

2012 Florida Legislature Requires Analysis to Sell, Lease, or Retain Government-Owned Hospitals

March 16, 2012

Tallahassee, FL -- The debate over whether it is in the best interest of the public for government to own and operate public hospitals culminated in the 2012 Florida Legislature's passage of [House Bill 711](#). The legislation was the outcome of a long-term effort by the Legislature and Governor Rick Scott that hinged on two concerns:

1. Whether government should own and operate hospitals at all, and
2. The need for increased scrutiny of the sale or lease of public hospitals to be sure the deals are in the best interest of the public, who ultimately own the facilities.

House Bill 711 does not require the sale or lease of a public hospital, but it does require a governing board or hospital district to commence an evaluation of continued ownership and consider the benefits of selling or leasing the hospital to a for-profit or not-for-profit company by December 31, 2012. This evaluation must be conducted regardless of whether the board intends to sell or lease the hospital, unless the hospital board had entertained offers by February 1, 2012. The hospital governing board must ultimately find that any sale or lease, or contract of the hospital is in the best interests of the affected community. The board must then post its findings in a newspaper and in the *Florida Administrative Weekly* within 160 days of the analysis. Depending on the analytical outcome, the board could decide not to make any transaction, or it could decide to sell or lease the facility to a for-profit or not-for-profit Florida corporation. In the course of the evaluation, the board shall:

1. Conduct a public hearing;
2. Publish notice of such public hearing;

3. Contract with a certified public accounting firm or another firm having substantial experience in the valuation of hospitals to render an independent valuation of the hospital's fair market value;
4. Consider an objective operating comparison between the hospital and other similarly situated hospitals, both for-profit and not-for-profit, that have a similar service mix to determine differences in operational costs using specified data. The comparison must determine whether it is more beneficial to taxpayers and the affected community for the hospital to be continued as a governmental entity, or whether the hospital can be otherwise operated with similar or better outcomes; and
5. Make publicly available all documents considered by the board in the course of the evaluation. The bill goes on to dictate the requirements of the board if the evaluation reveals that it is no longer in the best interests of the affected community to own or operate the hospital. In these situations, the board must first determine whether there are any qualified purchasers or lessees before it makes a final decision to sell or lease the facility to a third party. Any sale or lease must be at fair market value, or, if not at fair market value, the lease must be in the best interest of the affected community. The governing board's acceptance of a proposal for the sale or lease must satisfy the following requirements. The transaction must:
 1. Represent fair market value, unless otherwise provided, as determined by a certified public accounting or otherwise qualified firm;
 2. Result in a reduction or elimination of ad valorem or other taxes for taxpayers;
 3. Include an enforceable commitment to maintain quality health care, particularly for the indigent, uninsured, or under insured populations;
 4. Disclose all conflicts of interest as to whether the transaction inures to the benefit of any board member, key management, or medical staff in the area, and if any board member will be serving on any successor private corporation board;
 5. Disclose all current contracts with physicians or other entities and disclose whether those contracts would be void or voidable under the transaction; and
 6. Provide for compliance with public notice and public comment provisions.

Final authority for a governing public hospital board to sell or lease a hospital must be obtained from the secretary of the Florida Agency for Health Care Administration, who must apply certain criteria to make an approval of the transaction. The bill also provides for any interested party to seek a judicial review of the decision. However, in some situations, the approval of the sale or lease shall exclusively be determined by a majority vote of the registered voters in the respective jurisdiction where the hospital resides. All special district tax authority associated with the hospital must cease on the effective date of the sale, if any. The net proceeds of any sale must be deposited or

appropriated as follows:

1. Deposit 50 percent into a health care economic development trust fund under the control of a county or municipal commission, whichever is appropriate. The use and distribution of the funds are at the discretion of the respective commission; however, such distribution must be in consultation with the Florida Department of Economic Opportunity and must be used to promote health care job creation and/or expanded health care development and services.
2. Appropriate 50 percent for funding the delivery of health care services to indigent persons at points along the continuum of health care delivery.

Tax revenues generated through the sale of a public hospital to a for-profit-corporation shall be distributed by the appropriate local government in consultation with the Florida Dept. of Economic Opportunity and used for the purposes described above. House Bill 711 is now subject to gubernatorial review, approval or veto.

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.