

**VOTING CONFLICT AND DISPROPORTIONATE BENEFIT**  
**INDEPENDENT SPECIAL DISTRICT BOARD MEMBERS VOTING ON**  
**CONVERTING THE DISTRICT TO A NONPROFIT ENTITY**

*To: George H. Knott, Esq. (Lee Memorial Health System)*

**SUMMARY:**

Under the circumstances presented, the members of the Lee Memorial Health System Board of Directors will have a voting conflict if they vote to convert the independent special district to a nonprofit entity and intend to serve on the board of directors of that nonprofit entity, but they will be permitted to vote on the matter. Those System Board members will not violate the prohibition against abusing their positions to obtain a disproportionate benefit when they vote on the conversion. CEO 21-2, CEO 21-1, CEO 19-23, and CEO 91-7 are referenced.

**QUESTION 1**

Will a voting conflict of interest under Section 112.3143, Florida Statutes, be negated when legislation expressly permits a board member of an independent special district to vote on converting the district to a nonprofit entity, even when the board member intends to serve the nonprofit entity as a compensated board member following the conversion?

This question is answered as follows.

This opinion is provided under the authority granted to this Commission by Section 112.322(3), Florida Statutes. This opinion was requested on behalf of the Lee Memorial Health System Board members in regard to legislation, namely Chapter 2000-439 and Chapter 2023-326,

Laws of Florida, which provides specific guidance pertaining to the matters that are addressed in this opinion. While this new legislation is not part of, nor does it modify, the Code of Ethics (Part III, Chapter 112, Florida Statutes), we take this opportunity to consider how this legislation affects the application of certain ethical prohibitions over which the Commission has jurisdiction.

Pursuant to Chapter 2000-439, Laws of Florida,<sup>1</sup> the Lee Memorial Health System ("System") is an independent special district, governed by the Lee Memorial Health System Board of Directors ("System Board"), which operates and maintains hospitals, clinics, and other facilities providing for healthcare needs in Lee County. Chapter 2023-326, Laws of Florida, amended Chapter 2000-439 and, in part, provided for the conversion of the System from an independent special district to a nonprofit entity that would operate in accordance with Chapter 617, Florida Statutes.

Regarding a potential conversion, Chapter 2023-326 states,

[t]he 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).<sup>2</sup>

The System Board must also publish notice of and conduct a special public meeting to give the public the opportunity to comment regarding the conversion, must contract with a qualified independent entity to evaluate the potential conversion according to applicable best industry

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<sup>1</sup> Chapter 00-439 repealed and replaced Chapter 63-1552, which was the original enabling legislation.

<sup>2</sup> Ch. 23-326, §18(2), at 6, Laws of Fla.

practices, and must publish all documents considered by the System Board on its website.<sup>3</sup> Within 120 days of receiving the final report from the qualified independent entity, the System Board must vote at a public meeting to determine whether the conversion is in the best interests of Lee County residents.<sup>4</sup> If it determines that it is, then it must, within 120 days of its vote, enter into an agreement with the Lee County Board of County Commissioners to dispose of all assets and liabilities, and include an enforceable commitment that all programs and services currently provided by the System will continue to be provided by the succeeding nonprofit entity.<sup>5</sup> No later than 30 days after the complete transfer of all assets and liabilities, the System shall notify the Florida Department of Economic Opportunity, and the independent special district shall be automatically dissolved upon receipt of that notice.<sup>6</sup>

Chapter 2000-439 states that System Board members shall receive a maximum annual compensation of \$10,000 if approved by the Board, but that the maximum shall increase each year according to the Consumer Price Index published by the United States Department of Labor.<sup>7</sup> Chapter 2023-326 does not amend or delete this language or address compensation for board members of the succeeding nonprofit entity.

The question presented here is whether the System Board members will be faced with a voting conflict were they to vote on the conversion, considering that it appears they may then continue serving the succeeding nonprofit entity in compensated positions. Relevant to this inquiry, voting conflicts are prohibited by Section 112.3143(3)(a), Florida Statutes, which states:

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<sup>3</sup> Id. at §18(2)(a), (2)(b), and (2)(c), at 6, Laws of Fla.

<sup>4</sup> Id. at §18(4), at 6, Laws of Fla.

<sup>5</sup> Id. at §18(5), at 7, Laws of Fla.

<sup>6</sup> Id. at §18(11), at 8, Laws of Fla.

<sup>7</sup> Ch. 00-439, §8, at 3, Laws of Fla.

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Furthermore, "special private gain or loss" is defined by Section 112.3143(1)(d), Florida Statutes, which states,

“Special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.

