

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 unless  
6           certain exemption or referendum approval applies;  
7           requiring the hospital governing board to determine by  
8           certain public advertisements whether there are qualified  
9           purchasers or lessees before the sale or lease of such  
10          hospital; defining the term "fair market value"; requiring  
11          the board to state in writing specified criteria forming  
12          the basis of its acceptance of a proposal for sale or  
13          lease of the hospital; providing for publication of  
14          notice; authorizing submission of written statements of  
15          opposition to a proposed transaction, and written  
16          responses thereto, to the hospital governing board within  
17          a certain timeframe; requiring the board to file a  
18          petition for approval with the circuit court and receive  
19          approval before any transaction is finalized; providing an  
20          exception; specifying information to be included in such  
21          petition; providing for the circuit court to issue an  
22          order requiring all interested parties to appear before  
23          the court under certain circumstances; defining the term  
24          "interested party"; granting the circuit court  
25          jurisdiction to approve sales or leases of county,  
26          district, or municipal hospitals based on specified  
27          criteria; providing for a party to seek judicial review;  
28          requiring the court to enter a final judgment; requiring

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29 | the board to accept or reject the proposal for sale or  
30 | lease; requiring the board to pay costs associated with  
31 | the petition for approval unless a party contests the  
32 | action; providing an exemption for certain sale or lease  
33 | transactions completed before a specified date; providing  
34 | an exemption for county, district, or municipal hospitals  
35 | that receive no tax support; defining the term "tax  
36 | support"; amending s. 395.3036, F.S.; conforming cross-  
37 | references; providing an effective date.

38 |  
39 | Be It Enacted by the Legislature of the State of Florida:

40 |  
41 | Section 1. Subsections (1) and (4) of section 155.40,  
42 | Florida Statutes, are amended, subsections (5) through (8) are  
43 | renumbered as subsections (15) through (18), respectively, and  
44 | new subsections (5) through (14) are added to that section, to  
45 | read:

46 | 155.40 Sale or lease of county, district, or municipal  
47 | hospital; effect of sale.—

48 | (1) In order that citizens and residents of the state may  
49 | receive quality health care, any county, district, or municipal  
50 | hospital organized and existing under the laws of this state,  
51 | acting by and through its governing board, shall have the  
52 | authority to sell or lease such hospital to a for-profit or not-  
53 | for-profit Florida corporation, and enter into leases or other  
54 | contracts with a for-profit or not-for-profit Florida  
55 | corporation for the purpose of operating and managing such  
56 | hospital and any or all of its facilities of whatsoever kind and

57 nature. The term of any such lease, contract, or agreement and  
58 the conditions, covenants, and agreements to be contained  
59 therein shall be determined by the governing board of such  
60 county, district, or municipal hospital. The governing board of  
61 the hospital must find that the sale, lease, or contract is in  
62 the best interests of the public and must state the basis of  
63 such finding. The sale or lease of such hospital is subject to  
64 approval by a circuit court unless otherwise exempt under  
65 subsection (14) or, for those hospitals that are required by  
66 their statutory charter to seek approval by referendum for any  
67 action which would result in the termination of the direct  
68 control of such hospital by its governing board, approval by  
69 such referendum. ~~If the governing board of a county, district,~~  
70 ~~or municipal hospital decides to lease the hospital, it must~~  
71 ~~give notice in accordance with paragraph (4) (a) or paragraph~~  
72 ~~(4) (b).~~

73 (4) In the event the governing board of a county,  
74 district, or municipal hospital determines that it is no longer  
75 in the public interest to own or operate such hospital and  
76 elects to consider a sale or lease to a third party, the  
77 governing board shall first determine whether there are any  
78 qualified purchasers or lessees. In the process of evaluating  
79 any potential purchasers or lessees ~~elects to sell or lease the~~  
80 ~~hospital,~~ the board shall:

81 (a) ~~Negotiate the terms of the sale or lease with a for-~~  
82 ~~profit or not-for-profit Florida corporation and Publicly~~  
83 advertise the meeting at which the proposed sale or lease will  
84 be considered by the governing board of the hospital in

85 accordance with s. 286.0105; or

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

89

90 Any sale or lease must be for fair market value, and any sale or  
91 lease must comply with all applicable state and federal  
92 antitrust laws. For the purposes of this section, the term "fair  
93 market value" means the price that a seller is willing to accept  
94 and a buyer is willing to pay on the open market and in an  
95 arm's-length transaction.

