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## MUNICIPALLY OWNED CORPORATION

### House Bill 5407 as introduced First Analysis (5-13-98)

**Sponsor: Rep. Bob Emerson**  
**Committee: Health Policy**

#### ***THE APPARENT PROBLEM:***

Hurley Hospital, which is owned by the city of Flint, and Genesys Health Systems, a private nonprofit corporation, are currently collaborating on the development of a joint cancer treatment center. The proposed Genesys-Hurley Cancer Institute would consolidate outpatient oncology services at a single location. According to representatives of the project, several hurdles have already been cleared, and proposed bylaws and articles of incorporation are scheduled to go before the respective boards later this month. Though building a new facility in which to house the institute is expected to take at least two years, the newly-formed institute does expect to begin to offer services in the near future at the current Hurley Hospital and Genesys Health Systems locations.

However, as the project developed, the question was raised as to whether or not a city-owned corporation such as a hospital could form a partnership with a private nonprofit corporation under current laws. According to the Office of the Attorney General, due to the lack of specific statutory authority or case law on the issue, it is unclear as to the legality of the partnership. In one Michigan Supreme Court case cited by the AG's office, *City of Detroit v Walker*, 445 Mich 682, 690: 520 NW2d 135 (1994), the court held that under the broad grants of authority given to cities under the Michigan Constitution and the Home Rule City Act, cities "enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied." Yet, in another Supreme Court case, *Sebewaing Industries v Sebewaing*, 337 Mich 530, 543-544; 60 NW2d 444 (1953), the court held that although cities do enjoy a general grant of rights and powers under the Home Rule City Act, "cities must find their powers in the statute directly and can exercise only those expressly or impliedly conferred by statute." In light of such rulings, the AG's office concluded that should the partnership between Hurley Hospital and Genesys

Health Systems be challenged, "supporting authority could be found on both sides of the issue."

In order to clarify the authority of cities under the Home Rule City Act, legislation has been proposed to allow a city to amend its charter to provide for partnerships between city-owned corporations and private nonprofit corporations to establish nonprofit medical facilities.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Home Rule City Act to allow a city to provide in its charter a provision for the city or one or more of its public corporations to join as a partner with a private nonprofit corporation to create a separate private nonprofit corporation that could only establish, operate, or maintain a medical facility for a public purpose.

MCL 117.4n

#### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

#### ***ARGUMENTS:***

##### ***For:***

The impetus behind the bill is to allow city-owned hospitals to form partnerships with nonprofit corporations to establish and operate nonprofit medical facilities. The partnership between Flint-owned Hurley Hospital and Genesys Health Systems would create the Genesys-Hurley Cancer Institute. The institute would consolidate outpatient cancer treatment in one location, so patients would no longer have to go to one facility for radiation treatments, another for chemotherapy, and so on. Oncology services are very costly to deliver due to such things as physician manpower (primarily specialists) and expensive

House Bill 5407 (5-13-98)

equipment (radiation machines), so a partnership of this type can ensure that high tech, high cost services are able to be offered regionally. The partnership would also eliminate duplication of services, which aids in keeping the cost of such specialized services down. However, since another hospital in the area also provides some oncology services, Flint residents would still enjoy a choice of where to receive care.

However, since it is unclear under state statute, the state constitution, and case law as to the legality of such a partnership, legislation is needed to allow cities to permit such a partnership in their charters.

***Against:***

Some people are concerned about the precedent that may be set by the bill. For example, other amendments to the Home Rule City Act could then be adopted to allow for partnerships with for-profit corporations, such as Columbia/HCA, the for-profit hospital corporation.

***Response:***

It is true that the bill could set a precedent for the types of partnerships allowable under the act, but many may prove to be very beneficial, such as a city or a city-owned corporation joining as a partner with a nonprofit day care organization to provide low-cost quality day care for residents. Any future legislation would have to be judged on its own merits, but present legislation that would be beneficial to a city's residents should not be discouraged because of fears of what could come down the road. As to the other concern, the bill as written is very narrow and would prohibit a partnership with a for-profit health corporation.

***Against:***

The bill as written would only allow a city to provide in its charter for a partnership between the city or its corporations and a nonprofit corporation for the establishment of a medical facility. If a city did not so provide in its charter, the charter would first have to be amended by a vote of the electorate. Reportedly, the Flint city charter does not specifically allow for such a partnership, but allows the city to permit whatever is allowed by the state. Therefore, the wording of the bill may require the city to bring the issue before the voters. Only if the charter were amended could Flint permit such a partnership. In the case of the Genesys-Hurley Cancer Institute project, this could result in a lengthy and costly process, and could delay the delivery of services to area residents.

***Response:***

City voters should have a say in the types of partnerships their city enters into. To rewrite the provision so that charters would not have to be amended could remove an important safeguard that voters would have under the bill as written.

***Against:***

Under Public Act 170 of 1964 (MCL 691.1407), commonly referred to as the Governmental Immunity Act, publicly-owned hospitals are exempt from the immunity from tort liability that is extended to other governmental agencies by the act. However, "hospital" is defined in the act as "a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician." As the proposed Genesys-Hurley Cancer Institute would be owned in part by the city of Flint, and since it would only provide outpatient services, the question must be raised as to whether the facility would be exempt from governmental immunity under the current definition of "hospital," or if it would enjoy governmental immunity.

***POSITIONS:***

The Michigan Health and Hospital Association supports the bill. (5-12-98)

The Department of Community Health is neutral on the bill. (5-12-98)

The Michigan Municipal League has no position on the bill at this time. (5-12-98)

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.