3. The degree to which the interests of all members of the class are affected by the vote.

4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

Voting on the proposed conversion with intent to serve on the board of the succeeding nonprofit entity will create a special private gain or loss for the voting System Board members, considering that, at the time of the vote, they have the potential of serving in compensated positions if the conversion is approved. See CEO 91-7. Normally, this would require the System Board members to abstain from the vote, state the nature of the conflict, and file a Form 8B, "Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers."

However, Chapter 2023-326 offers specific guidance on this point. First, it states, "[a] current or former member of the system board may serve on the board of the succeeding nonprofit entity."<sup>8</sup> It also states,

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

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<sup>8</sup> Ch. 23-326, §18(7), at 7, Laws of Fla.

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." (emphasis added)<sup>9</sup>

We view this language as creating an obligation to disclose conflicts of interest stemming from Section 112.313, which is additional to those disclosure obligations already created by Section 112.3143. The Legislature, despite referring to it as an example of a conflict of interest, clearly intended to permit current System Board members who intend to serve on the board of the succeeding nonprofit entity to vote on the conversion. To the extent that this provision can be construed to conflict with the general prohibition against voting conflicts found in Section 112.3143, Florida Statutes, the specific guidance in Chapter 2023-326 will control.<sup>10</sup> Chapter 2023-326 therefore negates to the application of Section 112.3143, inasmuch as the System Board members can vote on the conversion even if they intend to serve as compensated directors of the succeeding nonprofit entity. We note, though that the System Board members must still comply with the other requirements of Sections 112.3143 (i.e., by orally discussing their conflict at the time of the vote and filing the Form 8B), and that they must comply with the entirety of Section 112.3143, including abstaining from the conversion vote, if another basis for a voting conflict exists (i.e., if they know the conversion will financially affect a principal, relative, or business associate).

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<sup>9</sup> Id. at §18(8), at 7-8, Laws of Fla.

<sup>10</sup> Where a specific provision of law conflicts with a general one, the specific provision controls. See *Davis v. Sheridan Healthcare, Inc.*, 281 So. 3d 1259, 1264-65 (Fla. 2<sup>nd</sup> DCA 2019), approved of, 339 So. 3d 318 (Fla. 2022); *Legal Envtl. Assistance Found. V. Dep't of Envtl. Prot.*, 702 So. 2d 1352, 1353 (Fla. 1<sup>st</sup> DCA 1997);

In sum, Chapter 2023-326 requires the System Board members to disclose all conflicts under Section 112.313. Under Section 112.3143, those System Board members that intend to serve on the board of the nonprofit entity will have a voting conflict, but, due to the operation of Chapter 2023-326, will be permitted to vote, though they must announce the nature of their conflict at the time of the vote and file a Form 8B within 15 days of the vote with the person responsible for recording the meeting minutes.

## **QUESTION 2**

Does the participation of any current System Board member in a vote on a proposed conversion, as described above, constitute a disproportionate benefit prohibited by Article II, Section 8(h)(2) of the Florida Constitution?

This question is answered in the negative.

Article II, Section 8(h)(2), Florida Constitution, states:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

Implementing Article II, Section 8(h)(2) of the Florida Constitution, this Commission promulgated Rule 34-18.001, Florida Administrative Code. Rule 34-18.001(2)(a) states, "[f]or the purpose of Article II, Section 8(h)(2) of the Florida Constitution, 'disproportionate benefit' means a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties." (emphasis added)

In CEO 19-23, we explained that:

...the term "disproportionate benefit" encompasses only a benefit, privilege, exemption, or result that is "inconsistent with the proper performance" of a public officer's or public employee's public duties. In other words, if the benefit, privilege, exemption, or result arising from the public officer's or public employee's conduct is contemplated by and consistent with the standards governing his or her public conduct, a "disproportionate benefit" will not be present. And Rule 34-18.001(4) states the requisite intent needed to violate the Constitutional prohibition is a "wrongful intent" to obtain a benefit, privilege, exemption, or result "inconsistent with the proper performance" of a public officer's or public employee's public duties.

