

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill clarifies that public hospitals, which are sold to Florida not-profit-corporations, are not subject to Florida public records laws.

B. EFFECT OF PROPOSED CHANGES:

HB 675 amends s. 155.40, F.S., to clarify legislative intent regarding the status of a public hospital purchased by a not-for-profit corporation.

Section 155.40, F.S., was enacted in 1982 to allow local taxing districts the authority to lease their hospitals to not-for-profit Florida corporations and was amended in 1996 to allow the sale of public hospitals to not-for-profit Florida corporations.

A recent court decision in Volusia County ruled that, even though the West Volusia Hospital Authority (the local taxing district) sold their public hospital to Adventist, the hospital must remain subject to the state public records and meetings laws.

The bill clarifies that the Legislature does not intend for public hospitals that are sold to Florida not-for-profits corporations to be subject to public records laws.

The effective date of the bill is July 1, 2006.

BACKGROUND

Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews

The public/private status of the Memorial Hospital (now Florida Hospital Deland) in Volusia County has been the subject of a string of court challenges. The challenges are summarized in the final summary judgment of Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews. The summary judgment lays out the development of the hospital prior to current litigation, background of prior litigation, development of the hospital currently, and legal conclusions.

Development of the Hospital Prior to Current Litigation

In 1957, the Florida Legislature created the West Volusia Hospital Authority (the "Authority"), as an independent taxing district (Ch. 57-2085, 1, Laws of Florida). The Authority developed and operated the West Volusia Memorial Hospital as a publicly owned hospital. From 1957 until 1994, the Authority levied substantial taxes but the Authority was unable to operate the hospital in a fiscally responsible manner and relied heavily on tax-payers to subsidize the hospital. In 1993 the Authority entered into negotiations with Memorial Health Systems (MHS) to lease and operate West Volusia Memorial Hospital. In the contract between MHS and the Authority, MHS agreed to provide indigent care for the indigent sick in the taxing district, and the Authority agreed to reimburse Hospital Corporation for those services.

Background of Prior Legislation

In 1994, News-Journal filed a complaint in the Circuit Court seeking a declaratory decree that the records of MHS were subject to the Public Records Act and the Sunshine Law. The Circuit Court entered a final judgment in favor of MHS. On appeal, the Fifth District Court of Appeal reversed and held that MHS was subject to the Public Records Act and the Sunshine Law. The court concluded that MHS was "acting on behalf of the Authority (News-Journal Corp. v. Memorial Hospital-West Volusia, Inc., 695 So. 2d 418, Fla. 5th DCA 1997). The Supreme Court of Florida upheld the ultimate decision

that MHS was subject to the Public Records Act and the Sunshine Law (Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 383, Fla 1999).

Development of Hospital Recently

On March 23, 2000, MHS delivered notice to the Authority that it intended to terminate the lease contract as of midnight September 30, 2000. The Authority was not interested in running the hospital again and eventually worked out a sale agreement with Adventist, as authorized in s.155.40, F.S. Under the sale agreement the Authority will continue to pay, now Adventist, for indigent care of Volusia County residents. Under the new ownership the name of the hospital was changed to Florida Hospital Deland.

Legal Conclusions

The summary judgment concluded that the Authority has delegated the performance of its public purpose to the Adventist Corporation which is thus subject to the Public Records Act Article I, section 24(a) of the Florida Constitution and the Sunshine Laws of Florida, s. 119.07, F.S.

Public Records Requirements of Leased Hospitals

Section 395.3036, F.S., provides that records and meetings of corporations that lease public hospitals or other public health care facilities are exempt from public records requests. The records of a private corporation are exempt from s. 119.07(1), F.S., and section 24(a), Article I of the State Constitution. The meetings of the governing board of a private corporation are exempt from s. 286.011, F.S., and section 24(b) providing the financial requirements of s. 155.40(5), F.S., are met. In order to qualify for these exemptions the three of the five following criteria must be met:

- The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility;
- The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds;
- Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision making process of the public lessor;
- The lease agreement does not expressly require the lessee to comply with the requirements of ss. 119.07(1) and 286.011, F.S. and
- The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal

meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

C. SECTION DIRECTORY:

Section 1.- Amends s. 155.40, F.S., to clarify legislative intent regarding the purchase of a hospital.

Section 2.- Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹ Section 119.15, F.S.

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration has the necessary rulemaking authority to carry out the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article I, s. 24 of the Florida Constitution and s. 119.07, F.S., both provide avenues for public records exemptions. In order to qualify for an exemption the statute must provide a public necessity statement and must meet certain public purposes. In order to clarify the legislative intent regarding the sale and lease of public hospitals, a redraft of the bill that includes a public records exemption with a rationale statement would strengthen the purpose being established by the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES