



Florida). Chapter 99-442 (as subsequently amended by Chapter 2001-308), Laws of Florida, is the codification of all special acts relating to the Hospital Board.

In March 1987, the Hospital Board created the Citrus County Health Foundation, Inc., subsequently renamed in November 1989 as the Citrus Memorial Health Foundation, Inc. The Foundation was created as a nonprofit corporation, with the Hospital Board as its sole member, to carry out the purpose of the special act creating the Hospital Board. The Foundation is currently doing business as the Citrus Memorial Health System, which includes:

- 198-bed in-patient hospital;
- 24-hour emergency room;
- Laboratory and diagnostic services;
- Walk-in clinic;
- Home health agency;
- Rehabilitation services;
- Heart center; and
- Orthopedic services.

The Foundation is a nonprofit corporation managed by a board of directors comprised of the following: (1) the five trustees of the Hospital Board, (2) a minimum of five and a maximum of seven at-large directors, and (3) the chief/president of the medical staff who represents the medical staff of the Citrus Memorial Hospital. In the event of dissolution of the Foundation, its assets, after payment of its liabilities, revert to the Hospital Board.

The Hospital Board entered into a lease agreement and an agreement for hospital care with the Foundation, both effective March 1, 1990. The lease agreement expires on June 15, 2033, unless sooner terminated in accordance with lease terms. The Foundation has the right to unconditionally renew the lease for an additional 45-year term, if the Foundation is not in default under the lease agreement terms. In the event the lease is terminated, the Hospital Board will take over the hospital facilities. The agreement for hospital care is automatically renewed each year for a total of 40 years, or for as long as the lease agreement remains in effect, unless terminated by the Foundation in accordance with agreement terms.

Under the lease agreement, the Foundation has leased from the Hospital Board all of the land, buildings, improvements, equipment, furniture, and fixtures of the Citrus Memorial Health System and agreed to make rental payments equal to the principal and interest and any premiums on the Hospital Revenue and Revenue Refunding Bonds issued by the Hospital Board. Under the agreement for hospital care, the Hospital Board agreed to assist the Foundation with funding for uncompensated care and the acquisition, expansion, and maintenance of proposed and existing hospital and health facilities in exchange for medical services provided by the Foundation to the residents of Citrus County. In addition, the Foundation is required to submit an annual operating and capital budget to the Hospital Board. The Hospital Board is required to review the budget in conjunction with its own budget and, in accordance with its enabling legislation, certify to the Citrus County Board of County Commissioners the millage rate required to be levied. Public budget hearings are held as required by law. The Hospital Board is then required to pay to the Foundation its share of the ad valorem tax revenues to fund activities and services identified in the Foundation operating and capital budget.

Budgeted revenues to be provided to the Foundation from ad valorem taxes for the 2008-09 fiscal year are \$11,900,004 with a district millage rate of 1.1689 (an increase of 0.2699 mills from the previous fiscal year). The total operating revenues for the Foundation as a whole are \$179,496,297 (making the ad valorem revenues 6.6% of the annual budget). The chart below shows past revenues and expenses, highlighting the fact that without budgeted ad valorem taxes, the hospital would be operating at a deficit.

Actual Operating Results by Fiscal Year			
	2005-06	2006-07	2007-08
<b>Revenues:</b>			
Net Patient Service Revenue	\$ 134,573,656	\$ 145,331,323	\$ 158,364,191
Funds from Hospital Board	7,585,000	9,900,000	10,050,000
Other Operating Revenues	1,623,001	2,005,832	2,149,918
<b>Total Operating Revenues</b>	<b>143,781,657</b>	<b>157,237,155</b>	<b>170,564,109</b>
<b>Expenses:</b>			
Total Operating Expenses	142,894,318	160,306,034	170,069,018
Non-Operating Income	1,783,109	1,801,736	2,055,956
Excess of Revenue Over (Under) Expenses	2,670,448	(1,267,143)	2,551,047
Less: Funds from Hospital Board	7,585,000	9,900,000	10,050,000
<b>Revised Income (Loss) without Board Funds</b>	<b>(\$4,914,552)</b>	<b>(\$11,167,143)</b>	<b>(\$7,498,953)</b>

**Auditor General Findings**

The Auditor General’s findings for the period January 2006 through December 2008, and selected actions taken prior and subsequent thereto, are given below. Whether these are enough to (1) indicate insufficient government control of the corporation invalidating the contract (see section on Leases of Public Hospitals) or (2) a significant enough concern for the health, safety, or welfare to override any impairment of contracts issue (see Constitutional Issues section), is open to debate.

**ACCOUNTABILITY**

**Finding No. 1:** Although the Hospital Board exercised its authority in contracting the operation of the Hospital to the Foundation, additional accountability measures should be implemented to ensure that public funds are used in a prudent manner and the Hospital is operated efficiently.

**Finding No. 2:** The Foundation does not maintain separate accountability for expenditures of ad valorem taxes received from the Hospital Board.

