

**SUBSTITUTE FOR
HOUSE BILL NO. 5300**

A bill to amend 1996 PA 522, entitled
"The Michigan biologic products institute transfer act,"
by amending the title and sections 3 and 5 (MCL 333.26333 and
333.26335) and by adding sections 3a and 3b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2 An act TO ESTABLISH THE MICHIGAN BIOLOGIC PRODUCTS INSTITUTE
3 AS AN INDEPENDENT STATE AGENCY WITHIN THE DEPARTMENT OF COMMUNITY
4 HEALTH; to authorize the conveyance of the assets and liabilities
5 of the state related to the operation of the Michigan biologic
6 products institute; to authorize the state administrative board
7 to approve the conveyance and to make determinations that certain
8 conditions upon the conveyance have been met; to permit the
9 acceptance of consideration in exchange for the conveyance; to
10 make certain findings and determinations of the interest of the

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1 state relative to the conveyance; to authorize the state
2 administrative board to approve certain agreements for continued
3 services and products by certain state agencies to transferred
4 facilities or to the state from the transferred facilities; TO
5 ESTABLISH THE MICHIGAN BIOLOGIC PRODUCTS COMMISSION AS A TEMPO-
6 RARY STATE COMMISSION; to authorize the Michigan biologic pro-
7 ducts commission to negotiate and, upon concurrence of the state
8 administrative board, approve certain agreements related to the
9 conveyance of the assets and liabilities of the state associated
10 with the Michigan biologic products institute, certain agreements
11 for the marketing of the assets and liabilities, certain agree-
12 ments for continued services and products, and certain agreements
13 for the retention of rights, interests, and easements in certain
14 conveyed assets; to authorize employees and employee based enti-
15 ties to bid for or make proposals to acquire the assets and
16 liabilities of the state associated with the Michigan biologic
17 products institute; to prescribe the powers and duties of certain
18 public officers and certain state agencies and departments; to
19 grant exclusive jurisdiction over claims related to the convey-
20 ance to the court of claims and to limit the time in which claims
21 related to the conveyance or to the products produced by the
22 Michigan biologic products institute may be brought; to provide
23 for the disposition of the revenue derived from the conveyance;
24 and to make an appropriation.

25 Sec. 3. As used in this act:

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

4 (i) Real property, including all rights to coal, oil, gas,
5 and other materials, and all rights to sand, gravel, clay, and
6 other nonmetallic minerals, found on, within, or under real prop-
7 erty conveyed under this act, except that the agreement for the
8 conveyance of the assets and liabilities of the institute entered
9 into under this act shall specify that the state shall receive
10 not less than 1/2 of the net royalties from the development, if
11 any, of coal, oil, gas, or other minerals on or under the real
12 estate.

13 (ii) Personal property.

14 (iii) Intangible property.

15 (iv) Product inventory, including, but not limited to, manu-
16 factured products that have been released by the federal food and
17 drug administration for public sale and use, manufactured pro-
18 ducts that have not been released by the federal food and drug
19 administration for public sale and use, and products that are in
20 the process of being manufactured and components of those
21 products.

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

23 (c) "Commission" means the Michigan biologic products com-
24 mission established by Executive Order 1995-25, pursuant to sec-
25 tion 4 of article V of the state constitution of 1963, AND BY
26 SECTION 3B.

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1 (d) "Conveyance" means sale, transfer, assignment, or other
2 disposition.

3 (e) "Institute" means the Michigan biologic products insti-
4 tute established by Executive Order 1995-25, pursuant to section
5 4 of article V of the state constitution of 1963, AND BY SECTION
6 3A.

7 (f) "Local health department" means that term as defined in
8 section 1105 of the public health code, ~~being section 333.1105~~
9 ~~of the Michigan Compiled Laws~~ MCL 333.1105.

10 (g) "Pharmaceutical products fund" means the pharmaceutical
11 products fund established under section 9112 of the public health
12 code, ~~being section 333.9112 of the Michigan Compiled Laws~~ MCL
13 333.9112.

