Alan Van Dyne *Legislative Service Commission*

Sub. S.B. 222

125th General Assembly
(As Reported by S. Health, Human Services and Aging)

Sen. Carey

BILL SUMMARY

- Permits a municipal hospital's board of hospital commissioners to enter into contracts with any person or government entity, including contracts for the erection of a hospital building.

- Provides that a municipal hospital's board of hospital commissioners has control of the hospital's property and all funds used in the hospital's operation.

- Allows a board of hospital commissioners to acquire an existing structure to lease office space to a local physician and to lease or convey interests in real estate for providing medical services other than inpatient hospital services.

- Permits property titles and leasehold interests to be taken in the name of the board of hospital commissioners or a charitable organization under the board's control and allows a municipal corporation to convey property titles and leasehold interests to the board or organization.

- Authorizes a municipal corporation to acquire an easement in the name of the board of hospital commissioners when property is acquired for a municipal hospital.

- Specifies the types of investments that a board of hospital commissioners may make with hospital funds not needed to meet the hospital's current demands.

- Permits a board of hospital commissioners to take and hold in trust any grant or devise of land and any donation or bequest of money or other personal property.

- Permits a board of hospital commissioners to donate to nonprofit entities any surplus hospital property or funds and the services rendered by the hospital.

- Authorizes a municipal corporation, by ordinance and without competitive bidding, to authorize the transfer, lease, or conveyance of municipal hospital property to any person for purposes of providing medical services other than hospital services.

- Permits a hospital or outpatient health facility to be operated in another municipality as a branch of the municipal hospital.

- Transfers to a board of hospital commissioners the management duties held by the municipality's director of public safety, including duties related to the employment of personnel, establishment of employee benefits, and administration of the hospital.

- Provides for a municipal hospital to be administered by a hospital administrator and makes the administrator responsible for the employment of hospital personnel.

- Authorizes the governing board of a municipal hospital to hold executive sessions to consider trade secrets.

- Excludes from the public records law municipal hospital information that constitutes a trade secret.

- Exempts from the prevailing wage law public improvements undertaken by a municipal hospital when none of the funds used have been appropriated by the state, a board of county commissioners, 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, a county, a township, or a municipal corporation.

- Permits the governing board of a municipal hospital to enter into a single contract for both design and construction services, but retains all other competitive bidding requirements applicable to the contract.

- Specifically provides that a municipal hospital's board of hospital commissioners or board of hospital trustees is a political subdivision for purposes of the political subdivision sovereign immunity law.

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CONTENT AND OPERATION

Background: authority to operate municipal hospitals

(R.C. 715.37(D), 719.01(E), 749.01, 749.05, and 749.20--not in the bill; 749.02)

Current law authorizes municipal corporations to erect, maintain, and regulate hospitals and to appropriate and hold real estate for hospitals within their corporate limits. A municipal corporation is authorized to annually levy and collect a tax and pay the amount collected to a private corporation or association that maintains and furnishes a public hospital for the benefit of the municipality. Subject to voter approval, the legislative authority of a municipal corporation may enter into an agreement with a charitable, nonprofit corporation to erect and manage a hospital, including hospital additions.

When the legislative authority of a municipal corporation takes possession of property for hospital purposes, the building and repair of the hospital and any additions to the hospital are to be governed by a board of hospital commissioners. A board of hospital commissioners must consist of the mayor and four trustees appointed by the mayor.

If hospital property or funds have been donated to a municipal corporation, the property or funds must be managed and administered in accordance with the provisions of the deed of gift, devise, or bequest. If the deed requires the property or funds to be managed on the approval of an advisory committee, the property or funds are to be managed by a board of hospital trustees. Except in specified cases, a board of hospital trustees is to be appointed by the legislative authority of the municipal corporation.

Management and control of the hospital

(R.C. 749.08, 749.082, and 749.15)

Current law specifies that a municipal corporation's director of public safety has the entire management and control of a municipal hospital when the hospital is completed and ready for use. Subject to the ordinances of the legislative authority, the director must establish rules for the hospital's government and the admission of persons as the director deems expedient.

The bill transfers the duties of the director of public safety to the municipal hospital's board of hospital commissioners. The bill specifies that the board is to assume and continue the operation of the hospital.

Contracting authority

(R.C. 749.08(C) and 749.10)

The bill authorizes a municipal hospital's board of hospital commissioners to enter into contracts with any person or government entity. It specifies that this contracting authority includes making contracts in the name of the board for the erection of a hospital building.

Control of hospital property

(R.C. 749.08(B) and 749.084)

The bill provides that a municipal hospital's board of hospital commissioners has control of the property of the hospital. It specifies that this control includes acquiring, holding, possessing, managing, and disposing of real and personal property.

