

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill codifies all prior special acts relating to the Indian River County Hospital District into a single act and repeals all prior special acts relating to the District's charter.

Background

Chapter 25904, Laws of Florida, authorized the Board of County Commissioners of Indian River County to construct and operate a hospital. The Indian River County Hospital District was created by ch. 59-1385, L.O.F., as a special tax district.

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in section 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended section 189.429, Florida Statutes to provide that reenactment of existing law pursuant to section 189.429: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of sections 189.429 and 191.015, F.S., 122 special districts have codified their charters.

Status Statement Language

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the Department of Community Affairs' determination or declaratory statement regarding the status of the district.

C. SECTION DIRECTORY:

Section 1: States that this act constitutes the codification of all special acts relating to the Indian River County Hospital District.

Section 2: Amends, codifies, reenacts and repeals all prior acts relating to the Indian River County Hospital District.

Section 3: Re-creates the Indian River County Hospital District and reenacts its charter to read:

Section 1: Provides current language describing the boundaries of the District.

Section 1.1: Definitions:

- (1) Defines "District."
- (2) Defines "Health facility" or "health facilities."
- (3) Defines "Health and medical services."
- (4) Defines "Cost."
- (5) Defines "General obligation bonds."
- (6) Defines "Revenue bonds."
- (7) Defines "Bonds."
- (8) Defines "State."

Section 2: Maintains current language describing the authority of the board of trustees for the District.

Section 2.1:

- (1) Maintains current language authorizing the board of the District to enter into contracts or agreements on behalf of the District.
- (2) Maintains current language authorizing the board of trustees to enter into financing agreements and to lease as lessee or lessor as necessary for purposes of the District.
- (3) Maintains current language authorizing the board of trustees to determine the terms of financing agreements.
- (4) Maintains current language authorizing the board of trustees from time to time to sell rights in real or personal property as determined by the District.

(5) Maintains current language authorizing the board of trustees to enter into interlocal agreement pursuant to Florida Interlocal Cooperation Act of 1969.

(6) Maintains current language requiring a referendum to be held prior to selling a substantial amount of the health facilities in the District. The referendum shall be held in accordance with:

(a) The bond referendum procedure set forth in ch. 100 and ch. 101, F.S.

(b) The procedure for all mail ballot referendum set forth in s. 101.6101, F.S.

(c) Any other comparable procedure set forth in then existing Florida law.

Section 3: Maintains current language relating to the governing body of the District. The governing body shall consist of seven trustees who shall be qualified electors and freeholders residing in said district. Provides new language stating that the election of the trustees for the governing board will be conducted in accordance with the Florida Election Code and the Uniform Special District Accountability Act of 1989, as amended from time to time.

Section 4: States that the board of trustees shall have the powers of a body corporate.

Section 5: Maintains current language relating to the organization of the Board.

Section 6: Provides language relating to meetings for the governing board of the District, including provisions stating that the meetings be governed by ch. 286, F.S., and the Uniform Special District Accountability Act of 1989.

Section 7: States that four of the trustees shall constitute a quorum, and an affirmative vote of at least three of said trustees shall be necessary to the transaction of any business of the District. This section also provides that the District shall comply with ch. 119, F.S., commonly referred to as the Florida Public Records Act.

Section 8: Maintains current language relating to the traveling expenses for trustees of the District including that authorized travelers shall be paid per diem expenses.

Section 9: Maintains current language describing the process in which the board shall pay its expenses.

Section 10: Maintains current language describing the filling of vacancies in the board of trustees.

Section 11: Maintains current language authorizing the board of trustees to establish reasonable rules and regulations.

Section 12: Maintains current language regarding medical staff.

Section 13: Maintains current language regarding bank accounts, investments and procurement of personal property or services.

Section 13.1: Provides new language stating that all contracts for construction, improvement or repair to any facility or property owned or leased by the district will be entered into in accordance with the procedures set forth in ch. 255, F.S.

Section 14: Allows the board of trustees and the board to annually assess and levy against the taxable property within the district a special tax not to exceed 5 mills on the dollar.

Section 14.1: Maintains current language authorizing the district to charge and collect non-ad valorem revenues.

Section 15: Maintains current language regarding ad valorem taxes, rate set by the board.

Section 16: Maintains current language authorizing the board of trustees to borrow money in anticipation of estimated taxes to be collected on behalf of the district.

Section 16.1: Maintains current language authorizing the board of trustees to acquire capital assets in the form of personal property.

Section 16.2: Maintains current language authorizing the board of trustees to sell revenue bonds.

Section 17: Maintains current language authorizing the District to issue and sell ad valorem bonds.

Section 17.1: Maintains current language authorizing the District to issue and sell refunding bonds.

Section 18: Maintains current language providing that bonds issued under this act may be validated by the board of trustees.

Section 19: Maintains current language providing for the treatment of the indigent sick.

Section 20: Maintains current language that the board shall have the power of eminent domain.

