

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1043 Citrus County
SPONSOR(S): Health & Human Services Quality Subcommittee; Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 1740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 1 N, As CS	Mathieson	Calamas
2) Community & Military Affairs Subcommittee			
3) Finance & Tax Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

This local bill amends the powers of the Citrus Memorial Health Foundation (Foundation) increasing the oversight powers of the Citrus County Hospital Board (Board).

The bill:

- Codifies all special acts relating the Board into a single act;
- Provides "whereas clauses";
- Revises the investment and financial reporting requirements of the Board;
- Provides for the indemnification of any agent of the Board, against any lawsuit;
- Imposes additional requirements to be applied to any lease agreements for the operation of Citrus County Memorial Hospital (in addition to the requirements of s. 155.40, F.S.);
- Provides that the additional lease obligations are to be retroactive;
- Provides for severability of the act's provisions in the case of judicial review; and
- Directs courts to construe this as a remedial act.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 155.40, F.S., authorizes a county, district or municipal hospital enter into contracts or leases for the purpose of operating and managing the hospital. The lease must be in the best interest of the public, and meet notice requirements for both the decision to lease,¹ and the offer to accept proposals.²

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

- The revenues must be 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.³

Section 155.40(7), F.S., provides that 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.

The Citrus County Hospital Board (Board) is an independent special district⁴ originally created by a special act of the Legislature in 1949 (Ch. 25728, Laws of Florida). Chapter 99-442 (as subsequently amended by Chapter 2001-308, L.O.F.), is the codification of all special acts relating to the Board.

The Board is comprised of five trustees, all of whom are appointed by the governor for a four year term. The purpose of the Board is to create and maintain public medical facilities in Citrus County. The Board is authorized to borrow money, issue notes, raise bonds, contract for services, and adopt rules and regulations for the operation of the medical facilities. The Board can levy up to a maximum of three mills per year on taxable residential or commercial real estate in Citrus County.⁵

In 1987, the Board created the Citrus County Health Foundation, Inc., (Foundation). The Foundation was created as a not-for-profit corporation, with the Board as its sole member, to carry out the purpose of the special act. The Foundation is currently doing business as the Citrus Memorial Health System, which includes:

- A 198-bed in-patient hospital;
- A 24-hour emergency room;
- Laboratory and diagnostic services;
- A walk-in clinic;
- A home health agency;
- Rehabilitation services;
- A heart center; and
- Orthopedic services.

¹ S. 286.0105, F.S.

² S. 255.0525, F.S.

³ S.155.40(6), F.S.

⁴ A special district is provided for in the Florida Constitution (Art. VIII, s. 1, Fla. Const.), and in s. 189.403(1), F.S., to be 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.” A special district can levy taxes, and is subject to the legislative provisions for open meetings, credit and bond financing. See ch. 189, F.S.

⁵ A mill is \$1 for every \$1,000 of assessed value. Ch. 99-442(6) (as amended by 2001-308), L.O.F.

The Board also entered into a 40 year contract with the Foundation for hospital services, which automatically renews every year, unless terminated. If the lease terminates, the hospital reverts to the Board. The hospital services contract ensures that the Foundation will be compensated by the Board for the uncompensated care at the hospital, pursuant to the Board's duty for indigent care. The Foundation is required to submit a budget to the Board, which is certified to the Citrus County Board of Commissioners as the millage rate required for the Foundation's operations.⁶

The Foundation leases from the Board the land, buildings, improvements, fixtures and furniture of the Citrus Memorial Health System. Currently, the composition of the Foundation's Board of directors is 13 people, with 5 guaranteed places for hospital Board members.⁷ The lease is for 33 years, running from March 1, 1990, until June 15, 2033. The lease could end sooner, subject to the terms of the lease. There is a right of renewal in 2033, for an additional 45 years for the Foundation.

In a 2006, the Foundation requested an opinion from the Attorney General (AG) in relation to the applicability of sovereign immunity to the Foundation. The AG concluded that the private not-for-profit Foundation was an instrumentality of Board, and was subject to the sovereign immunity provisions of s. 768.28, F.S.⁸ The AG came to this conclusion because of Board's transfer of authority to the Foundation in the lease agreement to operate the hospital, and the Foundation in carrying out these obligations were acting on behalf of the Board, as described in s. 155.40, F.S.⁹ The AG noted additional facts in support of this conclusion, that the Board appropriated funds to the Foundation for the provision of medical services, and retained some control of the Foundation.¹⁰

From 2006-2008, the Auditor General conducted an operational audit of both the Board and the Foundation, and issued a report in February 2010.¹¹ The Auditor General made several findings that noted concern with the governance and operation of the both entities in relation to the hospital. Specifically, the Auditor General's report found problems with the Foundation's accountability to the Board, use of funds for travel and bonuses that were not approved by the Board, contracts that were executed outside the scope of the Chief Executive Officer's (CEO) expenditure authority, and conflicts of interest that were not disclosed.

