

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 619 Sale or Lease of a County, District, or Municipal Hospital

**SPONSOR(S):** Community & Military Affairs Subcommittee; Health & Human Services Quality Subcommittee; Hooper

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	10 Y, 3 N, As CS	Mathieson	Calamas
2) Community & Military Affairs Subcommittee	8 Y, 4 N, As CS	Duncan	Hoagland
3) Justice Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

County, district and municipal hospitals are created pursuant to a special enabling act, rather than a general act. The special act sets out the hospital authority's power to levy taxes to support the maintenance of the hospital, the framework for the governing board and defines the ability to issue bonds.

The process for the sale or lease of a county, district or municipal hospital is established by s. 155.40, F.S. Currently, the authority to make this decision and to negotiate such a transaction is given to the governing board that is selling the hospital. A hospital can be sold or leased to for-profit or a not-for-profit Florida corporation, and must be in the best interest of the public.

This bill amends s. 155.40, F.S., to require that the governing board of a county, district or municipal hospital, prior to completing a proposed sale or lease of the hospital, receive approval from a circuit court.

The bill:

- Requires certain findings by the hospital governing board;
- Requires public notice by the hospital governing board;
- Requires approval by a circuit court prior to the sale or lease of the hospital;
- Provides for certain content for petitions to the court;
- Allows interested parties to participate in the court approval process;
- Requires certain findings by the court; and
- Allows for appeal.

The bill exempts a county, district, or municipal hospital that has not received any tax support from the public notice and circuit court process requirements established in the bill. The term "tax support" means ad valorem or other tax revenues paid directly from a county, district, or municipal taxing authority to a hospital without a corresponding exchange of goods or services within the five years before the effective date of a proposed lease or sale.

The bill has an indeterminate fiscal impact on the Office of the State Courts Administrator. Costs associated with the petition are borne by the hospital board, unless a party contests.

The bill provides an effective date of January 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

County, district<sup>1</sup> and municipal hospitals are created pursuant to a special enabling act, rather than a general act.<sup>2</sup> The special act sets out the hospital authority's power to levy taxes to support the maintenance of the hospital, the framework for the governing board and defines the ability to issue bonds. There are currently 31 hospitals with various forms of county, district or municipal ownership in Florida.<sup>3</sup>

The process for the sale or lease of a county, district or municipal hospital is established by s. 155.40, F.S. Currently, the authority to make this decision and to negotiate such a transaction is given to the governing board that is selling the hospital.<sup>4</sup> A hospital can be sold or leased to for-profit or a not-for-profit Florida corporation, and must be in the best interest of the public.<sup>5</sup> The board must publically advertise both the meeting at which the proposed sale or lease will be discussed,<sup>6</sup> and the offer to accept proposals from all interested and qualified purchasers.<sup>7</sup> Any lease, contract or agreement must contain the following terms:

- The articles of incorporation of the corporation are subject to approval of the board.
- A not-for-profit corporation must become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provision for orderly transition of the operation and management of the facilities.
- The facility returns to the county, district or municipality on termination of the contract, lease or agreement.
- Provide for the continued treatment of indigent patients pursuant to law.<sup>8</sup>

For the sale or lease to be considered a complete sale of the public agency's interest in the hospital the purchasing entity must:

- Acquire 100 per cent ownership of the hospital enterprise;
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance thereof, regardless of the underlying ownership of the real property;
- Not receive public funding, other than by contract for the payment of medical services provided to patients for which the public agency has responsibility to pay;
- Take control of decision-making or policy-making for the hospital from the public agency seller;
- Not receive substantial investment or loans from the seller;
- Not be created by the public agency seller; and
- Primarily operate for its interests and not those of the public agency seller.<sup>9</sup>

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<sup>1</sup> Hospital districts are created under the statutory authority provided in s. 189.404, F.S., and a special act.

<sup>2</sup> S. 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 per cent of resident freeholders, may levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. S. 155.05, F.S., gives a county the ability to found a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.

<sup>3</sup> This number includes psychiatric hospitals. Agency for Health Care Administration email March 3, 2011, on file with staff.

<sup>4</sup> S. 155.40(1), F.S.

<sup>5</sup> S. 155.40(1), F.S.

<sup>6</sup> In accordance with s. 286.0105, F.S.

