



# HOUSE BILL No. 6192

November 14, 1996, Introduced by Reps. Gilmer, Johnson and Emerson and referred to the Committee on Appropriations.

A bill to authorize the conveyance of the assets and liabilities of the state related to the operation of the Michigan biologic products institute; to authorize the state administrative board to approve the conveyance and to make determinations that certain conditions upon the conveyance have been met; to permit the acceptance of consideration in exchange for the conveyance; to make certain findings and determinations of the interest of the state relative to the conveyance; to authorize the state administrative board to approve certain agreements for continued services and products by certain state agencies to transferred facilities or to the state from the transferred facilities; to authorize the Michigan biologic products commission to negotiate and, upon concurrence of the state administrative board, approve certain agreements related to the conveyance of the assets and liabilities of the state associated with the Michigan biologic

products institute, certain agreements for the marketing of the assets and liabilities, certain agreements for continued services and products, and certain agreements for the retention of rights, interests, and easements in certain conveyed assets; to authorize employees and employee based entities to bid for or make proposals to acquire the assets and liabilities of the state associated with the Michigan biologic products institute; to prescribe the powers and duties of certain public officers and certain state agencies and departments; to grant exclusive jurisdiction over claims related to the conveyance to the court of claims and to limit the time in which claims related to the conveyance or to the products produced by the Michigan biologic products institute may be brought; to provide for the disposition of the revenue derived from the conveyance; and to make an appropriation.

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

1       Sec. 1. This act shall be known and may be cited as "the  
2 Michigan biologic products institute transfer act".

3       Sec. 2. The legislature finds and declares all of the  
4 following:

5       (a) That increasing regulatory costs, the need to replace  
6 manufacturing facilities, the need to develop and the cost of  
7 developing new biologic products, the changing pediatric vaccine  
8 market, and the need to serve other markets outside the borders  
9 of this state have adversely affected the ability of the state to  
10 sustain a viable, self-supporting operation for the manufacture  
11 and distribution of vaccines and blood derivative products.

1 (b) That allowing the Michigan biologic products institute  
2 to be conveyed to a private enterprise would assist the institute  
3 to become self-sustaining, avoid the need for future state gen-  
4 eral fund subsidies, retain the employment of many employees of  
5 the institute, and assure the state's access to biologic products  
6 to protect Michigan's citizens from infectious disease.

7 (c) That the conveyance of the assets associated with the  
8 institute will not impair the public health mission of the  
9 department of community health and, if the institute is not con-  
10 veyed to a private enterprise, the operations of the institute  
11 could be discontinued. If the operations of the institute are  
12 discontinued, the legislature recognizes that the need for  
13 replacement facilities and the expense to the state of costs  
14 related to employee separation from the institute and of costs  
15 related to disposal of the assets associated with the institute,  
16 both of which the legislature desires to offset by authorizing  
17 the conveyance of the assets associated with the institute to a  
18 private enterprise.

19 Sec. 3. As used in this act:

20 (a) "Assets" means all or part of the following that are  
21 associated with the institute and are subject to conveyance under  
22 this act:

23 (i) Real property, excluding all rights to coal, oil, gas,  
24 and other materials, but including all rights to sand, gravel,  
25 clay, and other nonmetallic minerals, found on, within, or under  
26 real property conveyed under this act.

1 (ii) Personal property.

2 (iii) Intangible property.

3 (iv) Product inventory, including, but not limited to, manu-  
4 factured products that have been released by the federal food and  
5 drug administration for public sale and use, manufactured pro-  
6 ducts that have not been released by the federal food and drug  
7 administration for public sale and use; and products that are in  
8 the process of being manufactured and components of those  
9 products.

10 (b) "Chair" means the chair of the commission.

11 (c) "Commission" means the Michigan biologic products com-  
12 mission established by Executive Order 1995-25 pursuant to sec-  
13 tion 4 of article V of the state constitution of 1963.

14 (d) "Conveyance" means sale, transfer, assignment, or other  
15 disposition.

16 (e) "Institute" means the Michigan biologic products insti-  
17 tute established by Executive Order 1995-25 pursuant to section 4  
18 of article V of the state constitution of 1963.

19 (f) "Local health department" means that term as defined in  
20 section 1105 of the public health code, being section 333.1105 of  
21 the Michigan Compiled Laws.

22 (g) "Pharmaceutical products fund" means the pharmaceutical  
23 products fund established under section 9112 of the public health  
24 code, being section 333.9112 of the Michigan Compiled Laws.

25 (h) "Public health code" means Act No. 368 of the Public  
26 Acts of 1978, being sections 333.1101 to 333.25211 of the  
27 Michigan Compiled Laws.

