

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1260

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Conversion of a Public Health Care System

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	Favorable
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1260 creates s. 189.0762, F.S., which provides a procedure for an independent hospital district to convert into a private non-profit entity by following the steps that are specified in the bill.

The governing body of the district may vote to evaluate the benefits of conversion for residents of the district. If the governing body of the district determines conversion is in the best interests of the district's residents, the governing body may negotiate an agreement with the governing body of each county in which any part of the district's boundary is located. This agreement must be in writing and include the terms and conditions necessary for both disposing of the assets and liabilities of the system and ensuring health care services are provided to the district's residents.

After completing the negotiation, the governing body of the district and each county that is a party to the agreement may elect to approve the conversion of the district to a private non-profit entity, subject to providing documentation to the public before the vote to approve of the conversion. If the district levies ad valorem taxes, the conversion must be approved by the electors of the district voting in a referendum held during the next general election.

Upon final approval by all required entities, the conversion agreement shall go into full force and effect.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Hospitals

Hospitals are licensed by the Agency for Health Care Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II, of ch. 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.¹ Hospitals must, at a minimum, make clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment, regularly available.² Currently, there are 311 hospitals licensed in Florida, of which 153 are for-profit and 158 are nonprofit.³

Hospital and Health Care 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.⁴ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.⁵ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.⁶ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁷ Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.⁸

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 the governing body of a single county or municipality.⁹ An “independent special district” is any district that is not a dependent special district.¹⁰

Hospital and health care districts are a type of independent special district specializing in the provision of health care services. As of January 20, 2022, there were 31 active hospital and health care districts: 28 that directly operate health care facilities and 3 that provide oversight for

¹ Section 395.002(13), F.S.

² Id.

³ Florida Health Finder search, available at <https://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 19, 2022).

⁴ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

⁵ See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

⁶ *Halifax Hospital Medical Center*, *supra* at 547.

⁷ 2020 – 2022 *Local Gov’t Formation Manual*, p. 64, available at

<https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3117> (last visited Jan. 26, 2022).

⁸ The method of financing a district must be stated in its charter. Ss. 189.02(4)(g), 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2017-220, s. 6(6) of s. 3, Laws of Fla. (Sunbridge Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), 388.221 (mosquito control), ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

⁹ Section 189.012(2), F.S.

¹⁰ Section 189.012(3), F.S.

facilities leased by local governments to private sector entities.¹¹ The charters of hospital and health care districts generally possess a set of core features: a board appointed by the Governor; the authority to build and operate hospitals; the power of eminent domain; the ability to issue bonds payable from ad valorem taxes; the use of ad valorem tax revenue for operating and maintaining hospitals; and providing that such facilities are established for the benefit of the indigent sick.¹²

Many of the state's largest hospital systems are classified as hospital and healthcare special districts created under special act, described below.:

Halifax Health

Halifax Health is located in Daytona Beach, Florida, and is the area's largest healthcare provider. It has 944 licensed beds and over 500 physicians on staff. The hospital provides a number of services including having a Level II trauma center, comprehensive stroke center, neonatal and pediatric intensive care units, child and adolescent behavioral services, and kidney transplant program. It also provides psychiatric services, a regional cancer program with four outreach centers, the area's largest hospice organization, and a preferred provider organization. Halifax Health is a legislatively chartered taxing healthcare organization governed by a Board of Commissioners appointed by the Governor.¹³

Lee Health

Lee Health has been open since 1916 and is one of the top five largest public health systems in the United States and the largest community-owned health system in Southwest Florida. The health system has 1,423 beds and is made up of four acute-care hospitals and two specialty hospitals, as well as outpatient centers, walk-in medical centers and primary care physician offices. Lee Health provides regional programs, such as the only children's hospital, the only Level II trauma center and the only kidney transplant center between Tampa and Miami. The system has a medical staff of nearly 1,200 Lee County physicians, 4,500 volunteers and 9,300 employees. Lee Health is governed by a 10-member publicly elected board.¹⁴

Memorial Healthcare System

The Memorial Healthcare System has 1,978 beds and is among the nation's largest public healthcare systems. The system consists of a hospital, a freestanding children's hospital, nine primary care centers, four community hospitals, a nursing home, two urgent care centers, a large freestanding 24/7 care center, and a home health agency.

Memorial Regional Hospital, located in Hollywood, is the flagship of the system and one of the largest hospitals in Florida. It offers extensive and diverse services that include Memorial

¹¹ Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 26, 2022).

¹² Florida TaxWatch, *Florida's Fragmented Hospital Taxing District System in Need of Reexamination*, Briefings (Feb. 2009), available at <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination> (last visited Jan. 26, 2022).

¹³ Id.

¹⁴ Id.

Transplant Institute, Memorial Cardiac and Vascular Institute, Memorial Cancer Institute and Memorial Neuroscience Institute.

