

By the Committee on Health Regulation; and Senators Gaetz and Garcia

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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 party"; 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; exempting the sale or lease of specified
42 physical property of a county, district, or municipal
43 hospital from processes required for the approval of a
44 sale or lease of county, district, or municipal
45 hospital property; creating s. 155.401, F.S.;
46 providing that the purposes for which a special taxing
47 district may appropriate funds from the sale or lease
48 of a hospital include the promotion and support of
49 economic growth in the district and county in which
50 the taxing district is located and the furthering of
51 the purposes of the taxing district; amending s.
52 395.3036, F.S.; conforming cross-references; providing
53 an effective date.

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

56
57 Section 1. Section 155.40, Florida Statutes, is amended to
58 read:

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59 155.40 Sale or lease of county, district, or municipal
60 hospital; effect of sale.-

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

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

83 (a) Provide that the articles of incorporation of the such
84 for-profit or not-for-profit corporation be subject to the
85 approval of the board of directors or board of trustees of the
86 ~~such~~ hospital;

87 (b) Require that any not-for-profit corporation become

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88 qualified under s. 501(c)(3) of the United States Internal
89 Revenue Code;

90 (c) Provide for the orderly transition of the operation and
91 management of the ~~such~~ facilities;

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

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

98 (3) Any sale, lease, or contract entered into pursuant to
99 this section prior to the effective date of this act must have
100 complied with the requirements of subsection (2) in effect at
101 the time of the sale, lease, or contract. Any lease
102 modification, renewal, or extension relating to a hospital that
103 was leased before the effective date of this act is not subject
104 to this section. It is the intent of the Legislature that this
105 section does not impose any further requirements with respect to
106 the formation of any for-profit or not-for-profit Florida
107 corporation, the composition of the board of directors of any
108 Florida corporation, or the manner in which control of the
109 hospital is transferred to the Florida corporation.

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

111 (a) "Affected community" means those persons residing
112 within the geographic boundaries defined by the charter of the
113 county, district, or municipal hospital, or if the boundaries
114 are not specifically defined by charter of the hospital, by the
115 geographic area from which 75 percent of the county, district,
116 or municipal hospital's inpatient admissions are derived.

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117 (b) "Fair market value" means the price that a seller or
118 lessor is willing to accept and a buyer or lessee is willing to
119 pay on the open market and in an arms-length transaction, or
120 what an independent expert in hospital valuation determines the
121 fair market value to be.

122 (c) "Interested party" includes any person submitting a
123 proposal for sale or lease of the county, district, or municipal
124 hospital, as well as the governing board.

125 (5) Within 45 calendar days after July 1, 2012, the
126 governing board of a county, district, or municipal hospital
127 shall commence an evaluation of the possible benefits to an
128 affected community from the sale or lease of hospital facilities
129 owned by the board to a not-for-profit or for-profit entity. In
130 the course of such evaluation, the board shall:

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

133 (b) Publish notice of the public hearing in one or more
134 newspapers of general circulation in the county in which the
135 majority of the physical assets of the hospital are located and
136 in the Florida Administrative Weekly at least 15 days before the
137 hearing is scheduled to take place.

138 (c) Contract with a certified public accounting firm or
139 other firm having substantial expertise in the valuation of
140 hospitals for an independent valuation of the hospital's fair
141 market value, with such valuation being available to the public
142 before the scheduled public hearing.

143 (d) Consider an objective operating comparison between a
144 hospital or hospital system operated by the district, county, or
145 municipality and other similarly situated hospitals, both not-

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146 for-profit and for-profit, which have a similar service mix, in
147 order to determine whether there is a difference in the cost of
148 operation using publicly available data provided by the Agency
149 for Health Care Administration and the quality metrics
150 identified by the Centers for Medicare and Medicaid Services
151 Core Measures. The comparison must determine whether it is more
152 beneficial to taxpayers and the affected community for the
153 hospital to be operated by a governmental entity, or whether the
154 hospital can be operated by a not-for-profit or for-profit
155 corporation with similar or better cost efficiencies or
156 measurable outcomes identified by the Centers for Medicare and
157 Medicaid Services Core Measures. The comparison must also
158 determine whether there is a net benefit to the community to
159 operate the hospital as a not-for-profit or for-profit entity
160 and use the proceeds of the sale or lease for the purposes
161 described in this section.

