

CHAPTER 2023-326

House Bill No. 227

An act relating to Lee Memorial Health System, Lee County; amending chapter 2000-439, Laws of Florida; providing quorum requirements for system board meetings; removing a requirement that the health system's annual audit and annual budget be filed with the clerk of the circuit court; revising provisions relating to purchasing real property, entering into financial agreements, and managing funds; providing a process by which the health system may convert to a nonprofit entity; providing construction; removing provisions relating to execution and enforcement of liens; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 7, subsections (4) and (7) of section 10, and sections 13 and 18 of chapter 2000-439, Laws of Florida, are amended, and new sections 18 and 19 are added to that chapter, to read:

Section 7. The system board shall elect annually from its members a chair, vice-chair, secretary, and treasurer, who shall be the officers of the system board. The system board shall cause true and accurate minutes and records to be kept of all business transacted by the system board and shall keep full, true, and complete books of accounts and records, which minutes, records, and books of account and the current line item budget shall at all reasonable times be open and subject to inspection and copying pursuant to the provisions of the constitution and laws of Florida. A majority of the members of the system board shall constitute a quorum of the system board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the system board upon an affirmative vote of a majority of those system board members attending a system board meeting at which a quorum is in attendance. All meetings of the system board shall be open to the general public pursuant to general law. At least once a year the system board shall cause the financial records and accounts of the health care system to be audited by a certified public accountant authorized to practice public accounting in Florida and a certified public account audit report to be prepared. ~~The audit, together with a copy of the health system's current annual budget, shall be filed annually with the Clerk of the Circuit Court of Lee County.~~

Section 10. The Lee Memorial Health System Board of Directors shall have the authority to operate and conduct the business of the public health system, and consistent therewith, shall have the following powers:

(4) The system board may make, or authorize its chief executive officer to make, contracts of all kinds, including, but not limited to, the sale or purchase of real property and may enter into leases of real and personal property of any kind or description, either as lessor or lessee. Any such

purchase of real property may be obtained, subject to one or more existing mortgages or may be purchased by installment sale or purchase money financing provided that any such assumed mortgage, installment sale, or new mortgage shall be non-recourse to other property of the system board.

(7) The system board may 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, subject to the system board's investment policy referenced in section 13.

Section 13. Funds of the Lee Memorial Health System may be paid out ~~only~~ upon drafts, checks, wire transfers, electronic bank transfers, or warrants signed or approved by persons duly authorized by the system board to execute such instruments for purposes consistent with this act. The system board may adopt rules for the payment of lesser sums in cash, and a petty cash fund or funds may be established for such purpose with the maximum amount payable in cash in one transaction fixed by the system chief executive officer. All funds of the system board shall be deposited in banks which are qualified under state law to accept deposits of public funds. In addition to any investment The system board may deposit or invest its surplus funds in interest-bearing accounts, instruments, or securities, to the fullest extent permitted by general law, the system board is authorized and empowered to invest any funds in its control or possession in accordance with an investment policy approved by the system board consistent with section 218.415, Florida Statutes, and shall include, among other items, the investment objectives and permitted securities under the policy. Such investment policy shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve the appropriate diversification of the portfolio. In addition, the system board may invest its surplus funds as provided in section 218.415, Florida Statutes, and in such other investments as are authorized by the system board and permitted by the system board investment policy follows:

~~(1) Without limitation in:~~

~~(a) Bonds, notes, or other obligations of the United States or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof.~~

~~(b) State bonds pledging the full faith and credit of the state and revenue bonds additionally secured by the full faith and credit of the state.~~

~~(c) Bonds of the several counties or districts in the state containing a pledge of the full faith and credit of the county or district involved.~~

~~(d) Savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association incorporated under the laws of the~~

~~United States doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof, in an amount that does not exceed 15 percent of the net worth of the institution, provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280, Florida Statutes.~~

~~(e) Obligations of the Federal Farm Credit Banks and obligations of the Federal Home Loan Bank and its district banks.~~

~~(f) Obligations of the Federal Home Loan Mortgage Corporation including participation certificates.~~

~~(g) Obligations guaranteed by the Government National Mortgage Association.~~

~~(h) Commercial paper of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service.~~

~~(i) Time drafts or bills of exchange drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are accepted by a member bank of the Federal Reserve System having total deposits of not less than \$400 million.~~

~~(j) Short term obligations not authorized elsewhere in this section, to be purchased individually or in pooled accounts or other collective investment funds, for the purpose of providing liquidity to any fund or portfolio.~~

~~(k) Securities of, or other interest in, any open end or closed end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations and provided that such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.~~

~~(2) With no more than 25 percent of its funds in:~~

~~(a) Bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of this state, if such obligations are rated in any one of the three highest ratings by two nationally recognized rating services. However, if only one nationally recognized rating service shall rate such obligations, then such rating service must have rated such obligations in any one of the two highest classifications heretofore mentioned.~~

