

1 **Lee Memorial Health System**

2 **Enabling Act**

3
4 A bill to be entitled

5 An act relating to Lee County; amending chapter 2000-439, Laws of Florida;
6 providing that the operation and maintenance of certain projects, activities, and
7 products by the Lee Memorial Health System Board of Directors is a public
8 purpose; deleting a reporting requirement; revising provisions relating to powers of
9 the system board and system funds; providing general and special powers of the
10 Lee Memorial Health System; providing for applicability, severability,
11 construction, and effect; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Sections 3, 4, 7, 10, 13, and 18 of chapter 2000-439, Laws of Florida, are
16 amended, new sections 18, 19, and 20 are added to that chapter and section 19 is renumbered as
17 Section 21, to read:

18
19 Section 3. The operation and maintenance of the public health system, ~~and~~ the construction
20 of health system facilities and such other projects, activities and products provided for in this act
21 are declared to be a public purpose.

1 Section 4. The Lee Memorial Health System Board of Directors, hereinafter called the
2 system board, is hereby authorized to establish and to provide for the operation and maintenance
3 of a public health care system comprised of hospitals; satellite hospitals; clinics; or other facilities
4 devoted to the provision of health care services intended to improve the physical, spiritual,
5 emotional, or mental health of those persons utilizing such services, or of services to prevent
6 sickness, injury, or disease, including those which are intended to promote a healthful lifestyle,
7 and such other facilities or services as the system board shall deem appropriate to provide a full
8 range of health care services to the population the public health care system may serve and, to
9 establish, fund, support, organize and participate in other projects, activities and products which
10 benefit the population served by Lee Memorial Health System. The system board is authorized to
11 construct and equip the necessary buildings for the aforesaid purposes and to construct extensions,
12 additions, and improvements thereto from time to time, and to lease as lessee or lessor, or purchase
13 or sell any land or any interest in land. The system board is authorized and empowered to carry
14 out its functions directly or indirectly through other companies it controls through joint ventures
15 or partnerships with other public or private organizations.

16
17 Section 7. The system board shall elect annually from its members a chair, vice-chair,
18 secretary, and treasurer, who shall be the officers of the system board. The system board shall
19 cause true and accurate minutes and records to be kept of all business transacted by the system
20 board and shall keep full, true, and complete books of accounts and records, which minutes,
21 records, and books of account and the current line item budget shall at all reasonable times be open
22 and subject to inspection and copying pursuant to the provisions of the constitution and laws of
23 Florida. A majority of the then elected and serving members of the system board constitutes a

1 quorum of the system board for the purpose of conducting its business and exercising its powers
2 and for all other purposes. Action may be taken by the system board upon an affirmative vote of a
3 majority of those system board members attending a system board meeting at which a quorum is
4 in attendance. The system board may conduct meetings of the system board, including, without
5 limitation, workshops and board committee meetings, in whole or partially by means of
6 communications media technology, if it so chooses. The utilization of communication technology
7 at any such meeting, shall be governed by the system board's policies pertaining to the use of such
8 technology. The participation by a system board member in a system board meeting conducted in
9 whole or partially through communications media technology and in accordance with system
10 board policies constitutes that individual's presence at such meeting for all purposes, including for
11 purposes of establishing that a quorum is in attendance, when a quorum is needed. As used in this
12 section, the term "communications media technology" includes, without limitation, the electronic
13 transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video,
14 and digital video by any method available now or in the future. All meetings of the system board
15 shall be open to the general public pursuant to general law. At least once a year the system board
16 shall cause the financial records and accounts of the health care system to be audited by a certified
17 public accountant authorized to practice public accounting in Florida and a certified public account
18 audit report to be prepared. ~~The audit, together with a copy of the health system's current annual~~
19 ~~budget, shall be filed annually with the Clerk of the Circuit Court of Lee County.~~
20

21 Section 10. The Lee Memorial Health System Board of Directors shall have the authority
22 to operate and conduct the business of the public health system and such other projects, activities
23 and products, and consistent therewith, shall have the following powers:

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

6
7 (2) The Lee Memorial Health System may sue and be sued in the name of Lee Memorial
8 Health System; provided that in any suit, a change in personnel of the system board
9 shall not abate the suit, which shall proceed as if such change had not taken place. In
10 all suits against the Lee Memorial Health System, service of process shall be had on
11 the chief executive officer of the hospital, or in his absence on any officer of the system
12 board.