**Finding No. 3:** The Foundation does not maintain separate accountability for expenditures of Low Income Pool Program funds received from the Agency for Health Care Administration.

**DEBT**

**Finding No. 4:** Neither the Hospital Board nor the Foundation had developed formal policies and procedures governing the issuance and monitoring of long-term debt. Additionally, the Hospital Board approved and issued revenue bonds

<sup>2</sup> FLORIDA AUDITOR GENERAL, CITRUS COUNTY HOSPITAL BOARD AND CITRUS MEMORIAL HEALTH FOUNDATION, INC. (Feb. 2010) available at [http://www.myflorida.com/audgen/pages/pdf\\_files/2010-093.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2010-093.pdf).

and notes in 2006 and 2008, respectively, that exceeded the Foundation's debt capacity, as calculated by the contracted financial advisor.

#### CONSTRUCTION ADMINISTRATION

**Finding No. 5:** The Hospital Board did not require the Foundation to follow any specific policies and procedures for construction processes related to the use of the 2008 revenue note proceeds, and we noted several issues of concern in the Foundation's administration of the construction projects. Such concerns include certain contract elements and costs, conflicts of interest, and subcontractor bid awards.

#### EXPENDITURES

**Finding No. 6:** Employee bonuses were paid to some Hospital officers and directors without the approval of either the Executive Compensation Committee or the Foundation Board.

**Finding No. 7:** Of the \$58,260 in Foundation travel-related expenses we reviewed, \$10,200 were only supported by credit card statements, check requests, or handwritten notes (i.e., were not supported by actual invoices); several hotel and restaurant invoices included alcohol, spa, and golf charges; and 16 banquet dinners were paid for by the Foundation for non-hospital-related attendees. Only \$517 in reimbursements were received by the Foundation related to these charges.

#### CONTRACTUAL SERVICES

**Finding No. 8:** Travel costs totaling approximately \$146,000 were paid by the Foundation either to the vendor for transcriptionist services, or on behalf of the vendor, that were not authorized in the contract.

**Finding No. 9:** Some contracts, the total of which exceeded the Chief Executive Officer's expenditure authority, were not presented to the Foundation Board for approval.

#### OTHER MATTERS

**Finding No. 10:** We noted instances of actual or possible conflicts of interest during our audit period. The Foundation's by-laws established conflicts of interest policies and a Conflict Committee to address actual or possible conflicts of interest related to its directors, principal officers, and committee members. However, the Conflict Committee did not operate during our audit period.

**Finding No. 11:** The Hospital Board did not always comply with controlling laws relating to voting, meeting minutes, or check approvals.<sup>3</sup>

#### Leases of Public Hospitals

Section 155.40, F.S., governs the sale or lease of a county, district, or municipal hospital. Any county, district, or municipal hospital has the authority to sell or lease the hospital to a Florida corporation, and enter into leases or other contracts for the purpose of operating and managing the hospital and its facilities. The terms and conditions of the lease are determined by the governing board of the county, district, or municipal hospital. The governing board of the

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<sup>3</sup> FLORIDA AUDITOR GENERAL, CITRUS COUNTY HOSPITAL BOARD AND CITRUS MEMORIAL HEALTH FOUNDATION, INC. (Feb. 2010) available at [http://www.myflorida.com/audgen/pages/pdf\\_files/2010-093.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2010-093.pdf).

hospital must find that the lease is in the best interest of the public and must state the basis of that finding. If the governing board decides to lease the hospital, it must give notice.

The lease or contract must contain a number of specified provisions including:

- the articles of incorporation of the corporation be subject to the approval of the board of directors or board of trustees of such hospital; and
- provisions for the return of such facility to the county, municipality, or district upon the termination of such lease, contract, or agreement.

In the event the governing board of a county, district, or municipal hospital elects to sell or lease the hospital, the Board shall:

- Negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation and publicly advertise the meeting at which the proposed sale or lease will be considered by the governing board of the hospital in accordance with s. 286.0105, F.S.;
- Publicly advertise the offer to accept proposals in accordance with s. 255.0525, F.S. and receive proposals from all interested and qualified purchasers.
- Any sale must be for fair market value, and any sale or lease must comply with all applicable state and federal antitrust laws.

In the event a hospital operated by a corporation receives annually more than \$100,000 in revenues from the county, district, or municipality that owns the hospital, the Florida corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended by either:

- Having the revenues subject to annual appropriations by the county, district, or municipality; or
- Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.

Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital shall not be construed as:

- A transfer of a governmental function from the county, district, or municipality to the private purchaser or lessee;
- Constituting a financial interest of the public lessor in the private lessee; or
- Making a private lessee an integral part of the public lessor's decisionmaking process.

