

Act No. 331  
Public Acts of 2010  
Approved by the Governor  
December 21, 2010  
Filed with the Secretary of State  
December 21, 2010  
EFFECTIVE DATE: December 21, 2010

**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2010**

Introduced by Senators Hardiman, Pappageorge, Birkholz and Jansen

# **ENROLLED SENATE BILL No. 1115**

AN ACT to amend 1987 PA 230, entitled "An act to authorize certain local governmental units to incorporate municipal health facilities corporations and subsidiary municipal health facilities corporations for establishing, modifying, operating, and managing health services and acquiring, constructing, adding to, repairing, remodeling, renovating, equipping, and re-equipping hospitals and other health care facilities and related purposes; to provide for the application of this act to existing municipal hospitals and for the transfer of ownership of hospital funds and personal property; to validate and ratify the existence, organization, actions, proceedings, and board membership of existing organizations acting as county public hospitals; to provide for the appointment of trustees; to grant certain powers of a public body corporate to health facilities corporations and subsidiary health facilities corporations; to empower certain local governmental units to encumber property for the benefit of, transfer or make property available to, issue bonds to construct facilities to be used by, appropriate funds for, and levy a tax for, municipal health facilities corporations and subsidiary municipal health facilities corporations; to empower certain local governmental units to guarantee obligations of municipal health facilities corporations and subsidiary municipal health facilities corporations and to permit certain local governmental units to pledge their full faith and credit to pay such guaranties; to provide for transfer of ownership or operation of health care facilities and health services to nonprofit health care organizations; to authorize municipal health facilities corporations and subsidiary municipal health facilities corporations to borrow money and issue notes for the purposes of meeting expenses of operation and to issue corporation obligations for the purpose of acquisition, construction, repair, remodeling, equipping or re-equipping of health care facilities and for the refinancing, refunding, or refunding in advance of indebtedness of the municipal health facilities corporations or the subsidiary municipal health facilities corporations or of indebtedness of certain local governmental units undertaken on their behalf; to authorize municipal health facilities corporations and subsidiary municipal health facilities corporations to enter into mortgages, deeds of trust, and other agreements for security which may include provisions for the appointment of receivers; to exempt obligations and property of municipal health facilities corporations and subsidiary municipal health facilities corporations from taxation; and to provide other rights, powers, and duties of municipal health facilities corporations and subsidiary municipal health facilities corporations," by amending sections 103, 207, 208, 256, 257, and 306 (MCL 331.1103, 331.1207, 331.1208, 331.1256, 331.1257, and 331.1306), section 103 as amended and sections 256 and 257 as added by 1988 PA 502 and section 306 as amended by 1998 PA 62, and by adding section 305a.

*The People of the State of Michigan enact:*

Sec. 103. As used in this act:

- (a) "Board of trustees" means the board of trustees of a corporation created under or governed by this act.
- (b) "City" means a city establishing a corporation incorporated under, or governed by, this act.
- (c) "City public hospital" means a health care facility that is owned or operated by a city.

(d) "Corporation" means a municipal health facilities corporation incorporated under this act or created under 1913 PA 350, MCL 331.151 to 331.169, or under 1945 PA 109, MCL 331.201 to 331.213, and governed by this act. The term includes a restructured corporation.

(e) “Corporation obligation” means a bond, note, or any other legal instrument issued by a corporation or subsidiary corporation under chapter 4 that evidences indebtedness of a corporation or a subsidiary corporation, including principal, interest, and premiums, if any, on that indebtedness. Notes issued under section 401 are not considered corporation obligations.

(f) “County” means a county establishing a corporation incorporated under, or governed by, this act.

(g) “County public hospital” means a public corporation organized and existing or purportedly organized and existing under 1913 PA 350, MCL 331.151 to 331.169, or under 1945 PA 109, MCL 331.201 to 331.213, on the effective date of this act.

(h) “Direct provider of health care” means a person or organization whose primary current activity is providing health services to individuals. The term includes a person or organization licensed, certified, or registered under article 6 or 15 of the public health code, 1978 PA 368, MCL 333.6101 to 333.6523 and 333.16101 to 333.18838, or a professional corporation or other public or private organization composed of or employing direct providers of health care.

