

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,
4 F.S.; requiring the hospital governing board to
5 evaluate the benefits to the affected community of the
6 sale or lease of certain hospital facilities;
7 requiring the board to conduct public hearings and
8 publish notice of the findings; directing the board to
9 determine by certain public advertisements whether
10 there are qualified purchasers or lessees before the
11 sale or lease of such hospital; providing definitions;
12 requiring the board to state in writing specified
13 criteria forming the basis of its acceptance of a
14 proposal for sale or lease of the hospital; providing
15 for publication of notice; providing a period
16 following such notice for submission of written
17 comments regarding the proposed transaction; providing
18 that the sale or lease of a county, district, or
19 municipal hospital is subject to approval by the Chief
20 Financial Officer or registered voters if required by
21 law; requiring the board to file a petition for
22 approval with the Chief Financial Officer; specifying
23 information to be included in such petition; providing
24 for the Chief Financial Officer to issue an order
25 requiring all interested parties to appear at a
26 hearing regarding such petition; requiring the Chief
27 Financial Officer or his or her designee to issue a
28 final order approving or denying the proposed

HB 895

2012

29 transaction; providing for a party to the action to
30 seek judicial review; requiring that the reviewing
31 court affirm the judgment of the Chief Financial
32 Officer unless the decision is arbitrary, capricious,
33 or not in compliance with the act; requiring the board
34 to pay costs associated with the petition for approval
35 unless a party contests the action; providing for
36 deposit of proceeds from the sale or lease of a
37 hospital partially in an economic development trust
38 fund of the county and partially for funding indigent
39 and uncompensated care; providing for deposit or use
40 of ad valorem tax revenue from the formerly tax-exempt
41 property if the sale or lease is to a for-profit
42 corporation or other business entity; authorizing the
43 county commission, in consultation with the Department
44 of Economic Opportunity, to oversee the use and
45 distribution of the funds in an economic development
46 trust fund of a county; providing an exemption for
47 certain sale or lease transactions completed before a
48 specified date; creating s. 155.401, F.S.; authorizing
49 a special taxing district to tax or appropriate funds
50 to an economic development trust fund in order to
51 promote and support economic growth in the district
52 and county; amending s. 395.3036, F.S.; conforming
53 cross-references; providing an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:
56

HB 895

2012

57 Section 1. Subsection (1) of section 155.40, Florida
58 Statutes, is amended, present subsection (4) is renumbered as
59 subsection (5) and amended, present subsections (5) through (8)
60 are renumbered as subsections (17) through (20), respectively,
61 and new subsections (4) and (6) through (16) are added to that
62 section, to read:

63 155.40 Sale or lease of county, district, or municipal
64 hospital; effect of sale.—

65 (1) In order for ~~that~~ citizens and residents of the state
66 to ~~may~~ receive quality health care, any county, district, or
67 municipal hospital organized and existing under the laws of this
68 state, acting by and through its governing board, may ~~shall have~~
69 ~~the authority to~~ sell or lease such hospital to a for-profit or
70 not-for-profit Florida corporation, and enter into leases or
71 other contracts with a for-profit or not-for-profit Florida
72 corporation for the purpose of operating ~~and managing~~ such
73 hospital and any or all of its facilities of whatsoever kind and
74 nature. The term of any such lease, contract, or agreement and
75 the conditions, covenants, and agreements to be contained
76 therein shall be determined by the governing board of such
77 ~~county, district, or municipal~~ hospital. The governing board of
78 the hospital must find that the sale, lease, or contract is in
79 the best interests of the affected community ~~public~~ and must
80 state the basis of such finding. ~~If the governing board of a~~
81 ~~county, district, or municipal hospital decides to lease the~~
82 ~~hospital, it must give notice in accordance with paragraph~~
83 ~~(4) (a) or paragraph (4) (b).~~

84 (4) (a) By July 31, 2012, the governing board of a county,

85 district, or municipal hospital shall evaluate the possible
 86 benefits to the affected community from the sale or lease of
 87 hospital facilities owned by the board. In the course of such
 88 evaluation, the board shall:

89 1. Conduct public hearings to provide all interested
 90 persons the opportunity to be heard on the matter.

