

**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 Health Regulation Committee

**BILL:** CS/SB 620

**INTRODUCER:** Health Regulation Committee and Senator Oelrich

**SUBJECT:** Health Facilities

**DATE:** February 18, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	<b>Fav/CS</b>
2.			CA	
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The committee substitute expands the definition of “health facility” within part III of ch. 154, F.S., related to health facilities authorities (authorities), to include facilities that provide independent living, assisted living, dementia care, or hospice services. The bill makes these types of facilities eligible to access financing through debt (bonds) issued by the authority.

This committee substitute substantially amends the following section of the Florida Statutes: 154.205.

**II. Present Situation:**

**Health Facilities Authorities**

*Generally*

The Health Facilities Authorities Law<sup>1</sup> (the Law) was enacted in 1974 to provide health facilities in each local agency (a county or municipality) with a measure of assistance and an alternate method to enable the health facilities to provide the facilities and structures that are determined

<sup>1</sup> Part III of ch. 154, F.S.

to be needed by the community to improve the development and maintenance of the public health.

Health facilities include any private corporation organized not-for-profit and authorized by law to provide:

- Hospital or nursing home care services in accordance with ch. 395, F.S., relating to hospital licensing and regulation, or ch. 400, F.S., relating to nursing home licensing and regulation;
- Life care services in accordance with ch. 651, F.S., related to continuing care contracts; and
- Facilities licensed under ch. 393, F.S., related to developmental disabilities, and ch. 394, F.S., relating to mental health.

The Law authorizes a local agency to create an authority if the governing body<sup>2</sup> of the local agency determines there is a need for an authority by adopting an ordinance or resolution. An authority is a public corporation created by s. 154.207, F.S.; or a board, body, commission, or department of a local agency succeeding to the principal functions of the public corporation or to whom the powers and responsibilities authorized by the Law are given by the local agency. The governing body of the local agency is required to appoint five persons, who must be residents of the local agency, as members of the authority to serve staggered terms of 4 years each. Members of the authority are eligible for reappointment and serve without compensation, but are paid for necessary expenses incurred while engaged in the performance of the authority's duties. Costs of employing professionals, staff, and other costs of operating the authority must be paid from funds obtained under the Law.

Any member of the authority who is employed by, or receives income from, a health facility under consideration by the authority may not vote on any matter related to that facility. All meetings of the authority, and its records, books, documents, and papers are open and available to the public in accordance with the Public Meetings Law in s. 286.011, F.S.<sup>3</sup>

#### *Purpose and Powers of the Authority*

The purpose of the authority is to assist health facilities in the acquisition, construction, financing, and refinancing of projects within the geographical limits of the local agency. However, if an authority finds that there will be a benefit or a cost savings to a health facility located within its jurisdiction, it may issue bonds for the health facility to finance projects for the health facility or for another not-for-profit corporation under common control with that health facility that is located outside the geographical limits of the local agency or outside the state.<sup>4</sup>

A "project" is defined<sup>5</sup> as any structure, facility, machinery, equipment, or other property suitable for use by a health facility in connection with its operations or proposed operations, including without limitation:

- Real property;

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<sup>2</sup> The governing body means the board, commission, or other governing body in which the general legislative powers of the local agency are vested. *See s. 154.205(7), F.S.*

<sup>3</sup> s. 154.207(7), F.S.

<sup>4</sup> s. 154.247, F.S.

<sup>5</sup> s. 154.205(10), F.S.

- A clinic, computer facility, dining hall, firefighting facility, fire prevention facility, food service and preparation facility, health care facility, long-term care facility, hospital, interns' residence, laboratory, laundry, maintenance facility, nurses' residence; nursing home, nursing school, office, parking area, pharmacy, recreational facility, research facility, storage facility, utility, or X-ray facility, or any combination of these; and
- Other structures or facilities related, required, or useful for health care purposes, research, or the operation of a health facility, including facilities or structures essential or convenient for the orderly conduct of the health facility and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended; excluding fuel, supplies, or other items customarily charged as current operating expenses.

The Law also provides in s. 154.209, F.S., related to the powers of an authority, that an accounts receivable program constitutes a project.

The authority is authorized and empowered, among other things, to:

- Sue and be sued;
- Purchase, lease, receive by gift or otherwise, or obtain options for the acquisition of, any real or personal property for the acquisition, construction, operation, or maintenance of any project;
- Construct, acquire, own, lease, repair, maintain, extend, expand, improve, rehabilitate, renovate, furnish, and equip projects and to pay all or any part of these costs from the proceeds of bonds of the authority or from any other funds made available to the authority for such purpose;
- Make and execute agreements of lease, contracts, deeds, mortgages, notes, and other instruments necessary or convenient in the exercise of its powers and functions;
- Sell, lease, exchange, mortgage, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to any project, any real or personal property or interest therein;
- Pledge or assign any money, rents, charges, fees, or other revenues and any proceeds derived from sales of property, insurance, or condemnation awards;
- Fix, charge, and collect rents, fees, and charges for the use of any project;
- Issue bonds for the purpose of providing funds to pay all or any part of the cost of any project and to issue refunding bonds;
- Employ consulting engineers, architects, surveyors, attorneys, accountants, financial experts, and such other employees and agents as may be necessary and to fix their compensation;
- Acquire existing projects, reimburse any health facility for the cost of such project, and refund outstanding obligations, mortgages, or advances issued, made, or given by a health facility for the cost of the project;
- Mortgage any project and site for the benefit of the holders of the bonds issued to finance that project;
- Participate in and to issue bonds for the purpose of establishing and maintaining a self-insurance pool, as provided under the state Insurance Code, on behalf of a health facility or a group of health facilities in order to resolve issues related to an act or omission of the health facility, its employees, or agents in the performance of health care or health-care-related functions;
- Issue special obligation revenue bonds for the purpose of establishing and maintaining the self-insurance pool and related reserve funds;

- Participate in and issue bonds and other forms of indebtedness for the purpose of establishing and maintaining an accounts receivable program on behalf of a health facility or group of health facilities;
- Issue and renew its negotiable notes; and
- Issue revenue bonds for the purpose of paying all or any part of the cost of any project or for acquiring existing or completed health facilities projects and negotiable bond anticipation notes payable out of revenues derived by the authority from the sale, operation, or leasing of any project.