<sup>7</sup> In accordance with s. 255.0525, F.S.

<sup>8</sup> Specifically, the Florida Health Care Responsibility Act, ss. 154.301-154.316, F.S., and ch. 87-92, Laws of Florida. S. 155.40(2), F.S.

<sup>9</sup> S. 155.40(8)(a), F.S.

The State courts currently do not have a role in the sale or lease process of a county, district or municipal hospital, unless the transaction is challenged in litigation. The Office of the Attorney General (OAG) reviews the proposed transaction with regard to any anti-competitive issues.<sup>10</sup> The OAG has charitable trust authority to review transactions that would implicate trusts where the public hospital entity was the beneficiary.<sup>11</sup>

### **Effect of the Proposed Changes**

The bill requires the governing board of a county, district or municipal hospital to submit a petition for approval of sale or lease to the circuit court, to be approved, prior to the completion of the proposed sale or lease of a hospital. The bill amends s. 155.40, F.S., detailing the process to determine the approval of a sale or lease.

The bill amends s. 155.40(4), F.S., requiring the hospital governing board to determine operating the hospital is no longer in the public's interest and to ascertain whether there are any interested and qualified purchasers or lessees. The bill adds that the sale or lease must be for "fair market value." This is defined as the "price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction."<sup>12</sup>

The governing board is required to determine, in writing, the basis for choosing a particular proposal. This must include:

- A determination that the proposed transaction represents fair market value;
- A determination of whether there will be a reduction or elimination of ad valorem or other taxes used to support the hospital;
- A determination that the quality of care will not be affected, especially in relation to indigent, uninsured and underinsured;
- The details of the facilities and all parties to the transaction;
- A description of the terms of all proposed agreements;
- An estimate of the total value associated with the proposed agreement, including available valuations from the last three years of the hospital's assets;
- Any available financial or economic analysis prepared by experts that the board retained;
- An independent fairness evaluation; and
- Copies of all other proposals and bids received.

The bill requires the hospital board to publish this information not later than 120 days before the anticipated closing for the proposed transaction. Notice shall be published in one or more newspapers of general circulation in the county where the majority of the hospital's assets are located. The notice must provide a mechanism for public comment about the proposed transaction to the board, for up to 20 days after the date of publication. If a statement of opposition is received, the governing board or proposed purchaser or lessee has 10 days to respond in writing.

The bill provides that no sooner than 30 days after the publication of notice, the hospital board shall file a petition for approval in the circuit court in which the majority of the hospital's assets are located. The

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<sup>10</sup> The OAG is responsible for enforcing state and federal antitrust laws, and the anti-trust division works to stop violations that harm competition and adversely impact the citizens of Florida. Ch. 542, F.S., provides the OAG with the authority to bring actions against individuals or entities that commit state or federal antitrust violations, including bid-rigging, price-fixing, market or contract allocation, and monopoly-related actions. See ch. 542, F.S.

<sup>11</sup> Pursuant to assert the rights of qualified beneficiaries with respect to charitable trusts, s. 736.0110(3), F.S., and with respect to the dissolution of not-for-profit corporations, ss. 617.1420, 617.1430, 617.2003, F.S. The OAG notes that the review under this authority varies considerably from transaction to transaction, and can be very labor intensive. This is especially the case in transactions that involve mergers of competitors within the same market. Email from the OAG on file with House Health and Human Services Quality Subcommittee staff. March 18, 2011.

<sup>12</sup> An "arm's length transaction" is a transaction in which the buyer and the seller have no significant, prior relationship and neither party has an incentive to act against his or her own interest. The negotiations for an arm's length transaction result in the arm's length price, which is almost always close to the market value of the asset being sold. <http://financial-dictionary.thefreedictionary.com> (last visited March 30, 2011).

bill directs the court to issue an order that would require all interested parties to appear at a specified date and time and show why the petition should not be granted. The order is to be published at least once a week for two consecutive weeks in one or more major newspapers, not less than 20 days prior to the hearing. Unless the petition is contested, the hospital board bears the expense.

The bill provides that any interested party may become a party to the action by moving against or pleading to the petition for approval. The circuit court shall hold a hearing to determine all questions of law and fact, rendering a final judgment that either approves or denies a proposed transaction.