Memorial Regional Hospital South is also located in Hollywood and offers medical and surgical services and houses Memorial Rehabilitation Institute, an 89-bed, inpatient comprehensive rehabilitation hospital.

Joe DiMaggio Children's Hospital is located in Broward and Palm Beach counties with major services in pediatric cardiology, including surgery and transplantation, oncology, orthopedics and neurosciences.

Memorial Hospital Miramar and Memorial Hospital Pembroke serve western Broward County as community hospitals. Additionally, Memorial Hospital West, which houses Memorial Cancer Institute, Moffitt Malignant Hematology & Cellular Therapy at Memorial Healthcare System, Memorial Manor nursing home, and a variety of ancillary healthcare facilities rounds out the system. Memorial Healthcare System is governed by a seven-member Board of Commissioners appointed by the Governor.¹⁵

Sarasota Memorial Health Care System

Sarasota Memorial Health Care System is an 839-bed medical center with over 6,000 staff and 1,000 physicians. Founded in 1925, Sarasota Memorial provides specialized expertise in cardiac, vascular, oncology, maternity and neuroscience services, as well as a complete continuum of care, with a network of outpatient and urgent care centers, physician practices, rehabilitation and skilled nursing, among other programs.

The region's only public hospital, Sarasota Memorial is governed by the Sarasota County Public Hospital Board, made up of nine unpaid citizens elected by local voters. It is the only hospital in Sarasota County providing trauma services, obstetrical care, pediatrics, neonatal intensive care, and psychiatric services for patients of all ages. Sarasota Memorial also operates a Community Medical Clinic, which provides specialty care for uninsured and underinsured residents.¹⁶

Broward Health

Broward Health is has been located in South Florida for more than 80 years. Broward Health includes four major hospitals and more than 30 locations and offices overall. The staff of Broward Health includes over 1,800 doctors and 8,000 other healthcare professionals.¹⁷

Broward Health is governed by a seven-member Board of Commissioners, each appointed by the governor to a four-year term. The terms are staggered to expire in alternate years. Five commissioners represent specific regions within Broward County while the other two are at-large members. The Board exercises budgetary authority, selects the senior executive management, participates in the fiscal management, provides taxing authority, and determines the scope of

¹⁵ Id.

¹⁶ Id.

¹⁷ Broward Health Services, Broward Health, available at <https://www.browardhealth.org/services> (last visited Jan 20, 2022).

services to be provided to the community. The President/CEO of the North Broward Hospital District reports to the Board.¹⁸

Non-for-Profit Corporations

Not-for-profit corporations are regulated by the Florida Not For Profit Corporation Act (Non-Profit Act), which outlines the requirements for creating and managing a private not-for-profit corporation as well as the powers and duties of the corporation.¹⁹ The Non-Profit Act authorizes not-for-profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.²⁰ The Non-Profit Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.

Florida law authorizes not-for-profit corporations to operate with the same degree of power provided to for-profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.²¹ Officers and directors of certain not-for-profit corporations are also protected by the same immunity from civil liability provided to directors of for-profit corporations.²² Unlike for-profit corporations, certain not-for-profit corporations may apply for exemptions from federal, state, and local taxes.²³

Not-for-profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the laws of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in Florida;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether application has been made for one;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in Florida and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Non-Profit Act.²⁴

¹⁸ Broward Health Board Information, Broward Health, available at <https://www.browardhealth.org/pages/board-calendar-2022> (last visited Jan. 20, 2022).

¹⁹ Ch. 90-179, L.O.F.

²⁰ Section 617.0301, F.S.

²¹ Sections 617.0302 and 607.0302, F.S.

²² Sections 617.0834 and 607.0831, F.S.

²³ See, e.g., 26 U.S.C. s. 501, s. 212.08(7)(p), F.S.

²⁴ Section 617.1622, F.S.

A not-for-profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as “moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose.”²⁵ The state or a local government may provide public funds to a not-for-profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.²⁶

III. Effect of Proposed Changes:

The bill authorizes the governing body of an independent hospital district to elect by a majority vote plus one to evaluate the potential conversion of the district into a private non-profit entity organized as a Florida not-for-profit corporation. The governing body must consider the potential benefits of conversion for the residents of the district and:

- Conduct a properly-noticed public hearing to provide residents of the district an opportunity to testify (the hearing must be held at a meeting other than a regularly-noticed or emergency meeting of the district);
- Contract with an independent entity that has at least five years of experience conducting comparable evaluations of hospital organizations similar in size and function to the district to conduct an evaluation according to applicable industry best practices (the independent entity may not have any affiliation with or financial involvement in the district or any member of its governing body); and
- Make available to the public on its website all documents considered by the governing body in making its determination.

The evaluation must be completed and a final report of the independent entity presented to the district by no later than 180 days after the date the vote was taken to authorize the evaluation. The final report must include a statement signed by the presiding officer of the governing board of the district and the chief executive officer of the independent entity conducting the evaluation that, upon each person's reasonable knowledge and belief, the contents and conclusions of the evaluation are true and correct.

