

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 239

Representatives Core, Seitz, McGregor, Kearns, Aslanides, Gilb, Hollister

A BILL

To amend sections 140.01 and 140.03, to enact new 1
section 140.051, and to repeal section 140.051 of 2
the Revised Code to expand the definition of costs 3
of hospital facilities, to specify that a trustee, 4
officer, or director of a hospital agency does not 5
have an interest in the profits or benefits of an 6
agreement between hospital agencies solely by 7
virtue of being a trustee, officer, or director of 8
one of the participating hospital agencies, and to 9
confirm and validate amendments made to section 10
140.01 and the enactment of section 140.051 of the 11
Revised Code by Am. Sub. S.B. 109 of the 113th 12
General Assembly in order to eliminate any legal 13
challenges that have been or may be raised 14
concerning the constitutionality of these 15
amendments. 16

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 140.01 and 140.03 be amended and new 17
section 140.051 of the Revised Code be enacted to read as follows: 18

Sec. 140.01. As used in ~~this chapter~~ this chapter: 19

(A) "Hospital agency" means any public hospital agency or any 20

nonprofit hospital agency. 21

(B) "Public hospital agency" means any county, board of 22
county hospital trustees established pursuant to section 339.02 of 23
the Revised Code, county hospital commission established pursuant 24
to section 339.14 of the Revised Code, municipal corporation, new 25
community authority organized under Chapter 349. of the Revised 26
Code, joint township hospital district, state or municipal 27
university or college operating or authorized to operate a 28
hospital facility, ~~or the state., or the state.~~ 29

(C) "Nonprofit hospital agency" means a corporation or 30
association not for profit, no part of the net earnings of which 31
inures or may lawfully inure to the benefit of any private 32
shareholder or individual, that has authority to own or operate a 33
hospital facility or provides or is to provide services to one or 34
more other hospital agencies. 35

(D) "Governing body" means, in the case of a county, the 36
board of county commissioners or other legislative body; in the 37
case of a board of county hospital trustees, the board; in the 38
case of a county hospital commission, the commission; in the case 39
of a municipal corporation, the council or other legislative 40
authority; in the case of a new community authority, its board of 41
trustees; in the case of a joint township hospital district, the 42
joint township district hospital board; in the case of a state or 43
municipal university or college, its board of trustees or board of 44
directors; in the case of a nonprofit hospital agency, the board 45
of trustees or other body having general management of the agency; 46
~~and, in the case of the state, the director of development or the~~ 47
~~Ohio higher educational facility commission.; and, in the case of~~ 48
the state, the director of development or the Ohio higher 49
educational facility commission. 50

(E) "Hospital facilities" means buildings, structures and 51
other improvements, additions thereto and extensions thereof, 52

furnishings, equipment, and real estate and interests in real 53
estate, used or to be used for or in connection with ~~one or more~~ 54
one or more hospitals, emergency, intensive, intermediate, 55
extended, long-term, or self-care facilities, diagnostic and 56
treatment and out-patient facilities, facilities related to 57
programs for home health services, clinics, laboratories, public 58
health centers, research facilities, and rehabilitation 59
facilities, for or pertaining to diagnosis, treatment, care, or 60
rehabilitation of sick, ill, injured, infirm, impaired, disabled, 61
or handicapped persons, or the prevention, detection, and control 62
of disease, and also includes education, training, and food 63
service facilities for health professions personnel, housing 64
facilities for such personnel and their families, and parking and 65
service facilities in connection with any of the foregoing; and 66
includes any one, part of, or any combination of the foregoing; 67
and further includes site improvements, utilities, machinery, 68
facilities, furnishings, and any separate or connected buildings, 69
structures, improvements, sites, utilities, facilities, or 70
equipment to be used in, or in connection with the operation or 71
maintenance of, or supplementing or otherwise related to the 72
services or facilities to be provided by, any one or more of such 73
hospital facilities. 74

