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1
 2 An act relating to the Highlands County Hospital
 3 District; amending chapter 2004-458, Laws of Florida;
 4 providing requirements and duties of the Board of
 5 Commissioners of the Highlands County Hospital
 6 District before a lease or management agreement with
 7 not-for-profit or for-profit corporations; providing
 8 requirements for the agreement; providing
 9 applicability; authorizing the board to sell the
 10 entirety of the assets of the hospital to a not-for-
 11 profit or for-profit entity under certain
 12 circumstances; providing requirements and duties of
 13 the board before the sale; providing requirements for
 14 the sale agreement; requiring the hospital to file a
 15 copy of the sale agreement with the Department of
 16 Commerce; requiring the board to notify the department
 17 of the sale; providing for judicial reviews; providing
 18 for court costs; providing construction; providing an
 19 effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 35 of section 3 of chapter 2004-458,
 24 Laws of Florida, is amended, and sections 37 and 38 are added to
 25 that section, to read:

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26 Section 3. The charter for the Highlands County Hospital
 27 District is re-created and reenacted to read:

28 Section 35. In order that citizens and residents of the
 29 district may receive quality health care, the board of
 30 commissioners may enter into contract with corporations, either
 31 for-profit ~~for profit~~ or not-for-profit ~~not for profit~~, duly
 32 authorized to do business in the state for the purpose of
 33 operating and managing such hospital and any or all of its
 34 facilities ~~of whatsoever kind and nature and enter into leases~~
 35 ~~with such corporations for the operating of such facilities. The~~
 36 ~~term of any such lease, contract, or agreement and the~~
 37 ~~conditions, covenants, and agreements to be contained therein~~
 38 ~~shall be determined by the board of commissioners.~~

39 (1) Prior to entering into a lease or management
 40 agreement, the Board of Commissioners of the Highlands County
 41 Hospital District must elect, by a majority vote of the members
 42 present and voting, to commence an evaluation of the benefits to
 43 the public of the district, as described in Section 1, of
 44 leasing the entirety of the assets of the Highlands County
 45 Hospital District to a not-for-profit or for-profit entity to
 46 continue to provide health care services to the community if the
 47 board executes an agreement that meets the requirements of
 48 subsection (6) of this section. In evaluating the benefits of
 49 leasing the district assets, the board must find that the lease
 50 is in the best interests of the public of the district and must

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51 state the basis of that finding. To make that determination, the
52 board shall:

53 (a) Contract with an independent entity or entities that
54 have at least 5 years of experience conducting comparable
55 evaluations of hospital organizations similar in size and
56 function to the hospital to conduct an evaluation of the
57 benefits of leasing the district assets according to applicable
58 industry practices. A study completed less than 2 years prior to
59 the public notice under paragraph (b) of this subsection that
60 meets all other requirements may be used for the purposes of
61 this evaluation. The evaluation must also include the estimated
62 fair market value, as defined in section 155.40(4), Florida
63 Statutes, of the district assets and a statement signed by the
64 chief executive officer or designee of the independent entity or
65 entities conducting the evaluation that, based on his or her
66 reasonable knowledge and belief, the content and conclusions of
67 the evaluation are true and correct.

68 (b) Publish notice of and conduct a public meeting in
69 accordance with section 189.015(1), Florida Statutes, to provide
70 the public of the district with the opportunity to publicly
71 testify regarding the lease or management agreement. The public
72 notice must contain notice of where the public can find all
73 documents related to the potential lease of the hospital.

74 (2) The board must publish on the hospital district
75 website the evaluation, all documents considered by the board,

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76 and a statement signed by the chair of the board that, based on
 77 his or her reasonable knowledge and belief, the content of the
 78 evaluation is true and correct.

79 (3) If, upon completion of the evaluation of the benefits
 80 of a lease, the board elects to consider a lease or management
 81 agreement of the hospital in its entirety to a third party, the
 82 board must first determine whether there are any qualified
 83 lessees. In the process of evaluating any qualified lessee, the
 84 board shall:

85 (a) Publicly advertise the meeting at which the proposed
 86 lease will be considered by the board in accordance with section
 87 286.0105, Florida Statutes; or

88 (b) Publicly advertise the offer to accept proposals in
 89 accordance with section 255.0525, Florida Statutes, and receive
 90 proposals from all qualified lessees.