Effect of the Proposed Changes

The bill repeals, re-enacts and substantially alters chapters 99-442 and 2001-308, Laws of Florida, relating to the Citrus County Hospital Board.

There are a series of findings in the bill, addressed in 20 "whereas" clauses, which outline the purpose of this legislation. The factual accuracy of the clauses is disputed by the Foundation.¹² Several of the clauses note the history of the Board and the Foundation. In addition to this history the whereas clauses make the following statements:

- The lease agreement does not provide for reasonable public accountability;
- ACHA data suggests there have been significant financial losses from patient services across 2003-2010;
- Financial performance compared to similarly situated hospitals has been substandard;
- Ad-valorem tax has been increased to cover these losses;

⁶ *Id.*

⁷ Florida Auditor General, Citrus County Hospital Board and Citrus County Memorial Health Foundation, Inc., 2010-093 (Feb. 2010)

⁸ Fla. Atty Gen. Op. 2006-36 (Aug. 2006).

⁹ *Id.*

¹⁰ *Id.*
¹¹ Florida Auditor General, Citrus County Hospital Board and Citrus County Memorial Health Foundation, Inc., 2010-093 (Feb. 2010)

¹² Memorandum for Members of the Florida Legislature, from Jan Gorrie, Esq. On file with the House Health and Human Services Quality Subcommittee, March 17, 2011

- An Auditor General's report observed inconsistencies in management practices of the Foundation;
- There are concerns with the Foundation's compliance with open meeting and public records laws; and
- Because of these reasons and the failure of the Foundation to address the Board's issues, to protect the public and sovereign immunity status, the Board has had intervene.

The bill provides definitions for the "hospital board," "county," the "hospital," "indigent care," "operate," "property," and "State." The definition for indigent care includes a citation to a rule in the Florida Administrative Code, ch. 59H-1.0035(30), which could change in the future, requiring another bill.

Provision is made for the Board to comply with ch. 218, F.S., relating to political subdivisions and ch. 280, F.S., relating to security for public deposits. The bond provision for Board members is re-enacted, however, removes the requirement that the monies be deposited in an institution located in Citrus County.

The bill also adds a \$25,000 cap to checks or warrants that can be signed without the signature of two Board members, one of which must be the chair, vice-chair or secretary-treasurer.

The bill allows the Board to indemnify any person who was deemed an agent of the Board, in any lawsuit. This indemnification continues past termination of agent status, and extends to the person's heirs, executors and administrators.¹³ The agent must act within the scope of employment and in good faith. Indemnification extends to expenses (including attorney's fees), judgments, fines and amounts paid in settlements. The Board may also indemnify an agent against lost wages or earnings suffered. For a person to receive compensation, the Board must determine by a quorum of non-parties that indemnification is appropriate. If a quorum of disinterested Board members is not possible, the decision shall be made by an independent legal counsel, who may be either the Board's legal counsel or selected by the same.

The bill expressly prohibits indemnification of medical malpractice claims against individuals. The bill creates a presumption that termination of a suit, action or proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere, does not amount to good faith.

The bill adds that the Board will provide for the payment of indigent care, or partner with other agencies to achieve the public purpose. The Board shall also develop and implement a county health plan.

The bill removes the Board's duty to determine the amount of money required for the construction, alteration, modification and maintenance of the hospital's facilities and then certify this to Citrus County's Board of Commissioners. The effect of this is to consolidate the taxing authority in the Board.

The bill provides that the Board may hire or terminate anyone it deems appropriate to assist the Board in the discharge of its operational, financial and statutory responsibilities. The bill also alters the Board's ability to borrow money – granting it authority to seek funds from state or federal agencies, or other entity – for the purpose of operation, construction, modification or repair of the hospital. The Board is also able to raise finance via bond issue, which can now be done without a referendum of the electorate. The bill also sets a cap on the amount of bond financing that can be raised no more than 6 times the annual hospital tax, based on an assumption of a tax rate of no more than 3 mills.