According to the s. 155.40(7), the lessee of a hospital, under this section or any special act of the Legislature, operating under a lease shall not be construed to be “acting on behalf of” the lessor as that term is used in statute, unless the lease document expressly provides to the contrary. Despite no finding that the Citrus County Hospital Board’s lease expressly provided that the Foundation was “acting on behalf of” the Board, an attorney general opinion found that because the contract was intended to be a transfer of a government function from the Board to the Foundation and because the Board agreed to provide the Foundation with funds the Foundation was “acting on behalf” of the Board. As a result, the Florida Attorney General concluded that the

Foundation was an instrumentality of the Board and subject to sovereign immunity for the purposes of s. 768.28, F.S.<sup>4</sup>

If a public Hospital Board fails to retain sufficient control the lease may be invalid. In *Palm Beach County Health Care Dist. v. Everglades Memorial Hosp., Inc.*, the lease and financial support agreements, entered into pursuant to statute governing reorganization of public hospital taxing districts as not-for-profit corporations, were invalid where they failed to reserve sufficient control in public authority and constituted unconstitutional application of statute by placing hospital effectively beyond public control.<sup>5</sup> The key issue in this case was that “the district essentially pledged public funds to the non-governmental entity, without provision for insuring operations and expenditure in the public interest.”<sup>6</sup> However, in *Indian River County Hospital Dist. v. Indian River Hospital*, the court found that the district retained sufficient control over private nonprofit hospital such that lease between district and hospital was valid.<sup>7</sup> The court found that the following factors indicated that the district retained sufficient control:

- the district had to approve hospital's articles of incorporation and bylaws,
- the district appointed three of 13 members of hospital's board of directors,
- the district could remove board member under certain conditions,
- certain hospital expenditures had to be approved by district,
- the hospital could not transfer any of its rights or encumber its leasehold interest without approval of the district, and
- the district independently determined how much it would pay each year to hospital for indigent care services.<sup>8</sup>

In the case of the Citrus County Health Foundation, Inc., the Board approved its initial articles of incorporation and bylaws, although they have been subsequently amended. Five of the thirteen members of the corporation's board of directors are the Hospital Board's trustees. The lease is effectively for 88 years total. This agreement can be terminated by the Foundation but not by the Hospital Board. In regard to the amount of control the Board retained, the Auditor General noted, that the:

Florida Statutes that apply to the operations of the Hospital Board, as a Florida local government, generally do not apply to the operations of the Foundation, as a nonprofit corporation. The agreements for the lease and operation of the Hospital do not incorporate or otherwise require the Foundation to follow any specific Florida laws, other than the Sunshine and public records laws, in the operation of the Foundation that are applicable to the Hospital Board. The agreements also do not prescribe specific good business practices to ensure the efficient operation of the Hospital.<sup>9</sup>

## Special Districts

<sup>4</sup> Fla. Atty Gen. Op. 2006-36 (Aug. 2006).

<sup>5</sup> *Palm Beach County Health Care Dist. v. Everglades Memorial Hosp., Inc.*, 658 So.2d 577 (5th DCA 1995).

<sup>6</sup> *Id.*

<sup>7</sup> 766 So.2d 233 (Fla. 4th DCA 2000).

<sup>8</sup> *Indian River County Hosp. Dist. v. Indian River Memorial Hosp., Inc.*, 766 So.2d 233 (Fla. 4th DCA 2000).

<sup>9</sup> FLORIDA AUDITOR GENERAL, CITRUS COUNTY HOSPITAL BOARD AND CITRUS MEMORIAL HEALTH FOUNDATION, INC. (Feb. 2010) available at [http://www.myflorida.com/audgen/pages/pdf\\_files/2010-093.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2010-093.pdf).

The Florida Constitution specifically provides for four types of local governments: counties, municipalities, school districts, and special districts. The 67 counties are subdivisions of the state, and provide a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the court) pursuant to authority granted in the constitution and consistent with general law.<sup>10</sup> The 67 school districts are coterminous with the boundaries of the county. Each school district is governed by a school board that is responsible for the operation, control and supervision of all free public schools within the district.<sup>11</sup> Florida's more than 400 municipalities exist pursuant to charters established by law and approved by the electorate in a referendum. They possess "home rule" authority to provide traditional municipal services, to the extent consistent with their charges and not inconsistent with general law.<sup>12</sup> The State Constitution limits the property taxing authority of each of these forms of government to a maximum of 10 mills<sup>13</sup> on the assessed value of real and tangible personal property.<sup>14</sup>

Section 189.403(1), F.S., provides that a special district is "a local unit of special purpose, as opposed to general-purpose, government, within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Special districts are limited-purpose units of local government. Their property tax millage is limited by general law and subject to referendum approval by the affected electorate.<sup>15</sup> Special districts are subject to the same restrictions on credit,<sup>16</sup> bonding,<sup>17</sup> elections,<sup>18</sup> public records and meetings,<sup>19</sup> as are counties, municipalities, and school districts.<sup>20</sup>

Special districts are either dependent or independent districts. Special districts operate within a limited geographical area and have a governing board with policy-making powers. A special district does not include: a school district, community college, municipal service taxing or benefit unit (MSTU/MSBU), or a board providing electrical service that is a political subdivision of a municipality or part of a municipality.

All special districts serve a public purpose and are to be held accountable to the public, local general-purpose governments, and state agencies. Special districts are subject to financial reporting requirements, which are an essential element of the law.

For financial reporting and other purposes, special districts are classified as either dependent or independent. A district is usually dependent if a single county or single municipality:

- has an identical governing board,
- appoints the governing board,
- may remove governing board members at will during unexpired terms,

<sup>10</sup> Art. VIII, § 1, Fla. Const.

<sup>11</sup> Art. IX, § 4(a), Fla. Const.

<sup>12</sup> Art. VIII, § 2 Fla. Const.

<sup>13</sup> A "mill" is equal to \$1 for each \$1,000 of assessed value.

<sup>14</sup> Art. VII, § 9, Fla. Const.

<sup>15</sup> Art. VII, § 9, Fla. Const.

<sup>16</sup> Art. VII, § 10, Fla. Const.

<sup>17</sup> Art. VII, § 12, Fla. Const.

<sup>18</sup> Art. VI, § 6, Fla. Const.

<sup>19</sup> Art. I, § 24, Fla. Const.

<sup>20</sup> Art. VII, § 8, Fla. Const.

- approves the budget, or
- may veto the budget.

Otherwise, the district is an independent district. Independent districts can sometimes occupy multiple counties. Florida currently has 1,011 independent districts and 614 dependent districts. Special districts include the five water management districts, community development districts, community redevelopment districts, drainage and water control districts, housing authorities, fire control and rescue, and soil and water conservation districts,<sup>21</sup> as well as districts that provide a variety of governmental services pertaining to airports, the arts, beach restoration, expressways and bridges, health care, housing, juvenile welfare, libraries, mosquito control, and transportation.

### **Security for Public Deposits**

Chapter 280, F.S., provides security requirements for public deposits.<sup>22</sup> All public deposits are secured when government depositors comply with the act's requirements. Public deposits must be made in a qualified public depository and require collateral unless exempted by law.

Under the act, monies must be deposited in a qualified public depository, which means any bank, savings bank, or savings association that is organized and exists under the laws of the United States, the laws of the state or any other state or territory of the United States; has its principal place of business in this state or has a branch office in the state which is authorized under the laws of the state or of the United States to receive deposits in the state; has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended; has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits; meets all the requirements of the Act; and has been designated by the Chief Financial Officer as a qualified public depository.

Exempted from the requirements of, and protection under, the Act are public deposits deposited in a bank or savings association by a trust department or trust company which are fully secured under trust business laws;<sup>23</sup> moneys of the System Trust Fund;<sup>24</sup> public deposits held outside the country;<sup>25</sup> wire transfers and transfers of funds solely for the purpose of paying registrars and

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<sup>21</sup> DEPARTMENT OF COMMUNITY AFFAIRS, OFFICIAL LIST OF SPECIAL DISTRICTS ONLINE, available at, [www.floridaspecialdistricts.org](http://www.floridaspecialdistricts.org).

<sup>22</sup> "Public deposit" means the moneys of the state or of any county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court and includes the moneys of all county officers, including constitutional officers, that are placed on deposit in a bank, savings bank, or savings association and for which the bank, savings bank, or savings association is required to maintain reserves. This includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not considered public deposits. Section 280.02, F.S.

<sup>23</sup> Section 280.03(3)(a), F.S.

<sup>24</sup> Section 280.03(3)(b), F.S.

<sup>25</sup> Section 280.03(3)(c), F.S.



paying agents;<sup>26</sup> public deposits which are fully secured under federal regulations;<sup>27</sup> and public deposits made in accordance with specified statutory provision.<sup>28</sup>

### **Investment of Local Government Surplus Funds**

Part IV of chapter 218, F.S., governs the “Investment of Local Government Surplus Funds.” To promote the maximization of interest earnings on invested surplus funds of local governments, and reduce the need for imposing additional taxes,<sup>29</sup> the act created a Local Government Surplus Funds Trust Fund. The fund is administered by the State Board of Administration and is composed of local government surplus funds deposited by units of local government under the procedures established in the act.<sup>30</sup>

Upon determination by the governing body that it is in the interest of the unit of local government to deposit surplus funds in the trust fund, a resolution by the governing body is required to be filed with the Florida State Board of Administration authorizing investment of its surplus funds in the trust fund. The resolution must name the local government official, who may be the chief financial or administrative officer of the local government or the independent trustee holding funds on behalf of the unit of local government responsible for deposit and withdrawal of such funds.<sup>31</sup> The Florida State Board of Administration must invest trust fund monies in the same manner and subject to the same restrictions as set forth in the statute<sup>32</sup> governing investment of state funds, generally.<sup>33</sup> The power of local governing bodies to deposit surplus funds in the trust fund does not impair the power of a unit of local government to hold funds in deposit accounts with banking or savings institutions or to invest funds as otherwise authorized by law.<sup>34</sup>

### **Statutory Requirements for Millage Rates**

The Florida Constitution<sup>35</sup> and chapter 200, F.S., provide a number of requirements for the setting of millage rates. No millage will be levied until a resolution or ordinance has been approved by the governing board of the taxing authority, according to a specified procedure. The provisions of the statute that provide the method of fixing millage<sup>36</sup> apply to all taxing authorities in Florida which levy ad valorem taxes. In the absence of express exemption, no past or future budget or levy of taxes will be set aside upon the ground that the taxing authority failed to comply with any special law prescribing a schedule or procedure for such adoption which is inconsistent or in conflict with the provisions of the statute.<sup>37</sup>

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<sup>26</sup> Section 280.03(3)(d), F.S.

<sup>27</sup> Section 280.03(3)(e), F.S.

<sup>28</sup> Section 280.03(3)(f), F.S.

<sup>29</sup> Section 218.401, F.S.

<sup>30</sup> Section 218.405, F.S.

<sup>31</sup> Section 218.407(1), F.S.

<sup>32</sup> Section 215.47, F.S.

<sup>33</sup> Section 218.407(2), F.S.

<sup>34</sup> Section 218.407(3), F.S.

<sup>35</sup> Art. VII, § 9 Fla. Const.

<sup>36</sup> Section 200.065, F.S.

<sup>37</sup> Section 200.065(14), F.S.

Chapter 200 requires each taxing authority to advise the property appraiser of its proposed millage rate, of its rolled-back rate computed pursuant to statute,<sup>38</sup> and of the date, time, and place at which a public hearing will be held to consider the proposed millage rate and the tentative budget. The property appraiser must utilize this information in preparing the notice of proposed property taxes pursuant to the statute regarding notice of proposed property taxes and non-ad valorem assessments.<sup>39</sup> The statute sets out the timeline for these notices to be completed. If any taxing authority fails to provide the information required to the property appraiser in a timely fashion, the taxing authority is prohibited from levying a millage rate greater than the rolled-back rate computed pursuant to statute for the upcoming fiscal year, which rate must be computed by the property appraiser and used in preparing the notice of proposed property taxes.<sup>40</sup>

### III. Effect of Proposed Changes:

The bill contains several whereas clauses recognizing that the Citrus County Hospital Board's not-for-profit corporation that is no longer completely controlled by the Hospital Board. The factual accuracy of these clauses is disputed by the Citrus Memorial Health Foundation.

The clauses state that the Hospital Board has leased all its public assets and operations to the not-for-profit corporation for effectively a ninety-seven year lease term, but the lease does not require the not-for-profit corporation to be accountable to the public or have operative or financial performance standards, other than requiring the not-for-profit corporation to maintain minimal bond covenants. The corporation has been underperforming and has lost over fifty million dollars, which has resulted in ad valorem tax increases for the people of Citrus County. As a result, the Hospital Board is now in an ongoing dispute with its corporation over management of the hospital and its responsibility to the taxpayers of the county. The bill states that restoration of the Hospital Board's representation on the board of the lessee corporation, and implementation of appropriate accountability and oversight by the Hospital Board, are necessitated by the not-for-profit corporation's significant financial losses from patient services, financial underperformance when compared with Florida not-for-profit hospitals or similarly grouped Florida hospitals, and corporate deficiencies as found by the Auditor General, and in order to ensure corporate sovereign immunity status as an instrumentality of the hospital district. The ability of the Hospital Board to continue to act in the public interest on behalf of the taxpayers of Citrus County requires mechanisms to ensure future adherence to the Hospital Board's public responsibilities, as well as express authority for judicial interpretation and enforcement of this act through declaratory proceedings and other appropriate judicial remedies.

**Section 1** of the bill states that this act provides a single comprehensive special act charter, including all current authority granted to the district by its several legislative enactments.

**Section 2** states that chapters 99-442 and 2001-308, Laws of Florida, are codified, reenacted, and amended by this bill. The following is an overview of the bill. Changes from current law are in **bold font**.

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<sup>38</sup> Section 200.065(1), F.S.

<sup>39</sup> Section 200.065(2)(b), F.S.

<sup>40</sup> Section 200.065, F.S.

Section 1 of chapter 99-442, Laws of Florida, as modified by chapter 2001-308, Laws of Florida, titles the act the "Citrus County Hospital and Medical Nursing and Convalescent Home Act."<sup>41</sup>

Section 2 creates a definitions section.

Section 3 creates the Citrus County Hospital Board as an independent special district and includes the following provisions:

- The Board may litigate, contract with parties, acquire and dispose of property, and have an official seal.
- The Board is a public nonprofit corporation without stock and is composed of and governed by five (5) members known as trustees.
- The Board is an agency of the county and incorporated for the purpose of operating hospitals, medical nursing homes, and convalescent homes in the county (hereinafter medical facilities).

The Laws of Florida also provide provisions for how the board members (also called trustees) shall be appointed and serve their terms.

Any and all funds deposited by the Board shall be withdrawn by a check or warrant signed by two trustees of the Hospital Board, of which one shall be the chair, vice chair, or secretary-treasurer. No check or warrant shall be delivered to the payee without approval thereof shown in the minutes of the Hospital Board.

Section 3 of the bill differs from the current law in the following ways:

- **Current law requires each trustee to execute a bond in the sum of \$5,000 with two sureties, conditioned on the faithful performance of the duties of the officer and paid by the Hospital Board; the bill deletes this requirement.**
- **Current law requires hospital funds to be placed in a designated depository within Citrus County and specifies the characteristics of a qualified depository; the bill deletes this requirement.**
- **The bill adds the requirement that the Hospital Board comply with the applicable requirements of Florida Security for Deposits Act, chapter 280, Florida Statutes, and the Investment of Local Government Surplus Funds Act, part IV of chapter 218, Florida Statutes.**

Section 4 states that the trustees of the Board receive no compensation for their services. Three trustees constitute a quorum of the Hospital Board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the Board only upon a vote in the affirmative of three trustees thereof.

Section 5 states that the purpose of the Citrus County Hospital Board is to operate medical facilities in Citrus County for the benefit of the citizens and residents of Citrus County. The corporation is authorized to extend medical services provided by the medical facilities to patients from other counties and other states, upon the payment of the cost of the services as may be

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<sup>41</sup> Chapter 99-442, Laws of Florida, as modified by chapter 2001-308, Laws of Florida.

determined by the trustees of the Hospital Board. The Board is explicitly authorized to carry out activities such as:

- operating ambulance services;
- charging patients for services rendered, including interest if applicable;
- selling, discounting, or assigning accounts to a bank, finance company, collection agency;
- accepting promissory notes or other types of debt obligations from a patient;
- assigning or discounting accounts receivable, notes, or other obligations;
- requiring a patient to guarantee the payment of an existing account or note; and
- receiving and assigning insurance proceeds.

Section 6 states that it is the duty of the Board of County Commissioners of Citrus County and/or their successors to levy the millage (up to three mills) certified to the board of county commissioners by the trustees of the Citrus County Hospital Board upon all taxable real and personal property in Citrus County for hospital purposes. This tax is called the “hospital tax” and is not levied on homestead property that is exempt from general taxation by the Constitution of the State of Florida. The Laws of Florida expressly charge the property appraiser and tax collector with the duties of assessing and collecting the taxes, respectively. The money collected is paid monthly to the Citrus County Hospital Board.

**Section 6 of the bill changes the language to make it clear that it is permissive for the Board to levy taxes. The bill specifies that the Board shall comply with the applicable provisions of chapter 200, Florida Statutes.**

Section 7 requires the Hospital Board to annually determine the amount of money required for the ensuing fiscal year for the erecting, building, expanding, equipping, maintaining, operating, altering, changing, leasing, financing, and repairing county medical facilities. The determination is made by resolution of the Hospital Board, and the chair and secretary of the Hospital Board must certify to the board of county commissioners the amount required, which is levied by the board of county commissioners for the ensuing fiscal year for the "hospital fund." The Laws of Florida provide timing requirements for the adoption and certification of these taxes. **The bill deletes this section of law. The following sections are renumbered accordingly.**

Section 7 authorizes the Hospital Board to own and acquire property and to manage and operate medical facilities in the county.

Section 8 authorizes the Hospital Board to enter into contracts to carry out the purposes of the act.

Section 9 empowers the Hospital Board to adopt all necessary rules and regulations and bylaws for the operation of medical facilities to provide for the admission and treatment of charity patients who are citizens of Florida and residents of Citrus County for the last two preceding years; to set the fees and charges to be made for the admission and treatment of patients; and to establish the qualifications for members of the medical profession to practice in the medical facilities.

**Section 10** authorizes the Hospital Board to purchase equipment for the operation of medical facilities. The Board may hire and fire employees as necessary for carrying out the purposes of the act.

**Section 11** requires the Citrus County Hospital Board to file detailed accounting of the preceding year with the Clerk of the Circuit Court of Citrus County. The Board shall file a certified copy of said financial report with the Board of County Commissioners of Citrus County, to be recorded in the minutes of the board of county commissioners. The board of county commissioners at its discretion and at the expense of the county may publish and report an accounting in a newspaper of general circulation in Citrus County.

**Sections 12 and 13** provide that the Board shall have the express authority to borrow money to construct, maintain, repair, alter, expand, equip, lease, or operate medical facilities, clinics, and all other types of allied medical care units. Government loans must be directly related and tied in with a grant-in-aid to said hospital, such as a Hill-Burton grant under the National Hospital Act. The amount of said loan, such as a Surgeon General's loan, shall not exceed the amount of the grant such as a Hill-Burton grant. **The bill deletes the obsolete language related to the grant program.**

**Section 14** allows the Board to issue bonds, subject to approval by a referendum of the voters of said county, and to issue Revenue Certificates, without a referendum of the voters. The proceeds shall be used for erecting, equipping, building, expanding, altering, changing, maintaining, operating, leasing, and repairing medical facilities.

**Section 15** provides that bonds, federal or state hospital loans, notes, or revenue certificates shall mature within thirty (30) years from the year in which they are issued or made, and shall be payable in such years and amounts as shall be approved by the Board. The Board determines the form of indebtedness, the manner of executing debt, and the amount of debt. The Board determines the place of payment of principal and interest which may be at any bank or trust company within or outside of the state. This section contains other provisions assuring the validity of the Hospital Board's indebtedness.

Whenever the Board passes a resolution approving the issuance of bonds, the board of county commissioners must pass a resolution approving the bond issue and calling an election. Subject to the election, the county permits the repayment of the bonds out of an annual levy not to exceed one and one-half mills per year. Said millage is included in the maximum millage of three mills per year. Subject to such limitations, the bonds shall be payable from the full faith and credit of Citrus County. **Instead of making bonds payable from the "full faith and credit of Citrus County" the bill makes the bonds payable from the full faith and credit of the Board.**

The loans, notes, and revenue certificates, together with the interest, shall be payable from gross or net receipts of the Hospital Board or any portion thereof. Said loans, notes, bonds, or revenue certificates shall not bear interest in excess of the maximum rate permitted by the laws of the State of Florida.

The Board may sell bonds, loans, notes, or revenue certificates in such manner, either at public or private sale, and for such price as it may determine to be for the best interest of the Hospital Board.

The board of county commissioners during any period that bonds payable from ad valorem taxation are outstanding shall, in addition to the maximum of one and one-half mills levy above authorized for the repayment of the bonds and interest, levy annually the remainder of the hospital tax in the amount up to one and one-half mills on the dollar for the purpose of maintaining and operating the county hospitals, medical nursing homes, and convalescent homes.

**Section 16** limits the total amount of outstanding bonds of the hospital payable from ad valorem taxation to six times the annual hospital tax, assuming the tax is based upon the yearly millage of three mills.

**“Section 17”** is created to clarify that the Hospital Board shall have the authority to enter into leases or contracts with a not-for-profit Florida corporation for the purpose of operating and managing a public hospital and any or all of its facilities of whatsoever kind and nature. In accordance with s. 155.40, F.S. and “[t]o ensure public oversight, accountability, and public benefit,” the bill requires the not-for-profit corporation to submit all of the following for approval by the Hospital Board:

- the Articles of Incorporation,
- all amendments or Restatements of the Articles of Incorporation,
- all corporate Bylaws,
- all amendments or Restatements of the corporate Bylaws, and
- all other governing documents of such not-for-profit corporation.

The bill provides that the Hospital Board shall be the sole member of the not-for-profit corporation. The Hospital Board shall independently approve any plan of merger or dissolution of the not-for-profit corporation pursuant to ss. 617.1103 and 617.1402, F.S.

All members of the Hospital Board shall be voting directors of the not-for-profit board of directors. The bill *requires the not-for-profit corporation to reorganize* to ensure that the number of members of the Hospital Board at all times constitutes a majority of the voting directors of the not-for-profit corporation.

All members of the not-for-profit board of directors shall be subject to approval by the Hospital Board, and any board members presently serving who have not been approved by the Hospital Board shall be submitted to the Hospital Board for approval. The chief executive officer of the hospital, and his or her term of office and any extensions thereof, shall be approved by the Hospital Board.

The borrowing of money in any form and for any reason in an amount exceeding \$100,000 shall be approved by the Hospital Board. No annual operating and capital budget of the not-for-profit corporation shall become effective until approved by the Citrus County Hospital Board. Any capital project having a value in excess of \$250,000 per project, and any non-budgeted operative expenditure in excess of \$125,000 in the per annum aggregate, shall be approved by the Hospital Board.

At the discretion of the Hospital Board, each and every year the not-for-profit corporation shall complete an independent audit of the fiscal management of the hospital by an auditor chosen by the Hospital Board, with the audit to be paid for by the not-for-profit corporation. The bill explicitly provides that all records of the not-for-profit corporation shall be public records unless exempt by law; provided however, the Hospital Board, pursuant to their oversight and auditing functions, must be given full and complete access to all proprietary confidential business information upon request and without subpoena, and must maintain the confidentiality of information so received. As used in this paragraph, the term “proprietary confidential business information” means information, regardless of its form or characteristics, which is owned or controlled by the not-for-profit corporation or its subsidiaries, including, but not limited to, all matters encompassed in privileged attorney-client communications and strategic planning.