(i) “Health care facilities” means buildings, structures, or equipment suitable and intended for, or incidental or ancillary to, use in providing health services, including, but not limited to, hospitals; hospital long-term care units; infirmaries; sanatoria; nursing homes; medical care facilities; outpatient clinics; ambulatory care facilities; surgical and diagnostic facilities; hospices; clinical laboratories; shared service facilities; laundries; meeting rooms; classrooms and other educational facilities; students’, nurses’, interns’, or physicians’ residences; administration buildings; facilities for use as or by health maintenance organizations; facilities for ambulance operations, advanced mobile emergency care services, and limited advanced mobile emergency care services; research facilities; facilities for the care of dependent children; maintenance, storage, and utility facilities; parking lots and structures; garages; office facilities not less than 80% of the net leasable space of which is intended for lease to or other use by direct providers of health care; facilities for the temporary lodging of outpatients or families of patients; residential facilities for use by the aged or disabled; and all necessary, useful, or related equipment, furnishings, and appurtenances and all lands necessary or convenient as sites for the health care facilities described in this subdivision.

(j) “Health services” means 1 or more of the following:

(i) Diagnosis and medical and surgical treatment by direct providers of health care of persons suffering from illness, injury, and disability, including persons suffering from tuberculosis and other contagious and infectious diseases, and persons requiring maternity care, rehabilitation, psychiatric care, or substance abuse services; dentistry and related services; podiatric medicine and surgery; optometric services; psychological services; skilled, basic, and visiting nursing services and home health services; ambulance operations; advanced mobile emergency care services and limited advanced emergency services; physical, respiratory, and occupational therapy; health maintenance services; services for the prevention of illness, injury, and disability and for the promotion, maintenance, and improvement of public health and welfare; food services and care for dependent children, the disabled, and the elderly; and social work and chaplaincy services provided in conjunction with other health services described in this subparagraph.

(ii) Conduct of or participation in programs for the education and training of health services personnel, including undergraduate, internship, residency, postgraduate, and continuing education programs for physicians; schools and other training programs for nurses, technicians, therapists, pharmacists, and other health services personnel; and in-service education of employees of health care facilities.

(iii) Research relating to the cause, prevention, and treatment of illness, injury, and disability, and the protection, promotion, or improvement of public health and welfare.

(k) “Local governmental unit” means a county, city, or village.

(l) “Nonprofit health care organization” means a public body organized and existing under the laws of this state and authorized to provide health services, a nonprofit corporation incorporated under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, or a not-for-profit corporation incorporated under the laws of another state and qualified to do business in this state, that is organized and operated exclusively for charitable, scientific, educational, or religious purposes and authorized to provide health services, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(m) “Project costs” means the total of the reasonable or necessary costs incurred for carrying out the acquisition, construction, repair, remodeling, equipping, or re-equipping of health care facilities. The term includes, but is not limited to, any of the following costs: studies, surveys, plans, and specifications; architectural and engineering services; fees, charges, and expenses incurred in obtaining permits, approvals, and licenses for the acquisition, and initial operation of the health care construction, financing, facilities; legal, organizational, marketing, and other special services; acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; rehabilitation, construction, repair, or remodeling of existing buildings; interest and carrying charges during construction and before full earnings are achieved but for a period not to exceed 3 years after the date of the corporation obligations; operating expenses before full earnings are achieved, but for a period not to exceed 1 year following completion of construction; and reasonable reserves for payment of principal and interest on corporation obligations, not exceeding 15% of the principal

amount of the corporation obligations. Project costs shall also include reimbursement of a corporation or a subsidiary corporation for any of the project costs described in this section expended before the issuance and delivery of the corporation obligations.

(n) "Restructured corporation" means a corporation that has completed the process described in section 305a.

(o) "Restructured subsidiary corporation" means a subsidiary corporation that has completed the process described in section 305a.

(p) "Subsidiary board" means the board of trustees of a subsidiary corporation.

(q) "Subsidiary corporation" means a subsidiary municipal health facilities corporation incorporated under this act. The term includes a restructured subsidiary corporation.

(r) "Trustee" means a person serving on a board of trustees or a subsidiary board.

