



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 6192 (Substitute H-1 as passed by the House)

Sponsor: Representative Donald Gilmer

House Committee: Appropriations

Senate Committee: Appropriations

Date Completed: 12-4-96

CONTENT:

The bill would create the "Michigan Biologic Products Institute Transfer Act" to do the following:

- Authorize the Michigan Biologic Products Commission, subject to the approval of the State Administrative Board, to negotiate the conveyance of all or part of the assets and liabilities of the Michigan Biologic Products Institute to one or more entities.
- Permit the State Administrative Board to approve and authorize the chair of the Commission, or his or her designee, to enter into agreements in the name of the State to convey all or a portion of the assets and liabilities of the Institute to one or more entities under certain conditions.
- Require that any monetary consideration received for the conveyance of the assets and liabilities of the Institute be deposited in the Pharmaceutical Products Fund, and make certain dispositions of the assets of the Fund.
- Appropriate \$2,000,000 in FY 1996-97 for construction and renovation of an Institute building.
- Allow employees of the Institute or a group made up in whole or in part by employees of the Institute to enter into an agreement related to the conveyance of the assets and liabilities of the Institute.
- Establish that the authorized conveyance would be free of all liens and claims.
- Transfer any assets remaining after the conveyance of the Institute, and after the expiration of the Commission (February 1998) to the Department of Management and Budget, or other State agency determined by the State Administrative Board.
- Give exclusive jurisdiction over claims filed against the State related to the provisions of this bill to the Court of Claims, and set time limits on bringing an action related to the provisions of the bill or a product of the Institute.
- Specify certain legislative findings and declarations.

Powers of the Michigan Biologic Products Commission

The Michigan Biologic Products Commission (the Commission) was established under Executive Order 1995-25 as a temporary entity, with a life span of no more than two years, to oversee the operation of the Michigan Biologic Products Institute (the Institute) and to prepare a plan for the transfer of the Institute to a private entity within the two-year term of the Institute. The Institute also was established under E.O.1995-25 as an autonomous entity with a two-year life span. The Biologic Products Division of the former Michigan Department of Public Health, the Division that developed and manufactured several vaccines and various blood products, was transferred to the Institute. Products currently manufactured by the Institute include Diphtheria, Tetanus, and Pertussis (Whole Cell) Vaccine (DTPw), Tetanus Vaccine, Diphtheria-Tetanus Vaccine (pediatric), Pertussis (Whole Cell), Rabies Vaccine, Anthrax Vaccine, Botulinum Toxoid, Human Albumin, Anti-Hemophilic Factor, and Immune Serum Globulin.

The bill would authorize the Commission to negotiate the conveyance or transfer of all or part of the Institute to one or more entities. The Commission, subject to the approval of the State Administrative Board, would be permitted to determine the assets that would be conveyed to and the liabilities of the Institute that would be assumed by a transferee. The assets potentially subject to conveyance are defined to include real property, including oil and mineral rights (although the State would retain the right to not less than 50% of the net royalties should oil and minerals be developed) and approximately 60 acres, personal property, intangible property, and product inventory. An agreement negotiated and approved could include any term or condition deemed by the Commission to be necessary or convenient for the conveyance of assets including agreements to retain easements; to grant rights for future purchase of assets retained by the State; to buy, sell, or jointly produce steam or other utilities from, to, or with a transferee; to provide services or products of State agencies to a transferee; and to retain the option to repurchase all or a portion of the conveyed assets. In negotiating the conveyance of the Institute, the Commission would be allowed to retain a selling agent; use any method deemed appropriate to solicit purchasers or transferees; make recommendations to the State Administrative Board; with Administrative Board approval, execute agreements or other instruments necessary to complete the conveyance; and exercise any power necessary or convenient to complete the transfer of the Institute. The Commission would be able to amend or terminate any activities related to the conveyance of the Institute without giving reasons and without liability. In a conveyance agreement, the Commission would be required to identify the consideration to be received for the conveyed assets.

Conditions of Conveyance or Transfer

The State Administrative Board could authorize the chair of the Commission, or his or her designee, to execute one or more agreements to convey all or a portion of the assets of the Institute if all of the following conditions were met:

- The State Administrative Board determined that the consideration to be received for the conveyance would be fair and adequate.
- The transferee provided the State “preferential access”, including first option to

access vaccines and biologic products, to biologic products for a period of time and subject to conditions and prices contained in the agreement.

- The conveyance agreement included a commitment by the proposed transferee to continue to employ Institute employees who chose to continue employment with the transferee for not less than one year. The transferee could terminate an Institute employee's employment for cause.

The latter two conditions could apply only to proposed transferees to which those assets directly involved in the manufacture of product would be transferred.

The State Administrative Board would be able to reject any recommendation of the Commission without giving a reason. The Board also would be required to obtain an independent opinion, before the effective date of the conveyance, that the proposed consideration for the assets and liabilities was fair and adequate. The State Auditor General would be required to review the conveyance process undertaken by the Commission and report his or her findings to the Legislature before the State Administrative Board approved the recommendations of the Commission.

Disposition of Monetary Consideration

The bill would require that any money received for the conveyance of the Institute's assets be deposited in the Pharmaceutical Products Fund (the Fund), and be used, with certain exceptions, for the purchase of vaccines and other blood products deemed necessary to protect the public's health. The money in the Fund not needed to support FY 1996-97 appropriations for the operations of the Michigan Biologic Products Institute would be appropriated for the following purposes in the following order of priority:

- Payment of the fees of a selling agent retained by the Commission;
- Payment to employees and reimbursement of State expenses related to accrued sick and annual leave payouts for Institute employees who would separate from State employment with the transfer of the Institute;
- Reimbursement of the State retirement system for the actuarial cost of providing an early retirement option to Institute employees;
- Separation costs including moving non-Institute employees and equipment; and
- Closing and other costs related to the conveyance agreement(s).

The amount from the Fund that could be spent for a sales agent, separation costs, and closing costs would be limited to \$2,500,000. The amount from the Fund that could be spent for sick and annual leave payouts, and for early retirement expenses would be limited to \$2,500,000 also.

The bill would appropriate an additional \$2,000,000 in FY 1996-97 for renovations of "building 16", a Diphtheria-Tetanus Vaccine production and formulation facility, required for regulatory compliance. (A FY 1995-96 appropriations transfer of \$850,000 supported the initial phase of the building 16 renovation.) Of the \$2,000,000, \$630,000 would be from Federal sources of revenue, and the remaining amount would be from revenue from the sale of biologic products.

Any amounts remaining in the Fund at the end of the fiscal year in which the conveyance took place would be administered by the Department of Community Health.

Institute Employees

An employee of the Institute or a group that included employees of the Institute would be allowed to bid on or make a proposal to acquire the assets of the Institute, and to enter into an agreement related to the conveyance of the assets of the Institute. An employee of the Institute also would be exempt from the requirements of Public Act 196 of 1973, an act prescribing standards of conduct for public officers and employees, when accepting employment with a potential buyer of the Institute, if the employee informed the Commission of the planned employment.

Other Provisions

The bill specifies that the conveyance of assets authorized under the bill would be free and clear of any liens, claims, or interest of the State, other than any taxes that might be imposed, or of a person claiming through or under the State.

Any assets of the Institute not conveyed before the expiration of the term of the Commission (February 1998) would be transferred to the Department of Management and Budget or another State agency designated by the State Administrative Board. Within 90 days after all of the transactions authorized or required by this bill were completed, the State Administrative Board would be required to report the terms of the conveyance, in writing, to the Legislature.

The bill provides that the Court of Claims would have exclusive jurisdiction over any claim against the State related to the provisions of this bill. The bill also provides that the determinations and actions of the Commission and Administrative Board would be conclusive unless a suit were filed in the Court of Claims within 60 days after the action that was the subject of the suit had occurred.

The bill would prohibit an individual from filing or maintaining a suit related to a product of the Institute unless the suit were commenced within six months after the claim or injury occurred or was discovered, or should have been discovered through reasonable diligence.

FISCAL IMPACT

The FY 1996-97 appropriation for the Michigan Biologic Products Institute is \$16,258,700. The fund sources are as follows:

Biologic product sales and other revenue	14,367,500
Federal funds	1,175,400
Red Cross Contract and processing revenues.....	715,800

There is no direct State General Fund/General Purpose (GF/GP) support in FY 1996-97 for the operational costs of the Institute. There could be approximately \$4,000,000 GF/GP

in indirect support for the Institute, in FY 1996-97, i.e. security, plant maintenance, and budget, contracting, finance, and personnel support.

The following is a brief history of the annual revenue generated by the sale of the Institute's products since FY 1992-93:

<u>Fiscal Year</u>	<u>Revenue</u>
	\$8,568,888
1992-93	
1993-94	5,966,994
1994-95	11,602,277
1995-96	7,552,087
1996-97	19,798,456

* FY 1996-97 expenditures are estimated.

Source: Michigan Biologic Products Institute

Clearly, the bill would result in the loss of future revenue from the sale of products, as well as, the expense of operating the Institute. The bill also would make a direct appropriation of \$2,000,000 Gross, \$630,000 Federal, and \$1,370,000 biologic sales revenue.

Because of the many variables that must be considered in assigning a value to the Institute, the amount that might be generated from the transfer of the Institute to a private entity is more difficult to assess. The State has entered into several contracts over the past three years with private firms to assess the value of the assets of the Institute. One contractor, who focused solely on physical property, i.e. equipment, 52.2 acres of vacant land, and 5 of 28 buildings that comprise the Institute, arrived at a \$4.7 million estimate. Another contractor, using an income approach to value (i.e. the estimated future income stream of a given asset over the expected remaining life of the asset, given various assumptions about anticipated rates of return on investment), yielded an estimated range for the value of the Institute from nominal, or zero, to \$10.5 million. In the final analysis, the wide variety of applicable variables makes it difficult to definitively assign a single value to this transaction.

Fiscal Analyst: Pam Graham