

HB 711

2012

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.; providing that the sale or lease of a county,  
5           district, or municipal hospital is subject to approval  
6           by the registered voters or by the circuit court;  
7           requiring the hospital governing board to determine by  
8           certain public advertisements whether there are  
9           qualified purchasers or lessees before the sale or  
10          lease of such hospital; defining the term "fair market  
11          value"; requiring the board to state in writing  
12          specified criteria forming the basis of its acceptance  
13          of a proposal for sale or lease of the hospital;  
14          providing for publication of notice; authorizing  
15          submission of written statements of opposition to a  
16          proposed transaction, and written responses thereto,  
17          within a certain timeframe; requiring the board to  
18          file a petition for approval with the circuit court  
19          and receive approval before any transaction is  
20          finalized; specifying information to be included in  
21          such petition; providing for the circuit court to  
22          issue an order requiring all interested parties to  
23          appear before the court under certain circumstances;  
24          requiring the clerk of the court to publish the copy  
25          of the order in certain newspapers at specified times;  
26          providing that certain parties are made parties to the  
27          action by the publication of the order; granting the  
28          circuit court jurisdiction to approve the sale or

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | lease of a county, district, or municipal hospital  
 30 | based on specified criteria; providing for a party to  
 31 | seek judicial review; requiring that the reviewing  
 32 | court affirm the judgment of the circuit court unless  
 33 | the decision is arbitrary, capricious, or not in  
 34 | compliance with the act; requiring the board to pay  
 35 | costs associated with the petition for approval unless  
 36 | a party contests the action; providing an exemption  
 37 | for certain sale or lease transactions completed  
 38 | before a specified date; amending s. 395.3036, F.S.;  
 39 | conforming cross-references; providing an effective  
 40 | date.

41

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

43

44 | Section 1. Subsections (1) and (4) of section 155.40,  
 45 | Florida Statutes, are amended, present subsections (5) through  
 46 | (8) of that section are renumbered as subsections (14) through  
 47 | (17), respectively, and new subsections (5) through (13) are  
 48 | added to that section, to read:

49 | 155.40 Sale or lease of county, district, or municipal  
 50 | hospital; effect of sale.—

51 | (1) In order for ~~that~~ citizens and residents of the state  
 52 | to ~~may~~ receive quality health care, any county, district, or  
 53 | municipal hospital organized and existing under the laws of this  
 54 | state, acting by and through its governing board, may ~~shall~~ have  
 55 | ~~the authority to~~ sell or lease such hospital to a for-profit or  
 56 | not-for-profit Florida corporation, and enter into leases or

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57 | other contracts with a for-profit or not-for-profit Florida  
 58 | corporation for the purpose of operating and managing such  
 59 | hospital and any or all of its facilities of whatsoever kind and  
 60 | nature. The term of any such lease, contract, or agreement and  
 61 | the conditions, covenants, and agreements to be contained  
 62 | therein shall be determined by the governing board of such  
 63 | ~~county, district, or municipal~~ hospital. The governing board of  
 64 | the hospital must find that the sale, lease, or contract is in  
 65 | the best interests of the public and must state the basis of  
 66 | such finding. The sale or lease of such hospital is subject to  
 67 | approval by a majority vote of the registered voters in the  
 68 | county, district, or municipality or, in the alternative,  
 69 | approval by a circuit court. ~~If the governing board of a county,~~  
 70 | ~~district, or municipal hospital decides to lease the hospital,~~  
 71 | ~~it must give notice in accordance with paragraph (4) (a) or~~  
 72 | ~~paragraph (4) (b).~~

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

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

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85 accordance with s. 286.0105; or

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

89

90 Any sale or lease must be for fair market value, ~~and any sale or~~  
91 ~~lease~~ must comply with all applicable state and federal  
92 antitrust laws. For the purposes of this section, the term "fair  
93 market value" means the price that a seller is willing to accept  
94 and a buyer is willing to pay on the open market and in an arms-  
95 length transaction.

96 (5) A determination by a governing board to accept a  
97 proposal for sale or lease must state, in writing, the findings  
98 and basis for supporting the determination.

99 (a) The findings and basis for supporting the governing  
100 board's determination must include, but need not be limited to,  
101 a balanced consideration of the following factors:

102 1. The proposal represents fair market value, or if the  
103 proposal does not represent fair market value, a detailed  
104 explanation of why the public interest is served by the  
105 acceptance of less than fair market value.

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

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

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113 underinsured.

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

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

119 1. The names and addresses of all parties to the  
120 transaction.

121 2. The location of the hospital and all related  
122 facilities.

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

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

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

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

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

135 8. A fairness evaluation by an independent expert in such  
136 transactions.

137 9. Copies of all other proposals and bids the governing  
138 board may have received or considered in compliance with  
139 subsection (4).

140 (6) Within 120 days before the anticipated closing date of

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141 the proposed transaction, the governing board shall make  
142 publicly available all findings and documents required under  
143 subsection (5) and publish a notice of the proposed transaction  
144 in one or more newspapers of general circulation in the county  
145 in which the majority of the physical assets of the hospital are  
146 located. The notice must include the names of the parties  
147 involved and the means by which a person may submit written  
148 comments about the proposed transaction to the governing board  
149 and obtain copies of the findings and documents required under  
150 subsection (5).

