

1 A bill to be entitled
2 An act relating to the sale or lease of a county,
3 district, or municipal hospital; amending s. 155.40,
4 F.S.; requiring approval from a circuit court for the
5 sale or lease of a county, district, or municipal
6 hospital unless certain exemption or referendum
7 approval applies; requiring the hospital governing
8 board to determine by certain public advertisements
9 whether there are qualified purchasers or lessees
10 before the sale or lease of such hospital; defining
11 the term "fair market value"; requiring the board to
12 state in writing specified criteria forming the basis
13 of its acceptance of a proposal for sale or lease of
14 the hospital; providing for publication of notice;
15 authorizing submission of written statements of
16 opposition to a proposed transaction, and written
17 responses thereto, to the hospital governing board
18 within a certain timeframe; requiring the board to
19 file a petition for approval with the circuit court
20 and receive approval before any transaction is
21 finalized; providing an exception; specifying
22 information to be included in such petition; providing
23 for the circuit court to issue an order requiring all
24 interested parties to appear before the court under
25 certain circumstances; defining the term "interested
26 party"; granting the circuit court jurisdiction to
27 approve sales or leases of county, district, or
28 municipal hospitals based on specified criteria;

29 providing for a party to seek judicial review;
 30 requiring the court to enter a final judgment;
 31 requiring the board to pay costs associated with the
 32 petition for approval unless a party contests the
 33 action; providing an exemption for certain sale or
 34 lease transactions completed before a specified date;
 35 providing an exemption for county, district, or
 36 municipal hospitals that receive no tax support;
 37 defining the term "tax support"; amending s. 395.3036,
 38 F.S.; conforming cross-references; providing an
 39 effective date.

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41 Be It Enacted by the Legislature of the State of Florida:

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43 Section 1. Subsections (1) and (4) of section 155.40,
 44 Florida Statutes, are amended, present subsections (5) through
 45 (8) are renumbered as subsections (15) through (18),
 46 respectively, and new subsections (5) through (14) are added to
 47 that section, to read:

48 155.40 Sale or lease of county, district, or municipal
 49 hospital; effect of sale.—

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

57 corporation for the purpose of operating and managing such
 58 hospital and any or all of its facilities of whatsoever kind and
 59 nature. The term of any such lease, contract, or agreement and
 60 the conditions, covenants, and agreements to be contained
 61 therein shall be determined by the governing board of such
 62 county, district, or municipal hospital. The governing board of
 63 the hospital must find that the sale, lease, or contract is in
 64 the best interests of the public and must state the basis of
 65 such finding. The sale or lease of such hospital is subject to
 66 approval by a circuit court unless otherwise exempt under
 67 subsection (14) or, for any such hospital that is required by
 68 its statutory charter to seek approval by referendum for any
 69 action that would result in the termination of the direct
 70 control of the hospital by its governing board, approval by such
 71 referendum. ~~If the governing board of a county, district, or~~
 72 ~~municipal hospital decides to lease the hospital, it must give~~
 73 ~~notice in accordance with paragraph (4) (a) or paragraph (4) (b).~~

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

82 (a) ~~Negotiate the terms of the sale or lease with a for-~~
 83 ~~profit or not-for-profit Florida corporation and Publicly~~
 84 advertise the meeting at which the proposed sale or lease will

85 be considered by the governing board of the hospital in
 86 accordance with ss. ~~s.~~ 286.0105 and 286.011; or

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

90
 91 Any sale or lease must be for fair market value, and any sale or
 92 lease must comply with all applicable state and federal
 93 antitrust laws. For the purposes of this section, the term "fair
 94 market value" means the price that a seller is willing to accept
 95 and a buyer is willing to pay on the open market and in an
 96 arm's-length transaction, which includes any benefit that the
 97 public would receive in connection with the sale or lease.

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

101 (a) The governing board shall develop findings and bases
 102 to support the determination of a balanced consideration of
 103 factors including, but not limited to, the following:

104 1. Whether the proposal represents fair market value,
 105 which includes an explanation of how the public interest will be
 106 served by the proposed transaction.

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

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

113 community, particularly to the indigent, the uninsured, and the
114 underinsured.

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

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

120 1. The name and address of each party to the 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 in the
132 3 years immediately before 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 procedures required under subsection (4).

140 (6) Not later than 120 days before the anticipated closing
141 date of the proposed transaction, the governing board shall
142 publish a notice of the proposed transaction in one or more
143 newspapers of general circulation in the county in which the
144 majority of the physical assets of the hospital are located. The
145 notice shall include the names of the parties involved, the
146 means by which persons may submit written comments about the
147 proposed transaction to the governing board, and the means by
148 which persons may obtain copies of the findings and documents
149 required under subsection (5).

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

158 (8) A governing board of a county, district, or municipal
159 hospital may not enter into a sale or lease of a hospital
160 facility without first receiving approval from a circuit court
161 or, for any such hospital that is required by its statutory
162 charter to seek approval by referendum for any action that would
163 result in the termination of the direct control of the hospital
164 by its governing board, approval by such referendum.