(s) "Village" means a village establishing a corporation incorporated under, or governed by, this act.

(t) "Village public hospital" means a health care facility that is owned or operated by a village.

Sec. 207. (1) The articles of incorporation of a corporation incorporated by a county shall be executed in duplicate by the chairperson of the county board of commissioners or other commissioner designated by the county board of commissioners. The articles of incorporation of a subsidiary corporation of a corporation incorporated by a county shall be executed in duplicate by the chairperson of the board of trustees of the parent corporation, or other trustee designated by the board of trustees. The articles of incorporation shall then be delivered to the county clerk who shall file 1 copy in his or her office and the other with the secretary of the corporation or subsidiary corporation when a secretary is selected. The county clerk shall cause a copy of the articles of incorporation to be published once in a newspaper designated in the articles of incorporation and circulating within the county accompanied by a statement that the right exists to question the validity of the incorporation in court as provided in this section.

(2) The county clerk shall file 1 printed copy of articles of incorporation delivered to him or her under subsection (1) with the secretary of state and 1 printed copy in his or her office. The county clerk shall attach to each of the printed copies his or her certificate setting forth that the copy is a true and complete copy of the original articles of incorporation on file in his or her office.

(3) The incorporation of a corporation or a subsidiary corporation described in this section is effective at the time provided in the articles of incorporation.

(4) The validity of the incorporation of a corporation or a subsidiary corporation described in this section is conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the certified copy of the articles of incorporation of that corporation or subsidiary corporation is filed with the secretary of state under subsection (2).

(5) This section does not apply to articles of incorporation of a restructured corporation or restructured subsidiary corporation described in section 305a.

Sec. 208. (1) The articles of incorporation of a corporation incorporated by a county may be amended by resolution approved by the affirmative vote of a majority of the members serving on the county board of commissioners. The articles of incorporation of a subsidiary corporation of a corporation incorporated by a county may be amended by resolution approved by the affirmative vote of a majority of the trustees serving on the board of trustees of the parent corporation.

(2) The county clerk shall file certified copies of any amendment to the articles of incorporation of a corporation or subsidiary corporation approved under subsection (1) in his or her office, with the secretary of state, and with the secretary of the corporation or subsidiary corporation. The amendment is effective when filed with the secretary of state unless a later effective date is specified in the resolution adopting the amendment. This subsection does not apply to an amendment to the articles of incorporation of a restructured corporation or a restructured subsidiary corporation.

(3) The articles of incorporation of a corporation or subsidiary corporation described in this section may be amended to include any provision that could be lawfully included in articles of incorporation initially adopted under this act at the time the amendment is approved, and may provide for the alteration or changing of the name, structure, organization, purposes, powers, programs, or activities of the corporation or subsidiary corporation. However, an amendment shall not be effective to impair the obligation of a corporation obligation, bond, note, or contract.

Sec. 256. (1) The articles of incorporation of a corporation incorporated by a city or village shall be executed in duplicate by the chairperson of the city council or the president of the village council or other member of the city council or village council designated by the city council or village council. The articles of incorporation of a subsidiary corporation of a corporation incorporated by a city or village shall be executed in duplicate by the chairperson of the board of trustees of the parent corporation, or other trustee designated by the board of trustees. The articles of incorporation shall then be delivered to the city clerk or village clerk who shall file 1 copy in his or her office and the other with the secretary of the corporation or subsidiary corporation when a secretary is selected. The city clerk or village clerk shall

cause a copy of the articles of incorporation to be published once in a newspaper designated in the articles of incorporation and circulating within the city or village accompanied by a statement that the right exists to question the validity of the incorporation in court as provided in this section.

(2) The city clerk or village clerk shall file 1 printed copy of articles of incorporation delivered to him or her under subsection (1) with the secretary of state and 1 printed copy in his or her office. The city clerk or village clerk shall attach to each of the printed copies his or her certificate setting forth that the copy is a true and complete copy of the original articles of incorporation on file in his or her office.

(3) The incorporation of a corporation or a subsidiary corporation described in this section is effective at the time provided in the articles of incorporation, but not before approval of the question of incorporation by the city or village electors under section 251.