Section 21: Maintains current language authorizing donations of money, personal property or real estate to the board of trustees.

Section 22: Maintains current language providing for the liberal construction of the act.

Section 23: Maintains current language regarding severability.

Section 24: Maintains current language authorizing the board of trustees to provide a retirement programs for District employees.

Section 24.1: Maintains current language authorizing the District to provide for life and disability and medical insurance for its employees or officers.

Section 25: Maintains current language authorizing the board to borrow a sum not to exceed \$15,000,000 upon approval of qualified voters in the district.

Section 4: Repeals all previous acts relating to the charter.

Section 5: Provides for severability of provisions of act.

Section 6: Provides for an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 1 and 4, 2003.

WHERE? The *Press Journal*, a daily newspaper of general circulation in Indian River County.

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:

Sovereign Immunity

The term "sovereign" historically referred to a monarch, such as a king or queen. In modern times, the term "sovereign" refers to an entity that is self-governing and independent. The United States of America is a sovereign nation and the State of Florida is a sovereign state. An "immunity" is a freedom from suit. Thus, the doctrine of sovereign immunity prevents the government from being sued for the actions of its officers or agents.

The basic idea behind sovereign immunity is that property held by the government (including assets in the public treasury) is in trust for all the citizens of that particular government. The public treasury and public property are, therefore, to be used for the benefit of all the citizens equally--not just a few individuals (such as the people who file lawsuits).

If, through lawsuit, a plaintiff can collect money from the government for some wrong the government has done him, the public treasury will be reduced for the benefit of that one person. There will then be less money to provide services to all the other citizens of the government. All the citizens will suffer because of the drain on the public treasury caused by a single citizen.

The immunity from suit in federal court is granted to the states by the Eleventh Amendment of the United States Constitution. Art. X, s.13, Florida Constitution, protects state and local governments from suit in Florida state courts, however, governments can "waive" or give up their right to sovereign immunity if they so choose.

Art. X, s. 13, Florida Constitution, prohibits waiver of sovereign immunity except by general law. It states that "[p]rovision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating." Any waiver of sovereign immunity or attempt to create sovereign immunity by special act would be null and void.¹

Common law sovereign immunity for the State of Florida, its agencies and subdivisions remained in full effect until 1973 when the legislature enacted s. 768.28, F.S. Subsequent amendments to this statute reflect the current state of law on sovereign immunity under s. 768.28, F.S. with pertinent portions recited:

¹ *Hillsborough County Hospital and Welfare Board v. Taylor*, 534 So.2d 711, 714 (Fla. 2nd DCA 1988).

(1) In accordance with sec. 13, Art. X, Florida Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions for injury . . . caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. . . .

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances.

The Florida Supreme Court held that a hospital district created by special act of the legislature was a governmental entity for purposes of s. 768.28, F.S.²

In accordance with Art. X, s. 13, Florida Constitution, and the provisions of s. 768.28, F.S., this bill appears, in s. 2.1 (7) of the charter (s. 3 of the bill) to improperly grant and waive sovereign immunity by special act.

Delegation of Legislative Authority

The legislative power of the state is vested in the Legislature (Art. III, s. I, State Constitution). It is fundamental that the Legislature may not, except when authorized by the constitution, delegate its power to enact laws, or to déclassé what the law shall be, or to exercise an unrestricted discretion in applying the law.³ The authorization to grant, waive, or compel a waiver of, sovereign immunity as provided in s. 2.1 (7) of the charter (s. 3 of the bill), appears to be an unauthorized delegation of legislative authority.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

The proposed bill will substantially reduce insurance costs for Indian River Memorial Hospital, which lost approximately \$14 million dollars in fiscal year 2000-2001. In the absence of expense reduction and improved financial performance, there is a question as to whether the hospital (which employees over 1,000 people) will be able to survive in its current form as a public hospital.⁴

At the meeting of the Local Government & Veterans' Affairs Committee on April 2, 2003, the sponsor indicated that he intended to work on language to resolve the sovereign immunity issue, specifically section(7) of section 2.1 of the charter (line 245 of the bill) wherein the language in the bill seeks to delegate a grant of sovereign immunity to the hospital's affiliates. During discussion of the bill, it was noted that a review of AGO # 2002-71 would reveal:

² *Eldred v. North Broward Hospital District*, 498 So.2d 911(Fla. 1986).

³ 10 Fla. Jur. 2d Constitutional Law s. 188.

⁴ Economic Impact Statement dated February 25, 2003.

Indian Memorial Hospital, Inc. is not acting primarily as an instrumentality of the Indian River County Hospital District in its operation of the Indian River Memorial Hospital such that it has sovereign immunity under section 768.28, F.S.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

On April 14, 2003, the Judiciary Committee adopted an amendment that removes the language authorizing the board of trustees to grant sovereign immunity to Indian River County Hospital, Inc., and its affiliates.