

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 227 Lee Memorial Health System, Lee County

**SPONSOR(S):** Botana

**TIED BILLS:**           **IDEN./SIM. BILLS:**

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**FINAL HOUSE FLOOR ACTION:** 114 Y's      0 N's            **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 227 passed the House on April 27, 2023, and subsequently passed the Senate on May 4, 2023.

Lee Memorial Health System (Health System) is an independent hospital district in Lee County. A hospital district is a type of a special district specializing in the provision of health care services through the development and operation of hospitals and other health care facilities. 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 amends and updates the charter of the Health System. The bill clarifies voting requirements for the Lee Memorial Health System Board of Directors of Lee County (the system board) to take official action .

The bill modernizes financial procedures for the Health System by removing a requirement for the district to file copies of its annual financial audit and current annual budget with the Clerk of the Circuit Court for Lee County,

authorizes the Health System to acquire real property subject to one or more existing mortgages or other financial obligation (provided that any such obligation is non-recourse to other property of the Health System), authorizes the Health System to make payments using wire or electronic bank transfers or approved warrants, and updates the district's investment policy to authorize investment in accordance with an investment policy approved by the system board consistent with general law.

The bill creates a process by which the Health System may convert to a non-profit entity. The process includes notice, contract, and publishing requirements for evaluating conversion, as well as a detailed plan on how the system board will transfer assets and liabilities and how debts are to be resolved. The bill prohibits a current member of the Lee County Board of County Commissioners from serving on the board of the succeeding non-profit entity, but allows a current or former member of the system board to serve on the board of the succeeding non-profit entity. The bill requires members of the system board and the Lee County Board of County Commissioners to disclose all conflicts of interest as required by general law.

According to the economic impact statement, the bill will not have a fiscal impact.

The bill was approved by the Governor on June 16, 2023, ch. 2023-326, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary<sup>1</sup>. Special districts are created by general law,<sup>2</sup> special act,<sup>3</sup> local ordinance,<sup>4</sup> or rule of the Governor and Cabinet.<sup>5</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.<sup>6</sup> Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>7</sup>

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of the governing body of a single county or municipality.<sup>8</sup> An “independent special district” is any district that is not a dependent special district.<sup>9</sup>

The charter of a newly-created district must state whether it is dependent or independent.<sup>10</sup> Charters of independent special districts must address and include a list of required provisions, including the purpose of the district, its geographical boundaries, taxing authority, bond authority, and selection procedures for the members of its governing body.<sup>11</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>12</sup>

Special districts may enter into interlocal agreements with one or more other local governmental units.<sup>13</sup> Under such an agreement, the special district may exercise jointly with the other participating local governments those powers, privileges, or authorities which they have in common and each may exercise separately.<sup>14</sup>

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

<sup>2</sup> S. 189.031(3), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> S. 189.02(1), F.S.

<sup>5</sup> S. 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

<sup>6</sup> *Halifax Hosp. Med. Center, supra* at 548.

<sup>7</sup> *Local Gov’t Formation Manual* at p. 58, available at

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&Committeed=3227&Session=2023&DocumentType=General+Publications&FileName=2022+Local+Government+Formation+Manual.pdf> (last visited Jan. 25, 2023).

<sup>8</sup> S. 189.012(2), F.S.

<sup>9</sup> S. 189.012(3), F.S.

<sup>10</sup> S. 189.031(5), F.S.

<sup>11</sup> S. 189.031(3), F.S.

<sup>12</sup> Art. VII, s. 9(a), Fla. Const.

<sup>13</sup> S. 163.01(2), (3)(b), F.S.

<sup>14</sup> S. 163.10(4), F.S.

## Hospital Districts

Hospital districts are a type of independent special district specializing in the provision of health care services. As of January 18, 2023, there are 30 special districts classified as hospital or health care districts.<sup>15</sup> 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 revenue to be used for operating and maintaining hospitals, and a provision that the facilities be established for the benefit of the indigent sick.<sup>16</sup>

Hospital districts, like all other special districts must operate within a defined geographic boundary absent an “express and unambiguous” grant of extraordinary authority.<sup>17</sup> For example, the Sarasota County Public Hospital District is authorized to operate hospitals and other types of health care facilities “both within and beyond the boundaries of the District.”<sup>18</sup> The district is prohibited from using any funds derived from ad valorem taxation to establish or provide any health care facility or health care service beyond its boundaries. Meanwhile, the Cape Canaveral Hospital District is responsible for “support[ing] the health and welfare of all those in the District’s boundaries and the surrounding communities by providing health care facilities and services to all those in need regardless of ability to pay.”<sup>19</sup> The charter for the Halifax Hospital Medical Center empowers the district to operate hospitals and other types of health care facilities, as well as provide health services, in Brevard, Flagler, Lake, and Volusia Counties.<sup>20</sup>

## Lease or Sale of Local Government Hospitals or Hospital Systems

Florida law authorizes the sale or lease of local government owned hospitals.<sup>21</sup>

The governing board of the hospital or hospital system must find that the sale or lease of the hospital is in the best interest of the affected community<sup>22</sup> 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.<sup>23</sup>

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<sup>15</sup> Dept. of Economic Opportunity, Official List of Special Districts Online, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited Jan. 30, 2023).