~~(b) Notes secured by first mortgages on Florida real property, insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs.~~

~~(e) Mortgage pass-through certificates, meaning certificates evidencing ownership of an undivided interest in pools of conventional mortgages on real property which is improved by a building or buildings used for residential purposes for one to four families when:~~

~~1. Such real property is located in this state;~~

~~2. Such mortgages are originated by one or more banks or savings and loan associations organized under the laws of this state, by national banks or federal savings and loan associations having their principal place of business in this state, or by a lender that is approved by the Secretary of the United States Department of Housing and Urban Development for the participation in any mortgage insurance program under the National Housing Act and has its principal place of business in this state, or by any combination thereof; and~~

~~3. Such mortgages are transferred or assigned to a corporate trustee acting for the benefit of the holders of such certificates.~~

~~(d) Obligations of the Federal National Mortgage Association.~~

~~(e) Group annuity contracts of the pension investment type with insurers licensed to do business in this state, except that amounts invested by the board with any one insurer shall not exceed 3 percent of its assets.~~

~~(f) Certain interest in real property and related personal property, including mortgages and related instruments on commercial or industrial real property, with provisions for equity or income participation or with provisions for convertibility to equity ownership; and interest in collective investment funds. Associated expenditures for acquisition and operation of assets purchased under this provision shall be included as a part of the cost of the investment.~~

~~1. The title to real property acquired under this paragraph shall be vested in the name of the respective fund.~~

~~2. For purposes of taxation of property owned by any fund, the provisions of section 196.199(2)(b), Florida Statutes, do not apply.~~

~~3. Real property acquired under the provisions of this paragraph shall not be considered state lands or public lands and property as defined in chapter 253, Florida Statutes, and the provisions of that chapter do not apply to such real property.~~

~~(g) General obligations backed by the full faith and credit of a foreign government which has not defaulted on similar obligations for a minimum period of 25 years prior to purchase of the obligation and has met its payments of similar obligations when due.~~

~~(h) Obligations of agencies of the government of the United States, provided such obligations have been included in and authorized by the~~

~~Florida Retirement System Total Fund Investment Plan established in section 215.475, Florida Statutes.~~

~~(i) United States dollar-denominated obligations by foreign governments, or political subdivisions or agencies thereof, or foreign corporations or foreign commercial entities.~~

~~(3) With no more than 50 percent of its funds in common stock, preferred stock, and interest-bearing obligations of a corporation having an option to convert into common stock, provided:~~

~~(a) The corporation is organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.~~

~~(b) The corporation is listed on any one or more of the recognized national stock exchanges in the United States and conforms with the periodic reporting requirements under the Securities Exchange Act of 1934.~~

~~The system board shall not invest more than 10 percent of the equity assets of its funds in the common stock, preferred stock, and interest-bearing obligations having an option to convert into common stock, of any one issuing corporation; and the system board shall not invest more than 3 percent of the equity assets of any funds in such securities of any one issuing corporation except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values at least as broad as the Standard and Poor's Composite Index of 500 Companies, or except upon a specific finding by the system board that such higher percentage is in the best interest of the system board. The system board may only sell listed options to reduce investment risks, to improve cash flow, or to provide alternative means for the purchase and sale of underlying investment securities. Reversing transactions may be made to close out existing option positions.~~

~~(4) With no more than 80 percent of its funds, in interest-bearing obligations with fixed maturity of any corporation or commercial entity within the United States.~~

~~For the purpose of determining the above investment limitations, the value of bonds shall be the par value thereof, and the value of evidences of ownership and interest-bearing obligations having an option to convert to ownership shall be the cost thereof. Investments in any securities authorized by this section may be under repurchase agreements or reverse repurchase agreements. Investments made by the system board may be designated to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The system board is authorized to buy and sell futures and options, provided the instruments for such purpose are traded on a securities exchange or board of trade regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission, unless the system board by rule authorizes a different~~

market. ~~The system board is authorized to invest in domestic or foreign national principal contracts.~~

Section 18. Conversion to nonprofit entity.—

(1) For purposes of this section, “nonprofit entity” means a Florida not-for-profit corporation operating under chapter 617, Florida Statutes.

(2) The system board may elect, by a majority vote of the members present and voting, to commence an evaluation of the benefits to the residents of Lee County of converting Lee Memorial Health System to a nonprofit entity if the system board and the Lee County Board of County Commissioners execute an agreement that meets the requirements of subsection (5). In evaluating the benefits of converting Lee Memorial Health System to a nonprofit entity, the system board must:

(a) Publish notice of and conduct a public meeting in accordance with section 189.015(1), Florida Statutes, to provide the residents of Lee County with the opportunity to publicly testify regarding the conversion. The public hearing must be held at a meeting other than a regularly noticed meeting or an emergency meeting of the system board.