The bill provides that the court shall determine that the transaction:

- Is permitted by law;
- Does not discriminate against a potential purchaser or lessee on the basis of being a for-profit or not-for-profit Florida corporation;
- Complied with the notice provisions;
- Was made with the exercise of due diligence by the board;
- Disclosed board conflicts of interest;
- Reflects fair market value;
- Makes an enforceable commitment to the continuation of quality care for all residents, and especially, the indigent, uninsured and underinsured; and
- Will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

The bill provides that any party to the action has the right to seek judicial review in the appellate district where it was filed, and will be governed by the Florida Rules of Appellate Procedure. Any interested party seeking review must file within 30 days of the final judgment. The standard of review that the Appellate Court shall use on appeal is that the decision is no arbitrary, capricious, or not in compliance with s. 155.40, F.S.

The bill provides that any sale or lease completed before March 9, 2011, is not subject to the requirements of these provisions. Additionally, any lease that contained, on March 9, 2011, an option to renew or extend that lease upon its expiration date is not subject to these provisions upon any renewal or extension on or after March 9, 2011.

Additionally, the bill exempts a county, district, or municipal hospital that has not received any tax support from the public notice and circuit court process requirements established in subsections (6) – (12) of the bill. The term “tax support” means ad valorem or other tax revenues paid directly from a county, district, or municipal taxing authority to a hospital without a corresponding exchange of goods or services within the five years before the effective date of a proposed lease or sale. The following public hospitals are exempt from the public notice and circuit court process requirements:<sup>13</sup>

- Lee Memorial Hospital (Lee County).
- Bay Medical Center (Bay County).
- Parrish Medical Center (Brevard County).
- Health Central (Orange County).
- Ed Fraser Memorial Hospital (Baker County).
- Jackson County Hospital (Jackson County).
- Doctors Memorial Hospital (Holmes County).
- Munroe Regional (Marion County).

The bill does not alter the OAG’s duty in relation to charitable trusts, and the transaction must still be reviewed for anti-competitive issues pursuant to ch. 542, F.S., and s. 736.0110(3), F.S.

## B. SECTION DIRECTORY:

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<sup>13</sup> Agency for Health Care Administration, email to House Community & Military Affairs Subcommittee staff, April 4, 2011.

- Section 1:** Amends s. 155.40, F.S., relating to sale or lease of county, district or municipal hospitals; effect of sale; and providing an exemption for county, district, or municipal hospitals that receive no tax support.
- Section 2:** Amends s. 395.3036, F.S., relating to confidentiality of records of meetings of corporations that lease public hospitals or other public health care facilities.
- Section 3:** Provides an effective date of January 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate fiscal impact on state courts to review proposed transaction for the sale or lease of a county, municipal or district hospital. However, the bill provides for the ability to assess costs to either the hospital board or a contesting party.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Prospective purchasers or lessees may be required to pay costs if they oppose the proposed transaction. The sale or lease of a hospital could be delayed by this oversight process.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Several terms and standards in the bill could subject the statute to judicial interpretation. These include: a “fairness evaluation,” and non-discriminatory decision making.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2011, the Health and Human Services Quality Subcommittee adopted a strike-all amendment to HB 619. The amendment:

- Creates jurisdiction for circuit courts to approve the sale of a county, district or municipal hospital, rather than the OAG.
- Specifies what the board shall include a petition for approval to the circuit court, and specifies timelines for notice.
- Provides for public comment, and for people to become parties to the action – either in support or opposition.
- Provides that the governing board of the hospital shall bear the cost of review, unless the action is contested.
- Specifies what the court shall examine, and report on for its judgment.
- Provides the ability for a party to appeal a judgment.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

On April 1, 2011, the Community & Military Affairs Subcommittee adopted 2 amendments to CS/HB 619:

Amendment 1 (with title amendment):

- Exempts a county, district, or municipal hospital that has not received any tax support from the following the public notice and circuit court requirements established in the bill.
- Defines the term “tax support,” which means ad valorem or other tax revenues paid directly from a county, district, or municipal taxing authority to a hospital without a corresponding exchange of goods or services within the five years before the effective date of a proposed lease or sale.
- Changes the effective date of the bill from July 1, 2011 to January 1, 2012.

Amendment 2 provides that the sale or lease of a county, district, or municipal hospital is subject to the approval by a circuit court, unless otherwise exempt.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.