

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Quality Subcommittee
3 Representative Hooper offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (1) and (4) of section 155.40,
8 Florida Statutes, are amended, subsections (5) through (8) are
9 renumbered as subsections (15) through (18), respectively, and
10 new subsections (5) through (14) are added to that section, to
11 read:

12 155.40 Sale or lease of county, district, or municipal
13 hospital; effect of sale.—

14 (1) In order that citizens and residents of the state may
15 receive quality health care, any county, district, or municipal
16 hospital organized and existing under the laws of this state,
17 acting by and through its governing board, shall have the
18 authority to sell or lease such hospital to a for-profit or not-
19 for-profit Florida corporation, and enter into leases or other

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20 contracts with a for-profit or not-for-profit Florida
21 corporation for the purpose of operating and managing such
22 hospital and any or all of its facilities of whatsoever kind and
23 nature. The term of any such lease, contract, or agreement and
24 the conditions, covenants, and agreements to be contained
25 therein shall be determined by the governing board of such
26 county, district, or municipal hospital. The governing board of
27 the hospital must find that the sale, lease, or contract is in
28 the best interests of the public and must state the basis of
29 such finding. The sale or lease of such hospital is subject to
30 approval by a circuit court unless otherwise exempt under
31 subsection (14) or, for those hospitals that are required by
32 their statutory charter to seek approval by referendum for any
33 action which would result in the termination of the direct
34 control of such hospital by its governing board, approval by
35 such referendum. ~~If the governing board of a county, district,~~
36 ~~or municipal hospital decides to lease the hospital, it must~~
37 ~~give notice in accordance with paragraph (4) (a) or paragraph~~
38 ~~(4) (b).~~

39 (4) In the event the governing board of a county,
40 district, or municipal hospital determines that it is no longer
41 in the public interest to own or operate such hospital and
42 elects to consider a sale or lease to a third party, the
43 governing board shall first determine whether there are any
44 qualified purchasers or lessees. In the process of evaluating
45 any potential purchasers or lessees ~~elects to sell or lease the~~
46 ~~hospital~~, the board shall:

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47 ~~(a) Negotiate the terms of the sale or lease with a for-~~
48 ~~profit or not-for-profit Florida corporation and Publicly~~
49 advertise the meeting at which the proposed sale or lease will
50 be considered by the governing board of the hospital in
51 accordance with s. 286.0105; or

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

55
56 Any sale or lease must be for fair market value, and any sale or
57 lease must comply with all applicable state and federal
58 antitrust laws. For the purposes of this section, the term "fair
59 market value" means the price that a seller is willing to accept
60 and a buyer is willing to pay on the open market and in an
61 arm's-length transaction, which includes any benefit that the
62 public would receive in connection with the sale or lease.

63 (5) A determination by a governing board to accept a
64 proposal for sale or lease shall state, in writing, the findings
65 and basis supporting the determination.

66 (a) The board shall develop findings and bases to support
67 the determination of a balanced consideration of factors
68 including, but not limited to, the following:

69 1. Whether the proposal represents fair market value,
70 which includes an explanation of why the public interest is
71 served by the proposed transaction.

72 2. Whether the proposal will result in a reduction or
73 elimination of ad valorem or other tax revenues to support the
74 hospital.

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75 3. Whether the proposal includes an enforceable commitment
76 that existing programs and services and quality health care will
77 continue to be provided to all residents of the affected
78 community, particularly to the indigent, the uninsured, and the
79 underinsured.

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

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

85 1. The name and address of all parties to the transaction.

86 2. The location of the hospital and all related
87 facilities.

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

89 4. A copy of the proposed sale or lease agreement and any
90 related agreements, including, but not limited to, leases,
91 management contracts, service contracts, and memoranda of
92 understanding.

93 5. The estimated total value associated with the proposed
94 agreement and the proposed acquisition price and other
95 consideration.

96 6. Any valuations of the hospital's assets prepared in the
97 3 years immediately preceding the proposed transaction date.

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

100 8. A fairness evaluation by an independent expert in such
101 transactions.

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

105 (6) Not later than 120 days before the anticipated closing
106 date of the proposed transaction, the governing board shall
107 publish a notice of the proposed transaction in one or more
108 newspapers of general circulation in the county in which the
109 majority of the physical assets of the hospital are located. The
110 notice shall include the names of the parties involved, the
111 means by which persons may submit written comments about the
112 proposed transaction to the governing board, and the means by
113 which persons may obtain copies of the findings and documents
114 required under subsection (5).

115 (7) Within 20 days after the date of publication of public
116 notice, any interested person may submit to the governing board
117 a detailed written statement of opposition to the transaction.
118 When a written statement of opposition has been submitted, the
119 governing board or the proposed purchaser or lessee may submit a
120 written response to the interested party within 10 days after
121 the written statement of opposition due date.

122 (8) A governing board of a county, district, or municipal
123 hospital may not enter into a sale or lease of a hospital
124 facility without first receiving approval from a circuit court
125 or, for those hospitals which are required by their statutory
126 charter to seek approval by referendum for any action which
127 would result in the termination of the direct control of such
128 hospital by its governing board, approval by such referendum.

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129 (a) The governing board shall file a petition for approval
130 in a circuit court seeking approval of the proposed transaction
131 not sooner than 30 days after publication of notice of the
132 proposed transaction.

