

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1449 Campbellton-Graceville Hospital District, Jackson County  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Drake  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N, As CS	Miller	Miller
2) Judiciary Committee	15 Y, 0 N	Bond	Poche
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Created by special act in 1961 for the public purpose of constructing and operating a critical-access hospital in Jackson County, Florida, the Campbellton-Graceville Hospital District (District) is an independent special district administered by a board of five trustees known as the Campbellton-Graceville Hospital Corporation (CGHC). The trustees are appointed by the Governor. Because the state constitution prohibits creation of a private-purpose corporation by special act, CGHC may only be the governing board of the District while the District is the entity that owns the hospital.

Fees for medical services and ad valorem taxes levied by Jackson County primarily fund the District. After suffering years of declining revenues, in 2015 the District contracted with Peoples' Choice Hospital, Inc. (PCH), turning over management of all operations and financial accounts. PCH placed the records and accounts of the hospital into a proprietary system and began referring large numbers of lab tests through the hospital. This led to a federal investigation, discharge of PCH by the District, litigation, denial of access to its own records and financial information by PCH, and denial of reimbursements to the hospital by the Center for Medicare and Medicaid Services. Because of the financial difficulties, CGHC filed for Chapter 11 bankruptcy protection in May 2017. The hospital was closed in June 2017, but a part of the facility continues providing services as a health clinic.

In the bankruptcy, CGHC claims to be a non-profit corporation separate from the District, listing all assets, accounts, claims, and liabilities attributable to the hospital operation as its property. CGHC settled all claims by and against PCH, and the Bankruptcy Court approved a proposed lease to Northwest Florida Healthcare, Inc. (NWFH) with an option to purchase the facilities.

CS/HB 1449 makes findings that CGHC is the board of the District and that the assets of the hospital's operation belong to the District for the benefit of the people. The bill creates an exception to general law to allow the District to complete the sale of the hospital facility. After the sale, the District retains all net proceeds and winds up its affairs. Jackson County's taxing authority terminates on closing the sale.

Sections 2, 3, 4, of the bill are effective on the date of a court order dismissing the bankruptcy case or converting it to a case under chapter 9 of the Bankruptcy Code (which chapter applies to certain local governments). The findings and the conditional effective date are effective when the act becomes law.

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,<sup>1</sup> special act,<sup>2</sup> local ordinance,<sup>3</sup> or by rule of the Governor and Cabinet.<sup>4</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>5</sup>

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.<sup>6</sup> An "independent special district" is any district that is not a dependent special district.<sup>7</sup>

Special districts do not possess "home rule" powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>8</sup>

The requirements for special district formation were standardized with the creation of ch. 189, F.S., in 1989.<sup>9</sup> Prior to that time, special districts created or authorized by the Legislature had certain common characteristics. For example, the first laws authorizing the formation of districts to drain lands required the actual creation of the district, expression of the specific powers the district could exercise, the creation of a board of supervisors or commissioners to administer the district, and specific sources of funding for district operations.<sup>10</sup> The charters of early hospital districts contained common characteristics: a boundary description for the district,<sup>11</sup> a governing entity to exercise the powers and achieve the purpose of the district,<sup>12</sup> trustees appointed by the Governor,<sup>13</sup> an expressed purpose for

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<sup>1</sup> Section 189.031(3), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 189.02(1), F.S.

<sup>4</sup> Section 190.005(1), F.S. *See, generally,* s. 189.012(6), F.S.

<sup>5</sup> *2017 – 2018 Local Gov't Formation Manual*, p. 60, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911> (last accessed 1/26/2018).

<sup>6</sup> Section 189.012(2), F.S.

<sup>7</sup> Section 189.012(3), F.S.

<sup>8</sup> Article VII, s. 9(a), Fla. Const.

<sup>9</sup> Ch. 89-169, Laws of Fla.

<sup>10</sup> *See* ch. 6458, Laws of Fla. (1913) (providing statutory authority for drainage districts).

<sup>11</sup> *See* ch. 24674, s. 1, Laws of Fla. (1947), Madison County Hospital District; ch. 28887, s. 1, Laws of Fla. (1953), Baker County Hospital District; ch. 67-1724, s. 1, Laws of Fla., The Lower Florida Keys Hospital District; ch. 79-577, s. 1, Laws of Fla., Halifax Hospital Medical Center.

