

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

CS/CS/HB 711

2012

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. Copies of all other proposals and bids the governing
136 board may have received or considered in compliance with
137 procedures required under subsection (4).

138 (6) Not later than 120 days before the anticipated closing
139 date of the proposed transaction, the governing board shall
140 publish a notice of the proposed transaction in one or more

141 newspapers of general circulation in the county in which the
142 majority of the physical assets of the hospital are located. The
143 notice shall include the names of the parties involved, the
144 means by which persons may submit written comments about the
145 proposed transaction to the governing board, and the means by
146 which persons may obtain copies of the findings and documents
147 required under subsection (5).

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

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

163 (a) The governing board shall file a petition for approval
164 in a circuit court seeking approval of the proposed transaction
165 not sooner than 30 days after publication of notice of the
166 proposed transaction.

167 (b) Any such petition for approval filed by the governing
168 board shall include all findings and documents required under

169 subsection (5) and certification by the governing board of
170 compliance with all requirements of this section.

171 (c) Circuit courts shall have jurisdiction to approve the
172 sale or lease of a county, district, or municipal hospital. A
173 petition for approval shall be filed in the circuit in which the
174 majority of the physical assets of the hospital are located.

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 or should not
179 be granted. For purposes of this section, the term "interested
180 party" means any party submitting a proposal for sale or lease
181 of the county, district, or municipal hospital; any taxpayer
182 from the county, district, or municipality in which the majority
183 of the physical assets of the hospital are located; or the
184 governing board.

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

195 (b) Any interested party may become a party to the action
196 by moving against or pleading to the petition at or before the

CS/CS/HB 711

2012

197 time set for the hearing. At the hearing, the court shall
198 determine all questions of law and fact and make such orders as
199 will enable it to properly consider and determine the action and
200 render a final judgment with the least possible delay.

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

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

207 (b) The governing board reviewed all proposals.

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

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

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

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

221 (g) The seller or lessor documented receipt of fair market
222 value for the assets, which includes an explanation of why the
223 public interest is served by the proposed transaction.

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

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

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

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

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

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

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

CS/CS/HB 711

2012

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

259 Section 2. Section 395.3036, Florida Statutes, is amended
260 to read:

261 395.3036 Confidentiality of records and meetings of
262 corporations that lease public hospitals or other public health
263 care facilities.—The records of a private corporation that
264 leases a public hospital or other public health care facility
265 are confidential and exempt from ~~the provisions of~~ s. 119.07(1)
266 and s. 24(a), Art. I of the State Constitution, and the meetings
267 of the governing board of a private corporation are exempt from
268 s. 286.011 and s. 24(b), Art. I of the State Constitution when
269 the public lessor complies with the public finance
270 accountability provisions of s. 155.40(15) ~~155.40(5)~~ with
271 respect to the transfer of any public funds to the private
272 lessee and when the private lessee meets at least three of the
273 five following criteria:

274 (1) The public lessor that owns the public hospital or
275 other public health care facility was not the incorporator of
276 the private corporation that leases the public hospital or other
277 health care facility.

CS/CS/HB 711

2012

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

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

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

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

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