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

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

169 2. This evaluation is not required if a district, county,
170 or municipal hospital has issued a public request for proposals
171 for the sale or lease of a hospital on or before February 1,
172 2012, for the purpose of receiving proposals from interested and
173 qualified prospective buyers or lessees, either not-for-profit
174 or for-profit.

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175 ~~(6)(4)~~ If In the event the governing board of a county,
176 district, or municipal hospital determines that it is no longer
177 in the public interest to own or operate such hospital and
178 elects to consider a sale or lease of the hospital to a third
179 party, the governing board must first determine whether there
180 are any qualified purchasers or lessees. In the process of
181 evaluating any potential purchasers or lessees ~~elects to sell or~~
182 ~~lease the hospital,~~ the board shall:

183 (a) ~~Negotiate the terms of the sale or lease with a for-~~
184 ~~profit or not-for-profit Florida corporation and Publicly~~
185 advertise the meeting at which the proposed sale or lease will
186 be considered by the governing board of the hospital in
187 accordance with s. 286.0105; or

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

191
192 Any sale or lease must be for fair market value, or, if not for
193 fair market value, the lease must be in the best interest of the
194 affected community. A ~~and any~~ sale or lease must comply with all
195 applicable state and federal antitrust laws.

196 (7) A determination by a governing board to accept a
197 proposal for sale or lease shall be made after consideration of
198 all proposals received and negotiations with a for-profit or
199 not-for-profit business entity organized under the laws of this
200 state. The governing board's determination must include, in
201 writing, detailed findings of all reasons for accepting the
202 proposal.

203 (a) The governing board's acceptance of a proposal for sale

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204 or lease must include a description of how the sale or lease
205 satisfies each of the following requirements:

206 1. The sale or lease represents fair market value, as
207 determined by a certified public accounting firm or other
208 qualified firm pursuant to paragraph (5) (c). If leased at less
209 than fair market value, the governing board shall provide a
210 detailed explanation of how the best interests of the affected
211 community are served by the acceptance of less than fair market
212 value for the lease of the hospital.

213 2. Acceptance of the proposal will result in a reduction or
214 elimination of ad valorem or other taxes for taxpayers in the
215 district.

216 3. The proposal includes an enforceable commitment that
217 programs and services and quality health care will continue to
218 be provided to all residents of the affected community,
219 particularly to the indigent, the uninsured, and the
220 underinsured.

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

230 5. Disclosure has been made by the seller or lessor of all
231 contracts with physicians or other entities providing health
232 care services through a contract with the seller or lessor,

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233 including all agreements or contracts that would be void or
234 voidable upon the consummation of the sale or lease.

235 6. The proposal is in compliance with subsections (8) and
236 (9).

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

240 1. The names and addresses of all parties to the
241 transaction.

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

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

244 4. A copy of the proposed sale or lease agreement and any
245 related agreements, including, but not limited to, leases,
246 management contracts, service contracts, and memoranda of
247 understanding.

248 5. The estimated total value associated with the proposed
249 agreement and the proposed acquisition price.

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

252 7. The fair market value analysis required by paragraph
253 (5) (c).

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

257 (8) Within 120 days before the anticipated closing date of
258 the proposed transaction, the governing board shall make
259 publicly available all findings and documents required under
260 subsection (7) and publish a notice of the proposed transaction
261 in one or more newspapers of general circulation in the county

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262 in which the majority of the physical assets of the hospital are
263 located. The notice must include the names of the parties
264 involved and the means by which a person may submit written
265 comments about the proposed transaction to the governing board
266 and obtain copies of the findings and documents required under
267 subsection (7).

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

271 (10) The sale or lease of the hospital is subject to
272 approval by the Chief Financial Officer or his or her designee,
273 except, if otherwise required by law, approval of the sale or
274 lease shall exclusively be by majority vote of the registered
275 voters in the county, district, or municipality in which the
276 hospital is located.

277 (a) The governing board shall file a petition with the
278 state Chief Financial Officer seeking approval of the proposed
279 transaction at least 30 days after publication of the notice of
280 the proposed transaction.

281 (b) The petition for approval filed by the governing board
282 must include all findings and documents required under
283 subsection (7) and certification by the governing board of
284 compliance with all requirements of this section. The chair of
285 the governing board must certify under oath and subject to the
286 penalty of perjury on a form accompanying the petition that the
287 contents of the petition and representations therein are true
288 and correct.