For the Commission to determine whether the requisite wrongful intent is present, it must rely on the results of a thorough investigation, which is not available in the procedure for responding to a formal opinion request. See CEO 21-1 and CEO 21-2, Question 2. Thus, we cannot opine on the intent of the public officers. Regardless of intent, this Commission would be hard pressed to determine that actions taken in accordance with specific guidance from the Legislature, as described in Question 1 above, are inconsistent with the proper performance of



public duties, given the law specifically allows for this process and allows for voting in the presence of certain voting conflicts and other conflicts of interest. See CEO 19-23. Therefore, in the absence of facts indicating otherwise, voting on a proposed conversion with intent to serve on the board of the succeeding nonprofit, even where compensation may be earned, would not violate the prohibition on obtaining a disproportionate benefit in Article II, Section 8(h)(2), Florida Constitution.<sup>11</sup>

Your inquiry is answered accordingly.

AL/jcb/ks

cc: George H. Knott, Esq.

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<sup>11</sup> Similarly, we find voting on the conversion would not constitute the "corrupt" conduct required for a violation of Section 112.313(6), Florida Statutes (Misuse of Public Position).

## Steverson, Kathryn

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**From:** Zuilkowski, Steven  
**Sent:** Wednesday, November 29, 2023 6:56 PM  
**To:** George Knott  
**Cc:** Stillman, Kerrie; Jackson, Ty (TAL - X35632); Steverson, Kathryn; Mary Alice McGillicuddy - Lee Health (mary.mcgillicuddy@leehealth.org)  
**Subject:** RE: Lee Memorial Health System Board of Directors Request for a Formal Advisory Opinion

Mr. Knott:

We have received the opinion request and will begin processing it. We will be in touch.

Sincerely,

### Steven J. Zuilkowski

*Deputy Executive Director & General Counsel*

Florida Commission on Ethics

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**Subject:** Lee Memorial Health System Board of Directors Request for a Formal Advisory Opinion

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Mr. Steven Zuilkowski, Esq.

Deputy Executive Director and General Counsel

Florida Commission on Ethics

Dear Mr. Zuilkowski:

This firm serves as Board Counsel to the Lee Memorial Health System Board of Directors. Lee Memorial Health System is an independent special district of the State of Florida, located in Lee County. We are hereby submitting, for the consideration of the Florida Commission of Ethics, a request for a formal advisory opinion. A copy the Board's request is attached. If there is any additional information the Board can provide, or if you wish to discuss this matter in further detail, please do not hesitate to contact me. Thank you for your attention to this matter.

Respectfully,

George H. Knott

**Knott · Ebelini · Hart**  
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November 29, 2023

Kerrie Stillman, Executive Director  
The Florida Commission on Ethics  
Post Office Drawer 15709  
Tallahassee, FL 32317-5709

RE: Request for a Formal Advisory Opinion

Dear Ms. Stillman:

This law firm represents Lee Memorial Health System's Board of Directors (the "Board"). This letter shall serve as a formal request for an advisory opinion confirming that a prohibited conflict of interest would not exist under the circumstances as described herein.

Lee Memorial Health System (the "Health System") is an independent special district of the State of Florida located in Lee County. The Health System has served the community since 1916. In its first 50 years of operations, the Health System operated as a private nonprofit entity. The independent special healthcare district was originally created in 1963 by a Special Act by the Florida Legislature (Chapter 63-1552, Laws of Florida). The Health System's enabling Legislation was amended and restated in 2000 by Chapter 2000-439, Laws of Florida, and was amended again earlier this year by Chapter 2023-326, Laws of Florida (collectively, the "Enabling Legislation"). A copy of the Enabling Legislation is attached as Exhibit A.

The Health System owns and operates four acute care hospitals, two specialty hospitals, including a children's hospital, a skilled nursing facility and two skilled nursing units, numerous outpatient centers and clinics and a regional cancer center. Oversight of the Health System is the responsibility of a Board of Directors. The Health System Board is comprised of ten elected directors, two from each of five county health system districts. Health System Board members are elected on a nonpartisan basis by a vote of the electorate of Lee County as a whole and serve staggered four-year terms.

Included in the 2023 amendments to the Enabling Legislation are provisions creating a process whereby the Health System may convert from an independent special district to a non-profit entity, specifically a Florida not-for-profit corporation operating under Chapter 617, Florida Statutes. *See*

Ch. 2023-326, §18, Laws of Florida. The process includes requirements for evaluating conversion and contemplates a detailed plan on how the Board will transfer assets and liabilities and how debts are to be resolved. The timeframe for each step in the conversion process is set forth in the Enabling Legislation. Each step presents an opportunity to reassess and determine to proceed forward or stop the process.

On August 31, 2023, the Board voted to authorize an evaluation of the benefits to the residents of Lee County of converting the Health System to a nonprofit entity as provided for in section eighteen of Chapter 2023-326, Laws of Florida. The Health System has retained an independent entity to conduct a conversion evaluation according to industry best practices. After the evaluation process is completed, the Board will have an opportunity to review the findings and vote on whether the interests of Lee County residents are best served by converting to a nonprofit entity.