<sup>12</sup> *Id.*, ch. 24674, s. 2; ch. 28887, s. 4(b); ch. 67-1724, s. 2; ch. 79-577, s. 3. *See also* ch. 25728, s. 3, Laws of Fla. (1949), Citrus County Hospital Board. In creating the Citrus County Hospital Board, the Legislature described a particular geographic boundary instead of creating a specific entity.

<sup>13</sup> Ch. 25728, s. 3; ch. 28887, s. 3; ch. 67-1724, s. 2; ch. 79-577, s. 2.

both the district and the governing entity to erect, build, equip, maintain, and operate a public hospital,<sup>14</sup> and the grant of powers necessary to meet the stated purpose for a public hospital.<sup>15</sup> Creation of some older hospital districts required the respective county commissions to levy a specific annual ad valorem tax to support the construction and operation of a hospital by the district.<sup>16</sup>

### Campbellton-Graceville Hospital District

The Campbellton-Graceville Hospital District (District), located in Jackson County, was created by special act in 1961.<sup>17</sup> The stated purpose of the District was to build, maintain, and operate a public hospital in Graceville, Florida “for the benefit of the citizens and residents of said district...”<sup>18</sup> As with the formation of some other hospital districts at that time, the enabling act did not create a specific board of supervisors for the district but instead created the Campbellton-Graceville Hospital Corporation (CGHC) as the governing entity of the District.<sup>19</sup> CGHC was created expressly for public purposes, primarily the construction, equipping, operation, and maintenance of the public hospital.<sup>20</sup> CGHC could sue and be sued, but was not liable for the negligence of its officers, agents, employees, or the medical staff of the hospital.<sup>21</sup> Five trustees appointed by the governor for terms of five years<sup>22</sup> would govern CGHC and exercise all the powers authorized to fulfill the purpose of the District.<sup>23</sup> The Jackson County Board of County Commissioners was authorized to levy ad valorem taxes of up to five mills within the district to fund the public purpose of the hospital, with all tax collections to be paid to CGHC on a monthly basis for hospital purposes.<sup>24</sup> The act was amended in 1986 to authorize CGHC to enter into contracts, agreements, or leases of the hospital and its assets to deliver health care services more efficiently.<sup>25</sup>

### Nature of the Campbellton-Graceville Hospital Corporation

The act creating the District also created CGHC as “a public, non-profit corporation,”<sup>26</sup> “established and incorporated for public purposes.”<sup>27</sup> This term describes the types of powers and functions needed to administer the District for public purposes, but does not mean CGHC was created as a separate corporate entity. The 1885 Florida Constitution was amended in 1899 to prohibit the Legislature from incorporating any “useful company” by special act.<sup>28</sup> This prohibition was retained in the 1968 Florida Constitution.<sup>29</sup> Regardless of the terminology in the District’s enabling act, CGHC was not created as a “corporation” legally distinct from the District because such an attempt would have been void under the Constitution.

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<sup>14</sup> See ch. 24674, ss. 1, 2, 5(b), 6; ch. 25728, s. 5; ch. 28887, ss. 1, 2; ch. 67-1724, s. 6.

<sup>15</sup> See chs. 24674, 25728, 28887, 67-1724, 79-577, all *passim*.

<sup>16</sup> Ch. 24674, s. 5 (3 mill max.); ch. 25728, s. 6 (3 mill max.); ch. 28887, s. 7 (5 mill max.).

<sup>17</sup> Ch. 61-2290, Laws of Fla.

<sup>18</sup> Ch. 61-2290, s. 1, Laws of Fla.

<sup>19</sup> Ch. 61-2290, s. 2, Laws of Fla.

<sup>20</sup> Ch. 61-2290, s. 6, Laws of Fla.

<sup>21</sup> Ch. 61-2290, s. 6, Laws of Fla.

<sup>22</sup> Creating five year terms may have been inconsistent with the Florida Constitution, as the Legislature was (and remains) prohibited from creating an office with a term of more than four years. Art. XVI, s. 7, Fla. Const. (1885); *see* art. III, s. 13, Fla. Const. (1968).

<sup>23</sup> Ch. 61-2290, ss. 2, 6, 10, 11, 12, Laws of Fla.

<sup>24</sup> Ch. 61-2290, ss. 3, 4, 5, Laws of Fla.

<sup>25</sup> Ch. 86-455, s. 1, creating ch. 61-2290, s. 17, Laws of Fla.

