

# SENATE BILL No. 1115

February 9, 2010, Introduced by Senators HARDIMAN, PAPPAGEORGE, BIRKHOLZ and JANSEN and referred to the Committee on Health Policy.

A bill to amend 1987 PA 230, entitled "Municipal health facilities corporations act," by amending section 306 (MCL 331.1306), as amended by 1998 PA 62, and by adding section 308.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 306. (1) Subject to applicable licensing and other  
 2 regulatory requirements, and subject to ~~any approvals required~~  
 3 ~~under subsections (5) and (6), each~~ **THE REQUIREMENTS OF THIS**  
 4 **SECTION, A** board of trustees ~~and~~ **OR** subsidiary board may enter into  
 5 and carry out agreements for the reorganization and the transfer of  
 6 ownership or operation of some or all of ~~its~~ **THE** health care  
 7 facilities and related assets or health services **OF ITS MUNICIPAL**  
 8 **HEALTH FACILITIES CORPORATION** to a nonprofit health care

1 organization or to a public authority on behalf of a nonprofit  
2 health care organization by sale, installment sales agreement, land  
3 contract, lease, lease with an option to purchase, sublease,  
4 contract, option, or by any other means. **HOWEVER, THIS SECTION DOES**  
5 **NOT APPLY TO A CONVERSION UNDER SECTION 308.**

6 (2) In establishing the terms of a reorganization ~~pursuant to~~  
7 **OF A MUNICIPAL HEALTH FACILITIES CORPORATION UNDER** this section,  
8 the board of trustees or subsidiary board **OF THAT MUNICIPAL HEALTH**  
9 **FACILITIES CORPORATION** may take into account, in addition to the  
10 monetary consideration for the transfer, if any, 1 or more of the  
11 following:

12 (a) The ability and willingness of the nonprofit health care  
13 organization to continue to provide health services to residents of  
14 the local governmental unit.

15 (b) The assumption by the nonprofit health care organization  
16 of liabilities, obligations, and risks associated with ownership or  
17 operation of the health care facilities and health services  
18 transferred, including those associated with outstanding bonds,  
19 notes and obligations, pension, retirement, and other benefits for  
20 employees and employees and conditions attached to public or  
21 private grants.

22 (c) The willingness and ability of the nonprofit health care  
23 organization to provide services to those unable to pay fully for  
24 their care.

25 (d) The elimination of or reduction in support required for  
26 the health care facilities or health services from tax revenues or  
27 other public sources.

1 (e) The ability and willingness of the nonprofit health care  
2 corporation to expand or improve the health care facilities or the  
3 health services being transferred.

4 (f) ~~Such~~**ANY** other factors bearing on the health and welfare  
5 of the residents of the local governmental unit ~~as~~**THAT** the board  
6 of trustees or subsidiary board considers appropriate.

7 (3) A board of trustees or subsidiary board may accept secured  
8 or unsecured notes, bonds, or obligations given by or on behalf of  
9 a nonprofit health care organization or ~~such~~**ANY** other forms of  
10 payment ~~as~~**THAT** it considers appropriate in full or partial  
11 satisfaction of any monetary consideration provided under an  
12 agreement for reorganization ~~pursuant to~~**OF A MUNICIPAL HEALTH**  
13 **FACILITIES CORPORATION UNDER** this section.

14 (4) Any board of trustees or subsidiary board transferring  
15 health care facilities ~~pursuant to~~**OF A MUNICIPAL HEALTH FACILITIES**  
16 **CORPORATION UNDER** this section shall require, for a term of not  
17 less than 30 years, that use of the health care facilities  
18 transferred shall be open to all regardless of race, religion,  
19 color, national origin, sex, age, disability, marital status,  
20 sexual preference, or source of payment, and that the nonprofit  
21 health care organization acquiring ~~such~~**THE** health care facilities  
22 shall provide an equal opportunity for employment, without  
23 discrimination as to race, religion, color, national origin, sex,  
24 age, disability, marital status, or sexual preference.

25 (5) Any transfer made by a subsidiary board in reliance ~~upon~~  
26 **ON** this section shall be made only with the prior approval of the  
27 board of trustees of ~~its~~**THE** parent corporation **OF ITS MUNICIPAL**

1 **HEALTH FACILITIES CORPORATION.**

2 (6) Any transfer by a corporation or a subsidiary corporation  
3 in reliance ~~upon~~ **ON** this section shall be made only with the prior  
4 approval of the county board of commissioners, city council, or  
5 village council **THAT OWNS THE MUNICIPAL HEALTH FACILITIES**  
6 **CORPORATION, OR OWNS THE PARENT CORPORATION IF THE MUNICIPAL HEALTH**  
7 **FACILITIES CORPORATION IS A SUBSIDIARY CORPORATION,** if either of  
8 the following applies:

9 (a) The health care facilities or health services to be  
10 transferred provided more than 10% of the gross revenues of the  
11 corporation ~~or subsidiary corporation~~ making the transfer,  
12 determined in accordance with generally accepted accounting  
13 principles, in either of the 2 full fiscal years of the corporation  
14 ~~or subsidiary corporation~~ completed immediately preceding the date  
15 of the transfer.

16 (b) A majority of the governing body of the nonprofit health  
17 care organization acquiring the health care facilities or health  
18 services is composed of persons who are also serving as trustees of  
19 the corporation ~~or the subsidiary corporation~~ making the transfer.

20 (7) Notwithstanding any other provision of this section, no  
21 transfer shall be made in such a way as to impair the obligation of  
22 the corporation ~~or the subsidiary corporation~~ with respect to any  
23 outstanding corporation obligation, bond, note, or contract.

24 **SEC. 308. (1) SUBJECT TO APPLICABLE LICENSING AND OTHER**  
25 **REGULATORY REQUIREMENTS, TO THE REQUIREMENTS OF SECTION 746 OF THE**  
26 **NONPROFIT CORPORATION ACT, 1982 PA 162, MCL 450.2746, AND TO THE**  
27 **REQUIREMENTS OF THIS SECTION, A BOARD OF TRUSTEES OR A SUBSIDIARY**

1 BOARD MAY CONVERT ITS HEALTH FACILITIES CORPORATION INTO A  
2 NONPROFIT CORPORATION, ORGANIZED ON A STOCK BASIS.

3 (2) IN EVALUATING WHETHER TO PURSUE A CONVERSION AND IN  
4 ESTABLISHING THE TERMS OF A CONVERSION UNDER THIS SECTION AND  
5 SECTION 746 OF THE NONPROFIT CORPORATION ACT, 1982 PA 162, MCL  
6 450.2746, IN ADDITION TO THE AMOUNT OF ANY MONETARY CONSIDERATION  
7 OFFERED FOR THE CONVERSION, THE BOARD OF TRUSTEES OR SUBSIDIARY  
8 BOARD OF THE HEALTH FACILITIES CORPORATION MAY CONSIDER ANY OF THE  
9 FOLLOWING:

10 (A) THE ABILITY AND WILLINGNESS OF THE PROPOSED SHAREHOLDER OR  
11 SHAREHOLDERS OF THE NONPROFIT CORPORATION TO CONTINUE TO PROVIDE  
12 HEALTH SERVICES TO RESIDENTS OF THE LOCAL GOVERNMENTAL UNIT.

13 (B) THE CONTINUED OBLIGATION OF THE NONPROFIT CORPORATION FOR  
14 THE LIABILITIES, OBLIGATIONS, AND RISKS ASSOCIATED WITH OWNERSHIP  
15 OR OPERATION OF THE HEALTH CARE FACILITIES AND HEALTH SERVICES  
16 OWNED BY THE CORPORATION, INCLUDING THOSE ASSOCIATED WITH  
17 OUTSTANDING BONDS, NOTES, AND OBLIGATIONS, PENSION, RETIREMENT, AND  
18 OTHER BENEFITS FOR EMPLOYEES AND EMPLOYEES, AND CONDITIONS ATTACHED  
19 TO PUBLIC OR PRIVATE GRANTS.

20 (C) THE WILLINGNESS AND ABILITY OF THE PROPOSED SHAREHOLDER OR  
21 SHAREHOLDERS OF THE NONPROFIT CORPORATION TO PROVIDE SERVICES TO  
22 THOSE UNABLE TO PAY FULLY FOR THEIR CARE.

