

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 897 Independent Hospital Districts

SPONSOR(S): State Affairs Committee; Local Administration & Veterans Affairs Subcommittee; Botana

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1260

FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's

GOVERNOR'S ACTION: Vetoes

SUMMARY ANALYSIS

CS/CS/HB 897 passed the House on March 4, 2022, as CS/SB 1260 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 8, 2022.

Hospital districts are a type of independent special district specializing in the provision of health care services. The charters of hospital 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. Florida law provides a process for the lease or sale of special district hospitals or hospital systems, but provides no process for the conversion of a district into another type of entity.

The bill establishes a procedure for any of Florida's 26 independent hospital districts to individually convert into a private non-profit entity. The governing body of the district may vote, by a majority vote plus one, to evaluate the benefits of conversion for residents of the district and must:

- Conduct public hearings;
- Contract with an independent entity meeting certain criteria to render a certified, independent evaluation; and
- Make documentation supporting conversion available to the public via the district's website.

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, collects, or receives ad valorem taxes in the current fiscal year and preceding five fiscal years, 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 goes into full force and effect. Once the district completes the transfer of its assets and liabilities as provided in the agreement, the district must submit a notice to the Department of Economic Opportunity that the transfer is complete and the district is deemed automatically dissolved upon receipt of the notice by the department.

The bill may have a positive effect on state revenues and no impact on state expenditures. The bill has no fiscal impact on local government.

The effective date of this bill was July 1, 2022; however, this bill was vetoed by the Governor on June 24, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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.¹ Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.² A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.³ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁴ Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.⁵

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.⁶ An “independent special district” is any district that is not a dependent special district.⁷

According to the Department of Economic Opportunity’s Special District Accountability Program Official List of Special Districts, as of January 20, 2022, the state had 1,834 special districts.⁸ There were 1,216 independent special districts and 618 dependent districts.

Special districts are governed generally by the Uniform Special District Accountability Act (Special District Act).⁹ The Special District Act centralizes provisions governing special districts and applies to the formation,¹⁰ governance,¹¹ administration,¹² supervision,¹³ merger,¹⁴ and dissolution¹⁵ of special districts, unless otherwise expressly provided in law.¹⁶ The Special District Act requires notice and publication of tentative budgets and final budgets.¹⁷ Certain budget amendments are allowed up to 60 days following the end of the fiscal year.¹⁸

¹ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

² See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

³ *Halifax Hospital Medical Center, supra* at 547.

⁴ 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).

⁵ 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).

⁶ S. 189.012(2), F.S.

⁷ S. 189.012(3), F.S.

⁸ Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 20, 2022).

⁹ S. 189.01, F.S., but see ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts), ch. 298, F.S. (water control districts), ch. 388, F.S. (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).

¹⁰ See ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).

¹¹ See s. 189.0311, F.S. (charter requirements for independent special districts).

¹² See s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).

¹³ See s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).

¹⁴ Ss. 189.071 and 189.074, F.S.

¹⁵ Ss. 189.071 and 189.072, F.S.

¹⁶ See, e.g., s. 190.004, F.S. (Ch. 190, F.S. as “sole authorization” for creation of community development districts).

¹⁷ S. 189.016(4), F.S.

¹⁸ S. 189.016(6), F.S.

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.¹⁹

Hospital and Health Care Districts

Hospital and health care districts are a type of special district specializing in the provision of health care services. As of January 20, 2022, there are 31 active hospital and health care districts: 28 that directly operate health care facilities and three that provide oversight for facilities leased by local governments to private sector entities. Five are dependent special districts and 26 are independent special districts. All were created by special act, except Hamilton County Memorial Hospital, which was created by local ordinance.²⁰

