



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

CONVEYANCES IN OAKLAND, GENESSEE, AND ROSCOMMON COUNTIES

**House Bill 6033 as enrolled
Public Act 492 of 1998
Sponsor: Rep. John Gernaat**

**House Committee: Regulatory Affairs
Senate Committee: Local, Urban and State
Affairs (Discharged)**

Second Analysis (2-18-99)

THE APPARENT PROBLEM:

Clinton Valley Center (CVC), a state-owned hospital offering in-patient mental health services, was closed on October 1, 1997 and declared as surplus later that month (see **Background Information**). The hospital property, comprising some 300 acres and approximately 60 buildings, is located in the city of Pontiac and sits adjacent to the Oakland County courthouse and jail, a National Guard armory, a shopping center, and two large office buildings. Several of the older CVC buildings have received a historical designation. In addition, many acres of the property are covered by pristine woods.

Since its closure, the CVC property has been the subject of many discussions as to its best use. Oakland County has expressed a desire to acquire an 88-acre plot that is directly adjacent to the county buildings in order to expand the county complex. Further, the City of Pontiac, in its Plan 2010 (which includes proposed plans for urban development over the next decade), lists a Clinton Valley Development concept that includes upscale residential housing, new office development, the removal of architecturally incompatible structures, and the restoration of historical buildings. Other possibilities have included the construction of an executive golf course and the demolition of all existing buildings on the site. In fact, in Public Act 538 of 1998 (Senate Bill 906), a capital

outlay bill, the legislature appropriated \$5 million for the demolition of the Clinton Valley Mental Health Center, to finance the demolition of existing buildings and environmental cleanup as required under federal law. Legislation has been proposed to authorize the sale of part of the property to Oakland County and to convey the balance of the CVC property either for commercial development or for possible public use purposes.

A related matter concerns Fairlawn Center, a former children's mental health hospital located on the grounds of the Clinton Valley Center (see **Background Information**). Fairlawn Center was closed in 1996 and the state currently spends over \$1 million annually to maintain and guard the vacant buildings and grounds of the complex housing CVC and Fairlawn. In 1993, a new wing was constructed under a joint public/private initiative in which a nonprofit children's mental health organization raised \$650,000 for the project. The public bond which paid for the rest of the renovation was recently satisfied when the State Building Authority secured new, lower rate loans for the Fairlawn Center bond and several other bond projects, thereby opening the way for the property to be sold. Reportedly, no decisions have been made at this time in regards to the fate of the building, but past discussions have included such possibilities as the

House Bill 6033 (2-18-99)

Analysis available @ <http://www.michiganlegislature.org>

Page

e
1

o
f
Pages

6

building being used by either public or nonprofit groups to provide mental health services, use as a charter school (similar to Lafayette Clinic, a former psychiatric hospital that now houses the Woodward Academy), and use by the Family Independence Agency (several years ago the FIA sought to use the facility to house juvenile delinquents). The state is seeking authority to sell the Fairlawn Center property for commercial purposes or to convey it for less than fair market value if used for public purposes.

In a separate but similar matter, the Department of Education is seeking legislative authority to convey Brown Hall, located on the eastern end of the School for the Deaf in Flint, Genessee County. Brown Hall was previously used for the vocational education program, but has stood vacant for many years and is considered a nuisance building. According to a representative of the Department of Education, the Department of Management and Budget estimated about five years ago that the cost to renovate the building would be approximately \$4.5 million. Reportedly, Social Services for the Hearing Impaired, a nonprofit organization, has formally expressed an interest in acquiring Brown Hall and constructing a new facility.

Further, Public Act 363 of 1998 conveyed a 40-acre parcel of land located in Higgins Township in Roscommon County to the Roscommon Metropolitan Recreation Authority. The land is adjacent to the Marguerite Gahagan Nature Preserve, which has a developed network of walking trails and programs to educate the public about wildlife. The authority had previously expressed a desire to expand the network of trails, develop cross-country ski trails, and provide a buffer zone for wildlife. However, the act specifies that the land can only be used for public recreational purposes and would revert to the state if used for any other purpose. It has been suggested that the act be amended so that the authority could also use the land for wildlife education purposes without fear of violating the reverter clause of Public Act 363.