The bill authorizes the board to do any of the following, if the board determines that the action is reasonably related to the operation of the hospital:

(1) Construct an addition to the hospital under its existing authority to erect additions;

(2) Acquire an existing structure to lease office space to local physicians;

(3) Lease real property to any person to construct facilities for providing medical services other than inpatient hospital services or otherwise lease or convey interests in real estate for providing medical services other than inpatient hospital services.

Property titles and leasehold interests

(R.C. 749.08(F))

With respect to taking title to or a leasehold interest in property on behalf of a municipal hospital, the bill provides both of the following:

--The title or leasehold interest in the property may be taken in the name of the board of hospital commissioners or an entity organized for charitable purposes that is under the board's control.

--If a transaction occurs or has occurred in which the title to or leasehold interest in property was taken in the name of the legislative authority of the municipality, the title or leasehold interest may be conveyed to the board of hospital commissioners or an entity organized for charitable purposes that is under the board's control.

Easements

(R.C. 749.08(G))

When the legislative authority of a municipal corporation acquires property for purposes of the municipal hospital, the bill provides that an easement may be acquired in the name of the hospital's board of hospital commissioners.

Donations to the hospital

(R.C. 749.08(E))

For the use and benefit of the municipal hospital, the hospital's board of hospital commissioners is permitted by the bill to take and hold in trust any grant or devise of land and any donation or bequest of money or other personal property.

Control of hospital funds and investments

(R.C. 749.08(D))

The bill provides that a municipal hospital's board of hospital commissioners has control of all funds used in the hospital's operation. These funds include moneys received from the operation of the hospital, moneys appropriated for its operation by the legislative authority of the municipal corporation, and moneys resulting from special levies submitted by the legislative authority for operation of the hospital.

Of the funds under the board's control, all or part of any amount determined not to be necessary to meet current demands on the hospital may be invested by the board or its designee in any classifications of securities and obligations eligible for deposit or investment of public moneys pursuant to existing law. The investments are subject to the approval of the board's written investment policy by the legislative authority of the municipal corporation.

Transfer of hospital property by municipal corporations

(R.C. 721.15 and 721.27)

Current law permits a municipal corporation, by ordinance, to authorize the transfer, lease, or conveyance of any real or personal property pertaining to a municipal hospital to the board of county commissioners. The action may be taken without complying with laws that otherwise require competitive bidding.

The bill expands a municipal corporation's authority to take action regarding hospital property without complying with competitive bidding laws. Under the bill, the municipal corporation is authorized to transfer, lease, or convey real or personal hospital property to any person. The action must be for purposes of providing medical services other than inpatient hospital services. Further, the municipal corporation must determine that the action is reasonably related to the proper operation of the hospital.

Donation of hospital resources

(R.C. 749.08(H))

For the public purpose of improving the health, safety, and general welfare of the community, the bill authorizes a board of hospital commissioners to 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;

(3) Services rendered by the hospital.

Approval of payments

(R.C. 749.08(A) and 749.081)

Existing law prohibits the payment of money for the erection, rebuilding, or repair of a municipal hospital, or for any addition to the hospital or for supplies, unless the expenditure is first authorized by the board of hospital commissioners. The payment must be made on the warrant of the proper officer of the municipal corporation.

The bill expands the types of expenditures specified in the law as payments that must be approved by the board. Under the bill, the board must approve payments for the uses and purposes of the hospital; for the replacement of necessary equipment; for the acquisition, leasing, or construction of permanent improvements to hospital property; and for making a donation as authorized by the bill. Each disbursement of funds must be made on a voucher signed by signatories designated and approved by the board.

Branch health facilities

(R.C. 749.03 and 3702.62)

The bill permits the legislative authority of a municipal corporation or a municipal hospital's board of hospital commissioners to purchase, acquire, lease, appropriate, or construct a health facility in another municipal corporation. For purposes of this provision, the bill specifies that a "health facility" includes both (1) a hospital and (2) a facility that is not a hospital where medical care and preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services are provided to outpatients by or under the direction of a physician or dentist.

A health facility established in another municipality is to serve as a branch of a municipal hospital. The facility is to be operated pursuant to the laws that regulate the operation of the municipal hospital.

When a proposal to establish a health facility in another municipal corporation is made by a board of hospital commissioners, all of the following apply:

(1) The board must give written notice to the legislative authority of its municipal corporation and to the legislative authority of the municipal corporation

where the facility is to be located. The legislative authority of the municipal corporation where the facility is to be located, by resolution adopted within 40 days after receipt of the notice, may object to the proposed facility. The resolution must include an explanation of the objection and may make any recommendations the legislative authority considers necessary. The legislative authority must send a copy of the resolution to the board of hospital commissioners and the legislative authority of the municipal corporation that proposes to locate the facility in the other municipal corporation.