91 2. Publish a notice of all public hearings on the matter
 92 in one or more newspapers of general circulation in the county
 93 in which the majority of the physical assets of the hospital are
 94 located and in the Florida Administrative Weekly at least 15
 95 days before any hearing is scheduled to take place.

96 3. Make publicly available all documents considered by the
 97 board in the course of such evaluation.

98 (b) By September 28, 2012, the board shall publish notice
 99 of its findings in one or more newspapers of general circulation
 100 in the county in which the majority of the physical assets of
 101 the hospital are located and in the Florida Administrative
 102 Weekly.

103 ~~(5)(4)~~ If In the event the governing board of a county,
 104 district, or municipal hospital determines that it is no longer
 105 in the public interest to own or operate such hospital and
 106 elects to consider a sale or lease of the hospital to a third
 107 party, the governing board must first determine whether there
 108 are any qualified purchasers or lessees. In the process of
 109 evaluating any potential purchasers or lessees ~~elects to sell or~~
 110 ~~lease the hospital,~~ the board shall:

111 ~~(a) Negotiate the terms of the sale or lease with a for-~~
 112 ~~profit or not-for-profit Florida corporation and Publicly~~

HB 895

2012

113 advertise the meeting at which the proposed sale or lease will
114 be considered by the governing board of the hospital in
115 accordance with s. 286.0105; or

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

119
120 Any sale or lease must be for fair market value, or, if not for
121 fair market value, any sale or lease must be in the best
122 interest of the affected community. ~~and~~ Any sale or lease must
123 comply with all applicable state and federal antitrust laws.

124 (6) A determination by a governing board to accept a
125 proposal for sale or lease must state, in writing, the findings
126 and basis for accepting the proposal.

127 (a) The governing board's acceptance of a proposal for
128 sale or lease must, at a minimum, reflect a balanced
129 consideration of each of the following:

130 1. Whether the sale or lease represents fair market value
131 or, if the lease does not represent fair market value, the
132 governing board shall provide a detailed explanation of how the
133 best interests of the affected community are served by the
134 acceptance of less than fair market value. For the purposes of
135 this section, the term "fair market value" means the price that
136 a seller is willing to accept and a buyer is willing to pay on
137 the open market and in an arm's length transaction, or what an
138 independent expert in hospital valuation determines the fair
139 market value to be.

140 2. Whether acceptance of the proposal will result in a

141 reduction or elimination of ad valorem or other taxes for
 142 taxpayers in the district.

143 3. Whether the proposal includes an enforceable commitment
 144 that existing programs and services and quality health care will
 145 continue to be provided to all residents of the affected
 146 community, particularly to the indigent, the uninsured, and the
 147 underinsured.

148 (b) The findings must be accompanied by all information
 149 and documents relevant to the governing board's determination,
 150 including, but not limited to:

151 1. The names and addresses of all parties to the
 152 transaction.

153 2. The location of the hospital and all related
 154 facilities.

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

156 4. A copy of the proposed sale or lease agreement and any
 157 related agreements, including, but not limited to, leases,
 158 management contracts, service contracts, and memoranda of
 159 understanding.

160 5. The estimated total value associated with the proposed
 161 agreement and the proposed acquisition price and other
 162 consideration.

163 6. A valuation of the hospital's assets, including any
 164 valuations of the hospital's assets prepared during the 3 years
 165 immediately preceding the proposed transaction date.

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

168 8. Copies of all other proposals and bids the governing

HB 895

2012

169 board may have received or considered in compliance with
170 subsection (5).