THE CONTENT OF THE BILL:

The bill would permit the sale of several parcels of property under the jurisdiction of the Department of Community Health located in the City of Pontiac,

Oakland County, and one parcel under the jurisdiction of the Department of Education located in the City of Flint, Genessee County. Any net revenue received from the sale of the properties would be deposited in the state treasury and credited to the general fund. "Net revenue" would mean the proceeds from the sale of any of the four parcels described in the bill minus reimbursement for any costs to the state associated with the sale of the property. In addition, the bill would allow the property conveyed to the Roscommon Metropolitan Recreation Authority by Public Act 363 of 1998 to also be used for wildlife education purposes.

The property to be conveyed is as follows:

Parcel # 1: The bill would allow the conveyance of 88 acres of land at the site of the former Clinton Valley Center to Oakland County for at least fair market value, and would include the exchange of an easement at the southernmost section of county-owned property that provides access to the parcels described in Parcel 2, below. The property could not be conveyed until the parcels comprising Parcel 2 are conveyed, or until 18 months after the effective date of the bill, whichever was first.

Parcel # 2: The bill would allow the conveyance of two sections of land that comprise 220 acres at the site of the former Clinton Valley Center for at least fair market value or less than fair market value if used exclusively for public purposes. For 18 months after the bill's effective date, plans for using the property and conveying and developing the property would have to be done in partnership by the City of Pontiac and the state. The city, through a statutorily authorized development agency (including the economic development corporation), would act as an agent of the state. The state could also option the land, in whole or in part, to the city for disposition. Any conveyance of this property would have to be approved by the director of the Department of Management and Budget (DMB).

Within 60 days of the bill's effective date, the City of Pontiac and the state would have to develop, in partnership, a request for proposal (RFP) to develop the two pieces of land. Possible public purposes, financial structure/ownership, highest and best use,

and maximizing the tax base would have to be addressed in the RFP, and would have to be consistent with securing or approaching fair market value and in fitting in with the city's Plan 2010 (as amended). The bill would also establish a time frame for responding to the RFP along with a departmental policy for approving or denying the RFPs.

Other provisions: For both Parcels 1 and 2, the bill would state that the plat descriptions given for the two parcels were approximate and would be subject to adjustments as necessary by survey or other legal description. Further, the parcels of land would be subject to any easement, rights-of-way, or restrictions currently existing on the lands and any determined by the director of the DMB (and approved by the state administrative board) to be necessary for the development and use of the remaining parcels of land owned by the state in the City of Pontiac.

If Parcel 1 was not sold within 21 months and Parcel 2 sold within 18 months after the bill's effective date, the director of the DMB would have to offer the properties for sale for fair market value first to local government and then through open bid or by broker contract. The fair market value would be determined by an appraisal based on the property's highest and best use and would be prepared by the state tax commission or an independent fee appraiser. If either of the parcels still remained unsold, the director, with the agreement of the state administrative board, could order a reappraisal of the property, withdraw the property from sale, or sell the property below fair market value because it would no longer be in the best interest of the state to hold and maintain the property.

If the properties were conveyed for less than fair market value, they could only be used for public purposes and would revert to the state if used for any other purpose. Fees or conditions of use imposed on the public for use of the properties would have to be the same for resident and nonresident members of the public, though the purchasers of the properties could waive daily fees or fees for the use of specific areas or facilities on the grounds. The attorney general could bring an action to quiet title to and regain possession of a property if the purchaser disputed the state's right to reentry and failed to deliver the property. The conveyances of Parcel 1 and 2 would be by quitclaim

deed approved by the attorney general. Mineral rights would not be retained by the state, but if any of the properties were developed at a future time, one half of the revenue derived from the mineral development would have to be paid to the state for deposit into the general fund.