<sup>26</sup> Ch. 61-2290, s. 2, Laws of Fla.

<sup>27</sup> Ch. 61-2290, s. 6, Laws of Fla.

<sup>28</sup> Art. III, s. 25, Fla. Const. (1885). Section 25, as amended in 1900 and still providing in 1961, stated: “The Legislature shall provide by general law for incorporating such educational, agricultural, mechanical, mining, transportation, mercantile and other useful companies or associations as may be deemed necessary; but it shall not pass any special law on any such subject, and any such special law shall be of no effect; Provided, however, That nothing herein shall preclude special legislation as to a university or the public schools, or as to a ship canal across the State.”

<sup>29</sup> Article III, s. 11(a)(12), Fla. Const. (1968).

In a case interpreting the constitutional prohibition against incorporation by special act, the Florida Supreme Court distinguished “private” from “public” corporations:

Private corporations are those which have no official duties or concern with the affairs of government, are voluntarily organized and are not bound to perform any act solely for government benefit, but the primary object of which is the personal emolument of its stockholders.

....

(The) business (of a public corporation) ordinarily is stipulated by the Legislature to fill a public need without private profit to any organizers or stockholders. Their function is to promote the public welfare and often they implement governmental regulations within the state’s police power. In a word, they are organized for the benefit of the public.<sup>30</sup>

The public function of CGHC as the administrative board of the District, as opposed to a separate corporation, was further established by the nature of the board, composed of public officers rather than private members or directors. The five members of the board are known as trustees and all are appointed by the Governor. Initially, the Governor was required to appoint each trustee from several candidates selected by the Board of Commissioners of State Institutions.<sup>31</sup> The trustees exercise the public power and authority provided to the District by its enabling act.<sup>32</sup> In this capacity, they are public officers according to the longstanding definition applied by the Florida Supreme Court:

A person, in the service of the government, who derives his (or her) position from a duly and legally authorized election or appointment, whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining though the incumbent dies or is changed, \* \* \* is a public officer \* \* \*; every “office,” in the constitutional meaning of the term, implying an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws.<sup>33</sup>

In 1961, the Constitution required the Legislature to provide for election or gubernatorial appointment of all public officers.<sup>34</sup>

### Financial Issues of the District

The District built and operated a 25-bed critical access hospital, employing up to 100 employees in the Campbellton-Graceville area, a community of about 2,000.<sup>35</sup> Over the years, the services of the hospital grew to include comprehensive medical care, emergency services, general hospitalization, x-ray and laboratory services, swing bed, and physical therapy. In addition to annual ad valorem tax

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<sup>30</sup> *O’Malley v. Florida Insurance Guaranty Association*, 257 So. 2d 9, 11 (Fla. 1971). For purposes of the prohibition against incorporation by special act, the Court relied on the purpose and function of the entity as opposed to the form of ownership as a “privately held” or “publicly traded” corporation.

<sup>31</sup> Composed of the Governor and Cabinet. *See* art. III, s. 17, Fla. Const. (1885). The Board was eliminated in the 1968 Constitution.

<sup>32</sup> Ch. 61-2290, s. 6, Laws of Fla.

<sup>33</sup> *State ex rel. Clyatt v. Hocker*, 22 So. 721, 723, 39 Fla. 477, 485-486 (1897), quoting Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers*, §§1-9 (Chicago 1890), at

[https://books.google.com/books?id=UahCAAAAYAAJ&printsec=frontcover&dq=Floyd+R.+Mechem&hl=en&sa=X&ved=0ahUKEwjHyZPkq\\_TYAhVR61MKHTBdD3MQ6AEIMzAC#v=onepage&q=Floyd%20R.%20Mechem&f=false](https://books.google.com/books?id=UahCAAAAYAAJ&printsec=frontcover&dq=Floyd+R.+Mechem&hl=en&sa=X&ved=0ahUKEwjHyZPkq_TYAhVR61MKHTBdD3MQ6AEIMzAC#v=onepage&q=Floyd%20R.%20Mechem&f=false) (last accessed 1/25/2018).

<sup>34</sup> Art. III, s. 27, Fla. Const. (1885).

