

By Senator Gaetz

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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.; defining the terms "affected community," "fair
5 market value," and "interested parties"; requiring the
6 governing board of a county, district, or municipal
7 hospital to evaluate the possible benefits to an
8 affected community from the sale or lease of a
9 hospital facility owned by the board to a not-for-
10 profit or for-profit entity within a specified time
11 period; specifying the actions the board must take in
12 evaluating whether to sell or lease the public
13 hospital; requiring the board to determine whether
14 qualified purchasers or lessees exist; specifying the
15 factors that must be considered by the governing board
16 before accepting a proposal to sell or lease the
17 hospital; requiring the board to state in writing its
18 detailed findings related to its decision to accept or
19 reject the proposal; requiring the governing board to
20 make public the required findings and documents and to
21 publish a notice of the proposed transaction in one or
22 more newspapers of general circulation in the county
23 in which the majority of the physical assets of the
24 hospital are located; allowing persons to submit
25 written comments regarding the proposed transaction;
26 providing that the sale or lease is subject to the
27 approval of the Chief Financial Officer; requiring the
28 governing board to file a petition with the Chief
29 Financial Officer seeking approval of the proposed

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30 transaction within a specified time period; requiring
31 the Chief Financial Officer or his or her designee to
32 issue a final order approving or denying the proposed
33 transaction; specifying the criteria upon which the
34 Chief Financial Officer must base his or her decision;
35 authorizing an interested party to appeal the decision
36 of the Chief Financial Officer; providing that all
37 costs be paid by the governing board, unless an
38 interested party contests the action, in which case
39 the court may assign costs equitably to the parties;
40 providing for the distribution of proceeds from the
41 transaction; creating s. 155.401, F.S.; providing that
42 the purposes for which a special taxing district may
43 appropriate funds from the sale or lease of a hospital
44 include the promotion and support of economic growth
45 in the district and county in which the taxing
46 district is located and the furthering of the purposes
47 of the taxing district; amending s. 395.3036, F.S.;

48 conforming cross-references; providing an effective
49 date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 155.40, Florida Statutes, is amended to
54 read:

55 155.40 Sale or lease of county, district, or municipal
56 hospital; effect of sale.—

57 (1) In the interest of providing quality health care
58 services to the ~~order that~~ citizens and residents of this the

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

77 (2) A ~~Any such~~ lease, contract, or agreement made pursuant
78 hereto shall:

79 (a) Provide that the articles of incorporation of the such
80 for-profit or not-for-profit corporation be subject to the
81 approval of the board of directors or board of trustees of the
82 ~~such~~ hospital;

83 (b) Require that any not-for-profit corporation become
84 qualified under s. 501(c)(3) of the United States Internal
85 Revenue Code;

86 (c) Provide for the orderly transition of the operation and
87 management of the such facilities;

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88 (d) Provide for the return of the ~~such~~ facility to the
89 county, municipality, or district upon the termination of the
90 ~~such~~ lease, contract, or agreement; and

91 (e) Provide for the continued treatment of indigent
92 patients pursuant to the Florida Health Care Responsibility Act
93 and pursuant to chapter 87-92, Laws of Florida.

94 (3) A ~~Any~~ sale, lease, or contract entered into pursuant to
95 this section before July 1, 2012, ~~prior to the effective date of~~
96 ~~this act~~ must have complied with the requirements of subsection
97 (2) in effect at the time of the sale, lease, or contract. It is
98 the intent of the Legislature that this section does not impose
99 any further requirements with respect to the formation of any
100 for-profit or not-for-profit Florida corporation, the
101 composition of the board of directors of any Florida
102 corporation, or the manner in which control of the hospital is
103 transferred to the Florida corporation.

104 (4) As used in this section, the term:

105 (a) "Affected community" means those persons residing
106 within the geographic boundaries defined by the charter of the
107 county, district, or municipal hospital, or if the boundaries
108 are not specifically defined by charter of the hospital, by the
109 geographic area from which 75 percent of the county, district,
110 or municipal hospital's inpatient admissions are derived.

111 (b) "Fair market value" means the price that a seller or
112 lessor is willing to accept and a buyer is willing to pay on the
113 open market and in an arms-length transaction, or what an
114 independent expert in hospital valuation determines the fair
115 market value to be.