Florida Hospital and Health Care Districts	
Dependent Special Districts	
Carrabelle Hospital Tax District	Hillsborough County Hospital Authority
Gadsden County Hospital	Marion County Hospital District
Highlands County Hospital District	
Independent Special Districts	
Baker County Hospital District	Jackson County Hospital District
Bay Medical Center	Lake Shore Hospital Authority
Campbellton-Graceville Hospital District	Lee Memorial Health System
Cape Canaveral Hospital District	Lower Florida Keys Hospital District
Citrus County Hospital Board	Madison County Health and Hospital District
DeSoto County Hospital District	North Brevard County Hospital District
Doctors Memorial Hospital	North Broward Hospital District
George E. Weems Memorial Hospital	North Lake County Hospital District
Halifax Hospital Medical Center	Sarasota County Public Hospital District
Hamilton County Memorial Hospital	South Broward Hospital District
Health Care District of Palm Beach County	Southeast Volusia Hospital District
Hendry County Hospital Authority	West Orange Healthcare District
Indian River County Hospital District	West Volusia Hospital Authority

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.²¹

Lease or Sale of Local Government Hospitals or Hospital Systems

¹⁹ See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).
²⁰ Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 4, 2022).
²¹ 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).

Florida law authorizes the sale or lease of local government owned hospitals.²² This provides for the sale or lease of the hospital or hospital system, but not the conversion of the district into another type of entity.

The governing board of the hospital or hospital system must find that the sale or lease is in the best interest of the affected community²³ and must state the basis of the finding. The governing board is responsible for determining the terms of the lease, sale, or contract. The hospital or hospital system may be leased or sold to a for-profit or a not-for-profit Florida entity, but the lease, contract, or agreement must:

- Subject the articles of incorporation of the lessee or buyer to approval by the board of the hospital;
- Require that not-for-profit lessees or buyers become qualified under s. 501(c)(3) of the United States Internal Revenue Code;
- Provide for orderly transition of operations and management;
- Provide for return of the facility upon termination of the lease, contract, or agreement; and
- Provide for continued treatment of the indigent sick.²⁴

The lease, sale, or contract must be done through a public process that includes:

- Consideration of proposals by and negotiations with all qualified buyers or lessees following public notice to identify them;²⁵
- Detailed, written board findings regarding the accepted proposal that meets specified requirements and disclosure of all information and documents relevant to the board's determination must occur;²⁶
- A 120-day timeline for conclusion of the lease, sale, or agreement measured in advance of the anticipated closing date that:
 - Begins with publishing of all findings, information and documents specified by law and a public notice of the proposed transaction;²⁷
 - Allows receipt of public comment;²⁸
 - Is subject to approval by the Secretary of the Agency of Health Care Administration (AHCA), unless law requires approval by the registered voters of the local government where the hospital or hospital system is located;²⁹
 - Requires a petition for approval of and a final order by AHCA;³⁰
 - Provides an appeal right for any interested party;³¹
 - Makes the costs the responsibility of the board, unless any interested party appeals, then the costs can be equitably assigned to the parties;³² and
 - Allows voiding of the transaction by any party if specified provisions are not followed.³³

²² S. 155.40, F.S.

²³ "Affected community" means those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital or health care system, or if the boundaries are not specifically defined by charter, by the geographic area from which 75 percent of the county, district, or municipal hospital's or health care system's inpatient admissions are derived. S. 155.40(4)(a), F.S.

²⁴ Continued treatment of the indigent sick must comply with the Florida Health Care Responsibility Act and pursuant to chapter 87-92, Laws of Florida. S. 155.40(2)(e), F.S. Ss. 154.301-154.316, F.S., are the Florida Health Care Responsibility Act. S. 154.301, F.S.

²⁵ S. 155.40(6), F.S.

²⁶ S. 155.40(7)(a), F.S.

²⁷ S. 155.40(8), F.S.

²⁸ S. 155.40(9), F.S.

²⁹ S. 155.40(10), F.S.

³⁰ S. 155.40(11), F.S. The AHCA final order is limited to whether the board complied with law and must require the board to approve or reject the proposal based on specified findings by AHCA.

³¹ S. 155.40(12), F.S. "Interested party" includes a person submitting a proposal for sale or lease of the county, district, or municipal hospital or health care system, as well as the governing board. S. 155.40(4)(c), F.S.

³² S. 155.40(13), F.S.

