

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1568

INTRODUCER: Community Affairs Committee; Health Regulation Committee; and Senators Gaetz and Garcia

SUBJECT: Sale or Lease of County, District, or Municipal Hospital

DATE: February 27, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Fav/CS
2.	Toman	Yeatman	CA	Fav/CS
3.	Betta	DeLoach	BGA	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The committee substitute (CS/CS) requires any sale or lease of a public hospital that is owned by a county, district, or municipality to be approved by the Chief Financial Officer (CFO) of Florida, unless a majority vote of the registered voters within that county, district, or municipality, is required by law.

Unless exempted, the governing board of a public hospital must, within 60 calendar days after one of six triggering conditions, commence evaluation of the possible benefits to an affected community from the sale or lease of the hospital. Within 160 days of the initiation of an evaluation, the governing board must publish its findings related to the evaluation process.

The CS/CS also provides that prior to the sale or lease, the governing board of the public hospital must provide public notice of the proposed transaction, publish documents associated with the transaction, and publish the governing board's findings regarding the proposed sale or lease. A procedure for allocating the costs associated with an evaluation is outlined. The CS/CS also provides the process of review of the sale or lease to be conducted by the CFO prior to approval or rejection of the sale or lease.

The CS/CS provides for the appeal of the CFO's decision by the governing board or an interested party.

The CS/CS allocates net proceeds received from the sale or lease of a county, district, or municipal hospital and ad valorem tax revenue collected when a public hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation.

The CS/CS exempts a lease modification, renewal, or extension relating to a hospital that was leased prior to the CS/CS becoming a law, from the evaluation, public disclosure, or approval processes, or net proceeds or tax revenue allocations provided for in the CS/CS. The CS/CS also exempts the sale or lease of any hospital property that generates less than a certain amount of revenue from these processes and allocations.

The CS/CS also provides that, despite any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an economic development fund include the promotion and support of health care business development or research in the district and in the county in which the district is located.

The CS/CS will take effect upon becoming a law.

This CS/CS amends sections 155.40 and 395.3036, Florida Statutes.

This CS/CS creates section 155.401, Florida Statutes.

The CS/CS creates an undesignated section of Florida Statutes.

II. Present Situation:

Sale or Lease of Public Hospitals

County, district, and municipal hospitals may be created by special enabling acts, rather than by general acts under Florida law.¹ The special act may specify the hospital's ability or inability to levy taxes to support the maintenance of the hospital, the framework for the governing board, and whether or not the governing board has the ability to issue bonds. There are currently 34 hospital districts in Florida under which public hospitals operate,² and the Public Health Trust of Miami-Dade County, which is not a special hospital district but is a part of county government.³

¹ Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 percent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.

² See Agency for Health Care Administration, Florida Commission on Review of Taxpayer Funded Hospital Districts, *Hospital Tax District Survey Data*, for a list of taxpayer funded hospital districts, available at: <http://ahca.myflorida.com/mchq/FCTFH/hospitalNEW.shtml> (Last visited on January 17, 2012).

³ Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 8, available at: <http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf> (Last visited on January 17, 2012).

The process for the sale or lease of a public hospital is established by s. 155.40, F.S. Currently, the governing board of a public hospital has the authority to negotiate the sale or lease of the hospital. The hospital can be sold or leased to a for-profit or not-for-profit Florida corporation and such sale or lease must be in the best interest of the public. The board is required to publicly advertise the meeting at which the proposed sale or lease will be discussed in accordance with s. 286.0105, F.S., and the offer to accept proposals from all interested and qualified purchasers in accordance with s. 255.0525, F.S.

Section 155.40(2), F.S., requires any lease, contract, or agreement to:

- Provide that the articles of incorporation of the corporation are subject to approval of the board of directors or board of trustees of the hospital.
- Require that any not-for-profit corporation become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provide for the orderly transition of the operation and management of the facilities.
- Provide for the return of the facility to the county, municipality, or district upon the termination of the lease, contract, or agreement.
- Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act⁴ and ch. 87-92, Laws of Florida.