Parcel 3: The bill would allow for the sale at fair market value, or below fair market value if used for public purposes, of the Fairlawn Center Campus, which is located adjacent to the Clinton Valley Center, in Pontiac. If sold for fair market value, the bill specifies that the director of the DMB would have to offer the property for sale on the open market for fair market value or by broker contract. Fair market value would be determined by an appraisal prepared by the state tax commission or an independent fee appraiser.

If the property were not sold for fair market value and failed to be sold at a public sale, the director (with the agreement of the state administrative board) could order a reappraisal of the property, withdraw the property from sale, or offer to sell the property for less than fair market sale. If sold for less than fair market value, the property could only be used for public purposes and would revert to the state if used for any other purpose. Fees or conditions of use imposed on the public for use of the properties would have to be the same for resident and nonresident members of the public, though the purchasers of the properties could waive daily fees or fees for the use of specific areas or facilities on the grounds.

The attorney general could bring an action to quiet title to and regain possession of a property if the purchaser disputed the state's right to reentry and failed to deliver the property. The conveyance would be by quitclaim deed approved by the attorney general. Mineral rights would not be retained by the state, but if the property were developed at a future time, one half of the revenue derived from the mineral development would have to be paid to the state for deposit into the general fund.

Parcel 4: The bill would allow for the conveyance of Brown Hall, under the jurisdiction of the Department of Education, either by sale at not less than fair market value or for below market value if used for public

purposes. The “fair market value” would be the price determined by an appraisal prepared by the state tax commission or an independent fee appraiser or the price established by competitive solicitation. The bill specifies that the property descriptions in the bill are approximate and would be subject to adjustment as the state administrative board or attorney general considers necessary by survey or other legal description. If the property were conveyed for less than fair market value, it would have to be used exclusively for a public purpose. If used for any other purpose, the property would revert to the state. In case of a dispute over the state’s right of reentry, the attorney general could bring an action to quiet title to and regain possession of the property.

BACKGROUND INFORMATION:

Clinton Valley Center. Originally known as the Eastern Michigan Asylum, and later as Pontiac State Hospital, the Clinton Valley Center (CVC) opened in 1878. According to information supplied by the Alliance for the Mentally Ill of Michigan (AMI), as the patient numbers swelled from 330 to a peak capacity of approximately 3,100 in 1955, land was added (from 307 acres to 800 acres) and additional wings and detached cottages were built. Food was produced from crops and orchards grown on the site and by raising prize-winning cattle. Between 1935 and 1953, the hospital began to change its focus from primarily being a custodial institution to one with psychiatric programs. Farming and animal husbandry ended in the early 1950s and about half the land was sold at that time. The patient population began to decline in the late 1950s with the advent of new psychiatric medications, and wards and cottages began to be closed. Some of the approximately 60 buildings located on the grounds of CVC were designed by the same architect that designed the Oakland County Courthouse, and have received historical designation.

The effects of a statewide recession in 1980 forced the layoffs of almost 300 employees, and, had it not been for the efforts of various volunteers and organizations, the hospital may have closed in 1982. About 160 acres of the land were sold in the mid-1980s and a shopping center and office buildings were built on the property. Patient populations at CVC continued to decline throughout the 1980s and 1990s as the state

shifted the delivery of mental health services to county mental health services programs, and treatment shifted from in-patient services to outpatient, community-based services.

Plans to close CVC, the Detroit Psychiatric Center, and the Pheasant Ridge Hospital, a children’s facility in Kalamazoo, were announced by the administration in February of 1997. A legislative attempt to restore funding for the three hospitals was subsequently vetoed. A lawsuit to block the closings was filed in Wayne County Circuit Court by AMI and families of patients and employees of the hospitals. The circuit court ruled in favor of AMI, finding that the closures were unconstitutional due to the “constitutional obligation on the part of the state to foster and support public institutions/public hospitals.” The hospitals were closed in the fall of 1997 after an appellate court lifted the lower court’s injunction against the state transferring patients to other facilities, and the property was declared as surplus on October 29, 1997. The Michigan Court of Appeals issued a final ruling in September of 1998 that overturned the circuit court’s decision. On January 11, 1999, AMI filed an Application for Leave to Appeal with the Michigan Supreme Court asking for a review of the appellate court’s decision. In a press release accompanying a summary of the appeal, AMI stated that the court of appeals “ruled incorrectly that the closures do not breach the promise in the State Constitution to provide care to residents with severe mental illness.” The matter is still pending before the Michigan Supreme Court.

