



Lynda J. Jacobsen

Final Analysis
Legislative Service Commission

Am. Sub. S.B. 55
123rd General Assembly
(As Passed by the General Assembly)

Sens. White, Schafrath, Spada, Gardner, Mumper, Kearns, Wachtmann

Reps. Carey, Hoops, O'Brien, Peterson, Evans, Padgett, Buehrer, Brading, Tiberi, Young, Vesper, Haines, Schuler, Austria

Effective date: *

ACT SUMMARY

- Authorizes a county hospital board of trustees to hold executive sessions to consider trade secrets.
- Excludes from the Public Records Law county hospital information that constitutes a trade secret.
- Exempts from the Prevailing Wage Law public improvements undertaken by a county hospital when none of the funds used have been appropriated by the board of county commissioners, the state, a township, or a municipal corporation from funds generated by the levy of a tax or are proceeds of obligations secured by the full faith and credit of the state, the county, a township, or a municipal corporation.
- Authorizes county hospitals to observe four designated state holidays on dates other than those specified by state law.
- Specifies permissible investments for certain county hospital funds.
- Makes other changes to the County Hospital Law, including changes pertaining to construction of branch outpatient health facilities in other counties, donations of funds, property, and services, and the hospital administrator's employment and functions.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Changes from July 1, 1999, to July 1, 2000, the date on which a person who dispenses or distributes nitrous oxide is required to begin recording each transaction on a separate card which includes the purchaser's signature and address, the date, and the signature of the dispenser or distributor.

TABLE OF CONTENTS

Exemption from the Open Meetings Law for certain county hospital matters	2
Exemption from the Public Records Law for certain records of county hospitals	3
Exemption from the Prevailing Wage Law for certain public improvements of county hospitals.....	3
Holiday leave benefits for county hospital employees.....	4
Changes to the law pertaining to authority to construct an outpatient health facility.....	4
Background law	4
Changes made by the act.....	5
Bond for county hospital trustees.....	6
Disposition of property and money by a board of county hospital trustees	6
Background	6
Investments	6
Donations of funds, property, and services.....	6
Employment of a hospital administrator	7
Recording requirements for the dispensing and distribution of nitrous oxide	7

CONTENT AND OPERATION

Exemption from the Open Meetings Law for certain county hospital matters

Continuing law requires public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law (sec. 121.22(A) and (C)). Public officials generally may hold an executive session (a portion of a meeting closed to the public) only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of considering any of several enumerated subject matters (sec. 121.22(G)). The act adds to the list of excepted subject matters the consideration of *trade secrets* by a county hospital operated under Chapter 339. of the Revised Code (sec. 121.22(G)(7)). "Trade secret" is defined as information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method,

technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following: (1) it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (2) it is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (sec. 1333.61(D)--not in the act).

Normally, under continuing law, if a public body holds an executive session to consider any of the enumerated subject matters, the motion and vote to hold the executive session must state which one or more of the matters are to be considered at the executive session. The act contains a similar requirement for the consideration of trade secrets by a county hospital. (Sec. 121.22(G).)

Exemption from the Public Records Law for certain records of county hospitals

The Public Records Law generally requires that all public records kept by a public office be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Specified records are excluded from the definition of a "public record" and therefore do not have to be made available for public inspection. (Sec. 149.43(A)(1) and (B).)

The act adds as an exclusion from the Public Records Law any information of a county hospital operated under Chapter 339. of the Revised Code that constitutes a trade secret as defined above (sec. 149.43(A)(1)(p)).

Exemption from the Prevailing Wage Law for certain public improvements of county hospitals

Generally, under continuing law, every public authority authorized to contract for, or construct with its own forces, a public improvement must have the Bureau of Employment Services determine the prevailing rates of wages of mechanics and laborers for the class of work called for by the public improvement in the locality where the work is to be performed. The schedule of wages must be made part of the specifications for the work done by contract. (Sec. 4115.04.)

The act exempts from this continuing law public improvements undertaken by, or under contract for, a county hospital if none of the funds used in constructing the improvements are the proceeds of bonds or other obligations which are secured by the full faith and credit of the state, the county, a township, or a municipal corporation and none of the funds used in constructing the improvements, including funds used to repay any amounts borrowed to construct the improvements, are funds that have been appropriated for that purpose by the board of county commissioners, the state, a township, or a municipal corporation

from funds generated by the levy of a tax. The act provides, however, that a county hospital may elect to apply the Prevailing Wage Law to a public improvement undertaken by, or under contract for, the county hospital. (Sec. 4115.04(B)(4).)