116 (c) "Interested parties" includes any person submitting a

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117 proposal for sale or lease of the county, district, or municipal
118 hospital, as well as the governing board.

119 (5) Within 45 calendar days after July 1, 2012, the
120 governing board of a county, district, or municipal hospital
121 shall commence an evaluation of the possible benefits to an
122 affected community from the sale or lease of hospital facilities
123 owned by the board to a not-for-profit or for-profit entity. In
124 the course of such evaluation, the board shall:

125 (a) Conduct a public hearing to provide interested persons
126 the opportunity to be heard on the matter.

127 (b) Publish notice of the public hearing in one or more
128 newspapers of general circulation in the county in which the
129 majority of the physical assets of the hospital are located and
130 in the Florida Administrative Weekly at least 15 days before the
131 hearing is scheduled to take place.

132 (c) Contract with a certified public accounting firm or
133 other firm having substantial expertise in the valuation of
134 hospitals for an independent valuation of the hospital's fair
135 market value, with such valuation being available to the public
136 before the scheduled public hearing.

137 (d) Consider an objective operating comparison between a
138 hospital operated by the district, county, or municipality and
139 other similarly situated hospitals, both not-for-profit and for-
140 profit, which have a similar service mix, in order to determine
141 whether there is a difference in the cost of operation using
142 publicly available data provided by the Agency for Health Care
143 Administration and the quality metrics identified by the Centers
144 for Medicare and Medicaid Services Core Measures. The comparison
145 must determine whether it is more beneficial to taxpayers and

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146 the affected community for the hospital to be operated by a
147 governmental entity, or whether the hospital can be operated by
148 a not-for-profit or for-profit corporation with similar or
149 better cost efficiencies or measurable outcomes identified by
150 the Centers for Medicare and Medicaid Services Core Measures.
151 The comparison must also determine whether there is a net
152 benefit to the community to operate the hospital as a not-for-
153 profit or for-profit entity and use the proceeds of the sale or
154 lease for the purposes described in this section.

155 (e) Make publicly available all documents considered by the
156 board in the course of such evaluation.

157 1. Within 160 days after July 1, 2012, the governing board
158 shall publish notice of the board's findings in one or more
159 newspapers of general circulation in the county in which the
160 majority of the physical assets of the hospital are located and
161 in the Florida Administrative Weekly.

162 2. This evaluation is not required if a district, county,
163 or municipal hospital has issued a public request for proposals
164 for the sale or lease of a hospital on or before February 1,
165 2012, for the purpose of receiving proposals from interested and
166 qualified prospective buyers or lessees, either not-for-profit
167 or for-profit.

168 (6)(4) If ~~In the event~~ the governing board of a county,
169 district, or municipal hospital determines that it is no longer
170 in the public interest to own or operate such hospital and
171 elects to consider a sale or lease of the hospital to a third
172 party, the governing board must first determine whether there
173 are any qualified purchasers or lessees. In the process of
174 evaluating any potential purchasers or lessees ~~elects to sell or~~

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175 ~~lease the hospital,~~ the board shall:

176 (a) ~~Negotiate the terms of the sale or lease with a for-~~
177 ~~profit or not-for-profit Florida corporation and~~ Publicly
178 advertise the meeting at which the proposed sale or lease will
179 be considered by the governing board of the hospital in
180 accordance with s. 286.0105; or

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

184
185 Any sale or lease must be for fair market value, or, if not for
186 fair market value, the lease must be in the best interest of the
187 affected community. A ~~and any~~ sale or lease must comply with all
188 applicable state and federal antitrust laws.

189 (7) A determination by a governing board to accept a
190 proposal for sale or lease shall be made after consideration of
191 all proposals received and negotiations with a for-profit or
192 not-for-profit business entity organized under the laws of this
193 state. The governing board's determination must include, in
194 writing, detailed findings of all reasons for accepting the
195 proposal.

196 (a) The governing board's acceptance of a proposal for sale
197 or lease must include a description of how the sale or lease
198 satisfies each of the following requirements:

199 1. The sale or lease represents fair market value, as
200 determined by a certified public accounting firm or other
201 qualified firm pursuant to paragraph (5) (c). If leased at less
202 than fair market value, the governing board shall provide a
203 detailed explanation of how the best interests of the affected

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204 community are served by the acceptance of less than fair market
205 value for the lease of the hospital.