For the sale or lease to be considered “a complete sale of the public agency’s interest in the hospital” under s. 155.40(8)(a), F.S., the purchasing private entity must:

- Acquire 100 percent ownership of the hospital enterprise.
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance of the facility, regardless of the underlying ownership of the real property.
- Not allow the public agency to retain control over decision-making or policymaking for the hospital.
- Not receive public funding, other than by contract for services rendered to patients for whom the public agency seller has the responsibility to pay for hospital or medical care.
- Not receive substantial investment or loans from the seller.
- Not be created by the public agency seller.
- Primarily operate for its own financial interests and not those of the public agency seller.

A complete sale of the public agency’s interest under s. 155.40(8)(b), F.S., shall not be construed as:

- A transfer of governmental function from the county, district, or municipality to a private corporation or entity.
- A financial interest of the public agency in the private corporation or other private entity purchaser.
- Making the private corporation or other private entity purchaser an “agency” as that term is used in statute.
- Making the private entity an integral part of the public agency’s decision-making process.
- Indicating that the private entity is “acting on behalf of a public agency,” as that term is used in statute.

⁴ Sections 154.301-154.316, F.S.

If the corporation that operates a hospital receives more than \$100,000 in revenues from the county, district, or municipality, it must account for the manner in which the funds are expended.⁵ The funds are to be expended by being subject to annual appropriations by the county, district, or municipality, or if there is a contract for 12 months or longer to provide revenues to the hospital, then the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.⁶

Recent Leases or Sales of Public Hospitals

The public hospital Bert Fish Medical Center entered into a controversial \$80 million lease agreement with Adventist Health System, which was nullified by Circuit Court Judge Richard Graham because of 21 closed-door meetings that occurred during the negotiation process and violated Florida's Sunshine Law under s. 286.011, F.S.⁷

Other leases or sales or proposed leases or sales of public hospitals have been scrutinized, especially for the effect such sales or leases would have on taxpayers. For example, Helen Ellis Hospital was merged with Adventist Health in 2010, and there have been proposals to turn public hospital systems in Miami-Dade County and Broward County into private hospitals.⁸

Florida Commission on Review of Taxpayer Funded Hospital Districts

On March 23, 2011, Governor Rick Scott issued Executive Order Number 11-63, which created the Florida Commission on Review of Taxpayer Funded Hospital Districts (Commission). The Commission was created to assess and make recommendations on the role of hospital districts, whether it is in the public's best interest to have government entities operating hospitals, and what is the most effective model for enhancing health-care access for the poor.

The Commission held 14 public meetings between May 23 and December 29, 2011, at which stakeholders, government officials, and taxpayers gave testimony and made presentations. The Commission also surveyed all Florida hospital districts. Based on the presentations, testimony, and the survey responses, the Commission made several recommendations in the Report of the Commission on Review of Taxpayer Funded Hospital Districts.⁹

The Commission's general recommendations include the following:¹⁰

⁵ Section 155.40(5), F.S.

⁶ *Id.*

⁷ Linda Shrieves, *Judge rules Bert Fish must cut ties with Florida Hospital*, Orlando Sentinel, February 24, 2011, available at: http://articles.orlandosentinel.com/2011-02-24/health/os-bert-fish-decision-20110224_1_sunshine-laws-open-meetings-hospital-board (Last visited January 17, 2012).

⁸ Anne Geggis, *Bills reflect problems at Bert Fish*, Daytona Beach News-Journal, March 8, 2011, available at: <http://www.news-journalonline.com/news/local/southeast-volusia/2011/03/08/bills-reflect-problems-at-bert-fish.html> (Last visited January 17, 2012).

⁹ Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 1, available at: <http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf> (Last visited on January 17, 2012).

¹⁰ *Id.* at 3.