289 (11) The Chief Financial Officer or his or her designee
290 shall issue a final order approving or denying the proposed

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291 transaction based solely upon consideration of whether the
292 procedures contained within this section have been followed by
293 the governing board of the county, district, or municipal
294 hospital. The order shall require the governing board to accept
295 or reject the proposal for the sale or lease of the county,
296 district, or municipal hospital based upon a determination that:

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

298 (b) The proposed transaction does not unreasonably exclude
299 a potential purchaser or lessee on the basis of being a for-
300 profit or a not-for-profit Florida corporation or other form of
301 business organization, such as a partnership or limited
302 liability company.

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

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

308 (e) Any conflict of interest was disclosed, including, but
309 not limited to, how the proposed transaction could result in a
310 special private gain or loss to members of the governing board
311 or key management employees of the county, district, or
312 municipal hospital, or if governing board members will be
313 serving on the board of any successor private corporation.
314 Conflicts of interest, if any, with respect to experts retained
315 by the governing board shall also be disclosed.

316 (f) The seller or lessor will receive fair market value for
317 the sale or lease of the assets as indicated in paragraph (5)(c)
318 or, if leased at less than fair market value, the governing
319 board provided a detailed explanation of how the best interests

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320 of the affected community are served by the acceptance of less
321 than fair market value for the lease of the hospital.

322 (g) The acquiring entity has made an enforceable commitment
323 that programs and services and quality health care will continue
324 to be provided to all residents of the affected community,
325 particularly to the indigent, the uninsured, and the
326 underinsured.

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

330 (12) Any interested party to the action has the right to
331 seek judicial review of the decision in the appellate district
332 where the hospital is located or in the First District Court of
333 Appeal pursuant to s. 120.68.

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

337 (b) In such judicial review, the appellate court shall
338 affirm the decision of the Chief Financial Officer, unless the
339 decision by the Chief Financial Officer is shown to be clearly
340 erroneous.

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

344 (14) If any provision of subsection (5), subsection (6), or
345 subsection (7) is not followed, the contract for sale or lease
346 is voidable by any party to the contract. If any member of the
347 governing board negligently or willfully violates subsection
348 (5), subsection (6), or subsection (7), as determined by the

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349 Commission on Ethics after receipt of a sworn complaint pursuant
350 to s. 112.322, the member is subject to a penalty, as determined
351 by the Commission on Ethics, pursuant to s. 112.317.

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

354 (a) Deposit 50 percent of the net proceeds of the sale or
355 lease into an economic development trust fund, which shall be
356 under the control of the county commission of the county in
357 which the property is located. The use and distribution of the
358 funds shall be at the discretion of a majority of the county
359 commission, the members of which shall serve as trustees of the
360 trust fund. The net proceeds in the economic development trust
361 fund shall be distributed, in consultation with the Department
362 of Economic Opportunity, to promote new business development,
363 research, collaborative investment with the state university
364 system, and the expansion of business economic opportunities
365 within the affected community; and

366 (b) Appropriate 50 percent of the net proceeds of the sale
367 or lease for funding the delivery of indigent and uncompensated
368 care on an equitable basis, based on the amount of indigent and
369 uncompensated care provided, to all hospitals within the
370 boundaries of the district.

371
372 For the purposes of this subsection, the term "net proceeds"
373 means the sale price after payment of all district debts and
374 obligations.

375 (16) If a county, district, or municipal hospital is sold
376 or leased to a for-profit corporation or other business entity
377 subject to local taxation, in addition to the distribution of

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378 funds as directed in subsection (15):

379 (a) Fifty percent of the resulting county and municipal ad
380 valorem tax revenue from the formerly tax-exempt property shall
381 be distributed by the county commission of the county in which
382 the property is located, in consultation with the Department of
383 Economic Opportunity, to promote new or expanded health care
384 business development or health care research within the affected
385 community; and

386 (b) Fifty percent of the resulting county and municipal ad
387 valorem tax revenue from the formerly tax-exempt property shall
388 be appropriated by the county commission for the sole purpose of
389 enhancing education and law enforcement programs within the
390 county.

391 (17)-(5) If In the event a hospital operated by a for-profit
392 or not-for-profit Florida corporation receives annually more
393 than \$100,000 in revenues from the county, district, or
394 municipality that owns the hospital, the Florida corporation
395 must be accountable to the county, district, or municipality
396 with respect to the manner in which the funds are expended by
397 either:

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

400 (b) Where there is a contract to provide revenues to the
401 hospital, the term of which is longer than 12 months, the
402 governing board of the county, district, or municipality must be
403 able to modify the contract upon 12 months notice to the
404 hospital.

405
406 A not-for-profit corporation that is subject to this subsection

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407 and that does not currently comply with the accountability
408 requirements in this subsection shall have 12 months after the
409 effective date of this act to modify any contracts with the
410 county, district, or municipality in a manner that is consistent
411 with this subsection.

412 (18)~~(6)~~ Unless otherwise expressly stated in the lease
413 documents, the transaction involving the sale or lease of a
414 hospital shall not be construed as:

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

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

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

421 (19)~~(7)~~ The lessee of a hospital, under this section or any
422 special act of the Legislature, operating under a lease may
423 ~~shall~~ not be construed to be "acting on behalf of" the lessor as
424 that term is used in statute, unless the lease document
425 expressly provides to the contrary.

426 (20)~~(8)~~ (a) If, whenever the sale of a public hospital by a
427 public agency to a private corporation or other private entity
428 pursuant to this section or pursuant to a special act of the
429 Legislature reflects that:

430 1. The private corporation or other private entity
431 purchaser acquires 100 percent ownership in the hospital
432 enterprise;

433 2. The private corporation or other private entity
434 purchases the physical plant of the hospital facility and has
435 complete responsibility for the operation and maintenance of the

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436 facility, regardless of ownership of the underlying real
437 property;

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

440 4. The private corporation or other private entity
441 purchaser receives no funding from the public agency seller
442 other than by contract for services rendered to patients for
443 whom the public agency seller has the responsibility to pay for
444 hospital or medical care;

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

447 6. The private corporation or other private entity
448 purchaser was not created by the public entity seller; and

449 7. The private corporation or other private entity
450 purchaser operates primarily for its own financial interests and
451 not primarily for the interests of the public agency,

452
453 such a sale shall be considered a complete sale of the public
454 agency's interest in the hospital.

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

457 1. A transfer of a governmental function from the county,
458 district, or municipality to the private corporation or other
459 private entity purchaser;

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

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

464 4. Making the private corporation or other private entity

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465 purchaser an integral part of the public agency's decisionmaking
466 process; or

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

470 (21) If the governing board elects to sell or lease any
471 physical property of a county, district, or municipal hospital
472 and such property generated less than 20 percent of the
473 hospital's total revenue within the hospital's most recent
474 fiscal year, the sale or lease of such property is exempt from
475 the requirements under subsections (6)-(16). However, the
476 governing board shall publicly advertise the meeting at which
477 the proposed sale or lease of such property will be considered
478 by the governing board of the hospital in accordance with s.
479 286.0105 or publicly advertise the offer to accept proposals in
480 accordance with s. 255.0525 and receive proposals from all
481 interested and qualified purchasers and lessees. The sale or
482 lease of the property must be for fair market value or, if a
483 lease is for less than fair market value, the lease must be in
484 the best interest of the affected community.

485 Section 2. Section 155.401, Florida Statutes, is created to
486 read:

487 155.401 Power of special taxing district to appropriate
488 proceeds from sale or lease of hospital to economic development
489 trust fund.—Notwithstanding any other provision of general or
490 special law, the purposes for which a special taxing district
491 may appropriate funds from the sale or lease of a hospital to an
492 economic development fund include the promotion and support of
493 economic growth in such district and in the county in which such

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494 district is located and the furthering of the purposes of such
495 district, as provided by law.

496 Section 3. Section 395.3036, Florida Statutes, is amended
497 to read:

498 395.3036 Confidentiality of records and meetings of
499 corporations that lease public hospitals or other public health
500 care facilities.—The records of a private corporation that
501 leases a public hospital or other public health care facility
502 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
503 and s. 24(a), Art. I of the State Constitution, and the meetings
504 of the governing board of a private corporation are exempt from
505 s. 286.011 and s. 24(b), Art. I of the State Constitution if
506 ~~when~~ the public lessor complies with the public finance
507 accountability provisions of s. 155.40(17) ~~155.40(5)~~ with
508 respect to the transfer of any public funds to the private
509 lessee and if ~~when~~ the private lessee meets at least three of
510 the five following criteria:

511 (1) The public lessor that owns the public hospital or
512 other public health care facility was not the incorporator of
513 the private corporation that leases the public hospital or other
514 health care facility.

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

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

522 (4) The lease agreement does not expressly require the

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523 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
524 286.011.

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

529 Section 4. This act shall take effect upon becoming a law.