133 (b) Any such petition for approval filed by the governing
134 board shall include all findings and documents required under
135 subsection (5) and certification by the governing board of
136 compliance with all requirements of this section.

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

141 (9) Upon the filing of a petition for approval, the court
142 shall issue an order requiring all interested parties to appear
143 at a designated time and place within the circuit where the
144 petition is filed and show why the petition should or should not
145 be granted. For purposes of this section, the term "interested
146 party" means any party submitting a proposal for sale or lease
147 of the county, district, or municipal hospital; any taxpayer
148 from the county, district, or municipality in which the majority
149 of the physical assets of the hospital are located; and the
150 governing board.

151 (a) Before the date set for the hearing, the clerk shall
152 publish a copy of the order in one or more newspapers of general
153 circulation in the county in which the majority of the physical
154 assets of the hospital are located at least once each week for 2
155 consecutive weeks, commencing with the first publication, which
156 shall not be less than 20 days before the date set for the

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157 hearing. By this publication, all interested parties are made
158 parties defendant to the action and the court has jurisdiction
159 of them to the same extent as if named as defendants in the
160 petition and personally served with process.

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

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

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

173 (b) The governing board reviewed all proposals.

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

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

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

183 (f) Any conflict of interest was disclosed, including, but
184 not limited to, conflicts of interest relating to members of the

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185 governing board and experts retained by the parties to the
186 transaction.

187 (g) The seller or lessor will receive fair market value
188 for the assets, which includes an explanation of why the public
189 interest is served by the proposed transaction.

190 (h) The governing board incorporated a provision in the
191 sale or lease requiring the acquiring entity to continue to
192 provide existing programs and services and quality health care
193 to all residents of the affected community, particularly to the
194 indigent, the uninsured, and the underinsured.

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

198 (11) Any party to the action has the right to seek
199 judicial review in the appellate district where the petition was
200 filed.

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

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

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

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212 (13) Any sale or lease completed before June 30, 2012, is
213 not subject to the requirements of this section. Any lease that
214 contained, on June 30, 2012, an option to renew or extend that
215 lease upon its expiration shall not be subject to this section
216 upon any renewal or extension on or after June 30, 2012.

217 (14) A county, district, or municipal hospital that has
218 not received any tax support is exempt from the requirements of
219 subsections (8)-(12). For the purposes of this section, the term
220 "tax support" means ad valorem or other tax revenues paid
221 directly from a county, district, or municipal taxing authority
222 to a hospital without a corresponding exchange of goods or
223 services within the 5 years before the effective date of a
224 proposed lease or sale.

225 Section 2. Section 395.3036, Florida Statutes, is amended
226 to read:

227 395.3036 Confidentiality of records and meetings of
228 corporations that lease public hospitals or other public health
229 care facilities.—The records of a private corporation that
230 leases a public hospital or other public health care facility
231 are confidential and exempt from the provisions of s. 119.07(1)
232 and s. 24(a), Art. I of the State Constitution, and the meetings
233 of the governing board of a private corporation are exempt from
234 s. 286.011 and s. 24(b), Art. I of the State Constitution when
235 the public lessor complies with the public finance
236 accountability provisions of s. 155.40 (15) ~~(5)~~ with respect to
237 the transfer of any public funds to the private lessee and when
238 the private lessee meets at least three of the five following
239 criteria:

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240 (1) The public lessor that owns the public hospital or
241 other public health care facility was not the incorporator of
242 the private corporation that leases the public hospital or other
243 health care facility.

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

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

251 (4) The lease agreement does not expressly require the
252 lessee to comply with the requirements of ss. 119.07(1) and
253 286.011.

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

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

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262 -----
263 **T I T L E A M E N D M E N T**

264 Remove the entire title and insert:

265 An act relating to
266 the sale or lease of a county, district, or municipal
267 hospital; amending s. 155.40, F.S.; requiring approval from

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268 a circuit court for the sale or lease of a county,
269 district, or municipal hospital unless certain exemption or
270 referendum approval applies; requiring the hospital
271 governing board to determine by certain public
272 advertisements whether there are qualified purchasers or
273 lessees before the sale or lease of such hospital; defining
274 the term "fair market value"; requiring the board to state
275 in writing specified criteria forming the basis of its
276 acceptance of a proposal for sale or lease of the hospital;
277 providing for publication of notice; authorizing submission
278 of written statements of opposition to a proposed
279 transaction, and written responses thereto, to the hospital
280 governing board within a certain timeframe; requiring the
281 board to file a petition for approval with the circuit
282 court and receive approval before any transaction is
283 finalized; providing an exception; specifying information
284 to be included in such petition; providing for the circuit
285 court to issue an order requiring all interested parties to
286 appear before the court under certain circumstances;
287 defining the term "interested party"; granting the circuit
288 court jurisdiction to approve sales or leases of county,
289 district, or municipal hospitals based on specified
290 criteria; providing for a party to seek judicial review;
291 requiring the court to enter a final judgment; requiring
292 the board to pay costs associated with the petition for
293 approval unless a party contests the action; providing an
294 exemption for certain sale or lease transactions completed
295 before a specified date; providing an exemption for county,

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296 district, or municipal hospitals that receive no tax
297 support; defining the term "tax support"; amending s.
298 395.3036, F.S.; conforming cross-references; providing an
299 effective date.