- The Governor and other appointing authorities should appoint qualified individuals to district and hospital boards who do not have conflicts of interest.
- Board members should include health care stakeholders and members of the local community who have financial expertise and experience operating successful, larger enterprises.
- To ensure appropriate checks and balances, the membership of district and hospital boards should be separate and distinct.
- To ensure appropriate checks and balances the membership of hospital board members and hospital managers should be separate and distinct.
- Special hospital districts should become indigent health care districts, funding indigent health care based on local priorities and not limited to hospitals owned or operated by the districts. As a part of the transition to indigent health care districts, hospital districts that own hospitals should de-couple them from the districts.
- When considering changes to taxation rates, millage rates should be adjustable with a maximum allowable rate, but with the flexibility to lower the rate if circumstances change.
- Boards of directors of hospital districts should be subject to appropriate oversight.

Furthermore, to correspond with the directives in the Governor's executive order, the Commission made several comments and recommendations regarding quality of care, cost of care, access to care for the poor, oversight and accountability, physician employment, and changes of ownership and governance in taxpayer funded hospitals.¹¹ Those comments and recommendations, pertaining to the sale or lease of taxpayer funded hospitals, are as follows:

- Using the available outcome data, the Commission could not establish that there is a pattern of higher or lower quality in Florida hospitals based on ownership. The Governor and Legislature should support the Agency for Health Care Administration (AHCA) in its effort to continue to refine and publish data on outcomes and quality by hospital and health care facility.
- An open, competitive public procurement process or negotiation should be ensured.
- A fair and independent asset valuation process should be ensured during a sale or lease.
- Guidelines should be established to ensure an ongoing community benefit from any proceeds generated by the sale of a hospital.
- Without inhibiting the functioning of a free market, independent oversight of a sale or lease process should be maintained with review by an appropriate authority.
- The maintenance and/or expansion of community health programs should be required if there is a sale or lease, with an emphasis on primary care and emergency room diversion.

Chief Financial Officer of Florida

Florida's Chief Financial Officer (CFO) oversees the state's accounting and auditing functions and unclaimed property, monitors the investment of state funds, and manages the deferred compensation program and risk management program for the state.¹²

Florida's CFO serves as one of three constitutionally elected state executives of the Florida Cabinet, which consists of the Chief Financial Officer, the Attorney General, and the

¹¹ *Id.* at 4-5.

¹² Florida Department of Financial Services, Jeff Atwater, Chief Financial Officer, *Meet the CFO*, available at: <http://www.myfloridacfo.com/sitepages/agency/cfo.aspx> (Last visited on January 17, 2012).

Commissioner of Agriculture and Consumer Services. The Governor and the Cabinet serve as a board of directors, or agency heads, governing such matters as the purchase of state lands; clemency matters; state bond, trust and fund management; veterans' affairs; state law enforcement administration; tax collection; power plant and transmission line sitings; and financial and insurance regulation for the state of Florida.¹³

Superseding or Prohibiting Local Law by General Law

The rule of statutory construction is that specific provisions prevail over general provisions.¹⁴ Therefore, local laws prevail over inconsistent general laws. General laws may be drafted to supersede prior local laws by using the phrase "notwithstanding any provision of local law." This phrase applies only to local laws existing when the general law takes effect and does not prevent later inconsistent local laws from again superseding the general law.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 155.40, F.S., to require the governing board of a county, district, or municipal hospital to find that a sale, lease, or contract is in the best interests of the "affected community," rather than the public and requires the board to state the basis of that finding notwithstanding any other provision of general or special law. "Affected community" is defined in this section to mean those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital, or if the boundaries are not specifically defined by charter of the hospital, by the geographic area from which 75 percent of the county, district, or municipal hospital's inpatient admissions are derived.

Subsection (3) of this section exempts any lease modification, renewal, or extension relating to a lease transaction that occurs before the CS/CS becomes a law from the provisions of the CS/CS if a governing board elects to consider a sale or lease of a hospital or health care system to a third party.

