

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/HB 1299 (SB 2016)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Finance & Tax Committee; Community & Military Affairs Committee; Metz; and others (Dockery)	116 Y's	0 N's
<b>COMPANION BILLS:</b>	SB 2016	<b>GOVERNOR'S ACTION:</b>	Approved

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### SUMMARY ANALYSIS

CS/CS/HB 1299 passed the House on February 29, 2012, and was subsequently passed by the Senate on March 9, 2012. The North Lake County Hospital District is an independent special district that was created by the Florida Legislature. This bill codifies and revises the hospital district charter to:

- revise the public purpose of the district, limiting it to indigent care;
- clarify that the district may levy an ad valorem tax up to one mill;
- limit persons from seeking election to the district board who have served as an officer or member of a board of a hospital physically located in the district, or a parent corporation or foundation of such a hospital, within the previous two years;
- require notice of district meetings to be published online on a publicly accessible website maintained by the district;
- discontinue mandatory payments of district tax proceeds to Florida Hospital Waterman, Leesburg Regional Medical Center, and LifeStream Behavioral Center;
- require financial integrity and compliance audits of providers;
- sunset the district in 2017, unless the electors approve its continuation; and
- provide language for a referendum.

According to the Economic Impact Statement, the bill's provisions may eventually result in a lower millage rate levied by the district, and, thus, lower taxes paid by individuals and businesses.

The bill was approved by the Governor on April 27, 2012, ch. 2012-258, Laws of Florida. The bill is effective upon becoming a law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### The North Lake County Hospital District

The North Lake County Hospital District is an independent special district that was created by the Florida Legislature pursuant to ch. 95-508, L.O.F. This special act ratified the merger of the Northwest Lake County Hospital District (created pursuant to ch. 78-546, L.O.F.)<sup>1</sup> and the Northeast Lake County Hospital District (created pursuant to ch. 63-1509, L.O.F.),<sup>2</sup> which were combined into a single independent taxing district by concurrent resolutions on February 9, 1990.<sup>3</sup> The expressed intent of the Legislature was to “provide uniform and adequate funding for indigent and other health care services in Lake County....” While the previous special acts for the hospital districts provided authorization to levy a tax not to exceed one mill, this act stated that the district “shall levy” an ad valorem tax of one mill.

All of the district’s prior special acts were codified in ch. 2002-348, L.O.F., which was subsequently amended by ch. 2004-460, L.O.F. The current stated purpose of the district is to “ensure continued hospital services” for its residents.

The North Lake County Hospital District is governed by a board of trustees composed of six persons elected by the eligible voters residing within the district. All trustees are required to be duly qualified electors who reside in the district. Three trustees must reside in the Northeast Territory, and three trustees must reside in the Northwest Territory.<sup>4</sup> Vacant seats are filled through appointment by the sitting board of trustees, and appointees serve until the expiration of the term for which they are appointed. Any member of the board may be removed by the Governor at any time, for cause.

Trustees serve four-year terms, for a maximum of eight years. A trustee serves without pay, and is required to provide the Lake County Board of County Commissioners a bond for the faithful performance of his or her duties in the sum of \$1,000.

Four trustees constitute a quorum, and a vote of at least four trustees is necessary for the transaction of district business. The board of trustees may select a chair, vice chair, secretary and treasurer. The board is required to keep true and accurate minutes and records of all business transacted, which are open and subject to the inspection of district residents during normal business hours.

The North Lake County Hospital District, through its board of trustees, has the power of eminent domain, and all powers of a body corporate.

All tax proceeds generated in the Northeast Territory of the district, less one-half of the amount reserved by the board to pay for its maintenance and services, must be paid to Florida Hospital Waterman, Inc.,<sup>5</sup> upon written request by the Waterman Foundation that the funds are needed for health care.

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<sup>1</sup> This act provided that the district was authorized to levy a tax not to exceed one mill to provide medical and services to indigents, subject to referendum approval.

<sup>2</sup> This act provided that the district was authorized to levy a tax not to exceed one mill. The proceeds of the tax were to be expended “for support and maintenance of The Waterman Memorial Hospital,” and a referendum was provided for that allowed electors to choose the hospital district in which they desired their area to be included.