Fairlawn Center. The center, adjacent to the Clinton Valley Center, opened in 1968 as a children’s facility. Prior to Fairlawn Center’s opening, many children were housed with adults in state hospitals. The center provided inpatient services to children from the eastern half of the Lower Peninsula (except Wayne County) and all of the Upper Peninsula, with an average stay of four months. In 1993, a new wing was built with funds supplied by both public and private sources; the Foundation for Mentally Ill Children raised more than \$650,000 for the new construction, which increased the bed capacity to 125. The center provided a unique approach to mental health services for children with its emphasis on family involvement and the involvement of volunteers from the community. By late 1994, as

community mental health services programs began to refer fewer and fewer patients to residential treatment programs, Fairlawn's patient population decreased to approximately 25 patients. Despite an attempt by the Michigan Association for Children with Emotional Disorders (MACED) to sue the state and several CMH boards to force the state to provide long-term residential care for children with mental illness or emotional problems, Fairlawn Center was closed in 1996. Reportedly, the property has not yet been declared surplus to the state.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Oakland County has expressed a desire for several years to expand the county complex. A section of about 88 acres of the former Clinton Valley Center (CVC) is adjacent to the county complex and would be ideal for an expansion project. Currently, this property is wooded and contains no buildings. Usually, state property is conveyed for \$1 to public bodies that use the property for public purposes. The bill, however, would require the county to purchase the land for at least fair market value. Therefore, the sale of the land would benefit state taxpayers, as the revenue would go into the general fund. At the same time, the county would acquire suitable land to expand their facilities to serve the residents of the county more efficiently.

For:

The city of Pontiac is in the midst of an unprecedented explosion of population, business, and industry. It is reported that 600 new single-family homes are under construction in the city in order to meet the growing demand for housing. However, land is still needed to build additional homes and businesses to accommodate this new growth. The sale of the Clinton Valley Center property for residential and commercial use would therefore have many benefits for area residents.

Reportedly, one potential plan under discussion is to build an executive golf course and upscale homes on

the property to attract those in the middle- and upper-income brackets. The increase in the property tax base and the resulting commercial enterprises that these consumers could attract would in turn have a ripple effect into the city's economy, such as improved school systems and city services that would benefit all residents. Other possibilities include a mix of residential homes, commercial development, and public recreational areas such as parks. The bill also includes a contingency plan that would allow the property to be conveyed to a public entity for public use in case no suitable plan for private development is offered.

Response:

In light of CVC being the subject of ongoing litigation, the provision to sell the CVC property is premature. Should the Michigan Supreme Court rule in favor of the Alliance for the Mentally Ill of Michigan (AMI), the state would have to continue to provide mental health services at this facility.

Rebuttal:

Reportedly, the state has taken the position that the suit filed by AMI would only require that the state provide appropriate mental health services, not that the services had to be performed at that facility or on that property. Therefore, the outcome of the lawsuit should have little bearing on the CVC property.

Against:

Several of the buildings at CVC date from post-Civil War times and have historic value. In fact, some have already received historic designation. Granted, the main building, though it dates from the mid-1870s, is in poor shape and would be horrendously expensive to renovate or maintain. Further, it is reported that many other old buildings are very dilapidated from years of nonuse and are unsafe. However, some of the buildings could be saved and renovated for residential use or for retail and office use, as described in the Clinton Valley Development Concept section of the City of Pontiac's Plan 2010. The legislation should be amended to require that, at the least, some of these historic buildings be saved and maintained for the enjoyment of future generations.