If the Board determines that conversion is in the best interest of the residents of Lee County, the Health System must negotiate and draft a proposed agreement with the Lee County Board of County Commissioners which sets out the terms of a conversion, including the elements described in the Enabling Legislation. The Board must approve the agreement by a majority vote plus one.<sup>1</sup> Approval of the agreement constitutes approval of the conversion of the special district to a nonprofit entity subject to the terms of the agreement, and the special district is dissolved automatically upon providing notice to the Florida Department of Economic Opportunity.

In fulfilling its fiduciary duties, the Board has conducted education workshops with legal experts to consider potential governance models in the event of a conversion. Most governance related items will be determined during later phases of the multi-phase process, in the event the process continues. However, the Board recognized that initial decisions on three key governance items were needed to inform the independent evaluator, the public and the Florida Commission on Ethics of the Board's current thinking regarding a governance model.

Subsequently, on November 17, 2023, the Board, by majority vote, approved the initial mission, vision and values of a successor nonprofit entity, as well as the composition and compensation of the initial Board of Directors of a successor nonprofit entity organized under Chapter 617, Florida Statutes. Specifically, the Board of Directors:

- Approved the Lee Memorial Health System's current Mission, Vision and Values, as the initial Mission, Vision and Values for the successor nonprofit entity to Lee Memorial Health System, if a conversion to a nonprofit entity occurs, subject to later revision at the Board's discretion.
- Approved that the Board of Directors of the Lee Memorial Health System, in place as of the Board's final vote on conversion, will constitute the initial Board of Directors for the successor nonprofit entity to Lee Memorial Health System, if conversion to a nonprofit entity occurs, subject to each Board member's preference and later revision at the Board's

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<sup>1</sup> The agreement must be approved by the Lee County Board of County Commissioners. (Chapter 2023-326 section 10(b), Laws of Florida)

discretion.

- Approved that members of the initial Board of Directors for the successor nonprofit entity to Lee Memorial Health System will be eligible to receive compensation in the same manner provided by the Enabling Legislation, if conversion to a nonprofit entity occurs, subject to each Board member's preference and later revision at the Board's discretion.

The intent of adopting an initial Mission, Vision, and Values is to recognize the benefit of maintaining Lee Memorial Health System's current Mission, Vision and Values given the continued community-centered nature of the successor nonprofit entity, if conversion to a nonprofit entity occurs. In the near future the Board will also consider the development of additional mission-driven statements for the successor nonprofit entity to capture the ongoing commitment to provide safety net programs and services to the community.

Further, the Board's action recognizes the importance of the Board of Directors' continued leadership and experience during the period immediately following conversion to a nonprofit entity, and that such initial continuity would best serve the interests of the health system and the community, if conversion to a nonprofit entity occurs. This important concept was recognized and authorized by the Florida legislature in the Enabling Legislation, as amended. (Ch. 2023-326, §18(8), Laws of Florida)

Additionally, the Board's action recognizes the continuity of practice in permitting members of the initial Board of Directors of the successor nonprofit entity to receive compensation in the same manner currently provided by the Enabling Legislation, if conversion to a nonprofit entity occurs. Under the Health System's Enabling Legislation, Board members are entitled to receive an annual compensation of up to \$10,000 for services as members of the Board if such compensation is approved by the Board. At the beginning of each fiscal year, the compensation limit increases by an amount equal to the increase in the Consumer Price Index during the prior fiscal year. As of September 24, 2023, the amount of annual compensation is \$18,264.74 for each Board member. All Board members currently receive the compensation expressly authorized in Section 8 of the Enabling Legislation, as amended. (Ch. 2000-426, §8, Laws of Florida). When considering such action, the Board recognized that compensation to directors of a Florida nonprofit corporation is authorized by Florida Statute Section 617.0505(2).

Importantly, at this point in the process, the Board has not endorsed or taken a position as to a potential conversion. The Board will continue to meet with experts to determine the best governance structure in the event Lee Memorial Health System converts to a nonprofit entity and retains the ability to revise its approach based on subsequently learned information from the independent evaluator, as well as legal and health industry experts.

While counsel for the Board concludes the current action by the Board related to the composition and compensation of a successor nonprofit board is consistent with the Enabling Legislation, Chapter 617 and Chapter 112, Florida Statutes, and the Florida Constitution, the Board seeks a confirming opinion from the Florida Commission on Ethics as it relates to Chapter 112, Part III,

Code of Ethics for Public Officers and Employees and Article II, Section 8(h)(2), Florida Constitution.

