~~155.40(5)~~ with
205 respect to the transfer of any public funds to the private
206 lessee and if ~~when~~ the private lessee meets at least three of
207 the five following criteria:

208 (1) The public lessor that owns the public hospital or
209 other public health care facility was not the incorporator of
210 the private corporation that leases the public hospital or other
211 health care facility.

212 (2) The public lessor and the private lessee do not
213 commingle any of their funds in any account maintained by either
214 of them, other than the payment of the rent and administrative
215 fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.



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216 (3) Except as otherwise provided by law, the private lessee
217 is not allowed to participate, except as a member of the public,
218 in the decisionmaking process of the public lessor.

219 (4) The lease agreement does not expressly require the
220 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
221 286.011.

222 (5) The public lessor is not entitled to receive any
223 revenues from the lessee, except for rental or administrative
224 fees due under the lease, and the lessor is not responsible for
225 the debts or other obligations of the lessee.

226 Section 3. This act shall take effect January 1, 2012.

227

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

229 And the title is amended as follows:

230 Delete everything before the enacting clause
231 and insert:

232 A bill to be entitled
233 An act relating to the sale or lease of a county,
234 district, or municipal hospital; amending s. 155.40,
235 F.S.; providing that the sale or lease of a county,
236 district, or municipal hospital is subject to circuit
237 court approval; requiring the hospital governing board
238 to determine by certain public advertisements whether
239 there are qualified purchasers or lessees before the
240 sale or lease of such hospital; defining the term
241 "fair market value"; requiring the board to state in
242 writing specified criteria forming the basis of its
243 acceptance of a proposal for sale or lease of the
244 hospital; providing for publication of notice;



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245 authorizing submission of written statements of
246 opposition to a proposed transaction, and written
247 responses thereto, within a certain timeframe;
248 requiring the board to file a petition for approval
249 with the circuit court and receive approval before any
250 transaction is finalized; specifying information to be
251 included in such petition; providing for the circuit
252 court to issue an order requiring all interested
253 parties to appear before the court under certain
254 circumstances; requiring the clerk of the court to
255 publish the copy of the order in certain newspapers at
256 specified times; providing that certain parties are
257 made parties defendant to the action by the
258 publication of the order; granting the circuit court
259 jurisdiction to approve sales or leases of county,
260 district, or municipal hospitals based on specified
261 criteria; providing for a party to seek judicial
262 review; requiring that in judicial review the
263 reviewing court affirm the judgment of the circuit
264 court unless the decision is arbitrary, capricious, or
265 not in compliance with the act; requiring the board to
266 pay costs associated with the petition for approval
267 unless a party contests the action; providing an
268 exemption for certain sale or lease transactions
269 completed before a specified date; amending s.
270 395.3036, F.S.; conforming cross-references; providing
271 an effective date.