165 (a) The governing board shall file a petition for approval
166 in a circuit court seeking approval of the proposed transaction

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167 not sooner than 30 days after publication of notice of the
168 proposed transaction.

169 (b) Any such petition for approval filed by the governing
170 board shall 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) Circuit courts shall have jurisdiction to approve the
174 sale or lease of a county, district, or municipal hospital. A
175 petition for approval shall be filed in the circuit in which the
176 majority of the physical assets of the hospital are located.

177 (9) Upon the filing of a petition for approval, the court
178 shall issue an order requiring all interested parties to appear
179 at a designated time and place within the circuit where the
180 petition is filed and show why the petition should or should not
181 be granted. For purposes of this section, the term "interested
182 party" means any party submitting a proposal for sale or lease
183 of the county, district, or municipal hospital; any taxpayer
184 from the county, district, or municipality in which the majority
185 of the physical assets of the hospital are located; or the
186 governing board.

187 (a) Before the date set for the hearing, the clerk shall
188 publish a copy of the order in one or more newspapers of general
189 circulation in the county in which the majority of the physical
190 assets of the hospital are located at least once each week for 2
191 consecutive weeks, commencing with the first publication, which
192 shall not be less than 20 days before the date set for the
193 hearing. By this publication, all interested parties are made
194 parties defendant to the action and the court has jurisdiction

195 of them to the same extent as if they were named as defendants
 196 in the petition and personally served with process.

197 (b) Any interested party may become a party to the action
 198 by moving against or pleading to the petition at or before the
 199 time set for the hearing. At the hearing, the court shall
 200 determine all questions of law and fact and make such orders as
 201 will enable it to properly consider and determine the action and
 202 render a final judgment with the least possible delay.

203 (10) Upon conclusion of all hearings and proceedings, and
 204 upon consideration of all evidence presented, the court shall
 205 render a final judgment as to whether the governing board
 206 complied with the process provided in this section. In reaching
 207 its final judgment, the court shall determine whether:

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

209 (b) The governing board reviewed all proposals.

210 (c) The governing board publicly advertised the meeting at
 211 which the proposed transaction was considered by the board in
 212 compliance with ss. 286.0105 and 286.011.

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

215 (e) The governing board did not act arbitrarily and
 216 capriciously in making the determination to sell or lease the
 217 hospital assets, selecting the proposed purchaser or lessee, and
 218 negotiating the terms of the sale or lease.

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

223 (g) The seller or lessor will receive fair market value
224 for the assets, which includes an explanation of how the public
225 interest will be served by the proposed transaction.

226 (h) The governing board incorporated a provision in the
227 sale or lease requiring the acquiring entity to continue to
228 provide existing programs and services and quality health care
229 to all residents of the affected community, particularly to the
230 indigent, the uninsured, and the underinsured.

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

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

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

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

244 (12) All costs shall be paid by the governing board,
245 except when an interested party contests the action, in which
246 case the court may assign costs to the parties at its
247 discretion.

248 (13) Any sale or lease completed before June 30, 2012, is
249 not subject to the requirements of this section. Any lease that
250 contained, on June 30, 2012, an option to renew or extend that

251 lease upon its expiration is not subject to this section upon
 252 renewal or extension on or after June 30, 2012.

253 (14) A county, district, or municipal hospital that has
 254 not received any tax support is exempt from the requirements of
 255 subsections (8)-(12). For the purposes of this section, the term
 256 "tax support" means ad valorem or other tax revenues paid
 257 directly from a county, district, or municipal taxing authority
 258 to a hospital without a corresponding exchange of goods or
 259 services within the 5 years before the effective date of a
 260 proposed lease or sale.

261 Section 2. Section 395.3036, Florida Statutes, is amended
 262 to read:

263 395.3036 Confidentiality of records and meetings of
 264 corporations that lease public hospitals or other public health
 265 care facilities.—The records of a private corporation that
 266 leases a public hospital or other public health care facility
 267 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
 268 and s. 24(a), Art. I of the State Constitution, and the meetings
 269 of the governing board of a private corporation are exempt from
 270 s. 286.011 and s. 24(b), Art. I of the State Constitution when
 271 the public lessor complies with the public finance
 272 accountability provisions of s. 155.40(15) ~~155.40(5)~~ with
 273 respect to the transfer of any public funds to the private
 274 lessee and when the private lessee meets at least three of the
 275 five following criteria:

276 (1) The public lessor that owns the public hospital or
 277 other public health care facility was not the incorporator of

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278 | the private corporation that leases the public hospital or other
279 | health care facility.

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

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

287 | (4) The lease agreement does not expressly require the
288 | lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
289 | 286.011.

290 | (5) The public lessor is not entitled to receive any
291 | revenues from the lessee, except for rental or administrative
292 | fees due under the lease, and the lessor is not responsible for
293 | the debts or other obligations of the lessee.

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