The language used by the Florida Legislature is key to the analysis. The Enabling Legislation states as follows regarding conflicts of interest in the conversion process:

(8) The members of the system board and the Lee County Board of County Commissioners must disclose all conflicts of interest 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.

Ch. 2023-326, §18(8), Laws of Florida. Accordingly, the Enabling Legislation expressly contemplates that current members of the Board may serve on the board of the succeeding nonprofit entity. Further, the Enabling Legislation expressly states that the intent on the part of current Board members to serve on the board of the succeeding nonprofit entity does not disqualify any member, which would necessarily include even the member(s) intending to serve on the succeeding nonprofit entity board, from voting on a proposed conversion.

Thus, the express language of the Enabling Legislation indicates that the Legislature has determined that current Board members voting on a proposed conversion, even where those same Board members may intend to serve on the board of the succeeding nonprofit entity, does not, in and of itself, result in a special private gain or loss to any member of the Board which would disqualify any member of the Board from voting on a proposed conversion. Similarly, given that the Legislature has confirmed there is no special private gain or loss to any member of the Board resulting solely from voting on a proposed conversion even where one or more members intend to serve on the board of the succeeding nonprofit entity, it follows that participation in the vote also would not result in a disproportionate benefit to any member of the Board under Article II, section 8(h)(2), Florida Constitution.

Moreover, the remuneration of Board members in the same manner as provided by the Enabling Legislation for their service on the board of the succeeding nonprofit entity does not constitute a special private gain or loss. As previously stated, the Legislature having authorized the Health System Board to convert the special district to a Florida nonprofit corporation, further authorized the current Board to serve as the nonprofit corporate board and expressly determined such a vote does not disqualify any member from voting on the conversion. The Florida Legislature understood Florida general law permits directors of a nonprofit corporation to receive compensation. Under the circumstances presented, such compensation is not a special private gain

or loss to an individual member because the entire class is the Board, all class members are affected in the same manner, and all members would be compensated in the same manner as they are currently under the Enabling Legislation. Simply stated, a vote related to compensation, as described herein, does not enhance the financial interests of Health System Board members.

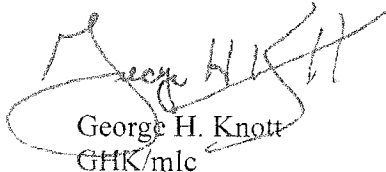
In consideration of the above, the Board seeks an opinion as follows:

1. That the intent of any current member of the Board to serve on the board of a succeeding nonprofit entity does not, in and of itself, constitute a special private gain or loss to any member creating a voting conflict pursuant to section 112.3143(3)(a), Florida Statutes that would disqualify any Board member from voting on a proposed conversion.
2. That the intent of any current member of the Board to serve on the board of a succeeding nonprofit entity does not, in and of itself, constitute a special private gain or loss to any member creating a voting conflict under section 112.3143(3)(a), Florida Statutes, that would therefore disqualify any Board member from voting on the proposed conversion even where the board members of the succeeding nonprofit entity may receive remuneration in the same manner as provided by the Enabling Legislation for their service on the board of the succeeding nonprofit entity; and
3. That participation by any current Board member in a vote to convert to a nonprofit entity, in and of itself, does not constitute a disproportionate benefit to any current Board member under Article II, Section 8(h)(2), Florida Constitution, even where one or more current Board members intends to serve on the board of the succeeding nonprofit entity and even where the board members of the succeeding nonprofit entity may receive remuneration in the same manner as provided by the Enabling Legislation for their service on the board of the succeeding nonprofit entity.

Under the Enabling Legislation, the report from the independent third-party evaluator is due to the Board no later than February 27, 2024. Having resolution of this matter prior to the report being finalized would allow for the Commission's feedback to be included in the analysis. We would appreciate any efforts that could be made to accommodate the timeline such that an opinion may be received as much in advance of February 27, 2024, as possible.

If additional information is necessary to enable you to address these inquiries, please advise. Thank you for your assistance with this matter.

Respectfully,  
KNOTT EBELINI HART



George H. Knott  
GHK/mlc



## 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.~~

~~(c) 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.

