Georgia State University Law Review

Volume 18
Issue 1 *Fall 2001*

Article 12

9-1-2001

HEALTH Regulation of County and Municipal Hospital Authorities: Extend to Certain Nonprofit Corporations Operating Certain Medical Facilities and Exemption from Open Records and Open Meetings Requirements

Janice T. Hellmann

HEALTH

Regulation of County and Municipal Hospital Authorities: Extend to Certain Nonprofit Corporations Operating Certain Medical Facilities an Exemption from Open Records and Open Meetings Requirements

CODE SECTION:	O.C.G.A. § 31-7-75.2 (amended)
BILL NUMBER:	HB 158
ACT NUMBER:	362
GEORGIA LAWS:	2001 Ga. Laws 1172
SUMMARY:	The Act provides for Georgia nonprofit corporations, operating hospitals or other medical facilities for the benefit of a Georgia governmental entity (e.g., Medical College of Georgia (MCG) Health Inc.), to benefit from the same exemptions from open records and open meetings requirements that county and municipal hospital authorities have enjoyed since 1989. Specifically, the Act would exempt MCG from the disclosure of any data which could give other hospital authorities a competitive advantage.
EFFECTIVE DATE:	April 28, 2001[1]

History

The concept that government should be as open to the public as possible is not new to the Georgia General Assembly, nor is the need to legislate exceptions to this rule.[2] Indeed, in the 1989 session of the Georgia General Assembly, HB 140 was introduced which, inter alia, would have exempted hospital authorities from disclosure of "any potentially commercially valuable plan, proposal, or strategy . . . of competitive advantage in the operation of the authority or its medical

1. *See* 2001 Ga. Laws 1172, § 3-4, at 1173. The Act became effective upon approval by the Governor. *See id.*, § 3, at 1173.

2. *See Review of Selected 1989 Georgia Legislation*, 6 GA. ST. U.L. REV. 324 (1989) (outlining changes in Georgia open meetings statutes).

facilities and which has not been made public."[3] When this exemption to the Open Records Act was adopted, it applied to the Medical College of Georgia's hospital, which was a branch of the University System of Georgia Board of Regents and, technically, a 'hospital authority.'[4]

However, in July 2000, the hospital was restructured as a subsidiary of a nonprofit corporation, MCG Health Inc., and as a consequence, lost its hospital authority exemption status regarding disclosure of sensitive information during negotiations with other health care providers.[5] The main purpose of introducing HB 158 in the 2001 legislative session was to restore the MCG hospital's former disclosure exemption, despite its changed hospital status.[6]

HB 158

Representatives Jack Connell of the 115th District, Thomas Buck of the 135th District, and Senator Charles Walker of the 22nd District sponsored HB 158.[7] Representative Connell introduced the bill on the House floor on January 12, 2001.[8] The House assigned the bill to its Ways and Means Committee, which favorably reported the bill, as introduced.[9] The House adopted the Committee substitute, along with a floor amendment from Representative Stallings of the 100th District, and passed the bill (138 to 25) on February 5, 2001.[10]

The language of the amendment, as adopted, read: "Line 18, add after public: 'provided no tax or state funds are involved in any way.'"[11] This amendment "could [have] substantially curtail[ed] the measure's

3. 1993 Ga. Laws 1020, § 2, at 1022 (formerly found at O.C.G.A. § 31-7-75.2 (1996)).

4. *See Georgia Bill Would Shield More MCG Records*, AUGUSTA CHRON., Mar. 10, 2001, at C3.

5. *See id.*; *see also* Electronic Mail Interview with David E. Hudson, Partner, Hull, Towill, Norman, Barret & Sally Law Firm, outside counsel to the new non-profit MCG Health Inc. (Mar. 28, 2001) [hereinafter Hudson Interview].

6. *See Georgia Bill Would Shield More MCG Records*, *supra* note 4, at C3; *see also* Telephone Interview with Rep. Jack Connell, House District No. 115 (Mar. 25 & Apr. 5, 2001) [hereinafter Connell Interview].

7. *See* HB 158, as introduced, 2001 Ga. Gen. Assem.

8. *See* State of Georgia Final Composite Status Sheet, HB 158, Mar. 21, 2001.

9. *See id.*

10. *See* Georgia House of Representatives Voting Record, HB 158 (Feb. 5, 2001); State of Georgia Final Composite Status Sheet, HB 158, Mar. 21, 2001; *see also Lawmakers 2001* (GPTV broadcast, Feb. 5, 2001) (on file with the *Georgia State University Law Review*).

