

By the Committee on Community Affairs; and Senators Garcia and Lynn

578-03770-11

20111448c1

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,  
4           F.S.; providing that the sale or lease of a county,  
5           district, or municipal hospital is subject to approval  
6           by the registered voters or by the circuit court;  
7           requiring the hospital governing board to determine by  
8           certain public advertisements whether there are  
9           qualified purchasers or lessees before the sale or  
10          lease of such hospital; defining the term "fair market  
11          value"; requiring the board to state in writing  
12          specified criteria forming the basis of its acceptance  
13          of a proposal for sale or lease of the hospital;  
14          providing for publication of notice; authorizing  
15          submission of written statements of opposition to a  
16          proposed transaction, and written responses thereto,  
17          within a certain timeframe; requiring the board to  
18          file a petition for approval with the circuit court  
19          and receive approval before any transaction is  
20          finalized; specifying information to be included in  
21          such petition; providing for the circuit court to  
22          issue an order requiring all interested parties to  
23          appear before the court under certain circumstances;  
24          requiring the clerk of the court to publish the copy  
25          of the order in certain newspapers at specified times;  
26          providing that certain parties are made parties  
27          defendant to the action by the publication of the  
28          order; granting the circuit court jurisdiction to  
29          approve sales or leases of county, district, or

578-03770-11

20111448c1

30 municipal hospitals based on specified criteria;  
31 providing for a party to seek judicial review;  
32 requiring that in judicial review the reviewing court  
33 affirm the judgment of the circuit court unless the  
34 decision is arbitrary, capricious, or not in  
35 compliance with the act; requiring the board to pay  
36 costs associated with the petition for approval unless  
37 a party contests the action; providing an exemption  
38 for certain sale or lease transactions completed  
39 before a specified date; amending s. 395.3036, F.S.;  
40 conforming cross-references; providing an effective  
41 date.

42  
43 Be It Enacted by the Legislature of the State of Florida:  
44

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

50 155.40 Sale or lease of county, district, or municipal  
51 hospital; effect of sale.—

52 (1) In order for ~~that~~ citizens and residents of the state  
53 to ~~may~~ receive quality health care, any county, district, or  
54 municipal hospital organized and existing under the laws of this  
55 state, acting by and through its governing board, may ~~shall have~~  
56 ~~the authority to~~ sell or lease such hospital to a for-profit or  
57 not-for-profit Florida corporation, and enter into leases or  
58 other contracts with a for-profit or not-for-profit Florida

578-03770-11

20111448c1

59 corporation for the purpose of operating and managing such  
60 hospital and any or all of its facilities of whatsoever kind and  
61 nature. The term of any such lease, contract, or agreement and  
62 the conditions, covenants, and agreements to be contained  
63 therein shall be determined by the governing board of such  
64 ~~county, district, or municipal~~ hospital. The governing board of  
65 the hospital must find that the sale, lease, or contract is in  
66 the best interests of the public and must state the basis of  
67 such finding. The sale or lease of such hospital is subject to  
68 approval by majority vote of the registered voters in the  
69 county, district, or municipality or, in the alternative,  
70 approval by a circuit court. ~~If the governing board of a county,~~  
71 ~~district, or municipal hospital decides to lease the hospital,~~  
72 ~~it must give notice in accordance with paragraph (4) (a) or~~  
73 ~~paragraph (4) (b).~~

74 (4) ~~If In the event~~ the governing board of a county,  
75 district, or municipal hospital determines that it is no longer  
76 in the public interest to own or operate such hospital and  
77 elects to consider a sale or lease of the hospital to a third  
78 party, the governing board must first determine whether there  
79 are any qualified purchasers or lessees. In the process of  
80 evaluating any potential purchasers or lessees ~~elects to sell or~~  
81 ~~lease the hospital,~~ the board shall:

82 (a) ~~Negotiate the terms of the sale or lease with a for-~~  
83 ~~profit or not-for-profit Florida corporation and Publicly~~  
84 advertise the meeting at which the proposed sale or lease will  
85 be considered by the governing board of the hospital in  
86 accordance with s. 286.0105; or

87 (b) Publicly advertise the offer to accept proposals in

578-03770-11

20111448c1

88 accordance with s. 255.0525 and receive proposals from all  
89 interested and qualified purchasers and lessees.

90

91 Any sale or lease must be for fair market value, ~~and any sale or~~  
92 ~~lease~~ must comply with all applicable state and federal  
93 antitrust laws. For the purposes of this section, the term "fair  
94 market value" means the price that a seller is willing to accept  
95 and a buyer is willing to pay on the open market and in an arm's  
96 length transaction.

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

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

102 1. Represents fair market value.

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

105 3. Ensures that quality health care will continue to be  
106 provided to all residents of the affected community,  
107 particularly to the indigent, the uninsured, and the  
108 underinsured.

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

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

113 1. The names and addresses of all parties to the  
114 transaction.

115 2. The location of the hospital and all related facilities.

116 3. A description of the terms of all proposed agreements.

578-03770-11

20111448c1

117 4. A copy of the proposed sale or lease agreement and any  
118 related agreements, including, but not limited to, leases,  
119 management contracts, service contracts, and memoranda of  
120 understanding.

