

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 619 Sale or Lease of a County, District, or Municipal Hospital
SPONSOR(S): Health & Human Services Committee; Community & Military Affairs Subcommittee; Health & Human Services Quality Subcommittee; Hooper and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/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) Judiciary Committee	10 Y, 8 N	Thomas	Havlicak
4) Health & Human Services Committee	11 Y, 5 N, As CS	Mathieson	Gormley

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 in 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 a 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, or, if provided for in the hospital charter, by a referendum. The bill:

- Requires certain findings by the hospital governing board;
- Requires public notice by the hospital governing board;
- 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.

A county, district, or municipal hospital that has not received tax support within the last five years is exempt from the circuit court process requirements established in the bill.

The bill has an indeterminate fiscal impact on the courts. 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, district¹ and municipal hospitals are created pursuant to a special enabling act, rather than a general act.² 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.³

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.⁴ A hospital can be sold or leased to a for-profit or a not-for-profit Florida corporation, and must be in the best interest of the public.⁵ The board must publically advertise both the meeting at which the proposed sale or lease will be discussed,⁶ and the offer to accept proposals from all interested and qualified purchasers.⁷ 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.⁸

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.⁹

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

² Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 per cent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish 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.

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

⁴ Section 155.40(1), F.S.

⁵ *Id.*

⁶ In accordance with s. 286.0105, F.S.

⁷ In accordance with s. 255.0525, F.S.

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

⁹ Section 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.¹⁰ The OAG has charitable trust authority to review transactions that would implicate trusts where the public hospital entity was the beneficiary.¹¹

Effect of the Proposed Changes

The bill amends s. 155.40, F.S., detailing the process to determine the approval of a sale or lease. 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. However, if a hospital's charter provides that a referendum is required to change ownership, that the governing board shall hold such a referendum instead of seeking approval from the circuit court.

The bill amends s. 155.40(4), F.S., requiring the hospital governing board to determine that 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."¹² If the board determines that a sale or lease is for less than fair market value, it must provide a written explanation as to why this is in the public interest.

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, and if not, an explanation as to why it does not;
- 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, that there will be a continuation of existing programs by the potential purchaser or lessee, 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.

¹⁰ 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. Chapter 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.

¹¹ The OAG may assert the rights of qualified beneficiaries with respect to charitable trusts pursuant to s. 736.0110(3), F.S., and with respect to the dissolution of not-for-profit corporations pursuant to ss. 617.1420, 617.1430, and 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 & Human Services Quality Subcommittee staff. March 18, 2011.

¹² "Arm's length transaction. Said of a transaction negotiated by unrelated parties, each acting in his or her self interest; the basis for a fair market value determination. A transaction in good faith in the ordinary course of business by parties with independent interests. Commonly applied in areas of taxation when there are dealings between related corporations, e.g. parent and subsidiary. The standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction. For example, if a corporation sells property to its sole shareholder for \$10,000, in testing whether \$10,000 is an "arm's length" price it must be ascertained for how much the corporation could have sold the property to a disinterested third party in a bargained transaction." Black's Law Dictionary (8th Ed. 2006).

The bill requires the hospital board to publish this information not later than 120 days before the anticipated closing for the proposed transaction. Notice must 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 must file a petition for approval in the circuit court in which the majority of the hospital's assets are located. The 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 an interested party may become a party to the action. An interested party is defined as a bidder, a taxpayer from the district and the governing board of the hospital. The circuit court must 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 an appeal within 30 days of the final judgment. The standard of review for the appellate court is that the decision is not 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, a county, district, or municipal hospital that has not received tax support within the last five years is exempt from the circuit court process approval requirements. Tax support is defined as receiving ad valorem or other tax revenues directly from a county, district, or municipal taxing authority to a hospital without a corresponding exchange of goods or services five years prior to the effective date of a proposed lease or sale. However, exempt hospitals are required to comply with the public notice provisions of the bill by publishing the details of the transaction prior to closing and receiving public comment. The following public hospitals are exempt from the circuit court process requirements:

- 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).¹³

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:

Section 1: Amends s. 155.40, F.S., relating to sale or lease of county, district or municipal hospitals; effect of sale.

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 transactions 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. However, more interested parties should be able to participate in the process of selling or leasing a public hospital creating more competition.

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.

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

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 & 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 in 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.

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

Amendment 1:

- Exempts a county, district, or municipal hospital that has not received any tax support from 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.

On April 25, 2011, the Health and Human Services Committee adopted 10 amendments to CS/CS/HB 619. The amendments:

- Made technical changes: that corrects a cross-reference and directory language.
- Require the board to explain the reason for selling or leasing a hospital for less than fair market value.
- Require that a hospital exempt from circuit court validation to comply with public notice provisions in the bill.
- Define the term “interested party.”
- Require the continuation of existing programs and services at the hospital by the acquiring entity.

- Provide that if the hospital charter requires a referendum for ownership changes that one be held instead of circuit court validation.
- Provide that an exempt hospital must meet the notice requirements of the bill when transacting a sale or lease.

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