

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:

Present Situation

The Sarasota County Public Hospital District (SCPHD) was established in 1949 by ch. 26468, L.O.F., as an independent special district. The District has common jurisdictional/geographical boundaries with Sarasota County, and encompasses approximately 610 square miles.

The SCPHD is governed by a board consisting of nine members who are chosen in partisan elections by the qualified voters of the district. Board members serve four-year terms and receive no compensation. The declared public purpose of the board is "the provision for the health care needs of the people of the [d]istrict."¹ Currently, the district provides services from Sarasota Memorial Hospital and five other locations within the county.

The SCPHD is empowered to extend the privileges and use of the hospital to persons residing outside of the district.² Twenty percent of inpatients and 19 percent of outpatients who receive the SCPHD's services reside in adjacent counties, but travel to Sarasota County to receive health care services.

The district is authorized to issue bonds and levy ad valorem taxes not to exceed two mills.³

Proposed Changes

This bill authorizes the SCPHD board to establish, construct, equip, operate and maintain hospitals and other health care facilities and services both within and beyond the boundaries of the district. The bill prohibits the board from using any funds derived from the assessment of ad valorem taxes on property located within the district to support joint efforts with other hospitals and health care providers, or to establish or provide health care facilities or services beyond the district's boundaries.

The bill also provides that the board shall have and exercise all powers to effect the purposes of the act, and specifically authorizes the board to contract to carry out such purposes to the extent allowed by the Florida constitution or general law.

C. SECTION DIRECTORY:

Section 1: Adds subsections (20), (21), (22) and (23) to section 8 of section 3 of ch. 2003-359, L.O.F.

Section 2: Provides a severability clause.

Section 3: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 17, 2004

¹ s. 8(17) of the SCPHD charter (See, ch.2003-359, L.O.F.)

² s.10 of the SCPHD charter (See, ch. 2003-359, L.O.F.)

³ The district indicates that it uses the tax (0.6 mil in 2004-2005) to pay for approximately one-third of the costs of charity and other uncompensated care.

WHERE? The *Sarasota Herald-Tribune*, a daily newspaper of general circulation, published in Sarasota 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

The attached economic impact statement indicates that the bill would not increase costs to the district or affect the revenues of the district. It states that the bill would have no impact upon competition or the open market for employment because it would not expand the types of health care facilities that can be established, operated or maintained by the district, but would merely afford the district greater flexibility in the placement of facilities. It further states that this analysis is "based on deductive reasoning....[t]he difference in the cost of establishing, operating and maintaining new health care facilities in one county, versus an adjacent county, would be de minimus."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Art. VII, s. 10, of the State Constitution prohibits the state and any county, school district, municipality, special district or agency from becoming a joint owner with, a stockholder of, or giving, lending or using its taxing power or credit to aid any corporation, association, partnership or person. The bill contains two provisions that address this prohibition. First, the bill prohibits the board from using any funds derived from the assessment of ad valorem taxes on property located within the district to support joint efforts or to establish or provide any health care facility or health care service beyond the boundaries of the district. Second, the bill provides that the board's activities as authorized by the bill be consistent with all restrictions contained in the constitution and general laws of the State of Florida.

As previously noted, the board has bonding authority, and s. 10, art. VII of the State Constitution prohibits the use of the Board's credit to aid any corporation, association, partnership or person. While the bill does not prohibit the use of the board's credit to support any joint participation with other hospitals or to establish or provide any health care facility or services beyond the boundaries of the district, it does require that such participation be consistent with all restrictions contained in the state's constitution and general laws.

B. RULE-MAKING AUTHORITY:

No rule-making authority is required to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill authorizes the Sarasota County Public Hospital Board to establish, construct, equip, operate and maintain hospitals and other health care facilities and services both within and beyond the boundaries of the district. The legislative authorization which this act provides is a recognized defense to an antitrust suit. "State action immunity" is a judicially created immunity in which antitrust laws do

not apply to anticompetitive actions prescribed by the states “as an act of government.” See, Parker v. Brown, 317 U.S. 341, 62 S.Ct. 307, 89 L.Ed. 315 (1943). While the Parker doctrine protects the anticompetitive actions of a state, it does not apply directly to a state’s political subdivisions because these entities “are not themselves sovereign.” City of Lafayette, La. v. Louisiana Power & Light Co., 435 U.S. 389, 412, 98 S.Ct. 1123, 1136, 55 L.Ed. 2d 364 (1978).

Nonetheless, in Town of Hallie v. City of Eau Claire, 471 U.S. 34, 105 S.Ct. 1713, 85 L.Ed.2d 24 (1985), the U.S. Supreme Court applied the Parker doctrine, with some modifications, to the anticompetitive actions of political subdivisions. When a political subdivision acts pursuant to a “clearly articulated and affirmatively expressed” state policy to displace competition with regulation or monopoly public service, the state action doctrine exempts the political subdivision’s anticompetitive activities from antitrust liability. The 11th Circuit employs a three-part test to determine whether the “clear articulation” test is satisfied. Under this test, a political subdivision must show the following in order to obtain state action immunity: (1) that it is a political subdivision of the state; (2) that, through statutes, the state generally authorizes the political subdivision to perform the challenged action; and (3) that, through statutes, the state clearly has articulated a state policy authorizing anticompetitive conduct. See, F.T.C. v. Hospital Bd. of Directors of Lee County, 38 F.3d 1184, 1187-1188 (11th Cir. 1994). The anticompetitive conduct need only be a “foreseeable result” of the statute establishing the state policy.

The Legislature previously has granted similar authority to other hospital districts. See, ch. 95-502, L.O.F., relating to the North Brevard County Hospital District, for example.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Local Government Council adopted a technical amendment at its meeting on March 9, 2005, which deleted the original Section 3 of the bill as it consisted of redundant language.