

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Codification

Codification is the process of compiling, updating and systematically arranging the special acts that comprise a special district's charter. After a district is created by special act of the Legislature, original charter provisions may be amended by subsequent special acts. Because special act amendments are not automatically incorporated into one special act charter, it is necessary to locate all special acts amending a district's original charter in order to ascertain its current status. This process can be difficult and time-consuming. Codification of special district charters permits readers to easily locate and identify the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature in ss. 189.429¹ and 191.015², F.S., both of which were amended in 1998. These laws provide for codification of all special district charters by December 1, 2004.³ Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor supersede 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 ss. 189.429 and 191.015, F.S., 173 special districts have codified their charters.

The Bay Medical Center

Chapter 23183, L.O.F. (1945)⁴ authorized the establishment of a county hospital, now known as Bay Medical Center. The Bay Medical Center is an independent special district located in Bay County. Chartered in 1949 as Memorial Hospital of Bay County, Bay Medical Center is a 403-bed regional referral center, serving a seven-county area in the central Florida panhandle. Bay Medical Center has over 200 physicians on staff, and more than 2,000 employees.

This bill codifies all prior special acts of the district into a single act, as required by s. 189.429, F.S. The bill deletes obsolete provisions, and makes minor, stylistic changes to language in the district charter. The bill also contains provisions which are not contained in previous district special acts, including language which updates the method for payment of funds to provide for modern standards of electronic funds transfer.

¹ Chapter 189, F.S., is known as the "Uniform Special District Accountability Act."

² Chapter 191, F.S., is known as the "Independent Special Fire Control District Act."

³ The 1998 amendment allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the House Committee on Community Affairs.

⁴ Chapter 23183, L.O.F. (1945), has been amended by the following subsequent special acts: chs. 27396 (1951), 30578 (1955), 57-1140, 59-1073, 61-1871, 61-1876, 93-375, and 95-510. , L.O.F.

In recreating and reenacting the charter for the district, the bill:

Section 1: Provides that the act may be cited as the “Bay Medical Center District Act.”

Section 2: Provides that the board is a public corporate and politic, with the powers to establish, lease, acquire, own and operate one or more hospitals or other health care facilities situated within Bay County; provide health care services determined by the board to be in the best interest of the persons utilizing such facilities; to perform any acts that may be incidental or necessary to carry out their purposes; to form, contribute to, and participate in all manner of alliances and organizations involved in the delivery, marketing, sale and payment of health care services; and to engage in any lawful act in which a not-for-profit corporation providing health care services may engage under the laws of Florida, including the power to:

- (1) have perpetual existence as a body politic and corporate;
- (2) adopt a seal;
- (3) contract with public and private entities;
- (4) sue and be sued in the name of Bay Medical Center;
- (5) acquire, hold, develop, modify, lease as lessee or lessor, and convey real and personal property;
- (6) employ executive officers and other agents and employees;
- (7) incur indebtedness, and issue notes, revenue certificates, bonds, and other evidences of indebtedness;
- (8) borrow money and issue anticipation notes;
- (9) adopt bylaws;
- (10) establish a medical staff;
- (11) determine services to be delivered;
- (12) establish and charge rates, fees, rentals and other charges;
- (13) establish a risk management and retention program;
- (14) form Florida for-profit corporations and other business organizations;
- (15) enter into arrangements with other hospitals or entities to provide for the sharing of resources, as well as to provide for the merger or consolidation of hospitals or facilities into Bay Medical Center;
- (16) pay expenses;
- (17) provide for the care of indigent patients;
- (18) accept gifts and contributions; to accept funds available from other private or governmental agencies;
- (19) make contributions to Section 501(c)(3) charitable organizations as well as to governmental agencies;
- (20) create, be a voting member of, choose directors to serve on the boards of, be a partner in, or participate in or control any venture, corporation, partnership, or other organization, public or private, and contribute funds thereto, which the board finds operates consistent with its purposes;
- (21) enter into contracts, upon such terms and conditions as the board may deem advisable, to receive or provide management services, professional services, and skilled or unskilled labor.
- (22) incur and pay reasonable expenditures for travel, physician recruiting, employee recruiting, hospitality, education and marketing;
- (23) do all things which are customarily done by other hospitals, public or private, which will further the purposes of this act.
- (24) exercise all implied powers necessary to further the its purposes; and
- (25) provide and pay for employee benefits.

The board specifically is prohibited from levying any tax or exercising the power of eminent domain.