(F) "Costs of hospital facilities" means the costs of 75
acquiring ~~or constructing~~ hospital facilities, or interests in 76
hospital facilities, including membership interests in nonprofit 77
hospital agencies, costs of constructing hospital facilities, 78
costs of improving ~~one or more~~ one or more hospital facilities, 79
including reconstructing, rehabilitating, remodeling, renovating, 80
and enlarging, costs of equipping and furnishing such facilities, 81
and all financing costs pertaining thereto, including, without 82
limitation thereto, costs of engineering, architectural, and other 83
professional services, designs, plans, specifications and surveys, 84
and estimates of cost, costs of tests and inspections, the costs 85

of any indemnity or surety bonds and premiums on insurance, all 86
related direct or allocable administrative expenses pertaining 87
thereto, fees and expenses of trustees, depositories, and paying 88
agents for the obligations, cost of issuance of the obligations 89
and financing charges and fees and expenses of financial advisors, 90
attorneys, accountants, consultants and rating services in 91
connection therewith, capitalized interest on the obligations, 92
amounts necessary to establish reserves as required by the bond 93
proceedings, the reimbursement of all moneys advanced or applied 94
by the hospital agency or others or borrowed from others for the 95
payment of any item or items of costs of such facilities, and all 96
other expenses necessary or incident to planning or determining 97
feasibility or practicability with respect to such facilities, and 98
such other expenses as may be necessary or incident to the 99
acquisition, construction, reconstruction, rehabilitation, 100
remodeling, renovation, enlargement, improvement, equipment, and 101
furnishing of such facilities, the financing thereof, and the 102
placing of the same in use and operation, including any one, part 103
of, or combination of such classes of costs and expenses, ~~and~~ 104
~~means the costs of refinancing obligations issued by, or~~ 105
~~reimbursement of money advanced by, nonprofit hospital agencies or~~ 106
~~others the proceeds of which were used for the payment of costs of~~ 107
~~hospital facilities, if the governing body of the public hospital~~ 108
~~agency determines that the refinancing or reimbursement advances~~ 109
~~the purposes of this chapter, whether or not the refinancing or~~ 110
~~reimbursement is in conjunction with the acquisition or~~ 111
~~construction of additional hospital facilities., and means the~~ 112
costs of refinancing obligations issued by, or reimbursement of 113
money advanced by, nonprofit hospital agencies or others the 114
proceeds of which were used for the payment of costs of hospital 115
facilities, if the governing body of the public hospital agency 116
determines that the refinancing or reimbursement advances the 117
purposes of this chapter, whether or not the refinancing or 118

reimbursement is in conjunction with the acquisition or 119
construction of additional hospital facilities. 120

(G) "Hospital receipts" means all moneys received by or on 121
behalf of a hospital agency from or in connection with the 122
ownership, operation, acquisition, construction, improvement, 123
equipping, or financing of any hospital facilities, including, 124
without limitation thereto, any rentals and other moneys received 125
from the lease, sale, or other disposition of hospital facilities, 126
and any gifts, grants, interest subsidies, or other moneys 127
received under any federal program for assistance in financing the 128
costs of hospital facilities, and any other gifts, grants, and 129
donations, and receipts therefrom, available for financing the 130
costs of hospital facilities. 131

(H) "Obligations" means bonds, notes, or other evidences of 132
indebtedness or obligation, including interest coupons pertaining 133
thereto, issued or issuable by a public hospital agency to pay 134
costs of hospital facilities. 135

(I) "Bond service charges" means principal, interest, and 136
call premium, if any, required to be paid on obligations. 137

(J) "Bond proceedings" means one or more ordinances, 138
resolutions, trust agreements, indentures, and other agreements or 139
documents, and amendments and supplements to the foregoing, or any 140
combination thereof, authorizing or providing for the terms, 141
~~including any variable interest rates,~~ including any variable 142
interest rates, and conditions applicable to, or providing for the 143
security of, obligations and the provisions contained in such 144
obligations. 145

(K) "Nursing home" has the same meaning as in division (A)(1) 146
of section 5701.13 of the Revised Code. 147

(L) "Residential care facility" has the same meaning as in 148
division (A)(2) of section 5701.13 of the Revised Code. 149