23 (D) THE ELIMINATION OF OR REDUCTION IN SUPPORT REQUIRED FOR  
24 THE HEALTH CARE FACILITIES OR HEALTH SERVICES FROM TAX REVENUES OR  
25 OTHER PUBLIC SOURCES.

26 (E) THE ABILITY AND WILLINGNESS OF THE PROPOSED SHAREHOLDER OR  
27 SHAREHOLDERS OF THE NONPROFIT CORPORATION TO EXPAND OR IMPROVE THE

1 HEALTH CARE FACILITIES OR THE HEALTH SERVICES BEING TRANSFERRED.

2 (F) ANY OTHER FACTORS BEARING ON THE HEALTH AND WELFARE OF THE  
3 RESIDENTS OF THE LOCAL GOVERNMENTAL UNIT THAT THE BOARD OF TRUSTEES  
4 OR SUBSIDIARY BOARD CONSIDERS APPROPRIATE.

5 (3) ALL OF THE FOLLOWING APPLY TO THE CONVERSION OF A  
6 MUNICIPAL HEALTH FACILITIES CORPORATION INTO A NONPROFIT  
7 CORPORATION UNDER THIS SECTION:

8 (A) THE BOARD OF TRUSTEES OR SUBSIDIARY BOARD MAY ACCEPT  
9 SECURED OR UNSECURED NOTES, BONDS, OR OBLIGATIONS GIVEN BY OR ON  
10 BEHALF OF THE PROPOSED SHAREHOLDER OR SHAREHOLDERS OF THE NONPROFIT  
11 CORPORATION, OR ANY OTHER FORMS OF PAYMENT IT CONSIDERS  
12 APPROPRIATE, IN FULL OR PARTIAL SATISFACTION OF ANY MONETARY  
13 CONSIDERATION PROVIDED UNDER AN AGREEMENT FOR CONVERSION UNDER THIS  
14 SECTION.

15 (B) THE AGREEMENT OF CONVERSION SHALL REQUIRE THAT, FOR AT  
16 LEAST 30 YEARS AFTER THE CONVERSION, THE HEALTH CARE FACILITIES  
17 OWNED BY THE CORPORATION SHALL BE OPEN FOR USE BY ANY PERSON  
18 REGARDLESS OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE,  
19 DISABILITY, MARITAL STATUS, SEXUAL PREFERENCE, OR SOURCE OF PAYMENT  
20 AND THAT THE NONPROFIT CORPORATION SHALL PROVIDE AN EQUAL  
21 OPPORTUNITY FOR EMPLOYMENT, WITHOUT DISCRIMINATION AS TO RACE,  
22 RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, DISABILITY, MARITAL  
23 STATUS, OR SEXUAL PREFERENCE.

24 (C) THE SUBSIDIARY BOARD OF A SUBSIDIARY CORPORATION SHALL NOT  
25 CONVERT THE CORPORATION INTO A NONPROFIT CORPORATION WITHOUT THE  
26 PRIOR APPROVAL OF THE BOARD OF TRUSTEES OF ITS PARENT CORPORATION  
27 TO THE CONVERSION.

1 (D) THE BOARD OF TRUSTEES OR SUBSIDIARY BOARD OF A MUNICIPAL  
2 HEALTH FACILITIES CORPORATION SHALL NOT CONVERT THE CORPORATION  
3 INTO A NONPROFIT CORPORATION UNDER THIS SECTION WITHOUT THE PRIOR  
4 MAJORITY APPROVAL OF THE COUNTY BOARD OF COMMISSIONERS, CITY  
5 COUNCIL, OR VILLAGE COUNCIL, AS APPLICABLE, THAT OWNS THE MUNICIPAL  
6 HEALTH FACILITIES CORPORATION OR OWNS THE PARENT CORPORATION OF THE  
7 MUNICIPAL HEALTH FACILITIES CORPORATION IF IT IS A SUBSIDIARY  
8 CORPORATION, IF EITHER OF THE FOLLOWING APPLIES:

9 (i) THE HEALTH CARE FACILITIES OR HEALTH SERVICES INCLUDED IN  
10 THE CONVERSION PROVIDED MORE THAN 10% OF THE GROSS REVENUES OF THE  
11 MUNICIPAL HEALTH FACILITIES CORPORATION, DETERMINED IN ACCORDANCE  
12 WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, IN EITHER OF THE 2  
13 FULL FISCAL YEARS OF THE MUNICIPAL HEALTH FACILITIES CORPORATION OR  
14 SUBSIDIARY CORPORATION COMPLETED IMMEDIATELY PRECEDING THE DATE OF  
15 THE CONVERSION.

