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CONVEY KZOO POWER PLANT TO WESTERN MICHIGAN UNIVERSITY

House Bill 4825 as enrolled
Second Analysis (7-7-94)

Sponsor: Rep. Donald H. Gilmer
House Committee: State Affairs
First Senate Committee: State Affairs and
Military/Veteran Affairs
Second Senate Committee: Family Law,
Mental Health, and Corrections

THE APPARENT PROBLEM:

The Department of Mental Health (DMH) owns a power plant that was built in 1928 to supply power to the Kalamazoo Regional Psychiatric Hospital (KRPB). As the population of KRPB declined and that of Western Michigan University (WMU) increased, WMU has wound up buying most of the energy produced by the plant. The DMH, accordingly, has needed much less of the plant's power.

The plant, which is located on 22,499 acres of land, reportedly is badly in need of repairs and modernization and has, according to the Department of Mental Health, already been fined once for failure to meet federal Environmental Protection Agency requirements. Western Michigan University would like to buy the plant from the department, and has been appropriated \$25 million dollars in capital outlay funds to retrofit it, including bringing it up to federal standards and converting it from a coal-fired plant to one which could use either coal or gas. Legislation has been introduced that would allow this conveyance.

THE CONTENT OF THE BILL:

The bill would convey a 22,499-acre parcel of land housing a power plant -- now under the jurisdiction of the Department of Mental Health and part of the Kalamazoo Regional Psychiatric Hospital -- to Western Michigan University to be used for operating the power plant located on the property or for general purposes associated with maintaining the university's physical plant. The conveyance would be by quitclaim deed and for one dollar, the state would reserve all mineral rights (except for coal used to operate the power plant), and Western Michigan University would not assume any liability

for improvements to the land made by the state. Should the land be used for other than those uses specified in the bill, it would immediately revert back to the state.

Western Michigan University would continue to operate and maintain a steam and electric generating power system, and would serve the power needs of the Kalamazoo Regional Hospital and Pheasant Ridge Center (as those needs existed on the date the transfer took effect) until that service no longer was needed. WMU would be responsible for maintaining -- up to the entrance of the hospital utility tunnel -- the equipment necessary for meeting the electric and power needs of the hospital and center. If WMU sold any excess power from (or capacity of) the power plant, the revenue would have to be sent to the state treasurer and put in a restricted fund for the Department of Mental Health to use to provide community demand beds.

For one year after the bill took effect, the university would employ -- on terms and conditions determined by the university and subject to the university's right to terminate employment for good cause -- the power plant employees. WMU also would offer health coverage, without coordination of preexisting conditions or exclusions, to the power plant employees when the conveyance took effect, and would enter into a collective bargaining agreement with the union which represented the Kalamazoo Regional Psychiatric Hospital's power plant employees before the conveyance.

The Department of Mental Health would enter into a written agreement with WMU under which the department would reimburse the university for a percentage of the cost of operating and maintaining

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the power plant. The bill would take effect immediately after it was enacted.

FISCAL IMPLICATIONS:

In testimony before the House State Affairs Committee, a representative of the Department of Mental Health said that the value of the power plant and the land to be conveyed was estimated by the Department of Management and Budget to be about \$11 million. The department currently spends \$660,000 annually for its portion of the power plant's electricity and power. In April of 1993, Public Act 19 of 1993 (enrolled Senate Bill 363) appropriated \$21.5 million to Western Michigan University for renovating the power plant.

ARGUMENTS:

For:

The bill would transfer to Western Michigan University the physical plant and land, as well as responsibility for the cost of operating and maintaining the Kalamazoo Regional Psychiatric Hospital power plant, with an estimated value of more than \$11 million. The bill would allow WMU, which is the primary service user, to operate and control the power/heating supply and to be responsible for the associated cost of upgrading and retrofitting the plant in compliance with service needs and federal and state environmental regulations. The university is willing to spend over \$21 million (appropriated to it last April in a capital outlay appropriations bill) to retrofit the plant, which reportedly was built in 1928 and which already has cost the Department of Mental Health tens of thousands of dollars in fines imposed by the federal Environmental Protection Agency (EPA). Reportedly, the EPA is considering imposing further fines, but has postponed action because it has been told that there is a possibility that the plant was going to be transferred to, and upgraded by, Western Michigan University. The bill would rid the state of a huge potential liability, in the form of a potential federal "superfund" cleanup site, while guaranteeing that the Department of Mental Health would continue to have its needs for power met.

What is more, the bill would protect the current employees at the power plant by incorporating language similar to that in legislation regarding privatization of the Accident Fund; the existing employees would be guaranteed continued employment and health benefits.

Against:

The bill, while requiring WMU, for a year after the property was conveyed, to employ the existing employees and provide them with health benefits, does not guarantee that all of the employees will be kept. For example, WMU has a policy of not employing people with felony records, yet reportedly at least two of the current 23 plant employees have felony convictions (with one employee apparently being employed at the plant upon his release from prison). The university says that its policy is intended to keep convicted felons from working around students, yet the plant employees with felony convictions have been doing just that for a number of years with no reported adverse impact on the university's student population. All employees should be "grandfathered" in as university employees, and not be subject to new employment conditions, so long as the employees have satisfactory employment records.

Response:

The bill would require WMU to enter into a collective bargaining agreement with the union the represented the power plant employees at the time of the conveyance, which should protect these employees.

Against:

The land and power plant are estimated to be worth \$11 million. Although the plant admittedly needs a lot of work to modernize it and bring it up to federal and state environmental standards, surely it is worth something on the open market. At the very least, the property should be put up for bid on the open market. If there were a taker, the money from the sale certainly could be put to good use by the state (some people have suggested that it -- as well as the \$21.5 million in capital outlay appropriations -- might then be given to the school aid fund). If there were no private bidders, then the conveyance could take place. Alternatively, some people have argued that since the state would, in effect, be giving Western Michigan University a total of over \$30 million (the estimated \$11 million that the property is worth plus the \$21.5 million in capital outlay to the university to upgrade the power plant), the least the university could do is to provide free (or even half-price) power to the Department of Mental Health. Reportedly, the department currently buys only ten percent -- or \$660,000 -- of the plant's power output, with WMU buying the remaining \$7 million of power. In a time of shrinking state budgets, surely this would not be too much to ask.

Response:

In the first place, it appears doubtful that a private enterprise would want to buy the power plant, given the plant's age and the millions of dollars it would take to bring it up to federal and state environmental requirements. The EPA already has fined the DMH once for failure to meet these standards, and is threatening a second fine. The plant is costing the state money, and it would be to the state's benefit to transfer this potentially huge superfund liability to another public entity that is willing not only to modernize the plant but also to guarantee that the DMH's power needs would continue to be met as long as needed. Secondly, however, the capital outlay appropriation has already taken place. The \$21.5 million appropriated to WMU to renovate the power plant cannot be taken back and put into the school aid fund.

Against:

The conveyance would give Western Michigan University not only the existing power plant, but nearly 22.5 acres of state land. Why does the university need this much land? Surely the power plant doesn't take up all 22.5 acres. The amount of land -- coupled with the provision in the bill that the university can use the property for "the operation of a power plant located on the property, or for general university purposes" -- would seem to suggest that what is going on is not just the conveyance of a power plant but of land that the university can use in any way it sees fit. Why should WMU get free land from the state and not other state universities?