Subsection (4) of this section provides a number of definitions including:

- "Expression of interest" means a bona fide request from a for-profit or not-for-profit entity that is a qualified purchaser or lessee to the board of directors of a county, district, or municipal hospital to enter into negotiations to sell or lease the hospital or health care system on commercially reasonable terms.
- "Increase tax support" means a vote to increase ad valorem or other taxes that are used to support operations of the hospital or health care system or any vote to allow the ad valorem tax rate to remain the same in any year in which property values in the taxing district have increased on the average, resulting in an increase in ad valorem tax revenues to the hospital.
- "Net operating expenses" means the total operating expenses of the hospital, excluding depreciation, interest, taxes, amortization, and nonoperating expenses.
- "Net operating revenues" has the same meaning as provided in s. 395.701(1). The term does not include restricted donations and grants for indigent care or nonoperating revenues, including, but not limited to, local unrestricted tax revenues and appropriated funds from

¹³ *Id.*

¹⁴ Fla. Senate, *Manual for Drafting Legislation*, 130 (6th ed. 2009)

¹⁵ *Id.*

state and local governments or any other type of tax support, gain or loss from the sale of assets, or unrestricted contributions.

- “Qualified purchaser or lessee” means an entity that demonstrates access to capital in an amount equal to or in excess of 25 percent of the net revenue generated in the immediately preceding fiscal year of the hospital or health care system that is the subject of the sale or lease. Such access to capital can be demonstrated by cash reserves, an existing line of credit, or a binding commitment to obtain a line of credit to finance the purchase in an amount that equals or exceeds 25 percent of the net revenue generated by the hospital or health care system.

Subsection (5) of this section requires the hospital governing board, within 60 calendar days after any of six possible triggering events, to commence an evaluation of the possible benefits to an affected community from the sale or lease of hospital facilities owned by the board to a nonprofit or for-profit entity. The six possible triggering events are:

1. The county, district, or municipal hospital or health care system receives a bona fide expression of interest by a qualified purchaser or lessee to buy or lease the county, district, or municipal hospital or health care system.
2. The governing board of a county, district, or municipal hospital votes to increase the amount of tax support for the hospital or health care system.
3. The county, district, or municipal hospital or health care system experiences operating deficits that result in net operating expenses that exceed net operating revenues by ten percent or more for three consecutive years.
4. The county, district, or municipal hospital or health care system has had administrative complaint proceedings initiated against it by the Agency for Health Care Administration for licensure violations under chapter 395 in three consecutive years.
5. The county, district, or municipal hospital or health care system has been declared ineligible to participate in the Medicare or Medicaid program.
6. The county, district, or municipal hospital or health care system fails to achieve or loses accreditation by the Joint Commission on Accreditation of Healthcare Organizations.

During the evaluation the board must:

- Conduct a public hearing to provide interested persons the opportunity to be heard on the matter.
- Publish notice of the public hearing in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly at least 15 days before the hearing is scheduled to occur.
- Contract with a certified public accounting firm or other firm that has substantial expertise in the valuation of hospitals to render an independent valuation of the hospital’s “fair market value,” which is defined in this section as the price that a seller or lessee is willing to accept and a buyer or lessee is willing to pay on the open market and in an arms-length transaction, or what an independent expert in hospital valuation determines the fair market value to be. The fair market valuation shall be valid for a period of 12 months, unless there are material financial changes in the hospital’s financial condition as determined by the certified public accounting firm, the Agency for Health Care Administration, or the Auditor General. The firm chosen by the board must be agreeable to the qualified purchaser or lessee and the hospital or health care system. The firm’s valuation must be available to the public seven working days before the scheduled public hearing.