91 (4) The members of the board must disclose all conflicts
 92 of interest as required by section 112.313, Florida Statutes,
 93 including, but not limited to, whether the lease or management
 94 agreement will result in a special private gain or loss to any
 95 member of the board. Conflicts of interest, if any, with respect
 96 to experts retained by the board shall also be disclosed.

97 (5) The evaluation, agreements, disclosures, and any other
 98 supporting documents related to the lease or management
 99 agreement of the hospital must be published on the hospital
 100 district website for 30 calendar days before the board may vote

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101 on the proposed agreement identified in subsection (6) of this
 102 section to lease the hospital to a not-for-profit or for-profit
 103 entity. The hospital district website must include a means by
 104 which a person may submit written comments about the proposed
 105 transaction to the board.

106 (6) The board must determine, by a majority vote, whether
 107 the interests of the public of the district are best served by
 108 leasing to a not-for-profit or for-profit entity. The board must
 109 make a determination to accept a proposal for lease after
 110 consideration of all proposals received and negotiations with a
 111 qualified lessee or management entity. The board's determination
 112 must include, in writing, detailed findings of all reasons for
 113 accepting the proposal. If the accepted bid is less than the
 114 fair market value under subsection (1) of this section, the
 115 board shall provide a detailed explanation of how the best
 116 interests of the public of the district are served by the
 117 acceptance of less than the fair market value for the lease of
 118 the hospital. The board's findings must include the findings of
 119 all information and documents relevant to the board's
 120 determination, including, but not limited to:

121 (a) The names and addresses of all parties to the
 122 transaction.

123 (b) The location of the hospital and all related
 124 facilities.

125 (c) A description of the terms of all proposed agreements.

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126 (d) A copy of the lease or management agreement and any
 127 related agreements.

128 (e)1. The estimated total value associated with the
 129 proposed agreement.

130 2. The estimated fair market value under subsection (1) of
 131 this section.

132 3. The proposed lease price.

133 (f) The evaluation as required in subsection (1) of this
 134 section and any other valuation prepared at the request of the
 135 board, lessee, or managing entity of the hospital.

136 (g) Copies of all other proposals and bids that the board
 137 may have received or considered in compliance with subsection
 138 (3) of this section.

139 (7) In a public meeting noticed as required pursuant to
 140 subsection (1) of this section, the board may approve, by a
 141 majority vote, of the lease of the hospital to an entity subject
 142 to the terms of a negotiated agreement. The agreement made
 143 pursuant hereto shall:

144 (a) Require that the articles of incorporation of the for-
 145 profit or not-for-profit corporation be subject to the approval
 146 of the board;

147 (b) Require that any not-for-profit corporation is
 148 qualified under s. 501(c)(3) of the United States Internal
 149 Revenue Code;

150 (c) Provide for the orderly transition of the operation

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151 and management of the facilities, including, but not limited to,
 152 a change of ownership as described in section 408.807, Florida
 153 Statutes, if applicable; and

154 (d) Provide that the leasing or managing entity has made
 155 an enforceable commitment that programs and services and quality
 156 health care will continue to be provided to the public of the
 157 district, particularly to the indigent, the uninsured, and the
 158 underinsured.

159 (8) Any interested party as defined in section 155.40(4),
 160 Florida Statutes, has the right to seek judicial review of the
 161 decision by the board relating to the lease of the hospital in
 162 the circuit court where the hospital is located. Judicial review
 163 is limited solely to consideration of whether the procedures
 164 contained within this section have been followed by the board.

165 (9) If an interested party contests the action by the
 166 board, the court will assign costs equitably to the parties.

167 (10) Leases or management agreements not subject to
 168 subsections (5)-(9) of this section are limited to:

169 (a) A lease entered into prior to the effective date of
 170 this act that is modified, extended, or renewed.

171 (b) A lease or management agreement for a term no greater
 172 than 10 years that is entered into so the board may undergo the
 173 process as outlined in subsections (5)-(9) of this section.