1 (i) "Real property" means all or a portion of the real  
2 property associated with the institute, more particularly  
3 described as follows:

4 (i) A parcel of land in the NE 1/4 of section 5, T4N, R2W,  
5 Ingham County, Michigan and more particularly described as com-  
6 mencing at the northeast corner of said section 5; thence  
7 N89°59'49"W 124.94 feet, on the north line of said section 5;  
8 thence S00°00'11"W 33.00 feet, to the point of beginning of this  
9 description; thence S33°12'59"W 315.33 feet; thence N53°08'14"W  
10 101.37 feet; thence S89°11'38"W 47.55 feet; thence S00°42'03"W  
11 63.21 feet; thence S89°45'02"W 73.97 feet; thence S00°59'58"W  
12 106.92 feet; thence 132.16 feet, on the arc of a curve to the  
13 right with a central angle of 33°53'13", a radius of 223.46 feet,  
14 and a long chord bearing and distance of S22°22'16"W 130.25 feet;  
15 thence S59°26'51"W 14.65 feet; thence S77°08'54"W 92.93 feet;  
16 thence S88°34'58"W 131.49 feet; thence S01°57'43"E 41.46 feet;  
17 thence S88°02'17"W 153.47 feet; thence S01°57'43"E 132.00 feet;  
18 thence S88°02'17"W 351.61 feet; to the easterly right of way line  
19 of Logan Street; thence N00°28'13"E 716.63 feet, to the southerly  
20 right of way line of Sheridan Road; thence S89°59'49"E 1155.21  
21 feet, on said right of way to the point of beginning, containing  
22 12.56 acres, more or less.

23 (ii) A parcel of land in the SE 1/4 of Section 32, T5N, R2W,  
24 Clinton County, Michigan and more particularly described as  
25 beginning at the S 1/4 corner of said section 32; thence  
26 N00°12'30"W 2152.16 feet on the N-S 1/4 line of said section 32;  
27 thence S89°57'16"E 683.94 feet to the westerly Right-of-Way of

1 DeWitt Road at a point 500.00 feet southerly of the E-W 1/4 line  
2 of said section 32; thence on the westerly Right-of-Way of DeWitt  
3 Road for the next five calls; thence S04°03'50"E 112.68 feet;  
4 thence 299.44 feet on the arc of a curve to the left with a cen-  
5 tral angle of 23°26'19", a radius of 731.99 feet and long chord  
6 bearing and distance of S15°47'00"E 297.36 feet; thence  
7 S27°30'10"E 927.69 feet; thence 356.62 feet on the arc of a curve  
8 to the right with a central angle of 27°41'37", a radius of  
9 737.82 feet and a long chord bearing and distance of S13°39'21"E  
10 353.16 feet; thence S00°11'27"W 30.40 feet; thence S88°07'13"W  
11 171.96 feet; thence S17°13'15"W 128.78 feet; thence S02°36'04"W  
12 161.34 feet; thence N89°52'39"W 420.93 feet; thence S00°06'07"E  
13 267.69 feet to the south line of said section 32, thence  
14 N89°59'49"W 632.45 feet on the south line of said section 32 to  
15 the N 1/4 corner of section 5, T4N, R2W; thence S89°27'29"W 6.45  
16 feet on the south line of said section 32 to the point of begin-  
17 ning, containing 46.94 acres, more or less.

18 (j) "State administrative board" means the state administra-  
19 tive board created under Act No. 2 of the Public Acts of 1921,  
20 being sections 17.1 to 17.11 of the Michigan Compiled Laws.

21 Sec. 4. (1) Subject to the requirements of this act,  
22 including the approval of the state administrative board, the  
23 commission may perform 1 or more of the following acts relative  
24 to the conveyance of assets under this act:

25 (a) Determine the assets that are subject to the proposed  
26 conveyance.

1 (b) Determine the liabilities of the institute, if any, that  
2 a proposed transferee would be required to assume.

3 (c) Negotiate and approve agreements on behalf of the state  
4 for the conveyance of all or a portion of the assets to 1 or more  
5 transferees and for the assumption of all, a portion of, or none  
6 of the liabilities of the institute by 1 or more transferees. An  
7 agreement negotiated and approved under this subdivision may  
8 include any term determined by the commission to be necessary or  
9 convenient for the conveyance of the assets, including, but not  
10 limited to, 1 or more of the following:

11 (i) The retention of rights, interests, and easements in or  
12 in the favor of the state to certain assets.

13 (ii) An agreement on behalf of the state to grant rights for  
14 the future purchase of assets retained by the state.

15 (iii) An agreement on behalf of the state to buy or sell  
16 steam and other utility services from assets retained by the  
17 state or conveyed by the state to a transferee.