11. *See* HB 158 (HCSFA), 2001 Ga. Gen. Assem.

impact."[12] In effect, it would have required continued public disclosure of information and data for any hospital receiving taxpayer dollars.[13] Not only would this have put the MCG hospital "out of business . . . it would have affected a lot of other hospitals [as well]."[14]

On February 7, 2001, the Senate assigned HB 158 to its Ethics Committee, which refused to concur with the House substitute. The Committee restored the bill to its original language and favorably reported the bill on March 12, 2001.[15] A Senate floor amendment, inspired by a Florida newspaper's request for autopsy photographs of Dale Earnhardt, the NASCAR driver killed in February's Daytona 500, led to the adoption of HB 158, as substituted, on March 14, 2001.[16] Although Representative Connell "argued that the Senate amendment was unrelated to the subject matter covered by his bill and was written so poorly that it would be difficult to defend in court," it was nonetheless unanimously adopted in the Senate.[17] The bill returned to the House on March 19, 2001, and the House agreed to the Senate substitute that same day by a vote of 111 to 50.[18] The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 158 into law on April 28, 2001.[19]

The Act

Section 1 of the Act provides the short title, "Hospital Authorities Law."[20] The Act amends Article 4 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, by striking Code Section 31-7-75.2, and inserting in its place a new Code section 31-7-75.2. The latter extends the hospital authorities' exemption from open records and open meetings requirements to any "Georgia nonprofit corporation in its

---

12. Dave Williams, *Bill Targets MCG Board's Meetings*, AUGUSTA CHRON., Feb. 6, 2001, at A1.

13. *See Georgia Bill Would Shield More MCG Records*, *supra* note 4, at C3.

14. *Id.*

15. *Compare* HB 158 (HCSFA), 2001 Ga. Gen. Assem., *with* HB 158 (SCS), 2001 Ga. Gen. Assem. *See* State of Georgia Final Composite Status Sheet, HB 158, Mar. 21, 2001.

16. *See* Audio Recording of Senate Proceedings, Mar. 14, 2001 (vote on amendments), *at* http://www.state.ga.us/services/leg/audio/2001archive.html [hereinafter Senate Audio].

17. *Autopsy Amendment*, AUGUSTA CHRON., Mar. 21, 2001, at C12; *see* Senate Audio, *supra* note 16 (vote on amendments).

18. *See* State of Georgia Final Composite Status Sheet, Mar. 21, 2001; *see also* Georgia House of Representatives Voting Record, HB 158 (Mar. 19, 2001).

19. 2001 Ga. Laws 1172, § 4, at 1173.

20. O.C.G.A. § 31-7-75.2 (2001).

operation of a hospital or other medical facility for the benefit of a governmental entity in this state," when dealing with competitors.[21]

Section 2 of the Act further distills the open records exemption by specifying that autopsy photographs and images are not to be released to the public without written consent by family members.[22]

Opposition to HB 158

Most of the opposition and objections to HB 158 came from open-government advocates like Representative Tracy Stallings of the 100th House District.[23] Representative Stallings contended "that the General Assembly [should not] approve anything that restricts the 'free flow of information' to Georgians about important state institutions."[24] Representative Stallings expressed sincere misgivings that a medical facility funded by tax dollars could be exempted from public review.[25] Additionally, he voiced concern regarding the recent mismanagement of MCG and the potential for this bill to provide "cover" for future misdealings.[26]

Ultimately, Representative Stallings offered a floor amendment in the House, which he felt could rectify the situation.[27] Although the House adopted HB 158 as substituted, Representative Jack Connell of the 115th, the strongest proponent of the original HB 158, lobbied to show that the amendment would have made the bill entirely useless.[28] Representative Connell explained that when a hospital operates at a medical school, it relies on a broad patient base, making it unavoidable

21. *Compare* 1993 Ga. Laws 1020, § 1, at 1020 (formerly found at O.C.G.A. § 31-7-75.2 (1996)), *with* O.C.G.A. § 31-7-75.2 (2001).

22. *Compare* 1993 Ga. Laws 1020, § 1, at 1020 (formerly found at O.C.G.A. § 31-7-75.2 (1996), *with* O.C.G.A. § 31-7-75.2 (2001).

23. *See* Williams, *supra* note 12, at A1.

24. *Id.*

25. *See* Telephone Interview with Rep. Tracy Stallings, House District No. 100 (Apr. 2, 2001).

26. *See id.* (alluding to the fact that it is not mere coincidence that this bill is being introduced in the wake of recent guilty pleas by former MCG researchers who defrauded the college of between $10 million and $11.5 million).

27. *See id.*

28. *See* Connell Interview, *supra* note 6.

that some of those patients' care is funded through tax dollars.[29] In consideration of the proposed House floor amendment, HB 158 would have failed to meet its objective.[30]

Janice T. Hellmann

29. *See id.*
30. *See id.*