13
14 (3) To the fullest extent permitted by the state law, the system board may create, be a voting
15 member of, choose directors to serve on the boards of, be a partner in, or participate in
16 or control, any venture, corporation, partnership, or other organization, public or
17 private, which the system board finds operates for the purposes consistent with, and in
18 furtherance of, the purposes and best interests of the Lee Memorial Health System.

19
20 (4) The system board may make, or authorize its chief executive officer to make, contracts
21 of all kinds, including, but not limited to, the sale or purchase of real property within
22 and beyond the boundaries of Lee County and may enter into leases of real and personal
23 property of any kind or description, either as lessor or lessee within or beyond the

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

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

8
9 (6) The system board is authorized and empowered, in order to provide for and carry out
10 the work of this act, to borrow money from time to time and in accordance with the
11 constitution and law, and to issue the notes or bonds of the Lee Memorial Health
12 System upon such terms and upon such rates of interest as the system board may deem
13 advisable, to the fullest extent permitted by general law, all such notes, bonds and any
14 other evidence of indebtedness (including the transfer, and the income therefrom and
15 any profit made on the sale thereof), as well as any notes, mortgages, security
16 agreements, letters of credit, or other instruments which arise out of or are given to
17 secure the repayment of such indebtedness, shall be exempt from all taxes by the state
18 or any local unit, political subdivision, or other instrumentality of the state, except any
19 tax imposed by chapter 220 on interest, income, or profits on debt obligations owned
20 by corporations.

21
22 (7) The system board may enter into any and all types of derivative agreements as may be
23 used by prudent borrowers, lenders, or investors, which are intended to minimize the

1 risk of financial loss or maximize the financial return in connection with its bonds,
2 notes, or investments, or for any other purpose, subject to the system board's
3 investment policy referenced in section 13 below.
4

5 (8) The system board may, or may authorize its chief executive officer to, settle or
6 compromise any claim, suit, or action brought against the Lee Memorial Health System
7 or any of its subsidiaries, or affiliated organizations, or any of its directors, officers, or
8 employees when such claim, suit, or action arises out of such directors', officers', or
9 employees' acts or omissions in the course of employment or the performance of
10 official duties, consistent with the provisions of the Florida Waiver of Sovereign
11 Immunity Act, as such act may be in effect at the time of such settlement or
12 compromise. This subsection shall not be construed as authorizing or requiring any
13 settlement in excess of those limits imposed by the foregoing general act.
14

15 (9) The system board may take any other action consistent with the efficient and effective
16 operation of the public health care system and such other projects, activities and
17 products provided for by this act, consistent with the constitution and laws of Florida.
18

19 Section 13. Funds of the Lee Memorial Health System may be paid out ~~only~~ upon drafts,
20 checks, wire transfers, electronic bank transfers, or warrants signed or approved by persons duly
21 authorized by the system board to execute such instruments for purposes consistent with this act.
22 The system board may adopt rules for the payment of lesser sums in cash, and a petty cash fund
23 or funds may be established for such purpose with the maximum amount payable in cash in one