(4) The validity of the incorporation of a corporation or a subsidiary corporation described in this section is conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the certified copy of the articles of incorporation of that corporation or subsidiary corporation is filed with the secretary of state under subsection (2).

(5) This section does not apply to articles of incorporation of a restructured corporation or restructured subsidiary corporation described in section 305a.

Sec. 257. (1) The articles of incorporation of a corporation incorporated by a city or village may be amended by resolution approved by the affirmative vote of a majority of the members serving on the city council or village council. The articles of incorporation of a subsidiary corporation of a corporation incorporated by a city or village may be amended by resolution approved by the affirmative vote of a majority of the trustees serving on the board of trustees of the parent corporation.

(2) The city clerk or village clerk shall file certified copies of any amendment to the articles of incorporation of a corporation or subsidiary corporation approved under subsection (1) in his or her office, with the secretary of state, and with the secretary of the corporation or subsidiary corporation. The amendment is effective when filed with the secretary of state unless a later effective date is specified in the resolution adopting the amendment. This subsection does not apply to an amendment to the articles of incorporation of a restructured corporation or a restructured subsidiary corporation.

(3) The articles of incorporation of a corporation or subsidiary corporation described in this section may be amended to include any provision that could be lawfully included in articles of incorporation initially adopted under this act at the time the amendment is approved, and may provide for the alteration or changing of the name, structure, organization, purposes, powers, programs, or activities of the corporation or subsidiary corporation. However, an amendment shall not be effective to impair the obligation of a corporation obligation, bond, note, or contract.

Sec. 305a. (1) Subject to applicable licensing and other regulatory requirements, the requirements of the nonprofit act, and the requirements of this section, the board of trustees or the subsidiary board may restructure a corporation or subsidiary corporation as a nonprofit corporation subject to the nonprofit act if all of the following are met:

(a) The corporation or subsidiary corporation is located in a county that had a population of more than 40,000 and less than 44,000 as of the 2000 decennial census.

(b) The restructuring is completed before July 1, 2012.

(2) A board of trustees or subsidiary board proposing to restructure a corporation or subsidiary corporation under this section must adopt a restructuring plan that includes all of the following:

(a) The terms and conditions of the proposed restructuring.

(b) The proposed articles of incorporation and bylaws that are to govern the restructured corporation or restructured subsidiary corporation. The articles and bylaws must comply with the requirements of the nonprofit act.

(3) If a restructuring plan described in subsection (2) is approved under this section, the corporation or subsidiary corporation shall file the articles of incorporation described in subsection (2)(b) with the administrator, in the manner provided in the nonprofit act.

(4) The effective date of a restructuring under this section is the effective date of the articles of incorporation under the nonprofit act. All of the following apply when a restructuring under this section takes effect:

(a) The restructured corporation or restructured subsidiary corporation is considered a continuation of the restructuring corporation or subsidiary corporation.

(b) The restructured corporation or restructured subsidiary corporation has all of the liabilities of the restructuring corporation or subsidiary corporation and the restructuring does not affect any obligations or liabilities of the corporation or subsidiary corporation incurred before the restructuring or the personal liability of any person incurred before the restructuring.

(c) The title to all real estate and other property and rights owned by the corporation or subsidiary corporation remain vested in the restructured corporation or restructured subsidiary corporation without reversion or impairment.

(d) The rights, privileges, powers, and interests in property of the corporation or subsidiary corporation, as well as the debts, liabilities, and duties of the corporation or subsidiary corporation, shall not be considered, as a consequence of the restructuring, to have been transferred to the restructured corporation or restructured subsidiary corporation for any purpose of the laws of this state.

(e) A proceeding pending against the corporation or subsidiary corporation may be continued as if the restructuring had not occurred, or the restructured corporation or restructured subsidiary corporation may be substituted in the proceeding for the corporation or subsidiary corporation.

(f) The restructured corporation or restructured subsidiary corporation is considered to be the same entity that existed before the restructuring and is considered to be incorporated on the date that the corporation or subsidiary corporation was originally incorporated.

(g) The restructured corporation or restructured subsidiary corporation is subject to the nonprofit act and, except as otherwise provided in this act, is subject to the provisions of this act.

