

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 791 DeSoto County Hospital District

SPONSOR(S): Kreegel

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs		Fudge	Kruse
2) Government Efficiency & Accountability Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The DeSoto County Hospital District is an independent special district created in 1965 and codified in 2004 as required by s. 189.429, F.S.

The bill amends ch. 2004-450, L.O.F., declaring that the district is not an agency under the Administrative Procedures Act and providing sovereign immunity protection. The bill also clarifies the purpose of the district and authorizes the district to hire personnel, lease facilities, provide self-insurance, and perfect liens for collection of charges incurred for hospital care and treatment.

A portion of the bill may be unconstitutional because it seeks to grant sovereign immunity, when such grants must be provided for in general law. Moreover, portions of the bill may be unnecessary to the extent that the district already enjoys the benefits of sovereign immunity and is not subject to the Administrative Procedures Act.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The DeSoto County Hospital District is an independent special district which includes all of DeSoto County. The district consists of five member elected by electors of the district. The district is authorized to lease any hospital or related medical care facility for the preservation of the public health, the public use and the welfare of the district and inhabitants.

Effect of Proposed Changes

The bill designates the district as an independent special district under chapter 189, F.S., In addition, the district is not an agency for purposes of the Administrative Procedures Act, chapter 120, F.S. The district is provided the protection of sovereign immunity under s. 768.28, F.S. The district's purpose is provided, which is to perform an essential governmental function of the state and county, and the district is authorized to carry out that purpose. The district is authorized to destroy any of its records if maintained in a reproducible format. The district is also authorized to retain personnel and lease facilities to not-for-profit corporation formed by the district. Further, the bill authorizes the district to create a self-insurance plan. The district, as well as any not-for-profit corporation contracting with the district, may establish a lien for all charges incurred for hospital care.

C. SECTION DIRECTORY:

Section 1: Amends chapter 2004-450, L.O.F., defining the nature and purpose of the district; declaring the district not an agency for purposes of the Administrative Procedures Act; providing protection of sovereign immunity; authorizing the district to retain personnel; authorizing the district to lease facilities to not-for-profit corporation; providing for self-insurance; authorizing the district and any not-for-profit corporation contracting with the district to establish lien for charges incurred;

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 9, 2008.

WHERE? In the *DeSoto Sun*, a newspaper published in Charlotte County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

The bill provides the district with the protections of sovereign immunity under section 768.28, F.S. However, Article X section 13, Fla. Const., requires that waiver of sovereign immunity be provided for in general law. Moreover, the district already enjoys the protection of sovereign immunity under section 768.28, F.S., as an independent subdivision of the state. See Whitney v. Marion County Hospital District, 416 So.2d 500 (Fla. 5th DCA 1982), overruled on other grounds by Orange County v. Piper, 523 So.2d 196 (Fla. 5th DCA), rev. denied, 531 So.2d 1354 (Fla.1988). see also Op.Atty.Gen., 078-42, March 9, 1978; s. 768.28(2), F.S.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The bill makes the district not subject to the Administrative Procedures Act. However, as a hospital board that operates within DeSoto County and which has no authority outside of the county, the district is not an agency under the Administrative Procedures Act. See Rubinstein v. Sarasota County Public Hospital Board, 498 So.2d 1012 (Fla. 2d DCA 1986); Op.Atty.Gen., 077-142, December 30, 1977.

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES