

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1449 DeSoto County Hospital District
SPONSOR(S): Harrington
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	_____	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Finance & Tax</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Desoto County Hospital District is an independent special district that was created by chapter 65-1450, Laws of Florida, and which has been amended by subsequent special acts.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by section 189.429, Florida Statutes. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

There are numerous provisions of this bill, however, which do not simply codify existing law, but seem to amend the charter of the Authority.

There are also provisions of this bill which may raise constitutional issues, drafting issues, and provide an exemption from general law¹ which requires passage of the bill by three-fifths vote of the membership of each house.

The bill takes effect upon becoming law.

¹ **Since this bill appears to create an exemption from general law, it may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills pursuant to House Rule 5.5(b).**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

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

B. EFFECT OF PROPOSED CHANGES:

The Desoto County Hospital District is an independent special district that was created by chapter 65-1450, Laws of Florida, and which has been amended by subsequent special acts.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by section 189.429, Florida Statutes. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

There are, however, provisions of this bill which do not simply codify existing law, but seem to amend the charter of the Authority.

Changes to the Charter – Minimum Requirements

A section of the charter sets forth the minimum requirements that must be addressed in “general laws or special acts that create or authorize the creation of independent special districts and are enacted after September 30, 1989.” These minimum requirements do not generally apply to codifications as codifications are considered reenactments as opposed to creations.² Although the minimum charter requirements and the authority provided in chapter 189, Florida Statutes, could be incorporated into a charter as part of a codification, this section of the charter appears to expand the provisions of previous legislative enactments.³

Additional Changes to the Charter

There are other provisions of this bill which seem to amend the charter of the Authority:

- includes language related to levy of an ad valorem tax of 3 mills, the authority for which appears to have expired on June 30, 1976;⁴
- permits the notice for additional meetings to be “written, oral, or by telephone, or without notice if notice is waived in writing by all of the board members;”⁵
- allows the chair to call a meeting of the board of directors upon written request of any two directors;⁶

² See Fla. Stat. § 189.429 (2003).

³ See HB 1449 (2004) (paragraph (a) relating to the purpose of the district, paragraph (d) affecting the terms of current members of the board, paragraph (m) permitting ad valorem taxation with no millage limit upon approval of the electors).

⁴ See ch. 73.-443, Laws of Fla. § 1

⁵ See HB 1449 §3, § 4 of the charter (2004)

⁶ *Id.*

- permits the district to establish and charge a reasonable fee for copying public records;⁷
- authorizes the district to provide or establish “any health care service” in addition to having a hospital or related medical care facility;⁸
- makes the aggregate limit of \$750,000 for certificates that are allowed by applicable law;⁹
- removes the financial reporting provisions from the charter;¹⁰
- expands the power of the district related to adopting rules for the operation of the hospital and the hospital staff to include related medical facilities and health care service and staff associated with them;
- restricts the provision that the bill does not supercede any other laws to be “except as specifically set forth herein;”
- provides for validation, ratification, and confirmation of all contracts made by the district or its board of directors since June 25, 1965, and all official acts of such board or its officers and agents in furtherance of such contracts;
- ratifies all acts and proceedings of the circuit court taken by, for, and on behalf of the district; all of the acts and proceedings of the district’s board of directors and all other officers and agents of the district, and of the county, acting for and on behalf of the district; and any and all tax levies and assessments that have been made by the board of directors for and on behalf of the district; and
- provides that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

Charter of Authority

In recreating and reenacting the charter for the Authority, the bill provides:

- Section 1: Sets forth the minimum charter requirements for “general laws or special acts that create or authorize the creation of independent special districts and are enacted after September 30, 1989;” reenacts provisions for a governing body of five members who are not members of the medical profession for terms of four years.
- Section 2: Includes all of DeSoto County in the District and declares the District to be an independent special district.
- Section 3: Provides for the powers of the District, including: including the power to sue and be sued; to contract and be contracted with; to adopt and use a common seal and to alter the same at pleasure; to acquire, purchase, hold, lease, mortgage, and convey such real and personal property as the board deems proper or expedient to carry out the purposes of this act; to appoint, employ, and remove a superintendent and other agents and employees, including physicians; to insure

⁷ *Id.*

⁸ See HB 1449 §3, § 5 of the charter (2004).

⁹ See HB 1449 §3, § 8 of the charter (2004).

¹⁰ *But see* section 189, Florida Statutes.

the improvements, fixtures, and equipment of the District against loss by fire, windstorm, or other coverage; and to borrow money and to issue evidence of indebtedness for the District.

Returns the power of the board of county commissioners to levy upon all taxable property in the district and collect a tax sufficient to provide funds not to exceed 3 mills on assessed valuation of property in the district for the operation, maintenance, and repair of any hospitals and related healthcare facilities established by the district hospital board under this act with the proceeds of such tax to be paid to the District as provided and only upon the approval of a majority of the qualified electors voting in a referendum election

- Section 4: Requires the chair of the hospital district to be elected annually; permits the board to elect one of its members to serve as secretary and treasurer or it may appoint some person not a member of the board to serve in that capacity; allows warrants may be signed by any other member of the board selected by the members present as chair pro tem in the absence of the chair; provides for three members to constitute a quorum with a vote of at least two members to transact any business; requires a regular meeting of the board annually; permits additional meetings with certain notice and by request of two directors; provides for true and accurate minutes and records to be kept of all business transacted by them and shall keep full, true, and complete books of account and minutes, which minutes, records, and books of account shall at all reasonable times be open and subject to inspection of inhabitants of the district; and any person desiring to do so may make or procure copies of the minutes, records, or books of account, or such portions thereof as he or she may desire; however, such records shall not include personnel and medical records of a private and confidential nature. The district may establish and charge a reasonable fee for copying the records. The district hospital board may destroy any of its records, together with any of the records of the hospitals owned and operated by the board, if the records are photographed or microfilmed prior to their destruction.
- Section 5: Permits the board to establish, construct, lease, operate, and maintain any hospital or related medical care facility and provide any health care services; provides the intent for such hospitals or medical care facilities as a public purpose and necessary for the preservation of the public health, for the public use, and for the welfare of the District and inhabitants thereof; allows the board to determine the location of any hospital or related medical care facility or health care service; authorizes the board to accept any and all gifts, loans, or advancements for the purchase of property, real or personal.
- Section 6: Authorizes the board to establish and maintain in connection with any hospital a training school for nurses which will provide a diploma to nurses who have satisfactorily completed the course; permits the board to adopt all rules necessary for the operation of a nurses' training school and make all necessary expenditures in connection therewith.
- Section 7: Gives the board the power of eminent domain, to be exercised in the same manner as provided by general law.
- Section 8: Allows the board to incur short-term indebtedness on behalf of the district at a rate of interest pursuant to section 215.84, Florida Statutes.
- Section 9: Provides for the board to issue certificates of indebtedness; requires certificates to bear rates of interest at a rate consistent with applicable law and the prevailing

commercial rate, not to exceed 5.5 percent per year, become due not more than 30 years after the date of issuance. Certificates may be made redeemable upon such terms and conditions as the district board in its judgment deems appropriate, and be in an aggregate amount not to exceed the amount allowed by applicable law; provides for the principal and interest on the certificates authorized in this section shall, up to \$50,000 annually, be payable from racetrack funds accruing annually to DeSoto County and specifically allocated to the hospital district pursuant to chapter 550, Florida Statutes, and chapter 65-1105, Laws of Florida; makes these certificates legal investments.

- Section 10: Declares a covenant between the Legislature and the holders of certificates issued pursuant to the district's authority that it will not enact any law that will repeal, impair, or amend in any manner the rights of such holders or the security of the racetrack funds that are pledged to the payment of the principal and interest on the certificates issued pursuant to this act.
- Section 11: Prohibits funds of the District from being paid except upon signed warrants with the corporate seal and for authorized purposes; requires warrants against funds of the district to be drawn or issued only after the account or expenditure for which the same is to be given in payment has been ordered and approved by the board; authorizes the chair of the board is authorized to sign checks and warrants of the district by the facsimile signature machines for that purpose, provided that the checks and warrants are countersigned by the treasurer for the district.
- Section 12: Authorizes the board to pay all reasonable and necessary expenses, including the fees and expenses of an attorney.
- Section 13: Provides authority for the board to enter into contracts with the Government of the United States or any agency or instrumentality thereof, or with the state or any county, municipality, district, authority, or political subdivision of the state, private corporation, partnership, association, or individual; allows the board to receive and accept from any federal agency, state agency, or other public body grants or loans for or in aid of such purposes and receive and accept aid or contributions or loans from any other source of either money, property, labor, or other thing of value to be held, used, and applied only for the purpose for which such grants, contributions, or loans are made.
- Section 14: Declares that the hospital or related medical facilities are for the use and benefit of the residents of the District, but subject to the rules and charges prescribed by the board; provides that medical care and treatment for the indigent in the district shall be and remain the primary responsibility of DeSoto County; authorizes the board to refuse admission of indigents when found by such board not to be financially practicable with due regard to the general financial condition of the district; empowers the board to enter into and fulfill agreements with the Board of County Commissioners of DeSoto County for the admission and treatment of indigents; allows the board to accept money from any welfare funds provided for DeSoto County or moneys available to the indigent patients from a federal, state, or county agency or moneys available to DeSoto County from such governmental agencies for welfare and hospital purposes, for the payment of costs of treatment and care of indigent residents of the district as are admitted; permits the board to collect from patients who are financially able such charges as the board from time to time establishes; provides for the board to extend the privileges and use of the hospital, related medical facilities, or clinic to nonresidents of the district who shall pay the rates established by the district board, provided that residents

of the district wherein the hospital, related medical facilities, or clinic is located have first claim to admission; gives the board the power to furnish and extend the benefits of the hospital, related medical facilities, and clinic services and treatment to the homes of indigent residents of the district; provides that each municipal corporation situated within the district and the law enforcement agencies of DeSoto County are liable to the board for the occupancy, care, medicine, and treatment of prisoners in the custody of the municipal corporation or county officers who are admitted to any hospital operated by the board.

- Section 15: Permits the board to adopt rules and bylaws for the operation of the hospital and the hospital staff as well as any related medical facilities and health care service and staff associated with them; empowers the board to grant or revoke licenses and privileges of staff members for practice in and about any hospital or other medical care facility maintained under the charter; allows privileges of staff membership and appointments to be authorized or granted by the board; provides for the board to adopt rules for the control of all professional and nonprofessional employees of any hospital or other medical care facility, and all parties in the facility either as employees or in any manner in attendance of patients.
- Section 16: Authorizes the District to secure liability insurance covering vehicles, premises, and malpractice; provides for the policy contract between the district hospital board and the insurer that the company shall not be entitled to the benefit of the defense of governmental immunity for the insured by reason of exercising a governmental function on any suit brought against the insured; further provides that immunity of the board against liability damages is waived to the extent of liability insurance carried by the board, but prohibits any attempt from being made at the trial of any action to suggest the existence of any insurance that covers in whole or in part any judgment or award that may be rendered in favor of the plaintiff; requires any verdict rendered by the jury which exceeds the limit of the applicable insurance to be reduced by the court to a sum equal to the applicable limit set forth in the policy.
- Section 17: Provides for liberal construction of the charter; provides that the bill is not deemed to repeal or supersede any other laws, except as specifically set forth, but is supplemental authority to carry out the purposes of the bill.
- Section 18: Allows the District to create an employee's pension fund so as to provide for life, disability, or medical insurance for all or any of its employees or officers on a group insurance or other acceptable plan; permits the District to establish an employee's pension, hospitalization and health plan, annuity plan, or retirement plan; authorizes the District to pay all or such portion of the cost of any such plan.

C. SECTION DIRECTORY:

- Section 1: Provides that the bill constitutes the codification of all special acts relating to the District; provides legislative intent.
- Section 2: Codifies, reenacts, amends and repeals chapters 65-1450, 69-1011, 71-605, 73-443, 78-498, 82-288, and 89-493, Laws of Florida.
- Section 3: Recreates and reenacts the charter of the District.

- Section 4: Provides for validation, ratification, and confirmation of all contracts made by the district or its board of directors since June 25, 1965, and all official acts of such board or its officers and agents in furtherance of such contracts.
- Section 5: Ratifies all acts and proceedings of the circuit court taken by, for, and on behalf of the district; all of the acts and proceedings of the district's board of directors and all other officers and agents of the district, and of the county, acting for and on behalf of the district; and any and all tax levies and assessments that have been made by the board of directors for and on behalf of the district.
- Section 6: Provides that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.
- Section 7: Repeals chapters 65-1450, 69-1011, 71-605, 73-443, 78-498, 82-288, and 89-493, Laws of Florida.
- Section 8: Provides for the bill to take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? WHERE?

An Affidavit of Proof of Publication states that a Notice of Intent to Seek Legislation was published in the Desoto Sun on December 23, 2004.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

As the bill reinstates an ad valorem tax of up to 3 mills, it requires the approval of a majority of the qualified electors voting in a referendum election to be called by the Board of County Commissioners of DeSoto County within 45 days after the date that a resolution calling for such election is duly adopted by a majority of the board of the District.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Constitutional Limitations on Special Acts Related to Independent Special Districts

There are five types of special laws related to independent special districts which are prohibited.¹¹

This bill may enact one of the five types of types of special laws which are prohibited related to special districts. A special law is prohibited if it exempts an independent special district from the reporting,

¹¹ Fla. Const. Art. III, § 11(a)(21) (provides that there shall be no special laws pertaining to any subject when prohibited by general law passed by 3/5 vote of the membership of each house). As Section 189.404, Florida Statutes, is a general law which was passed by three-fifths vote of the membership of each house, it makes any special law prohibited unless it is also passed by three-fifths vote of the membership of each house.

notice, or public meetings requirements of sections 189.4085, 189.415, 189.417, or 189.418, Florida Statutes. This bill appears to exempt the District from the requirements of section 189.417, Florida Statutes, by specifying the notice required special meetings¹² of the board.