<sup>35</sup> Doc. 184, “Transcript of Hearing July 20, 2017,” filed in Case No. 17-40185-KKS (8/2/2017), 13. Where indicated, the facts in this analysis are drawn from the filings in that pending bankruptcy case.

levies imposed by the County Commission under the District's enabling act, the hospital also qualified to receive Medicare and Medicaid payments.<sup>36</sup>

In 2015, the Board of Trustees for CGHC contracted with Peoples' Choice Hospital, Inc. (PCH), for healthcare management and related services. The District contracted to pay PCH a monthly consulting fee of \$30,000 and gave PCH a secured interest in all of the hospital's assets. According to representations made in the bankruptcy case, PCH implemented a "reference lab program" under which specimens were sent to the hospital for lab tests from other areas of the country in a scheme to obtain higher payments at the rates provided to rural hospitals.<sup>37</sup> PCH also installed a proprietary health information and billing system into which the records and accounts of the hospital were placed. Problems with the PCH's management and operation of the hospital led CGHC in June 2016 to sue to prevent PCH from continuing to access the hospital's financial accounts and to bar PCH from the hospital property. PCH counterclaimed and removed the hospital's access to the proprietary information and billing system. Without access to the proprietary patient health information and billing system, the hospital was unable to comply with its statutory reporting obligations and submitting proper cost reports to the Center for Medicare and Medicaid Services. As a result of the failure to file cost reports, the hospital ceased receiving Medicare and Medicaid reimbursements effective in February 2017.<sup>38</sup>

Because of the reference lab program set up by PCH, in August 2016 the Office of the Inspector General of U.S. Office of Personnel Management and an insurance investigator for Blue Cross Blue Shield both began investigations of the hospital for alleged fraudulent and illegal billing practices.<sup>39</sup>

### Bankruptcy of CGHC

Due to the ongoing financial problems caused by the dispute with PCH, on May 3, 2017, the Board of CGHC voted to seek relief under chapter 11 of the U.S. Bankruptcy Code.<sup>40</sup> The petition for relief was filed on May 5, 2017.<sup>41</sup> In the bankruptcy filings CGHC claimed all assets of the District, including real property (primarily the hospital facility) with an estimated value of \$567,393 and personal property estimated at \$4,056,452.92. CGHC estimated its liabilities at \$11,300,292.89.<sup>42</sup> The record of the bankruptcy case suggests CGHC closed the hospital portion of the property but continued operating a clinic.<sup>43</sup>

In a motion filed with the Bankruptcy Court on July 5, 2017, seeking an emergency order to sell substantially all assets, CGHC alleged:

The Debtor's main priority is to be able to continue to provide healthcare to the community. If the Debtor is unable to consummate a sale of its assets to the Buyer, as contemplated by this Motion, the Debtor believes that the Debtor will be forced to cease all healthcare services to the community. The proposed transaction contemplates continued healthcare in the community and the opportunity to maintain some jobs and the prospect of more services and jobs in the future.<sup>44</sup>

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<sup>36</sup> Doc. 341, "Joint Disclosure Statement In Connection With Chapter 11 Plan of Liquidation of Campbellton-Graceville Hospital Corporation Filed by the Debtor and the Official Committee of Unsecured Creditors," (12/29/2017) (Disclosure Statement), 10-15.

<sup>37</sup> Doc. 184, *supra* at 32-36.

<sup>38</sup> Doc. 341, *supra* at 10-15.

<sup>39</sup> *Id.*

<sup>40</sup> 11 U.S.C. s. 101, et seq.

<sup>41</sup> Doc. 1, "Voluntary Petition for Non-Individuals Filing for Bankruptcy," filed in Case No. 17-40185-KKS (5/5/2017) (Bankruptcy Case). All bankruptcy documents cited are available through the PACER service for the U.S. Bankruptcy Court, Northern District of Florida.

<sup>42</sup> Doc. 133, "Amended Summary of Schedules, etc." (6/21/2017).

<sup>43</sup> Doc. 230, "Debtor's Emergency Motion to Approve Lease Agreement, with Purchase Option, By and Between (I) the Debtor, Campbellton-Graceville Hospital Corporation; and (II) Northwest Florida Healthcare, Inc." (9/7/2017).

<sup>44</sup> Doc. 144, "Statement of Need for Emergency Hearing" (7/5/2017).

