

STORAGE NAME: h4081a.ca

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 4081

RELATING TO: Hillsborough County/Hospitals

SPONSOR(S): Rep. Culp and others

COMPANION BILL(S): SB 2604 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE SERVICES YEAS 9 NAYS 0
- (2) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

Many hospitals throughout the state enjoy the privilege of imposing liens on the judgments or settlements for injury or harm that resulted in the person requiring medical care at the particular hospital. Hospitals in Florida are granted the lien privilege either through a special act, a local ordinance, or a specific hospital's enabling act.

Hillsborough County's lien privilege was afforded only to Tampa General Hospital through the Hospital Authority's enabling act; however, due to recent changes at Tampa General, the Hospital Authority no longer operates the hospital. As a result, the lien privilege previously enacted for Hillsborough County is no longer in effect.

This bill allows Hillsborough County to develop and enact a health care lien ordinance that will restore the lien privilege to Tampa General and extend it to all hospitals in Hillsborough County. It will also allow the lien privilege to be extended to Hillsborough County when the county pays for hospital services of qualified county residents.

This bill has no direct fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Hospital liens are liens against the proceeds of settlements or judgments awarded to persons who have received medical services for injuries resulting from the incidents giving rise to the cause of action settled or adjudicated. Hospital liens assure hospitals a source of payment for the medical care provided to nonpaying or indigent patients. All hospital liens are statutory liens, which require privity of contract between the lien claimant and the party bound by the lien. The relationship between hospitals and their patients is always contractual whether expressed through contracts completed prior to or upon patient admission, or implied through quasi-contracts that result when the patient is admitted under emergency situations with no opportunity for informed consent.

Most states have general laws that authorize hospital liens, but Florida hospital liens exist on a county-to-county basis through special acts and local ordinances. In 1951, the Florida Legislature passed a general law of local application granting all hospitals in counties with populations over 325,000 the right to attach hospital liens. A general law of local application operates throughout the state based upon a specified classification (usually population) wherever it exists in the state. Although general laws of local application differ from special laws, which are limited to a particular person, group, or locality, their classification schemes are such that the laws' applications are restricted to particular localities, and general laws of local application are often vulnerable to constitutional challenge as being special acts in disguise. Special acts are required by the Florida Constitution to publish notice of intention to seek enactment in the manner provided by general law or to have the condition of becoming effective only upon approval by vote of the electors of the areas affected. (FLA. CONST. art. III, § 10.) At the time the 1951 general law of local application was passed, only Dade County qualified to meet the specified classification of a county with a population over 325,000.

Between 1951 and 1971 the populations of several counties increased so that they would have been included in the original 1951 Hospital Lien Act; however, several acts were created during the two decades to exclude specific counties. By the early 1970's, the Act applied only to counties with populations between 325,000 and 350,000, between 385,000 and 390,000, and over 425,000. In 1971, the Legislature repealed the 1951 Hospital Lien Act in an act that repealed many other population acts. With the adoption of the 1971 Act, the Legislature intended to reduce dependence on general laws of local application that were often subject to constitutional challenge and to expand the home rule powers of local government. The Act stated that previous acts, including the Hospital Lien Act, were to become ordinances in the counties in which they applied on the effective date of the Act. Dade and Duval counties codified the hospital lien law by ordinance and remain the only counties to attach liens by virtue of local ordinances. The remaining counties that have been granted the lien privilege have done so through special acts.

Of the hospitals that have been granted the lien right, in thirteen counties (Dade, Broward, Orange, Duval, Volusia, Sarasota, Escambia, Marion, Seminole, Monroe, Jackson, Bradford, and Lake) the lien right has been extended to all hospitals, in two counties (Alachua and Lee) it is limited to only non-profit hospitals, and in another two counties (Palm Beach and Indian River) the right is limited to public hospitals. In

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Hillsborough County the lien was only afforded to the Hillsborough County Hospital Authority (HCHA).

Three of the counties (Dade, Orange, and Palm Beach) also extend the privilege to the county or health care district when the governmental entity has paid for the hospital care.

Hillsborough County obtained its hospital's enabling act in 1980 (Ch. 80-510, Laws of Florida), which gave the HCHA the lien privilege. The HCHA only operated Tampa General Hospital, and therefore, it was the only hospital in Hillsborough afforded the right to impose liens. Tampa General has been able to collect \$17-22 million annually through the privilege, but this collection only accounts for slightly more than half the actual charges. Due to recent changes at Tampa General, the Hospital Authority no longer operates the hospital. As a result, the lien privilege in Hillsborough County is no longer in effect. This change has created a situation in which Tampa General is the only Level I Trauma Center and statutory teaching hospital in the state that does not have the lien privilege.