Holiday leave benefits for county hospital employees

State law entitles full-time county employees to eight hours of holiday pay for ten specified days each year. The act provides that, for four of these days (Martin Luther King Day, Washington-Lincoln Day, Columbus Day, and Veterans' Day), a county hospital may observe the holiday on days other than those designated by state law (in sec. 1.14--not in the act).¹ (Secs. 325.19(D)(2)(b) and 339.06(H)(6).)

Changes to the law pertaining to authority to construct an outpatient health facility

Background law

Under continuing law, a board of county commissioners may purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities. After a county hospital or hospital facilities have been fully completed and sufficiently equipped for occupancy, any subsequent improvements, enlargements, or rebuilding must be made by the board of county hospital trustees or a hospital commission. (Sec. 339.01(B).)

Under continuing law, a board of county hospital trustees or a hospital commission may purchase, acquire, lease, appropriate, or construct an "outpatient health facility" in *another county* as a branch of the county hospital. Written notice must be provided *to the other county's* board of county commissioners. (Sec. 339.01(C)(1).)

Under continuing law, if the board of county commissioners of the *county in which the hospital is located* provides a subsidy for uncompensated care, the board of county hospital trustees or hospital commission may establish and operate the outpatient health facility outside the county only if the board of county commissioners approves the establishment. Under former law, even if the board of county commissioners so approved, no funds generated by a tax levy could be used to finance the acquisition, construction, repair, maintenance, or operation of the facility (sec. 339.01(C)(3)). Otherwise, under former law, the board of county

¹ Section 1.14 specifies that the four holidays are legal holidays to be celebrated, respectively, on the third Monday in January, the third Monday in February, the second Monday in October, and November 11.

hospital trustees or hospital commission could establish and operate the facility unless the board of county commissioners of the *county where the facility was to be located* adopted a resolution, no later than 60 days after receiving the notice mentioned above, denying the trustees or commission the right to establish the facility (sec. 339.01(C)(2)).

Changes made by the act

The act adds *a board of county commissioners* to the entities listed and authorized to purchase, acquire, lease, appropriate, or construct an outpatient health facility in another county as a branch of a county hospital. The act also requires that *notice* be provided to the board of county commissioners of a county with a county hospital when its board of trustees or commission proposes to locate an outpatient health facility in another county as well as (similar to continuing law) to the board of county commissioners of the other county. The act provides that the board of county commissioners *of the county where the facility is proposed to be located*, by resolution adopted within 40 days after receipt of the previously mentioned notice, *may object* to the proposed facility. The resolution must include an explanation of the objection and *may make any recommendations* the board of county commissioners considers necessary. The board must send a copy of the resolution to the board of county hospital trustees or hospital commission and to the board of county commissioners of the county that proposed to locate the facility in the other county. However, the act *removes the ability* of the board of county commissioners *of the county where the facility is proposed to be located* to *deny* the right to establish the facility in their county. (Sec. 339.01(C)(1) and (2).)

The act does provide that the board of county commissioners *of the county proposing to locate the facility* in the other county may *deny the right* to establish the facility in the other county, if the county where the facility is proposed to be located objects. To do so, the board of county commissioners of the county proposing to locate the facility in the other county must adopt a resolution, not later than 20 days after receiving a resolution of objection from the other board of county commissioners, denying the board of county hospital trustees or hospital commission the right to establish the facility (sec. 339.01(C)(2)). Finally, the act removes the prohibition against using *funds generated by a tax levy* to finance an outpatient health facility when the board of the county commissioners of the county proposing to locate the facility in another county approves its establishment and a subsidy has been provided by the board to the county hospital for uncompensated care (sec. 339.01(C)(3)).

Bond for county hospital trustees

Under former law, each trustee was required to be bonded for the proper performance of the trustee's duties, in whatever sum the board of county

commissioners required and with sureties approved by the board. The expense of the bonding was paid for out of hospital operating funds. The act removes the requirement for a trustee's bond. (Sec. 339.03.)

Disposition of property and money by a board of county hospital trustees

Background

Under continuing law, a board of county hospital trustees, upon completion of construction or leasing and equipping of a county hospital, assumes and continues the operation of the hospital. The board has the entire management and control of the hospital. The board also has control of the property of the hospital, including management and disposal of surplus property other than real estate or an interest in real estate, and has control of all funds used in the hospital's operation, including moneys received from the operation of the hospital, moneys appropriated for its operation by the board of county commissioners, and moneys resulting from special levies submitted by the board of county commissioners. (Sec. 339.06(A).)

