

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

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30 Officer or his or her designee to issue a final order
31 approving or denying the proposed transaction;
32 specifying the criteria upon which the Chief Financial
33 Officer must base his or her decision; authorizing an
34 interested party to appeal the decision of the Chief
35 Financial Officer; requiring that all costs be paid by
36 the governing board unless an interested party
37 contests the action, in which case the court may
38 assign costs equitably to the parties; providing for
39 the distribution of proceeds from the transaction;
40 exempting the sale or lease of specified physical
41 property of a county, district, or municipal hospital
42 from processes required for the approval of a sale or
43 lease of county, district, or municipal hospital
44 property; providing an exemption from complying with
45 the requirements of the act under certain
46 circumstances; exempting application of the act to
47 hospitals or health care systems for which a letter of
48 intent to sell or lease is executed before a specified
49 date; creating s. 155.401, F.S.; providing that the
50 purposes for which a special taxing district may
51 appropriate funds from the sale or lease of a hospital
52 include the promotion and support of economic growth
53 in the district and county in which the taxing
54 district is located and the furthering of the purposes
55 of the taxing district; providing that any general or
56 special law that is inconsistent with or otherwise in
57 conflict with the act is specifically superseded by
58 the act; amending s. 395.3036, F.S.; conforming cross-

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59 references; providing an effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Section 155.40, Florida Statutes, is amended to
64 read:

65 155.40 Sale or lease of county, district, or municipal
66 hospital; effect of sale.—

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

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

90 (a) Provide that the articles of incorporation of the ~~such~~
91 for-profit or not-for-profit corporation be subject to the
92 approval of the board of directors or board of trustees of the
93 ~~such~~ hospital;

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

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

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

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

105 (3) Any sale, lease, or contract entered into pursuant to
106 this section before ~~prior to~~ the effective date of this act must
107 have complied with the requirements of subsection (2) in effect
108 at the time of the sale, lease, or contract. Any lease
109 modification, renewal, or extension relating to a lease
110 transaction that occurred before the effective date of this act
111 is not subject to subsections (6)-(17). It is the intent of the
112 Legislature that this section does not impose any further
113 requirements with respect to the formation of any for-profit or
114 not-for-profit Florida entity ~~corporation~~, the composition of
115 the board of directors of any Florida entity ~~corporation~~, or the
116 manner in which control of the hospital is transferred to the

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117 Florida entity ~~corporation~~.

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

119 (a) "Affected community" means those persons residing
120 within the geographic boundaries defined by the charter of the
121 county, district, or municipal hospital, or if the boundaries
122 are not specifically defined by charter of the hospital, by the
123 geographic area from which 75 percent of the county, district,
124 or municipal hospital's inpatient admissions are derived.

125 (b) "Expression of interest" means a bona fide request from
126 a for-profit or not-for-profit entity that is a qualified
127 purchaser or lessee to the board of directors of a county,
128 district, or municipal hospital to enter into negotiations to
129 sell or lease the hospital or health care system on commercially
130 reasonable terms.

131 (c) "Fair market value" means the price that a seller or
132 lessor is willing to accept and a buyer or lessee is willing to
133 pay on the open market and in an arms-length transaction, or
134 what an independent expert in hospital valuation determines the
135 fair market value to be.

136 (d) "Increase tax support" means a vote to increase ad
137 valorem or other taxes that are used to support operations of
138 the hospital or health care system or any vote to allow the ad
139 valorem tax rate to remain the same in any year in which
140 property values in the taxing district have increased on the
141 average, resulting in an increase in ad valorem tax revenues to
142 the hospital.

143 (e) "Interested party" includes a person submitting a
144 proposal for sale or lease of the county, district, or municipal
145 hospital, as well as the governing board.

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146 (f) "Net operating expenses" means the total operating
147 expenses of the hospital, excluding depreciation, interest,
148 taxes, amortization, and nonoperating expenses.

149 (g) "Net operating revenues" has the same meaning as
150 provided in s. 395.701(1). The term does not include restricted
151 donations and grants for indigent care or nonoperating revenues,
152 including, but not limited to, local unrestricted tax revenues
153 and appropriated funds from state and local governments or any
154 other type of tax support, gain or loss from the sale of assets,
155 or unrestricted contributions.

156 (h) "Qualified purchaser or lessee" means an entity that
157 demonstrates access to capital in an amount equal to or in
158 excess of 25 percent of the net revenue generated in the
159 immediately preceding fiscal year of the hospital or health care
160 system that is the subject of the sale or lease. Such access to
161 capital can be demonstrated by cash reserves, an existing line
162 of credit, or a binding commitment to obtain a line of credit to
163 finance the purchase in an amount that equals or exceeds 25
164 percent of the net revenue generated by the hospital or health
165 care system.

166 (5) (a) The governing board of a county, district, or
167 municipal hospital shall commence an evaluation of the possible
168 benefits to an affected community from the sale or lease of
169 hospital facilities owned by the board to a not-for-profit or
170 for-profit entity within 60 calendar days after:

171 1. The county, district, or municipal hospital or health
172 care system receives a bona fide expression of interest by a
173 qualified purchaser or lessee to buy or lease the county,
174 district, or municipal hospital or health care system;

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175 2. The governing board of a county, district, or municipal
176 hospital votes to increase the amount of tax support for the
177 hospital or health care system;

178 3. The county, district, or municipal hospital or health
179 care system experiences operating deficits that result in net
180 operating expenses that exceed net operating revenues by 10
181 percent or more for 3 consecutive years;

182 4. The county, district, or municipal hospital or health
183 care system has had administrative complaint proceedings
184 initiated against it by the Agency for Health Care
185 Administration for licensure violations under chapter 395 in 3
186 consecutive years;

187 5. The county, district, or municipal hospital or health
188 care system has been declared ineligible to participate in the
189 Medicare or Medicaid program; or

190 6. The county, district, or municipal hospital or health
191 care system fails to achieve or loses accreditation by the Joint
192 Commission on Accreditation of Healthcare Organizations.

193 (b) In the course of evaluating the benefits of the sale or
194 lease, the board shall:

195 1. Conduct a public hearing to provide interested persons
196 the opportunity to be heard on the matter.

197 2. Publish notice of the public hearing in one or more
198 newspapers of general circulation in the county in which the
199 majority of the physical assets of the hospital are located and
200 in the Florida Administrative Weekly at least 15 days before the
201 hearing is scheduled to occur.

202 3. Contract with a certified public accounting firm or
203 other firm that has substantial expertise in the valuation of

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204 hospitals to render an independent valuation of the hospital's
205 fair market value. The firm chosen by the board must be
206 agreeable to the qualified purchaser or lessee and the hospital
207 or health care system. The firm's valuation report shall be made
208 available to the public 7 working days before the scheduled
209 public hearing.

210 4. Consider an objective operating comparison between a
211 hospital or health care system operated by the district, county,
212 or municipality and other similarly situated hospitals, both
213 not-for-profit and for-profit, which have a similar service mix,
214 in order to determine whether there is a difference in the cost
215 of operation using publicly available data provided by the
216 Agency for Health Care Administration and the quality metrics
217 identified by the Centers for Medicare and Medicaid Services
218 Core Measures. The comparison must determine whether it is more
219 beneficial to taxpayers and the affected community for the
220 hospital to be operated by a governmental entity, or whether the
221 hospital can be operated by a not-for-profit or for-profit
222 entity with similar or better cost-efficiencies or measurable
223 outcomes identified by the Centers for Medicare and Medicaid
224 Services Core Measures. The comparison must also determine
225 whether there is a net benefit to the community to operate the
226 hospital as a not-for-profit or for-profit entity and use the
227 proceeds of the sale or lease for the purposes described in this
228 section.

229 5. Make publicly available all documents considered by the
230 board in the course of such evaluation.

231 (c)1. Within 160 days after the initiation of the process
232 established in paragraphs (a) and (b), the governing board shall

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233 publish notice of the board's findings in one or more newspapers
234 of general circulation in the county in which the majority of
235 the physical assets of the hospital are located and in the
236 Florida Administrative Weekly.

237 2. This evaluation is not required if a district, county,
238 or municipal hospital has issued a public request for proposals
239 for the sale or lease of a hospital on or before February 1,
240 2012, for the purpose of receiving proposals from qualified
241 purchasers or lessees, either not-for-profit or for-profit.

242 3. The fair market valuation established in paragraph (b)
243 shall be valid for a period of 12 months following the date of
244 its issuance, unless there are material financial changes in the
245 hospitals financial condition as determined by the outside
246 independent certified public accounting firm for the hospital or
247 health care system, the Agency for Health Care Administration,
248 or the Auditor General.