(M) "Adult care facility" has the same meaning as in division	150
(A)(3) of section 5701.13 of the Revised Code.	151
(N) "Independent living facility" means any self-care	152
facility or other housing facility designed or used as a residence	153
for elderly persons. An "independent living facility" does not	154
include a residential facility, or that part of a residential	155
facility, that is any of the following:	156
(1) A hospital required to be certified by section 3727.02 of	157
the Revised Code;	158
(2) A nursing home or residential care facility;	159
(3) An adult care facility;	160
(4) A hospice licensed under section 3712.04 of the Revised	161
Code;	162
(5) A habilitation center as defined in section 5123.041 of	163
the Revised Code;	164
(6) A residential facility for the mentally ill licensed by	165
the department of mental health under section 5119.22 of the	166
Revised Code;	167
(7) A facility licensed to provide methadone treatment under	168
section 3793.11 of the Revised Code;	169
(8) A facility certified as an alcohol and drug addiction	170
program under section 3793.06 of the Revised Code;	171
(9) A residential facility licensed under section 5123.19 of	172
the Revised Code or a facility providing services under a contract	173
with the department of mental retardation and developmental	174
disabilities under section 5123.18 of the Revised Code;	175
(10) A residential facility used as part of a hospital to	176
provide housing for staff of the hospital or students pursuing a	177
course of study at the hospital.	178

Sec. 140.03. (A) Two or more hospital agencies may enter into 179
agreements for the acquisition, construction, reconstruction, 180
rehabilitation, remodeling, renovating, enlarging, equipping, and 181
furnishing of hospital facilities, or the management, operation, 182
occupancy, use, maintenance, and repair of hospital facilities, or 183
for participation in programs, projects, activities, and services 184
useful to, connected with, supplementing, or otherwise related to 185
the services provided by, or the operation of, hospital facilities 186
operated by one or more participating hospital agencies, including 187
any combination of such purposes, all in such manner as to promote 188
the public purpose stated in section 140.02 of the Revised Code. A 189
city health district; general health district; board of alcohol, 190
drug addiction, and mental health services; county board of mental 191
retardation and developmental disabilities; the department of 192
mental health; the department of mental retardation and 193
developmental disabilities; or any public body engaged in the 194
education or training of health professions personnel may join in 195
any such agreement for purposes related to its authority under 196
laws applicable to it, and as such a participant shall be 197
considered a public hospital agency or hospital agency for the 198
purposes of this section. No trustee, officer, or director of a 199
hospital agency who has entered into an agreement with another 200
hospital agency will be considered to have an interest in the 201
profits or benefits of the agreement solely by virtue of being a 202
trustee, officer, or director. 203

(B) An agreement entered into under authority of this section 204
shall, where appropriate, provide for: 205

(1) The manner in which the title to the hospital facilities, 206
including the sites and interest in real estate pertaining 207
thereto, is to be held, transferred, or disposed of; 208

(2) Unless provided for by lease pursuant to section 140.05 209

of the Revised Code, the method by which such hospital facilities 210
are to be acquired, constructed, or otherwise improved and by 211
which they shall be managed, occupied, maintained, and repaired, 212
including the designation of one of the hospital agencies to have 213
charge of the details of acquisition, construction, or improvement 214
pursuant to the contracting procedures prescribed under the law 215
applicable to one of the participating public hospital agencies; 216

(3) The management or administration of any such programs, 217
projects, activities, or services, which may include management or 218
administration by one of said hospital agencies or a board or 219
agency thereof; 220

(4) Annual, or more frequent, reports to the participating 221
hospital agencies as to the revenues and receipts pertaining to 222
the subject of the agreement, the expenditures thereof, the status 223
and application of other funds contributed under such agreement, 224
and such other matters as may be specified by or pursuant to such 225
agreement; 226

