

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/CS/HB 1445 Citrus County Hospital Board, Citrus County
SPONSOR(S): Health & Human Services Committee; Local & Federal Affairs Committee; Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 1430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	18 Y, 0 N, As CS	Dougherty	Rojas
2) Health & Human Services Committee	16 Y, 0 N, As CS	Poche	Calamas

SUMMARY ANALYSIS

The Citrus County Hospital Board (Board) and the Citrus County Health Foundation, Inc., (Foundation) operate and manage the Citrus Memorial Hospital. The hospital is facing significant administrative problems and has been operating at a loss for several years. The Board and the Foundation decided to lease the hospital to Hospital Corporation of America (HCA), a for-profit hospital management corporation, for approximately \$140 million. HCA's greater financial resources will allow the hospital to avoid foreclosure on a \$5.6 million loan and to continue providing health care in Citrus County.

Currently, the Board is only authorized to enter into contracts or leases with not-for-profit Florida corporations.

CS/CS/HB 1445 authorizes the Board to enter into contracts or leases with for-profit Florida corporations. This change would allow the Board to legally execute the lease with HCA. The bill authorizes the Board to create an irrevocable community trust or foundation to manage the net proceeds of the lease, estimated to be approximately \$90 million.

The bill also eliminates the Board's authority to levy ad valorem taxes. According to the Economic Impact Statement provided by the Board, this will result in a negative fiscal impact to Citrus County of \$1,714,820 for Fiscal Year 2014-2015 and \$1,531,334 for Fiscal Year 2015-2016.

The bill provides an effective date October 15, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 155, Florida Statutes/Public Hospitals

Section 155.40, F.S., authorizes a county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with the corporation for the purpose of operating and managing the hospital and its facilities. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public.

The term of any such lease, contract, or agreement and the conditions, covenants, and agreements contained therein is determined by the governing board of the hospital. The lease, contract, or agreement must accomplish the following:

- provide that the articles of incorporation of such for-profit or not-for-profit corporation are subject to the approval of the board of directors of the hospital;
- require that the not-for-profit corporation become qualified under s. 501(c)(3) of the United States Internal Revenue Code;
- provide for the orderly transition of the operation and management of facilities;
- provide for the return of such facilities to the county, municipality, or district upon the termination of any lease, contract, or agreement; and
- provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act (ss. 154.301-154.316, F.S.) and ch. 87-92, L.O.F.

In the event a hospital operated by a Florida corporation receives more than \$100,000 annually in revenues from the county, district, or municipality that owns the hospital, the corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended. Either:

- the revenues must be subject to annual appropriations by the county, district, or municipality; or
- 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.¹

Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital is not to be construed as:

- a transfer of a governmental function from the county, district, or municipality to the private purchaser or lessee;
- constituting a financial interest of the public lessor in the private lessee; or
- making a private lessee an integral part of the public lessor's decision-making process.²

Section 155.40(7), F.S., provides that the lessee of a hospital, operating under that section or any special act of the Legislature, 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.

The Citrus County Hospital and Medical Nursing and Convalescent Home Act

¹ Section.155.40(5), F.S.

² Section 155.40(6), F.S.

The Citrus County Hospital Board (Board) is an independent special district,³ created by a special act of the Legislature in 1949, run by five gubernatorial appointees for the purpose of acquiring, building, constructing, maintaining, and operating a public hospital in Citrus County.⁴ The enabling act was amended in 1969 to require confirmation of the trustees by the Florida Senate.⁵ Chapter 99-442, L.O.F.,⁶ codifies all special acts relating to the Board.

The purpose of the Board is to create and maintain public medical facilities in Citrus County. The Board is authorized to borrow money, issue notes, raise bonds, contract for services, and adopt rules and regulations for the operation of the medical facilities. The Board may levy up to a maximum of three mills per year on taxable residential or commercial real estate in Citrus County. Board members serve four-year terms.