³³ S. 155.40(14), F.S. If any board member negligently or willfully violates specified provisions, they are subject to penalty by the Commission on Ethics.

If a hospital is sold, all tax authority associated with the hospital ceases.³⁴ Fifty percent of the proceeds from the sale or lease must be deposited into a health care economic development trust fund serving specified health care related purposes.³⁵ The district board must appropriate the other 50 percent to funding to care for the indigent sick.³⁶ Other taxing, financial, and liability considerations are provided by the law, including prohibitions on the transfer of government functions.³⁷ A streamlined process is provided if the property represents less than 20 percent of the hospital's net revenue.³⁸

Commission on Review of Taxpayer Funded Hospital Districts

In March 2011, the Governor issued Executive Order 11-63, creating the Commission on Review of Taxpayer Funded Hospital Districts (Commission).³⁹ This Commission was tasked with assessing and making recommendations as to the role of hospital districts, including what is in the public interest as to hospital operation and an effective access model for the economically disadvantaged.⁴⁰ Specifically, the Governor ordered the following areas to be examined: quality of care; cost of care; access to care for the poor; oversight and accountability; physician employment; and changes in ownership and governance.⁴¹ In a final report issued on December 30, 2011, the Commission recommended a transition from hospital districts to indigent health care districts, which would include decoupling district owned hospitals from the district, among other recommendations.⁴²

Not-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.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶ Unlike for-profit corporations, certain not-for-profit corporations may apply for exemptions from federal, state, and local taxes.⁴⁷

³⁴ S. 155.40(15), F.S.

³⁵ S. 155.40(16)(a), F.S. The trust fund is controlled by the local government where the leased or sold property is located. The net proceeds in trust fund shall be distributed, in consultation with the Department of Economic Opportunity, to promote job creation in the health care sector of the economy through new or expanded health care business development, new or expanded health care services, or new or expanded health care education programs or commercialization of health care research within the affected community.

³⁶ S. 155.40(16)(b), F.S. Funding the delivery of indigent care, includes, but not limited to, primary care, physician specialty care, out-patient care, in-patient care, and behavioral health, to hospitals within the boundaries of the district with consideration given to the levels of indigent care provided.

³⁷ S. 155.40(17)-(21), F.S.

³⁸ S. 155.40(22), F.S.

³⁹ Fla. Exec. Order No. 11-63 (Mar. 23, 2011).

⁴⁰ *Id.*

⁴¹ *Report on the Commission of Review of Taxpayer Funded Hospitals*, (December 30, 2011), available at <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15657/Report-of-the-Commission-on-Review-of-Taxpayer-Funded-Hospital-Districts> (last visited Feb. 5, 2022).

⁴² *Id.*

⁴³ Ch. 90-179, Laws of Fla.

⁴⁴ S. 617.0301, F.S.

⁴⁵ See ss. 617.0302 and 607.0302, F.S.

⁴⁶ See ss. 617.0834 and 607.0831, F.S.

⁴⁷ See, e.g., 26 U.S.C. s. 501, s. 212.08(7)(p), F.S.

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.⁴⁸

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."⁴⁹ 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.⁵⁰

Effect of the Bill

The bill authorizes the governing body of an independent hospital district⁵¹ 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.

⁴⁸ S. 617.1622, F.S.

⁴⁹ S. 215.85(3)(b), F.S.

⁵⁰ See, e.g., Pinellas County, Fla. Code s. 2-103(a) (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. Fla. Water Mgmt. Dist. Admin. Policies s. 120-65(a)(2) (authorizing the district to pay for an employee's membership in a professional organization not required by his or her job).

⁵¹ The bill defines an "independent hospital district" as an entity created by special act that operates one or more hospitals licensed under ch. 395, F.S. and that is governed by the governing body of a special district or by the board of trustees of a public health trust created under s. 154.07, F.S.

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 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 non-profit 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 45 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, collects, or receives ad valorem taxes in the current fiscal year and preceding five fiscal years. 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 (DEO) no later than 10 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a small positive impact on state revenues to the extent additional private not-for-profit corporations are created and maintained to provide functions currently provided by public health care systems.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.