In the past, hospital liens have been an issue of debate between Florida hospitals and Florida trial lawyers. Most of the counties in Florida that have been granted the lien privilege have no provision for attorney's fees and address only the hospital's right to attach any settlement or judgment awarded to a claimant to cover all reasonable medical services the hospital has provided the claimant. Without an express provision, Florida case law has held that the hospital's charges attach first. Trial lawyers feel that hospital liens should make allowance for attorneys' fees in order to generate more suits with greater overall value. Trial lawyers argue that because attorneys' fees and any portion going directly to the plaintiff can only be satisfied from anything remaining after the hospital has deducted its costs, there is little incentive for an attorney to take a client's case, or for an indigent client to pursue a cause of action. Hospitals argue that if they are not given priority in reimbursement, the cost of indigent care to the state will increase. Hospitals also argue that they should continue to have priority over attorneys because under state law they must provide emergency care to patients, unlike attorneys who may choose their clients.

B. EFFECT OF PROPOSED CHANGES:

This bill will enable Hillsborough County Commissioners to implement an ordinance for liens in favor of all operators of hospitals in Hillsborough County and in favor of Hillsborough County when it pays for medical care, treatment, or maintenance of qualifying residents of the county upon all rights of action which the injured person or his legal representative may assert, as well as the proceeds of any settlements or judgments arising from the cause of action that necessitated hospitalization and medical treatment. The county ordinance may provide for the attachment, perfection priority, and enforcement of such liens and for necessary and appropriate procedures to carry out the purposes of the ordinance. Any ordinance adopted by Hillsborough County under this act must grant identical remedies to every hospital operating in the county and to the County Indigent Health Care Plan.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

None.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, Hillsborough County is authorized to provide for hospital liens through a county ordinance.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, Hillsborough County may implement a county ordinance to provide for hospital liens.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1. Authorizes the county commissioners of Hillsborough County to provide by ordinance for liens in favor of Hillsborough County hospitals and Hillsborough County when it pays for medical care, treatment, or maintenance of qualifying residents of the county upon all causes of action, suits, claims, counterclaims, and demands accruing to persons to whom care, treatment, or maintenance is furnished by such hospital or is paid for by Hillsborough County. Such liens would also apply to demands accruing to the legal representative of the patient and upon proceeds of all judgments, settlements, and settlement agreements awarded to the person receiving medical services for injuries resulting from the incidents giving rise to the cause of action. The ordinance may provide for the attachment, perfection, priority, and enforcement of such liens, and for

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necessary procedures to carry out the purposes of the ordinance. Any ordinance adopted by the county under this act must grant identical remedies both to every hospital operating in the county and to the County Indigent Health Care Plan.

Section 2. Provides an effective date of upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 6, 1998

WHERE? La Gaceta, Tampa, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? N/A

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

Committee on Health Care Services

This special act allows Hillsborough County to develop and enact a health care lien ordinance. Issues relating to the details of how the lien privilege is to be designed and implemented are intended to be resolved at the local level where the actual lien ordinance is to be enacted. Therefore, although this act does not make allowances for attorneys' fees and patient losses, such allowances may be provided for in the county ordinance.

Committee on Community Affairs

Under this bill, Hillsborough County is seeking authorization to provide for hospital liens by ordinance through a special act by the Legislature. It is not clear whether the county could have designed and implemented such an ordinance without an authorizing special act.

However, a Hillsborough County delegation representative consulted the Hillsborough County attorney's office regarding this issue. After approximately two months of research, the Hillsborough County attorney's office determined that all hospital liens are created by general law and, unless otherwise shown, Hillsborough County needs legislative approval to authorize hospital liens by ordinance. This determination is not an official legal opinion issued by the Hillsborough County attorney's office. Through its research, the Hillsborough County attorney's office failed to find any county enacting ordinances to provide for hospital liens that did so without statutory approval. A letter to that effect is attached.

In addition, the Hillsborough County Home Rule Charter took effect May 1985. The charter provides for local self-determination and grants all powers of a chartered county under Section I, Article VIII, Florida Constitution, 1968, as amended. One of the features of the

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Hillsborough County charter as described in "Home Rule Charter for Hillsborough County Florida, Approved by Hillsborough County Voters, September, 1983," is:

Special laws enacted by the Florida Legislature may be effective in Hillsborough County without approval by County electors if they relate to the following: civil service, aviation, the port, sports, transportation, **hospitals**, planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts. [Emphasis added.]

On April 6, 1998, the House Committee on Community Affairs unanimously passed HB 4081 with the caveat that all interested parties work out concerns at the local level. The committee expressed concerns regarding the implementation of hospital liens related to attorney fees, plaintiff's lost wages, and insurance recovery.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Because this is a special law, any adopted amendments to this bill must meet the notice requirements set out in Art. III, sec. 10 of the Florida Constitution. Any proposed amendments to this bill must be sponsored by a member of the Hillsborough Delegation and have the consent of the other Hillsborough Delegation members.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Amy K. Guinan

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AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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