Relevant History of the Board

Creating the Not-for-Profit Foundation

In 1987, the Board created the Citrus County Health Foundation, Inc., (Foundation) under the authority of s. 155.40, F.S. The Foundation was created as a not-for-profit corporation,⁷ with the Board as its sole member, to carry out the purposes of the special act. The Foundation is managed by a board of directors comprised of the five trustees of the hospital board, a minimum of five and a maximum of seven at-large directors, and the chief of the medical staff of Citrus Memorial Hospital. The Foundation is currently doing business as the Citrus Memorial Health System, which includes:

- a 198-bed in-patient hospital;
- a 24-hour emergency room;
- laboratory and diagnostic services;
- a walk-in clinic;
- a home health agency;
- rehabilitation services;
- a heart center; and
- orthopedic services.

Lease of the Hospital to the Foundation

The Board entered into a lease agreement and an agreement for hospital care with the Foundation, both effective on March 1, 1990. At that time, the same Board members controlled both the Board and the Foundation.

Under the lease agreement, the Foundation has leased from the Board all of the land, buildings, improvements, equipment, furniture, and fixtures of the Citrus Memorial Health System and agreed to make rental payments equal to the principal and interest and any premiums on the Hospital Revenue and Revenue Refunding Bonds issued by the Board.

Under the agreement for hospital care, the Board agreed to assist the Foundation with funding for uncompensated care and the acquisition, expansion, and maintenance of proposed and existing hospital and health facilities in exchange for medical services provided by the Foundation to the residents of Citrus County. In addition, the Foundation is required to submit an annual operating and capital budget to the Board. The Board is required to review the budget in conjunction with its own budget and, in accordance with its enabling legislation, certify to the Citrus County Board of County

³ A special district is provided for in s. 1, Art. VIII of the State Constitution and in s. 189.403(1), F.S., to be a "local unit of special purpose, as opposed to general purpose, government, within a limited boundary, created by general law, special act, local ordinance or by rule of the Governor and Cabinet." A special district can levy taxes, and is subject to the legislative provisions for open meetings, credit and bond financing. See, ch. 189, F.S.

⁴ Chapter 25728, L.O.F.

⁵ Chapter 69-944, L.O.F.

⁶ As subsequently amended by ch. 2001-308, L.O.F.

⁷ Under ch. 617, F.S.

Commissioners the millage rate required to be levied. Public budget hearings are held as required by law. The Board is then required to pay the Foundation its share of the ad valorem tax revenues to fund activities and services identified in the Foundation operating and capital budget. The funds are raised by the levy of ad valorem taxes on Citrus county property owners.⁸

The lease agreement expires on June 15, 2033, unless terminated earlier in accordance with the agreement. The Foundation has the right to unconditionally renew the lease for an additional 45-year term, if it is not in default of the lease agreement. The agreement for hospital care is automatically renewed each year for a total of 40 years, or for as long as the lease agreement remains in effect, unless terminated by the Foundation in accordance with the agreement. In the event of dissolution of the Foundation, its assets, after payment of its liabilities, revert to the Board.

Control Shift

In 2006, the Foundation amended its Articles of Incorporation to have a board of directors composed of the Board trustees, five to seven at-large members, the Foundation's president, and the chair of hospital's medical staff. This brought the number of board members to not less than 12 or more than 14, with the consequence that the Board's five trustees could no longer constitute a majority of the board.

Operational Audit

From January 2006 through December 2008, the Auditor General conducted an operational audit of both the Board and the Foundation, and issued a report in February 2010. The Auditor General made several findings that noted concern with the governance and operation of both entities in relation to the hospital. Specifically, the Auditor General's report found problems with the Foundation's accountability to the Board, the use of funds for travel and bonuses that were not approved by the Board, contracts that were executed outside the scope of the Foundation's chief executive officer's expenditure authority, and undisclosed conflicts of interest.

Despite no finding that the Citrus Memorial Hospital lease expressly provided that the Foundation was "acting on behalf of" the Board, an Attorney General opinion found that the Foundation was an instrumentality of Board, and subject to the sovereign immunity provisions of s. 768.28, F.S.⁹

Litigation¹⁰

Both the Board and the Foundation have filed various lawsuits against one another alleging a variety of claims, including breach of contract, public records violations, and breach of fiduciary duty by individually named directors. As of publication of this analysis, there are still two ongoing cases – one of which is before the Supreme Court.¹¹ See section IIIC. for further discussion.

