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BILL



ANALYSIS

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Senate Bills 1115 and 1116 (as introduced 2-9-10)  
Sponsor: Senator Bill Hardiman  
Committee: Health Policy

Date Completed: 3-10-10

## **CONTENT**

### **Senate Bill 1115 would amend the Municipal Health Facilities Corporations Act to do the following:**

- Allow a board of trustees or a subsidiary board to convert its municipal health facilities corporation into a nonprofit corporation, organized on a stock basis.
- Prescribe factors that a board could consider in evaluating whether to pursue such a conversion.
- Require the approval of the governing body of the local unit of government for a conversion, under certain circumstances.

### **Senate Bill 1116 would amend the Nonprofit Corporation Act to do the following:**

- Apply the Act to a domestic corporation formed by the conversion of municipal health facilities corporation to a nonprofit corporation.
- Allow a nonprofit organization (including a municipal health facilities corporation) to convert to a domestic corporation.
- Require a nonprofit organization proposing to convert to a domestic corporation to adopt a plan of conversion and file a certificate of conversion with the Department of Energy, Labor, and Economic Growth (DELEG).

The bills are tie-barred

### **Senate Bill 1115**

#### **Transfer to Nonprofit Corporation**

Under Section 306 of the Municipal Health Facilities Corporations Act, subject to applicable licensing requirements and other regulatory requirements and required approvals, a board of trustees or a subsidiary board may enter into and carry out agreements for the reorganization and transfer of ownership or operation of some or all of the health care facilities and related assets or health services of its municipal health facilities corporation to a nonprofit health care organization or to a public authority on behalf of a nonprofit health care organization, by any means. Under the bill, this provision would not apply to a conversion under proposed Section 308 (described below).

Currently, any transfer by a corporation or a subsidiary corporation in reliance on Section 306 may be made only with the prior approval of the county board of commissioners, city council, or village council if either of the following applies:

- The health care facilities or health services to be transferred provided more than 10% of the corporation's or subsidiary corporation's gross revenue in either of its two full fiscal years completed immediately before the date of the transfer.
- A majority of the governing body of the nonprofit health care organization acquiring the health care facilities or health services is composed of people

who also are serving as trustees of the corporation or subsidiary corporation making the transfer.

The bill would refer specifically to the county board of commissioners, city council, or village council that owns the municipal health facilities corporation, or owns the parent corporation if the corporation is a subsidiary corporation. The bill would delete the references to the subsidiary corporation in the conditions requiring prior approval.

Currently, notwithstanding any other provision, no transfer may be made in a way that impairs the obligation of the corporation or the subsidiary corporation with respect to any outstanding corporation obligation bond, note, or contract. The bill would delete the reference to the subsidiary corporation.

#### Conversion to Nonprofit Corporation

The bill would create Section 308 to allow a board of trustees or a subsidiary board to convert its health facilities corporation to a nonprofit corporation, organized on a stock basis, subject to applicable licensing and other regulatory requirements, the requirements of proposed Section 746 of the Nonprofit Corporation Act (which Senate Bill 1116 would add), and the requirements of the bill.

In evaluating whether to pursue a conversion and in establishing its terms, in addition to the amount of any monetary consideration offered for the conversion, the board of trustees or subsidiary board of the health facilities corporation could consider any of the following:

- The ability and willingness of the proposed shareholder or shareholders of the nonprofit corporation to continue to provide health services to residents of the local governmental unit.
- The nonprofit organization's continued obligation for the liabilities, obligations, and risks associated with ownership or operation of the health care facilities and health services owned by the corporation, including those associated with outstanding bonds, notes, and obligations, pensions, retirement, and other employee benefits, and conditions attached to public or private grants.
- The willingness and ability of the proposed shareholder or shareholders of

the nonprofit corporation to provide services to those unable to pay fully for their care.

- The elimination of or reduction in support required for the health care facilities or services from tax revenue or other public sources.
- The ability and willingness of the proposed shareholder or shareholders of the nonprofit corporation to expand or improve the health care facilities or services being transferred.
- Any other factors bearing on the health and welfare of the residents of the local governmental unit that the board of trustees or subsidiary board considered appropriate.