Subsequently, CGHC sought court authority to enter a lease agreement with an option to purchase the hospital property with Northwest Florida Healthcare, Inc. (NWFH).<sup>45</sup> CGHC informed the Bankruptcy Court that the terms of the special act creating the District “may prohibit the conveyance of the real property” and that CGHC would “work diligently to have the law...clarified to clearly permit such conveyance.”<sup>46</sup> A condition precedent to final closing was obtaining consent to the sale from the Florida Attorney General’s Office.<sup>47</sup> After a subsequent hearing on the issue,<sup>48</sup> the Bankruptcy Court granted the motion<sup>49</sup> and NWFH currently operates and manages the property under the terms of the approved lease.<sup>50</sup>

In May and June 2017, CGHC received a portion of the ad valorem taxes levied by the County Commission for the District.<sup>51</sup> The cumulative amount of ad valorem tax receipts collected by CGHC through December 2017 was \$24,301.88.<sup>52</sup>

According to its counsel, CGHC had three major issues to resolve in the bankruptcy. First, to resolve the pending litigation with PCH, which was settled with approval of the Bankruptcy Court.<sup>53</sup> Second, to sell or lease the facility or find some other solution to continue providing medical care in the immediate community. Finally, to resolve the outstanding litigation claims both of and against CGHC.<sup>54</sup> Since the filing of the bankruptcy case, significant effort was put into meeting these goals. As a result, the Bankruptcy Court approved a series of interim or final applications for awards of fees and costs by various professionals previously approved to provide services, including total fees of \$416,727.50 and total expenses of \$20,750.49.<sup>55</sup>

#### Applicable Requirements of Ch. 155, F.S.

If the governing board of a hospital district determines to sell the hospital, the sale may be to a for-profit or not-for-profit Florida corporation and must be determined by the board to be in the public interest.<sup>56</sup> The lease, contract, or agreement between the district and the corporation must include:<sup>57</sup>

- Articles of incorporation of the corporation purchasing the hospital;
- Qualification under s. 501(c)(3) of the Internal Revenue Code for a not-for-profit corporation;
- Provisions for the orderly transition of operation and management of the facilities;
- Provide for the continued treatment of indigent patients pursuant to law.

If the district determines it is no longer in the best interest of the community to own or operate a hospital, the governing board of the district must determine if there are any qualified purchasers or

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<sup>45</sup> Doc. 230, *supra*.

<sup>46</sup> Doc. 230, *supra* at 4.

<sup>47</sup> Doc. 184, *supra* at 29, 57; Doc. 185, *supra* at 6, 8.

<sup>48</sup> See Doc. 238, Hearing held and motion in Doc 230 granted (9/20/2017).

<sup>49</sup> Doc. 248, “Order Granting Debtor’s Emergency Motion to Approve Lease Agreement, etc.” (9/22/2017).

<sup>50</sup> Doc. 230-1, “Lease Agreement, etc.” (9/7/2017). The initial term of the lease is 12 months.

<sup>51</sup> The receipts in May 2017 were \$9,248.53. Doc. 135, “Debtor’s Standard Monthly Operating Report for the Period May 5, 2017 to May 31, 2017” (6/22/2017). The receipts in June 2017 were \$15,053.35. Doc. 392, “Debtor’s Standard Monthly Operating Report for the Period June 1, 2017 to June 30, 2017” (1/25/2018).

<sup>52</sup> Doc. 384, “Debtor’s Standard Monthly Operating Report for the Period December 1, 2017 to December 31, 2017” (1/22/2018).

<sup>53</sup> See Doc. 82, “Notice of Filing Fully Executed Settlement Agreement Between (I) Debtor, Campbellton-Graceville Hospital Corporation; (II) the People’s Choice Hospital, LLC and Certain Related Parties” (5/19/2017).

<sup>54</sup> Doc. 184, *supra* at 13-18.

<sup>55</sup> Doc. 278, Order awarding interim fees (\$133,562) and expenses (\$11,837.80) to Berger Singerman LLP [bankruptcy counsel for CGHC] (10/24/2017); Doc. 284, Order awarding interim fees (\$159,665.50) and expenses (\$6,321.30) to Broad and Cassell, LLP [counsel for the unsecured creditors committee] (10/27/2017); Doc. 292, Order awarding interim fees (\$5,967.50) and expenses (\$41.30) to Ausley McMullen (11/8/2017); Doc. 293, Order awarding interim fees (\$73,387.50) and expenses (\$2,533) to Blankenship Jordan [corporate counsel for CGHC] (11/8/2017); and Doc. 294, Order awarding final fees (\$44,145) and expenses (\$17.09) to Lubell Rosen [special health care counsel to CGHC] (11/8/2017).