Lease of Hospital to For-Profit Corporation

An in-depth review of the hospital's finances and operations in October 2012 revealed significant problems with the administration of the hospital, which had been operating at a loss for several years. The hospital defaulted on a \$5.6 million loan from SunTrust Bank on October 1, 2013, by not meeting a bond covenant requiring the hospital to have at least 65 operational days of cash on hand. The loan

⁸ Section 6, Ch. 2011-256, L.O.F.

⁹ Florida Attorney General Opinion 2006-36 (August 2006).

¹⁰ *Citrus Memorial Health Foundation Inc., vs. Citrus County Hospital Board*, 2010-CA-005399 (5th Cir. 2010); *Citrus County Hospital Board vs. Citrus Memorial Health Foundation Inc.*, 2010-CA-005702 (5th Cir. 2010); *Citrus Memorial Health Foundation Inc., vs. Upender*, 2011-CA-001476 (5th Cir. 2011); *Citrus Memorial Health Foundation Inc., vs. Upender*, 2011-CA-001388 (5th Cir. 2011); *Citrus County Hospital Board vs. Ryan Beaty*, 2011-CA-809 (5th Cir. 2011); *Citrus Memorial Health Foundation, Inc. vs. Trustees Rao, Ressler and Smallridge*, 2011-CA-1388 (5th Cir. 2011); *Citrus Memorial Health Foundation, Inc. vs. Citrus County Hospital Board*, 2011-CA-1653 (5th Cir. 2011); *Citrus County Hospital Board vs. Citrus Memorial Health Foundation, Inc.*, 2012-CA-219 (5th Cir. 2012); *Citrus County Hospital Board v. Citrus Memorial Health Foundation, Inc.*, SC13-411 (Supreme Court 2013).

¹¹ *Citrus Memorial Health Foundation Inc., vs. Citrus County Hospital Board*, 2010-CA-005399 (5th Cir. 2010) and *Citrus County Hospital Board v. Citrus Memorial Health Foundation, Inc.*, SC13-411 (Supreme Court 2013).

was scheduled to be foreclosed on April 2, 2014.¹² The Board and the Foundation decided to lease or sell the hospital to an outside hospital management team.

Bidding Process

The Board and the Foundation considered bids from three for-profit hospital groups and one not-for-profit hospital.¹³ For-profit hospital groups would likely pay off the hospital debt, cover the pension plan deficit, and provide capital to update the hospital facilities. Additionally, the for-profit entities would provide approximately \$2.1 million in property tax revenues annually. A not-for-profit entity would most likely not be able to invest as much capital into the hospital and would not pay property taxes. In September 2013, the Board and Foundation voted to award the bid to the Hospital Corporation of America (HCA), a for-profit corporation.

Decision to Lease

Despite much public support for selling the hospital to HCA, the Board and the Foundation decided to lease the hospital. HCA offered \$140 million for the lease, with an additional \$45 million in capital investment over five years. Of the \$140 million, \$50 million is expected to pay off the debt and cover the pension plan deficit, leaving \$90 million in profit.¹⁴

On January 10, 2014, both the Board and the Foundation voted to sign the letter of intent¹⁵ with HCA to lease the hospital and came to an agreement on the terms of the master settlement of lawsuits. The Board began due diligence with HCA for the lease on January 24, 2014. As of the publication date of this analysis, the specific contract terms of the lease are still being negotiated by the Board, the Foundation, and HCA. The final lease agreement is expected to be completed in late summer 2014.

Irrevocable Community Trust or Foundation

Net proceeds from the lease agreement are expected to be approximately \$90 million. In order to maintain control of the proceeds, the Board and the Foundation agreed to create an irrevocable community trust or foundation. The purpose of the trust or foundation must be to provide for the medical needs of county residents. The governing body must be elected by the process provided in the bill.

Effect of Proposed Changes

CS/CS/HB 1445 authorizes the Board to enter into contracts or leases with for-profit Florida corporations. Under current law, the Board may only contract with not-for-profit corporations. This change would allow the lease with HCA to be legally executed.

The bill also authorizes the Board to create an irrevocable community trust or foundation to manage the net proceeds of the lease.