Within 120 days of receipt of the final report, the governing body of the district must determine, by majority vote plus one, whether the interests of residents of the district are best served by conversion. If the governing body determines conversion is in the best interest of residents, the district must negotiate and complete an agreement with the board of county commissioners for each county in which any part of the district's boundary is located.

The agreement between the governing body of the district and each county commission must be completed no later than 120 days after the date of the public meeting during which the governing

²⁵ Section 215.85(3)(b), F.S.

²⁶ See, e.g., S. 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); S. 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee's membership in a professional organization not required by his or her job).

body of the district determined conversion was in the best interest of residents. The agreement must be in writing, dispose of all assets and liabilities of the district, and include:

- A description of each asset and liability that will be transferred to each county;
- The estimated total value of the assets and liabilities that will be transferred to each county;
- If the agreement is with more than one county, a description of the methodology used to allocate the assets and liabilities of the district between the counties;
- A description of all assets and liabilities that will be transferred to the succeeding non-profit entity;
- The total value of assets and liabilities that will be transferred to the succeeding non-profit entity;
- If any debts remain, how those debts will be resolved,
- An enforceable commitment that programs and services provided by the district will continue to be provided to all residents of the district in perpetuity, so long as the non-profit entity is in operation (or, if otherwise agreed to by the district and each county that is a party to the agreement, until the non-profit entity has otherwise met all obligations set forth in the agreement);
- A provision that transfers the rights and obligations agreed to by the district and each county that is a party to the agreement to the successor nonprofit entity upon conversion of the district; and
- Any other terms or conditions mutually agreed upon by the district and each county that is a party to the agreement.

The bill prohibits any member of the board of commissioners for any county that is a party to the agreement from serving on the board of the successor nonprofit entity, but allows for members of the district's governing body to serve on the board of the successor entity. Members of the governing body of the district and the board of commissioners of each county that is a party to the agreement must disclose all conflicts of interest as required by s. 112.313, F.S., including, but not limited to:

- Whether the conversion of the district will result in a special private gain or loss to any member of the governing body of the district or boards of commissioners or to any senior executives of the independent hospital district; and
- If any member of the governing body of the district will serve on the board of the successor nonprofit entity (intent to serve on the board of the successor nonprofit entity does not disqualify a member from voting on the proposed conversion).

Upon completion of the agreement, the governing body of the district may agree, by a majority vote plus one at a public meeting that is not a regularly-scheduled or emergency meeting of the district, to approve of the conversion of the district to a non-profit entity and any agreements related to the conversion. The agreement must also be approved by the board of commissioners of each county that is subject to the agreement at a properly noticed public meeting. Both the district and each county that is subject to the agreement must publish all evaluations, agreements, disclosures, and other documents supporting the conversion on their websites for at least 20 days before the vote to approve of the conversion.

If the governing bodies of the district and each county subject to the agreement approve of the proposed agreement, a referendum of the qualified electors of the district must be conducted at

the next general election if the district levies ad valorem taxes. Once approved by all required entities the agreement shall go into full force and effect. The district must file a copy of the agreement with the Department of Economic Opportunity no later than ten days after the date of the referendum approving the agreement.

Within 30 days of completing the transfer of assets and liabilities as provided in the agreement, the district must notify DEO that the transfer is complete. The district is deemed automatically dissolved upon receipt of the notice.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Subsection (2) of the committee substitute refers to “an agreement that meets the requirements of subsection (4).” However, the requirements of the agreement appear to be laid out in subsection (5).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 189.0762 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Community Affairs on February 2, 2022:

The committee substitute moves the bill from ch. 155 F.S., to ch. 189 F.S., to make the conversion applicable to independent hospital districts rather than public healthcare systems and makes the following provisions:

- Requires an independent evaluation of a conversion to be performed by an independent entity that has at least 5 years of experience conducting comparable evaluations of hospital organizations similar in size and function.
- Requires the evaluation of a conversion to be presented to the governing body of the hospital district no later than 180 days after the date a vote is taken.
- Allows the governing board 120 days after the date they receive the final report to determine whether the best interests of the residents of the district are served by converting to a nonprofit.
- Provides that an agreement between a hospital district and each county in which part of the district boundary is located must be completed no later than 120 days after the vote of the governing body for conversion. Such agreement must be made during a properly noticed meeting.
- Amends the list of provisions to be included an agreement, including how debts will be resolved if they exist.
- Requires members of the governing board of the independent district and any county commissioners to disclose all conflicts of interest relating to the conversion.
- Requires an agreement to be approved by the qualified electors of the independent hospital district voting in a referendum conducted at the next general election for any independent hospital district that exercise ad valorem taxing powers.

B. Amendments:

None.