<sup>3</sup> In 1989, the Uniform Special District Accountability Act provided for the merger of special districts through adoption of concurrent resolutions by the governing bodies of each special district pursuant to s. 189.4042, F.S.

<sup>4</sup> Both of these territories are defined by legal description in Section 1 of the district charter.

<sup>5</sup> Florida Hospital Waterman was founded in 1938 as a legacy of Frank Waterman, president of the Waterman Fountain Pen Company. Florida Hospital Waterman has progressed from an 18-bed county hospital to a 204-bed acute care facility. In 1992, Florida Hospital

All tax proceeds generated from within the Northwest Territory of the district, less one-half of the amount reserved annually by the board to pay its maintenance and services, must be paid to Leesburg Regional Medical Center, Inc.,<sup>6</sup> upon written request by the Leesburg Regional that the funds are needed for health care. In 2010, Leesburg Regional received hospital district funding of approximately \$4.5 million.<sup>7</sup>

After submission of a written request by LifeStream Behavioral Center<sup>8</sup> to Florida Hospital Waterman, Inc., and Leesburg Regional Medical Center, Inc., certifying that funds are needed for indigent health care, the following payments are required from their respective share of the above-described tax funds:

- for each year after calendar year 1993, LifeStream is paid \$100,000 or 1/20 of one mill of the tax moneys due Waterman from the Northeast Territory, whichever is greater; plus
- \$100,000 or 1/20 of one mill of the tax moneys due Leesburg Regional from the Northwest Territory, whichever is greater.

If either of the two providers refuses to pay LifeStream in any given year, during the next fiscal year of the district, its board is required to directly pay LifeStream an amount equal to the funds withheld during the previous year by the provider payable from funds that would otherwise be payable to the provider.

The obligation to pay tax revenues to LifeStream permanently terminates if a countywide health taxing district is created and funded pursuant to ch. 154, F.S.,<sup>9</sup> or LifeStream loses, relinquishes, or forfeits its accreditation as a hospital.

Leesburg Regional Medical Center Charitable Foundation, Inc., and its parent corporation; Florida Hospital Waterman Foundation, Inc., and its parent corporation; and LifeStream Behavioral Center are required to file annual audited financial statements with the district.

The board is authorized to pay from district funds all its expenses and all expenses necessarily incurred with the development of the district as well as the fees and expenses of a certified public accountant and an attorney. The board is required to include a reserve amount in its annual budget.

At least once each year, the board is required to file a complete financial statement with the Lake County Clerk of the Circuit Court. Notice of the statement must be filed with the clerk and published in a newspaper regularly published in Lake County, and the statement must be made available at all reasonable times to district residents for their inspection. The board is required to comply with all financial disclosure and reporting requirements provided by general law.

According to a statement provided by the sponsor of the bill, as a practical matter, the board functions primarily as a fiscal agent for the tax exempt hospital corporations, i.e., Leesburg Regional, Waterman and LifeStream. In response to a public records request, the board stated that it has not adopted any

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Waterman merged with the Adventist Healthcare System and became part of a worldwide network.

<http://www.fhwat.org/AboutUs.aspx>, last visited on February 10, 2012.

<sup>6</sup> Leesburg Regional Medical Center, part of Central Florida Health Alliance, is a 322-bed acute care hospital serving Lake, Sumter and Marion counties that has grown from a small community hospital built in 1963 to a comprehensive medical center.

[http://www.cfhalliance.org/AboutUs\\_LRMC.htm](http://www.cfhalliance.org/AboutUs_LRMC.htm), last visited on February 9, 2012.

<sup>7</sup> August 19, 2011, letter from Phyllis Baum, Leesburg Regional Medical Center Chief Executive Officer.

<sup>8</sup> LifeStream is a behavioral health and social services organization that provides treatment, education, care management and rehabilitation services to children, adolescents and adults. Located in Central Florida, LifeStream primarily serves the residents of Lake and Sumter Counties. Beginning in 1969 as a component of Waterman Memorial Hospital in Eustis, LifeStream became an independent non-profit organization in 1971. Since then, LifeStream has grown to 21 facilities and 52 programs to care for individuals who suffer from mental illness and substance abuse achieve recovery and resiliency. <http://www.lsbc.net/Aboutus.aspx>, last visited February 9, 2012.

