

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1421 Independent Hospital Districts

**SPONSOR(S):** State Affairs Committee, Fine and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 4 N	Roy	Darden
2) Select Committee on Health Innovation	7 Y, 3 N	DesRochers	Calamas
3) State Affairs Committee	14 Y, 5 N, As CS	Mwakyanjala	Williamson

### SUMMARY ANALYSIS

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet. A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.

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 does not provide a 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, allowing the governing body of the district to vote, by a majority vote plus one, to evaluate the benefits of conversion for residents of the district by contracting with an independent entity meeting certain criteria to render a certified, independent evaluation.

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 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.

The bill also requires each independent hospital district to conduct a financial evaluation of converting to a non-profit entity or transacting a sale to a for-profit entity by December 31, 2024, unless the district has conducted a financial evaluation within the past 10 years or is currently conducting an evaluation.

The bill may have a positive effect on state revenues and no impact on state expenditures. The bill may have a negative fiscal impact on independent hospital districts.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

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

Special districts may be classified as dependent or independent based on their relationship with local general-purpose governments. A special district is classified as “dependent” if the governing body of a single county or municipality:

- Serves as governing body of the district;
- Appoints the governing body of the district;
- May remove members of the district’s governing body at-will during their unexpired terms; or
- Approves or can veto the budget of the district.<sup>5</sup>

A district is classified as “independent” if it does not meet any of the above criteria or is located in more than one county, unless the district lies entirely within the boundaries of a single municipality.<sup>6</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>7</sup>

##### Hospital and Health Care Districts

Hospital districts are a type of independent special district specializing in the provision of health care services. As of January 15, 2024, there are 30 special districts classified as hospital or health care districts.<sup>8</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

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

<sup>3</sup> Local Administration, Federal Affairs & Special Districts Subcommittee, *The Local Government Formation Manual*, 62, <https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?Committeed=3227> (last visited Jan. 16, 2024).

<sup>4</sup> 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. 2023-335, s. 6 of s. 1, Laws of Fla. (East River Ranch 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), and 388.221, F.S. (mosquito control), and ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

<sup>5</sup> S. 189.012(2), F.S.

<sup>6</sup> S. 189.012(3), F.S.

<sup>7</sup> See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

<sup>8</sup> Dept. of Commerce, *Official List of Special Districts Online*, available at <https://specialdistrictreports.floridajobs.org/OfficialList/CustomList> (last visited Jan. 15, 2024).

and maintaining hospitals, and a provision that the facilities be established for the benefit of the indigent sick.<sup>9</sup>

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 Volusia Hospital Authority
Indian River County Hospital District	

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

Current law authorizes the sale or lease of local government owned hospitals.<sup>10</sup> The governing board of the hospital or hospital system must find that the sale or lease is in the best interest of the affected community<sup>11</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.
- Provide for continued treatment of the indigent sick.<sup>12</sup>

<sup>9</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>10</sup> S. 155.40, F.S.

<sup>11</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>12</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>13</sup>
- 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.<sup>14</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>15</sup>
  - Allows receipt of public comment.<sup>16</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>17</sup>
  - Requires a petition for approval of and a final order by AHCA.<sup>18</sup>
  - Provides an appeal right for any interested party.<sup>19</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>20</sup>
  - Allows voiding of the transaction by any party if specified provisions are not followed.<sup>21</sup>

If a hospital is sold, all tax authority associated with the hospital ceases.<sup>22</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>23</sup> The district board must appropriate the other 50 percent to funding to care for the indigent sick.<sup>24</sup> Other taxing, financial, and liability considerations are provided by the law, including prohibitions on the transfer of government functions.<sup>25</sup> A streamlined process is provided if the property represents less than 20 percent of the hospital's net revenue.<sup>26</sup>

### 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).<sup>27</sup> 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.<sup>28</sup> 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

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<sup>13</sup> S. 155.40(6), F.S.

<sup>14</sup> S. 155.40(7)(a), F.S.

<sup>15</sup> S. 155.40(8), F.S.

<sup>16</sup> S. 155.40(9), F.S.

<sup>17</sup> S. 155.40(10), F.S.

<sup>18</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>19</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>20</sup> S. 155.40(13), F.S.

<sup>21</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>22</sup> S. 155.40(15), F.S.

