

The Florida Senate

2013 Florida Statutes

<p><u>TITLE XI</u> COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS</p>	<p><u>CHAPTER 155</u> HOSPITALS</p>	<p><u>VIEW ENTIRE CHAPTER</u></p>
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155.40 Sale or lease of county, district, or municipal hospital; effect of sale. —

(1) In the interest of providing quality health care services to the citizens and residents of this state, and notwithstanding any other provision of general or special law, a county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, may sell or lease the hospital to a for-profit or not-for-profit Florida entity, and enter into leases or other contracts with a for-profit or not-for-profit Florida entity for the purpose of operating the hospital and its facilities. The term of such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of the hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the affected community and must state the basis of that finding.

(2) A lease, contract, or agreement made pursuant hereto shall:

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

(3) Any sale, lease, or contract entered into pursuant to this section before the effective date of this act must have complied with the requirements of subsection (2) in effect at the time of the sale, lease, or contract. It is the intent of the Legislature that this section not impose any further requirements with respect to the formation of any for-profit or not-for-profit Florida entity, the composition of the board of directors of any Florida entity, or the manner in which control of the hospital is transferred to the Florida entity.

(4) As used in this section, the term:

- (a) "Affected community" means those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital or health care system, or if the boundaries are not specifically defined by charter, by the geographic area from which 75 percent of the county, district, or municipal hospital's or health care system's inpatient admissions are derived.
- (b) "Fair market value" means the price that a seller or lessor 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.
- (c) "Interested party" includes a person submitting a proposal for sale or lease of the county, district, or municipal hospital or health care system, as well as the governing board.

(5) The governing board of a county, district, or municipal hospital or health care system shall 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 not-for-profit or for-profit entity no later than December 31, 2012. In the course of evaluating the benefits of the sale or lease, the board shall:

- (a) Conduct a public hearing to provide interested persons the opportunity to be heard on the matter.

(b) 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 or health care system are located and in the Florida Administrative Register at least 15 days before the hearing is scheduled to occur.

(c) 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.

(d) Consider an objective operating comparison between a hospital or health care system operated by the district, county, or municipality and other similarly situated hospitals, both not-for-profit 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 Agency for Health Care Administration and the quality metrics identified by the Centers for Medicare and Medicaid Services 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 not-for-profit or for-profit entity with similar or better cost-efficiencies or measurable outcomes identified by the Centers for Medicare and Medicaid Services Core Measures. The comparison must also determine whether there is a net benefit to the community to operate the hospital as a not-for-profit or for-profit entity and use the proceeds of the sale or lease for the purposes described in this section.

(e) Make publicly available all documents considered by the board in the course of such evaluation.

1. Within 160 days after the initiation of the process established in this subsection, the governing board shall publish notice of the board's findings 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 Register.

2. This evaluation is not required if a district, county, or municipal hospital 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, either not-for-profit or for-profit.

(6) If, upon completion of the evaluation of the benefits of the sale or lease, the governing board of a county, district, or municipal hospital determines that it is no longer in the best interest of the affected community to own or operate a hospital or health care system and elects to consider a sale or lease of the hospital or health care system to a third party, the governing board must first determine whether there are any qualified purchasers or lessees. In the process of evaluating any qualified purchaser or lessee, the board shall:

(a) Publicly advertise the meeting at which the proposed sale or lease will be considered by the governing board of the hospital in accordance with s. 286.0105; or

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

Any sale or lease must be for fair market value, or, if not for fair market value, the lease must be in the best interest of the affected community. A sale or lease must comply with all applicable state and federal antitrust laws.

(7) A determination by the governing board to accept a proposal for sale or lease shall be made after consideration of all proposals received and negotiations with a qualified purchaser or lessee. The governing board's determination must include, in writing, detailed findings of all reasons for accepting the proposal.

(a) 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:

1. The sale or lease represents fair market value, as determined by a certified public accounting firm or other qualified firm pursuant to subsection (5). If leased at less than fair market value, the governing board shall 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.

2. Acceptance of the proposal will result in a reduction or elimination of ad valorem or other taxes for taxpayers in the district, if applicable.

3. 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.

4. Disclosure has been made of all conflicts of interest, including, but not limited to, whether the sale or lease of the hospital or health care system would result in a special private gain or loss to members of the governing board or key management employees or 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 shall also be disclosed.

5. Disclosure has been made by the seller or lessor of all contracts with physicians or other entities providing health care services through a contract with the seller or lessor, including all agreements or contracts that would be void or voidable upon the consummation of the sale or lease.

6. The proposal is in compliance with subsections (8) and (9).

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

1. The names and addresses of all parties to the transaction.
2. The location of the hospital or health care system and all related facilities.
3. A description of the terms of all proposed agreements.
4. A copy of the proposed sale or lease agreement and any related agreements, including, but not limited to, leases, management contracts, service contracts, and memoranda of understanding.