(b) 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 Lee Memorial Health System to conduct the evaluation according to applicable industry best practices. The independent entity may not have any current affiliation with or financial involvement in Lee Memorial Health System or with any current member of the system board.

(c) Publish all documents considered by the system board on the Lee Memorial Health System website.

(3) The evaluation must be completed and a final report presented to the system board no later than 180 days after the date on which the vote is taken by the system board to evaluate the conversion. The final report shall be published on the Lee Memorial Health System website. 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, based on each person’s reasonable knowledge and belief, the contents and conclusions of the evaluation are true and correct.

(4) No later than 120 days after the date on which the system board receives the final report, the system board must determine, by a majority vote, whether the interests of Lee County residents are best served by converting to a nonprofit entity. If the system board determines that conversion is in the best interests of Lee County residents, Lee Memorial Health System must negotiate and draft a proposed agreement with the Lee County Board of County Commissioners before conversion may occur.

(5) An agreement between the system board and Lee County must be completed no later than 120 days after the date on which the public meeting is held to determine if conversion is in the best interests of Lee County residents. The agreement must be in writing, dispose of all assets and liabilities of Lee Memorial Health System, and include:

- (a) A description of each asset that will be transferred to Lee County.
- (b) A description of each liability that will be transferred to Lee County.
- (c) The estimated total value of the assets that will be transferred to Lee County.
- (d) The estimated total value of the liabilities that will be transferred to Lee County.
- (e) A description of all assets that will be transferred to the succeeding nonprofit entity.
- (f) A description of all liabilities that will be assumed by the succeeding nonprofit entity.
- (g) The estimated total value of the assets that will be transferred to the succeeding nonprofit entity.
- (h) The total value of the liabilities to be assumed by the succeeding nonprofit entity.
- (i) If any debts remain, how those debts will be resolved.
- (j) An enforceable commitment that programs and services provided by Lee Memorial Health System will continue to be provided to residents of Lee County in perpetuity so long as the succeeding nonprofit entity is in operation or, if otherwise agreed to, until the succeeding nonprofit entity has otherwise met all obligations set forth in the agreement.
- (k) A provision transferring the rights and obligations as agreed to by the system board and Lee County to the succeeding nonprofit entity.
- (l) Any other terms mutually agreed to by Lee Memorial Health System and Lee County.
- (6) A current member of the Lee County Board of County Commissioners may not serve on the board of the succeeding nonprofit entity.
- (7) A current or former member of the system board may serve on the board of the succeeding nonprofit entity.
- (8) The members of the system board and the Lee County Board of County Commissioners must disclose all conflicts of interest as required by section 112.313, Florida Statutes, including, but not limited to:

(a) Whether the conversion will result in a special private gain or loss to any member of the system board or the Lee County Board of County Commissioners.

(b) If any current member of the system board will serve on the board of the succeeding nonprofit entity. Such intent to serve on the board of the succeeding nonprofit entity does not disqualify any member from voting on the proposed conversion.

(9) The evaluation, agreements, disclosures, and any other supporting documents related to the conversion of Lee Memorial Health System must be published on the websites of Lee Memorial Health System and Lee County for 45 days before the system board and the Lee County Board of County Commissioners may vote on the proposed agreement identified in subsection (5) to convert Lee Memorial Health System to a nonprofit entity.

(10)(a) In a public meeting noticed as required pursuant to subsection (2), the system board may approve, by a majority vote plus one, the agreement identified under subsection (5), which approval shall constitute approval of the conversion of Lee Memorial Health System to a nonprofit entity subject to the terms of the agreement.

(b) The agreement identified under subsection (5) must be approved by the Lee County Board of County Commissioners in a properly noticed public meeting.

(c) If the system board and the Lee County Board of County Commissioners approve the agreement, Lee Memorial Health System shall file a copy of the agreement with the Florida Department of Economic Opportunity no later than 10 days after the date of approval by the Lee County Board of County Commissioners.

(11) No later than 30 days after the complete transfer of assets and liabilities as provided in the agreement under subsection (5), Lee Memorial Health System shall notify the Florida Department of Economic Opportunity. The Lee Memorial Health System independent special district shall be dissolved automatically upon receipt of the notice by the department.

(12) If the system board and the Lee County Board of County Commissioners fail to approve for any reason an agreement that would result in the conversion of Lee Memorial Health System to a nonprofit entity, Lee Memorial Health System shall continue to exist as an independent special district.

Section 19. The provisions of this act shall be construed liberally in order to carry out its purpose effectively. Any of the enumerated powers herein shall not be construed as a limitation against any remaining powers but shall be construed as cumulative.

