

Act No. 8
Public Acts of 1998
Approved by the Governor
February 17, 1998
Filed with the Secretary of State
February 17, 1998
EFFECTIVE DATE: February 17, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Rep. Brewer

Reps. Anthony, Bodem, Ciaramitaro, DeHart, Emerson, Fitzgerald, Frank, Freeman, Gagliardi, Gire, Goschka, Gubow, Hanley, Kelly, Kukuk, Martinez, Price, Prusi, Schermesser, Scott, Tesanovich, Vaughn and Wojno named co-sponsors

ENROLLED HOUSE BILL No. 5300

AN ACT to amend 1996 PA 522, entitled "An act 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," 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:

TITLE

An act to establish the Michigan biologic products institute as an independent, autonomous state agency within the department of community health; 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 establish the Michigan biologic products commission as a temporary state commission; 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.

Sec. 3. As used in this act:

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

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

(ii) Personal property.

(iii) Intangible property.

(iv) Product inventory, including, but not limited to, manufactured products that have been released by the federal food and drug administration for public sale and use, manufactured products that have not been released by the federal food and drug administration for public sale and use, and products that are in the process of being manufactured and components of those products.

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

(c) "Commission" means the Michigan biologic products commission established by Executive Order 1995-25, pursuant to section 4 of article V of the state constitution of 1963, and by section 3b.

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

(e) "Institute" means the Michigan biologic products institute established by Executive Order 1995-25, pursuant to section 4 of article V of the state constitution of 1963, and by section 3a.

(f) "Local health department" means that term as defined in section 1105 of the public health code, MCL 333.1105.

(g) "Pharmaceutical products fund" means the pharmaceutical products fund established under section 9112 of the public health code, MCL 333.9112.

(h) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

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

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

(ii) A parcel of land in the SE 1/4 of Section 32, T5N, R2W, Clinton County, Michigan and more particularly described as beginning at the S 1/4 corner of said section 32; thence N00°12'30"W 2152.16 feet on the N-S 1/4 line of said section 32; thence S89°57'16"E 683.94 feet to the westerly Right-of-Way of DeWitt Road at a point 500.00 feet southerly of the E-W 1/4 line of said section 32; thence on the westerly Right-of-Way of DeWitt Road for the next five calls; thence S04°03'50"E 112.68 feet; thence 299.44 feet on the arc of a curve to the left with a central angle of 23°26'19", a radius of 731.99 feet and long chord bearing and distance of S15°47'00"E 297.36 feet; thence S27°30'10"E 927.69 feet; thence 356.62 feet on the arc of a curve to the right with a central angle of 27°41'37", a radius of 737.82 feet and a long chord bearing and distance of S13°39'21"E 353.16 feet; thence S00°11'27"W 30.40 feet; thence S88°07'13"W 171.96 feet; thence S17°13'15"W 128.78 feet; thence S02°36'04"W 161.34 feet; thence N89°52'39"W 420.93 feet; thence S00°06'07"E 267.69 feet to the south line of said section 32, thence N89°59'49"W 632.45 feet on the south line of said section 32 to the N 1/4 corner of section 5, T4N, R2W; thence S89°27'29"W 6.45 feet on the south line of said section 32 to the point of beginning, containing 46.94 acres, more or less.

(j) "State administrative board" means the state administrative board created under 1921 PA 2, MCL 17.1 to 17.3.

Sec. 3a. (1) Effective February 17, 1998, the Michigan biologic products institute, established by Executive Order 1995-25, is transferred to the Michigan department of community health as a type I transfer. As used in this subsection, "type I transfer" means that term as defined in section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103.

(2) The institute is an independent and autonomous entity. The institute and the director of the institute shall exercise the powers and perform the duties prescribed by this act independently of the principal executive departments of this state, including, but not limited to, personnel, budgeting, procurement, and management-related functions.

(3) The governor shall appoint a director for the institute, who shall be the head of the institute, within the meaning of the executive organization act of 1965, 1965 PA 380, MCL 16.101 to 16.608. The director is also the appointing authority for purposes of section 5 of article XI of the state constitution of 1963.

(4) The institute has the powers, duties, and responsibilities prescribed in Executive Order 1995-25, and shall operate pursuant to and in accordance with Executive Order 1995-25.

Sec. 3b. (1) Effective February 17, 1998, the Michigan biologic products commission, established by Executive Order 1995-25, is transferred to the Michigan department of community health as a type I transfer. As used in this subsection, "type I transfer" means that term as defined in section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103.

(2) The commission consists of 3 voting members appointed by the governor who are not employees of the institute and who shall serve at the pleasure of the governor. The governor shall designate 1 of the appointed members to serve as chair of the commission. The chair of the commission also serves in that capacity at the pleasure of the governor.

(3) The commission has the powers, duties, and responsibilities prescribed in Executive Order 1995-25, and shall operate pursuant to and in accordance with Executive Order 1995-25.

(4) The members of the commission shall serve without compensation, but shall be reimbursed for necessary travel and other expenses pursuant to the standard travel regulations of the department of management and budget.

(5) The commission may promulgate bylaws governing the organization and procedures of the commission. A majority of the members serving constitute a quorum for the transaction of business, notwithstanding the existence of 1 or more vacancies on the commission. The commission shall approve a final action of the commission by a majority vote of the members. A member of the commission must be present at a meeting of the commission in order to vote, either in person or by amplified telephone equipment.

(6) The commission shall meet at the call of the chair and as otherwise provided in the commission's bylaws. The commission may meet at any location within the state. A meeting of the commission is subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The commission may make inquiries, conduct studies and investigations, hold hearings, and receive comments from the public.

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

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

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

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

(2) If more than 1 transferee is recommended by the commission to the state administrative board under subsection (1), the determinations and requirements prescribed by subsection (1)(b) and (c) apply to that transferee to which those assets directly involved in the manufacture of vaccines and blood derivative products are proposed to be transferred.

(3) The state administrative board may, in its sole discretion, evaluate the terms of any recommendation made by the commission under subsection (1) and approve or reject any recommendations of the commission made under this act without assigning reasons for the evaluation, approval, or rejection.

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

(5) The state administrative board may rely upon the opinions or reports of legal counsel, independent appraisers, accountants, financial advisors, and other experts when performing its duties and exercising its powers under this act.

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

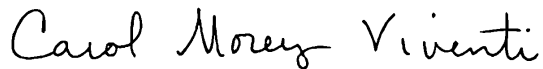
(7) The governing boards of the house and senate fiscal agencies shall each appoint a person to monitor the progress and review the results of the independent opinion required under subsection (4).

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.