For:

Brown Hall, which formerly was used for vocational educational programs at the Michigan School for the

Deaf, has stood empty for many years. In effect, it is a nuisance building. A Department of Management and Budget estimate from five years ago put renovation costs in excess of \$4 million. Recently, a nonprofit organization offering services for the hearing impaired has formally expressed an interest in acquiring the building. Selling or conveying the building for such public use purposes would relieve the state from liability and the expense of keeping the building secured against vandals.

For:

Fairlawn Center has stood vacant for over two years. The cost to taxpayers to maintain the CVC property, including Fairlawn Center, has been about \$1.6 million a year, and that covers the bare minimum for heat, grounds care, and security. With money appropriated to demolish the CVC buildings, Public Act 538 of 1998 also appropriated \$1.2 million for fiscal year 1998-1999 for maintenance of Fairlawn Center alone. In addition, the state recently spent over \$1 million to build a new utilities system for Fairlawn Center, as the center drew power and heat from the old CVC power station. Selling the property would give the state an opportunity to recoup taxpayers' dollars spent over the past few years in maintenance costs and would enable state funds to be redirected in the future for other programs rather than being spent on yearly maintenance costs of an empty building. Even conveying the property for less than fair market value to a public entity would relieve the state of liability concerns and further maintenance costs, thus saving taxpayers' dollars.

Against:

Fairlawn Center is in a different category than other state-owned facilities that have been closed and whose buildings stand vacant. Fairlawn Center was an innovative children's mental health hospital that financed a renovation project with both public and private funds, and that integrated volunteers from the community in providing services. Because of the intense involvement of patients' families and community volunteers, the public had a more vested interest and involvement in the center than is common at other state-operated facilities. Yet, it would seem that the public has no input into the fate of Fairlawn Center.

According to mental health advocates in the area, many would like to see Fairlawn Center continue to be used to provide mental health services for adolescents or adults. Reportedly, a nonprofit adolescent mental health provider has expressed an interest for many years to offer adolescent services at the site. On August 14, 1997, the Oakland County Board of Commissioners adopted a resolution urging the state legislature to disallow the Family Independence Agency from using Fairlawn Center as an FIA Adjudicated Youth Facility (youth detention center), and to urge the state to allow the Oakland County Community Mental Health Board to use the facility for "a desperately needed treatment facility for persons with mental illness." In October of 1998, the Oakland County Community Mental Health Services Board adopted a resolution regarding the use of Fairlawn Center by the Oakland County CMH, in collaboration with other relevant public and private agencies, "to improve the access to and components of our system of care for citizens with disabilities and their families."

So, though both the county commissioners and the mental health services board of Oakland County have indicated through the adoption of resolutions that there is strong local support for Fairlawn Center to be used to provide mental health services to an underserved population, rumors still circulate that the FIA is interested in retaining the building, though it is not known for what purpose. There are also rumors that a group is interested in acquiring the facility for use as a charter school, similar to the Woodward Academy's acquisition of the former Lafayette Clinic. Due to the fact that private funds were used to construct a new wing at Fairlawn Center, the public should be allowed to have input as to the eventual use of the facility.

Further, the language pertaining to the sale of Fairlawn Center is ambiguous as to the order of events regarding a sale. According to a representative of the Department of Management and Budget, the language was meant to be neutral so that the director had the option of either selling the property for fair market value or the option to convey the property for public use purposes for less than fair market value. However, the language appears to set up a chronologic order of events, with the property being able to be used for public use purposes only if it does not sell for fair market value at a public sale. If contested, the

language might prove to restrict the director to offering the property for commercial development

first. Perhaps the provision should be amended to clarify that the DMB director has the option of either allowing the center to be used for public purposes or to be sold for commercial development.

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e
7

o
f
Pages

Pag
Analyst: S. Stutzky

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Pag

e
8

o
f
Pages

6