249 4. This subsection does not apply to any county, district
250 or municipal hospital, or health care system that is under lease
251 as of February 1, 2012, as long as that lease remains in effect
252 in accordance with the terms of the lease or such lease is
253 extended or renewed. Any such hospital or health care system,
254 however, becomes subject to this subsection upon:

255 a. Termination of the lease;

256 b. Notification provided to the lessee of a planned
257 termination of the lease in accordance with the lease terms;

258 c. Notification to the lessee that the lessor plans to seek
259 potential new lessees or buyers; or

260 d. Notification to the lessee that the lessor plans to
261 resume operation of the hospital or health care system at the

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262 termination of the lease.

263

264 Any such hospital or health care system may not thereafter be
265 sold, leased to another lessee, or operated by the owner without
266 first complying with the provisions of subsections (5)-(16).

267 (6)(4) If, upon completion of the evaluation of the
268 benefits of the sale or lease, ~~in the event~~ the governing board
269 of a county, district, or municipal hospital determines that it
270 is no longer in the best interest of the affected community to
271 own or operate a hospital or health care system and elects to
272 consider a sale or lease of the hospital or health care system
273 to a third party, the governing board must first determine
274 whether there are any qualified purchasers or lessees. In the
275 process of evaluating any qualified purchaser or lessee ~~elects~~
276 ~~to sell or lease the hospital,~~ the board shall:

277 (a) ~~Negotiate the terms of the sale or lease with a for-~~
278 ~~profit or not-for-profit Florida corporation and Publicly~~
279 advertise the meeting at which the proposed sale or lease will
280 be considered by the governing board of the hospital in
281 accordance with s. 286.0105; or

282 (b) Publicly advertise the offer to accept proposals in
283 accordance with s. 255.0525 and receive proposals from all
284 ~~interested and~~ qualified purchasers and lessees.

285

286 Any sale or lease must be for fair market value, or, if not for
287 fair market value, the lease must be in the best interest of the
288 affected community. A ~~and any~~ sale or lease must comply with all
289 applicable state and federal antitrust laws.

290 (7) If, upon completion of the evaluation of the benefits

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291 of the sale or lease, the governing board determines that it is
292 in the best interest of the affected community to maintain
293 ownership or operation of the hospital or health care system and
294 elects not to consider a sale or lease of the hospital or health
295 care system, the qualified purchaser or lessee shall pay the
296 final cost of the evaluation. If, however, the governing board
297 and the qualified purchaser do not agree upon the firm chosen to
298 evaluate the hospital or health care system, the governing board
299 is responsible for the full cost of the evaluation.

300 (8) A determination by the governing board to accept a
301 proposal for sale or lease shall be made after consideration of
302 all proposals received and negotiations with a qualified
303 purchaser or lessee. The governing board's determination must
304 include, in writing, detailed findings of all reasons for
305 accepting the proposal.

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

309 1. The sale or lease represents fair market value, as
310 determined by a certified public accounting firm or other
311 qualified firm pursuant to paragraph (5) (b). If leased at less
312 than fair market value, the governing board shall provide a
313 detailed explanation of how the best interests of the affected
314 community are served by the acceptance of less than fair market
315 value for the lease of the hospital.

316 2. Acceptance of the proposal will result in a reduction or
317 elimination of ad valorem or other taxes for taxpayers in the
318 district, if applicable.

319 3. The proposal includes an enforceable commitment that

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320 programs and services and quality health care will continue to
321 be provided to all residents of the affected community,
322 particularly to the indigent, the uninsured, and the
323 underinsured.

324 4. Disclosure has been made of all conflicts of interest,
325 including, but not limited to, whether the sale or lease of the
326 hospital would result in a special private gain or loss to
327 members of the governing board or key management employees or
328 members of the medical staff of the county, district, or
329 municipal hospital, or if governing board members will be
330 serving on the board of any successor private corporation.
331 Conflicts of interest, if any, with respect to experts retained
332 by the governing board shall also be disclosed.

333 5. Disclosure has been made by the seller or lessor of all
334 contracts with physicians or other entities providing health
335 care services through a contract with the seller or lessor,
336 including all agreements or contracts that would be void or
337 voidable upon the consummation of the sale or lease.

338 6. The proposal is in compliance with subsections (9) and
339 (10).