<sup>23</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>24</sup> S. 155.40(16)(b), F.S. Funding the delivery of indigent care, includes, but not limited to, primary care, physician specialty care, outpatient 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>25</sup> S. 155.40(17)-(21), F.S.

<sup>26</sup> S. 155.40(22), F.S.

<sup>27</sup> Fla. Exec. Order No. 11-63 (Mar. 23, 2011).

<sup>28</sup> *Id.*

governance.<sup>29</sup> 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.<sup>30</sup>

### 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>31</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>32</sup> 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.<sup>33</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>34</sup> Unlike for-profit corporations, certain not-for-profit corporations may apply for exemptions from federal, state, and local taxes.<sup>35</sup>

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.
- 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.<sup>36</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>37</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>38</sup>

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<sup>29</sup> *Report on the Commission of Review of Taxpayer Funded Hospitals*, (December 30, 2011), <https://floridataxwatch.org/Research/Blog/ArtMID/34888/ArticleID/15657/Report-of-the-Commission-on-Review-of-Taxpayer-Funded-Hospital-Districts> (last visited Jan. 16, 2024).

<sup>30</sup> *Id.*

<sup>31</sup> Ch. 90-179, Laws of Fla.

<sup>32</sup> S. 617.0301, F.S.

<sup>33</sup> See ss. 617.0302 and 607.0302, F.S.

<sup>34</sup> See ss. 617.0834 and 607.0831, F.S.

<sup>35</sup> See, e.g., 26 U.S.C. s. 501, s. 212.08(7)(p), F.S.

<sup>36</sup> S. 617.1622, F.S.

<sup>37</sup> S. 215.85(3)(b), F.S.

<sup>38</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).

## Effect of Proposed Changes

### Conversion to Not-for-Profit Entity

The bill authorizes the governing body of an independent hospital district<sup>39</sup> 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.<sup>40</sup> 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).
- Make available to the public on its website all documents considered by the governing body in making its determination.

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

Within 120 days of receipt of the final report, the governing body of the district must determine, by majority vote plus one, whether the interests of residents of the district are best served by conversion. If the governing body determines conversion is in the best interest of residents, the district must negotiate and complete an agreement with the board of county commissioners for each county in which any part of the district's boundary is located. The agreement between the governing body of the district and each county commission must be completed no later than 120 days after the date of the public meeting during which the governing 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.

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<sup>39</sup> 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.

<sup>40</sup> The bill defines a "nonprofit entity" as a Florida not-for-profit corporation operating under ch. 617, F.S., the Florida Not For Profit Corporation Act.

- 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 non-profit 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 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.
- If any member of the governing body of the district will serve on the board of the successor non-profit entity (intent to serve on the board of the successor non-profit 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 goes into full force and effect. The district must file a copy of the agreement with the Department of Commerce (Commerce) 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 Commerce that the transfer is complete. The district is deemed automatically dissolved upon receipt of the notice.

### Financial Evaluation

The bill also requires the governing body of the independent hospital district to conduct a financial evaluation of the benefits to the residents of the district of converting the independent hospital district to a non-profit entity or transacting a sale to a for-profit entity. The evaluation must include, but is not limited to, a complete financial valuation of the assets and liabilities of the district. The bill requires 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 the evaluation according to applicable industry best practices.

The evaluation must include a statement signed by the chief executive of the district that, upon his or her reasonable knowledge and belief, the evaluation is true and correct. The evaluation must be conducted by an independent certified public accountant and include a statement from the accountant that, upon his or her reasonable knowledge and belief, the valuation is true and correct. The bill requires each district to complete its evaluation by December 31, 2024, and publish the evaluation on its website within 30 days of completion.

The bill provides an exception for any district that has conducted a financial evaluation within the last 10 years or is currently conducting a financial evaluation.

## **B. SECTION DIRECTORY:**

Section 1: Creates s. 189.0762, F.S., authorizing the conversion of an independent hospital district

to a private nonprofit entity.

Section 2: Requires independent hospital districts to conduct a financial evaluation by December 31, 2024.

Section 3: Provides an effective date of July 1, 2024.

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

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

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

The bill may have a 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:**

The bill may have an indeterminate negative impact on hospital district expenditures due to the need to contract for a financial evaluation.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill does not provide rulemaking authority or require executive branch rulemaking.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 14, 2024, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided an exception from the required financial evaluation by independent hospital districts for any district that has conducted a financial evaluation within the last 10 years or is currently conducting a financial evaluation.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.