# CHAPTER 2000-439

## House Bill No. 1615

An act relating to Lee County; codifying chapters 63-1552 and 78-552, Laws of Florida, as amended; revising said acts, as amended; repealing prior acts and reenacting portions thereof; providing for a public health care system in Lee County to be named Lee Memorial Health System; providing for an elected health care system board, and setting forth its duties and powers; providing compensation of board members; providing for the operation and maintenance of said public health care system; providing for deposit and investment of certain funds; authorizing the issuance of bonds; providing for execution and enforcement of liens; providing for the effect of conflicting provisions; providing an effective date.

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

Section 1. Chapter 63-1552, Laws of Florida, and amendments thereto made by chapters 69-1235, 72-600, 81-420, 83-452, 83-454, 84-465, 87-438, 91-410, 92-269, and 98-528, Laws of Florida; and chapter 78-552, Laws of Florida, are hereby repealed. Said prior acts are replaced in their entirety by this act. This act shall constitute a codification as required by section 189.429, Florida Statutes. It is declared to be the legislative intent that if any section, subsection, sentence, clause, or provision of this act is found to be invalid, the remainder of the act shall not be affected; and further, in order to assure the uninterrupted maintenance and operation of the public health care system provided for herein, that any of the prior acts set forth herein, or any portion thereof, shall survive and be deemed reenacted to the extent necessary to replace any section, subsection, sentence, clause, or provision of this act found to be invalid.

Section 2. The name of the public health care system provided for by this act shall be Lee Memorial Health System, which is a public body, and the governing body thereof shall be the Lee Memorial Health System Board of Directors.

Section 3. The operation and maintenance of the public health system, and the construction of health system facilities provided for in this act are declared to be a public purpose.

Section 4. The Lee Memorial Health System Board of Directors, hereinafter called the system board, is hereby authorized to establish and to provide for the operation and maintenance of a public health care system comprised of hospitals; satellite hospitals; clinics; or other facilities devoted to the provision of health care services intended to improve the physical, spiritual, emotional, or mental health of those persons utilizing such services, or of services to prevent sickness, injury, or disease, including those which are intended to promote a healthful lifestyle, and such other facilities or services as the system board shall deem appropriate to provide a full range of health care services to the population the public health care system may serve. The system board is authorized to construct and equip the necessary buildings

for the aforesaid purposes and to construct extensions, additions, and improvements thereto from time to time, and to lease as lessee or lessor, or purchase or sell any land or any interest in land. The system board is authorized and empowered to carry out its functions directly or indirectly through other companies it controls through joint ventures or partnerships with other public or private organizations.

Section 5. In the event that it should become necessary to acquire any land for health system purposes under the authority of this act by eminent domain, the proceedings therefor shall be instituted by the system board and prosecuted in the manner provided by general law.

Section 6. (1) The Lee Memorial Health System Board of Directors shall consist of ten directors, comprised of two directors from each of the five county health system districts, the boundaries of which have been established by resolution of the system board. Said directors shall be residents and registered voters of Lee County. Directors from the five county health system districts shall be residents of the district from which they are elected and which they represent. System board members shall be elected on a nonpartisan basis by a vote of the electorate of the county as a whole and shall serve staggered 4-year terms. Members of the Hospital Board of Directors of Lee County holding office on the effective date of this act shall continue to hold office for the terms to which they were elected or appointed. Thereafter, directors of the Lee Memorial Health System Board of Directors shall be elected at the general election on a nonpartisan basis for staggered 4-year terms.

(2) The five county health system districts provided for herein shall have such boundaries as exist on the effective date of this act. The system board may at any time, by resolution, make any change which it deems necessary in the boundaries of any or all of the five county health system districts after a public hearing held by the system board, and the publication of notice at least once in a newspaper published in Lee County 15 days prior to said public hearing; provided that such districts shall be as nearly equal in population as practicable, and provided further that no change that would affect the residence qualifications of any incumbent director shall disqualify such incumbent director during the term for which the director is elected. Changes in district boundaries shall be shown by resolutions included within the minutes of the system board. District boundary changes shall be made only in odd-numbered years.

(3) Each candidate for election to the system board shall pay a qualifying fee and qualify during the qualification period as provided by general law. To qualify, each candidate shall sign an oath that he or she is a legal resident of Lee County, that he or she is a citizen of the United States, that he or she is a duly qualified elector in the state, that he or she has not violated any of the laws of the state relating to electors and to the registration of electors, that he or she is seeking election as a director of the Lee Memorial Health System Board of Directors from the county health system district he or she resides in, and that he or she has taken the oath as required by section 876.05, Florida Statutes, although the said candidate is not considered a county or state officer. The candidate shall sign an oath that he or she is a

legal resident of the county health system district of Lee County in which he or she is running for election.

(4) Any vacancy in the office of director shall be filled as provided by law.