14 (h) "Public health code" means ~~Act No. 368 of the Public~~
15 ~~Acts of 1978, being sections 333.1101 to 333.25211 of the~~
16 ~~Michigan Compiled Laws~~ 1978 PA 368, MCL 333.1101 TO 333.25211.

17 (i) "Real property" means all or a portion of the real prop-
18 erty associated with the institute, more particularly described
19 as follows:

20 (i) A parcel of land in the NE 1/4 of section 5, T4N, R2W,
21 Ingham County, Michigan and more particularly described as com-
22 mencing at the northeast corner of said section 5; thence
23 N89°59'49"W 124.94 feet, on the north line of said section 5;
24 thence S00°00'11"W 33.00 feet, to the point of beginning of this
25 description; thence S33°12'59"W 315.33 feet; thence N53°08'14"W
26 101.37 feet; thence S89°11'38"W 47.55 feet; thence S00°42'03"W
27 63.21 feet; thence S89°45'02"W 73.97 feet; thence S00°59'58"W

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1 106.92 feet; thence 132.16 feet, on the arc of a curve to the
2 right with a central angle of $33^{\circ}53'13''$, a radius of 223.46 feet,
3 and a long chord bearing and distance of $S22^{\circ}22'16''W$ 130.25 feet;
4 thence $S59^{\circ}26'51''W$ 14.65 feet; thence $S77^{\circ}08'54''W$ 92.93 feet;
5 thence $S88^{\circ}34'58''W$ 131.49 feet; thence $S01^{\circ}57'43''E$ 41.46 feet;
6 thence $S88^{\circ}02'17''W$ 153.47 feet; thence $S01^{\circ}57'43''E$ 132.00 feet;
7 thence $S88^{\circ}02'17''W$ 351.61 feet; to the easterly right of way line
8 of Logan Street; thence $N00^{\circ}28'13''E$ 716.63 feet, to the southerly
9 right of way line of Sheridan Road; thence $S89^{\circ}59'49''E$ 1155.21
10 feet, on said right of way to the point of beginning, containing
11 12.56 acres, more or less.

12 (ii) A parcel of land in the SE 1/4 of Section 32, T5N, R2W,
13 Clinton County, Michigan and more particularly described as
14 beginning at the S 1/4 corner of said section 32; thence
15 $N00^{\circ}12'30''W$ 2152.16 feet on the N-S 1/4 line of said section 32;
16 thence $S89^{\circ}57'16''E$ 683.94 feet to the westerly Right-of-Way of
17 DeWitt Road at a point 500.00 feet southerly of the E-W 1/4 line
18 of said section 32; thence on the westerly Right-of-Way of DeWitt
19 Road for the next five calls; thence $S04^{\circ}03'50''E$ 112.68 feet;
20 thence 299.44 feet on the arc of a curve to the left with a cen-
21 tral angle of $23^{\circ}26'19''$, a radius of 731.99 feet and long chord
22 bearing and distance of $S15^{\circ}47'00''E$ 297.36 feet; thence
23 $S27^{\circ}30'10''E$ 927.69 feet; thence 356.62 feet on the arc of a curve
24 to the right with a central angle of $27^{\circ}41'37''$, a radius of
25 737.82 feet and a long chord bearing and distance of $S13^{\circ}39'21''E$
26 353.16 feet; thence $S00^{\circ}11'27''W$ 30.40 feet; thence $S88^{\circ}07'13''W$
27 171.96 feet; thence $S17^{\circ}13'15''W$ 128.78 feet; thence $S02^{\circ}36'04''W$

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1 161.34 feet; thence N89°52'39"W 420.93 feet; thence S00°06'07"E
2 267.69 feet to the south line of said section 32, thence
3 N89°59'49"W 632.45 feet on the south line of said section 32 to
4 the N 1/4 corner of section 5, T4N, R2W; thence S89°27'29"W 6.45
5 feet on the south line of said section 32 to the point of begin-
6 ning, containing 46.94 acres, more or less.