16 (ii) A MAJORITY OF THE BOARD OF THE NONPROFIT CORPORATION AFTER  
17 THE CONVERSION WILL BE INDIVIDUALS WHO SERVED AS TRUSTEES OF THE  
18 MUNICIPAL HEALTH FACILITY CORPORATION BEFORE THE CONVERSION.

19 (E) THE BOARD OF TRUSTEES OR SUBSIDIARY BOARD OF A MUNICIPAL  
20 HEALTH FACILITIES CORPORATION SHALL NOT CONVERT THE CORPORATION  
21 INTO A NONPROFIT CORPORATION UNDER THIS SECTION IF THE CONVERSION  
22 IN ANY MANNER IMPAIRS THE OBLIGATION OF THE MUNICIPAL HEALTH  
23 FACILITIES CORPORATION WITH RESPECT TO ANY OUTSTANDING OBLIGATION,  
24 BOND, NOTE, OR CONTRACT OF THAT CORPORATION.

25 (F) THE CONVERTING MUNICIPAL HEALTH FACILITIES CORPORATION AND  
26 THE BOARD OF TRUSTEES OR SUBSIDIARY BOARD OF THAT MUNICIPAL HEALTH  
27 FACILITIES CORPORATION SHALL COMPLY WITH SECTION 746 OF THE

1 NONPROFIT CORPORATION ACT, 1982 PA 162, MCL 450.2746.

2 (G) AFTER THE CONVERSION IS EFFECTIVE, THE SURVIVING NONPROFIT  
3 CORPORATION IS SUBJECT TO THE NONPROFIT CORPORATION ACT, 1982 PA  
4 162, MCL 450.2101 TO 450.3192, AND IS NOT SUBJECT TO THIS ACT.

5 (H) AFTER THE CONVERSION IS EFFECTIVE, THE ARTICLES OF  
6 INCORPORATION OF THE CONVERTING MUNICIPAL HEALTH FACILITY  
7 CORPORATION OR THE SUBSIDIARY CORPORATION ARE CONSIDERED TERMINATED  
8 AND THE ARTICLES OF INCORPORATION FILED WITH THE CERTIFICATE OF  
9 CONVERSION UNDER SECTION 746 OF THE NONPROFIT CORPORATION ACT, 1982  
10 PA 162, MCL 450.2746, APPLY TO THE SURVIVING NONPROFIT CORPORATION.  
11 THE SURVIVING CORPORATION SHALL DELIVER A COPY OF ITS ARTICLES OF  
12 INCORPORATION AND THE CERTIFICATE OF CONVERSION TO THE COUNTY  
13 CLERK, CITY CLERK, OR VILLAGE CLERK TO WHOM THE CONVERTING  
14 MUNICIPAL HEALTH FACILITIES CORPORATION ORIGINALLY DELIVERED ITS  
15 ARTICLES OF INCORPORATION UNDER SECTION 207 OR 256, AND THAT CLERK  
16 SHALL FILE THE ARTICLES OF INCORPORATION AND CERTIFICATE OF  
17 CONVERSION IN HIS OR HER OFFICE.

18 (4) AS USED IN THIS SECTION, "NONPROFIT CORPORATION" MEANS A  
19 DOMESTIC CORPORATION, AS THAT TERM IS DEFINED IN SECTION 106 OF THE  
20 NONPROFIT CORPORATION ACT, 1982 PA 162, MCL 450.2106.

21 Enacting section 1. This amendatory act does not take effect  
22 unless Senate Bill No. 1116

23 of the 95th Legislature is enacted into law.