<sup>9</sup>Section 154.331, F.S., provides that each county may establish a dependent special district pursuant to the provisions of ch. 125, F.S., or, by ordinance, create an independent special district to provide funding for indigent and other health and mental health care services throughout the county.

bylaws, rules, regulations, policies or procedures, and simply levies the millage rate allowed by the district's enabling law. Although the board has retained an attorney and accountant to act on its behalf, it has no office, website, or telephone number, and no employees or retained auditors to provide oversight for the tax revenues. A review of the minutes of board meetings over the past 20 years revealed that only three board meetings were held annually, and most were of relatively short duration.<sup>10</sup>

## **Effect of Changes**

CS/CS/HB 1299 provides for the codification of all special acts relating to the North Lake County Hospital District. It is the stated intent of the Legislature in enacting this law to provide a single, comprehensive special act charter. The district boundaries remain the same.

## **Public Purpose**

The bill establishes a new public purpose for the district: to provide a means to pay for indigent care. This language is more restrictive than current law which provides that the purpose of the district is to "...ensure continued hospital services for the residents of the North Lake County Hospital District...." Indigent care may be provided to residents of the district through the use of health care facilities not owned and operated by the board.

The impact of this change may be that either more eligible individuals are served, or that the district has lower overall expenditures and subsequently lower taxes are paid by individuals and businesses.

## **Indigent Care**

The term "indigent care" is defined by the bill to mean medically necessary health care provided to residents of the district who are determined to be qualified pursuant to the provisions of the Florida Health Care Responsibility Act, s. 154.304(9), F.S., and the Florida Health Care Indigency Eligibility Certification Standards,<sup>11</sup> except that the poverty rate standard is 200 percent of the federal poverty level<sup>12</sup>. Section 154.304(9), F.S., provides that a "qualified indigent person" or "qualified indigent patient" means, in pertinent part, a person who is not eligible to participate in any other government program that provides hospital care; who has no private insurance or has inadequate private insurance; and who does not reside in a public institution as defined under the medical assistance program for the needy under Title XIX of the Social Security Act, as amended.<sup>13</sup>

## **Eligibility for Office**

New language is added to the district charter, which provides that beginning with the general election in 2014, and in each general election thereafter, a person is ineligible to seek election to the board if that person served, within the previous two years, as an officer or member of a board of directors of a hospital physically located in the district, a parent corporation of such a hospital, or a foundation of such a hospital. This restriction should assist district trustees in maintaining their objectivity, and avoiding appearances of conflicts of interest.

## **Notice of Annual Meetings**

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<sup>10</sup> Statement of Representative Larry Metz.

<sup>11</sup> Rule 59H-1.0035(30), F.A.C.

<sup>12</sup> The 2011 Poverty Guidelines for the 48 Contiguous States and the District of Columbia provide maximum incomes of \$10,890 for families of one, \$14,710 for families of two; \$18,530 for families of three; and \$22,350 for families of four. The poverty guidelines do not make a distinction between farm and non-farm families. <http://aspe.hhs.gov/poverty/11fedreg.shtml>.

<sup>13</sup> Rule 59H-1.0035(30), F.A.C., contains similar language along with restrictions with regard to assets.

The bill requires notice of district meetings to be published online on a publicly accessible website maintained by the district, as well as a daily newspaper of general circulation. This change will require the district to develop a website, and make the notices for its meetings more available to the public.

#### Filling of Unexpired Terms after Removal by Governor

If any member of the board is removed by the Governor, for cause, the vacancy no longer is filled through appointment by the remaining board members, but will be appointed by the Governor for the unexpired term. This change will help the board avoid the appearance of cronyism in these matters.

#### District Powers

The revised charter eliminates the district's power of eminent domain. The district is authorized to adopt an official seal, maintain an office, sue and be sued, make and execute agreements and contracts, employ staff, apply for and receive grants, and adopt and promulgate policies, rules and procedures.