- Consider an objective operating comparison between a hospital or hospital system operated by the district, county, or municipality and other similarly situated hospitals, both nonprofit and for-profit, which have a similar service mix, in order to determine whether there is a difference in the cost of operation using publicly available data provided by the AHCA and the quality metrics identified by the Centers for Medicare and Medicaid Services (CMS) Core Measures. The comparison must determine whether it is more beneficial to taxpayers and the affected community for the hospital to be operated by a governmental entity, or whether the hospital can be operated by a nonprofit or for-profit entity with similar or better cost efficiencies or measurable outcomes identified by the CMS Core Measures. The comparison must also determine whether there is a net benefit to the community to operate the hospital as a nonprofit or for-profit entity and use the proceeds of the sale or lease for specified purposes.
- Make publicly available all documents considered by the board in the course of the evaluation.

The governing board must publish notice of the board's findings, within 160 days after the initiation of the evaluation process, in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly.

This section includes a provision to grandfather-in, and exempt from the evaluation process any district, county, or municipal hospital that has issued a public request for proposals for the sale or lease of a hospital on or before February 1, 2012, for the purpose of receiving proposals from qualified purchasers or lessees, regardless if the buyer or lessee is nonprofit or for-profit.

The evaluation process does not apply to any county, district or municipal hospital, or health care system that is under lease as of February 1, 2012, as long as that lease remains in effect in accordance with the terms of the lease or such lease is extended or renewed. However, any such hospital or health care system becomes subject to the evaluation process upon:

- Termination of the lease.
- Notification provided to the lessee of a planned termination of the lease in accordance with the lease terms.
- Notification to the lessee that the lessor plans to seek potential new lessees or buyers. or
- Notification to the lessee that the lessor plans to resume operation of the hospital or health care system at the termination of the lease.

Subsection (6) requires the governing board of the hospital, when it has determined that it is no longer in the interest of the affected community to own or operate the hospital or health care system, to first determine whether there are any qualified purchasers or lessees, prior to the sale or lease of the county, district, or municipal hospital. The authority of the board to negotiate the terms of a sale or lease with a for-profit or nonprofit Florida corporation, to determine if there is a potential purchaser or lessee, is removed.

A sale or lease of the hospital is required to be for fair market value, or if less than fair market value, the lease must be in the best interest of the affected community.

Subsection (7) provides that if upon completion of the evaluation of the benefits of the sale or lease, the governing board determines that it is in the best interest of the affected community to maintain ownership or operation of the hospital or health care system and elects not to consider a sale or lease of the hospital or health care system, the qualified purchaser or lessee shall pay the final cost of the evaluation. If, however, the governing board and the qualified purchaser do not agree upon the firm chosen to evaluate the hospital or health care system, the governing board is responsible for the full cost of the evaluation.

Subsection (8) requires the governing board's determination to accept a proposal for sale or lease to be made after consideration of all proposals received and negotiations with a qualified purchaser or lessee. The governing board's determination must include detailed written findings of all reasons for accepting the proposal. Furthermore, the governing board's acceptance of a proposal for sale or lease must include a description of how the sale or lease satisfies each of the following requirements:

- The sale or lease represents fair market value, as determined by a certified public accounting firm or other qualified firm. If leased at less than fair market value, the governing board must provide a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.
- Acceptance of the proposal will result in a reduction or elimination of ad valorem or other taxes for taxpayers in the district if applicable.
- The proposal includes an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- Disclosure has been made of all conflicts of interest, including whether the sale or lease of the hospital would result in a special private gain or loss to members of the governing board, to key management employees, or to members of the medical staff of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board must also be disclosed.
- Disclosure has been made by the seller or lessor of all contracts with physicians or other entities to provide health care services, including all agreements or contracts that would be void or voidable upon the consummation of the sale or lease.
- The proposal is in compliance with legal requirements to make the board's findings and documents publicly available, to publish a notice of the proposed transaction, and to allow any person to submit written comments to the board regarding the proposed transaction.

The board's findings must be accompanied by all information and documents relevant to the governing board's determination, including:

- The names and addresses of all parties to the transaction.
- The location of the hospital and all related facilities.
- A description of the terms of all proposed agreements.
- A copy of the proposed sale or lease agreement and any related agreements, including leases, management contracts, service contracts, and memoranda of understanding.
- The estimated total value associated with the proposed agreement and the proposed acquisition price.