The bill provides that the Board has the ability to lease to a not-for-profit Florida corporation. In addition, the Board is given the power and authority to:

¹³ This could have the effect of excluding people who were devisees of the descendant agent. S. 732.201(20), F.S. Also, the use of "administrator / executor" is unclear. Florida's Probate Code, provides that the correct term is Personal Representative. S. 732.201(28), F.S.

- Provide health care services through the use of health care facilities not owned by the Board, finding a public purpose to do so if necessary.
- Maintain an office and staff. This includes the ability to employ administrators, physicians, accountants, financial experts, consulting engineers, architects, surveyors, and anyone else it deems necessary – regardless of any lease to a not-for-profit corporation.
- Acquire healthcare facilities, satisfy their financial obligations and mortgage them;
- Cooperate or contract with anyone in connection with this act.
- Provide reimbursement to public or private hospitals and healthcare providers.

The bill expressly prohibits the Board from reimbursing the bad debts of any health care facility or provider for patients that do not meet the Board's guidelines for reimbursement. However, the bill allows the Board to reimburse for medically needy patients, within the limitations of the Board's financial capacity.

The bill authorizes the Board to establish the following requirements of the not-for-profit corporation that leases the hospital, in addition to any lease requirements s. 155.40, F.S.:

- Members of the hospital board or not-for-profit corporate board must be residents of Citrus County;
- A separate accounting of ad valorem tax monies must be provided from the not-for-profit corporations other revenue streams, and approval from the Board be sought before expenditure;
- All articles of incorporation, corporate bylaws, all other governing documents, including all amendments or restatements of the lessee must be approved by the Board. This operates retroactively;
- The Board shall be the sole member of the not-for-profit corporation;
- The Board shall approve any merger or dissolution plans of the not-for-profit corporation;
- The Board shall be the voting majority of the not-for-profit corporation and shall rectify any corporate documents that say otherwise;
- All members of the not-for-profit corporation board shall be approved by the hospital Board. This is to operate retroactively;
- The Chief Executive Officer (CEO) of the not-for-profit corporation, and that any extensions of this term, shall be approved by the Board. The CEO is dismissible with or without cause, subject to contract, by the Board;
- All borrowing over \$100,000, leases or increases in indebtedness of greater than \$1.25 million, any capital project in excess of \$250,000, any non-budgeted expenditure of greater than \$125,000 and all policies that govern travel reimbursement and contract bid procedures must be approved by the Board;
- The budget of the not-for-profit corporation must be approved by the Board, prior to release. An independent financial audit shall be completed and paid for by the not-for-profit corporation, utilizing an auditor selected by the Board. Subject to approval of the budget, the Board will reimburse the not-for-profit corporation for indigent care, to the extent that it is required by law.
- All records of the not-for-profit corporation are public, unless exempt by law. However, the Board shall have access to all records, at any time. The Board has a duty to maintain the confidentiality of such information, where appropriate.
- The provisions of this bill shall be construed as furthering public health and welfare and open government requirements;
- Any dispute shall be subject to ch. 164, F.S., Government Disputes;¹⁴
- Failure to comply with these provisions is not to be construed as breach, but provides cause for the Board to seek judicial relief against the not-for-profit corporation;

These provisions are to operate retroactively, on all leases between the Board and the not-for-profit corporation. The bill provides that this does not affect third party contracts for which the Board has not approved. It is likely that this section of the bill will provide grounds for litigation, the outcome of

¹⁴ The bill also provides that it can be enforced by declaratory judgment or by seeking judicial relief.

which cannot be accurately predicted. This section of the bill may interpreted as a violation of Art. I, s. 10 of the Florida Constitution, in that it may impair a private contract. However, this would be subject to judicial interpretation.

The bill provides a severability clause, and that it is to be liberally construed as a remedial act.

B. SECTION DIRECTORY:

- Section 1:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 2:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 3:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 4:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 5:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 6:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 7:** Amends and recodifies 99-442, L.O.F.,(as amended by 2001-308, L.O.F.) Citrus County Hospital and Medical Nursing and Convalescent Home Act.
- Section 8:** Provides for an effective date of July 1, 2011.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 31, 2011.

WHERE?

The *Citrus County Chronicle*, a newspaper of general circulation published in Citrus County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement claims that there will be no impact on state revenue or expenditure.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Health and Human Services Quality Subcommittee adopted three amendments. The amendments:

- Removed an assertion from the whereas clauses that the Board sought an opinion from the AG's office in November 2010;
- Substituted the Board for the Foundation as the responsible party for maintaining the public purpose of the hospital; and
- Added that the Board shall take into account all available sources of funding for indigent care.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.