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

159 (8) A governing board of a county, district, or municipal  
160 hospital may not enter into a sale or lease of a hospital  
161 facility without first receiving approval by a majority vote of  
162 the registered voters in the county, district, or municipality  
163 or, in the alternative, approval from a circuit court.

164 (a) The governing board shall file a petition in a circuit  
165 court seeking approval of the proposed transaction at least 30  
166 days after publication of the notice of the proposed  
167 transaction. The petition must be filed in the circuit in which  
168 the majority of the physical assets of the hospital are located.

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169       (b) The petition for approval filed by the governing board  
170 must include all findings and documents required under  
171 subsection (5) and certification by the governing board of  
172 compliance with all requirements of this section.

173       (c) A circuit court has jurisdiction to approve the sale  
174 or lease of a county, district, or municipal hospital.

175       (9) Upon the filing of a petition for approval, the court  
176 shall issue an order requiring all interested parties to appear  
177 at a designated time and place within the circuit where the  
178 petition is filed and show why the petition should not be  
179 granted. For purposes of this subsection, the term "interested  
180 parties" includes any party submitting a proposal for sale or  
181 lease of the county, district, or municipal hospital, as well as  
182 the governing board.

183       (a) Before the date set for the hearing, the clerk shall  
184 publish a copy of the order in one or more newspapers of general  
185 circulation in the county in which the majority of the physical  
186 assets of the hospital are located at least once each week for 2  
187 consecutive weeks, commencing with the first publication, which  
188 must be at least 20 days before the date set for the hearing. By  
189 these publications, all interested parties are made parties  
190 defendant to the action and the court has jurisdiction of them  
191 to the same extent as if named as defendants in the petition and  
192 personally served with process.

193       (b) Any interested person may become a party to the action  
194 by moving against or pleading to the petition at or before the  
195 time set for the hearing. At the hearing, the court shall  
196 determine all questions of law and fact and make such orders as

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197 will enable it to properly consider and determine the action and  
 198 render a final judgment with the least possible delay.

199 (10) Upon conclusion of all hearings and proceedings, and  
 200 upon consideration of all evidence presented, the court shall  
 201 render a final judgment approving or denying the proposed  
 202 transaction and shall order the governing board to accept or  
 203 reject the proposal for the sale or lease of the county,  
 204 district, or municipal hospital. In reaching its final judgment,  
 205 the court shall determine whether:

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

207 (b) The proposed transaction unreasonably excludes a  
 208 potential purchaser or lessee on the basis of being a for-profit  
 209 or a not-for-profit Florida corporation.

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

213 (d) The governing board of the hospital publicly  
 214 advertised the offer to accept proposals in compliance with s.  
 215 255.0525.

216 (e) The governing board of the hospital exercised due  
 217 diligence in deciding to dispose of hospital assets, selecting  
 218 the proposed purchaser or lessee, and negotiating the terms and  
 219 conditions of the disposition.

220 (f) Any conflict of interest was disclosed, including, but  
 221 not limited to, conflicts of interest relating to members of the  
 222 governing board and experts retained by the parties to the  
 223 transaction.

224 (g) The seller or lessor will receive fair market value



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225 for the assets, or if the sale or lease represents less than  
226 fair market value, why the public interest will be served by  
227 accepting less than fair market value.

228 (h) The acquiring entity has made an enforceable  
229 commitment that existing programs and services and quality  
230 health care will continue to be provided to all residents of the  
231 affected community, particularly to the indigent, the uninsured,  
232 and the underinsured.

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

236 (11) Any party to the action has the right to seek  
237 judicial review in the appellate district where the petition for  
238 approval was filed.

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

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

246 (12) All costs shall be paid by the governing board,  
247 unless an interested party contests the action, in which case  
248 the court may assign costs to the parties.

249 (13) Any sale or lease completed before March 9, 2011, is  
250 not subject to this section. Any lease that contained, on March  
251 9, 2011, an option to renew or extend that lease upon its  
252 expiration is not subject to this section upon renewal or

253 extension on or after March 9, 2011.

254 Section 2. Section 395.3036, Florida Statutes, is amended  
255 to read:

256 395.3036 Confidentiality of records and meetings of  
257 corporations that lease public hospitals or other public health  
258 care facilities.—The records of a private corporation that  
259 leases a public hospital or other public health care facility  
260 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)  
261 and s. 24(a), Art. I of the State Constitution, and the meetings  
262 of the governing board of a private corporation are exempt from  
263 s. 286.011 and s. 24(b), Art. I of the State Constitution if  
264 ~~when~~ the public lessor complies with the public finance  
265 accountability provisions of s. 155.40(14) ~~155.40(5)~~ with  
266 respect to the transfer of any public funds to the private  
267 lessee and if ~~when~~ the private lessee meets at least three of  
268 the five following criteria:

269 (1) The public lessor that owns the public hospital or  
270 other public health care facility was not the incorporator of  
271 the private corporation that leases the public hospital or other  
272 health care facility.

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

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

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

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281 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and  
282 286.011.

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

287 Section 3. This act shall take effect July 1, 2012.