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

343 1. The names and addresses of all parties to the
344 transaction.

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

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

347 4. A copy of the proposed sale or lease agreement and any
348 related agreements, including, but not limited to, leases,

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349 management contracts, service contracts, and memoranda of
350 understanding.

351 5. The estimated total value associated with the proposed
352 agreement and the proposed acquisition price.

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

355 7. The fair market value analysis required by paragraph
356 (5) (b), or any other valuation prepared at the request of the
357 board, owner of the hospital or health care system, or managing
358 entity of the hospital or health care system.

359 8. Copies of all other proposals and bids that the
360 governing board may have received or considered in compliance
361 with subsection (6).

362 (9) Within 120 days before the anticipated closing date of
363 the proposed transaction, the governing board shall make
364 publicly available all findings and documents required under
365 subsection (8) and publish a notice of the proposed transaction
366 in one or more newspapers of general circulation in the county
367 in which the majority of the physical assets of the hospital are
368 located. The notice must include the names of the parties
369 involved and the means by which a person may submit written
370 comments about the proposed transaction to the governing board
371 and obtain copies of the findings and documents required under
372 subsection (8).

373 (10) Within 20 days after the date of publication of the
374 public notice, any person may submit to the governing board
375 written comments regarding the proposed transaction.

376 (11) The sale or lease of the hospital is subject to
377 approval by the Chief Financial Officer or his or her designee,

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378 except, if otherwise required by law, approval of the sale or
379 lease shall exclusively be by majority vote of the registered
380 voters in the county, district, or municipality in which the
381 hospital is located.

382 (a) The governing board shall file a petition with the
383 state Chief Financial Officer seeking approval of the proposed
384 transaction at least 30 days after publication of the notice of
385 the proposed transaction.

386 (b) The petition for approval filed by the governing board
387 must include all findings and documents required under
388 subsection (8) and certification by the governing board of
389 compliance with all requirements of this section. The chair of
390 the governing board must certify under oath and subject to the
391 penalty of perjury on a form accompanying the petition that the
392 contents of the petition and representations therein are true
393 and correct.

394 (12) Within 30 days of receiving the petition, the Chief
395 Financial Officer or his or her designee shall issue a final
396 order approving or denying the proposed transaction based solely
397 upon consideration of whether the procedures contained within
398 this section have been followed by the governing board of the
399 county, district, or municipal hospital. The order shall require
400 the governing board to accept or reject the proposal for the
401 sale or lease of the county, district, or municipal hospital
402 based upon a determination that:

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

404 (b) The proposed transaction does not unreasonably exclude
405 a potential purchaser or lessee on the basis of being a for-
406 profit or a not-for-profit Florida corporation or other form of

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407 business organization, such as a partnership or limited
408 liability company.

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

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

414 (e) Any conflict of interest was disclosed, including, but
415 not limited to, how the proposed transaction could result in a
416 special private gain or loss to members of the governing board
417 or key management employees of the county, district, or
418 municipal hospital, or if governing board members will be
419 serving on the board of any successor private corporation.
420 Conflicts of interest, if any, with respect to experts retained
421 by the governing board shall also be disclosed.

422 (f) The seller or lessor documented that it will receive
423 fair market value for the sale or lease of the assets as
424 indicated in paragraph (5)(b) or, if leased at less than fair
425 market value, the governing board provided a detailed
426 explanation of how the best interests of the affected community
427 are served by the acceptance of less than fair market value for
428 the lease of the hospital.

429 (g) The acquiring entity has made an enforceable commitment
430 that programs and services and quality health care will continue
431 to be provided to all residents of the affected community,
432 particularly to the indigent, the uninsured, and the
433 underinsured.

434 (h) The governing board disclosed whether the sale or lease
435 will result in a reduction or elimination of ad valorem or other

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436 taxes used to support the hospital.

437 (13) Any interested party to the action has the right to
438 seek judicial review of the decision in the appellate district
439 where the hospital is located or in the First District Court of
440 Appeal pursuant to s. 120.68.

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

444 (b) In such judicial review, the appellate court shall
445 affirm the decision of the Chief Financial Officer, unless the
446 decision by the Chief Financial Officer is shown to be clearly
447 erroneous.

448 (14) All costs shall be paid by the governing board, unless
449 an interested party contests the action, in which case the court
450 may assign costs equitably to the parties.