5. The estimated total value associated with the proposed agreement and the proposed acquisition price.

6. Any valuations of the hospital's or health care system's assets prepared during the 3 years immediately preceding the proposed transaction date.

7. The fair market value analysis required by paragraph (5)(c), 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.

8. Copies of all other proposals and bids that the governing board may have received or considered in compliance with subsection (6).

(8) Within 120 days before the anticipated closing date of the proposed transaction, the governing board shall make publicly available all findings and documents required under subsection (7) 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 or health care system 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 required under subsection (7).

(9) Within 20 days after the date of publication of the public notice, any person may submit to the governing board written comments regarding the proposed transaction.

(10) The sale or lease of the hospital or health care system is subject to approval by the Secretary of Health Care Administration or his or her designee, except, if otherwise required by law, approval of the sale or lease shall exclusively be by majority vote of the registered voters in the county, district, or municipality in which the hospital or health care system is located.

(a) The governing board shall file a petition with the Secretary of Health Care Administration seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction.

(b) The petition for approval filed by the governing board must include all findings and documents required under subsection (7) and certification by the governing board of compliance with all requirements of this section.

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.

(11) Within 30 days after receiving the petition, the Secretary of Health Care Administration or his or her designee shall issue a final order approving or denying the proposed transaction based solely upon consideration of whether the procedures contained within this section have been followed by the governing board of the county, district, or municipal hospital or health care system. The order shall require the governing board to accept or reject the proposal for the sale or lease of the county, district, or municipal hospital or health care system based upon a determination that:

- (a) The proposed transaction is permitted by law.
- (b) 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.
- (c) The governing board of the hospital or health care system publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105.
- (d) The governing board of the hospital or health care system publicly advertised the offer to accept proposals in compliance with s. 255.0525.
- (e) Any conflict of interest was disclosed, including, but not limited to, 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 shall also be disclosed.
- (f) The seller or lessor documented that it will receive fair market value for the sale or lease of the assets as indicated in paragraph (5)(c) 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 or health care system.
- (g) 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.
- (h) 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.

(12) Any interested party to the action has the right to seek judicial review of the decision in the appellate district where the hospital is located or in the First District Court of Appeal pursuant to s. 120.68.

(a) All proceedings shall be instituted 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.

(b) In such judicial review, the appellate court shall affirm the decision of the Secretary of Health Care Administration, unless the decision by the Secretary of Health Care Administration is shown to be clearly erroneous.

(13) All costs shall 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.

(14) If any provision of subsection (5), subsection (6), or subsection (7) 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 subsection (7), as determined by the Commission on Ethics after receipt of a sworn complaint pursuant to s. 112.322, the member is subject to a penalty, as determined by the Commission on Ethics pursuant to s. 112.317.

(15) If a county, district, or municipal hospital is sold, any and all special district tax authority associated with the hospital subject to the sale shall cease on the effective date of the closing date of the sale. Any special law inconsistent with this subsection is superseded by this act.

(16) If a county, district, or municipal hospital is sold or leased, the governing board shall:

(a) Deposit 50 percent of the net proceeds of the sale or lease into a health care economic development trust fund, which shall be under the control of the county commission of the county in which the property is located, if the hospital is a county hospital or district hospital whose geographic boundaries extend beyond a single municipality, or, if the hospital is a municipal hospital or district hospital whose geographic boundaries lie entirely within a single municipality, under the control of the city or municipal government in which the hospital is located. The use and distribution of the funds shall be at the discretion of a majority of the county commission if the hospital is a county hospital or district hospital whose geographic boundaries extend beyond a single municipality, or, if the hospital is a municipal hospital or district hospital whose geographic boundaries lie entirely within a single municipality, at the discretion of a majority of the members of the municipal government. The members of the county commission or the municipal government, depending on the type of hospital being sold, shall serve as trustees of the trust fund. The net proceeds in the health care economic development trust fund shall 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

(b) Appropriate 50 percent of the net proceeds of the sale or lease for funding the delivery of indigent care, including, but not limited to, primary care, physician specialty care, out-patient care, in-patient care, and behavioral health, to hospitals within the boundaries of the district with consideration given to the levels of indigent care provided.

For the purposes of this subsection, the term "net proceeds" means the sale price after payment of all district debts and obligations.

(17) If a county, district, or municipal hospital or health care system is sold or leased to a for-profit corporation or other business entity subject to local taxation, the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property shall be distributed by the county commission of the county in which the property is located, if the hospital is a county hospital or district hospital whose geographic boundaries extend beyond a single municipality, or, if the hospital is a municipal hospital or district hospital whose geographic boundaries lie entirely within a single municipality, such ad valorem tax revenues shall be distributed by the municipal government. The distribution of such ad valorem tax revenues shall be made in consultation with the Department of Economic Opportunity, for purposes set forth in subsection (16).