<sup>56</sup> Section 155.40(1), F.S.

<sup>57</sup> Section 155.40(2), F.S.

lessees. The governing board must hold a publicly advertised meeting on any proposed sale or lease and must publicly advertise any offer to accept a proposal. The sale or lease must generally be for fair market value, but may be a lesser amount if determined to be in the best interest of the affected community.<sup>58</sup>

The governing board must make a written determination that the sale or lease:<sup>59</sup>

- Is for fair market value, as determined by a certified public accounting firm or other qualified firm, or a detailed explanation of why a sale for less than fair market value is in the best interest of the affected community;
- Reduces or eliminates ad valorem or other taxes;
- Includes an enforcement commitment that programs and services will continued to be provided to all residents of the community, particularly the indigent, uninsured, and underinsured.
- Presents the need for disclosure any conflicts of interest for the governing board of the district, key management employees of the district, or members of the medical staff of the hospital, including when members of the district's board will service on the board will serve on the board of the corporation;
- Presents the need for disclosure of any contracts between physicians or other entities with the seller or lessor for the provision of health care services
- Complies with notice and public comment requirements.

The findings also must identify the parties to the transaction, the location of the facilities to be sold, a description of contract terms, a copy of the proposed sale or lease agreement, the estimate value associated with the proposed agreement, the proposed acquisition price, any valuations of hospital assets prepared during the last three years before the transaction, a fair market value analysis, and copies of other bids and proposals received by the district.<sup>60</sup> The findings must be published within 120 days before the anticipated closing date of the sale in a newspaper of general circulation in the county in which a majority of the physical assets of the hospital are located.<sup>61</sup> The public may submit written comments regarding the sale for 20 days after the date of publication of the public notice.<sup>62</sup>

The sale or lease of a public hospital is subject to approval by the Secretary of Health Care Administration or his or her designee, unless a special act provides that the sale or lease may only occur upon approval by registered voters in the county, district, or municipality in which the hospital or health care system is located.<sup>63</sup> The governing board of the district must file a petition at least 30 days after the publication of the notice of the proposed transaction with the Secretary of Health Care Administration.<sup>64</sup> The petition must contain the finding and documents approved the county, as well as certification of compliance with all of the requirements of s. 155.40, F.S.<sup>65</sup> A final order approving or denying the sale must be rendered within 30 days of receiving the petition.<sup>66</sup> Any interested party has a right to seek judicial review of the final order in either the appellate district where the hospital is located or in the First DCA.<sup>67</sup>

After the hospital is sold, any special district tax authority associated with the hospital subject to the sale shall cease on the effective date of the closing date of the sale.<sup>68</sup>

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<sup>58</sup> Section 155.40(6), F.S.

<sup>59</sup> Section 155.40(7)(a), F.S.

<sup>60</sup> Section 155.40(7)(b), F.S.

<sup>61</sup> Section 155.40(8), F.S.

<sup>62</sup> Section 155.40(9), F.S.

<sup>63</sup> Section 155.40(10), F.S.

<sup>64</sup> Section 155.40(10)(a), F.S.

<sup>65</sup> Section 155.40(10)(b), F.S.

<sup>66</sup> Section 155.40(11), F.S.

<sup>67</sup> Section 155.40(12), F.S.

<sup>68</sup> Section 155.40(15), F.S.

Upon completion of the sale, the governing board of the district is required to deposit 50 percent of the net proceeds into a health care economic development trust fund under the control of the county commission (or municipal commission, in the case of a district that serves a specific municipality).<sup>69</sup> The county or municipal governing body serves as trustee of the fund, which is distributed in consultation with the Department to Economic Opportunity, to promote job creation in the health care sector through health care business development, health care services, or health care education programs, or commercialization of health care research within the affected community. The governing board of the district is required to appropriate the remaining 50 percent of net proceeds to the delivery of indigent care services.<sup>70</sup>

### Pending Sale to NWFH

The present lease to NWFH is of limited duration and CGHC has repeatedly expressed concern in public statements filed with the Bankruptcy Court that significant value would be lost if the sale cannot be completed.<sup>71</sup> CGHC also has expressed concern that failure to complete the sale would result in closing of the presently-operating clinic, resulting in a loss of health care services in the community as well as a loss of significant employment. Consequently, the Bankruptcy Court accepted testimony on the value of the assets<sup>72</sup> and entered an order authorizing CGHC and NWFH to enter into the lease agreement with purchase option.<sup>73</sup>

### Effect of the Bill

CS/HB 1449 resolves the constitutional questions posed by the original bill by stating the facts applicable to the creation of the District and CGHC. The findings include the conclusion that assets developed and acquired through the operation of the District belong to the District for the benefit of the residents of the District.