Revenue bonds issued by an authority under the Law are not a debt, liability, obligation, or a pledge of the faith and credit of the local agency, the state, or any political subdivision but are payable solely from the revenues of the project.<sup>6</sup>

The Law provides that a certificate of need (CON) is required under the Health Facility and Services Development Act in ss. 408.031 – 408.045, F.S., before revenue bonds are validated for a project.<sup>7</sup> A CON is a written statement issued by the Agency for Health Care Administration (Agency) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.<sup>8</sup> Currently, a CON is required for the establishment of a hospice, skilled nursing facility (currently under a moratorium), intermediate care facility for the developmentally disabled, hospital, and certain in-patient hospital services. A CON issued by the Agency is not required prior to the purchase of major medical equipment.

Currently there are 32 Health Facilities Authorities throughout the state.<sup>9</sup>

### **Miscellaneous Licensed Facilities**

#### *Assisted Living Facilities*

An assisted living facility (ALF) provides housing, meals, personal care services, and supportive services to older persons and disabled adults who are unable to live independently. ALFs are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services, but who do not need 24-hour nursing supervision. Generally, an ALF provides supervision, assistance with personal care services, such as bathing, dressing, eating, and assistance with or administration of medications. ALFs are licensed and regulated by the Agency under part I of ch. 429, F.S., part II of ch. 408, F.S., and Chapter 59A-5, F.A.C. An ALF may be operated for profit or not-for-profit.

#### *Continuing Care Retirement Communities*

The term continuing care retirement community (CCRC) is often applied to group living arrangements that may include several components. CCRCs provide a continuum of care, ranging from independent live-in houses or apartments, to assisted living facilities, to skilled nursing facilities. CCRCs typically have entry fees and monthly expenses with living arrangements and other services provided pursuant to a contractual agreement for a designated

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<sup>6</sup> s. 154.223, F.S.

<sup>7</sup> s. 154.245, F.S. See also s. 154.213, F.S.

<sup>8</sup> s. 408.032(3), F.S.

<sup>9</sup> Official List of Special Districts Online, maintained by the Florida Department of Community Affairs, available at: <http://www.floridaspecialdistricts.org/OfficialList/criteria.cfm>, (last visited on February 13, 2009).

time period or for life.<sup>10</sup> A certificate of authority issued under ch. 651, F.S., relating to continuing care contracts as a part of the Florida Insurance Code, is required prior to providing continuing care or issuing continuing care agreements. A certificate of authority is also required before constructing a facility for the purpose of providing continuing care, unless a CON is required for the facility from the Agency.<sup>11</sup> However, s. 651.118, F.S., preempts certain other applicable regulatory statutes, in particular, that the Agency must approve, through issuance of a CON, one sheltered nursing home bed for every four proposed residential units in the continuing care facility, unless the need for more or fewer beds is demonstrated. Those portions of a CCRC that provide nursing home and ALF services are also subject to regulation as a nursing home and ALF. A CCRC may be operated for profit or not-for-profit.

### *Hospices*

A hospice is defined as a centrally administered corporation providing a continuum of palliative (services that are intended to reduce or abate pain and suffering as opposed to having curative effects) and supportive care for the terminally ill patient and his or her family.<sup>12</sup> Hospice services may be provided in the patient's home, hospice residential facility, or other residential facility such as a nursing home, ALF, or Adult Family-Care Home. However, hospice services provided by a hospital, nursing home or other health care facility, health care provider, or caregiver, or under the Community Care for the Elderly Act, are not subject to regulation as a hospice unless the facility, provider, or caregiver establishes a separate and distinct administrative program to provide home, residential, and homelike inpatient hospice services.<sup>13</sup> Hospices are licensed and regulated under part IV of ch. 400, F.S., part II of ch. 408, F.S., and Chapter 58A-2, F.A.C. A hospice may be operated for profit or not-for-profit.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 154.205, F.S., to revise the definition of a health facility for the purpose of expanding the types of projects that may be supported through a local authority. The layout of the defined term is modified to list the components in the definition. The definition of health facility is expanded to include corporations organized not-for-profit that provide independent living, assisted living, dementia care, or hospice services.

CCRCs organized as not-for-profit corporations operating under ch. 651, F.S., are currently included within the definition of health facility. Facilities included in the amended language might include facilities providing only one of the services or facilities providing the continuum of care but not within the prescript of ch. 651, F.S., for example without the contractual agreement.

**Section 2.** Provides an effective date of upon the bill becoming a law.

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<sup>10</sup> s. 651.055, F.S.

<sup>11</sup> s. 651.021, F.S.

<sup>12</sup> s. 400.601(3), F.S.

<sup>13</sup> s. 400.602, F.S.

**Other Potential Implications**

This bill empowers local governments with additional options for addressing local health-care related needs.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This committee substitute allows authorities the option to assist private entities with the funding of fixed assets to help ensure that the local community has better access to a wider range of health-related care and housing options.

**C. Government Sector Impact:**

This committee substitute could help alleviate demands placed on government to address local needs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Regulation Committee on February 18, 2009:**

Adds corporations that provide independent living, assisted living, dementia care, or hospice services to the list of private corporations organized not for profit that are eligible to benefit from funding provided through a health facility authority.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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