

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

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

37 |

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

39 |

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

45 | 155.40 Sale or lease of county, district, or municipal
 46 | hospital; effect of sale.—

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

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

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

80 | (a) ~~Negotiate the terms of the sale or lease with a for-~~
81 | ~~profit or not-for-profit Florida corporation and Publicly~~
82 | advertise the meeting at which the proposed sale or lease will
83 | be considered by the governing board of the hospital in
84 | accordance with s. 286.0105; or

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

88
89 Any sale or lease must be for fair market value, and any sale or
90 lease must comply with all applicable state and federal
91 antitrust laws. For the purposes of this section, the term "fair
92 market value" means the price that a seller is willing to accept
93 and a buyer is willing to pay on the open market and in an
94 arm's-length transaction, which includes any benefit that the
95 public would receive in connection with the sale or lease.

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,
103 which includes an explanation of why the public interest is
104 served by the proposed transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

138 (6) Not later than 120 days before the anticipated closing
139 date of the proposed transaction, the governing board shall
140 publish a notice of the proposed transaction in one or more

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

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

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

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

166 (b) Any such petition for approval filed by the governing
167 board shall include all findings and documents required under
168 subsection (5) and certification by the governing board of

169 compliance with all requirements of this section.

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

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

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

194 (b) Any interested party may become a party to the action
195 by moving against or pleading to the petition at or before the
196 time set for the hearing. At the hearing, the court shall

197 determine all questions of law and fact and make such orders as
198 will enable it to properly consider and determine the action and
199 render a final judgment with the least possible delay.

200 (10) Upon conclusion of all hearings and proceedings, and
201 upon consideration of all evidence presented, the court shall
202 render a final judgment as to whether the governing board
203 complied with the process provided in this section. In reaching
204 its final judgment, the court shall determine whether:

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

206 (b) The governing board reviewed all proposals.

207 (c) The governing board publicly advertised the meeting at
208 which the proposed transaction was considered by the board in
209 compliance with ss. 286.0105 and 286.011.

210 (d) The governing board publicly advertised the offer to
211 accept proposals in compliance with s. 255.0525.

212 (e) The governing board did not act arbitrarily and
213 capriciously in making the determination to sell or lease the
214 hospital assets, selecting the proposed purchaser or lessee, and
215 negotiating the terms of the sale or lease.

216 (f) Any conflict of interest was disclosed, including, but
217 not limited to, conflicts of interest relating to members of the
218 governing board and experts retained by the parties to the
219 transaction.

220 (g) The seller or lessor will receive fair market value
221 for the assets, which includes an explanation of why the public
222 interest is served by the proposed transaction.

223 (h) The governing board incorporated a provision in the
224 sale or lease requiring the acquiring entity to continue to

225 provide existing programs and services and quality health care
226 to all residents of the affected community, particularly to the
227 indigent, the uninsured, and the underinsured.

228 (i) The proposed transaction will result in a reduction or
229 elimination of ad valorem or other taxes used to support the
230 hospital.

231 (11) Any party to the action has the right to seek
232 judicial review in the appellate district where the petition was
233 filed.

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

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

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

245 (13) Any sale or lease completed before March 9, 2011, is
246 not subject to the requirements of this section. Any lease that
247 contained, on March 9, 2011, an option to renew or extend that
248 lease upon its expiration shall not be subject to this section
249 upon any renewal or extension on or after March 9, 2011.

250 (14) A county, district, or municipal hospital that has
251 not received any tax support is exempt from the requirements of
252 subsections (8)-(12). For the purposes of this section, the term

253 "tax support" means ad valorem or other tax revenues paid
 254 directly from a county, district, or municipal taxing authority
 255 to a hospital without a corresponding exchange of goods or
 256 services within the 5 years before the effective date of a
 257 proposed lease or sale.

258 Section 2. Section 395.3036, Florida Statutes, is amended
 259 to read:

260 395.3036 Confidentiality of records and meetings of
 261 corporations that lease public hospitals or other public health
 262 care facilities.—The records of a private corporation that
 263 leases a public hospital or other public health care facility
 264 are confidential and exempt from the provisions of s. 119.07(1)
 265 and s. 24(a), Art. I of the State Constitution, and the meetings
 266 of the governing board of a private corporation are exempt from
 267 s. 286.011 and s. 24(b), Art. I of the State Constitution when
 268 the public lessor complies with the public finance
 269 accountability provisions of s. 155.40(15)~~(5)~~ with respect to
 270 the transfer of any public funds to the private lessee and when
 271 the private lessee meets at least three of the five following
 272 criteria:

273 (1) The public lessor that owns the public hospital or
 274 other public health care facility was not the incorporator of
 275 the private corporation that leases the public hospital or other
 276 health care facility.

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

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

284 (4) The lease agreement does not expressly require the
285 lessee to comply with the requirements of ss. 119.07(1) and
286 286.011.

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

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