The bill creates an exception to general law. The District would be able to complete the pending sale to NWFH by providing written, detailed findings of all reasons for accepting the proposal, including how the sale satisfies each of the following requirements:

- The sale represents fair market value, as determined by a certified public accounting firm or other qualified firm. If sold at less than fair market value, the Board must provide a detailed explanation of how the best interests of the community are served by accepting less than fair market value for the sale of the hospital.
- How accepting the proposal will result in a reduction or elimination of ad valorem or other taxes for taxpayers in the district.
- There is an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the community, particularly to the indigent, the uninsured, and the underinsured.
- Disclosure has been made of all conflicts of interest, including, but not limited to, whether the sale of the hospital would result in a special private gain or loss to members of the Board or key management employees or members of the medical staff of the district hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board shall also be disclosed.
- Disclosure has been made by the District of all contracts with physicians or other entities providing health care services through a contract with the District, including all agreements or contracts that would be void or voidable upon the consummation of the sale or lease.<sup>74</sup>

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<sup>69</sup> Section 155.40(16)(a), F.S.

<sup>70</sup> Section 155.40(16)(b), F.S.

<sup>71</sup> See Doc. 184, *supra* 24-28

<sup>72</sup> Doc. 185, "Transcript of Hearing 7/27/2017," 9-14 (8/2/2017).

<sup>73</sup> Doc. 248, "Order Granting Debtor's Emergency Motion to Approve Lease Agreement, with Purchase Option, By and Between (I) the Debtor, Campbellton-Graceville Corporation (*sic*); and (II) Northwest Florida Healthcare, Inc." (9/22/2017).

<sup>74</sup> See s. 155.40(7)(a)1.-5., F.S.



The bill provides that on the date the sale is closed, sections 4 and 5 of ch. 61-2290, Laws of Florida, are repealed and the County Commission may no longer levy the ad valorem taxes. After completing the sale, the District would not dissolve but would retain possession of all remaining assets not subject to the sale. The District would then wind up its affairs.<sup>75</sup>

Sections 2, 3, and 4 of the bill provide an exception to general law to facilitate the sale, provide for the continuation of the District after the sale, and repeal the authority of the County Commission to levy the ad valorem taxes, go into effect only on the date the pending bankruptcy is dismissed or the case converted to the municipal bankruptcy of the District under ch. 9 of the Bankruptcy Code.<sup>76</sup>

**B. SECTION DIRECTORY:**

Section 1: Makes legislative findings.

Section 2: Provides an exception to general law for the sale of the District's hospital, requires compliance with certain statutes pertaining to such sale, and requires the District to retain all funds remaining after satisfying all valid liens and debts of the District.

Section 3: Provides the District will not be dissolved upon the completion of the sale but will retain full authority to wind up its affairs.

Section 4: Provides sections 4 and 5 of ch. 61-2290, Laws of Fla., are repealed and the County Commission may no longer levy the hospital district ad valorem tax upon the closing of the sale.

Section 5: Provides sections 2, 3, and 4 of the act go into effect only on the date of an order of the Bankruptcy Court dismissing the bankruptcy case filed by CGHC or converting the case to a municipal bankruptcy proceeding under chapter 9 of the Bankruptcy Code; providing sections 1 and 5 go into effect on the date the act becomes law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 30, 2017

WHERE? Jackson County Times, Jackson 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

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<sup>75</sup> See s. 155.40, F.S.

<sup>76</sup> For the purposes of bankruptcy filing, the District is a "local government entity" that must seek and receive the permission of the Governor before filing a petition under chapter 9 of the Bankruptcy Code. See ss. 218.502, 218.503(5), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

None.