451 (15) If any provision of subsection (5), subsection (6), or
452 subsection (8) is not followed, the contract for sale or lease
453 is voidable by any party to the contract. If any member of the
454 governing board negligently or willfully violates subsection
455 (5), subsection (6), or subsection (7), as determined by the
456 Commission on Ethics after receipt of a sworn complaint pursuant
457 to s. 112.322, the member is subject to a penalty, as determined
458 by the Commission on Ethics pursuant to s. 112.317.

459 (16) If a county, district, or municipal hospital is sold
460 or leased, the governing board shall:

461 (a) Deposit 50 percent of the net proceeds of the sale or
462 lease into a health care economic development trust fund, which
463 shall be under the control of the county commission of the
464 county in which the property is located. The use and

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465 distribution of the funds shall be at the discretion of a
466 majority of the county commission, the members of which shall
467 serve as trustees of the trust fund. The net proceeds in the
468 health care economic development trust fund shall be
469 distributed, in consultation with the Department of Economic
470 Opportunity, to promote job creation in the health care sector
471 of the economy through new or expanded health care business
472 development, new or expanded health care services, or new or
473 expanded health care education programs or commercialization of
474 health care research within the affected community; and

475 (b) Appropriate 50 percent of the net proceeds of the sale
476 or lease for funding the delivery of indigent and uncompensated
477 care on an equitable basis, based on the amount of indigent and
478 uncompensated care provided, to all hospitals within the
479 boundaries of the district.

480
481 For the purposes of this subsection, the term "net proceeds"
482 means the sale price after payment of all district debts and
483 obligations.

484 (17) If a county, district, or municipal hospital is sold
485 or leased to a for-profit corporation or other business entity
486 subject to local taxation, in addition to the distribution of
487 funds as directed in subsection (16):

488 (a) Fifty percent of the resulting county and municipal ad
489 valorem tax revenue from the formerly tax-exempt property shall
490 be distributed by the county commission of the county in which
491 the property is located, in consultation with the Department of
492 Economic Opportunity, for purposes set forth in subsection (16);
493 and

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494 (b) Fifty percent of the resulting county and municipal ad
495 valorem tax revenue from the formerly tax-exempt property shall
496 be appropriated by the county commission for the sole purpose of
497 enhancing education and law enforcement programs within the
498 county.

499 (18) ~~(5)~~ ~~If In the event~~ a hospital operated by a for-profit
500 or not-for-profit Florida entity ~~corporation~~ receives annually
501 more than \$100,000 in revenues from the county, district, or
502 municipality that owns the hospital, the Florida entity
503 ~~corporation~~ must be accountable to the county, district, or
504 municipality with respect to the manner in which the funds are
505 expended by either:

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

508 (b) Where there is a contract to provide revenues to the
509 hospital, the term of which is longer than 12 months, the
510 governing board of the county, district, or municipality must be
511 able to modify the contract upon 12 months notice to the
512 hospital.

513
514 A not-for-profit entity ~~corporation~~ that is subject to this
515 subsection and that does not currently comply with the
516 accountability requirements in this subsection shall have 12
517 months after the effective date of this act to modify any
518 contracts with the county, district, or municipality in a manner
519 that is consistent with this subsection.

520 (19) ~~(6)~~ Unless otherwise expressly stated in the lease
521 documents, the transaction involving the sale or lease of a
522 hospital may ~~shall~~ not be construed as:

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

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

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

529 (20)~~(7)~~ The lessee of a hospital, under this section or any
530 special act of the Legislature, operating under a lease may
531 ~~shall~~ not be construed to be "acting on behalf of" the lessor as
532 that term is used in statute, unless the lease document
533 expressly provides to the contrary.

534 (21)~~(8)~~ (a) If, whenever the sale of a public hospital by a
535 public agency to a private ~~corporation or other private~~ entity
536 pursuant to this section or pursuant to a special act of the
537 Legislature reflects that:

538 1. The private ~~corporation or other private~~ entity
539 purchaser acquires 100 percent ownership in the hospital
540 enterprise;

541 2. The private ~~corporation or other private~~ entity
542 purchases the physical plant of the hospital facility and has
543 complete responsibility for the operation and maintenance of the
544 facility, regardless of ownership of the underlying real
545 property;

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

548 4. The private ~~corporation or other private~~ entity
549 purchaser receives no funding from the public agency seller
550 other than by contract for services rendered to patients for
551 whom the public agency seller has the responsibility to pay for

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552 hospital or medical care;

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

555 6. The private ~~corporation or other private~~ entity
556 purchaser was not created by the public entity seller; and

557 7. The private ~~corporation or other private~~ entity
558 purchaser operates primarily for its own financial interests and
559 not primarily for the interests of the public agency,

560

561 such a sale shall be considered a complete sale of the public
562 agency's interest in the hospital or health care system.