- Any valuations of the hospital's assets prepared during the 3 years immediately preceding the proposed transaction date.
- The fair market value analysis or any other valuation prepared at the request of the board, owner of the hospital or health care system, or managing entity of the hospital or health care system.
- Copies of all other proposals and bids the governing board may have received or considered.

Subsection (9) requires, within 120 days before the anticipated closing date of the proposed transaction, the governing board to make publicly available all findings and documents associated with the transaction or relevant to the board's determination, including copies of all other proposals and bids, and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties involved and the means by which a person may submit written comments about the proposed transaction to the governing board and obtain copies of the findings and documents.

Subsection (10) provides that, within 20 days after the date of publication of the public notice provided by the governing board, any person may submit to the governing board written comments regarding the proposed transaction.

Subsection (11) provides that the sale or lease of the hospital is subject to approval by the state CFO or his or her designee, unless a law (most likely a local charter) requires approval of the sale or lease exclusively by majority vote of the registered voters in the county, district, or municipality in which the hospital is located.

To obtain approval from the CFO, the governing board must file a petition with the CFO seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction. The petition for approval filed by the governing board must include all findings and related documents and certification by the governing board of compliance with all requirements under s. 155.40, F.S. The chair of the governing board must certify under oath and subject to the penalty of perjury on a form accompanying the petition that the contents of the petition and representations therein are true and correct.

Subsection (12) requires the CFO or his or her designee, within 30 days of receiving the petition, to issue a final order approving or denying the proposed transaction based solely upon consideration of whether the procedures required under s. 155, 40, F.S., have been followed by the governing board of the county, district, or municipal hospital. The CFO's order must require the governing board to accept or reject the proposal for the sale or lease of the county, district, or municipal hospital based upon a determination that:

- The proposed transaction is permitted by law.
- The proposed transaction does not unreasonably exclude a potential purchaser or lessee on the basis of being a for-profit or a not-for-profit Florida corporation or other form of business organization, such as a partnership or limited liability company.
- The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105, F.S., which requires notice to be provided to the public that a record of a meeting must be made in order to appeal any decision made by the board with respect to any matter considered at the meeting.

- The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525, F.S., which requires the solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than \$200,000 to be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than \$500,000 must be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference.
- Any conflict of interest was disclosed, including how the proposed transaction could result in a special private gain or loss to members of the governing board or key management employees of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board must also be disclosed.
- The seller or lessor documented that it will receive fair market value for the sale or lease of the assets or, if leased at less than fair market value, the governing board provided a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.
- The acquiring entity has made an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- The governing board disclosed whether the sale or lease will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

Subsection (13) provides that any interested party to the action has the right to seek judicial review of the CFO's decision in the appellate district where the hospital is located or in the First District Court of Appeal pursuant to s. 120.68, F.S. "Interested party" is defined in the CS/CS to include any person submitting a proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board. All appellate proceedings must be initiated by filing a notice of appeal in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of the final order.

In judicial review of the appeal, the appellate court must affirm the decision of the CFO, unless the decision by the CFO is shown to be clearly erroneous.¹⁶

Subsection (14) requires all costs to be paid by the governing board, unless an interested party contests the action, in which case the court may assign costs equitably to the parties.

Subsection (15) requires that if any provision of subsection (5), subsection (6), or subsection (8) is not followed, the contract for sale or lease is voidable by any party to the contract. If any member of the governing board negligently or willfully violates subsection (5), subsection (6), or

¹⁶ "Clearly erroneous" is the standard of review that an appellate court usually applies in judging a trial court's treatment of factual issues. Under this standard, a judgment will be upheld unless the appellate court is left with the firm conviction that an error has been committed. Black's Law Dictionary, 9th ed., 2009.

subsection (7), as determined by the Commission on Ethics after receipt of a sworn complaint, the member is subject to a penalty, as determined by the Commission on Ethics.

