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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 requiring approval from the Attorney General for the sale
5 or lease of a county, district, or municipal hospital;
6 requiring the hospital governing board to determine by
7 certain public advertisements whether there are qualified
8 purchasers or lessees before the sale or lease of such
9 hospital; defining the term "fair-market value"; requiring
10 the board to state in writing specified criteria forming
11 the basis of its acceptance of a proposal for sale or
12 lease of the hospital; requiring the board to submit a
13 request for, and receive, approval from the Attorney
14 General before entering into any contract for sale or
15 lease of a hospital; specifying information to be included
16 in such request; requiring the Attorney General to report
17 his or her findings and decision regarding the sale or
18 lease of a hospital based on specified criteria and to
19 publish notice of such decision in the Florida
20 Administrative Weekly; authorizing the Attorney General to
21 issue subpoenas or written interrogatories for certain
22 purposes and request certain assistance during the review
23 of a proposed sale or lease transaction; authorizing
24 submission of written statements of opposition to a
25 proposed transaction, and written responses thereto, to
26 the Attorney General within a certain timeframe; amending
27 s. 395.3036, F.S.; conforming a cross-reference; providing
28 an effective date.

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

Section 1. Subsections (1) and (4) of section 155.40, Florida Statutes, are amended, subsections (5) through (8) are renumbered as subsections (7) through (10), respectively, and new subsections (5) and (6) are added to that section, to read:

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

(1) In order that citizens and residents of the state may receive quality health care, any county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, shall have the authority to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities of whatsoever kind and nature. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of such county, district, or municipal hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public and must state the basis of such finding. The sale or lease of such hospital is subject to approval by the Attorney General. If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph

57 (4) (a) or paragraph (4) (b) .

58 (4) If ~~In the event~~ the governing board of a county,
 59 district, or municipal hospital determines that it is no longer
 60 in the public interest to own or operate such hospital and
 61 elects to consider a sale or lease to a third party, the
 62 governing board must first determine whether there are any
 63 interested and qualified purchasers or lessees by ~~elects to sell~~
 64 ~~or lease the hospital, the board shall:~~

65 (a) ~~Negotiate the terms of the sale or lease with a for-~~
 66 ~~profit or not-for-profit Florida corporation and Publicly~~
 67 advertising ~~advertise~~ the meeting at which the proposed sale or
 68 lease will be considered by the governing board of the hospital
 69 in accordance with s. 286.0105; or

70 (b) Publicly advertising ~~advertise~~ the offer to accept
 71 proposals in accordance with s. 255.0525 ~~and receive proposals~~
 72 ~~from all interested and qualified purchasers.~~

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 74 The governing board shall receive proposals from all interested
 75 and qualified purchasers or lessees. Any sale or lease must be
 76 for fair market value, and any sale or lease must comply with
 77 all applicable state and federal antitrust laws. For the
 78 purposes of this section, the term "fair market value" means the
 79 most probable price that the asset would bring in a competitive
 80 and open market under all conditions requisite to a fair sale or
 81 lease, with interested and qualified parties acting prudently
 82 and knowledgeably, and with a reasonable time allowed for the
 83 asset to be exposed in the open market.

84 (5) A determination by a governing board to accept a

85 proposal for sale or lease must state, in writing, the findings
 86 and basis supporting its determination. The findings must
 87 include, but need not be limited to, that the proposal:

- 88 (a) Represents fair market value.
- 89 (b) Constitutes the best use of the hospital facilities.
- 90 (c) Has a positive impact on the reduction or elimination
 91 of ad valorem or other tax revenues to support the hospital.
- 92 (d) Ensures that quality health care will continue to be
 93 provided to all residents of the affected community,
 94 particularly to the indigent, the uninsured, and the
 95 underinsured.

96 (6) A governing board of a county, district, or municipal
 97 hospital may not enter into a sale or lease of a hospital
 98 facility without receiving the approval of the Attorney General.

99 (a) The governing board must submit a request for
 100 approval, in writing, to the Attorney General within 120 days
 101 before the anticipated closing date of the proposed transaction.

102 The request for approval must include:

- 103 1. The name and address of all parties to the transaction.
- 104 2. The location of the hospital and all related
 105 facilities.
- 106 3. A description of the terms of all proposed agreements.
- 107 4. A copy of the proposed sale or lease agreement and any
 108 related agreements, including, but not limited to, leases,
 109 management contracts, service contracts, and memoranda of
 110 understanding.
- 111 5. The estimated total value associated with the proposed
 112 transaction and the proposed acquisition price and other

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113 considerations.

114 6. Any valuations of the hospital's assets prepared in the
115 3 years preceding the proposed transaction date.

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

118 8. A fairness evaluation by an independent expert in such
119 transactions.

120 9. Copies of all other proposals and bids the governing
121 board may have received or considered as required by subsection
122 (4).

123
124 After receipt of the information required under this paragraph,
125 the Attorney General may request additional information before
126 granting approval.

127 (b) Within 30 days after receipt of the request for
128 approval, the Attorney General shall publish a notice of the
129 proposed transaction in one or more newspapers of general
130 circulation in the county where the hospital is located and in
131 the Florida Administrative Weekly. Such notice must state that
132 the Attorney General has received notice of the proposed
133 transaction, the names of the parties involved, and the means by
134 which a person may submit written comments about the proposed
135 transaction to the Attorney General.

136 (c) During the course of any proceeding required under
137 this section, the Attorney General may issue in writing and
138 cause to be served by subpoena upon any person a demand that
139 such person appear before the Attorney General to give testimony
140 or produce documents as to any matters relevant to the scope of

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141 the review or may issue a written interrogatory, to be answered
142 under oath, as to any matter relevant to the scope of the review
143 and prescribing a return date that allows a reasonable time to
144 respond. If a person fails to comply with this paragraph, the
145 Attorney General may apply to any appropriate court to seek
146 enforcement of the subpoena or written interrogatory.

147 (d) The Attorney General may contract with experts or
148 consultants to assist in reviewing the proposed transaction,
149 including, but not limited to, assistance in independently
150 determining the fair market value of the proposed transaction.
151 The Attorney General shall submit any bills for such contracts
152 to the proposed purchaser or lessee. The proposed purchaser or
153 lessee must pay such bills within 30 days after receipt.

154 (e) Within 20 days after publication of notice under
155 paragraph (b), any interested person may submit to the Attorney
156 General a detailed written statement of opposition to the
157 proposed transaction. Upon expiration of such 20-day period, if
158 a written statement of opposition is submitted, the governing
159 board, the proposed purchaser or lessee, or any other person has
160 an additional 10 days in which to submit a written response to
161 the Attorney General. The Attorney General may request
162 additional information.

163 (f) Within 60 days after receipt of all information
164 required by this subsection, the Attorney General shall publish
165 a report of his or her findings and the decision to approve,
166 with or without modification, or deny the proposed transaction,
167 based upon a determination of whether the proposed transaction
168 is in substantial compliance with this subsection in the Florida

169 Administrative Weekly. In making that decision, the Attorney
 170 General must determine:
 171 1. That the proposed transaction is permitted by Florida
 172 statutory and common law.
 173 2. That the proposed transaction results in the best use
 174 of the hospital facilities and assets.
 175 3. That the proposed transaction does not discriminate
 176 among proposed purchasers or lessees by virtue of whether a
 177 proposed purchaser or lessee is a for-profit or a not-for-profit
 178 Florida corporation.
 179 4. Whether the governing board of the hospital publicly
 180 advertised the meeting at which the proposed transaction was
 181 considered by the board in compliance with s. 286.0105.
 182 5. Whether the governing board of the hospital publicly
 183 advertised the offer to accept proposals in compliance with s.
 184 255.0525.
 185 6. Whether the governing board of the hospital exercised
 186 due diligence in deciding to dispose of hospital assets,
 187 selecting the proposed purchaser or lessee, and negotiating the
 188 terms and conditions of the disposition.
 189 7. Whether the procedures used by the governing board of
 190 the hospital in making its decision to dispose of its assets
 191 were fair and reasonable.
 192 8. Whether any conflict of interest was disclosed,
 193 including, but not limited to, conflicts of interest regarding
 194 members of the governing board and experts retained by the
 195 parties to the transaction.
 196 9. Whether the seller or lessor will receive fair market

197 | value for the assets.

198 | 10. Whether charitable assets will be placed at
 199 | unreasonable risk if the transaction is financed in part by the
 200 | seller or lessor.

201 | 11. Whether the terms of any management or services
 202 | contract negotiated in conjunction with the transaction are fair
 203 | and reasonable.

204 | 12. Whether the proposed purchaser or lessee has made an
 205 | enforceable commitment to provide health care to the indigent,
 206 | the uninsured, and the underinsured and to provide benefits to
 207 | the affected community to promote improved health care.

208 | 13. Whether the proposed transaction will result in a
 209 | reduction or elimination of ad valorem or other taxes used to
 210 | support the hospital.

211 | Section 2. Section 395.3036, Florida Statutes, is amended
 212 | to read:

213 | 395.3036 Confidentiality of records and meetings of
 214 | corporations that lease public hospitals or other public health
 215 | care facilities.—The records of a private corporation that
 216 | leases a public hospital or other public health care facility
 217 | are confidential and exempt from the provisions of s. 119.07(1)
 218 | and s. 24(a), Art. I of the State Constitution, and the meetings
 219 | of the governing board of a private corporation are exempt from
 220 | s. 286.011 and s. 24(b), Art. I of the State Constitution when
 221 | the public lessor complies with the public finance
 222 | accountability provisions of s. 155.40 (7) ~~(5)~~ with respect to the
 223 | transfer of any public funds to the private lessee and when the
 224 | private lessee meets at least three of the five following

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225 criteria:

226 (1) The public lessor that owns the public hospital or
227 other public health care facility was not the incorporator of
228 the private corporation that leases the public hospital or other
229 health care facility.

230 (2) The public lessor and the private lessee do not
231 commingle any of their funds in any account maintained by either
232 of them, other than the payment of the rent and administrative
233 fees or the transfer of funds pursuant to subsection (2).

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

237 (4) The lease agreement does not expressly require the
238 lessee to comply with the requirements of ss. 119.07(1) and
239 286.011.

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

244 Section 3. This act shall take effect July 1, 2011.