206 2. Acceptance of the proposal will result in a reduction or
207 elimination of ad valorem or other taxes for taxpayers in the
208 district.

209 3. The proposal includes an enforceable commitment that
210 programs and services and quality health care will continue to
211 be provided to all residents of the affected community,
212 particularly to the indigent, the uninsured, and the
213 underinsured.

214 4. Disclosure has been made of all conflicts of interest,
215 including, but not limited to, whether the sale or lease of the
216 hospital would result in a special private gain or loss to
217 members of the governing board or key management employees of
218 the county, district, or municipal hospital, or if governing
219 board members will be serving on the board of any successor
220 private corporation. Conflicts of interest, if any, with respect
221 to experts retained by the governing board shall also be
222 disclosed.

223 5. The proposal is in compliance with subsections (8) and
224 (9).

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

228 1. The names and addresses of all parties to the
229 transaction.

230 2. The location of the hospital and all related facilities.

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

232 4. A copy of the proposed sale or lease agreement and any

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233 related agreements, including, but not limited to, leases,
234 management contracts, service contracts, and memoranda of
235 understanding.

236 5. The estimated total value associated with the proposed
237 agreement and the proposed acquisition price.

238 6. Any valuations of the hospital's assets prepared during
239 the 3 years immediately preceding the proposed transaction date.

240 7. The fair market value analysis required by paragraph
241 (5) (c).

242 8. Copies of all other proposals and bids the governing
243 board may have received or considered in compliance with
244 subsection (6).

245 (8) Within 120 days before the anticipated closing date of
246 the proposed transaction, the governing board shall make
247 publicly available all findings and documents required under
248 subsection (7) and publish a notice of the proposed transaction
249 in one or more newspapers of general circulation in the county
250 in which the majority of the physical assets of the hospital are
251 located. The notice must include the names of the parties
252 involved and the means by which a person may submit written
253 comments about the proposed transaction to the governing board
254 and obtain copies of the findings and documents required under
255 subsection (7).

256 (9) Within 20 days after the date of publication of the
257 public notice, any person may submit to the governing board
258 written comments regarding the proposed transaction.

259 (10) The sale or lease of the hospital is subject to
260 approval by the Chief Financial Officer or his or her designee,
261 except, if otherwise required by law, approval of the sale or

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262 lease shall exclusively be by majority vote of the registered
263 voters in the county, district, or municipality in which the
264 hospital is located.

265 (a) The governing board shall file a petition with the
266 state Chief Financial Officer seeking approval of the proposed
267 transaction at least 30 days after publication of the notice of
268 the proposed transaction.

269 (b) The petition for approval filed by the governing board
270 must include all findings and documents required under
271 subsection (7) and certification by the governing board of
272 compliance with all requirements of this section. The chair of
273 the governing board must certify under oath and subject to the
274 penalty of perjury on a form accompanying the petition that the
275 contents of the petition and representations therein are true
276 and correct.

277 (11) The Chief Financial Officer or his or her designee
278 shall issue a final order approving or denying the proposed
279 transaction based solely upon consideration of whether the
280 procedures contained within this section have been followed by
281 the governing board of the county, district, or municipal
282 hospital. The order shall require the governing board to accept
283 or reject the proposal for the sale or lease of the county,
284 district, or municipal hospital based upon a determination that:

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

286 (b) The proposed transaction does not unreasonably exclude
287 a potential purchaser or lessee on the basis of being a for-
288 profit or a not-for-profit Florida corporation or other form of
289 business organization, such as a partnership or limited
290 liability company.

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

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

296 (e) Any conflict of interest was disclosed, including, but
297 not limited to, how the proposed transaction could result in a
298 special private gain or loss to members of the governing board
299 or key management employees of the county, district, or
300 municipal hospital, or if governing board members will be
301 serving on the board of any successor private corporation.
302 Conflicts of interest, if any, with respect to experts retained
303 by the governing board shall also be disclosed.