(5) The manner of apportionment or sharing of costs of 227
hospital facilities, any other applicable costs of management, 228
operation, maintenance, and repair of hospital facilities, and 229
costs for the programs, projects, activities, and services forming 230
the subject of the agreement, which apportionment or sharing may 231
be prescribed in fixed amounts, or determined by ratios, formulas, 232
or otherwise, and paid as service charges, rentals, or in such 233
other manner as provided in the agreement, and may include amounts 234
sufficient to meet the bond service charges and other payments and 235
deposits required under the bond proceedings for obligations 236
issued to pay costs of hospital facilities. A hospital agency may 237
commit itself to make such payments at least for so long as any 238
such obligations are outstanding. In the apportionment, different 239
classes of costs or expenses may be apportioned to one or more, 240
all or less than all, of the participating hospital agencies as 241

determined under such agreement.	242
(C) An agreement entered into under authority of this section	243
may provide for:	244
(1) An orderly process for making determinations or advising	245
as to planning, execution, implementation, and operation, which	246
may include designating one of the hospital agencies, or a board	247
thereof, for any of such purposes, provisions for a committee,	248
board, or commission, and for representation thereon, or as may	249
otherwise be provided;	250
(2) Securing necessary personnel, including participation of	251
personnel from the respective hospital agencies;	252
(3) Standards or conditions for the admission or	253
participation of patients and physicians;	254
(4) Conditions for admittance of other hospital agencies to	255
participation under the agreement;	256
(5) Fixing or establishing the method of determining charges	257
to be made for particular services;	258
(6) The manner of amending, supplementing, terminating, or	259
withdrawal or removal of any party from, the agreement, and the	260
term of the agreement, or an indefinite term;	261
(7) Designation of the applicants for or recipients of any	262
federal, state, or other aid, assistance, or loans available by	263
reason of any activities conducted under the agreement;	264
(8) Designation of one or more of the participating hospital	265
agencies to maintain, prepare, and submit, on behalf of all	266
parties to the agreement, any or all records and reports with	267
regard to the activities conducted under the agreement;	268
(9) Any incidental use of the hospital facilities, or	269
services thereof, by participating public hospital agencies for	270
any of their lawful purposes, which incidental use does not impair	271

the character of the facilities as hospital facilities for any 272
purpose of this chapter; 273

(10) Such other matters as the parties thereto may agree upon 274
for the purposes of division (A) of this section. 275

(D) For the purpose of paying or contributing its share under 276
an agreement made under this section, a public hospital agency 277
may: 278

(1) Expend any moneys from its general fund, and from any 279
other funds not otherwise restricted by law, but including funds 280
for permanent improvements of hospital facilities of such public 281
hospital agency where the contribution is to be made toward the 282
costs of hospital facilities under the agreement, and including 283
funds derived from levies for, or receipts available for, 284
operating expenses of hospital facilities or services of such 285
public hospital agency where the contribution or payment is to be 286
made toward operating expenses of the hospital facilities or 287
services under the agreement or for the services provided thereby; 288

(2) Issue obligations under Chapter 133. or sections 140.06, 289
339.14, 339.15, 513.12, or 3345.12 of the Revised Code, or Section 290
3 of Article XVIII, Ohio Constitution, if applicable to such 291
public hospital agency, to pay costs of hospital facilities, or 292
issue obligations under any other provision of law authorizing 293
such public hospital agency to issue obligations for any costs of 294
hospital facilities; 295

(3) Levy taxes under Chapter 5705. or section 513.13 or 296
3709.29 of the Revised Code, if applicable to such public hospital 297
agency, provided that the purpose of such levy may include the 298
provision of funds for either or both permanent improvements and 299
current expenses if required for the contribution or payment of 300
such hospital agency under such agreement, and each such public 301
hospital agency may issue notes in anticipation of any such levy, 302

pursuant to the procedures provided in section 5705.191 of the Revised Code if the levy is solely for current expenses, and in section 5705.193 of the Revised Code if the levy is all or in part for permanent improvements;

(4) Contribute real and personal property or interest therein without necessity for competitive bidding or public auction on disposition of such property.