18 (iv) A joint production agreement on behalf of the state  
19 related to steam and other utility services from assets conveyed  
20 by the state to a transferee.

21 (v) Agreements on behalf of the state for the provision of  
22 service or products by 1 or more state agencies to a transferee  
23 and agreements for the provision of service or products by a  
24 transferee to 1 or more state agencies.

25 (vi) Option or similar agreements on behalf of and in favor  
26 of the state related to the repurchase of all or a portion of the

1 conveyed assets upon the occurrence of events specified in the  
2 option or similar agreement.

3 (vii) Deeds and other instruments of conveyance associated  
4 with real property.

5 (d) Retain a selling agent to assist the commission in mar-  
6 keting the assets and the liabilities of the institute.

7 (e) Solicit prospective purchasers or other transferees for  
8 the assets using the method or methods considered most appropri-  
9 ate by the commission.

10 (f) Recommend to the state administrative board the terms of  
11 1 or more proposed agreements with 1 or more proposed transferees  
12 for the conveyance of all or a portion of the assets to 1 or more  
13 transferees and for the assumption of all, a portion of, or none  
14 of the liabilities of the institute.

15 (g) Upon approval of the state administrative board, autho-  
16 rize the chair or his or her designee to execute agreements,  
17 deeds and other instruments of conveyance, bills of sale, and  
18 closing documents necessary to complete the conveyance of all or  
19 a portion of the assets.

20 (h) Exercise any other power necessary or convenient to  
21 effect or complete the transactions permitted under this act,  
22 including, but not limited to, all actions necessary to transfer  
23 permits and licenses related to the operation of the institute.

24 (2) The commission, for and on behalf of the state, without  
25 giving any reasons and without any liability therefor, at any  
26 time and in any respect, may amend or terminate any activities  
27 with respect to the conveyance of the assets, commence and

1 terminate discussion with any or all persons seeking to acquire  
2 the assets, reject any or all proposals to acquire the assets,  
3 and negotiate and consummate the conveyance of the assets with  
4 any person. This subsection does not restrict the right of the  
5 commission to enter into a binding purchase agreement upon  
6 approval of the state administrative board pursuant to section  
7 5.

8 (3) The commission shall identify in an agreement for the  
9 conveyance of the assets the consideration to be received in  
10 exchange for the conveyance of the assets. In addition to the  
11 consideration recognized by the legislature in section 2, the  
12 commission may accept as part of the conveyance any other valu-  
13 able consideration.

14 Sec. 5. (1) Upon recommendation of the commission, the  
15 state administrative board may approve and authorize the chair or  
16 his or her designee to execute, or more agreements, instruments  
17 of conveyance, and bills of sale in the name of the state for the  
18 conveyance of all or a portion of the assets to 1 or more trans-  
19 ferees, and for the assumption of all, a portion of, or none of  
20 the liabilities of the institute by 1 or more transferees,  
21 subject to all of the following conditions:

22 (a) Before the effective date of the agreement, the state  
23 administrative board shall determine that the consideration to be  
24 received under the agreement is fair and appropriate so that the  
25 credit of the state does not need to be granted to a public or  
26 private person, association, or corporation.

1 (b) The terms of the agreement must require the transferee  
2 to provide the state for use in Michigan with preferential access  
3 to biologic products from among those products and product compo-  
4 nents made by the institute on the effective date of the agree-  
5 ment and licensed by the federal food and drug administration or  
6 subsequently made by the transferee, as determined by the state,  
7 and for the period and subject to conditions and prices contained  
8 in the agreement.

9 (c) Before the effective date of the agreement, the state  
10 administrative board shall determine that the agreement includes  
11 a commitment by the proposed transferee to continue the employ-  
12 ment of institute employees who elect to continue employment with  
13 the transferee, for not less than 1 year after the effective date  
14 of the agreement. This subdivision does not affect the  
15 transferee's ability to terminate an employee's employment for  
16 cause.

17 (2) If more than 1 transferee is recommended by the commis-  
18 sion to the state administrative board under subsection (1), the  
19 determinations and requirements prescribed by subsection (1)(b)  
20 and (c) apply to that transferee to which those assets directly  
21 involved in the manufacture of vaccines and blood derivative pro-  
22 ducts are proposed to be transferred.

23 (3) The state administrative board may, in its sole and  
24 absolute discretion, evaluate the terms of the agreements recom-  
25 mended by the commission under subsection (1) and approve or  
26 reject other recommendations of the commission made under this

1 act without assigning reasons for the evaluation, approval, or  
2 rejection.