The bill eliminates the Board's authority to levy ad valorem taxes. According to the Economic Impact Statement provided by the Board, this will result in a loss of \$1,714,820 for Fiscal Year 2014-2015 and \$1,531,334 for Fiscal Year 2015-2016.

¹² Write, Mike. "Foundation votes for cooperation," *Citrus County Chronicle* 27 Aug. 2013: A1, available at <http://ufdcimages.uflib.ufl.edu/UF/00/02/83/15/03216/08-27-2013.pdf>.

¹³ The for-profit corporations included Hospital Corporation of America, Health Management Associates, and RegionalCare Hospital Partners. The not-for-profit hospital was Tampa General Hospital.

¹⁴ "Courtship complete," *Citrus County Chronicle Online* 19 Sept. 2013, available at <http://www.chronicleonline.com/content/courtship-complete>.

¹⁵ The letter of intent is a non-binding letter to HCA, but signals to HCA that the governing bodies of the hospital are ready to start the formal negotiation process and gives them a written list of priorities and requests to consider from the Board and the Foundation.

Both the Board and the Foundation agree that the lease is in the best interest of the community and support creating a community trust for the proceeds left from the lease.

B. SECTION DIRECTORY:

Section 1: Amends s. 3 of ch. 2011-256, L.O.F., relating to the Citrus County Hospital and Medical Nursing and Convalescent Home Act.

Section 2: Provides qualifications of amendments made by this act to ch. 2011-256, L.O.F.

Section 3: Provides an effective date of October 15, 2014.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 15, 2014

WHERE? The *Citrus County Chronicle*, a daily newspaper of general circulation published in Citrus County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Need for Additional Special Act

Unlimited Bonding Authority without Taxing Authority

Upon passage of this bill, internal inconsistencies and obsolete language will be created. The Board's bonding authority is capped by its taxing authority in section 14 of section 3 of ch. 2011-256, L.O.F. However, this bill removes the Board's taxing authority. This should be addressed in a future special act.

Ongoing Litigation - Creating Internal Inconsistencies in the Law

Due to the pending litigation at the Florida Supreme Court, parts of ch. 2011-256, L.O.F., have not been updated to reflect the changes made by this bill. Specifically, ss. 3(16), 5, and 6, ch. 2011-256, L.O.F.,

refer to not-for-profit corporations and taxing authority that will not be accurate if this bill becomes law. At issue in the case, *Citrus County Hospital Board v. Citrus Memorial Health Foundation, Inc.*, are the "whereas" clauses and sections 3 through 5 of ch. 2011-256. The Supreme Court heard oral arguments in November 2013 and is expected to issue an opinion in 2014. Therefore, upon passage of this bill, there will be internal inconsistencies in the updated Laws of Florida. These inconsistencies should be corrected in a future special act.

Status as a "Florida corporation"

According to ch. 2011-256, L.O.F., and the language of this bill, the Board may enter into contracts or leases with Florida corporations. HCA is incorporated in Delaware. HCA was also incorporated in Florida, but voluntarily withdrew their incorporation status in 1994 and have never been reinstated.

Allegedly, the terms of the lease agreement will create a for-profit corporation incorporated in Florida, called HCA West Florida. HCA West Florida is a hospital network in Tampa whose parent company is HCA. However, the Department of Corporation's website does not have a record of incorporation for HCA West Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3, 2014, the Local & Federal Affairs Committee considered and adopted a Proposed Committee Substitute revising the original bill. CS/HB 1445 authorizes the hospital board to enter into contracts or leases with for-profit Florida corporations and create an irrevocable community trust or foundation to manage the net proceeds of the lease to a for-profit corporation. This bill also eliminates the board's authority to levy ad valorem taxes.

On April 10, 2014, the Health and Human Services Committee adopted three amendments and reported the bill favorably as a committee substitute.

- Allowed the irrevocable community trust or foundation to implement more stringent transparency or disclosure requirements by establishing minimum requirements for the trust or foundation, including financial disclosure, ethics, and government-in-the sunshine requirements.
- Deleted a reference to a "not-for-profit" corporation to confirm the authority of the Board to enter into a lease with any corporation.
- Changed the effective date to October 15, 2014.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.