1 transaction fixed by the system chief executive officer. All funds of the system board shall be
2 deposited in banks which are qualified under state law to accept deposits of public funds. In
3 addition to any investment permitted by general law, the system board shall be and is hereby
4 authorized and empowered to invest any funds in its control or possession in accordance with an
5 investment policy approved by the system board consistent with Section 218.415, Florida Statutes,
6 which mandates prudent investment practices and shall include, among other items, the investment
7 objectives and permitted securities of the policy. Such investment policy shall be designed to
8 maximize the financial return to the fund consistent with the risks incumbent in each investment
9 and shall be designed to preserve the appropriate diversification of the portfolio.~~The system board~~
10 ~~may deposit or invest its surplus funds in interest-bearing accounts, instruments, or securities, to~~
11 ~~the fullest extent permitted, or authorized by general law.~~ In addition, the system board may invest
12 its surplus funds as provided in Section 218.415, Florida Statutes, and such other investments as
13 are authorized by the system board and permitted by the system board investment policy. follows:

14

15 ~~— (1) — Without limitation in:~~

16

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

20

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

23

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

3
4 ~~(d) Savings accounts in, or certificates of deposit of, any bank, savings bank, or savings~~
5 ~~and loan association incorporated under the laws of the United States doing business and situated~~
6 ~~in this state, the accounts of which are insured by the Federal Government or an agency thereof,~~
7 ~~in an amount that does not exceed 15 percent of the net worth of the institution, provided such~~
8 ~~savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280,~~
9 ~~Florida Statutes.~~

10
11 ~~(e) Obligations of the Federal Farm Credit Banks and obligations of the Federal Home~~
12 ~~Loan Bank and its district banks.~~

13
14 ~~(f) Obligations of the Federal Home Loan Mortgage Corporation including participation~~
15 ~~certificates.~~

16
17 ~~(g) Obligations guaranteed by the Government National Mortgage Association.~~

18
19 ~~(h) Commercial paper of prime quality of the highest letter and numerical rating as~~
20 ~~provided for by at least one nationally recognized rating service.~~

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

4
5 ~~(j) Short-term obligations not authorized elsewhere in this section, to be purchased~~
6 ~~individually or in pooled accounts or other collective investment funds, for the purpose of~~
7 ~~providing liquidity to any fund or portfolio.~~

8
9 ~~(k) Securities of, or other interest in, any open end or closed end management type~~
10 ~~investment company or investment trust registered under the Investment Company Act of 1940,~~
11 ~~15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided that the portfolio of such~~
12 ~~investment company or investment trust is limited to obligations of the United States Government~~
13 ~~or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such~~
14 ~~United States Government obligations and provided that such investment company or investment~~
15 ~~trust takes delivery of such collateral either directly or through an authorized custodian investments~~
16 ~~permitted under this Act.~~

17
18 ~~(2) — With no more than 25 percent of its funds in:~~

19
20 ~~(a) — Bonds, notes, or obligations of any municipality or political subdivision or any~~
21 ~~agency or authority of this state, if such obligations are rated in any one of the three highest ratings~~
22 ~~by two nationally recognized rating services. However, if only one a nationally recognized rating~~

1 ~~service shall rate such obligations, then such rating service must have rated such obligations in any~~
2 ~~one of the two highest classifications heretofore mentioned.~~

3
4 ~~(b) — Notes secured by first mortgages on Florida real property, insured or guaranteed by~~
5 ~~the Federal Housing Administration or the United States Department of Veterans Affairs.~~

6
7 ~~(c) — Mortgage pass through certificates, meaning certificates evidencing ownership of~~
8 ~~an undivided interest in pools of conventional mortgages on real property which is improved by a~~
9 ~~building or buildings used for residential purposes for one to four families when:~~

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

11
12 ~~2. — Such mortgages are originated by one or more banks or savings and loan~~
13 ~~associations organized under the laws of this state, by national banks or federal savings and loan~~
14 ~~associations having their principal place of business in this state, or by a lender that is approved~~
15 ~~by the Secretary of the United States Department of Housing and Urban Development for the~~
16 ~~participation in any mortgage insurance program under the National Housing Act and has its~~
17 ~~principal place of business in this state, or by any combination thereof; and~~

18
19 ~~3. — Such mortgages are transferred or assigned to a corporate trustee acting for the~~
20 ~~benefit of the holders of such certificates.~~

