

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2012

SPONSOR: Senator Silver

SUBJECT: Health Facilities Authorities

DATE: April 25, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 2012 authorizes any health facilities authority, despite limitations in current law to the contrary, if it finds that there will be a benefit or a cost savings to a health facility located within its jurisdiction, to issue bonds for such health facility to finance projects for such health facility, or for another not-for-profit corporation under common control with such health facility, located outside the geographical limits of the local agency or outside this state.

This bill creates the following section of the *Florida Statutes* (F.S.): 154.247.

II. Present Situation:

Part III of ch. 154, F.S., the Health Facilities Authorities Law (hereafter “part III” or “the Law”), was enacted in 1974 to benefit residents of Florida, increase commerce, welfare, and prosperity, and improve health and living conditions, as a matter of declared legislative determination of public interest necessity that residents of the state have access to adequate medical care and health facilities. These benefits and enhancements to the quality-of-life of state residents are to result from granting *each county and municipality appropriate additional means to assist in the development and maintenance of the public health*, as stated in s. 154.203, F.S., stating findings and declaration of necessity. Furthermore, the purpose of part III, is to *provide a measure of assistance and an alternate method to enable health facilities in each county and municipality to supply the facilities and structures which are determined to be needed by the community to accomplish the purposes of this part*. Health facilities authorities are mechanisms created under part III that would enable cities and counties to achieve the objectives stated in the Law.

A health facility under the Law means a private, not-for-profit corporation organized as a state-licensed hospital, nursing home, developmental disabilities facility, mental health facility, or provider of life care services under continuing care contracts. The Law uses the term “local agency” to mean a county or municipality created under Florida law.

A health facilities authority, by definition, may be one of two types of public entities: (1) a public corporation and political entity created by ordinance or resolution of a city or county, bearing the creating governmental entity's name; or (2) a board, body, commission, or department of a county or municipality as successor of a health facilities authority. A health facilities authority is deemed to perform an essential public function in the exercise of powers conferred under the Law. The county commission or city council or commission that creates a health facilities authority must designate five persons who are residents of its jurisdiction as members of the authority.

Each member of the authority is to serve a 4-year term, under oath or affirmation required by the *State Constitution*, and may be reappointed. Authority members may not be compensated for the performance of their duties, but expenses incurred while performing duties may be paid, as provided under s. 112.061, F.S. The authority is required to annually elect one of its members as chair and another member as vice chair. Three members of an authority constitute a quorum. However, no vacancy in the membership of the authority will impede the right of a quorum to exercise all rights and perform all the duties of the authority. Actions taken by an authority may be authorized by resolution at any regular or special meeting. The resolution may have immediate effect and the authority is not required to publish or post it. All meetings of an authority and its records, books, documents, and papers are open and available to the public in accordance with the Public Meetings Law, s. 286.011, F.S.

A health facility authority may employ a paid staff of consulting engineers, architects, surveyors, attorneys, accountants, financial experts, and other persons and agents, as necessary, and fix their compensation. As provided in s. 154.211, F.S., relating to payment of expenses, all expenses incurred by a health facilities authority under part III must be payable solely from funds obtained under the provisions of this part. No liability or obligation may be incurred by a health facilities authority, county or municipality, or the state relating to activities permitted under part III *beyond the extent to which moneys shall have been provided under the provisions of this part*.

Section 154.209, F.S., provides for health facilities authorities to engage in virtually all types of business transactions allowed under law in furtherance of assisting health facilities within the geographic limits of the county or city that created the authority. Health facilities authorities are granted broad powers to accomplish the purposes of part III, as provided in s. 154.209(19), F.S. Health facilities authorities are delegated, among other powers, the power to:

- Sue and be sued;
- Acquire by purchase, lease, gift, or otherwise, or obtain options for the acquisition of, any property, real or personal, improved or unimproved, for the acquisition, construction, operation, or maintenance of any project;
- Construct, acquire, own, lease, repair, maintain, extend, expand, improve, rehabilitate, renovate, furnish, and equip projects and to pay all or any part of the costs of projects from the *proceeds of bonds of the authority* or from any other funds made available to the authority for such purpose;
- Make and execute agreements of lease, contracts, deeds, mortgages, notes, and other instruments necessary or convenient in the exercise of its powers and functions under part III;
- Pledge or assign any money, rents, charges, fees, or other revenues and any proceeds derived from sales of property, insurance, or condemnation awards;
- Fix, charge, and collect rents, fees, and charges for the use of any project;

- Issue bonds for the purpose of providing funds to pay all or any part of the cost of any project and issue refunding bonds;
- Acquire existing projects and to refund outstanding obligations, mortgages, or advances issued, made, or given by a health facility for the cost of such project;
- Participate in and issue bonds for the purpose of establishing and maintaining a self-insurance pool, as provided under the state Insurance Code, on behalf of a health facility or a group of health facilities in order to provide for the payment of judgments, settlements of claims, expenses, or loss and damage that arises or is claimed to have arisen from an act or omission of the health facility, its employees, or agents in the performance of health care or health-care-related functions; and
- Issue special obligation revenue bonds for the purpose of establishing and maintaining the self-insurance pool and to provide reserve funds in connection with such an insurance pool.