(2) The board of hospital commissioners is permitted to establish and operate the facility, unless the legislative authority proposing to locate the facility in the other municipal corporation, not later than 20 days after receiving a resolution of objection from the other legislative authority, adopts a resolution denying the board the right to establish the facility.

(3) If the legislative authority of a municipal corporation provides a subsidy for uncompensated care to a board of hospital commissioners, the board may establish and operate the health facility only if that legislative authority approves the establishment of the facility.

(4) To the extent that the existing Certificate of Need law may apply, any action taken to establish a health facility in another municipal corporation must be taken in accordance with that law.

Employees of the board and hospital

(R.C. 749.082 and 749.15)

Under current law, the authority to employ persons for a municipal hospital, fix their compensation, and grant employee benefits is held by the municipal corporation's director of public safety. The director's authority is subject to the ordinances of the legislative authority.

The bill transfers to the board of hospital commissioners all of the director's responsibilities related to hospital employees. As with the director, the board's actions are subject to the ordinances of the municipal corporation's legislative authority.

Under the bill, all of the following apply to the board in relation to its employees and the employees of the municipal hospital:

(1) The board may adopt the wage and salary schedule for employees;

(2) The board may employ the hospital's administrator, and the administrator may employ individuals for the hospital;

(3) The board may employ assistants as necessary to perform its clerical work, superintend properly the construction of the hospital, and pay the hospital's expenses, and the employees may be paid from funds provided for the hospital;

(4) The board may enter into a contract with an employer or other entity whereby the services of any employee of the board or hospital are rendered to or on behalf of the employer or other entity for a fee paid to the board or hospital;

(5) The board may grant fringe benefits the board determines to be customary and usual in the nonprofit hospital field in the community;

(6) The board may provide holiday leave by observing Martin Luther King Day, Washington-Lincoln Day, Columbus Day, and Veterans' Day on days other than those designated under current law;

(7) The board may grant specified insurance benefits;

(8) The board may provide employee recognition awards and may hold employee recognition dinners;

(9) The board may provide scholarships for education in the health care professions, tuition reimbursement, and other staff development programs for the purpose of recruiting or retaining qualified employees;

(10) The board may pay reasonable expenses for recruiting physicians into the city or for retaining them if all or part of the city has been designated as an area with a shortage of personal health services under certain federal laws.

Health, life, and liability insurance

(R.C. 749.082(B)(1) to (3))

The bill permits the board of hospital commissioners to contract for, purchase, or otherwise procure on behalf of any or all of its employees, the employees of the hospital, or such employees and their immediate dependents the following types of health and life insurance benefits:

(1) Group or individual insurance contracts which may include life, sickness, accident, disability, annuities, endowment, health, medical expense, hospital, dental, surgical and related coverage or any combination thereof;

(2) Group or individual contracts with health insuring corporations or other providers of professional services, care, or benefits duly authorized to do business in this state.

The bill permits the board of hospital commissioners to contract for, purchase, or otherwise procure insurance contracts that provide protection for the commissioners, the board's employees, and the employees of the hospital against liability, including professional liability. The bill specifies that the authority to obtain this insurance or any insurance contract issued under that authority cannot be construed as a waiver of or in any manner affect the immunity of the hospital or municipal corporation.

All or any portion of the cost, premium, fees, or charges for the insurance benefits specified above can be paid in such manner or combination of manners as the board may determine, including direct payment by an employee. If authorized in writing by an employee, the payment can be made by the board with moneys made available by deduction from or reduction in salary or wages or by the foregoing of a salary or wage increase.

Notwithstanding the laws that regulate group life insurance, the bill permits the board to purchase group life insurance by reason of payment of premiums by the board from its funds. The bill specifies that such group life insurance may be issued and purchased if otherwise consistent with the laws that regulate group life insurance.

Hospital administrator

(R.C. 749.083 and 749.15(A))

Current law permits the director of public safety to employ a superintendent, steward, physicians, nurses, and other employees as are necessary for a municipal hospital. The director is permitted to fix their compensation, but the compensation is subject to the approval of the legislative authority.

The bill requires the board of hospital commissioners to provide for the administration of the hospital by directly employing a hospital administrator or by entering into a contract for the management of the hospital under which an administrator is provided. When an administrator is employed directly, the board must adopt a job description delineating the administrator's powers and duties. The board is permitted to pay the administrator's salary and other benefits from funds provided for the hospital.

During the construction and equipping of the hospital, the administrator is required to act in an advisory capacity to the board. After the hospital is completed, the administrator is to serve as the chief executive officer and must carry out the administration of the hospital according to the policies set forth by the board.

The bill requires the administrator to administer the hospital, make reports, and take any other action that the administrator determines is necessary for the operation of the hospital. At the end of each fiscal year, the administrator must submit to the board a complete financial statement showing the receipts, revenues, and expenditures in detail for the entire fiscal year.

