

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 a circuit court for the sale or
5 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; providing for publication of
13 notice; authorizing submission of written statements of
14 opposition to a proposed transaction, and written
15 responses thereto, to the hospital governing board within
16 a certain timeframe; requiring the board to file a
17 petition for approval with the circuit court and receive
18 approval before any transaction is finalized; specifying
19 information to be included in such petition; providing for
20 the circuit court to issue an order requiring all
21 interested parties to appear before the court under
22 certain circumstances; granting the circuit court
23 jurisdiction to approve sales or leases of county,
24 district, or municipal hospitals based on specified
25 criteria; providing for a party to seek judicial review;
26 requiring the board to pay costs associated with the
27 petition for approval unless a party contests the action;
28 providing an exemption for certain sale or lease

29 transactions completed before a specified date; amending
 30 s. 395.3036, F.S.; conforming cross-references; providing
 31 an effective date.

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

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

40 155.40 Sale or lease of county, district, or municipal
 41 hospital; effect of sale.—

42 (1) In order that citizens and residents of the state may
 43 receive quality health care, any county, district, or municipal
 44 hospital organized and existing under the laws of this state,
 45 acting by and through its governing board, shall have the
 46 authority to sell or lease such hospital to a for-profit or not-
 47 for-profit Florida corporation, and enter into leases or other
 48 contracts with a for-profit or not-for-profit Florida
 49 corporation for the purpose of operating and managing such
 50 hospital and any or all of its facilities of whatsoever kind and
 51 nature. The term of any such lease, contract, or agreement and
 52 the conditions, covenants, and agreements to be contained
 53 therein shall be determined by the governing board of such
 54 county, district, or municipal hospital. The governing board of
 55 the hospital must find that the sale, lease, or contract is in
 56 the best interests of the public and must state the basis of

57 such finding. The sale or lease of such hospital is subject to
 58 approval by a circuit court. ~~If the governing board of a county,~~
 59 ~~district, or municipal hospital decides to lease the hospital,~~
 60 ~~it must give notice in accordance with paragraph (4) (a) or~~
 61 ~~paragraph (4) (b).~~

62 (4) In the event the governing board of a county,
 63 district, or municipal hospital determines that it is no longer
 64 in the public interest to own or operate such hospital and
 65 elects to consider a sale or lease to a third party, the
 66 governing board shall first determine whether there are any
 67 qualified purchasers or lessees. ~~In the process of evaluating~~
 68 ~~any potential purchasers or lessees~~ ~~elects to sell or lease the~~
 69 ~~hospital,~~ the board shall:

70 (a) ~~Negotiate the terms of the sale or lease with a for-~~
 71 ~~profit or not-for-profit Florida corporation and Publicly~~
 72 advertise the meeting at which the proposed sale or lease will
 73 be considered by the governing board of the hospital in
 74 accordance with s. 286.0105; or

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

78
 79 Any sale or lease must be for fair market value, and any sale or
 80 lease must comply with all applicable state and federal
 81 antitrust laws. For the purposes of this section, the term "fair
 82 market value" means the price that a seller is willing to accept
 83 and a buyer is willing to pay on the open market and in an
 84 arm's-length transaction.

85 (5) A determination by a governing board to accept a
86 proposal for sale or lease shall state, in writing, the findings
87 and basis supporting the determination.

88 (a) The findings shall include, but are not limited to,
89 the governing board's determination that the proposal:

90 1. Represents fair market value.

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

94 3. Ensures that quality health care will continue to be
95 provided to all residents of the affected community,
96 particularly to the indigent, the uninsured, and the
97 underinsured.

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

99 (b) The findings shall be accompanied by all information
100 and documents relevant to the governing board's determination,
101 including, but not limited to:

102 1. The name and address of all parties to the transaction.

103 2. The location of the hospital and all related
104 facilities.

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

106 4. A copy of the proposed sale or lease agreement and any
107 related agreements, including, but not limited to, leases,
108 management contracts, service contracts, and memoranda of
109 understanding.

110 5. The estimated total value associated with the proposed
111 agreement and the proposed acquisition price and other
112 consideration.

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

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

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

119 9. Copies of all other proposals and bids the governing
120 board may have received or considered in compliance with the
121 procedures required under subsection (4).