Subsection 154.205(10), F.S., defines “ project” to mean *any structure, facility, machinery, equipment, or other property suitable for use by a health facility in connection with its operations or proposed operations, including, without limitation, real property therefor; a clinic, computer facility, dining hall, firefighting facility, fire prevention facility, food service and preparation facility, health care facility, long-term care facility, hospital, interns' residence, laboratory, laundry, maintenance facility, nurses' residence, nursing home, nursing school, office, parking area, pharmacy, recreational facility, research facility, storage facility, utility, or X-ray facility, or any combination of the foregoing; and other structures or facilities related thereto or required or useful for health care purposes, the conducting of research, or the operation of a health facility, including facilities or structures essential or convenient for the orderly conduct of such health facility and other similar items necessary or convenient for the operation of a particular facility or structure in the manner to which its use is intended.*

Expressly excluded from the scope of a project under part III are such items as fuel, supplies, or other items which are customarily deemed to result in a current operating charge.

In 1990, part III of chapter 154, F.S., was amended to allow not-for-profit health care corporations to finance their accounts receivables through the issuance of tax-exempt bonds through *any* health facilities authority established in the state. Such a practice allows health care facilities to maximize cash flow liquidity on a consistent and predictable basis. Section 154.209(18), F.S., was amended by chapter 98-273, Laws of Florida, to clarify that *an accounts receivable program may include the financing of accounts receivable acquired by a health facility from other health facilities, whether or not controlled by or affiliated with the health facility and regardless of location within or outside the geographical limits of this state.*

Revenue bonds issued by a health facilities authority do not constitute debt, liability, or obligation on the part of the county or city that created the authority nor are they a pledge of the faith and credit of the state or the county or city that created the authority, as provided in s. 154.223, F.S. Under s. 154.221, F.S., a health facilities authority has the discretion to secure a bond issue through a trust agreement by and between the authority and a corporate trustee which may contain a pledge or assign fees, rents, charges, or proceeds from the sale of any project or part of a project, insurance proceeds, condemnation awards, and other funds and revenues to be received from a condemnation, and may provide for the mortgaging of any project or part of a project as security for repayment of the bond.

The costs of operating health facilities authorities may be charged to, and equitably apportioned among, health facilities under their respective jurisdictions. If approved by a resolution of the health facilities authority, the authority may donate any surplus funds, including fees or accrued interest, that remain in its account at the end of the fiscal year after its operating costs are paid, to the county commission or city council or commission of the county or municipality that created the health facilities authority. A county commission or city council or commission that receives such funds is required to appropriate and disburse those funds to nonprofit human health services agencies. Section 154.239, F.S., requires health facilities authorities to submit within the first 90 days of each calendar year to the county commission or city council or commission that created it a report of its activities that includes a complete operating and financial statement for the preceding calendar year.

III. Effect of Proposed Changes:

Section 1. Creates s. 154.247, F.S., providing for health facilities authorities to finance health care-related projects located outside of the municipality or county in which the health facility is located, to authorize a health facilities authority to issue bonds for a health facility located within its jurisdiction to finance projects for such health facility, or for another not-for-profit corporation under common control with such health facility, located outside the geographical limits of the local agency or outside this state. Such bond issues are to be premised on the health facilities authority that sponsors the bond issue making a *finding that there will be a benefit or cost savings to a health facility located within its jurisdiction*. This new authority is prefaced with the nullifying clause: *notwithstanding any provision of this part to the contrary*. This may be intended to create an exception to requirements otherwise provided under part III of chapter 154, F.S., that under current law limit a health facilities authority to financing by bond issue for the purposes of: *(1) paying all or any part of the cost of any project or projects for which a certificate of need has been obtained, (2) paying all or any part of the cost of acquiring existing or completed health facilities projects, or (3) establishing and maintaining a self-insurance pool on behalf of a health facility or a group of health facilities to cover the liabilities arising from the health care or health-care-related functions of the facilities, their employees, or agents.*

Section 2. Provides a July 1, 2000, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Not-for-profit corporations within the state, around the country, and, conceivably, throughout the world may have an additional source of debt financing.

C. Government Sector Impact:

Health facilities authorities will be able to generate revenues from the management of bond issues. Such bond issues are not obligations of any governmental jurisdiction other than the involved health facilities authority.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is silent on guidelines for the borrowers and other pertinent factors relating to the use of debt instruments as authorized by the bill. It would appear that the provisions of this bill create a substantial departure from the public policy purpose of part III of chapter 154, F.S. Furthermore, the bill does not provide safeguards against a health facilities authority abusing the newly created bond financing authority provided in the bill nor does it provide guidelines to minimize the ability of a health facilities authority to overextend itself as a credit financier.

VIII. Amendments:

None.