(18) If a hospital operated by a for-profit or not-for-profit Florida entity receives annually more than \$100,000 in revenues from the county, district, or municipality that owns the hospital, the Florida entity must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended by either:

(a) Having the revenues subject to annual appropriations by the county, district, or municipality; or

(b) Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.

A not-for-profit entity that is subject to this subsection and does not currently comply with the accountability requirements in this subsection shall have 12 months after the effective date of this act to modify any contracts with the county, district, or municipality in a manner that is consistent with this subsection.

(19) Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital may not be construed as:

- (a) A transfer of a governmental function from the county, district, or municipality to the private purchaser or lessee;
- (b) Constituting a financial interest of the public lessor in the private lessee; or
- (c) Making a private lessee an integral part of the public lessor's decisionmaking process.

(20) The lessee of a hospital, under this section or any special act of the Legislature, operating under a lease may not be construed to be "acting on behalf of" the lessor as that term is used in statute, unless the lease document expressly provides to the contrary.

(21)(a) If, whenever the sale of a public hospital by a public agency to a private entity pursuant to this section or pursuant to a special act of the Legislature reflects that:

1. The private entity purchaser acquires 100 percent ownership in the hospital enterprise;
2. The private entity purchases the physical plant of the hospital facility and has complete responsibility for the operation and maintenance of the facility, regardless of ownership of the underlying real property;
3. The public agency seller retains no control over decisionmaking or policymaking for the hospital;
4. The private entity purchaser receives no funding from the public agency seller 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;
5. The public agency seller makes no substantial investment in or loans to the private entity;
6. The private entity purchaser was not created by the public entity seller; and
7. The private entity purchaser operates primarily for its own financial interests and not primarily for the interests of the public agency,

such a sale shall be considered a complete sale of the public agency's interest in the hospital or health care system.

(b) A complete sale of a hospital or health care system as described in this subsection may not be construed as:

1. A transfer of a governmental function from the county, district, or municipality to the private entity purchaser;

2. Constituting a financial interest of the public agency in the private entity purchaser;
3. Making the private entity purchaser an "agency" as that term is used in statutes;
4. Making the private entity purchaser an integral part of the public agency's decisionmaking process; or
5. Indicating that the private entity purchaser is "acting on behalf of a public agency" as that term is used in statute.

(22) If the governing board elects to sell or lease the physical property of a county, district, or municipal hospital or health care system and such property generated less than 20 percent of the hospital's net revenue within the hospital's or health care system's most recent fiscal year, the sale or lease of such property is exempt from the requirements under subsections (6)-(17). However, the governing board shall 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 or publicly advertise the offer to accept proposals in accordance with s. 255.0525 and receive proposals from all qualified purchasers and lessees. The sale or lease of the property must be for fair market value, or, if a lease is for less than fair market value, the lease must be in the best interest of the affected community.

(23) A county, district, or municipal hospital or health care system that is under lease as of the effective date of this act is not subject to subsections (5)-(17) as long as that lease remains in effect in accordance with the terms of the lease or such lease is modified, extended, or renewed. However, such hospital or health care system becomes subject to the provisions of this act upon:

- (a) Termination of the lease, unless the lease termination is the direct result of a new lease involving a partnership, transaction, or contract in which both the existing lessor and lessee agree to the new lease between the lessor and another mutually agreed upon entity;
- (b) Notification provided to the lessee of a planned termination of the lease in accordance with the lease terms, unless the notification of lease termination is the direct result of a new lease involving a partnership, transaction, or contract in which both the existing lessor and lessee agree to the new lease between the lessor and another mutually agreed upon entity;
- (c) Notification to the lessee that upon termination of the lease the lessor plans to seek potential new lessees or buyers; or
- (d) Notification to the lessee that the lessor plans to resume operation of the hospital or health care system at the termination of the lease.

Any such hospital or health care system may not thereafter be sold, leased to another lessee, or operated by the owner without first complying with this section.

(24) A county, district, or municipal hospital or health care system 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 subsections (6)-(17) as long as the final closing of the sale or lease transaction pursuant to the letter of intent occurs before December 31, 2012.

(25) Notwithstanding subsection (24), a county, district, or municipal hospital or health care system that has issued a request for proposals for the sale or lease of a hospital or health care system on or before February 1, 2012, in order to receive proposals from not-for-profit or for-profit qualified purchasers or lessees, is not subject to subsections (5)-(17) unless such request for proposals does not directly result in a sale or lease of the hospital or health care system to a qualified purchaser or lessee on or before December 31, 2012.

History.—s. 3, ch. 82-147; s. 1, ch. 83-158; s. 1, ch. 84-98; s. 6, ch. 87-92; s. 1, ch. 96-304; s. 6, ch. 99-356; s. 1, ch. 2006-170; s. 1, ch. 2012-66; s. 14, ch. 2013-14.

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