Subsection (16) requires, when a county, district, or municipal hospital is sold or leased, the governing board to:

- Deposit 50 percent of the “net proceeds,” which means the sale price after payment of all district debts and obligations, of the sale or lease into a health care economic development trust fund, which must be under the control of the county commission of the county in which the property is located. The use and distribution of the funds must be at the discretion of a majority of the county commission, the members of which must serve as trustees of the trust fund. The net proceeds in the health care economic development trust fund must be distributed, in consultation with the Department of Economic Opportunity, to promote job creation in the health care sector of the economy through new or expanded health care business development, new or expanded health care services, or new or expanded health care education programs or commercialization of health care research within the affected community; and
- Appropriate 50 percent of the net proceeds of the sale or lease for funding the delivery of indigent and uncompensated care on an equitable basis, based on the amount of indigent and uncompensated care provided, to all hospitals within the boundaries of the district.

Subsection (17) provides that if a county, district, or municipal hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation, in addition to the distribution of net proceeds as directed in subsection (16):

- Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property must be distributed by the county commission of the county in which the property is located, in consultation with the Department of Economic Opportunity, for purposes set forth in subsection (16); and
- Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property must be appropriated by the county commission for the sole purpose of enhancing education and law enforcement programs within the county.

Subsection (22) exempts, from the public disclosure, and approval of sale or lease processes provided for in the CS/CS, the sale or lease of any hospital or health care system property if such property generated less than 20 percent of the hospital or health care system’s total revenue within the most recent fiscal year. However, the governing board must publicly advertise the meeting at which the proposed sale or lease of such property will be considered by the governing board of the hospital in accordance with s. 286.0105, F.S., or publicly advertise the offer to accept proposals in accordance with s. 255.0525, F.S., and receive proposals from all qualified purchasers and lessees. Additionally, the sale or lease of the property must be for fair market value, or if the lease is for less than fair market value, the lease must be in the best interest of the affected community.

Subsection (23) provides that a county, district, or municipal hospital that has executed a letter of intent to sell or lease the hospital or health care system accepted at a properly noticed public meeting, and whose governing board has voted to approve the letter of intent before December 31, 2011, is not subject to the public disclosure, and approval of sale or lease

processes provided for in the CS/CS, as long as the final closing of the sale or lease transaction pursuant to the letter of intent occurs before December 31, 2012.

Section 2 creates s. 155.401, F.S., to provide that, despite any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an economic development fund include the promotion and support of economic growth in such district and in the county in which such district is located and the furthering of the purposes of such district, as provided by law.

Section 3 creates an undesignated section of law providing that to the extent that any general or special law is inconsistent with or otherwise in conflict with this act, such conflicting provisions are specifically superseded by this act. A special tax district, public hospital, or municipal hospital is not exempt from this act.

Section 4 amends s. 395.3036, F.S., to change a cross-reference and make other clarifying updates to conform to changes made by the CS/CS.

Section 5 provides that the CS/CS will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection 18(a) of the Florida Constitution, provides that a county or municipality may not be bound by any general law requiring the county or municipality to spend funds or to take an action requiring the expenditure of funds, unless the legislature has determined that such law fulfills an important state interest and unless:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Subsection 18(d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (which is \$1.88 million for FY 2009/10), are exempt.

The extent of this CS/CS's fiscal impact has not yet been determined; however, if the costs incurred are greater than \$1.88 million, the law may be unenforceable unless passed by two-thirds in each house of the Legislature.

B. Public Records/Open Meetings Issues:

This CS/CS will provide more disclosure of the sale or lease process of a public hospital by requiring the governing board of the hospital to make available to the public its facts and findings that support its decision to sell or lease the hospital. Additionally, the CS/CS ensures more oversight of the sale or lease process by requiring the CFO to determine whether the public has been put on notice as to any meetings at which the proposed sale or lease is to be considered or as to any offer to accept the proposal for sale or lease prior to the CFO's approval of the sale.