Public Records Limitations

This bill appears to limit access to public records to the inhabitants or residents of the District:

minutes, records and books of account shall at all reasonable times be open and subject to inspection of the inhabitants of the District.¹³

This limitations may violate the provisions of section 24 of article I of the Florida Constitution which provides the right to inspect or copy any public record to *every person*.¹⁴ While the Legislature may provide exemptions from the public records requirement, such an exemption must be by *general law* passed by a two-thirds vote of each house and state with specificity the public necessity justifying the exemption.¹⁵

Public Notice for Meetings

Article I, section 24(b) of the Florida Constitution requires meetings of special districts, at which official action is to be taken or public business transacted, to be notice to the public. The added provision of the charter which permits the notice for additional meetings to be "waived in writing by all of the board members"¹⁶ may violate this provision.

Waiver of Sovereign Immunity

The bill recreates a section of the charter permitting the board to secure and keep liability insurance. Yet this section also provides for waiving the immunity of the board and requires the courts to take certain actions:

Immunity of the board against liability damages is waived to the extent of liability insurance carried by the board; however, no attempt shall be made at the trial of any action against the board to suggest the existence of any insurance that covers in whole or in part any judgment or award that may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of the judgment or award to a sum equal to the applicable limit set forth in the policy.¹⁷

Pursuant to article X, section 13 of the Florida Constitution, provisions related to bringing suit against the state, and by extension its subdivisions, may be made by general law. As such, it is not clear that sovereign immunity can only be waived by special law.

Pursuant to article 1, section 21 of the Florida Constitution, the courts must be open to every person for redress of any injury and the administration of justice. Requiring courts to reduce judgments may violate this provision.

¹² HB 1449, § 3, § 4 of the charter (2004).

¹³ HB 1449, § 3, § 4 (2004). While this section also provides that "any person desiring to do so may make or procure copies of the minutes, records, or books of account, or such portions thereof as he or she may desire," it is not clear how this would be read with the preceding restriction.

¹⁴ This section provides that "every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."

¹⁵ See Fla. Const. Art. 1, § 24(c)

¹⁶ HB 1449, § 3, § 4 of the charter (2004).

¹⁷ HB 1449, § 3, § 16 of the charter (2004).

B. RULE-MAKING AUTHORITY:

The charter permits the board to adopt all rules:

- necessary for the operation of a nurses' training school;
- in effect as of the date of admission of a patient or patients to a hospital or related medical facility which is established for the use and benefit of the residents of this district;
- for the operation of the hospital and hospital staff, as well as any related medical facilities and health care service and staff associated with them; and
- for the control of all professional and nonprofessional employees of any hospital or other medical care facility, which terms shall include nurses on general duty or on private duty attending patients, and all parties in the facility either as employees or in any manner in attendance of patients.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Validation and Ratification

The provision which validates all contracts and ratifies all specified prior acts is problematic. The general rule for such curative provisions is: “what the Legislature could have authorized, it can ratify if it can authorize at the time of ratification.”¹⁸ It is important to note, however, that most of the cases on the issue of ratification and validation in Florida, with respect to special districts, relate specifically to the issue of assessments, which the Legislature had the power to ratify. Yet, different issues are presented through the use of broad and ambiguous validation and ratification language as it is not clear what exactly the Legislature is validating and ratifying. Thus, there is no way to know whether the Legislature could have authorized all these contracts or the acts and proceedings of the circuit court, the county, or the district. Moreover, to the extent that this broad and ambiguous ratification provision is not “curing” a specific issue, its application raises issues as to whether it may be retroactively applied.¹⁹ As such, the sponsor may wish to remove this language from the bill.

Drafting Issues – Supremacy Clause

The bill is reenacting language currently in section 10 of the charter which may act as a supremacy clause:

The Legislature covenants with the holders of such certificates as are issued pursuant to the district's authority that it will not enact any law that will repeal, impair, or amend in any manner the rights of such holders or the security of the racetrack funds that are pledged to the payment of the principal and interest on the certificates issued pursuant to this act.

In addition, the bill restricts a provision in the charter that the act does not supercede any other laws to add “except as specifically set forth herein.”

The sponsor may wish to remove both of these provisions.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

There are no amendments or committee substitute changes.

¹⁸ See, e.g., *Charlotte H. & N. R. Co. v. Welles*, 260 U.S. 8 (1922).

¹⁹ See, e.g., *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995) (where the Florida Supreme Court noted its refusal to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties).