

By Senators Dean and Fasano

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1 A bill to be entitled
2 An act relating to Citrus County; providing for
3 codification of special laws relating to the Citrus
4 County Hospital Board, an independent special district
5 in Citrus County; providing legislative intent;
6 codifying, amending, and reenacting chapter 99-442,
7 Laws of Florida, as amended, as the "Citrus County
8 Hospital and Medical Nursing and Convalescent Home
9 Act"; deleting obsolete provisions; making technical
10 revisions; repealing prior special acts relating to
11 board; authorizing the board to enter into a lease or
12 contract with a not-for-profit corporation for the
13 purpose of operating and managing the hospital and its
14 facilities; providing requirements for such lease or
15 contract; declaring a need for governance authority to
16 fulfill the hospital board's public responsibilities;
17 providing for approval by the hospital board of the
18 governing documents of the not-for-profit corporation
19 and of the members of its board of directors;
20 providing that the hospital board is the sole member
21 of the not-for-profit corporation; providing for the
22 hospital board's approval for a merger or dissolution
23 of the not-for-profit corporation; providing that all
24 members of the hospital board are voting members of
25 the board of directors of the not-for-profit
26 corporation and will comprise a voting majority of the
27 board; requiring hospital board approval of the Chief
28 Executive Officer of the hospital and his or her term
29 of office; requiring hospital board approval for all

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30 substantial operating, capital, and debt expenditures;
31 providing for the hospital board's approval of the
32 annual operating and capital budgets of the not-for-
33 profit corporation; requiring an annual independent
34 audit of the fiscal management of the hospital at the
35 discretion of the hospital board; providing that all
36 records of the not-for-profit corporation, unless
37 exempted, are public records; requiring that
38 proprietary confidential business information be
39 disclosed to the hospital board; providing for
40 interpretation and implementation of the act and for
41 court enforcement; providing for severability;
42 providing for application of the act; providing an
43 effective date.

44
45 WHEREAS, the Citrus County Hospital Board was created by
46 the Legislature in 1949 as a special taxing district and a
47 public nonprofit corporation for the purpose of operating public
48 hospitals, medical nursing homes, and convalescent homes in
49 Citrus County, and

50 WHEREAS, in 1987 the hospital board incorporated a not-for-
51 profit management corporation, and in 1990 entered into a lease
52 agreement with the not-for-profit corporation pursuant to s.
53 155.40, Florida Statutes, leasing all public assets, operations,
54 and management of Citrus Memorial Hospital, and

55 WHEREAS, members of the hospital board constituted a
56 majority of the board of directors of the lessee corporation
57 when the hospital board incorporated the not-for-profit
58 corporation, but the hospital board's majority has been diluted

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59 over time through increases in the number of private, at-large
60 corporate directors, and

61 WHEREAS, the term of the lease agreement extends for forty-
62 two (42) years, with an unconditional right of renewal provided
63 to the lessee corporation for an additional forty-five (45)
64 years, providing an effective ninety-seven (97) year lease term,
65 and

66 WHEREAS, the lease provisions do not provide for reasonable
67 public accountability regarding operative or financial
68 performance standards, other than requiring the not-for-profit
69 corporation to maintain minimal bond covenants, the lease fails
70 to provide for any corporate performance standards regarding
71 financial or operative compliance with industry standards or for
72 any actionable financial or operative performance monitoring by
73 the hospital board, and

74 WHEREAS, the Financial Hospital Data 2003-2008 compiled by
75 Florida's Agency for Health Care (AHCA) reports the lessee
76 corporation has incurred cumulative financial operative losses
77 from patient services exceeding fifty (50) million dollars, and
78 2009 internal corporate financial documents project additional
79 patient service operative losses, and

80 WHEREAS, the Florida AHCA Financial Hospital Data 2003-2008
81 reports the lessee corporation consistently underperforms AHCA
82 not-for-profit and similarly grouped hospital operating margins
83 financial benchmarks, and

84 WHEREAS, consistent patient service operative losses
85 incurred by the lessee corporation have necessitated substantial
86 increases in the ad valorem tax burden on the citizens of Citrus
87 County, and

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88 WHEREAS, in February 2010 the Auditor General issued a
89 final Operational Audit, report number 2010-093, with findings
90 that are critical of the not-for-profit corporation's fiscal
91 management of the leased public hospital facilities, and its
92 accountability for public funds, noting that the lease agreement
93 does not prescribe any specific good business practices to
94 ensure efficient operations of the public hospital, and

95 WHEREAS, the Attorney General has opined and the Fifth
96 Judicial Circuit Court in and for Citrus County has held that
97 the not-for-profit corporation is an instrumentality of the
98 hospital board for purposes of s. 768.28, Florida Statutes, and
99 is entitled to sovereign immunity, and

100 WHEREAS, the hospital board has repeatedly expressed
101 governance and administrative concerns to the not-for-profit
102 corporation with respect to its performance of public
103 responsibilities and its management of public assets on behalf
104 of the hospital board and the taxpayers of Citrus County, and

105 WHEREAS, the hospital board has endeavored to resolve
106 governance and administrative concerns with the lessee on an
107 amicable basis, but without cooperation on the part of the
108 lessee, and

109 WHEREAS, meaningful oversight by the hospital board is
110 necessitated in light of the not-for profit corporation's status
111 as an instrumentality of the hospital district, and

112 WHEREAS, restoration of the hospital board's representation
113 on the board of the lessee corporation, and implementation of
114 appropriate accountability and oversight by the hospital board,
115 are necessitated by the not-for-profit corporation's significant
116 financial losses from patient services, financial

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117 underperformance when compared with Florida not-for-profit
118 hospitals or similarly grouped Florida hospitals, and corporate
119 deficiencies as found by the Auditor General, and in order to
120 ensure corporate sovereign immunity status as an instrumentality
121 of the hospital district, and

122 WHEREAS, the ability of the hospital board to continue to
123 act in the public interest on behalf of the taxpayers of Citrus
124 County requires mechanisms to ensure future adherence to the
125 hospital board's public responsibilities, as well as express
126 authority for judicial interpretation and enforcement of this
127 act through declaratory proceedings and other appropriate
128 judicial remedies, and

129 WHEREAS, this act provides an appropriate and effective
130 means of addressing in a public forum the hospital board's
131 concerns with respect to its oversight of the lessee's
132 performance of its responsibilities to the public and to the
133 taxpayers of Citrus County, NOW, THEREFORE,

134

135 Be It Enacted by the Legislature of the State of Florida:

136

137 Section 1. This act constitutes the codification of all
138 special acts relating to the Citrus County Hospital Board. It is
139 the intent of the Legislature in enacting this law to provide a
140 single comprehensive special act charter for the district,
141 including all current authority granted to the district by its
142 several legislative enactments.

143 Section 2. Chapters 99-442 and 2001-308, Laws of Florida,
144 relating to the Citrus County Hospital Board, are codified,
145 reenacted, and amended to read:

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146 Section 1. This act shall be known and may be cited as the
147 "Citrus County Hospital and Medical Nursing and Convalescent
148 Home Act."

149 Section 2. As used in this act, the words and terms shall
150 have the following meanings:

151 (a) The term "Citrus County Hospital Board" or the word
152 "board" shall mean the Citrus County Hospital Board.

153 (b) The word "county" shall mean the County of Citrus, in
154 the State of Florida.

155 (c) The word "state" shall mean the State of Florida.

156 (d) The word "property" shall mean the real and personal
157 property of every nature whatsoever.

158 (e) The word "operate" shall include build, construct,
159 maintain, repair, alter, expand, equip, lease, pursuant to and
160 consistent with section 17 of this act, finance, and operate.

161 (f) The words "county hospital and medical nursing and
162 convalescent homes" shall include hospitals, medical care
163 facilities, clinics, and other allied medical care units.

164 Section 3. (a) There is hereby created the Citrus County
165 Hospital Board, an independent special district, and by that
166 name the board may sue and be sued, plead and be impleaded,
167 contract and be contracted with, acquire and dispose of property
168 or any interest therein, and have an official seal. The board is
169 created as a public nonprofit corporation without stock and is
170 composed of and governed by the five (5) members herein provided
171 for, to be known as trustees. The hospital board is hereby
172 constituted and declared to be an agency of the county and
173 incorporated for the purpose of operating hospitals, medical
174 nursing homes, and convalescent homes in the county. The

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175 hospital board shall consist of five (5) trustees appointed by
176 the Governor and, upon this act becoming a law, the present
177 members will automatically become trustees and shall constitute
178 the board. Their respective terms of office shall be the term
179 each member is presently serving. All subsequent appointments,
180 upon the expiration of the present terms, shall be for the term
181 of four (4) years. Upon the expiration of the term of each
182 trustee, the successor shall be appointed by the Governor.
183 Likewise, any vacancy occurring shall be filled by appointment
184 by the Governor for the unexpired term. Each appointment by the
185 Governor is subject to approval and confirmation by the Florida
186 Senate.

187 (b) The trustees of said board shall elect from its members
188 a chair, a vice chair, and a secretary-treasurer who shall each
189 hold office for a period of one (1) year.

190 (c) The hospital board shall comply with the applicable
191 requirements of Florida Security for Public Deposits Act,
192 chapter 280, Florida Statutes, and the Investment of Local
193 Government Surplus Funds Act, part IV of chapter 218, Florida
194 Statutes.

195 (d) Any and all funds so deposited shall be withdrawn by a
196 check or warrant signed by two (2) trustees of the hospital
197 board, of which one (1) shall be the chair, vice chair, or
198 secretary-treasurer. No check or warrant shall be delivered to
199 the payee without approval thereof shown in the minutes of the
200 hospital board.

201 Section 4. The trustees of the board shall receive no
202 compensation for their services. Three trustees shall constitute
203 a quorum of the hospital board for the purpose of conducting its

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204 business and exercising its powers and for all other purposes.
205 Action may be taken by the board only upon a vote in the
206 affirmative of three trustees thereof.

207 Section 5. The Citrus County Hospital Board as hereby
208 created shall be for the purpose of operating, in the County of
209 Citrus, public hospitals, medical nursing homes, and
210 convalescent homes, primarily and chiefly for the benefit of the
211 citizens and residents of Citrus County. Authority is hereby
212 given to said board to build, erect, expand, equip, maintain,
213 operate, alter, change, lease, pursuant to and consistent with
214 section 17 of this act, and repair public hospitals, medical
215 nursing homes, and convalescent homes in Citrus County. The
216 corporation is authorized, when rooms and services are
217 available, without detriment or deprivation to the citizens and
218 residents of Citrus County, to extend the hospitalization and
219 medical nursing home and convalescent home services provided by
220 said hospitals, medical nursing homes, and convalescent homes to
221 patients from adjoining and other counties of Florida and from
222 other states, upon the payment of the cost of such
223 hospitalization, medical nursing home services, and convalescent
224 home services as may be determined by the trustees of the
225 hospital board. The board shall have the power and authority to
226 operate an ambulance system and ambulance services. The board
227 shall have the authority to charge all patients for all services
228 rendered in any facility owned or operated by the hospital
229 board, including the ambulance facility. The board may charge
230 patients interest on the patient's account; may sell, discount,
231 or assign said account to a bank, finance company, collection
232 agency, or other type of collection facility; may accept

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233 promissory notes or other types of debt obligations from a
234 patient; may assign or discount said accounts receivable, notes,
235 or other obligations; may require a patient to guarantee the
236 payment of an existing account or note; may require a guarantee
237 of payment before admitting a patient; and may receive and
238 assign any assignment of all types of insurance proceeds.

239 Section 6. The board may provide for the annual levy of an
240 ad valorem tax upon all taxable property within the district to
241 pay for the principal of and interest on promissory notes,
242 mortgages, or ad valorem bonds; and may pay for the erecting,
243 building, equipping, maintaining, changing, altering, repairing,
244 leasing, and operating the public hospital. However, the millage
245 rate may not exceed 3 mills per year. The board shall comply
246 with the applicable provisions of chapter 200, Florida Statutes.

247 Section 7. The hospital board is hereby authorized and
248 empowered to own and acquire property by purchase, lease, gift,
249 grant, or transfer from the county, the state, or the Federal
250 Government, or any subdivision or agency thereof, any
251 municipality, person, partnership, or corporation, and to
252 acquire, construct, maintain, operate, expand, alter, repair,
253 change, lease, finance, and equip hospitals, medical nursing
254 homes, convalescent homes, medical care facilities, and clinics
255 in the county.

256 Section 8. The hospital board is authorized and empowered
257 to enter into contracts with individuals, partnerships,
258 corporations, municipalities, the county, the state or any
259 subdivision or agency thereof, and the United States of America
260 or any subdivision or agency thereof to carry out the purposes
261 of this act.

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262 Section 9. The hospital board is empowered to and shall
263 adopt all necessary rules and regulations and bylaws for the
264 operation of hospitals, medical nursing homes, and convalescent
265 homes; to provide for the admission thereto and treatment of
266 such charity patients who are citizens of Florida and residents
267 of Citrus County for the last two (2) preceding years; to set
268 the fees and charges to be made for the admission and treatment
269 therein of all patients; and to establish the qualifications for
270 members of the medical profession to be entitled to practice
271 therein.

272 Section 10. The hospital board shall have the power to
273 purchase any and all equipment that may be needed for the
274 operation of hospitals, medical nursing homes, and convalescent
275 homes, and shall have the power to appoint and hire such agent
276 or agents, technical experts, attorneys, and all other employees
277 as are necessary for carrying out the purposes of this act, and
278 to prescribe their salaries and duties. The board shall have the
279 power to discharge all employees or agents when it shall be
280 deemed by the board necessary for the carrying out of the
281 purposes of this act.

282 Section 11. At the end of each fiscal year thereafter, the
283 Citrus County Hospital Board shall within thirty (30) days file
284 with the Clerk of the Circuit Court of Citrus County a full,
285 complete, and detailed accounting of the preceding year and at
286 the same time shall file a certified copy of said financial
287 report with the Board of County Commissioners of Citrus County,
288 which report shall be recorded in the minutes of the board of
289 county commissioners. The board of county commissioners at its
290 discretion and at the expense of the county may publish and

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291 report an accounting in a newspaper of general circulation in
292 Citrus County.

293 Section 12. In addition to all other implied and express
294 powers contained herein, the board shall have the express
295 authority to negotiate loans to borrow money from any state or
296 federal agency for the purpose or purposes of constructing,
297 maintaining, repairing, altering, expanding, equipping, leasing,
298 and operating county hospitals, medical nursing homes,
299 convalescent homes, medical care facilities, clinics, and all
300 other types of allied medical care units.

301 Section 13. In addition to all other implied and express
302 powers contained herein, the board shall have the express
303 authority to borrow money, with or without issuing notes
304 therefor, for the purpose or purposes of constructing,
305 maintaining, repairing, altering, expanding, equipping, leasing,
306 and operating county hospitals, medical nursing homes,
307 convalescent homes, medical care facilities, clinics, and all
308 other types of allied medical care units. The board's authority
309 to borrow money, with or without issuing notes, shall be subject
310 to the conditions of this act, applying to the board's right to
311 issue revenue bonds.

312 Section 14. Said board shall have express authority to
313 issue bonds, subject to approval by a referendum of the voters
314 of said county, and to issue revenue bonds, without a referendum
315 of the voters of said county, the proceeds of which shall be
316 used for erecting, equipping, building, expanding, altering,
317 changing, maintaining, operating, leasing, and repairing said
318 hospitals, medical nursing homes, and convalescent homes.

319 Section 15. (a) Said bonds, federal or state hospital

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320 loans, notes, or revenue bonds shall mature within thirty (30)
321 years from the year in which they are issued or made, and shall
322 be payable in such years and amounts as shall be approved by the
323 board.

324 (b) The board shall determine the form of the loans, notes,
325 bonds, and revenue bonds, including any interest coupons to be
326 attached thereto, and the manner of executing it, shall fix the
327 denomination or denominations thereof and the place or places of
328 payment of principal and interest which may be at any bank or
329 trust company within or without the state. In case an officer
330 whose signature or a facsimile of whose signature shall appear
331 on any loan, note, bond, or revenue certificate or coupon shall
332 cease to be such officer before the delivery thereof, such
333 signature or facsimile shall nevertheless be valid and
334 sufficient for all purposes the same as if the officer had
335 remained in office until such delivery. All loan agreements,
336 notes, bonds, and revenue bonds issued hereunder shall have and
337 are hereby declared to have all the qualities and incidents of
338 negotiable instruments under the negotiable instruments law of
339 the state.

340 (c) Whenever the board shall pass a resolution approving
341 the issuance of said bonds, the board shall call for an election
342 and, subject to said election, permit the repayment of the bonds
343 out of an annual levy not to exceed one and one-half (1 1/2)
344 mills per year. Said millage is included in the maximum millage
345 of three (3) mills per year. Subject to such limitations, said
346 bonds shall be payable from the full faith and credit of the
347 board.

348 (d) The loans, notes, and revenue bonds, together with the

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349 interest, shall be payable from gross or net receipts of the
350 hospital board or any portion thereof.

351 (e) Said loans, notes, bonds, or revenue bonds shall not
352 bear interest in excess of the maximum rate permitted by the
353 laws of the State of Florida.

354 (f) The board may sell bonds, loans, notes, or revenue
355 bonds such manner, either at public or private sale, and for
356 such price as it may determine to be for the best interest of
357 the hospital board.

358 (g) The board of county commissioners during any period
359 that bonds payable from ad valorem taxation are outstanding, in
360 addition to the maximum of one and one-half (1 1/2) mills levy
361 above authorized for the repayment of the bonds and interest,
362 levy annually the remainder of the hospital tax in the amount up
363 to one and one-half (1 1/2) mills on the dollar for the purpose
364 of maintaining and operating the county hospitals, medical
365 nursing homes, and convalescent homes.

366 Section 16. The total amount of outstanding bonds of said
367 hospital payable from ad valorem taxation at any one time shall
368 not exceed an amount equal to six (6) times the annual hospital
369 tax, assuming said tax is based upon the yearly millage of three
370 (3) mills.

371 Section 17. The hospital board shall have the authority to
372 enter into leases or contracts with a not-for-profit Florida
373 corporation for the purpose of operating and managing a public
374 hospital and any or all of its facilities of whatsoever kind and
375 nature. To ensure public oversight, accountability, and public
376 benefit, in addition to the requirements for any such lease or
377 contract which are set out in s. 155.40, Florida Statutes:

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378 (a) The Articles of Incorporation, all amendments or
379 Restatements of the Articles of Incorporation, all corporate
380 Bylaws, all amendments or Restatements of the corporate Bylaws,
381 and all other governing documents of such not-for-profit
382 corporation shall be subject to the approval of the hospital
383 board; and any such documents which have not heretofore been
384 approved by the hospital board shall be submitted to the
385 hospital board for approval forthwith.

386 (b) The hospital board shall be the sole member of the not-
387 for-profit corporation.

388 (c) The hospital board shall independently approve any plan
389 of merger or dissolution of the not-for-profit corporation
390 pursuant to sections 617.1103 and 617.1402, Florida Statutes.

391 (d) All members of the hospital board shall be voting
392 directors of the not-for-profit board of directors.

393 (e) The number of members of the hospital board shall at
394 all times constitute a majority of the voting directors of the
395 not-for-profit corporation, and to the extent that any
396 governance documents of the not-for-profit corporation do not so
397 presently provide the not-for-profit corporation shall forthwith
398 take all steps necessary to bring them into conformity with this
399 majority membership requirement.

400 (f) All members of the not-for-profit board of directors
401 shall be subject to approval by the hospital board, and any
402 board members presently serving who have not heretofore been
403 approved by the hospital board shall be submitted to the
404 hospital board for approval forthwith.

405 (g) The Chief Executive Officer of the hospital, and his or
406 her term of office and any extensions thereof, shall be approved

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407 by the hospital board.

408 (h) The borrowing of money in any form and for any reason
409 in an amount exceeding \$100,000 shall be approved by the
410 hospital board.

411 (i) No annual operating and capital budget of the not-for-
412 profit corporation shall become effective until approved by the
413 Citrus County Hospital Board.

414 (j) Any capital project having a value in excess of
415 \$250,000 per project, and any non-budgeted operative expenditure
416 in excess of \$125,000 in the per annum aggregate, shall be
417 approved by the hospital board.

418 (k) At the discretion of the hospital board, each and every
419 year the not-for-profit corporation shall complete an
420 independent audit of the fiscal management of the hospital by an
421 auditor chosen by the hospital board, with the audit to be paid
422 for by the not-for-profit corporation.

423 (l) All records of the not-for-profit corporation shall be
424 public records unless exempt by law; provided however, the
425 hospital board, pursuant to their oversight and auditing
426 functions, must be given full and complete access to all
427 proprietary confidential business information upon request and
428 without subpoena, and must maintain the confidentiality of
429 information so received. As used in this paragraph, the term
430 "proprietary confidential business information" means
431 information, regardless of its form or characteristics, which is
432 owned or controlled by the not-for-profit corporation or its
433 subsidiaries, including, but not limited to, all matters
434 encompassed in privileged attorney-client communications and
435 strategic planning.

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436 Section 18. In order to ensure public oversight,
437 accountability, and public benefit, the provisions in this act
438 and the hospital board's lease with the not-for-profit
439 corporation:

440 (a) Shall be construed and interpreted as furthering the
441 public health and welfare, and the open-government requirements
442 of s. 24, Article I of the State Constitution and ss. 119.01 and
443 286.011, Florida Statutes; and

444 (b) May be enforced by a court of competent jurisdiction in
445 declaratory proceedings under chapter 86, Florida Statutes, by
446 injunction, or by any other appropriate form of judicial relief.

447 Section 3. Chapter 99-442, Laws of Florida, and chapter
448 2001-308, Laws of Florida, are repealed.

449 Section 4. If any provision of this act or its application
450 to any person or circumstance is held invalid, the invalidity
451 does not affect other provisions or applications of the act
452 which can be given effect without the invalid provision or
453 application, and to this end the provisions of this act are
454 severable.

455 Section 5. This act shall take effect upon becoming a law
456 and shall apply to existing and future leases and amendments,
457 revisions, and restatements thereto, and to existing and future
458 agreements for hospital care and amendments, revisions, and
459 restatements thereto; however, this act shall not apply to the
460 term of any existing contract entered into by the not-for-profit
461 corporation with a third-party, to any existing contract for the
462 borrowing of money in excess of \$100,000 for which the hospital
463 board has not previously given its approval, or to any existing
464 contract for a capital project in excess of \$250,000 for which

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465 the hospital board has not previously given its approval.