C. Trust Funds Restrictions:

The provisions of this CS/CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS/CS will allow interested parties to provide written statements of opposition to a governing board's determination to accept a proposal for the sale or lease of a public hospital and requires the governing board to conduct a public hearing to provide interested persons the opportunity to be heard regarding the proposed sale or lease.

In the event that an interested party challenges the CFO's decision to approve or reject the sale or lease, the interested party may incur costs associated with appealing the decision.

The net proceeds of a hospital sale or lease will generate funds for the establishment of a county economic development trust fund to promote job creation in the health care sector through new or expanded health care business development as well as monies for the delivery of indigent care at all hospitals within the district. Private entities may benefit from these opportunities.

C. Government Sector Impact:

This CS/CS will require a governing board to make publicly available and publish certain findings and documents that support a board's decision to accept a proposal for the sale or lease of a public hospital. Therefore, there may be costs to local governments associated with gathering and publishing such information.

The governing board will also likely incur costs associated with contracting with a certified public accounting firm or other firm to provide a valuation of the hospital's fair market value. These costs could be recouped if a sale or lease does not occur.

In the event that a governing board challenges the CFO's decision to reject the sale or lease, the governing board may incur costs associated with appealing the decision. The state CFO is likely to incur costs associated with reviewing and approving or rejecting proposed sales or leases of public hospitals, but has indicated any costs can be absorbed.

The CS/CS allocates the net proceeds of the sale or lease of a public hospital.

VI. Technical Deficiencies:

In line 441 of the CS/CS, the word "instituted" should be replaced by the word "initiated."

VII. Related Issues:

The CS/CS requires notice of public hearings and notice of the board's findings and documents to be published in the county in which the "majority of the physical assets of the hospital are located." It is unclear whether the "majority of the physical assets" means the place where multiple facilities associated with the hospital are located or whether it is the location of the largest physical building associated with the hospital.

Use of any new ad valorem tax revenue resulting from a hospital sale or lease may need to be limited to municipal and county taxes. School millage is to be used for school purposes pursuant to Art. VII, sec. 9(b) of the State Constitution. In addition, there may be issues related to sales or leases of hospital facilities within existing community redevelopment areas where tax increment financing is in place. Finally, the status of a hospital district following a sale or lease may need to be clarified.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on January 30, 2012

Provides additional definitions.

- Provides conditions that trigger the evaluation of a possible sale or lease of hospital facilities.
- Establishes new time frames for the initiation and the completion of an evaluation.
- Specifies the length of time a fair market valuation shall remain valid.
- Outlines how the CS/CS applies to specified hospitals that are under lease as of February 1, 2012
- Provides a means for evaluation costs to be borne by a potential purchaser if a sale or lease does not occur.
- Specifies time length within which the CFO must approve or deny a proposed hospital transaction.

- Establishes that proceeds from a hospital sale shall be used to promote health care business development or research.
- Provides that specified hospital sales that close prior to December 31, 2012 are exempted from certain provisions of the CS/CS.
- Provides that the provisions of the CS/CS supersede other general or special law.
- Makes technical and clarifying changes.

CS by Health Regulation on January 19, 2012:

The CS is different from the bill in that it:

- Makes several technical changes;
- Exempts an existing lease that is modified, renewed, or extended from the requirements of s. 155.40, F.S.;
- Adds the term “hospital system” to clarify that multiple hospitals may be considered in a cost of operation comparison;
- Requires the governing board to demonstrate that disclosure was made by the seller or lessor of all contracts with physicians or other entities to provide health care services, including agreements or contracts that would be void or voidable upon the consummation of the sale or lease;
- Exempts the sale or lease of any hospital property that generates less than 20 percent of the hospital’s total revenue in the most recent fiscal year from certain requirements relating to public disclosure, approval of a sale or lease, or allocations of the net proceeds or taxes stemming from a lease or sale, while maintaining other requirements that exist under current law; and
- Revises the effective date to provide that the CS takes effect upon becoming a law.

B. Amendments:

None.