174 Section 37. (1) The Board of Commissioners of the
 175 Highlands County Hospital District may elect, by a majority vote

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176 of the members present and voting, to commence an evaluation of
177 the benefits to the public of the district, as described in
178 Section 1, of selling the entirety of the assets of the
179 Highlands County Hospital District to a not-for-profit or for-
180 profit entity to continue to provide health care services to the
181 community if the board executes an agreement that meets the
182 requirements of subsection (7) of this section. In evaluating
183 the benefits of the sale, the board must find that the sale is
184 in the best interest of the public of the district and must
185 state the basis of that finding. To make that determination, the
186 board shall contract with an independent entity or entities that
187 have at least 5 years of experience conducting comparable
188 evaluations of hospital organizations similar in size and
189 function to the hospital to conduct an evaluation of the
190 benefits of selling the district assets according to applicable
191 industry practices. A study completed less than 2 years prior to
192 the public notice under subsection (2) of this section that
193 meets all other requirements may be used for the purposes of
194 this evaluation. The evaluation must be based on the most
195 currently available financial data and must include, but need
196 not be limited to, all of the following:

197 (a) An objective operating comparison of the hospital to
198 other similarly situated hospitals, both not-for-profit and for-
199 profit, which have a similar service mix in order to determine
200 where there is a difference in the cost of operation using,

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201 including, but not limited to, publicly available data provided
 202 by the Agency for Health Care Administration, data provided by
 203 the current operator of the hospital as requested by the board,
 204 and the quality metrics identified by the Centers for Medicare
 205 and Medicaid Services Core Measures.

206 (b) An assessment of whether there is a net benefit to the
 207 community to operate the hospital as a not-for-profit or for-
 208 profit entity and use the proceeds of the sale for the purposes
 209 described in section 36.

210 (c) An assessment of the fair market value, as defined in
 211 section 155.40(4), Florida Statutes, of the district assets.

212 (d) A statement signed by the chief executive officer or
 213 designee of the independent entity or entities conducting the
 214 evaluation that, based on his or her reasonable knowledge and
 215 belief, the content and conclusions of the evaluation are true
 216 and correct.

217 (2) The board must publish notice of and conduct a public
 218 meeting in accordance with section 189.015(1), Florida Statutes,
 219 to provide the public of the district with the opportunity to
 220 publicly testify regarding the sale. The public notice must
 221 contain notice of where the public can find all documents
 222 related to the potential sale of the hospital.

223 (3) The board must publish on the hospital district
 224 website the evaluation, all documents considered by the board,
 225 and a statement signed by the chair of the board that, based on

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226 his or her reasonable knowledge and belief, the content of the
227 evaluation is true and correct.

228 (4) If, upon completion of the evaluation of the benefits
229 of a sale, the board elects to consider a sale of the hospital
230 in its entirety to a third party, the board must first determine
231 whether there are any qualified purchasers. In the process of
232 evaluating any qualified purchaser, the board shall:

233 (a) Publicly advertise the meeting at which the proposed
234 sale will be considered by the board in accordance with section
235 286.0105, Florida Statutes; or

236 (b) Publicly advertise the offer to accept proposals in
237 accordance with section 255.0525, Florida Statutes, and receive
238 proposals from all qualified purchasers.

239 (5) The members of the board must disclose all conflicts
240 of interest as required by section 112.313, Florida Statutes,
241 including, but not limited to, whether the sale will result in a
242 special private gain or loss to any member of the board.
243 Conflicts of interest, if any, with respect to experts retained
244 by the board shall also be disclosed.

245 (6) The evaluation, agreements, disclosures, and any other
246 supporting documents related to the sale of the hospital must be
247 published on the hospital district website for 30 calendar days
248 before the board may vote on the proposed agreement identified
249 in subsection (8) of this section to sell the hospital to a not-
250 for-profit or for-profit entity. The hospital district website

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251 must include a means by which a person may submit written
252 comments about the proposed transaction to the board and obtain
253 copies of the findings and documents required under subsections
254 (1) and (7) of this section.

255 (7) The board must determine, by a majority vote, whether
256 the interests of the public of the district are best served by
257 selling to a not-for-profit or for-profit entity. The board must
258 make a determination to accept a proposal for sale after
259 consideration of all proposals received and negotiations with a
260 qualified purchaser. The board's determination must include, in
261 writing, detailed findings of all reasons for accepting the
262 proposal. If the accepted bid is less than the fair market value
263 under subsection (1) of this section, the board shall provide a
264 detailed explanation of how the best interests of the public of
265 the district are served by the acceptance of less than the fair
266 market value for the purchase of the hospital. The board's
267 findings must include the findings of all information and
268 documents relevant to the board's determination, including, but
269 not limited to:

270 (a) The names and addresses of all parties to the
271 transaction.

272 (b) The location of the hospital and all related
273 facilities.

274 (c) A description of the terms of all proposed agreements.

275 (d) A copy of the proposed sale and any related

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276 agreements.

277 (e)1. The estimated total value associated with the
 278 proposed agreement.

279 2. The estimated fair market value, as defined in section
 280 155.40, Florida Statutes, associated with the proposed
 281 agreement.

282 3. The proposed acquisition price.

283 (f) The evaluation as required in subsection (1) of this
 284 section and any other valuation prepared at the request of the
 285 board, lessee, or managing entity of the hospital.

286 (g) Copies of all other proposals and bids that the board
 287 may have received or considered in compliance with subsection
 288 (3) of this section.

289 (8) In a public meeting noticed as required pursuant to
 290 subsection (1) of this section, the board may approve, by a
 291 majority vote, of the sale of the hospital to an entity subject
 292 to the terms of a negotiated agreement. The agreement made
 293 pursuant hereto shall:

294 (a) Require that the articles of incorporation of the for-
 295 profit or not-for-profit corporation be subject to the approval
 296 of the board;

297 (b) Require that any not-for-profit corporation is
 298 qualified under s. 501(c)(3) of the United States Internal
 299 Revenue Code;

300 (c) Provide for the orderly transition of the operation

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301 and management of the facilities, including, but not limited to,
 302 a change of ownership as described in section 408.807, Florida
 303 Statutes, if applicable; and

304 (d) Provide that the acquiring entity has made an
 305 enforceable commitment that programs and services and quality
 306 health care will continue to be provided to all residents of the
 307 district, particularly to the indigent, the uninsured, and the
 308 underinsured in perpetuity so long as the succeeding entity is
 309 in operation or, if otherwise agreed to, until the succeeding
 310 entity has otherwise met all obligations set forth in the
 311 agreement.

312 (9) If the board approves the sale, the hospital district
 313 shall file a copy of the agreement with the Department of
 314 Commerce no later than 10 calendar days after the later of:

315 (a) The approval of the change of ownership pursuant to
 316 section 408.807, Florida Statutes, if applicable; or

317 (b) The date of closing, if no change of license ownership
 318 is required.

319 (10) The residual proceeds of the sale are surplus funds
 320 and must be used in the same manner as described in Section 36.

321 (11) No later than 30 calendar days after the complete
 322 sale of the district's assets and liabilities, as described in
 323 section 155.40(21), Florida Statutes, the board shall notify the
 324 Department of Commerce of the sale. The Highlands County
 325 Hospital District shall be dissolved 30 calendar days following

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326 the receipt of the notice by the department.

327 (12) If the board fails to approve for any reason an
 328 agreement that would result in the sale of the hospital to a
 329 not-for-profit or for-profit entity that will continue to
 330 provide health care services for the county, the board shall
 331 continue to exist as the Highlands County Hospital District.

332 (13) Any interested party as defined in section 155.40(4),
 333 Florida Statutes, has the right to seek judicial review of the
 334 decision by the board to sell the district assets, including,
 335 but not limited to, the hospital, in the circuit court where the
 336 hospital is located. Judicial review is limited solely to
 337 consideration of whether the procedures contained within this
 338 section have been followed by the board.

339 (14) If an interested party contests the action by the
 340 board, the court will assign costs equitably to the parties.

341 Section 38. The provisions of this act shall be construed
 342 liberally in order to carry out its purpose effectively. Any of
 343 the enumerated powers herein shall not be construed as a
 344 limitation against any remaining powers but shall be construed
 345 as cumulative. To the extent necessary to fully effectuate the
 346 purpose of this act, the provisions hereof shall supersede and
 347 preempt the application of section 155.40, Florida Statutes,
 348 relating to the sale or lease of the hospital.

349 Section 2. This act shall take effect upon becoming a law.