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Final Analysis
Legislative Service Commission

Sub. H.B. 239

125th General Assembly
(As Passed by the General Assembly)

Reps. Core, Seitz, McGregor, Kearns, Aslanides, Gilb, Hollister, Flowers, Schmidt, Willamowski

Effective date: *

ACT SUMMARY

HOSPITAL AGENCIES

- Confirms and validates amendments to the law governing hospital agencies that were held unconstitutional on procedural grounds.
- Expands the definition of "costs of hospital facilities" in the law governing hospital agencies.

COUNTY HOSPITALS

- Modifies the contractual requirements that must be met when a board of county hospital trustees contracts for a secured line of credit, including requirements limiting the amount and duration of the contract.
- Permits the board to secure the line of credit by granting a security interest in its personal property, regardless of anything in Ohio law to the contrary.

COUNTY HOMES

- Authorizes a board of county commissioners to enter into a contract to aid the board in fulfilling its duties regarding the operation of a county home.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Permits the board of county commissioners to transfer operational control of a county home to the board of county hospital trustees.
- Allows the transfer of operational control of a county home to occur by adoption of mutual resolutions for the transfer of all operational control or by entering into an agreement that may specify the duties to be retained by the board of county commissioners.
- Permits the governing body of a county home to require monthly reports from the home and to specify the information that must be included.
- Permits a board of county commissioners to sell a county home to a third party.

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CONTENT AND OPERATION

HOSPITAL AGENCIES

Validation of amendments held unconstitutional

(R.C. 140.01 and 140.051; Section 3)

Law unchanged by the act provides for the establishment of hospital agencies, including public hospital agencies and nonprofit hospital agencies.



Hospital agencies may take a number of actions, including entering into agreements for acquisition or construction of hospital facilities, operation of facilities, and participation in programs related to hospital facilities. A public hospital agency may lease a facility to a nonprofit hospital agency or to a government entity such as a county board of mental retardation and developmental disabilities or the Ohio Department of Mental Health.

Continuing law defines "nonprofit hospital agency" as a corporation or association not for profit, no part of the earnings of which may lawfully inure to the benefit of any private shareholder or individual, that has authority to operate a hospital facility or is to provide services to one or more other hospital agencies.

Continuing law also defines "public hospital agency" as any county, board of county hospital trustees, county hospital commission, municipal corporation, new community authority, joint township hospital district, or state or municipal university or college authorized to operate a hospital facility.

Am. Sub. S.B. 109 of the 113th General Assembly, enacted in 1980, modified the hospital agency law by amending a number of definitions used in that law and enacting a new section dealing with contracts for facilities to be leased by a public hospital agency to a nonprofit hospital agency. In 1985, S.B. 109 was held unconstitutional by the Ohio Supreme Court on the grounds that it was enacted in violation of "three hearing rule" of Section 15(C) of Article II of the Ohio Constitution.¹ (*Hoover v. Board of County Commissioners* (1985) 19 Ohio St.3d 1.) A further amendment to the hospital agency law had been made in 1983 by Am. Sub. S.B. 227 of the 115th General Assembly, but the court did not consider that amendment.

The act confirms and validates the amendments made by S.B. 109 and S.B. 227 to eliminate any legal challenges that have been or may be raised concerning the constitutionality of those amendments. It does this in Revised Code section 140.01, the definitional section, by striking the amendments and repeating them as new law and by repealing R.C. 145.051 and enacting it as new law.

In the definitional section, the re-enacted provisions do the following:

- (1) Amend the definition of "public hospital agency" to include the state.

¹ Section 15(C), Article II provides in part:

*"Every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. * * *"*

(2) Amend the definition of "governing body," in the case of the state, to include the Director of Development or the Ohio Higher Educational Facility Commission.

(3) Amend the definition of "costs of hospital facilities" to include "the costs of refinancing obligations issued by, or reimbursement of money advanced by, nonprofit hospital agencies or others the proceeds of which were used for the payment of costs of hospital facilities, if the governing body of the public hospital agency determines that the refinancing or reimbursement advances the purposes of [the hospital agencies law], whether or not the refinancing or reimbursement is in conjunction with the acquisition or construction of additional hospital facilities."

(4) Amend the definition of "bond proceedings" to provide that terms may include variable interest rates.

The section repealed and re-enacted by the act, R.C. 145.051, permits a public hospital agency to enter into certain contracts, including a contract for the acquisition, construction, improvement, equipment, or furnishing of a hospital facility to be leased to a nonprofit hospital agency, if the costs of the hospital facility are to be paid with funds derived from revenue obligations issued pursuant to the hospital agency law and other funds derived from the nonprofit hospital agency. It provides that the public hospital agency's action is pursuant to negotiation and in the manner determined in its sole discretion by the agency's governing body. The section further provides that any requirement of competitive bidding, other restriction, or other procedures that are imposed on a public hospital agency with respect to contracts is not applicable to any contract entered into pursuant to the section. The section specifies that a hospital facility is not exempt from applicable zoning, planning, and building regulations by reason of being financed from the proceeds of obligations issued pursuant to the hospital agency law.

Costs of hospital facilities

(R.C. 140.01)

The act further amends the definition of "costs of hospital facilities" in the law governing hospital agencies by providing that that term includes the costs of acquiring interests in hospital facilities, including membership interests in nonprofit hospital agencies.

COUNTY HOSPITALS

Secured line of credit

(R.C. 339.06)

Continuing law authorizes a board of county hospital trustees to enter into a contract for a secured line of credit.² Prior law required a contract to meet the following requirements:

- (1) Not exceed a term of 180 days;
- (2) Not exceed \$500,000;
- (3) Require the amount extended to be repaid in full before any additional credit could be extended;
- (4) In the event of a default, prohibit the lending institution from commencing a civil action to recover the principal, interest, or any other amounts outstanding from the board of county commissioners, any board member, or the county;
- (5) Prohibit use of assets other than those of the hospital to secure the line of credit;
- (6) Comply with all applicable state and federal laws.

The act modifies the contractual requirements that must be met by a board of county hospital trustees when it enters into a contract with a financial institution for a secured line of credit. Specifically, the act does the following:

- Eliminates the \$500,000 limit on the secured line of credit;
- Lengthens the maximum term of the contract to one year;
- Permits the contract to provide for its automatic renewal for up to four additional one-year periods if, on the date of automatic renewal, the aggregate outstanding draws remaining unpaid do not exceed 50% of the maximum amount that can be drawn under the secured line of credit;

² *A secured line of credit is an arrangement whereby a lender agrees to furnish a specific sum of money or loan on a continuous basis until canceled or until a predetermined date. Some form of collateral or legal right to claim certain assets of the debtor is required. (Howard Bryan Bonham, Adams' Complete Investment and Finance Dictionary. Charles Woelfel, The Dictionary of Banking.)*

--Eliminates the requirement that any amount extended be repaid in full before any additional credit can be extended.

The act permits the board of county hospital trustees to secure the line of credit by the grant of a security interest³ in any part or all of its tangible personal property and intangible personal property, including its deposit accounts, accounts receivable, or both. The act specifies that this authority applies regardless of anything to the contrary in Ohio's statutes.

COUNTY HOMES

Background

A county home is a facility owned and operated by a board of county commissioners to provide services in much the same manner as a privately owned residential care facility or nursing home. According to the *Ohio County Commissioners Handbook*, county homes are derivatives of the county "poor houses" or "poor farms" that were originally authorized under Ohio law in the early 1800s.⁴

In its current provision of services, a county home is not required to be licensed either as a nursing home or residential care facility; a county home may, however, choose to seek licensure as a residential care facility. If a county home provides skilled nursing care, it may seek reimbursement under the Medicaid or Medicare programs. To receive payments under either program, the county home must be surveyed by the Ohio Department of Health and obtain the necessary certification by meeting all applicable state or federal standards.⁵

Contracts regarding county homes

(R.C. 5155.01 and 5155.012)

Law unchanged by the act requires the board of county commissioners to make all contracts for new buildings and for additions to existing buildings

³ A "security interest" is a property interest created by agreement or by operation of law to secure performance of an obligation, especially repayment of a debt (Bryan A. Garner, *Black's Law Dictionary*, 8th ed.).

⁴ *Ohio County Commissioners Association of Ohio, Chapter 48 of the "Ohio County Commissioners Handbook," available at <<http://www.ccao.org/>>, last visited, November 7, 2004.*

⁵ R.C. 3721.01 and 3721.07; *Ohio County Commissioners Handbook*.



necessary for the county home and requires the board to prescribe rules for the management and good government of the home.

The act authorizes the board to enter into a contract to aid it in the execution of its powers and duties for the management and good government of the county home.

Transferring operation of county homes to boards of county hospital trustees

(R.C. 5155.011)

The act permits the board of county commissioners to transfer operational control of the county home to the board of county hospital trustees of a county hospital located in the county. The transfer may occur by either of the following means:

(1) **Complete transfer by resolution.** This transfer is to occur by adopting a resolution to transfer all operational control of the home to the board of county hospital trustees. The board of county hospital trustees also must adopt a resolution to accept the transfer of operational control. When operational control is transferred under this provision, the act specifies that the board of county commissioners cannot and does not transfer ownership of any real or personal property of the county to the board of county hospital trustees.

(2) **Complete or partial transfer by agreement.** This transfer is to occur by entering into an agreement with the board of county hospital trustees to authorize the board of county hospital trustees to manage and operate the home on behalf of the board of county commissioners. Except as otherwise provided in the agreement, the operator must carry out the duties of operating the county home in the same manner as otherwise would be required of the board of county commissioners. The agreement may specify duties of operating the county home that will be retained by the board of county commissioners instead of being carried out by the operator on behalf of the board. The board of county commissioners is required to retain ownership of the county home under the agreement.

Powers and duties when operating a transferred county home

(R.C. 5155.011(A))

Once the operational duties of a county home are transferred to a board of county hospital trustees, the act provides for that board to be known as the "operator." As a result, the act applies many of the statutes governing county homes to those operators. Specifically, the board is subject to the following provisions:

--Appointment of superintendent or administrator. The operator is required to appoint a superintendent or administrator for the county home and to determine the superintendent's compensation. In turn, the superintendent or administrator must perform the duties that the operator imposes and is governed in all respects by the operator's rules. (R.C. 5155.03.)

--Limits on conflicts of interests. The operator cannot appoint one of the members of the board of county hospital trustees to serve as the superintendent or administrator. The members of the board are not eligible for any other office in the county home and cannot receive any compensation as a physician or otherwise. (R.C. 5155.03.)

--Appointment of assistant superintendent or administrator. The operator may, by resolution, provide for the appointment by the superintendent or administrator of an assistant superintendent or administrator (R.C. 5155.03).

--Inappropriate use of residents or employees. The county home's superintendent or administrator and administrative assistant must be removed if either of them requires or permits residents or employees to render services for the private interests of the superintendent or administrator, the administrative assistant, any member of the board of county commissioners, any private interest, or any member of the board of county hospital trustees (R.C. 5155.01).

--Records. The operator must keep a record of its transactions regarding the county home in the same manner that the board of county commissioners must keep records of its proceedings. The operator's records must be open to public inspection at all reasonable times. (R.C. 5155.02.)

--Reserve funds. The superintendent or administrator may ask the operator to set apart from the county home fund, a reserve fund of not more the \$400 at any one time. When ordered by the operator, the amount is to be paid to the superintendent or administrator and expended as needed for emergency supplies and expenses. (R.C. 5155.14.)

--Annual report. The operator is required to submit an annual report to the board of county commissioners. The report must include information on the number of residents, total expenses, and salaries of all county home employees, as well as any other information the board or operator requires. (R.C. 5155.16.)

--Monthly reports. The operator is permitted to require the superintendent or administrator to submit to the board of county commissioners and the operator a monthly report. The monthly report may contain information on residents, total current expenses, and other information required by the board or operator. (R.C. 5155.19.)



--Contracts with physicians. The operator is permitted to enter into contracts with one or more physicians to furnish medical relief and medicines to the county home residents. The contracts cannot extend beyond one year. The operator is permitted to discharge any physician for proper cause. (R.C. 5155.27.)

Monthly reports

(R.C. 5155.19)

Prior law required the superintendent or administrator of a county home to submit monthly reports to the board of county commissioners. The monthly reports had to contain specified information on the residents, the total current expenses exclusive of farm products, the total value of farm products, and any other information the board required.

In place of the requirement for a monthly report, the act permits the board of county commissioners to require the submission of the report. The report may contain any or all of the information currently required in a monthly report. References to farm products, however, are eliminated. If a county home is operated under the act by a board of county hospital trustees, a monthly report may be required by that board, as described above.

Sale of county homes

(R.C. 5155.31)

Continuing law permits a board of county commissioners to close a county home, including one that is operated in the same manner as a nursing home, whenever the buildings of the home have become unsuitable for habitation, the population of the home is too small for economical and efficient operation, or for any other reason of record. Prior law provided that when the home closed, the board was authorized to lease the home for five-year periods to any person for establishment of a licensed nursing home.

The act permits the board to sell a county home to a third party. The sale may occur for the same reasons specified in continuing law for closing a county home. The act eliminates provisions that applied to the sale or lease of a county home prior to December 31, 1983.

Elimination of provisions applicable to the operation of county homes

Several provisions of former law pertaining to the operation of county homes were eliminated by the act. Specifically, the act does the following:



--Rules on the function of county homes. The act eliminates a provision requiring that the board of county commissioners prescribe rules to promote sobriety, morality, and industry among the residents of the county home (R.C. 5155.01).