The bill authorizes the district to levy an ad valorem tax not to exceed one mill. Currently, the district charter provides that the district "may levy an ad valorem tax...of 1 mill" and this language apparently has been interpreted to mean that the district may not levy a lesser amount. The new language should clarify that the district may levy a tax of one mill, or lower.

The requirements for the board to pay tax proceeds to Florida Hospital Waterman, Inc., and Leesburg Regional Medical Center, Inc. are deleted. Also, the provision authorizing funding for LifeStream Behavioral Center is eliminated.

#### Permitted Uses of Tax Funds

CS/CS/HB 1299 adds a new section to the district charter that provides the authorized uses for funds received through the district's taxing power:

- reasonable expenses incurred by the district to administer and enforce the act, including the use of private vendors;
- indigent care provided by licensed hospitals physically located in the district;
- indigent care provided by licensed primary care clinics physically located in the district that are approved by the board, if the care does not overlap or duplicate care available through other public health clinics physically located in the district and serving medically indigent residents;
- maximizing public or private grant or matching funds available for indigent care; and
- contracts with the Lake County Board of County Commissioners for services performed by county personnel to carry out the purpose of the district.

These provisions establish much clearer guidelines for the use of taxpayer dollars by the district, and emphasize its mission to provide indigent care.

#### Restrictions

The bill provides that the board may not issue bonds, raise tax revenue from any other source, or impose non-ad valorem assessments. Funds received through the district's taxing power and any interest thereon may not be used:

- to compensate for a provider's inability to collect debts arising from serving persons who are not eligible for indigent care under the act;
- to cover shortfalls or deficiencies in the amounts paid by Medicare or private insurance from patients who are not eligible for indigent care under the act;
- for capital expenditures incurred by or for a provider;
- for indigent care based on assumptions, models, studies, or expert analyses or opinions; or

- indigent care in excess of the actual cost of providing such care; however, the payment for indigent care provided may not exceed the amount payable by the Medicare program for identical or substantially similar care in the district's territory.

### Fiscal Responsibility, Transparency and Accountability

The bill states that the board must annually determine and approve a balanced district budget and millage in accordance with ch. 200, F.S., its charter, and generally accepted accounting principles. This provision essentially mirrors current language, with exception of the reference to ch. 200, F.S., relating to determination of millage.

At least once each year, the board is required to post online on a publicly accessible website maintained by the district, and publish once in a daily newspaper of general circulation in the district, a detailed financial statement. This provision eliminates the current requirement that the board file such statement with the Clerk of the Circuit Court, and adds the requirement to publish it on the Internet.

Any provider receiving funds from the district is subject to an audit of its records relative to the patients for whom payment is sought in order to ensure compliance with the act. All auditors must contractually agree to comply with applicable patient confidentiality rules, including the Health Insurance Portability and Accountability Act of 1996<sup>14</sup> and rules implementing that act.

The district is required to conduct financial integrity and compliance audits of providers receiving payments in any one fiscal year in excess of 10 percent of the district's tax revenue in that year, and may initiate other audits of any provider at any time, to ensure compliance with the act and to provide transparency and accountability to the taxpayers. All audit reports become public records upon acceptance by the board. If, upon completion of an audit, it is determined that a payment made by the district was not in compliance with the act, a rebuttable presumption is created that the district is entitled to a recoupment of the amounts in question. Notice to the provider and an opportunity to present evidence rebutting the presumption in an informal setting is required. Pending judicial determination, the district may set off the amounts in question against other amounts owed to the provider. If informal resolution cannot be reached between the parties, a formal mediation conference must be requested by the board of trustees. Venue for any legal proceedings is in the Lake County Circuit Court.

The board of trustees is required to adopt and promulgate eligibility verification criteria and procedures designed to ensure that all recipients of indigent care for which payment is sought are qualified by the provider as medically indigent persons and residents of the district. Any indigent care for which payment is requested must be certified by the provider as medically necessary.

If estimated payments are made to a provider, to ensure public oversight, accountability, and public benefit, the hospital or clinic is required to maintain such funds in a separate accounting of funds and document each eligible indigent care patient account so that a complete audit record is established. All direct documentation that is part of the audit record is subject to disclosure as provided in ch. 119, F.S.