7 (j) "State administrative board" means the state administra-
8 tive board created under ~~Act No. 2 of the Public Acts of 1921,~~
9 ~~being sections 17.1 to 17.11 of the Michigan Compiled Laws~~ 1921
10 PA 2, MCL 17.1 TO 17.11.

11 SEC. 3A. (1) EFFECTIVE FEBRUARY 5, 1998, THE MICHIGAN BIO-
12 LOGIC PRODUCTS INSTITUTE, ESTABLISHED BY EXECUTIVE ORDER 1995-25,
13 IS TRANSFERRED TO THE DEPARTMENT OF COMMUNITY HEALTH AS A TYPE I
14 TRANSFER. AS USED IN THIS SUBSECTION, "TYPE I TRANSFER" MEANS
15 THAT TERM AS DEFINED IN SECTION 3 OF THE EXECUTIVE REORGANIZATION
16 ACT OF 1965, 1965 PA 380, MCL 16.103.

17 (2) THE INSTITUTE IS AN INDEPENDENT AND AUTONOMOUS ENTITY.
18 THE INSTITUTE AND THE DIRECTOR OF THE INSTITUTE SHALL EXERCISE
19 THE POWERS AND PERFORM THE DUTIES PRESCRIBED BY THIS ACT INDEPEN-
20 DENTLY OF THE PRINCIPAL EXECUTIVE DEPARTMENTS OF THIS STATE,
21 INCLUDING, BUT NOT LIMITED TO, PERSONNEL, BUDGETING, PROCUREMENT,
22 AND MANAGEMENT-RELATED FUNCTIONS.

23 (3) THE GOVERNOR SHALL APPOINT A DIRECTOR FOR THE INSTITUTE,
24 WHO SHALL BE THE HEAD OF THE INSTITUTE, WITHIN THE MEANING OF THE
25 EXECUTIVE REORGANIZATION ACT OF 1965, 1965 PA 380, MCL 16.101 TO
26 16.608. THE DIRECTOR IS ALSO THE APPOINTING AUTHORITY FOR

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1 PURPOSES OF SECTION 5 OF ARTICLE XI OF THE STATE CONSTITUTION OF
2 1963.

3 (4) THE INSTITUTE HAS THE POWERS, DUTIES, AND RESPONSIBILI-
4 TIES PRESCRIBED IN EXECUTIVE ORDER 1995-25, AND SHALL OPERATE
5 PURSUANT TO AND IN ACCORDANCE WITH EXECUTIVE ORDER 1995-25.

6 SEC. 3B. (1) EFFECTIVE FEBRUARY 5, 1998, THE MICHIGAN BIO-
7 LOGIC PRODUCTS COMMISSION, ESTABLISHED BY EXECUTIVE ORDER
8 1995-25, IS TRANSFERRED TO THE DEPARTMENT OF COMMUNITY HEALTH AS
9 A TYPE I TRANSFER. AS USED IN THIS SUBSECTION, "TYPE I TRANSFER"
10 MEANS THAT TERM AS DEFINED IN SECTION 3 OF THE EXECUTIVE REORGA-
11 NIZATION ACT OF 1965, 1965 PA 380, MCL 16.103.

12 (2) THE COMMISSION CONSISTS OF 3 VOTING MEMBERS APPOINTED BY
13 THE GOVERNOR WHO ARE NOT EMPLOYEES OF THE INSTITUTE AND WHO SHALL
14 SERVE AT THE PLEASURE OF THE GOVERNOR. THE GOVERNOR SHALL DESIG-
15 NATE 1 OF THE APPOINTED MEMBERS TO SERVE AS CHAIR OF THE
16 COMMISSION. THE CHAIR OF THE COMMISSION ALSO SERVES IN THAT
17 CAPACITY AT THE PLEASURE OF THE GOVERNOR.

18 (3) THE COMMISSION HAS THE POWERS, DUTIES, AND RESPONSIBILI-
19 TIES PRESCRIBED IN EXECUTIVE ORDER 1995-25, AND SHALL OPERATE
20 PURSUANT TO AND IN ACCORDANCE WITH EXECUTIVE ORDER 1995-25.