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. 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 8. Lee Memorial Health System directors shall receive an annual compensation of up to \$10,000 for services as members of such board, if such compensation is approved by the board. On the first day of each fiscal year following the effective date of this act, the limit shall increase by an amount equal to the increase in the Consumer Price Index during the prior fiscal year published by the United States Department of Labor. Directors shall be reimbursed for travel pursuant to section 112.061, Florida Statutes, as the same may be amended or recodified from time to time, and, in addition, shall be reimbursed for mileage expenses and travel expenses incurred in attending meetings of the Lee Memorial Health System Board of Directors or its committees, notwithstanding that the meetings are held in Lee County, Florida. The system board may adopt policies, procedures, guidelines, and rules that it deems appropriate which will grant the system board members the same privileges, benefits, and allowances that are provided to the Lee Memorial Health System medical staff and volunteers. The system board may adopt a policy that permits board members to participate in the health system's health insurance program for system employees, provided that the cost of such health insurance shall be paid by the board member electing to participate in such plan, said cost to be not less than that set for employees. Each Lee Memorial Health System director shall post a bond as required by general law for the faithful performance of his or her duties.

Section 9. The Lee Memorial Health System Board of Directors shall establish and authorize a medical staff to direct and control practitioners with privileges to perform professional services in the hospitals and other facilities operated by the system board. The system board may establish bylaws, rules, and regulations governing the organization of such medical staffs, the appointment and reappointment of such medical staffs, the disciplining or removal of medical staff members, the delineation of medical staff privileges, the professional duties of members of the medical staffs, and such other matters as the system board may address so that the health and well-being of patients and the best interests of the hospital and other facilities

authorized pursuant to this act may at all times be served. The system board shall have the ultimate authority regarding the medical staffs in the Lee Memorial Health System.

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:

(1) The system board is authorized to pay all expenses of operation of the Lee Memorial Health System and all other necessary expenses incurred, including the fees and expenses of attorneys retained by the system board or the chief executive officer of the Lee Memorial Health System, in the transaction of the business of the public health care system, and in carrying out and accomplishing the purposes of this act.

(2) The Lee Memorial Health System may sue and be sued in the name of Lee Memorial Health System; provided that in any suit, a change in personnel of the system board shall not abate the suit, which shall proceed as if such change had not taken place. In all suits against the Lee Memorial Health System, service of process shall be had on the chief executive officer of the hospital, or in his absence on any officer of the system board.

(3) To the fullest extent permitted by the state law, the system board may create, be a voting member of, choose directors to serve on the boards of, be a partner in, or participate in or control, any venture, corporation, partnership, or other organization, public or private, which the system board finds operates for the purposes consistent with, and in furtherance of, the purposes and best interests of the Lee Memorial Health System.

(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.

(5) The system board is authorized to accept gifts, bequests, grants, endowments, and conveyances from any source.

(6) The system board is authorized and empowered, in order to provide for and carry out the work of this act, to borrow money from time to time and in accordance with the constitution and law, and to issue the notes or bonds of the Lee Memorial Health System upon such terms and upon such rates of interest as the system board may deem advisable, to the fullest extent permitted by general law.

(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.

(8) The system board may, or may authorize its chief executive officer to, settle or compromise any claim, suit, or action brought against the Lee Memorial Health System or any of its subsidiaries, or affiliated organizations, or any of its directors, officers, or employees when such claim, suit, or

action arises out of such directors', officers', or employees' acts or omissions in the course of employment or the performance of official duties, consistent with the provisions of the Florida Waiver of Sovereign Immunity Act, as such act may be in effect at the time of such settlement or compromise. This subsection shall not be construed as authorizing or requiring any settlement in excess of those limits imposed by the foregoing general act.

(9) The system board may take any other action consistent with the efficient and effective operation of the public health care system provided for by this act, consistent with the constitution and laws of Florida.

Section 11. The public health care system established under this act shall be primarily for the use and benefit of the residents of Lee County, but exists to provide health care services to all persons, including nonresidents of Lee County, who may seek such services. Persons seeking care may be admitted to Lee Memorial Health System hospitals or treated at its other facilities subject to the rules and regulations adopted by the system board. The system board may establish policies providing for the treatment without charge of those patients who, after reasonable inquiry, are found by Lee Memorial Health System management to be without the means to pay. The system board may, from time to time, establish guidelines for the hospital management in making such inquiry and determinations. The Lee Memorial Health System is authorized to collect from patients who are found to have the means to pay, such charges as the system board may, in its sole discretion, from time to time establish. The Lee Memorial Health System is authorized to bill and receive payment from insurance companies, governmental agencies, or other sources for treatment and care of patients or for other purposes.

Section 12. The Lee Memorial Health System Board of Directors may hire or appoint a chief executive officer, who shall have the title of president. The system board may make and adopt, or authorize the president to adopt such bylaws, rules, regulations, guidelines, or policies for its own guidance and for the organization, management, and operation of health care system facilities and services as may be deemed necessary for the efficient and economic conduct thereof. Subject to the annual health system budget and policy established by the system board, the president shall have the authority to see to the hiring or retention of such personnel as may be deemed necessary for the efficient management and operation of the public health care system and its subsidiaries and affiliated organizations; and to the firing or termination of such personnel. The president shall recommend the adoption of such general policies by the system board as may be deemed necessary and appropriate for the day-to-day management and operation of the hospital and its other facilities, and the system board may authorize the president to see to the establishment of specific policies, procedures, guidelines, and rules regarding such management and operation. The system board may authorize and delegate the enforcement of all such policies, procedures, guidelines, and rules to the president, who may, in turn, authorize and delegate enforcement of the same to such assistants as the president may deem appropriate or necessary. The president may delegate to assistants and subordinates the authority to manage the day-to-day operations

of the public health care system, consistent with the president's authority as delegated by the system board pursuant to this section.

Section 13. Funds of the Lee Memorial 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 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. 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. In addition, the system board may invest its surplus funds as 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.

(c) 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 14. For the purpose of providing funds for any purpose that the system board may deem advisable, the system board is authorized to issue revenue bonds of the Lee Memorial Health System pursuant to the constitution and laws of Florida, in such amounts as the system board may by resolution establish. The principal and interest on such bonds shall be paid from the revenues of the Lee Memorial Health System.

Section 15. For the purpose of providing funds to be used in connection with the Lee Memorial Health System, including the acquisition of land or any interest in land, the system board, at its discretion, is authorized to issue general obligation bonds in amounts necessary to pay the cost thereof. Said bonds shall be issued only after their issuance shall have been approved by a majority of the votes cast at an election of the qualified electors residing in Lee County. Notwithstanding the provisions of any other law, the election concerning the issuance of bonds may be held on the same day as an election held in said county for any other purpose, whether such other election be a primary, general, or special election. The system board may submit the question of issuing bonds authorized by this act at one election and others thereof at one or more subsequent elections. The ballots used at any such election shall state the maximum amount of bonds proposed to be issued. In the event that at any election the issuance of bonds under the authority of this act should not be approved, or if any such election be invalid or ineffective for any reason, the system board may call another election at any time for the same purpose. Except as otherwise provided herein, any election concerning the issuance of bonds as aforesaid shall be called and held and the result thereof canvassed, declared, and recorded in the manner prescribed by chapter 100, Florida Statutes.

Section 16. When any bonds have been issued pursuant to section 15 hereof, there shall be levied and assessed annually, so long as any of said bonds or the interest thereon remain unpaid, an ad valorem tax upon all taxable property, not exempt by law, in Lee County, which tax shall be sufficient in amount to pay the interest on said bonds as it becomes due and the principal thereof at maturity. Such tax shall be levied, assessed, and collected by the same officers and in the same manner as other county ad valorem taxes are levied, assessed, and collected.

Section 17. The bonds herein authorized to be issued by this act may be issued and sold at one time or from time to time, and shall bear such date or dates, be in such denomination or denominations, be payable at such place, bear interest at such fixed or variable rate or rates, and bear such maturity dates as may be permitted by general law, with or without the right of prior redemption, all as may be determined by resolution of the system board, which resolution may prescribe the manner and terms of redemption of any bonds which the system board may elect to make redeemable. The bonds may be issued in coupon form or non-coupon form, may be validated as permitted by law and shall bear the seal of the Lee Memorial Health System. Neither the provisions of this section nor any other provision of this act shall impair, abate, suspend, or invalidate any bond or other debt obligation of the Hospital Board of Directors of Lee County issued prior to the effective date of this act. The Lee Memorial Health System Board of Directors shall, without interruption, continue to have all duties and responsibilities regarding such bonds or obligations as were had by the Hospital Board of Directors of Lee County.

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 19. In the event of a conflict of the provisions of this act with the provisions of any other act, the provisions of this act shall control to the extent of such conflict.

Section 20. This act shall take effect upon becoming a law.

Approved by the Governor June 7, 2000.

Filed in Office Secretary of State June 7, 2000.