122 (6) Not later than 120 days before the anticipated closing
123 date of the proposed transaction, the governing board shall make
124 publicly available all findings and documents required under
125 subsection (5) and shall publish a notice of the proposed
126 transaction in one or more newspapers of general circulation in
127 the county in which the majority of the physical assets of the
128 hospital are located. The notice shall include the names of the
129 parties involved, the means by which persons may submit written
130 comments about the proposed transaction to the governing board,
131 and the means by which persons may obtain copies of the findings
132 and documents required under subsection (5).

133 (7) Within 20 days after the date of publication of public
134 notice, any interested person may submit to the governing board
135 a detailed written statement of opposition to the transaction.
136 When a written statement of opposition has been submitted, the
137 governing board or the proposed purchaser or lessee may submit a
138 written response to the interested party within 10 days after
139 the written statement of opposition due date.

140 (8) A governing board of a county, district, or municipal

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141 hospital may not enter into a sale or lease of a hospital
142 facility without first receiving approval from a circuit court.

143 (a) The governing board shall file a petition for approval
144 in a circuit court seeking approval of the proposed transaction
145 not sooner than 30 days after publication of notice of the
146 proposed transaction.

147 (b) Any such petition for approval filed by the governing
148 board shall include all findings and documents required under
149 subsection (5) and certification by the governing board of
150 compliance with all requirements of this section.

151 (c) Circuit courts shall have jurisdiction to approve the
152 sale or lease of a county, district, or municipal hospital. A
153 petition for approval shall be filed in the circuit in which the
154 majority of the physical assets of the hospital are located.

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

160 (a) Before the date set for the hearing, the clerk shall
161 publish a copy of the order in one or more newspapers of general
162 circulation in the county in which the majority of the physical
163 assets of the hospital are located at least once each week for 2
164 consecutive weeks, commencing with the first publication, which
165 shall not be less than 20 days before the date set for the
166 hearing. By this publication, all interested parties are made
167 parties defendant to the action and the court has jurisdiction
168 of them to the same extent as if named as defendants in the

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169 petition and personally served with process.

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

176 (10) Upon conclusion of all hearings and proceedings, the
177 court shall render a final judgment approving or denying the
178 proposed transaction. In reaching its final judgment, the court
179 shall determine whether:

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

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

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

187 (d) The governing board of the hospital publicly
188 advertised the offer to accept proposals in compliance with s.
189 255.0525.

190 (e) The governing board of the hospital exercised due
191 diligence in deciding to dispose of hospital assets, selecting
192 the proposed purchaser or lessee, and negotiating the terms and
193 conditions of the disposition.

194 (f) Any conflict of interest was disclosed, including, but
195 not limited to, conflicts of interest relating to members of the
196 governing board and experts retained by the parties to the

197 transaction.

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

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

204 (i) Whether the proposed transaction will result in a
 205 reduction or elimination of ad valorem or other taxes used to
 206 support the hospital.

207 (11) Any party to the action has the right to seek
 208 judicial review in the appellate district where the petition was
 209 filed.

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

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

217 (12) All costs shall be paid by the governing board,
 218 except when an interested party contests the action, in which
 219 case the court may assign costs to the parties at its
 220 discretion.

221 (13) Any sale or lease completed before March 9, 2011, is
 222 not subject to the requirements of this section. Any lease that
 223 contained, on March 9, 2011, an option to renew or extend that
 224 lease upon its expiration shall not be subject to this section

225 upon any renewal or extension on or after March 9, 2011.

226 Section 2. Section 395.3036, Florida Statutes, is amended
227 to read:

228 395.3036 Confidentiality of records and meetings of
229 corporations that lease public hospitals or other public health
230 care facilities.—The records of a private corporation that
231 leases a public hospital or other public health care facility
232 are confidential and exempt from the provisions of s. 119.07(1)
233 and s. 24(a), Art. I of the State Constitution, and the meetings
234 of the governing board of a private corporation are exempt from
235 s. 286.011 and s. 24(b), Art. I of the State Constitution when
236 the public lessor complies with the public finance
237 accountability provisions of s. 155.40 (14) ~~(5)~~ with respect to
238 the transfer of any public funds to the private lessee and when
239 the private lessee meets at least three of the five following
240 criteria:

241 (1) The public lessor that owns the public hospital or
242 other public health care facility was not the incorporator of
243 the private corporation that leases the public hospital or other
244 health care facility.

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

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

252 (4) The lease agreement does not expressly require the

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253 lessee to comply with the requirements of ss. 119.07(1) and
254 286.011.

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

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