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

99 (a) The board shall develop findings and bases to support  
100 the determination of a balanced consideration of factors  
101 including, but not limited to, the following:

102 1. Whether the proposal represents fair market value, and  
103 if the proposal does not represent fair market value, a detailed  
104 explanation of why the public interest is served by the  
105 acceptance of less than fair market value.

106 2. Whether the proposal will result in a reduction or  
107 elimination of ad valorem or other tax revenues to support the  
108 hospital.

109 3. Whether the proposal includes an enforceable commitment  
110 that existing programs and services and quality health care will  
111 continue to be provided to all residents of the affected  
112 community, particularly to the indigent, the uninsured, and the

113 underinsured.

114 4. Whether the proposal is otherwise in compliance with  
115 subsections (6) and (7).

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

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

120 2. The location of the hospital and all related  
121 facilities.

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

123 4. A copy of the proposed sale or lease agreement and any  
124 related agreements, including, but not limited to, leases,  
125 management contracts, service contracts, and memoranda of  
126 understanding.

127 5. The estimated total value associated with the proposed  
128 agreement and the proposed acquisition price and other  
129 consideration.

130 6. Any valuations of the hospital's assets prepared in the  
131 3 years immediately preceding the proposed transaction date.

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

134 8. A fairness evaluation by an independent expert in such  
135 transactions.

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

139 (6) Not later than 120 days before the anticipated closing  
140 date of the proposed transaction, the governing board shall

141 publish a notice of the proposed transaction in one or more  
142 newspapers of general circulation in the county in which the  
143 majority of the physical assets of the hospital are located. The  
144 notice shall include the names of the parties involved, the  
145 means by which persons may submit written comments about the  
146 proposed transaction to the governing board, and the means by  
147 which persons may obtain copies of the findings and documents  
148 required under subsection (5).

149 (7) Within 20 days after the date of publication of public  
150 notice, any interested person may submit to the governing board  
151 a detailed written statement of opposition to the transaction.  
152 When a written statement of opposition has been submitted, the  
153 governing board or the proposed purchaser or lessee may submit a  
154 written response to the interested party within 10 days after  
155 the written statement of opposition due date.

156 (8) A governing board of a county, district, or municipal  
157 hospital may not enter into a sale or lease of a hospital  
158 facility without first receiving approval from a circuit court  
159 or, for those hospitals which are required by their statutory  
160 charter to seek approval by referendum for any action which  
161 would result in the termination of the direct control of such  
162 hospital by its governing board, approval by such referendum.

163 (a) The governing board shall file a petition for approval  
164 in a circuit court seeking approval of the proposed transaction  
165 not sooner than 30 days after publication of notice of the  
166 proposed transaction.

167 (b) Any such petition for approval filed by the governing  
168 board shall include all findings and documents required under

169 subsection (5) and certification by the governing board of  
170 compliance with all requirements of this section.

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

175 (9) Upon the filing of a petition for approval, the court  
176 shall issue an order requiring all interested parties to appear  
177 at a designated time and place within the circuit where the  
178 petition is filed and show why the petition should or should not  
179 be granted. For purposes of this section, the term "interested  
180 party" means any party submitting a proposal for sale or lease  
181 of the county, district, or municipal hospital; any taxpayer  
182 from the county, district, or municipality in which the majority  
183 of the physical assets of the hospital are located; and the  
184 governing board.

185 (a) Before the date set for the hearing, the clerk shall  
186 publish a copy of the order in one or more newspapers of general  
187 circulation in the county in which the majority of the physical  
188 assets of the hospital are located at least once each week for 2  
189 consecutive weeks, commencing with the first publication, which  
190 shall not be less than 20 days before the date set for the  
191 hearing. By this publication, all interested parties are made  
192 parties defendant to the action and the court has jurisdiction  
193 of them to the same extent as if named as defendants in the  
194 petition and personally served with process.