All of the following would apply to the conversion of a municipal health facilities corporation to a nonprofit corporation under Section 308:

- The board of trustees or subsidiary board could accept secured or unsecured notes, bonds, or obligations given by or on behalf of the proposed shareholder or shareholders of the nonprofit corporation, or any other forms of payment it considered appropriate, in full or partial satisfaction of any monetary consideration provided under an agreement for conversion.
- The subsidiary board of a subsidiary corporation could not convert the corporation into a nonprofit corporation without the prior approval of the board of trustees of its parent corporation.
- The board of trustees or subsidiary board of a municipal health facilities corporation could not convert the corporation into a nonprofit corporation if the conversion in any manner impaired the corporation's obligation with respect to any outstanding obligation, bond, note, or contract.
- The converting municipal health facilities corporation and the board of trustees or subsidiary board would have to comply with proposed Section 746 of the Nonprofit Corporation Act.

Also, the conversion agreement would have to provide that, for at least 30 years after the conversion, the health care facilities owned by the corporation would have to be open for use by any person regardless of race, religion, color, national origin, sex, age, disability, marital status, sexual

preference, or source of payment, and that the nonprofit corporation would have to provide an equal opportunity for employment, without discrimination as to race, religion, color, national origin, sex, age, disability, marital status, or sexual preference.

After the conversion took effect, the surviving nonprofit organization would be subject to the Nonprofit Corporation Act, the articles of incorporation of the converting municipal health facilities corporation or the subsidiary corporation would be considered terminated, and the articles of incorporation filed with the certificate of conversion under proposed Section 746 of the Nonprofit Corporation Act would apply to the surviving nonprofit corporation.

The surviving corporation would have to deliver a copy of its articles of incorporation and the certificate of conversion to the county clerk, city clerk, or village clerk to whom the converting municipal health facilities corporation originally delivered its articles of incorporation under the Municipal Health Facilities Corporations Act. The clerk would have to file them in his or her office.

Additionally, the board of trustees or subsidiary board could not convert the municipal health facilities corporation to a nonprofit corporation without the prior majority approval of the county board of commissioners, city council, or village council, as applicable, that owned the municipal health facilities corporation or, if it were a subsidiary corporation, its parent corporation, if either of the following applied:

- The health care facilities or health services included in the conversion provided more than 10% of the gross revenue of the municipal health facilities corporation in either of its two full fiscal years completed immediately before the conversion date.
- A majority of the board of the nonprofit corporation after the conversion would be individuals who served as trustees of the municipal health facility corporation before the conversion.

### **Senate Bill 1116**

The Nonprofit Corporation Act specifies that, unless otherwise provided in, and to the

extent not inconsistent with, the act under which a corporation is or has been formed, the Act applies to a corporation that is or has been organized under another act and not repealed by the Nonprofit Corporation Act. Under the bill, a corporation covered by this provision would include a domestic corporation formed by the conversion of a municipal health facilities corporation under proposed Section 308 of the Municipal Health Facilities Corporation Act.

The bill would add Section 746 to the Nonprofit Corporation Act to authorize a nonprofit organization to convert to a domestic corporation. (Under the bill, "nonprofit organization" would mean an organization or entity organized or formed to carry out any lawful purpose or purposes that do not involve pecuniary profit or gain for its directors, officers, shareholders, members, partners, or owners. The term would include a municipal health facilities corporation incorporated or governed by the Municipal Health Facilities Corporations Act. "Entity" would mean a domestic corporation or nonprofit organization.)

The conversion of a nonprofit organization to a domestic corporation would have to be permitted by the law that governs the internal affairs of the nonprofit organization and the nonprofit organization would have to comply with that law in converting. The nonprofit organization also would have to adopt a plan of conversion that included all of the following:

- The name of the nonprofit organization, the type of nonprofit organization that was converting, the identification of the statute that governed the organization's internal affairs, the name of the surviving domestic corporation to which the organization was converting, the street address of the surviving domestic corporation, and the principal place of business of the surviving domestic corporation.
- A description of all of the ownership interests in the nonprofit organization, specifying the interests entitled to vote, any rights those interests had to vote collectively or as a class, and, if the ownership interests were subject to change before the conversion's effective date, the manner in which the change could occur.

- The terms and conditions of the articles and bylaws that were to govern the surviving domestic corporation.

The plan of conversion also would have to include the terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the nonprofit organization into shares of the surviving domestic corporation if it were organized on a stock basis or into member or director interests if organized on a nonstock basis; into other obligations of the surviving domestic corporation; into cash; into other consideration that could include ownership interests or obligations of an entity that was not a party to the conversion; or into a combination of cash and other consideration.