3 (4) In addition to the conditions upon the execution of an  
4 agreement specified in subsection (1), the state administrative  
5 board may require, at its sole and absolute option and before the  
6 effective date of the agreement, an independent opinion that the  
7 consideration for the assets or liabilities, or both, of the  
8 institute is fair and adequate.

9 (5) The state administrative board may rely upon the opin-  
10 ions or reports of legal counsel, independent appraisers, accoun-  
11 tants, financial advisors, and other experts when performing its  
12 duties and exercising its powers under this act.

13 Sec. 6. (1) The monetary consideration received under this  
14 act for the conveyance of the assets shall be deposited in the  
15 pharmaceutical products fund.

16 (2) The money in of the pharmaceutical products fund not  
17 needed to fund the appropriations made by Act No. 364 of the  
18 Public Acts of 1996 for the 1996-97 state fiscal year is appro-  
19 priated for the following purposes and in the following order of  
20 priority:

21 (a) Payment of fees associated with the services provided by  
22 a selling agent in marketing the assets, if such services are  
23 retained and used by the commission.

24 (b) For payment of accrued sick and annual leave time to  
25 employees of the institute upon separation of employment from the  
26 state if current fiscal year appropriations available for that  
27 purpose are insufficient.

1 (c) For reimbursement of the state for payouts for accrued  
2 sick and annual leave time from current fiscal year appropria-  
3 tions available for that purpose to employees of the institute  
4 upon separation of employment from the state.

5 (d) To reimburse the state employees' retirement system for  
6 the actuarial cost of providing an optional early-out program for  
7 employees of the institute whose combined age and service credit  
8 equal 70 or greater, regardless of age, on the date of separation  
9 of employment from the state.

10 (e) Separation costs including, but not limited to, expenses  
11 incurred in moving non-institute employee work stations and other  
12 equipment in to other state office locations and converting the  
13 facilities of the institute to private operations.

14 (f) To pay other costs related to the negotiation and clos-  
15 ing of the agreement for the conveyance of the assets, including  
16 title insurance and any opinions or reports required by the state  
17 administrative board, and the fees of attorneys and consultants  
18 used to develop and complete the conveyance.

19 (3) All unexpended monies of the pharmaceutical products  
20 fund shall be retained in the pharmaceutical products fund at the  
21 end of the fiscal year in which the conveyance of the assets is  
22 completed. After the conveyance is completed, the community  
23 public health agency within the department of community health  
24 shall administer the pharmaceutical products fund.

25 Sec. 7. (1) An employee of the institute or a group com-  
26 posed in whole or in part of employees of the institute may bid  
27 on or make a proposal to acquire the assets and enter into 1 or

1 more agreements related to the conveyance of all or a portion  
2 assets of the to the employee or group.

3 (2) When acting with the knowledge or upon the direction of  
4 the commission or in entering into an agreement to accept employ-  
5 ment with a potential acquirer of the assets, an employee of the  
6 institute shall not be considered to have violated Act No. 196 of  
7 the Public Acts of 1973, being sections 15.341 to 15.348 of the  
8 Michigan Compiled Laws, if the employee provided written notice  
9 to the commission of the proposed employment agreement and the  
10 terms of that agreement before its execution.

11 Sec. 8. Except for taxes otherwise imposed by the state or  
12 a political subdivision of the state, the conveyance of assets  
13 permitted under this act is free and clear of any liens, claims,  
14 or interests of the state or of a person claiming through or  
15 under the state.

16 Sec. 9. (1) Except for the pharmaceutical products fund,  
17 any assets that have not been conveyed on or before the expira-  
18 tion of the life of the commission shall be transferred to the  
19 department of management and budget or any other state executive  
20 department, as the state administrative board may direct.

21 (2) Not less than 90 days after the conveyance of assets and  
22 liabilities is completed under this act, the state administrative  
23 board shall make a report in writing to the legislature of the  
24 terms of the conveyance.

25 Sec. 10. (1) The court of claims has exclusive jurisdiction  
26 over a claim asserted against the state and arising out of or  
27 related to this act.

1 (2) The validity of the proceedings of, or the  
2 determinations made by, the state administrative board or the  
3 commission under this act are conclusive if not challenged by  
4 filing suit with the court of claims within 60 days after the  
5 action that is the subject of the suit is taken.

6 (3) A person shall not bring or maintain an action related  
7 to a product manufactured by the institute or to recover damages  
8 for injuries to persons unless the action is commenced within 6  
9 months after the claim first accrued to the plaintiff or to some-  
10 one through whom the plaintiff claims. A claim subject to this  
11 subsection accrues at the time the plaintiff or someone through  
12 whom the plaintiff claims discovered or should have discovered  
13 through reasonable diligence the existence of the claim or the  
14 injury that is the basis for the claim.