171 (7) Within 120 days before the anticipated closing date of
172 the proposed transaction, the governing board shall make
173 publicly available all findings and documents required under
174 subsection (6) and publish a notice of the proposed transaction
175 in one or more newspapers of general circulation in the county
176 in which the majority of the physical assets of the hospital are
177 located. The notice must include the names of the parties
178 involved and the means by which a person may submit written
179 comments about the proposed transaction to the governing board
180 and obtain copies of the findings and documents required under
181 subsection (6).

182 (8) Within 20 days after the date of publication of the
183 public notice, any interested person may submit to the governing
184 board written comments regarding the proposed transaction.

185 (9) The sale or lease of such hospital is subject to
186 approval by the Chief Financial Officer, or alternatively, if
187 otherwise required by law, by approval by majority vote of the
188 registered voters in the county, district, or municipality.

189 (a) The governing board shall file with the Chief
190 Financial Officer, at least 30 days after publication of the
191 notice of the proposed transaction, a petition seeking approval
192 of the proposed transaction.

193 (b) The petition for approval filed by the governing board
194 must include all findings and documents required under
195 subsection (6) and certification by the governing board of
196 compliance with all requirements of this section.

197 (10) Upon the filing of a petition for approval, the Chief
 198 Financial Officer or his or her designee shall issue an order
 199 requiring all interested parties to appear at a hearing
 200 conducted within 30 days after the petition is filed, pursuant
 201 to chapter 120, and show why the petition should not be granted.
 202 For the purposes of this subsection, the term "interested
 203 parties" includes any party submitting a proposal for sale or
 204 lease of a county, district, or municipal hospital, as well as
 205 the governing board.

206 (11) Upon conclusion of all proceedings, the Chief
 207 Financial Officer or his or her designee shall issue a final
 208 order approving or denying the proposed transaction based upon
 209 consideration of whether the requirements of this section have
 210 been met. The order shall require the governing board to either
 211 accept or reject the proposal for the sale or lease of the
 212 county, district, or municipal hospital based upon a
 213 determination that:

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

215 (b) The proposed transaction does not unreasonably exclude
 216 a potential purchaser or lessee on the basis of being a for-
 217 profit or a not-for-profit Florida corporation, or other form of
 218 business organization such as a partnership or limited liability
 219 company.

220 (c) The governing board publicly advertised the meeting at
 221 which the proposed transaction was considered by the board in
 222 compliance with s. 286.0105.

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

HB 895

2012

225 (e) The governing board acted reasonably and prudently in
226 deciding to dispose of hospital assets, selecting the proposed
227 purchaser or lessee, and negotiating the terms and conditions of
228 the disposition.

229 (f) Each conflict of interest was disclosed, including,
230 but not limited to, conflicts of interest relating to members of
231 the governing board and experts retained by the parties to the
232 transaction.

233 (g) The seller or lessor will receive fair market value
234 for the assets or, if the lease represents less than fair market
235 value, the public interest of the affected community will be
236 served by accepting less than fair market value.

237 (h) The acquiring entity has made an enforceable
238 commitment that existing programs and services and quality
239 health care will continue to be provided to all residents of the
240 affected community, particularly the indigent, the uninsured,
241 and the underinsured.

242 (i) The governing board has considered whether the sale or
243 lease will result in a reduction or elimination of ad valorem or
244 other taxes used to support the hospital.

245 (12) Any party to the action has the right to seek
246 judicial review of the decision in the appellate district where
247 the hospital is located or in the First District Court of
248 Appeal.

249 (a) All proceedings shall be instituted by filing a notice
250 of appeal in accordance with the Florida Rules of Appellate
251 Procedure within 30 days after the date of the final order.

252 (b) In such judicial review, the reviewing court shall

253 affirm the judgment of the Chief Financial Officer, unless the
 254 decision is arbitrary, capricious, or not in compliance with
 255 this section.

256 (13) All costs shall be paid by the governing board,
 257 unless an interested party contests the action, in which case
 258 the court may assign costs equitably to the parties.