<sup>16</sup> 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. 17, 2023).

<sup>17</sup> *Halifax Hosp. Med. Center v. State*, 278 So. 3d 545, 548 (Fla. 2019).

<sup>18</sup> Ch. 2005-304, Laws of Fla.

<sup>19</sup> S. 1 of the Charter of the Cape Canaveral Hospital District, as codified in s. 3, ch. 2003-337, Laws of Fla.

<sup>20</sup> Ch. 2003-374, Laws of Fla., as amended by ch. 2019-172, Laws of Fla.

<sup>21</sup> S. 155.40, F.S.

<sup>22</sup> “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.

<sup>23</sup> 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.

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;<sup>24</sup>
- Detailed, written findings by the board regarding the accepted proposal that meets specified requirements and disclosure of all information and documents relevant to the board's determination must occur;<sup>25</sup>
- A 120-day timeline for conclusion of the lease, sale, or agreement measured in advance of the anticipated closing date that:
  - Begins with publishing all findings, information, and documents specified by law and a public notice of the proposed transaction;<sup>26</sup>
  - Allows receipt of public comment;<sup>27</sup>
  - 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;<sup>28</sup>
  - Requires a petition for approval of and a final order by AHCA;<sup>29</sup>
  - Provides a right of appeal for any interested party;<sup>30</sup>
  - Makes the costs the responsibility of the board, unless any interested party appeals, then the costs can be equitably assigned to the parties;<sup>31</sup> and
  - Allows voiding of the transaction by any party if specified provisions are not followed.<sup>32</sup>

If a hospital is sold, all taxing authority associated with the hospital ceases.<sup>33</sup> 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.<sup>34</sup> The district board must appropriate the other 50 percent to funding to care for the indigent sick.<sup>35</sup> Other taxing, financial, and liability considerations are provided by the law, including prohibitions on the transfer of government functions.<sup>36</sup> A streamlined process is provided if the property represents less than 20 percent of the hospital's net revenue.<sup>37</sup>

Current law does not provide a procedure for the conversion of a hospital operated by a local government into another type of entity such as a non-profit corporation.<sup>38</sup>

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<sup>24</sup> S. 155.40(6), F.S.

<sup>25</sup> S. 155.40(7)(a), F.S.

<sup>26</sup> S. 155.40(8), F.S.

<sup>27</sup> S. 155.40(9), F.S.

<sup>28</sup> S. 155.40(10), F.S.

<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> S. 155.40(13), F.S.

<sup>32</sup> 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.

<sup>33</sup> S. 155.40(15), F.S.

<sup>34</sup> 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.

<sup>35</sup> 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.

<sup>36</sup> S. 155.40(17)-(21), F.S.

<sup>37</sup> S. 155.40(22), F.S.

<sup>38</sup> See ch. 155, F.S.

## 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.<sup>39</sup> 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.<sup>40</sup> The Non-Profit Act specifies that such purposes may 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.<sup>41</sup> 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.<sup>42</sup> Unlike for-profit corporations, certain not-for-profit corporations may apply for exemptions from federal, state, and local taxes.<sup>43</sup>

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.”<sup>44</sup> 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.<sup>45</sup>

## Lee Memorial Health System

The Lee Memorial Health System (Health System or district) is an independent special district established in Lee County.<sup>46</sup> The Lee Memorial Health System Board of Directors of Lee County (system board) is authorized to establish and provide for the operation and maintenance of the Health System and provide health care services intended to improve the physical, spiritual, emotional, or mental health of those persons utilizing such services.<sup>47</sup> The system board is authorized to carry out its functions directly or indirectly through other companies it controls through joint ventures or partnerships with other public or private organizations.<sup>48</sup>

The system board annually elects a chair, vice chair, secretary, and treasurer.<sup>49</sup> The officers are responsible for keeping accurate minutes, records, and books of accounts of all business transacted by the system board, which books and records must be made available for inspection and copying

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<sup>39</sup> Ch. 90-179, Laws of Fla.

<sup>40</sup> S. 617.0301, F.S.

<sup>41</sup> See ss. 617.0302 and 607.0302, F.S.

<sup>42</sup> See ss. 617.0834 and 607.0831, F.S.

<sup>43</sup> See, e.g., 26 U.S.C. s. 501, s. 212.08(7)(p), F.S.

<sup>44</sup> S. 215.85(3)(b), F.S.

<sup>45</sup> 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).

<sup>46</sup> Ch. 2000-439, Laws of Fla.