~~Section 18.— Lee Memorial Health System shall be entitled to a lien for all reasonable charges for hospital, physician, and other health care services~~

~~provided by the Lee Memorial Health System to ill or injured persons, upon the proceeds of all causes of action, suits, claims, counterclaims, and demands accruing to said persons or to their legal representatives, and upon all judgments, settlements, and settlement agreements rendered or entered into by virtue thereof, on account of injuries giving rise to such causes of action, suits, claims, counterclaims, demands, judgments, settlements, or settlement agreements, which injuries shall have necessitated such hospital, physician, and other services provided to such ill or injured persons. Lee Memorial Health System shall perfect and be entitled to enforce such lien as follows:~~

~~(1) In order to perfect the lien provided for herein, the Lee Memorial Health System chief executive officer or an employee or employees of the Lee Memorial Health System authorized by the chief executive officer shall, before or within 10 days after such ill or injured person shall have been discharged from a Lee Memorial Health System hospital, file in the office of the Lee County Clerk of Circuit Court, a verified written notice of lien setting forth the name and address of the ill or injured person as they may appear in the records of said health system hospital, the name and location of said hospital, the name and address of the employee or other authorized person preparing the notice of lien, the date of admission to said hospital and the date of discharge from said hospital, the amount claimed to be due for hospital, physician, and other services provided, and to the best knowledge of the person preparing the notice of lien, the names and addresses of all persons, firms, or corporations who may be claimed by such ill or injured person or by the legal representative of such person, to be liable on account of such illness or injuries. When the notice of lien is filed, a copy thereof shall be sent by United States Postal Service to the ill or injured person, to said person's attorney, if known, and to all persons, firms, or corporations named in such notice of lien. The filing and mailing of the notice of lien in accordance with this section shall be notice thereof to all persons, firms, or corporations who may be liable on account of such illness or injuries, and to any other persons, firms, or corporations that may have an interest in the aforesaid causes of action, suits, claims, counterclaims, demands, judgments, settlements, or settlement agreements, whether or not they are named in the notice of lien, and whether or not a copy of the notice of lien shall have been received by them.~~

~~(2) The Lee County Clerk of Circuit Court shall endorse on the written notice of lien the date and hour of filing and shall record said notice of lien in the Official Records of Lee County. The Clerk of Circuit Court shall be entitled to a fee from the Lee Memorial Health System for filing and recording the notice of lien that shall be the same fee as provided by general law for the filing and recording of other instruments.~~

~~(3) No release or satisfaction of any cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement shall be valid or effectual as against the lien of Lee Memorial Health System unless the lienholder shall join therein or execute a release of its lien prior to the payment of any proceeds thereof. Any acceptance of a release or~~

~~satisfaction of any cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement in the absence of a release or satisfaction of the lien of Lee Memorial Health System shall prima facie constitute an impairment of such lien and the lienholder shall be entitled to a cause of action for damages against any and all persons, firms, or corporations giving or accepting such release or satisfaction, or paying or accepting the proceeds from the same. In such action, Lee Memorial Health System may recover the full amount of its charges for such hospital, physician, or other health care services; regardless of the amount of proceeds paid or received in impairment of its lien. Satisfaction of a judgment rendered in favor of Lee Memorial Health System in such action shall operate as a satisfaction of the lien. The action by the lienholder shall be brought in the court in Lee County having jurisdiction of the amount of the lienholder's claim. If Lee Memorial Health System shall prevail in such action, it shall be entitled to recover from the defendant or defendants, in addition to costs otherwise allowable by law, all reasonable attorney fees and expenses.~~

~~(4) No person shall be entitled to recover or receive damages based on the expense of hospital, physician, or other health care services provided by Lee Memorial Health System unless that person shall affirmatively show that Lee Memorial Health System's charges have been paid. Provided, however, that in any action, suit, or counterclaim brought on account of illness or injury, the plaintiff or counterclaimant may include as an item of damages the expense of such hospital, physician, or other health care services provided by Lee Memorial Health System, if prior to trial he or she shall have notified Lee Memorial Health System in writing of the pendency of such action, suit, or counterclaim; whereupon the lienholder shall have the right, without leave of court, to intervene in the case and prove the amount of its charges for such hospital, physician, or other health care services. Any judgment rendered in favor of the plaintiff or counterclaimant shall provide that the amount proved by the lienholder to be due shall be deducted from the damages awarded and paid to the Lee Memorial Health System.~~

~~(5) The provisions of this section shall not be applicable to accidents or injuries within the purview of the workers' compensation laws of Florida.~~

Section 2. If any section, paragraph, sentence, clause, phrase, or other part of this act is declared unconstitutional, or if this act is declared inapplicable in any case, such declaration does not affect the remainder of the act or the applicability of the act in any other case.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 16, 2023.

Filed in Office Secretary of State June 16, 2023.