All of these provisions are in addition to anything already in the contract or lease between the Hospital Board and the not-for-profit corporation.

Section 18 in current law is deleted. The new Section 18 states that in order to ensure public oversight, accountability, and public benefit, the provisions in this act and the Hospital Board’s lease with the not-for-profit corporation:

- Shall be construed and interpreted as furthering the public health and welfare, and the open-government requirements of s. 24, Article I of the State Constitution and ss. 119.01 and 286.011, F.S.; and
- May be enforced by a court of competent jurisdiction in declaratory proceedings under chapter 86, F.S., by injunction, or by any other appropriate form of judicial relief.

Section 3 of the bill repeals chapter 99-442, Laws of Florida, and chapter 2001-308, Laws of Florida.

Section 4 provides a severability clause.

Section 5 provides that this act shall take effect upon becoming a law and shall **apply to existing** and future leases and amendments, revisions, restatements, and to **existing** and future agreements for hospital care. The act does not apply to the term of any existing contract entered into by the not-for-profit corporation with a third-party, to any existing contract for the borrowing of money in excess of \$100,000 for which the Hospital Board has not previously given its approval, or to any existing contract for a capital project in excess of \$250,000 for which the hospital has not previously given its approval.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

**B. Public Records/Open Meetings Issues:**

Article I, section 24(a) of the Florida Constitution, the Sunshine Law,<sup>42</sup> and the Public records Act,<sup>43</sup> specify the conditions under which public access must be provided to meetings and governmental records. The bill makes the Foundation more clearly a government entity. The Foundation, however, already complies with the Public Records Act. However, under this bill the exception for proprietary confidential business information would not apply as between the Board and the Foundation.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****Local Bill**

This bill is a local law. A special or local law is a law:

relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.<sup>44</sup>

Article 3, section 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Notice was published on January 22 and 28, 2010, in the *Citrus County Chronicle* in compliance with s. 11.03, F.S., governing publication of local laws.

**Impairment of Contracts and Restrictions on Local Bills**

This local bill raises impairment of contracts issues<sup>45</sup> and possibly an issue regarding a special law pertaining to “private incorporation or grant of privilege to a private corporation.”<sup>46</sup>

<sup>42</sup> Section 286.011, F.S.

<sup>43</sup> Chapter 119, F.S.

<sup>44</sup> *Lawnwood Medical Center Inc. v. Seeger, M.D.*, 959 So.2d 1222 (Fla. 1st DCA 2007) affirmed by 990 So.2d 503 (Fla. 2008) (finding that the reorganization granted a privilege to a private corporation, the Florida Supreme Court did not reach the impairment of contracts issue, the appellate court, however, provisions changing the governance of the medical facility violated the impairment of contracts clause of the state constitution).

<sup>45</sup> U.S. Const. Art. I, § 10; Art. I, s. 10, Fla. Const.



The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>47</sup> “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>48</sup> If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>49</sup> The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- whether the law was enacted to deal with a broad, generalized economic or social problem;
- whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.<sup>50</sup>

A Florida case held that a special law directed at reorganizing a hospital was in violation of the constitution because it both impaired contracts and was a special law granting a privilege to a corporation.<sup>51</sup> It is, however, distinguishable from this situation because the hospital was not acting under color of local government authority (i.e., using district tax dollars and operating under sovereign immunity). In addition, this bill is not granting a privilege to the corporation rather it is reorganizing the corporation over the objections of the corporation itself.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The not-for-profit corporation will have to pay for audits and submit its financial decisions to the Board for approval. The not-for-profit corporation, a large employer

<sup>46</sup> Art. 3, s. 11(a)(12), Fla. Const.; see also *Lawnwood Medical Center Inc. v. Seeger, M.D.*, 990 So.2d 503 (Fla. 2008).

<sup>47</sup> U.S. Const. Art. I, § 10; Art. I, s. 10, Fla. Const.

<sup>48</sup> *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>49</sup> *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public’s health, safety, or welfare. See *Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981).

<sup>50</sup> *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979).

<sup>51</sup> *Lawnwood Medical Center Inc. v. Seeger, M.D.*, 959 So.2d 1222 (Fla. 1st DCA 2007) affirmed by 990 So.2d 503 (Fla. 2008) (finding that the reorganization granted a privilege to a private corporation, the Florida Supreme Court did not reach the impairment of contracts issue, the appellate court, however, ruled that provisions changing the governance of the medical facility violated the impairment of contracts clause of the state constitution).

within Citrus County, will be restructured. The fiscal ramifications of this change are uncertain.

C. Government Sector Impact:

Changes in this bill will likely effect existing bond agreements and other financial arrangements.

**VI. Technical Deficiencies:**

Lines 359-360 should probably read “that bonds payable from ad valorem taxation are outstanding **shall**, in addition to the maximum of one and one-half (1 ½) mills **levied**”.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

**Barcode 213308 by Community Affairs on April 7, 2010:**

Is a technical amendment that clarifies bill language.