563 (b) A complete sale of a hospital or health care system as
564 described in this subsection may ~~shall~~ not be construed as:

565 1. A transfer of a governmental function from the county,
566 district, or municipality to the private ~~corporation or other~~
567 ~~private~~ entity purchaser;

568 2. Constituting a financial interest of the public agency
569 in the private ~~corporation or other private~~ entity purchaser;

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

572 4. Making the private ~~corporation or other private~~ entity
573 purchaser an integral part of the public agency's decisionmaking
574 process; or

575 5. Indicating that the private ~~corporation or other private~~
576 entity purchaser is "acting on behalf of a public agency" as
577 that term is used in statute.

578 (22) If the governing board elects to sell or lease any
579 physical property of a county, district, or municipal hospital
580 or health care system and such property generated less than 20

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581 percent of the hospital's net revenue within the hospital's or
582 health care system's most recent fiscal year, the sale or lease
583 of such property is exempt from the requirements under
584 subsections (6)-(17). However, the governing board shall
585 publicly advertise the meeting at which the proposed sale or
586 lease of such property will be considered by the governing board
587 of the hospital in accordance with s. 286.0105 or publicly
588 advertise the offer to accept proposals in accordance with s.
589 255.0525 and receive proposals from all qualified purchasers and
590 lessees. The sale or lease of the property must be for fair
591 market value or, if a lease is for less than fair market value,
592 the lease must be in the best interest of the affected
593 community.

594 (23) A county, district, or municipal hospital that has
595 executed a letter of intent to sell or lease the hospital or
596 health care system accepted at a properly noticed public
597 meeting, and whose governing board has voted to approve the
598 letter of intent before December 31, 2011, is not subject to
599 subsections (6)-(17) as long as the final closing of the sale or
600 lease transaction pursuant to the letter of intent occurs before
601 December 31, 2012.

602 Section 2. Section 155.401, Florida Statutes, is created to
603 read:

604 155.401 Power of special taxing district to appropriate
605 proceeds from sale or lease of hospital to economic development
606 trust fund.—Notwithstanding any other general or special law,
607 the purposes for which a special taxing district may appropriate
608 funds from the sale or lease of a hospital to an economic
609 development fund include the promotion and support of economic

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610 growth in such district and in the county in which such district
611 is located and the furthering of the purposes of such district,
612 as provided by law.

613 Section 3. To the extent that any general or special law is
614 inconsistent with or otherwise in conflict with this act, such
615 conflicting provisions are specifically superseded by this act.
616 A special tax district, public hospital, or municipal hospital
617 is not exempt from this act.

618 Section 4. Section 395.3036, Florida Statutes, is amended
619 to read:

620 395.3036 Confidentiality of records and meetings of
621 entities ~~corporations~~ that lease public hospitals or other
622 public health care facilities.—The records of a private entity
623 ~~corporation~~ that leases a public hospital or other public health
624 care facility are confidential and exempt from ~~the provisions of~~
625 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and
626 the meetings of the governing board of a private entity
627 ~~corporation~~ are exempt from s. 286.011 and s. 24(b), Art. I of
628 the State Constitution if ~~when~~ the public lessor complies with
629 the public finance accountability provisions of s. 155.40(18)
630 ~~155.40(5)~~ with respect to the transfer of any public funds to
631 the private lessee and if ~~when~~ the private lessee meets at least
632 three of the five following criteria:

633 (1) The public lessor that owns the public hospital or
634 other public health care facility was not the incorporator or
635 initial member of the private entity ~~corporation~~ that leases the
636 public hospital or other health care facility.

637 (2) The public lessor and the private lessee do not
638 commingle any of their funds in any account maintained by either

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639 of them, other than the payment of the rent and administrative
640 fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.

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

644 (4) The lease agreement does not expressly require the
645 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
646 286.011.

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

651 Section 5. This act shall take effect upon becoming a law.