

## **FINAL BILL ANALYSIS**

**BILL #:** CS/CS/HB 1043

**FINAL HOUSE FLOOR ACTION:**

115 Y's      1 N's

**SPONSOR:** Rep. Smith

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** SB 1740

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### **SUMMARY ANALYSIS**

CS/CS/HB 1043 passed the House on May 2, 2011, and subsequently passed the Senate on May 3, 2011. The bill was approved by the Governor on June 24, 2011, chapter 2011-256, Laws of Florida, and takes effect July 1, 2011.

This local bill codifies the special acts relating to the Citrus County Hospital Board (board), an independent special district. The bill deletes obsolete provisions, updates language and makes technical revisions. Additionally, the bill amends the board's charter to:

- Clarify the powers and authority of the board;
- Provide the board with specific authority to enter into a lease with a not-for-profit corporation for the purpose of operating and managing its hospital; and
- Provide additional oversight and accountability provisions relating to the board and the not-for-profit corporation.

The bill also requires that the board request an operational audit from the auditor general in three years, and provides for severability of the act's provisions

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Current Situation**

##### Sale or Lease of Public Hospitals

Section 155.40, F.S., authorizes a county, district or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with the corporation for the purpose of operating and managing the hospital and its facilities. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public.

The term of any such lease, contract or agreement and the conditions, covenants and agreements contained therein is determined by the governing board of the hospital. The lease, contract, or agreement must:

- Provide that the articles of incorporation of such for-profit or not-for-profit corporation are subject to the approval of the board of directors of the hospital;
- Require that the not-for-profit corporation become qualified under s. 501(c)(3) of the federal States Internal Revenue Code;
- Provide for the orderly transition of the operation and management of facilities;
- Provide for the return of such facilities to the county, municipality, or district upon the termination of any lease, contract, or agreement; and
- Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act (ss. 154.301-154.316, F.S.) and ch. 87-92, L.O.F.

In the event a hospital operated by a Florida corporation receives more than \$100,000 annually 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.<sup>1</sup>

Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital is not to 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 decision-making process.<sup>2</sup>

Section 155.40(7), F.S., provides that the lessee of a hospital, operating under that section or any special act of the Legislature, 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.

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<sup>1</sup> S. 155.40(5), F.S.

<sup>2</sup> S. 155.40(6), F.S.

## The Citrus County Hospital Board and the Citrus County Health Foundation

The Citrus County Hospital Board (board) is an independent special district<sup>3</sup> originally created by a special act of the Legislature in 1949 (ch. 25728, L.O.F.). Chapter 99-442, L.O.F. (as subsequently amended by ch. 2001-308, L.O.F.), provides 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 four-year terms, and subject to Senate confirmation. 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 may levy up to a maximum of three mills per year on taxable residential or commercial real estate in Citrus County.

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 purposes 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.

The board entered into a lease agreement and an agreement for hospital care with the foundation, both effective on March 1, 1990. The lease agreement expires on June 15, 2033, unless terminated earlier in accordance with its terms. The foundation has the right to unconditionally renew the lease for an additional 45-year term, if it is not in default of the lease agreement. 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 the agreement. In the event of dissolution of the foundation, its assets, after payment of its liabilities, revert to the board.

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 board. Under the agreement for hospital care, the 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 board. The board is required to review the budget in conjunction with

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<sup>3</sup> A special district is provided for in Sec. 1, Art. VIII of the State Constitution 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.

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 board is then required to pay the foundation its share of the ad valorem tax revenues to fund activities and services identified in the foundation operating and capital budget.

The foundation is managed by a board of directors comprised of the five trustees of the board, a minimum of five and a maximum of seven at-large directors, and the chief of the medical staff of Citrus Memorial Hospital. Currently, the foundation's board of directors includes 13 individuals, with five guaranteed places for hospital board members.<sup>4</sup>

From January 2006 through December 2008, the Auditor General conducted an operational audit of both the board and the foundation, and issued a report in February 2010. The Auditor General made several findings that noted concern with the governance and operation of 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 foundation's chief executive officer's expenditure authority, and conflicts of interest that were not disclosed.

Despite no finding that the Citrus County Hospital lease expressly provided that the foundation was "acting on behalf of" the board, an Attorney General opinion found that the foundation was an instrumentality of board, and subject to the sovereign immunity provisions of s. 768.28, F.S.<sup>5</sup>

The board and the foundation are currently engaged in litigation with each other. Specifically, a lawsuit was filed by the foundation on November 5, 2010, for contractual breaches by the board. The board filed a lawsuit November 30, 2010, alleging public records violations by the foundation. The foundation filed lawsuits on April 8 and April 14, 2011 against individually named directors, alleging breaches of fiduciary duty. These cases remain unresolved at the time of publication of this analysis.<sup>6</sup>

### **Effect of Changes**

CS/CS/HB 1043 codifies, reenacts, amends and repeals chs. 99-442 and 2001-308, L.O.F., relating to the Citrus County Hospital Board. The bill deletes obsolete provisions, updates language and makes technical revisions. Additionally, the bill amends the board's charter to clarify the powers and authority of the board, and provides additional oversight and accountability provisions relating to the board and the not-for-profit corporation.

The bill makes a series of findings in six "whereas" clauses which describe the history of the hospital board and the foundation (referenced as the "not-for-profit corporation") and conclude that:

- Meaningful oversight by the board is necessary in light of the foundation's status as an instrumentality of the hospital district;

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<sup>4</sup> Florida Auditor General Operational Audit, Citrus County Hospital Board & Citrus County Memorial Health Foundation, Inc., 2010-093 (February 2010).