21 (4) THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT COM-
22 PENSATION, BUT SHALL BE REIMBURSED FOR NECESSARY TRAVEL AND OTHER
23 EXPENSES PURSUANT TO THE STANDARD TRAVEL REGULATIONS OF THE
24 DEPARTMENT OF MANAGEMENT AND BUDGET.

25 (5) THE COMMISSION MAY PROMULGATE BYLAWS GOVERNING THE
26 ORGANIZATION AND PROCEDURES OF THE COMMISSION. A MAJORITY OF THE
27 MEMBERS SERVING CONSTITUTE A QUORUM FOR THE TRANSACTION OF

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1 BUSINESS, NOTWITHSTANDING THE EXISTENCE OF 1 OR MORE VACANCIES ON
2 THE COMMISSION. THE COMMISSION SHALL APPROVE A FINAL ACTION OF
3 THE COMMISSION BY A MAJORITY VOTE OF THE MEMBERS. A MEMBER OF
4 THE COMMISSION MUST BE PRESENT AT A MEETING OF THE COMMISSION IN
5 ORDER TO VOTE, EITHER IN PERSON OR BY AMPLIFIED TELEPHONE
6 EQUIPMENT.

7 (6) THE COMMISSION SHALL MEET AT THE CALL OF THE CHAIR AND
8 AS OTHERWISE PROVIDED IN THE COMMISSION'S BYLAWS. THE COMMISSION
9 MAY MEET AT ANY LOCATION WITHIN THE STATE. A MEETING OF THE COM-
10 MISSION IS SUBJECT TO THE OPEN MEETINGS ACT, 1976 PA 267, MCL
11 15.261 TO 15.275. THE COMMISSION MAY MAKE INQUIRIES, CONDUCT
12 STUDIES AND INVESTIGATIONS, HOLD HEARINGS, AND RECEIVE COMMENTS
13 FROM THE PUBLIC.

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 1 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 conveyance, the state
23 administrative board shall determine that the consideration to be
24 received under the conveyance is fair and adequate so that the
25 credit of the state does not need to be granted to a public or
26 private person, association, or corporation.

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1 (b) The terms of the conveyance must require the transferee
2 to provide the state for use in Michigan with preferential access
3 to biologic products, including, but not limited to, the first
4 option to access vaccines and biologic products, from among those
5 products and product components made by the institute on the
6 effective date of the agreement and licensed by the federal food
7 and drug administration or subsequently made by the transferee,
8 as determined by the state, and for the period and subject to
9 conditions and prices contained in the agreement.

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

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

24 (3) The state administrative board may, in its sole discre-
25 tion, evaluate the terms of any recommendation made by the com-
26 mission under subsection (1) and approve or reject any

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1 recommendations of the commission made under this act without
2 assigning reasons for the evaluation, approval, or rejection.

3 (4) In addition to the conditions upon the execution of a
4 conveyance specified in subsection (1) [
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7], the state administrative board
8 shall receive, before the effective date of the conveyance, an
9 independent opinion that the consideration for the assets or
10 liabilities, or both, of the institute is fair and adequate.

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

15 (6) The auditor general shall review the entire process used
16 by the commission under this act to convey the assets and liabil-
17 ities of the institute and shall report the results of its review
18 to the legislature before the state administrative board approves
19 the recommendations made by the commission under subsection (1).

20 (7) PRIOR TO THE TRANSFER, THE AUDITOR GENERAL SHALL CONDUCT
21 A PERFORMANCE AUDIT DESIGNED TO DETERMINE WHETHER STAFFING LEVELS
22 AT THE INSTITUTE ARE APPROPRIATE.

23 (8) [THE GOVERNING BOARDS OF THE HOUSE AND SENATE FISCAL
24 AGENCIES SHALL EACH APPOINT A PERSON TO MONITOR THE PROGRESS AND
25 REVIEW THE RESULTS OF THE INDEPENDENT OPINION REQUIRED UNDER
26 SECTION 5(4).

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Enacting section 1. This amendatory act does not take

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effect unless House Bill No. 4425 of the 89th Legislature is

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enacted into law.