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BILL ANALYSIS



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House Bill 5637 (Substitute H-1 as reported without amendment)  
Sponsor: Representative Jacob Hoogendyk  
House Committee: Health Policy  
Senate Committee: Health Policy

Date Completed: 11-9-04

### **RATIONALE**

Low-income women who become pregnant, especially unexpectedly, may have difficulty obtaining adequate prenatal care, which can involve the use of ultrasound technology. Ultrasound is a diagnostic tool that employs high-frequency sound waves to create images of a fetus on a video monitor. It helps obstetricians monitor fetal heartbeat, movement, and growth, and detect the presence of certain abnormalities and birth defects. Facilities that provide prenatal care to low-income women often are nonprofit agencies funded by private donations, and may not be able to afford the machines to perform ultrasounds. It has been suggested that a State grant program should be established to help these facilities purchase ultrasound equipment.

### **CONTENT**

**The bill would amend the Public Health Code to do the following:**

- **Create the "Ultrasound Equipment Fund".**
- **Require the Department of Community Health (DCH) to establish and administer a program to provide grants for the purchase of ultrasound equipment to qualified entities that provided free or reduced cost family planning or reproductive health services to low-income women.**
- **Require a 50% cost match or a repayment guarantee for a grant.**

The bill would create the Ultrasound Equipment Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into

the Fund. The Treasurer would have to direct the investment of the Fund, and credit to it interest and earnings from investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The DCH would have to use the Fund money to make grants to qualified entities that applied for a grant and had fewer than two ultrasound machines. Under the bill, "qualified entity" would mean a local agency, organization, or corporation, or a subdivision, contractee, subcontractee, or grant recipient of a local agency, organization, or corporation, that had been reviewed and determined by the DCH to satisfy all of the conditions described below and to be technically and logistically capable of providing the quality and quantity of services required within a cost range the DCH considered appropriate.

In order for the DCH to make a grant, the entity would have to provide family planning or reproductive health services to low-income women at no cost or at a reduced cost. The entity also would have to agree to do all of the following:

- Have at least one ultrasound monitor that was fully accessible to the pregnant woman to view during the performance of her ultrasound.
- Inform each pregnant woman upon whom the equipment was used that she had the right to view the image.
- If the ultrasound equipment were capable, inform the pregnant woman that she had the right to record the image for her own records if she provided the entity

- with the videocassette, film, or other medium on which images could be recorded or otherwise stored.
- Certify in writing that the woman was offered an opportunity to view the image, obtain her written acceptance or rejection to view the image, and maintain a copy of each in the woman's medical file.
- Have a trained medical professional or a qualified medical director on staff to perform the ultrasound.

The entity also would have to agree not to use the equipment to assist in the performance of an elective abortion. (The bill would define "elective abortion" as the performance of a procedure involving the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Elective abortion would not include the use or prescription of a drug or device intended as a contraceptive; or the intentional use of an instrument, drug, or other substance or device by a physician to terminate a woman's pregnancy if her physical condition, in the physician's reasonable medical judgment, necessitated the termination of the woman's pregnancy to avert her death.)

An application for a grant would have to be made on a form or in a format prescribed by the DCH. The DCH could require the applicant to provide information reasonably necessary to allow the Department to make a determination. The DCH would have to give priority to applicants that did not have an ultrasound machine or that had only one machine that was outdated based on industry standards. The DCH Director would have final approval of grants. The grants could be approved only if the money were available in the Fund. A cash match of at least 50% of the grant or other repayment guarantee with a dedicated funding source would be required before a grant could be awarded.

The DCH would have to prepare an annual report summarizing the grants made, contractual commitments made and achieved, and a preliminary evaluation of the grant program's effectiveness. The DCH would have to provide a copy of the report to the chairpersons of the House and Senate Appropriations Subcommittees for the DCH.

The DCH could promulgate rules to implement the grant program.