304 (f) The seller or lessor will receive fair market value for
305 the sale of the assets as indicated in paragraph (5) (c) or, if
306 leased at less than fair market value, the governing board
307 provided a detailed explanation of how the best interests of the
308 affected community are served by the acceptance of less than
309 fair market value for the lease of the hospital.

310 (g) The acquiring entity has made an enforceable commitment
311 that programs and services and quality health care will continue
312 to be provided to all residents of the affected community,
313 particularly to the indigent, the uninsured, and the
314 underinsured.

315 (h) The governing board disclosed whether the sale or lease
316 will result in a reduction or elimination of ad valorem or other
317 taxes used to support the hospital.

318 (12) Any interested party to the action has the right to
319 seek judicial review of the decision in the appellate district

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320 where the hospital is located or in the First District Court of
321 Appeal pursuant to s. 120.68.

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

325 (b) In such judicial review, the appellate court shall
326 affirm the decision of the Chief Financial Officer, unless the
327 decision by the Chief Financial Officer is shown to be clearly
328 erroneous.

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

332 (14) If any provision of subsection (5), subsection (6), or
333 subsection (7) is not followed, the contract for sale or lease
334 is voidable by any party to the contract. If any member of the
335 governing board negligently or willfully violates subsection
336 (5), subsection (6), or subsection (7), as determined by the
337 Commission on Ethics after receipt of a sworn complaint pursuant
338 to s. 112.322, the member is subject to a penalty, as determined
339 by the Commission on Ethics, pursuant to s. 112.317.

340 (15) If a county, district, or municipal hospital is sold
341 or leased the governing board shall:

342 (a) Deposit 50 percent of the net proceeds of the sale or
343 lease into an economic development trust fund, which shall be
344 under the control of the county commission of the county in
345 which the property is located. The use and distribution of the
346 funds shall be at the discretion of a majority of the county
347 commission, the members of which shall serve as trustees of the
348 trust fund. The net proceeds in the economic development trust

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349 fund shall be distributed, in consultation with the Department
350 of Economic Opportunity, to promote new business development,
351 research, collaborative investment with the state university
352 system, and the expansion of business economic opportunities
353 within the affected community; and

354 (b) Appropriate 50 percent of the net proceeds of the sale
355 or lease for funding the delivery of indigent and uncompensated
356 care on an equitable basis, based on the amount of indigent and
357 uncompensated care provided, to all hospitals within the
358 boundaries of the district.

359
360 For the purposes of this subsection, the term "net proceeds"
361 means the sale price after payment of all district debts and
362 obligations.

363 (16) If a county, district, or municipal hospital is sold
364 or leased to a for-profit corporation or other business entity
365 subject to local taxation, in addition to the distribution of
366 funds as directed in subsection (15):

367 (a) Fifty percent of the resulting county and municipal ad
368 valorem tax revenue from the formerly tax-exempt property shall
369 be distributed by the county commission of the county in which
370 the property is located, in consultation with the Department of
371 Economic Opportunity, to promote new or expanded health care
372 business development or health care research within the affected
373 community; and

374 (b) Fifty percent of the resulting county and municipal ad
375 valorem tax revenue from the formerly tax-exempt property shall
376 be appropriated by the county commission for the sole purpose of
377 enhancing education and law enforcement programs within the

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378 county.

379 (17)~~(5)~~ If ~~In the event~~ a hospital operated by a for-profit
380 or not-for-profit Florida corporation receives annually more
381 than \$100,000 in revenues from the county, district, or
382 municipality that owns the hospital, the Florida corporation
383 must be accountable to the county, district, or municipality
384 with respect to the manner in which the funds are expended by
385 either:

386 (a) Having the revenues subject to annual appropriations by
387 the county, district, or municipality; or

388 (b) Where there is a contract to provide revenues to the
389 hospital, the term of which is longer than 12 months, the
390 governing board of the county, district, or municipality must be
391 able to modify the contract upon 12 months notice to the
392 hospital.

393
394 A not-for-profit corporation that is subject to this subsection
395 and that does not currently comply with the accountability
396 requirements in this subsection shall have 12 months after the
397 effective date of this act to modify any contracts with the
398 county, district, or municipality in a manner that is consistent
399 with this subsection.

