

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

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29 transactions completed before a specified date; providing
30 an exemption for county, district, or municipal hospitals
31 that receive no tax support; defining the term "tax
32 support"; amending s. 395.3036, F.S.; conforming cross-
33 references; providing an effective date.

34

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

36

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

42 155.40 Sale or lease of county, district, or municipal
43 hospital; effect of sale.—

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

57 | the hospital must find that the sale, lease, or contract is in
 58 | the best interests of the public and must state the basis of
 59 | such finding. The sale or lease of such hospital is subject to
 60 | approval by a circuit court unless otherwise exempt under
 61 | subsection (14). ~~If the governing board of a county, district,~~
 62 | ~~or municipal hospital decides to lease the hospital, it must~~
 63 | ~~give notice in accordance with paragraph (4) (a) or paragraph~~
 64 | ~~(4) (b).~~

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

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

78 | (b) Publicly advertise the offer to accept proposals in
 79 | accordance with s. 255.0525 and receive proposals from all
 80 | interested and qualified purchasers and lessees.

81 |
 82 | Any sale or lease must be for fair market value, and any sale or
 83 | lease must comply with all applicable state and federal
 84 | antitrust laws. For the purposes of this section, the term "fair

85 market value" means the price that a seller is willing to accept
86 and a buyer is willing to pay on the open market and in an
87 arm's-length transaction.

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

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

93 1. Represents fair market value.

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

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

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

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

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

106 2. The location of the hospital and all related
107 facilities.

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

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

113 5. The estimated total value associated with the proposed
114 agreement and the proposed acquisition price and other
115 consideration.

116 6. Any valuations of the hospital's assets prepared in the
117 3 years immediately preceding the proposed transaction date.

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

120 8. A fairness evaluation by an independent expert in such
121 transactions.

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

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

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

141 written response to the interested party within 10 days after
142 the written statement of opposition due date.

143 (8) A governing board of a county, district, or municipal
144 hospital may not enter into a sale or lease of a hospital
145 facility without first receiving approval from a circuit court.

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

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

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

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

163 (a) Before the date set for the hearing, the clerk shall
164 publish a copy of the order in one or more newspapers of general
165 circulation in the county in which the majority of the physical
166 assets of the hospital are located at least once each week for 2
167 consecutive weeks, commencing with the first publication, which
168 shall not be less than 20 days before the date set for the

169 hearing. By this publication, all interested parties are made
170 parties defendant to the action and the court has jurisdiction
171 of them to the same extent as if named as defendants in the
172 petition and personally served with process.

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

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

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

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

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

190 (d) The governing board of the hospital publicly
191 advertised the offer to accept proposals in compliance with s.
192 255.0525.

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

197 (f) Any conflict of interest was disclosed, including, but
198 not limited to, conflicts of interest relating to members of the
199 governing board and experts retained by the parties to the
200 transaction.

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

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

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

210 (11) Any party to the action has the right to seek
211 judicial review in the appellate district where the petition was
212 filed.

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

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

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

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

225 not subject to the requirements of this section. Any lease that
 226 contained, on March 9, 2011, an option to renew or extend that
 227 lease upon its expiration shall not be subject to this section
 228 upon any renewal or extension on or after March 9, 2011.

229 (14) A county, district, or municipal hospital that has
 230 not received any tax support is exempt from the requirements of
 231 subsections (6)-(12). For the purposes of this section, the term
 232 "tax support" means ad valorem or other tax revenues paid
 233 directly from a county, district, or municipal taxing authority
 234 to a hospital without a corresponding exchange of goods or
 235 services within the 5 years before the effective date of a
 236 proposed lease or sale.

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 when
 247 the public lessor complies with the public finance
 248 accountability provisions of s. 155.40 (14) ~~(5)~~ with respect to
 249 the transfer of any public funds to the private lessee and when
 250 the private lessee meets at least three of the five following
 251 criteria:

252 (1) The public lessor that owns the public hospital or

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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
261 | lessee is not allowed to participate, except as a member of the
262 | public, 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.