259 (14) If a county, district, or municipal hospital is sold
 260 or leased, the governing board shall:

261 (a) Deposit 50 percent of the net proceeds of the sale or
 262 lease proceeds in an economic development trust fund established
 263 by and under the control of the county commission of the county
 264 in which the property is located. The use and distribution of
 265 the funds shall be at the discretion of a majority of the county
 266 commission, which shall serve as trustees of the trust fund. The
 267 funds in the economic development trust fund shall be
 268 distributed, in consultation with the Department of Economic
 269 Opportunity, to promote new business development, research,
 270 collaborative investment with the State University System, and
 271 the expansion of business economic opportunities within the
 272 affected community.

273 (b) Appropriate 50 percent of the net proceeds of the sale
 274 for the funding of the provision of indigent and uncompensated
 275 care on an equitable basis, based on the amount of indigent and
 276 uncompensated care provided, to all hospitals within the
 277 boundaries of the district.

278
 279 For the purposes of this subsection, the term "net proceeds"
 280 means the sale price after payment of all district debts and

HB 895

2012

281 obligations.

282 (15) If a county, district, or municipal hospital is sold
283 or leased to a for-profit corporation or other business entity
284 subject to local taxation, in addition to the distribution of
285 funds as directed in subsection (14):

286 (a) Fifty percent of the resulting county and municipal ad
287 valorem tax revenue from the formerly tax-exempt property shall
288 be deposited in an economic development trust fund established
289 by and under the control of the county commission of the county
290 in which the property is located. The use and distribution of
291 the funds shall be at discretion of a majority of the county
292 commission, which shall serve as trustees of the trust fund. The
293 funds in the economic development trust fund shall be
294 distributed, in consultation with the Department of Economic
295 Opportunity, to promote new or expanded health care business
296 development or research related to health care within the
297 affected community. Such funds may not be distributed to any
298 entity that is related to or in any way affiliated with the
299 entity selling, leasing, or acquiring the hospital which is the
300 subject of the transaction.

301 (b) Fifty percent of the resulting county and municipal ad
302 valorem tax revenue from the formerly tax-exempt property shall
303 be appropriated by the county commission for education and law
304 enforcement.

305 (16) Any sale or lease completed before January 1, 2012,
306 is not subject to this section. Any lease modifications,
307 renewals, or extensions relating to a hospital that was leased
308 before January 1, 2012, are not subject to this section.

HB 895

2012

309 Section 2. Section 155.401, Florida Statutes, is created
 310 to read:

311 155.401 Power of special hospital or other health care
 312 taxing district to tax or appropriate funds to county economic
 313 development trust fund.—Notwithstanding any other provision of
 314 general or special law, the purposes for which a special taxing
 315 district for hospital or other health care purposes may levy
 316 taxes or appropriate funds to an economic development trust fund
 317 of a county established pursuant to s. 155.40 include the
 318 promotion and support of economic growth in the district and in
 319 the county in which the district is located and the furthering
 320 of the purposes of the district as provided by law.

321 Section 3. Section 395.3036, Florida Statutes, is amended
 322 to read:

323 395.3036 Confidentiality of records and meetings of
 324 corporations that lease public hospitals or other public health
 325 care facilities.—The records of a private corporation that
 326 leases a public hospital or other public health care facility
 327 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
 328 and s. 24(a), Art. I of the State Constitution, and the meetings
 329 of the governing board of a private corporation are exempt from
 330 s. 286.011 and s. 24(b), Art. I of the State Constitution if
 331 ~~when~~ the public lessor complies with the public finance
 332 accountability provisions of s. 155.40(17) ~~155.40(5)~~ with
 333 respect to the transfer of any public funds to the private
 334 lessee and if ~~when~~ the private lessee meets at least three of
 335 the five following criteria:

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

HB 895

2012

337 other public health care facility was not the incorporator of
338 the private corporation that leases the public hospital or other
339 health care facility.

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

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

347 (4) The lease agreement does not expressly require the
348 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
349 286.011.

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

354 Section 4. This act shall take effect July 1, 2012.