21
22 ~~(d) — Obligations of the Federal National Mortgage Association.~~
23

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

4
5 ~~(f) — Certain interest in real property and related personal property, including mortgages~~
6 ~~and related instruments on commercial or industrial real property, with provisions for equity or~~
7 ~~income participation or with provisions for convertibility to equity ownership; and interest in~~
8 ~~collective investment funds. Associated expenditures for acquisition and operation of assets~~
9 ~~purchased under this provision shall be included as a part of the cost of the investment.~~

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

12
13 ~~2. — For purposes of taxation of property owned by any fund, the provisions of~~
14 ~~section 196.199(2)(b), Florida Statutes, do not apply.~~

15
16 ~~Real property acquired under the provisions of this paragraph shall not be considered state~~
17 ~~lands or public lands and property as defined in chapter 253, Florida Statutes, and the~~
18 ~~provisions of that chapter do not apply to such real property.~~

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

1 ~~(h) — Obligations of agencies of the government of the United States, provided such~~
2 ~~obligations have been included in and authorized by the Florida Retirement System Total Fund~~
3 ~~Investment Plan established in section 215.475, Florida Statutes.~~

4
5 ~~(i) — United States dollar-denominated obligations by foreign governments, or political~~
6 ~~subdivisions or agencies thereof, or foreign corporations or foreign commercial entities.~~

7
8 ~~(3) With no more than 50 percent of its funds in common stock, preferred stock, and~~
9 ~~interest-bearing obligations of a corporation having an option to convert into common stock,~~
10 ~~provided:~~

11
12 ~~(a) — The corporation is organized under the laws of the United States, any state or~~
13 ~~organized territory of the United States, or the District of Columbia.~~

14
15 ~~(b) — The corporation is listed on any one or more of the recognized national stock~~
16 ~~exchanges in the United States and conforms with the periodic reporting requirements under the~~
17 ~~Securities Exchange Act of 1934.~~

18
19 ~~The system board shall not invest more than 10 percent of the equity assets of its funds in the~~
20 ~~common stock, preferred stock, and interest-bearing obligations having an option to convert into~~
21 ~~common stock, of any one issuing corporation; and the system board shall not invest more than 3~~
22 ~~percent of the equity assets of any funds in such securities of any one issuing corporation except~~
23 ~~to the extent a higher percentage of the same issue is included in a nationally recognized market~~

1 ~~index, based on market values at least as broad as the Standard and Poor's Composite Index of 500~~
2 ~~Companies, or except upon a specific finding by the system board that such higher percentage is~~
3 ~~in the best interest of the system board. The system board may only sell listed options to reduce~~
4 ~~investment risks, to improve cash flow, or to provide alternative means for the purchase and sale~~
5 ~~of underlying investment securities. Reversing transactions may be made to close out existing~~
6 ~~option positions.~~

7
8 ~~(4) With no more than 80 percent of its funds, in interest-bearing obligations with fixed~~
9 ~~maturity of any corporation or commercial entity within the United States.~~

10
11 ~~For the purpose of determining the above investment limitations, the value of bonds shall be the~~
12 ~~par value thereof, and the value of evidences of ownership and interest-bearing obligations having~~
13 ~~an option to convert to ownership shall be the cost thereof. Investments in any securities~~
14 ~~authorized by this section may be under repurchase agreements or reverse repurchase agreements.~~
15 ~~Investments made by the system board may be designated to maximize the financial return to the~~
16 ~~fund consistent with the risks incumbent in each investment and shall be designed to preserve an~~
17 ~~appropriate diversification of the portfolio. The system board is authorized to buy and sell futures~~
18 ~~and options, provided the instruments for such purpose are traded on a securities exchange or board~~
19 ~~of trade regulated by the Securities and Exchange Commission or the Commodity Futures Trading~~
20 ~~Commission, unless the system board by rule authorizes a different market. The system board is~~
21 ~~authorized to invest in domestic or foreign national principal contracts.~~