The bill requires the administrator to ensure that the hospital has such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the hospital and its patients. The physicians, nurses, and other employees may be suspended or removed by the administrator at any time the welfare of the hospital warrants suspension or removal. The bill specifies that the administrator may obtain physicians, nurses, and other employees by direct employment, entering into contracts, or granting authority to practice in the hospital.

Legal counsel

(R.C. 749.082(C) and 749.15(A))

Current law permits the director of public safety, with the approval of the mayor, to employ counsel to bring legal action for the collection of delinquent accounts. The bill transfers this authority to the board of hospital commissioners and specifies that the board may retain counsel, as opposed to employing counsel, to bring actions for the collection of delinquent accounts.

Open meetings law exemption

(R.C. 121.22)

Existing law requires public officials to take official action and to conduct all deliberations on official business only in open meetings, unless the subject matter is specifically excepted by law. 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 (R.C. 121.22(G)). The bill adds to the excepted subject matters the consideration of *trade secrets* by a municipal hospital.[1]

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[1] *"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,*

Normally, under existing 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 bill contains a similar requirement for the consideration of trade secrets by a municipal hospital.

Public records law exemption

(R.C. 149.43)

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.

The bill adds as an exclusion from the public records law any municipal hospital information that constitutes a trade secret.

Prevailing wage law exemption

(R.C. 4115.04)

Generally, under existing 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.

The bill exempts public improvements undertaken by, or under contract for, a municipal hospital if none of the funds used in constructing the improvements are the proceeds of bonds or other obligations secured by the full faith and credit of the state, a 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 state, a board of county commissioners, a township, or a municipal corporation from funds generated by the levy of a tax. The bill provides, however, that a municipal hospital may elect to apply the prevailing

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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 (R.C. 1333.61(D)--not in the bill).

wage law to a public improvement undertaken by, or under contract for, the county hospital.

Combined contracts for design and construction

(R.C. 749.37)

Notwithstanding any conflicting provision of current competitive bidding laws that require a public authority to enter into separate contracts for the design and construction of a public improvement, the bill permits a board of hospital commissioners or a board of hospital trustees to enter into a single contract under which the entity awarded the contract is responsible for providing both design and construction services related to the erection of a municipal hospital, any addition to the hospital, or any other improvement to the hospital or its properties involving alteration, repair, replacement, renovation, installation, or demolition. The bill specifies that this provision does not otherwise alter the competitive bidding requirements that apply to the board when entering into a contract for a public improvement.

Sovereign immunity of political subdivisions

(R.C. 2744.01 and 2744.02 (not in the bill))

Background

Under current law, acts of a political subdivision are divided into governmental and proprietary functions. Generally, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. A governmental function is one that is specified in law or possesses one of the following characteristics:

(1) A function imposed on the state as an obligation of sovereignty that is performed by the political subdivision voluntarily or pursuant to legislative requirement;

(2) A function that is for the common good of all citizens of the state;

(3) A function that promotes the public peace, health, safety, or welfare that generally is not engaged in by nongovernmental persons and is not a proprietary function.

Governmental functions under current law include the provision of police, fire, and emergency rescue services, the maintenance of public roads, judicial and legislative functions, and the design and maintenance of public parks.

A proprietary function is specified in law or is any function of a political subdivision that promotes or preserves the public peace, health, safety, or welfare and that involves activities generally not engaged in by nongovernmental persons. Proprietary functions are not imposed on the state as an obligation of sovereignty. Proprietary functions under current law include the operation of a hospital by a political subdivision, the maintenance of a sewer system, and the operation of a public stadium.

A political subdivision may be liable for injury, death, or loss to person or property in certain circumstances. For example, where an employee of a political subdivision negligently operates a motor vehicle in the scope of the employee's authority or employment, the political subdivision may be liable. A political subdivision is liable for the negligent performance of a proprietary function.

Municipal hospital board as a political subdivision

For the purposes of the sovereign immunity law, "political subdivision" includes any "body corporate and public responsible for governmental activities in a geographic area smaller than that of the state." The bill expands "political subdivision" to specifically include a board of hospital commissioners or board of hospital trustees appointed for a municipal hospital. As a result, the actions of a municipal hospital board generally will be immune from liability in a civil action for injury, death, or loss to person or property. However, because the operation of a hospital by a political subdivision is a proprietary function, the board will be liable for any negligent actions in the course of the operation of the hospital.

Conforming and technical changes

(R.C. 133.05, 737.03, 749.02, 749.03 (renumbered as 749.021), 749.18, 749.24, 749.33, and 751.07)

The bill includes changes to several sections of existing law for purposes of conforming statutory cross-references and other provisions with corresponding changes made by the bill. Other sections are included only for technical corrections.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-06-04	p.	1711
Reported, S. Health, Human Services & Aging	11-18-04	p.	2300

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