All hospitals receiving any payments from the district in a given fiscal year are required to file with the district the audited financial statements required by and filed with the Agency for Health Care Administration for the same fiscal year.

Additionally, the board is required to provide each member of the Lake County Legislative Delegation:

- all financial statements and reports of the district;
- all audit reports of the district and all providers that are the subjects of audits initiated by the district; and

<sup>14</sup> HIPAA; Pub. L. No. 104-191, 110 Stat. 1936.

- within 120 days after the end of its fiscal year, an annual report for the previous fiscal year providing a detailed review of the performance of the district containing actual data and analyses of patients served, the names and types of providers used, the ratio of administrative to direct patient expenditures, problems encountered, and recommendations for improvement, including proposed legislative changes to the district's special act.

### Financial Disclosure and Notice

Members of the board are subject to the financial disclosure requirements provided in general law. This reflects current language, and refers to the financial disclosure requirements provided in part III of ch. 112, F.S., the "Code of Ethics for Public Officers and Employees."

Except as otherwise expressly required by the act, the board is subject to the reporting, notice and public meetings requirements of ss.189.415,<sup>15</sup> 189.417,<sup>16</sup> and 189.418,<sup>17</sup> F.S. All meeting and workshop notices and minutes of meetings and workshops must also be posted online on the publicly accessible website maintained by the district.

### Sovereign Immunity

For purposes of sovereign immunity pursuant to s. 768.28(2), F.S., the bill provides that any primary care clinic physically located in the district, the main purpose of which is to provide indigent care and which directly delivers that care for compensation from the district, and any health care provider who volunteers his or her services to the primary care clinics to provide indigent care without receiving personal financial compensation, is conclusively deemed to be primarily acting as an instrumentality of the state. This language, in effect, appears to provide an exemption to s. 766.1115, F.S., the "Access to Health Care Act," which provides sovereign immunity for volunteer, uncompensated services of a health care professional where the health care provider receives no compensation from a governmental contractor.

### District Duration and Continuation

The district expires and will be dissolved at the end of its fiscal year in 2017 without further action by the Legislature. However, the district may be continued at the end of that period for 10 years if a majority of the electors approve its continuation in the 2016 general election. The district is subject to a continuation vote every 10 years thereafter. If the district is dissolved without further action by the Legislature as provided in the act, all property owned by the district is transferred to, and all indebtedness of the district is assumed by, the Lake County Board of County Commissioners. This provision is in keeping with s. 189.4045(2), F.S., which provides for financial allocations when a special district is dissolved.

Section 189.4042(2), F.S., provides that the dissolution of an independent special district created and operating pursuant to a special act may only be effectuated by the Legislature, unless otherwise provided by general law. However, for any independent district that has ad valorem taxation powers, the same procedure used to grant this authority, is required to dissolve or merge the district. In keeping with previous practice and the purpose of these laws, a more appropriate method for the Legislature to dissolve this district may be to pass a local bill specifically repealing the district's special act, subject to referendum.

The bill provides referendum language, and is effective upon becoming law.

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<sup>15</sup> Section 189.415, F.S., requires each independent special district to submit to each local general-purpose government in which it is located a public facilities report and an annual notice of any changes.

<sup>16</sup> Section 189.417, F.S., requires the governing body of each special district to file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. It also requires such meetings to be noticed and open to the public.

<sup>17</sup> Section 189.418, F.S., relates to special district reports, audits and budgets.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? December 7, 2011.

WHERE? The *Orlando Sentinel*, a daily newspaper of general circulation published in Lake County, Florida.

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

IF YES, WHEN? November 8, 2016.

C. LOCAL BILL CERTIFICATION FILED? Yes ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes ☒ No ☐

According to the Economic Impact Statement, the district is anticipated to receive revenues of \$8.4 million in Fiscal Year 2012-13 and \$8.1 million in Fiscal Year 2013-14, based on current revenue projections using a projected decline in property values of eight percent in Fiscal Year 2012-13 and three percent in Fiscal Year 2013-14.