121 5. The estimated total value associated with the proposed  
122 agreement and the proposed acquisition price and other  
123 consideration.

124 6. Any valuations of the hospital's assets prepared during  
125 the 3 years immediately preceding the proposed transaction date.

126 7. Any financial or economic analysis and report from any  
127 expert or consultant retained by the governing board.

128 8. A fairness evaluation by an independent expert in such  
129 transactions.

130 9. Copies of all other proposals and bids the governing  
131 board may have received or considered in compliance with  
132 subsection (4).

133 (6) Within 120 days before the anticipated closing date of  
134 the proposed transaction, the governing board shall make  
135 publicly available all findings and documents required under  
136 subsection (5) and publish a notice of the proposed transaction  
137 in one or more newspapers of general circulation in the county  
138 in which the majority of the physical assets of the hospital are  
139 located. The notice must include the names of the parties  
140 involved and the means by which a person may submit written  
141 comments about the proposed transaction to the governing board  
142 and may obtain copies of the findings and documents required  
143 under subsection (5).

144 (7) Within 20 days after the date of publication of the  
145 public notice, any interested person may submit to the governing

578-03770-11

20111448c1

146 board a detailed written statement of opposition to the  
147 transaction. If a written statement of opposition has been  
148 submitted, the governing board or the proposed purchaser or  
149 lessee may submit a written response to the interested party  
150 within 10 days after the written statement of opposition due  
151 date.

152 (8) A governing board of a county, district, or municipal  
153 hospital may not enter into a sale or lease of a hospital  
154 facility without first receiving approval by majority vote of  
155 the registered voters in the county, district, or municipality  
156 or, in the alternative, approval from a circuit court.

157 (a) The governing board shall file a petition in a circuit  
158 court seeking approval of the proposed transaction at least 30  
159 days after publication of the notice of the proposed  
160 transaction. The petition must be filed in the circuit in which  
161 the majority of the physical assets of the hospital are located.

162 (b) The petition for approval filed by the governing board  
163 must include all findings and documents required under  
164 subsection (5) and certification by the governing board of  
165 compliance with all requirements of this section.

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

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

173 (a) Before the date set for the hearing, the clerk shall  
174 publish a copy of the order in one or more newspapers of general

578-03770-11

20111448c1

175 circulation in the county in which the majority of the physical  
176 assets of the hospital are located at least once each week for 2  
177 consecutive weeks, commencing with the first publication, which  
178 must be at least 20 days before the date set for the hearing. By  
179 these publications, all interested parties are made parties  
180 defendant to the action and the court has jurisdiction of them  
181 to the same extent as if named as defendants in the petition and  
182 personally served with process.

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

189 (10) Upon conclusion of all hearings and proceedings, the  
190 court shall render a final judgment approving or denying the  
191 proposed transaction. In reaching its final judgment, the court  
192 shall determine whether:

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

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

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

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

202 (e) The governing board of the hospital exercised due  
203 diligence in deciding to dispose of hospital assets, selecting

578-03770-11

20111448c1

204 the proposed purchaser or lessee, and negotiating the terms and  
205 conditions of the disposition.

206 (f) Any conflict of interest was disclosed, including, but  
207 not limited to, conflicts of interest relating to members of the  
208 governing board and experts retained by the parties to the  
209 transaction.

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

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

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

219 (11) Any party to the action has the right to seek judicial  
220 review in the appellate district where the petition for approval  
221 was filed.

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

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

229 (12) All costs shall be paid by the governing board, unless  
230 an interested party contests the action, in which case the court  
231 may assign costs to the parties.

232 (13) Any sale or lease completed before March 9, 2011, is



578-03770-11

20111448c1

233 not subject to this section. Any lease that contained, on March  
 234 9, 2011, an option to renew or extend that lease upon its  
 235 expiration is not subject to this section upon renewal or  
 236 extension on or after March 9, 2011.

237 Section 2. Section 395.3036, Florida Statutes, is amended  
 238 to read:

239 395.3036 Confidentiality of records and meetings of  
 240 corporations that lease public hospitals or other public health  
 241 care facilities.—The records of a private corporation that  
 242 leases a public hospital or other public health care facility  
 243 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)  
 244 and s. 24(a), Art. I of the State Constitution, and the meetings  
 245 of the governing board of a private corporation are exempt from  
 246 s. 286.011 and s. 24(b), Art. I of the State Constitution if  
 247 ~~when~~ the public lessor complies with the public finance  
 248 accountability provisions of s. 155.40(14) ~~155.40(5)~~ with  
 249 respect to the transfer of any public funds to the private  
 250 lessee and if ~~when~~ the private lessee meets at least three of  
 251 the five following criteria:

252 (1) The public lessor that owns the public hospital or  
 253 other public health care facility was not the incorporator of  
 254 the private corporation that leases the public hospital or other  
 255 health care facility.

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

260 (3) Except as otherwise provided by law, the private lessee  
 261 is not allowed to participate, except as a member of the public,

578-03770-11

20111448c1

262 in the decisionmaking process of the public lessor.

263 (4) The lease agreement does not expressly require the  
264 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and  
265 286.011.

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

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