--Maintenance of buildings. The act eliminates a provision specifying that the superintendent or administrator of the county home is responsible for maintaining buildings in good repair (R.C. 5155.01).

--Placement of spouses. The act eliminates a provision specifying that in all cases in which both the husband and wife have been admitted to a county home, the couple must not be separated, unless otherwise requested by either of them, and must be given quarters in the same part of the facility (R.C. 5155.01).

--Removal of superintendent or administrator. The act eliminates a provision specifying that county home's superintendent or administrator cannot be removed except for good and sufficient cause (R.C. 5155.03).

--Bonding of superintendent or administrator. While retaining the requirement that the county home's superintendent or administrator be bonded before entering into official duties, the act eliminates a provision specifying that the bond must be given to the state and in an amount between \$2,000 and \$20,000. The act eliminates a related provision specifying that the bond must be given with two or more sureties. (R.C. 5155.04.)

--Itemized accounts. The act eliminates a provision under which the superintendent or administrator must require itemized bills for all labor performed under the direction of the superintendent or administrator. It also eliminates a provision under which itemized bills are required for articles purchased by the superintendent or administrator and provided for the use of the county home or the farm connected with the home. Further, the act eliminates provisions requiring the superintendent or administrator to certify the correctness of the bills. (R.C. 5155.05 and 5155.06 (repealed by the act).)

--Labor by residents. The act eliminates provisions under which the superintendent or administrator must require all persons in the county home to perform reasonable and moderate labor, without compensation, as is suited to their age and bodily strength (R.C. 5155.06 (repealed by the act)).

--Purchase procedures. The act eliminates a provision specifying that the superintendent or administrator and the administrative assistant must make purchases as are authorized by the board of county commissioners. It eliminates a provision specifying that, as far as practicable, all supplies must be purchased on competitive bids or from a qualified nonprofit agency pursuant to the laws

governing products and services provided by persons with severe disabilities. (R.C. 5155.06 (repealed by the act)).

--Sale of farm products. The act eliminates provisions under which the superintendent or administrator, under the direction of the board of county commissioners, must sell all products of the county home's farm not necessary for the use of the home (R.C. 5155.06 (repealed by the act)).

--Discharge of residents. The act eliminates a provision permitting the superintendent or administrator to discharge residents from the county home for justified cause (R.C. 5155.06 (repealed by the act)).

--Resident information book. The act eliminates a provision under which the superintendent or administrator is required to enter, in a book, statistical and medical information on each person received in the county home (R.C. 5155.07 (repealed by the act) and 5155.16).

--Annual report. The act eliminates provisions requiring a county home's annual report to include information on the home's farm products, the total amount paid in the county for outdoor relief during the year, and an itemized account of all moneys received by the superintendent or administrator and paid into the county home fund. The act also eliminates provisions requiring the annual report to be examined by the board of county commissioners and filed with the county auditor. (R.C. 5155.16.)

--Prohibitions regarding purchases and sales. The act eliminates a provision that prohibits a county commissioner from selling or supplying an article to a superintendent or administrator or other person for the relief of the poor. The act eliminates a corresponding provision that prohibits a county commissioner from making an order for the payment of supplies so sold or furnished. Further, it eliminates a provision specifying that an order for the payment of money for supplies sold or furnished cannot be paid to any such commissioner, assignee, or holder thereof. The act also eliminates a provision specifying that a county commissioner or employee cannot sell or give any article belonging to, grown, or produced at a county home or other public facility. (R.C. 5155.28(A) (repealed by the act).)

--Penalties. The act eliminates a provision specifying the penalty that applies to a superintendent or administrator, commissioner, trustee, or other officer, who certifies to, allows, or draws an order for the payment of an account or bill, knowing that it is false or fraudulent. Under this provision, the violator is required to forfeit and pay not less than \$500 nor more the \$3,000 for each offense. The act eliminates a corresponding provision specifying that the violator is subject to criminal prosecution. (R.C. 5155.28(B) (repealed by the act).)



--Religious and funeral services. The act eliminates a provision requiring that the board of county commissioners provide for religious services on Sunday in the county home at least once a month. It also eliminates a provision requiring that, on request, the board provide for funeral services over deceased residents. (R.C. 5155.30 (repealed by the act).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-01-03	p. 1004
Reported, H. Health	05-12-04	p. 1898
Passed House (96-3)	05-25-04	pp. 1958-1964
Reported, S. Health, Human Services and Aging	12-07-04	p. 2430
Passed Senate (32-0)	12-08-04	pp. 2441-2442
House concurred in Senate amendments (94-0)	12-15-04	pp. 2700-2701

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