195 (b) Any interested party may become a party to the action  
196 by moving against or pleading to the petition at or before the

197 time set for the hearing. At the hearing, the court shall  
 198 determine all questions of law and fact and make such orders as  
 199 will enable it to properly consider and determine the action and  
 200 render a final judgment with the least possible delay.

201 (10) Upon conclusion of all hearings and proceedings, and  
 202 upon consideration of all evidence presented, the court shall  
 203 render a final judgment approving or denying the proposed  
 204 transaction and shall order the governing board to either accept  
 205 or reject the proposal for sale or lease of the county,  
 206 district, or municipal hospital. In reaching its final judgment,  
 207 the court shall determine whether:

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

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

212 (c) The governing board of the hospital publicly  
 213 advertised the meeting at which the proposed transaction was  
 214 considered by the board in compliance with ss. 286.0105 and  
 215 286.011.

216 (d) The governing board of the hospital publicly  
 217 advertised the offer to accept proposals in compliance with s.  
 218 255.0525.

219 (e) The governing board of the hospital exercised due  
 220 diligence in deciding to dispose of hospital assets, selecting  
 221 the proposed purchaser or lessee, and negotiating the terms and  
 222 conditions of the disposition.

223 (f) Any conflict of interest was disclosed, including, but  
 224 not limited to, conflicts of interest relating to members of the



225 governing board and experts retained by the parties to the  
226 transaction.

227 (g) The seller or lessor will receive fair market value  
228 for the assets, or if the sale or lease represents less than  
229 fair market value, why the public interest will be served by  
230 acceptance of less than fair market value.

231 (h) The acquiring entity has made an enforceable  
232 commitment that existing programs and services, and quality  
233 health care, will continue to be provided to all residents of  
234 the affected community, particularly to the indigent, the  
235 uninsured, and the underinsured.

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

239 (11) Any party to the action has the right to seek  
240 judicial review in the appellate district where the petition was  
241 filed.

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

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

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

253       (13) Any sale or lease completed before March 9, 2011, is  
 254 not subject to the requirements of this section. Any lease that  
 255 contained, on March 9, 2011, an option to renew or extend that  
 256 lease upon its expiration shall not be subject to this section  
 257 upon any renewal or extension on or after March 9, 2011.

258       (14) A county, district, or municipal hospital that has  
 259 not received any tax support is exempt from the requirements of  
 260 subsections (8)-(12). For the purposes of this section, the term  
 261 "tax support" means ad valorem or other tax revenues paid  
 262 directly from a county, district, or municipal taxing authority  
 263 to a hospital without a corresponding exchange of goods or  
 264 services within the 5 years before the effective date of a  
 265 proposed lease or sale.

266       Section 2. Section 395.3036, Florida Statutes, is amended  
 267 to read:

268       395.3036 Confidentiality of records and meetings of  
 269 corporations that lease public hospitals or other public health  
 270 care facilities.—The records of a private corporation that  
 271 leases a public hospital or other public health care facility  
 272 are confidential and exempt from the provisions of s. 119.07(1)  
 273 and s. 24(a), Art. I of the State Constitution, and the meetings  
 274 of the governing board of a private corporation are exempt from  
 275 s. 286.011 and s. 24(b), Art. I of the State Constitution when  
 276 the public lessor complies with the public finance  
 277 accountability provisions of s. 155.40(15)~~(5)~~ with respect to  
 278 the transfer of any public funds to the private lessee and when  
 279 the private lessee meets at least three of the five following  
 280 criteria:

281 (1) The public lessor that owns the public hospital or  
 282 other public health care facility was not the incorporator of  
 283 the private corporation that leases the public hospital or other  
 284 health care facility.

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

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

292 (4) The lease agreement does not expressly require the  
 293 lessee to comply with the requirements of ss. 119.07(1) and  
 294 286.011.

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

299 Section 3. This act shall take effect January 1, 2012.