Investments

Former law authorized the *hospital's administrator* or the administrator's designee to deposit funds *not needed for immediate expenses* in interest bearing or noninterest bearing accounts or United States government obligations. The act removes this authorization and provides instead that all or part of the moneys determined not to be necessary to meet current demands on the hospital may be invested by the *board of hospital trustees or its designee* in any classifications of securities and obligations eligible for deposit or investment of county moneys under a provision of the Uniform Depository Act (sec. 135.35, not in the act), subject to the approval of the board's written investment policy by the county investment advisory committee established as required under the Uniform Depository Act (sec. 135.341, not in the act). (Sec. 339.06(A).)

Donations of funds, property, and services

Under continuing law, the board of county hospital trustees submits a budget, annually, to the board of county commissioners. The board of trustees is not permitted to expend funds until its budget is submitted to and approved by the board of county commissioners. Thereafter, under continuing law, funds may be disbursed by the board of trustees, consistent with the approved budget, for the uses and purposes of the hospital, for the replacement of necessary equipment, or for the acquisition, leasing, or construction of permanent improvements to county hospital property. (Sec. 339.06(B).)

The act adds an authorization for funds to be used for making a donation as authorized by the act. It provides that, for the public purpose of improving the health, safety, and general welfare of the community, the board of trustees may donate to a nonprofit entity any of the following: (1) moneys and other financial assets determined not to be necessary to meet current demands on the hospital, (2) surplus hospital property, including supplies, equipment, office facilities, and other property that is not real estate or an interest in real estate, and (3) services rendered by the hospital. (Sec. 339.06(B) and (C).)

Employment of a hospital administrator

Under former law, a board of county hospital trustees was required to employ an administrator who had authority to employ necessary hospital personnel. Also, under former law, the administrator had authority to *deposit hospital moneys* in banks or trust companies or into specified interest-bearing or noninterest-bearing accounts or United States government obligations. The act removes the authority for the administrator to so deposit hospital moneys and authorizes a board of county hospital trustees to provide for the administration of the county hospital either by directly employing a hospital administrator or by entering into a contract for the management of the hospital under which an administrator is provided. If an administrator is employed directly, the board, similar to former law, must adopt a job description delineating the administrator's powers and duties and may pay the administrator's salary and other benefits from funds provided for the hospital. The administrator, similar to former law, must ensure that the hospital has physicians, nurses, and other necessary employees, and the administrator may directly employ these types of personnel or may enter into contracts or grant authority to practice in the hospital. If the employees are directly employed, then, similar to former law, they are required to be in the unclassified civil service. (Secs. 339.03, 339.06, and 339.07.)

Recording requirements for the dispensing and distribution of nitrous oxide

Former law required, beginning July 1, 1999, a person who dispenses or distributes nitrous oxide to record each transaction involving the dispensing or distributing on a separate card. For each transaction, a card was required to contain (1) the signature of the purchaser, (2) the complete residential address of the purchaser, (3) the date, and (4) the signature of the person dispensing or distributing the nitrous oxide. Each card was required to be maintained for one year from the date of the transaction at the person's business address and was required to be made available during normal business hours for inspection and copying by officers or employees of the State Board of Pharmacy or of other Ohio or federal law enforcement agencies authorized to investigate violations of the Drug Offenses Law, the Controlled Substances Law, the Board of Pharmacy Law, or the federal drug abuse control laws. (Sec. 2925.32(F).)

The act changes from July 1, 1999, to July 1, 2000, the date on which a person who dispenses or distributes nitrous oxide is required to begin recording each transaction as described above (sec. 2925.32(F)).²

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-99	p. 117
Reported, S. State & Local Gov't & Veterans Affairs	05-13-99	pp. 426-427
Passed Senate (33-0)	05-13-99	p. 428
Reported, H. Local Gov't & Townships	06-17-99	p. 891
Passed House (71-26)	06-29-99	pp. 1109-1115
Senate concurred in House amendments (32-1)	06-30-99	p. 853

99-SB55.123/jc

² Due to the operation of Section 1c of Article II of the Ohio Constitution, this act will not become effective until the 91st day after it has been filed in the Secretary of State's office. As a result, the former version of section 2925.32(F) of the Revised Code, which requires transactions to be recorded as described above beginning on July 1, 1999, went into operation on July 1, 1999. That version will remain in operation until the effective date of this act. On and after the effective date of this act, and until July 1, 2000, transactions involving the dispensing or distributing of nitrous oxide will not be required to be recorded as described above.