Section 3: Provides for a board of trustees of nine members and their selection; provides language which ratifies and validates the appointment and terms of all current board members; provides for four-year terms, and for vacancies in office; provides for board qualifications and conflicts of interest.

Section 4: Provides that the board elect a chair, vice chair, and either a secretary and a treasurer or a secretary-treasurer; provides that five members constitute a quorum; requires the board to keep minutes, and complete accounts and records which shall be open to public inspection; provides that board meetings shall be open to the general public; provides for an annual audit of board's financial records.

Section 5: Provides that the board hire a chief executive officer, who is responsible for hiring personnel necessary for the efficient management and operation of the hospital; provides that the chief executive officer recommend the adoption of general policies to the board.

Section 6: Provides for the payment of board funds upon drafts, checks or warrants signed by persons duly authorized by the board; provides new language which provides for the use of electronic fund transfers, direct credits and debits, purchasing cards and other electronic means.

Section 7: Provides that the board may extend the use of the hospital and other facilities to nonresidents of Bay County.

Section 8: Authorizes the board of county commissions and the board of trustees, jointly, to convey, lease or otherwise dispose of all the assets owned or controlled by the board of trustees to a for-profit or not-for-profit corporation or other entity; provides for a referendum of the electors of Bay County if the board disagree on the exercise of this authority;

Section 9: Provides that the board or any other body in charge of the hospital is not required to pay any taxes or assessments of any kind on its property.

Section 10: Provides for the liberal and remedial construction of act; provides for severability of act.

C. SECTION DIRECTORY:

Section 1: Provides that the act constitutes the codification of all special acts relating to the district.

Section 2: Codifies, reenacts, amends and repeals prior special acts relating to the district's charter.

Section 3: Recreates and reenacts the district charter as follows:

Section 1: Provides for name of act.

Section 2: Provides for board powers.

Section 3: Provides for a board membership, selection, terms and qualifications.

Section 4: Provides for board elections, minutes, records, meetings and audit.

Section 5: Authorizes the hiring of a chief executive officer by the board.

Section 6: Provides for the payment of board funds.

Section 7: Provides for the use of hospital by nonresidents of Bay County.

Section 8: Authorizes the board of county commissions and the board of trustees, jointly, to dispose of the board's assets.

Section 9: Provides a tax exemption for the board or any other body in charge of the hospital.

Section 10: Provides for the liberal and remedial construction of act, and provides for severability of act.

Section 4: Repeals all prior special acts.

Section 5: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 15, 2004

WHERE? *The News Herald*, a newspaper published in Bay 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

No fiscal impacts are anticipated according to the Economic Impact Statement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemptions from Ad Valorem Taxation

In Section 3 of the bill (s. 9 of the special district's charter), language is carried forward from previous special acts which provides that the board or any other agency in charge of the hospital shall not be required to pay any taxes or assessments of any kind.

Property owned by governmental entities is subject to ad valorem taxation unless immune or exempt, and such exemptions are strictly construed against party claiming them. Immunity from taxation precludes the power to tax, while an exemption from taxation presupposes the existence of the power to tax but the power is limited by a constitutional or statutory provision. *Orange State Oil Co. v. Amos*, 139 So.2d 707 (Fla. 1930). The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

Special districts are not immune from taxation. Therefore, property owned by special districts is taxable unless the Legislature enacts an exemption from taxation that is consistent with the Florida Constitution. Section 189.403(1), F.S., provides that special districts are treated as municipalities for purposes of s. 196.199(1), F.S., which exempts from ad valorem taxation property owned by a municipality and used for "governmental, municipal, or public purposes." Accordingly, property owned by a municipality or special district is entitled to exemption only if used for a governmental or public purpose.

If a private entity leases government owned property from an exempt governmental entity, such as a special district, the actual use of the property determines whether a valid exemption from ad valorem taxation continues to apply. If public property is leased to a private entity, but is *not* used for a "public purpose," the fee interest in the property is taxable. The "public purpose" standard applicable in tax exemption cases is the "governmental-governmental" standard under which property leased to private entities for "governmental-proprietary" activities is not tax exempt. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). Non-exempt "governmental-proprietary" use occurs when a nongovernmental lessee utilizes public property for proprietary and for-profit aims to promote the comfort, convenience, safety and happiness of citizens. Conversely, exempt "governmental-governmental" use occurs when a lease of public property concerns the administration of some phase of government. It should be noted that the leasehold interest in leased public property may be subject to the intangibles tax regardless of whether the leased property itself is subject to ad valorem taxation. *See Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.