If a nonprofit organization adopted a plan of conversion, the plan would have to be submitted for approval in the manner required by the law governing the internal affairs of the organization. After the plan was approved, the nonprofit organization would have to file a certificate of conversion with the administrator (the DELEG Director). The certificate would have to include all of the following:

- All of the nonprofit organization's identifying information and information related to its ownership interests, and the manner and basis of converting the ownership interests of the nonprofit organization contained in the plan.
- A statement that the nonprofit organization had adopted the plan of conversion.
- A statement that the surviving domestic corporation would furnish a copy of the plan, on request and without cost, to any owner of the nonprofit organization.
- A statement specifying each assumed name of the nonprofit organization to be used by the surviving domestic corporation and authorized under the bill.
- Articles of incorporation for the surviving domestic corporation that meet all of the Act's requirements applicable to articles of incorporation.

The bill provides that Section 131 would apply in determining when a certificate of conversion became effective. (That section pertains to the submission of documents required or permitted to be filed under the

Act.) When a conversion took effect, all of the following would apply:

- The nonprofit organization would convert into the surviving domestic corporation.
- The surviving domestic corporation would have all of the liabilities of the nonprofit organization.
- The title to all real estate and other property and rights owned by the nonprofit organization would remain vested in the surviving domestic corporation without reversion or impairment.
- The surviving domestic corporation could use the name and assumed names of the nonprofit organization if the filings required under the bill or any other applicable statute were made and the laws regarding use and form of names were followed.
- A proceeding pending against the nonprofit organization could be continued as if the conversion had not occurred, or the surviving domestic corporation could be substituted in the proceeding for the nonprofit organization.
- The surviving domestic corporation would be considered to be the same entity that existed before the conversion and would be considered to be incorporated or organized on the date that the nonprofit organization was originally incorporated or organized.
- The ownership interests of the nonprofit organization that were to be converted into shares, member or director interests, or other obligations of the surviving domestic corporation or into cash or other property would be converted.
- Unless otherwise provided in a conversion plan adopted in accordance with the bill, the nonprofit organization would not have to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion would not constitute a dissolution of the nonprofit organization.

Except as otherwise provided, the surviving domestic corporation would be organized and subject to the Act. The conversion of the nonprofit organization into a domestic corporation would not be considered to affect any of the organization's obligations or liabilities incurred before the conversion or the personal liability of any person

incurred before the conversion. The conversion would not be considered to affect the choice of law applicable to the nonprofit organization with respect to matters arising before the conversion. The rights, privileges, powers, and interests in property of the nonprofit organization, as well as its debts, liabilities, and duties, would not be considered, as a consequence of the conversion, to have been transferred to the surviving domestic corporation for any purpose of Michigan laws.

Under the Act, except as otherwise prohibited by law, a domestic or foreign corporation may conduct its affairs under any assumed name or names other than its corporate name, not precluded from use under the Act. Two or more corporations participating together in any partnership or joint venture may assume the same name by filing a certificate stating the true name of the corporation and the assumed name under which its affairs are to be conducted.

Under the bill, a corporation to which one or more nonprofit organizations had converted under proposed Section 746 could use as an assumed name the name of any nonprofit organization converting to that corporation, or use as an assumed name an assumed name of that nonprofit organization, by filing a certificate of assumed name or by providing for the use of that name or assumed name as an assumed name of the corporation in the certificate of conversion. A provision in the certificate would have to be treated as a new certificate of assumed name.

MCL 331.1306 et al. (S.B. 1115)  
450.2123 et al. (S.B. 1116)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The State, through its Medicaid program, achieves GF/GP savings through a program involving publicly-owned hospitals known as "certified public expenditures". These expenditures reflect uncompensated care provided by public hospitals. The State then receives reimbursement from the Federal government that equates to the Medicaid match that the State would have received had the uncompensated care been covered by Medicaid. The program leads to State savings of between \$35.0 million and \$40.0

million GF/GP each year. Conversion of a publicly owned hospital to nonprofit status would reduce the State's GF/GP savings from the certified public expenditure program. The State's savings would be reduced proportional to the ratio of uncompensated care performed by the given hospital to uncompensated care performed by all public hospitals.

The bills would have no fiscal impact on the Department of Energy, Labor, and Economic Growth.

A local government could potentially see savings from the bills. Conversion of a public hospital owned by a city, county, or other local entity to nonprofit status would lead to local savings if the local government is subsidizing the operation of the hospital.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.