Proposed MCL 333.9141

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Obstetricians use ultrasound technology to determine gestational age, fetal viability, and the location, size, and number of fetuses; and to monitor fetal movement, breathing, and heartbeat. The presence of some fetal abnormalities and birth defects also can be determined through an ultrasound, allowing the mother to get appropriate care in a timely manner. Furthermore, the opportunity for a woman actually to see the fetus can help impress upon her the importance of continuing to receive good prenatal care and making healthy choices regarding nutrition and behavior during the pregnancy. For all of these reasons, ultrasound technology helps to improve the health of the mother and the child at birth, and reduce infant mortality.

Some agencies that provide prenatal care to low-income women are nonprofit organizations funded by private donations. These agencies have difficulty obtaining the equipment and qualified volunteers necessary to provide critical services to people in their communities. The bill would provide a funding source for these agencies to purchase equipment to perform ultrasounds, a critical diagnostic tool.

#### **Opposing Argument**

The bill would ignore the larger problem that low-income pregnant women face: the lack of access to comprehensive prenatal care. In a Child Trends/KIDS COUNT special report entitled, "The Right Start for America's Newborns", in 2001, Michigan was tied for 27<sup>th</sup> place, with Louisiana and Virginia, for the percentage of births to mothers who received late or no prenatal care (3.6%). According to Senate Health Policy Committee testimony, 27% of children born in Michigan have had less than adequate prenatal care. Reportedly, in studies identifying deficits in prenatal care, a need for ultrasound equipment has not been cited. Rather than focusing on any

particular piece of equipment, the State should direct its efforts toward increasing women's overall access to prenatal care and reproductive health services.

**Response:** While it is true that the bill would not address the more complex issue of general access to prenatal care, it would help struggling local agencies overcome a single, yet significant barrier to providing care to low-income, pregnant women.

### **Opposing Argument**

Over the last few years, businesses that use advanced ultrasound technology to produce high-resolution, three-dimensional pictures, and even videos, of fetuses have opened in strip malls and shopping centers. Some pregnant couples excited by the prospect of seeing their unborn baby's anatomical features with such clarity, and sharing their prenatal experience with friends and family, have undergone the procedure and purchased packages of these "keepsake" portraits and videos, unaware of the risks involved.

The U.S. Food and Drug Administration (FDA) regulates ultrasound devices and sets the standards for the level of energy that may be used for different purposes. According to the FDA, there is no definitive evidence that ultrasound can cause harm to fetuses. Ultrasound, however, is a form of energy, and the long-term effects of repeated exposure to it are unknown. Thus, the Administration says the procedure should be used only for medical purposes. Ultrasounds in these "fetal portrait studios", as some have called them, are not always performed by properly trained personnel or under a doctor's supervision. Some studios do not even have a relationship with a physician. Obstetricians use very low levels of ultrasound to perform the procedure; in portrait studios, however, the machines often are used at higher levels and for longer periods of time than the FDA says is proper or safe.

Furthermore, businesses that do not make it clear that their services are only for entertainment purposes can give their customers the false impression that the ultrasound will identify birth defects or complications. If an abnormality *is* detected in this type of setting, commercial ultrasound facilities might not be equipped to provide counseling to the parents. In light of the potential for misuse of this

technology, the State should not facilitate the purchase of ultrasound equipment.

**Response:** In 2002, the FDA declared that ultrasound keepsake pictures and videos constitute an unapproved use of the equipment, and that a person may not perform an ultrasound on another person without a prescription. The FDA already has the authority to take enforcement action against any person who does not use ultrasound equipment in accordance with regulations.

The bill specifies that an agency or organization would not qualify for the grant program unless it provided family planning or reproductive health care services to low-income women at low or no cost. The entities that would benefit from the grant program typically would be nonprofit agencies motivated by a desire to increase access to prenatal care for women who cannot afford it, not the opportunity to make money. Furthermore, the bill would require a qualified entity to have a trained medical professional or qualified medical director on staff to perform the ultrasound, ensuring that only medically indicated ultrasounds were performed and that they were performed properly.

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

The Fund would include revenue from various sources, including Federal money, private donations, State restricted funds, and State General Fund/General Purpose revenue. The fiscal impact on the State would depend on how much State Restricted or State General Fund/General Purpose revenue was appropriated to the Fund. Such a decision would be made in developing the Department of Community Health budget each year, so the fiscal impact is indeterminate.

There would be minor costs related to the promulgation of rules and the annual report.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.