(h) The articles of incorporation of the corporation or the subsidiary corporation filed with the county clerk under section 207 or the city clerk or village clerk under section 256 are considered terminated and the articles of incorporation filed under the nonprofit act apply to the corporation or subsidiary corporation. The corporation or subsidiary corporation shall deliver a copy of the articles of incorporation of the restructured corporation or restructured subsidiary corporation to that county clerk, city clerk, or village clerk, and the county clerk, city clerk, or village clerk will indicate in his or her records that the corporation or subsidiary corporation has restructured under this section and that the articles of incorporation previously filed with him or her under section 207 or 256 are no longer in effect.

(i) The corporation or subsidiary corporation shall deliver a copy of the articles of incorporation of the restructured corporation or restructured subsidiary corporation to the secretary of state and notify the secretary of state that the articles of incorporation previously filed with him or her by the county clerk, city clerk, or village clerk under section 207 or 256 are no longer in effect.

(5) A subsidiary board may not restructure a subsidiary corporation as a nonprofit corporation under this section without the prior approval of the board of trustees of its parent corporation to the restructuring.

(6) A board of trustees or subsidiary board may not restructure a corporation or subsidiary corporation under this section without the prior majority approval of the county board of commissioners, city council, or village council, as applicable.

(7) A board of trustees or subsidiary board may not restructure a corporation or subsidiary corporation under this section if the restructuring in any manner impairs the obligation of the corporation or subsidiary corporation with respect to any outstanding obligation, bond, note, or contract of that corporation.

(8) As used in this section:

(a) "Administrator" means that term as defined in section 105 of the nonprofit act, MCL 450.2105.

(b) "Nonprofit act" means the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(c) "Nonprofit corporation" means a domestic corporation, as that term is defined in section 106 of the nonprofit act, MCL 450.2106.

Sec. 306. (1) Subject to applicable licensing and other regulatory requirements, and subject to the requirements of this section, a board of trustees or a subsidiary board may enter into and carry out agreements for the sale or transfer of the ownership of a corporation or subsidiary corporation, or the sale or transfer of ownership or operation of some or all of the health care facilities and related assets or health services of the corporation or subsidiary corporation, to a nonprofit health care organization or to a public authority on behalf of a nonprofit health care organization by sale, installment sales agreement, land contract, lease, lease with an option to purchase, sublease, contract, option, or by any other means.

(2) In establishing the terms of a sale or transfer described in subsection (1), the board of trustees or subsidiary board may take into account, in addition to the monetary consideration for the sale or transfer, if any, 1 or more of the following:

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

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

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

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

(e) The ability and willingness of the nonprofit health care corporation to expand or improve the corporation, subsidiary corporation, or health care facilities or health services being sold or transferred.

(f) 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 considers appropriate.

(3) A board of trustees or subsidiary board may accept secured or unsecured notes, bonds, or obligations given by or on behalf of a nonprofit health care organization or any other forms of payment that it considers appropriate in full or partial satisfaction of any monetary consideration provided under an agreement for a sale or transfer described in subsection (1).

(4) Any board of trustees or subsidiary board that sells or transfers a corporation, subsidiary corporation, or health facilities under this section shall require, for a term of not less than 30 years, that use of the health care facilities owned by the sold or transferred corporation or subsidiary corporation or the sold or transferred health care facilities shall be open to all regardless of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment, and that the nonprofit health care organization acquiring those health care facilities or that corporation or subsidiary corporation shall provide an equal opportunity for employment, without discrimination as to race, religion, color, national origin, sex, age, disability, marital status, or sexual preference.

(5) Any transfer made by a subsidiary board in reliance on this section shall be made only with the prior approval of the board of trustees of its parent corporation.

(6) Any sale or transfer of ownership of a corporation or subsidiary corporation under this section shall be made only with the prior approval of the county board of commissioners, city council, or village council. Any sale or transfer of ownership or operation of health care facilities or health services by a corporation or a subsidiary corporation under this section shall be made only with the prior approval of the county board of commissioners, city council, or village council, if either of the following applies:

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

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

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

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Richard J. Brown*

Clerk of the House of Representatives

Approved .....

.....  
Governor