

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill adds to current statute the provision that public hospitals, which are sold to Florida corporations, are not subject to Florida public records laws. The bill decreases public access to records and meetings of public hospitals that are leased or sold to a private company.

B. EFFECT OF PROPOSED CHANGES:

Current law specifies that a lessee of a hospital shall not be construed to be “acting on behalf of” a lessor. HB 675 w/ CS amends s. 155.40, F.S., to add a purchaser of a hospital to this provision. The bill provides that a purchaser of a hospital is not construed to be “acting on behalf of” the seller.

Section 155.40, F.S., was enacted in 1982 to allow local taxing districts the authority to lease their hospitals to Florida corporations and was amended in 1996 to allow the sale of public hospitals to Florida corporations.

A recent court decision in Volusia County ruled that, even though the West Volusia Hospital Authority (the local taxing district) sold their public hospital to Adventist, the hospital must remain subject to the state public records and meetings laws.

The bill clarifies a public records exemption for public hospitals that are leased or sold to private Florida corporations. The bill provides that the records of a private corporation that leases or purchases a public hospital are confidential and not subject to s. 119.07(1) or s. 24(a), Article I of the Florida Constitution. The bill also specifies that the meetings of the governing board of a private corporation that leases or purchases a public hospital are not subject to s. 286.011, s. 24(b) or Article I of the Florida Constitution.

The bill provides a public necessity statement that includes:

- The legislature always intended that private corporations that purchase public hospitals are not subject to public records and open meetings laws;
- Private entities do not act “on behalf” of the public entities from which they purchase or lease a public hospital;
- If the public records laws and open meetings laws apply to private corporations that purchase or lease public hospitals, public entities may find it difficult, if not impossible, to find a private corporation that is willing to purchase or lease a public hospital; and
- The legislature finds that any private corporation that purchases a public hospital, regardless of whether the corporation had previously leased that hospital, does not act on behalf of the public entity.

The bill provides for future review and repeal of the exemptions on October 2, 2011, pursuant to the Open Government Sunset Review Act of 1995.

The bill specifies that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure.

The effective date of the bill is upon becoming law. The bill also specifies that if passed it will apply to all private corporations that have purchases or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

BACKGROUND

Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews

The public/private status of the Memorial Hospital (now Florida Hospital Deland) in Volusia County has been the subject of a string of court challenges. The challenges are summarized in the final summary judgment of Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews. The summary judgment lays out the development of the hospital prior to current litigation, background of prior litigation, development of the hospital currently, and legal conclusions.

Development of the Hospital Prior to Current Litigation

In 1957, the Florida Legislature created the West Volusia Hospital Authority (the "Authority"), as an independent taxing district (Ch. 57-2085, 1, Laws of Florida). The Authority developed and operated the West Volusia Memorial Hospital as a publicly owned hospital. From 1957 until 1994, the Authority levied substantial taxes but the Authority was unable to operate the hospital in a fiscally responsible manner and relied heavily on tax-payers to subsidize the hospital. In 1993 the Authority entered into negotiations with Memorial Health Systems (MHS) to lease and operate West Volusia Memorial Hospital. In the contract between MHS and the Authority, MHS agreed to provide indigent care for the indigent sick in the taxing district, and the Authority agreed to reimburse Hospital Corporation for those services.

Background of Prior Legislation

In 1994, News-Journal filed a complaint in the Circuit Court seeking a declaratory decree that the records of MHS were subject to the Public Records Act and the Sunshine Law. The Circuit Court entered a final judgment in favor of MHS. On appeal, the Fifth District Court of Appeal reversed and held that MHS was subject to the Public Records Act and the Sunshine Law. The court concluded that MHS was "acting on behalf of the Authority (News-Journal Corp. v. Memorial Hospital-West Volusia, Inc., 695 So. 2d 418, Fla. 5th DCA 1997). The Supreme Court of Florida upheld the ultimate decision that MHS was subject to the Public Records Act and the Sunshine Law (Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 383, Fla 1999).

Development of Hospital Recently

On March 23, 2000, MHS delivered notice to the Authority that it intended to terminate the lease contract as of midnight September 30, 2000. The Authority was not interested in running the hospital again and eventually worked out a sale agreement with Adventist, as authorized in s.155.40, F.S. Under the sale agreement the Authority will continue to pay, now Adventist, for indigent care of Volusia County residents. Under the new ownership the name of the hospital was changed to Florida Hospital Deland.

Legal Conclusions

The summary judgment concluded that the Authority has delegated the performance of its public purpose to the Adventist Corporation which is thus subject to the Public Records Act Article I, section 24(a) of the Florida Constitution and the Sunshine Laws of Florida, s. 119.07, F.S.

Public Records Requirements of Leased Hospitals

Section 395.3036, F.S., provides that records and meetings of corporations that lease public hospitals or other public health care facilities are exempt from public records requests. The records of a private corporation are exempt from s. 119.07(1), F.S., and section 24(a), Article I of the State Constitution. The meetings of the governing board of a private corporation are exempt from s. 286.011, F.S., and

section 24(b) providing the financial requirements of s. 155.40(5), F.S., are met. In order to qualify for these exemptions the three of the five following criteria must be met:

- The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility;
- The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds;
- Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision making process of the public lessor;
- The lease agreement does not expressly require the lessee to comply with the requirements of ss. 119.07(1) and 286.011, F.S. and
- The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

C. SECTION DIRECTORY:

Section 1.- Amends s. 155.40, F.S., to add purchasers to provide that a purchaser of a hospital is not construed to be "acting on behalf of" the seller.

Section 2. - Provides a public necessity statement.

¹ Section 119.15, F.S.

Section 3. – Provides that the public records and public meeting exemption does not change existing law related to discover of records and information.

Section 4. - Provides that the bill is effective upon becoming law.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration has the necessary rulemaking authority to carry out the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article III, section 6 of the Florida Constitution requires that, "every law shall embrace but one subject and matter properly connected." The bill may violate this provision because the bill may include some substantive language as well as a public records and public meetings exemption.

Article I, section 24 of the Florida Constitution requires that all public records include a public necessity statement that is narrowly drawn. The bill may need to be narrowed in scope in order to meet the provisions in the Constitution.

Section 3 of the bill is unnecessary because public records exemptions do not have any impact on the Florida Rules of Civil Procedure.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2005, the Health Care Regulation Committee adopted a strike-all amendment and reported the bill favorably with committee substitute (CS). The CS provided a public necessity statement for the public records exemption, changed the bill to a public records exemption bill, and provides that the bill will take effect upon becoming law.

The analysis is drafted to the committee substitute.