(E) Any funds provided by public hospital agencies that are parties to an agreement entered into under this section shall be transferred to and placed in a separate fund or funds of such participating public hospital agency as is designated under the agreement. The funds shall be applied for the purposes provided in such agreement and are subject to audit. Pursuant to any determinations to be made under such agreement, the funds shall be deposited, invested, and disbursed under the provisions of law applicable to the public hospital agency in whose custody the funds are held. This division is subject to the provisions of any applicable bond proceedings under section 133.08, 140.06, 339.15, or 3345.12 of the Revised Code or Section 3 of Article XVIII, Ohio Constitution. The records and reports of such public hospital agency under Chapter 117. of the Revised Code and sections 3702.51 to 3702.62 of the Revised Code, with respect to the funds shall be sufficient without necessity for reports thereon by the other public hospital agencies participating under such agreement.

(F)(1) Prior to its entry into any such agreement, the public hospital agency must determine, and set forth in a resolution or ordinance, that the contribution to be made by it under such agreement will be fair consideration for value and benefit to be derived by it under such agreement and that the agreement will promote the public purpose stated in section 140.02 of the Revised Code.

(2) If the agreement is with a board of county commissioners,

board of county hospital trustees, or county hospital commission 335
and is an initial agreement for the acquisition or operation of a 336
county hospital operated by a board of county hospital trustees 337
under section 339.06 of the Revised Code, the governing body of 338
the public hospital agency shall submit the resolution to the 339
board of county commissioners pursuant to section 339.091 of the 340
Revised Code. If the board of county commissioners adopts a 341
resolution under that section, it shall submit the resolution to 342
the electors of the county pursuant to section 339.092 of the 343
Revised Code. The requirements of division (F)(2) of this section 344
do not apply to the agreement if one or more hospitals classified 345
as general hospitals by the public health council under section 346
3701.07 of the Revised Code are operating in the same county as 347
the county hospital. 348

Sec. 140.051. If the costs of the hospital facilities are to 349
be paid with funds derived from revenue obligations issued 350
pursuant to section 140.06 of the Revised Code and with other 351
funds derived from the nonprofit hospital agency, a public 352
hospital agency, pursuant to negotiation and in the manner 353
determined in its sole discretion by the governing body of the 354
public hospital agency, may enter into a contract for the 355
acquisition, construction, improvement, equipment, or furnishing 356
of a hospital facility that is to be leased pursuant to section 357
140.05 of the Revised Code by a public hospital agency to a 358
nonprofit hospital agency. Any requirement of competitive bidding, 359
other restriction, or other procedures that are imposed on a 360
public hospital agency with respect to contracts is not applicable 361
to any contract entered into pursuant to this section. 362

A hospital facility is not exempt from applicable zoning, 363
planning, and building regulations by reason of being financed 364
from the proceeds of obligations issued pursuant to this chapter. 365

Section 2. That existing sections 140.01 and 140.03 and 366
section 140.051 of the Revised Code are hereby repealed. 367

Section 3. (A) Except as provided in division (B) of this 368
section, the amendments to divisions (B), (D), (E), (F), and (J) 369
of section 140.01 of the Revised Code and the repeal and 370
reenactment of section 140.051 of the Revised Code by this act are 371
intended to confirm and validate the amendments to those divisions 372
of section 140.01 of the Revised Code and the enactment of section 373
140.051 of the Revised Code by Am. Sub. S. B. 109 of the 113th 374
General Assembly. This confirmation validation is advisable to 375
eliminate any legal challenge that has been or may be raised 376
concerning the constitutionality of those amendments and that 377
enactment by Am. Sub. S.B. 109 of the 113th General Assembly on 378
the grounds that they may have violated the following requirements 379
contained in Section 15 of Article II, Ohio Constitution: 380

(1) That no bill shall contain more than one subject, which 381
shall be clearly expressed in its title; 382

(2) That every bill shall be considered by each house on 383
three different days, unless two-thirds of the members elected to 384
the house in which it is pending suspend the requirement. 385

(B) The amendments to division (D) of section 140.01 of the 386
Revised Code by this act, insofar as they re-enact the phrase 387
"director of development" are intended to ratify the amendments 388
made to that division by Am. Sub. S.B. 227 of the 115th General 389
Assembly enacted subsequent to the amendments enacted in that 390
division by Am. Sub. S.B. 109 of the 113th General Assembly. 391