<sup>47</sup> *Id.* at S. 4.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at S. 7.

pursuant to law.<sup>50</sup> At least once a year, the system board must have the financial records and accounts of the Health System audited by a certified public accountant and an audit report prepared.<sup>51</sup>

The system board operates the Health System<sup>52</sup> and may enter into necessary contracts, including for the sale, purchase, or lease of real or personal property.<sup>53</sup> The system board may construct and equip buildings and improvements as necessary to provide the full range of health care services the health care system is authorized to provide.<sup>54</sup>

Funds of the Health System may be paid out only upon drafts, checks, or warrants signed by persons duly authorized by the system board to execute such instruments.<sup>55</sup> The system board may adopt rules for the payment of lesser sums in cash, and a petty cash fund may be established with the maximum amount payable in cash in one transaction fixed by the system chief executive officer. The system board may deposit or invest surplus funds in interest-bearing accounts, instruments, or securities, to the fullest extent permitted by general law.<sup>56</sup> The system board may invest surplus funds in several types of investments specified in the charter,<sup>57</sup> including obligations of the United States, state and local general obligation bonds, revenue bonds, specified short-term obligations, and other specified investments. The system board may also enter into any and all types of derivative agreements as may be used by prudent borrowers, lenders, or investors, which are intended to minimize the risk of financial loss or maximize the financial return in connection with its bonds, notes, or investments, or for any other purpose.<sup>58</sup>

The Health System is entitled to obtain and enforce liens for medical services charges, including upon the proceeds of legal actions accruing to those receiving services or their legal representatives, and upon judgements and settlements rendered or entered into on account of injuries giving rise to such causes of actions.<sup>59</sup> The Health System must perfect these liens as provided in law.<sup>60</sup>

### **Effect of the Bill**

The bill clarifies the voting requirements for purposes of taking official action by the system board. A majority of the system board members constitutes a quorum for the purpose of conducting business and exercising its powers. Action may only be taken by the system board upon the affirmative vote of a majority of board members when a quorum is present and in attendance. The bill also removes the requirement that the financial audit and a copy of the health system's current annual budget be filed annually with the Clerk of the Circuit Court of Lee County.

The bill authorizes the Health System to acquire real property subject to one or more existing mortgages or other financial obligation provided that any such obligation is non-recourse to other property of the Health System.

The bill authorizes Health System funds to be paid out by wire transfers, electronic bank transfers, and warrants signed or approved by persons duly authorized by the system board to execute such instruments. The bill revises the manner in which the system board may invest funds and manage investments, Providing that funds may be invested in accordance with investment policies approved by

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* This requirement appears to duplicate the general law requirement for certain independent special districts to file audited financial statements annually. See ss. 218.32 and 218.39, F.S.

<sup>52</sup> Ch. 2000-439, s. 10, Laws of Fla.

<sup>53</sup> *Id.* at (4)

<sup>54</sup> Ch. 2000-439, s. 4, Laws of Fla.

<sup>55</sup> Ch. 2000-439, s. 13, Laws of Fla.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at (7)

<sup>59</sup> Ch. 2000-439, s. 18, Laws of Fla.

<sup>60</sup> Ch. 2000-439, s. 18(1-5), Laws of Fla.

the system board consistent with general law. These investment policies must be designed to maximize the financial return consistent with the risks incumbent in each investment and must be designed to preserve the appropriate diversification of the system board's portfolio. Surplus funds may also be invested as permitted by general law.

The bill also creates a process by which the Health System may convert to a Florida not-for-profit corporation. By majority vote, the system board may commence an evaluation on whether converting the Health System to a nonprofit entity will benefit the residents of Lee County.

In evaluating the benefits, the system board must:

- 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 chair of the system board 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 system board must determine, by majority vote plus one, whether the interests of residents of the district are best served by conversion. If the system board determines conversion is in the best interest of the residents, the district must negotiate and complete an agreement with the Lee County Board of County Commissioners no later than 120 days after the date of the public meeting during which the system board determined conversion was in the best interest of the 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 Lee County;
- The estimated total value of the assets and liabilities that will be transferred to Lee County;
- 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 Lee County to the successor non-profit entity upon conversion of the district; and
- Any other terms or conditions mutually agreed upon by the district and Lee County.

The bill prohibits any member of the Lee County Board of County Commissioners from serving on the board of the successor nonprofit entity, but allows for members of the district's governing body to the

serve on the board of the successor entity. Members of both boards 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 Lee County Board of County Commissioners or to any senior executives of the 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 system board 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 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 Lee County Board of County Commissioners at a properly noticed public meeting. Both the district and Lee County 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.

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 approval by the Lee County Board of County Commissioners. 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 provides that provisions of the charter are to be construed liberally and the enumeration of powers is not a limitation to other legal authority that the system board may exercise.

Finally, the bill provides that if any part of the act is declared unconstitutional, it does not affect the remaining parts of the bill.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

According to the Economic Impact Statement, the bill is not expected to have a fiscal impact.

**C. ECONOMIC IMPACT STATEMENT FILED?** Yes  No

**D. NOTICE PUBLISHED?** Yes  No



IF YES, WHEN? December 14, 2022.

WHERE? *The News-Press*, a daily newspaper of general circulation published in Lee County, Florida.

E. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?