#### B. RULE-MAKING AUTHORITY:

The PCS neither authorizes nor requires executive branch rulemaking.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Issues with HB 1449 as Filed

The original bill as filed would add five new sections to ch. 61-2290, Laws of Florida, recognize CGHC as a corporation separate from the District, authorize the board of CGHC and the District to sell the hospital assets and exempting such sale from ch. 155, Florida Statutes, ratify all decisions of CGHC to enter all past or future leases or contracts for sale, authorize CGHC and the District to lease or sell all of the hospital property, and, if such sale was completed, dissolve the district but transfer all remaining assets (net of paying outstanding debts of the District) to CGHC which would continue in existence.

The original bill presented two constitutional problems due to the allegations of CGHC to be a corporation separate and distinct from the District. Under the Bankruptcy Code, no government entity or unit may be a debtor in a case under chapter 11.<sup>77</sup> If CGHC is a proper debtor under chapter 11, it is not a governmental entity. The proposed ratification of prior actions taken by CGHC, retention of net assets from the sale of the hospital properties, and retention of causes of action including those against PCH, would appear to provide a benefit to a private corporation (as opposed to public purpose entity).<sup>78</sup> The Florida Constitution prohibits enacting a special law that grants a privilege to a private corporation.<sup>79</sup>

The second constitutional problem concerns the nature of the hospital assets. Apparently, all assets claimed by CGHC in the pending bankruptcy are derived from the acquisition, development, and operation of property for hospital purposes under ch. 61-2290, Laws of Florida, as amended. The creation of the taxing District and subsequent tax levies appears to indicate the hospital assets were acquired through the District, rendering them public assets. The Florida Constitution prohibits enacting a special law disposing of private property or any interest therein for private purposes.<sup>80</sup>

However, if ch. 61-2290, Laws of Florida, as amended, is interpreted consistently with the limitation placed on the Legislature by the Florida Constitution<sup>81</sup> as creating the District with CGHC simply being the District's Board, then the pending sale is between the District and NWFH. Current statute authorizes entities such as the District to sell publicly owned hospitals to private entities in an open process to ensure the best value is obtained.<sup>82</sup>

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<sup>77</sup> A "debtor" is a person or a "municipality" as further defined in the Bankruptcy Code. 11 U.S.C. s. 101(13). The definition of "person" excludes a "municipality." 11 U.S.C. s. 101(41). A "municipality" is defined as a political subdivision, public agency, or instrumentality of a state. 11 U.S.C. s. 101(40). Only a person that may be a debtor under ch. 7 of the Bankruptcy Code may be a debtor under ch. 11. *See* 11 U.S.C. s. 109(d).

<sup>78</sup> *See O'Malley v. Florida Insurance Guaranty Association*, *supra* note 30.

<sup>79</sup> Art. III, s. 11(a)(12), Fla. Const. (1968).

<sup>80</sup> Art. III, s. 11(a)(10), Fla. Const. (1968).

<sup>81</sup> Art. III, s. 25, Fla. Const. (1885).

<sup>82</sup> Ch. 155, F.S.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 29, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted the proposed committee substitute for HB 1449 and approved PCS for HB 1449 as a committee substitute.

The bill as filed would add five new sections to ch. 61-2290, Laws of Florida, recognize CGHC as a corporation separate from the District, authorize the board of CGHC and the District to sell the hospital assets and exempting such sale from ch. 155, Florida Statutes, ratify all decisions of CGHC to enter all past or future leases or contracts for sale, authorize CGHC and the District to lease or sell all of the hospital property, and, if such sale was completed, dissolve the district but transfer all remaining assets (net of paying outstanding debts of the District) to CGHC which would continue in existence.

The committee substitute confirms the legislative intent for ch. 61-2290, Laws of Florida, was to create the District and form its governing board for the benefit of the people in the District, not create a private, non-profit corporation separate from the District. The committee substitute finds the assets of the District obtained by public funds are public assets. The committee substitute exempts the District from the legal requirements for selling a publicly-owned hospital except for the requirements of s. 155.40(7)(a)1. through 5., F.S., requires the District to remain in existence to wind up its affairs after the sale of its main real estate assets, and provides the County's authority to impose ad valorem taxes for the hospital district terminates on the date of closing the asset sale. Under the committee substitute, sections 2, 3, 4 of the act would not go into effect until the date of a Bankruptcy Court order dismissing or converting the pending bankruptcy to a case under chapter 9, but sections 1 and 5, the findings and the effective date provision, go into effect when the bill becomes law.

This analysis is drawn to the committee substitute approved by the Local, Federal & Veterans Affairs Subcommittee.