<sup>5</sup> Florida Attorney General Opinion 2006-36 (August 2006).

<sup>6</sup> *Citrus Memorial Health Foundation Inc., v. Citrus County Hospital Board*, 2010CA005399, (5th Cir. 2010); *Citrus County Hospital Board v. Citrus Memorial Health Foundation Inc.*, 2010CA005702, (5th Cir. 2010); *Citrus Memorial Health Foundation Inc., v. Upender*, 2011CA001476, (5th Cir. 2011); *Citrus Memorial Health Foundation Inc., v. Upender*, 2011001388, (5th Cir. 2011).

- Restoration of meaningful hospital board representation on the board of the lessee foundation and implementation of appropriate accountability and oversight by the board are necessary in order to ensure the sovereign immunity status of the foundation as an instrumentality of the hospital district;
- The ability of the board to continue to act in the public interest on behalf of the taxpayers of Citrus County requires mechanisms to ensure adherence to the board's public responsibilities; and
- The act provides an appropriate and effective means of addressing the lessee's performance of its responsibilities to the public and the taxpayers of Citrus County.

The bill provides a new definition for "indigent care." This term means medically necessary health care provided to Citrus County residents who are determined to be qualified pursuant to the provisions of the Florida Health Care Responsibility Act and the Florida Health Care Indigency Eligibility Certification Standards (Rule 59H-1.0035(30), F.A.C.).<sup>7</sup>

The bill removes several provisions relating to the deposit of funds, and adds language which recognizes the responsibility of the board to comply with ch. 218, F.S., relating to financial matters pertaining to political subdivisions and ch. 280, F.S., the "Florida Security for Public Deposits Act."

The bill continues the requirement that checks or warrants must have two signatures, one of which must be the chair, vice-chair or secretary-treasurer of the hospital board, but adds language requiring that checks over \$25,000 must have prior approval in the minutes of the board.

The bill provides the board with specific authority to provide for the payment of indigent care services by private health care providers in the county, or to partner with other agencies, such as the Department of Health, in furtherance of the board's public purpose and the necessity for the preservation of the public health and welfare of the residents of the county. The board is required to develop and implement a county health plan.

The bill provides new language that confirms the board's power to hire employees as are necessary for carrying out the purposes of the act, regardless of the lease to the not-for-profit corporation.

The bill provides specific authority for the board to enter into leases or contracts with a not-for-profit Florida corporation for the purpose of operating and managing the hospital and any or all of its facilities. In addition, the board is provided the power and authority to:

- Provide health care services through the use of health care facilities not owned by the board;
- Maintain an office; and
- 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 who do not meet the board's guidelines for reimbursement. However, the bill requires the board to continue to reimburse such providers for the care of medically needy patients, within the limitations of the board's financial capacity.

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<sup>7</sup> The bill includes this reference to a provision of the F.A.C., a rule of general applicability, which could change in the future and would require reenactment.

In order to ensure public oversight, accountability and public benefit, in addition to the requirements for leases set forth in s. 155.40, F.S., the bill provides the following requirements:

- The not-for-profit corporation must separately account for the expenditure of all ad valorem tax monies provided to it by the board, which must approve the expenditure of these funds in a public meeting.
- All articles of incorporation, corporate bylaws, and all other governing documents, including all amendments or restatements of the not-for-profit corporation, must be approved by the board. Any such document that has not been approved shall be submitted to the board for approval.
- The board must independently approve any merger or dissolution of the not-for-profit corporation pursuant to ss. 617.1103 and 617.1402, F.S., and may reject any such plan in its sole discretion.
- The hospital board members shall be the voting majority of the not-for-profit corporation board, which must conform its governance documents to this specification.
- All members of the not-for-profit corporation board, including current members, must be approved by the hospital board.
- The chief executive officer of the not-for-profit corporation, and his or her term of office, must be approved by the board. This individual may be terminated, with or without cause by the board, subject to any existing contracts.
- The hospital board must approve all borrowing of money by the not-for-profit corporation 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, in the per annum aggregate, and all policies that govern travel reimbursement and contract bid procedures.
- The budget of the not-for-profit corporation must be approved by the board before such budget becomes effective. Subject to approval of the budget, the board will reimburse the not-for-profit corporation for indigent care, pursuant to the Florida Health Care Responsibility Act and the Florida Indigent Certification Standards.
- The hospital board may require the not-for-profit corporation to complete a yearly independent financial audit, paid for by the corporation, utilizing an auditor selected by the board.
- Three years from the effective date of the act, the hospital board is required to submit a request to the Joint Legislative auditing Committee for an operational audit of the hospital board and the not-for-profit corporation to be conducted by the Auditor General.
- All records of the not-for-profit corporation are public, unless exempt by law.
- The provisions of the bill are to be construed as furthering public health and welfare and open government requirements.
- Any dispute between the hospital board and the not-for-profit corporation will be subject to court action pursuant to ch. 164, F.S., Government Disputes.

These provisions are to apply to existing and future leases and amendments between the board and the not-for-profit corporation. However, the bill provides that 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, to any additional loan indebtedness or leases in excess of \$1.25 million 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 per project, and any nonbudgeted operative expenditure in excess of \$125,000 in the per annum aggregate, which the board has not previously approved.

The bill provides a severability clause, and has 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 provides that the bill will not have an impact on state revenue or expenditures.