400 (18)~~(6)~~ Unless otherwise expressly stated in the lease
401 documents, the transaction involving the sale or lease of a
402 hospital shall not be construed as:

403 (a) A transfer of a governmental function from the county,
404 district, or municipality to the private purchaser or lessee;

405 (b) Constituting a financial interest of the public lessor
406 in the private lessee; or

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407 (c) Making a private lessee an integral part of the public
408 lessor's decisionmaking process.

409 (19)~~(7)~~ The lessee of a hospital, under this section or any
410 special act of the Legislature, operating under a lease may
411 ~~shall~~ not be construed to be "acting on behalf of" the lessor as
412 that term is used in statute, unless the lease document
413 expressly provides to the contrary.

414 (20)~~(8)~~(a) If, whenever the sale of a public hospital by a
415 public agency to a private corporation or other private entity
416 pursuant to this section or pursuant to a special act of the
417 Legislature reflects that:

418 1. The private corporation or other private entity
419 purchaser acquires 100 percent ownership in the hospital
420 enterprise;

421 2. The private corporation or other private entity
422 purchases the physical plant of the hospital facility and has
423 complete responsibility for the operation and maintenance of the
424 facility, regardless of ownership of the underlying real
425 property;

426 3. The public agency seller retains no control over
427 decisionmaking or policymaking for the hospital;

428 4. The private corporation or other private entity
429 purchaser receives no funding from the public agency seller
430 other than by contract for services rendered to patients for
431 whom the public agency seller has the responsibility to pay for
432 hospital or medical care;

433 5. The public agency seller makes no substantial investment
434 in or loans to the private entity;

435 6. The private corporation or other private entity

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436 purchaser was not created by the public entity seller; and

437 7. The private corporation or other private entity
438 purchaser operates primarily for its own financial interests and
439 not primarily for the interests of the public agency,

440
441 such a sale shall be considered a complete sale of the public
442 agency's interest in the hospital.

443 (b) A complete sale of a hospital as described in this
444 subsection shall not be construed as:

445 1. A transfer of a governmental function from the county,
446 district, or municipality to the private corporation or other
447 private entity purchaser;

448 2. Constituting a financial interest of the public agency
449 in the private corporation or other private entity purchaser;

450 3. Making the private corporation or other private entity
451 purchaser an "agency" as that term is used in statutes;

452 4. Making the private corporation or other private entity
453 purchaser an integral part of the public agency's decisionmaking
454 process; or

455 5. Indicating that the private corporation or other private
456 entity purchaser is "acting on behalf of a public agency" as
457 that term is used in statute.

458 Section 2. Section 155.401, Florida Statutes, is created to
459 read:

460 155.401 Power of special taxing district to appropriate
461 proceeds from sale or lease of hospital to economic development
462 trust fund.—Notwithstanding any other provision of general or
463 special law, the purposes for which a special taxing district
464 may appropriate funds from the sale or lease of a hospital to an

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465 economic development fund include the promotion and support of
466 economic growth in such district and in the county in which such
467 district is located and the furthering of the purposes of such
468 district, as provided by law.

469 Section 3. Section 395.3036, Florida Statutes, is amended
470 to read:

471 395.3036 Confidentiality of records and meetings of
472 corporations that lease public hospitals or other public health
473 care facilities.—The records of a private corporation that
474 leases a public hospital or other public health care facility
475 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
476 and s. 24(a), Art. I of the State Constitution, and the meetings
477 of the governing board of a private corporation are exempt from
478 s. 286.011 and s. 24(b), Art. I of the State Constitution if
479 ~~when~~ the public lessor complies with the public finance
480 accountability provisions of s. 155.40(17) ~~155.40(5)~~ with
481 respect to the transfer of any public funds to the private
482 lessee and if ~~when~~ the private lessee meets at least three of
483 the five following criteria:

484 (1) The public lessor that owns the public hospital or
485 other public health care facility was not the incorporator of
486 the private corporation that leases the public hospital or other
487 health care facility.

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

492 (3) Except as otherwise provided by law, the private lessee
493 is not allowed to participate, except as a member of the public,

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494 in the decisionmaking process of the public lessor.

495 (4) The lease agreement does not expressly require the
496 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
497 286.011.

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

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