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

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

- 8 ~~(1) In order to perfect the lien provided for herein, the Lee Memorial Health System chief~~
9 ~~executive officer or an employee or employees of the Lee Memorial Health System~~
10 ~~authorized by the chief executive officer shall, before or within 10 days after such ill~~
11 ~~or injured person shall have been discharged from a Lee Memorial Health System~~
12 ~~hospital, file in the office of the Lee County Clerk of Circuit Court, a verified written~~
13 ~~notice of lien setting forth the name and address of the ill or injured person as they may~~
14 ~~appear in the records of said health system hospital, the name and location of said~~
15 ~~hospital, the name and address of the employee or other authorized person preparing~~
16 ~~the notice of lien, the date of admission to said hospital and the date of discharge from~~
17 ~~said hospital, the amount claimed to be due for hospital, physician, and other services~~
18 ~~provided, and to the best knowledge of the person preparing the notice of lien, the~~
19 ~~names and addresses of all persons, firms, or corporations who may be claimed by~~
20 ~~such ill or injured person or by the legal representative of such person, to be liable on~~
21 ~~account of such illness or injuries. When the notice of lien is filed, a copy thereof shall~~
22 ~~be sent by United States Postal Service to the ill or injured person, to said person's~~
23 ~~attorney, if known, and to all persons, firms, or corporations named in such notice of~~

1 ~~lien. The filing and mailing of the notice of lien in accordance with this section shall~~
2 ~~be notice thereof to all persons, firms, or corporations who may be liable on account~~
3 ~~of such illness or injuries, and to any other persons, firms, or corporations that may~~
4 ~~have an interest in the aforesaid causes of action, suits, claims, counterclaims,~~
5 ~~demands, judgments, settlements, or settlement agreements, whether or not they are~~
6 ~~named in the notice of lien, and whether or not a copy of the notice of lien shall have~~
7 ~~been received by them.~~

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

13 ~~(3) No release or satisfaction of any cause of action, suit, claim, counter claim, demand,~~
14 ~~judgment, settlement, or settlement agreement shall be valid or effectual as against the~~
15 ~~lien of Lee Memorial Health System unless the lienholder shall join therein or execute~~
16 ~~a release of its lien prior to the payment of any proceeds thereof. Any acceptance of a~~
17 ~~release or satisfaction of any cause of action, suit, claim, counterclaim, demand,~~
18 ~~judgment, settlement, or settlement agreement in the absence of a release or~~
19 ~~satisfaction of the lien of Lee Memorial Health System shall prima facie constitute an~~
20 ~~impairment of such lien and the lienholder shall be entitled to a cause of action for~~
21 ~~damages against any and all persons, firms, or corporations giving or accepting such~~
22 ~~release or satisfaction, or paying or accepting the proceeds from the same. In such~~
23 ~~action, Lee Memorial Health System may recover the full amount of its charges for~~

1 ~~such hospital, physician, or other health care services; regardless of the amount of~~
2 ~~proceeds paid or received in impairment of its lien. Satisfaction of a judgment rendered~~
3 ~~in favor of Lee Memorial Health System in such action shall operate as a satisfaction~~
4 ~~of the lien. The action by the lienholder shall be brought in the court in Lee County~~
5 ~~having jurisdiction of the amount of the lienholder's claim. If Lee Memorial Health~~
6 ~~System shall prevail in such action, it shall be entitled to recover from the defendant~~
7 ~~or defendants, in addition to costs otherwise allowable by law, all reasonable attorney~~
8 ~~fees and expenses.~~

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

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

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Section 18. Lee Memorial Health System is authorized to own and operate facilities and provide services and products in conformity with this act both within and beyond the boundaries of Lee County.

Section 19. Lee Memorial Health System shall have and exercise all powers necessary, incidental, or convenient to carry out and effectuate any and all purposes for which Lee Memorial Health System is organized under the provisions of this act.

Section 20. 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 21. ~~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 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.