

Committee Substitute for Senate Bill No. 1190

An act relating to the sale or lease of a county, district, or municipal hospital; amending s. 155.40, F.S.; providing for the effect of the sale of a public hospital to a private purchaser; providing conditions that must be met in order for a sale to be considered a complete sale; providing legislative findings and intent with respect to the effect of the sale of a public hospital to a private purchaser; providing applicability, including retroactive applicability; providing an effective date.

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

Section 1. Section 155.40, Florida Statutes, is amended to read:

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

(1) In order that citizens and residents of the state may receive quality health care, any county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, shall have the authority to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities of whatsoever kind and nature. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of such county, district, or municipal hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public and must state the basis of such finding. If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph (4)(a) or paragraph (4)(b).

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

(a) Provide that the articles of incorporation of such for-profit or not-for-profit corporation be subject to the approval of the board of directors or board of trustees of such 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 such facilities;

(d) Provide for the return of such facility to the county, municipality, or district upon the termination of such 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 prior to 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 does not impose any further requirements with respect to the formation of any for-profit or not-for-profit Florida corporation, the composition of the board of directors of any Florida corporation, or the manner in which control of the hospital is transferred to the Florida corporation.

(4) In the event the governing board of a county, district, or municipal hospital elects to sell or lease the hospital, the board shall:

(a) Negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation and 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 interested and qualified purchasers.

Any sale must be for fair market value, and any sale or lease must comply with all applicable state and federal antitrust laws.

(5) In the event a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than \$100,000 in revenues from the county, district, or municipality that owns the hospital, the Florida corporation 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 corporation that is subject to this subsection and that 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.

(6) Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital shall 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 decision-making process.

(7) The lessee of a hospital, ~~under pursuant to~~ this section or any special act of the Legislature, operating under a lease shall 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.

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

1. The private corporation or other private entity purchaser acquires 100 percent ownership in the hospital enterprise;

2. The private corporation or other 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 corporation or other 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 corporation or other private entity purchaser was not created by the public entity seller; and

7. The private corporation or other 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.

(b) A complete sale of a hospital as described in this subsection shall not be construed as:

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

2. Constituting a financial interest of the public agency in the private corporation or other private entity purchaser;

3. Making the private corporation or other private entity purchaser an "agency" as that term is used in statutes;

4. Making the private corporation or other private entity purchaser an integral part of the public agency's decisionmaking process; or

5. Indicating that the private corporation or other private entity purchaser is "acting on behalf of a public agency" as that term is used in statute.

Section 2. The Legislature finds that it is necessary to clarify that a public agency may sell its interest in a public hospital to a private corporation or other private entity and to establish that such a sale results in the privatization of the hospital enterprise. The Legislature finds that the sale of a hospital by a public agency to a private corporation or other private entity purchaser under this section is a complete sale when: the public agency retains no ownership interest in the hospital enterprise or the hospital facility, regardless of who owns the underlying property; the private corporation or other private entity has the complete responsibility for operation and maintenance of the hospital facility; the private corporation or other private entity receives no funds from the public agency seller other than by contract for services provided to patients for whom the public agency has responsibility to pay for medical or hospital services; the public agency makes no substantial investment or loan to the private corporation or other private entity; the private corporation or other private entity is not created by the public agency; and the private corporation or other private entity operates primarily for its own financial interests as opposed to those of the public agency. The Legislature further finds that a complete sale of the hospital under such circumstances eliminates any argument that the private corporation or other private entity continues to perform any governmental or public function; that the public agency retains any financial interest in the private purchaser or the hospital; that the private purchaser is an integral part in the public agency's decisionmaking process or that the private entity is an "agency" or is "acting on behalf of a public agency" as those terms are used in statute. The Legislature further finds that the recognition of such sales as being complete sales of the formerly public hospital to a private corporation or other private entity is a public necessity so that private entities that purchase public hospitals are allowed to operate without unnecessary public interference. Some recent court decisions, however, have found that a private corporation or other private entity that purchases a public hospital is still a public agency for some purposes and have failed to recognize that the public agency does not retain any control over the private entity or the formerly public hospital following the complete sale of a public hospital to a private corporation or other private entity. Therefore, the Legislature finds that it is a necessity to confirm its intent that a private corporation or other private entity that purchases a formerly public hospital through a complete sale is not a public agency for any purpose. To find otherwise would place such a private corporation or other private entity that purchases a public hospital at a competitive disadvantage compared to other private entities that own private hospitals that were not formerly public hospitals and would serve as a disincentive for the purchase of a public hospital. Public agencies choose to sell their public hospitals to private corporations or other private entities when the public entity is no longer able to operate the hospital in a fiscally responsible manner and when taxpayers would otherwise be required to finance the operations of the hospital beyond indigent care. If a private corporation or

other private entity that purchases a public hospital is treated as a public agency, then public agencies may find it difficult, if not impossible, to find a private corporation or other private entity that is willing to purchase a public hospital. This could force the public agency to close the hospital, which would result in a reduction in health care services to the public, or continue operating the hospital using public tax dollars to subsidize recurring losses. Neither of these options is in the best interest of the public. Thus, the Legislature finds that a private corporation or other private entity that purchases a public hospital and the purchase agreement for that hospital meets the requirements established herein, regardless of whether the corporation had previously leased that public hospital, that private corporation or other private entity is not a public agency for any purpose and does not act on behalf of the public agency.

Section 3. This act shall take effect upon becoming a law and shall apply to each private corporation or other private entity that has purchased a public hospital regardless of whether such purchase occurred prior to the effective date of this act.

Approved by the Governor June 12, 2006.

Filed in Office Secretary of State June 12, 2006.