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BILL ANALYSIS

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Senate Bill 1114 (Substitute S-1)
Sponsor: Senator Tom Casperson
Committee: Michigan Competitiveness

Date Completed: 9-25-18

**CONTENT**

**The bill would amend the Municipal Health Facilities Corporations Act to do the following:**

-- **Allow a board of trustees or a subsidiary board to enter into and carry out an agreement for the sale or transfer of the ownership of a corporation or subsidiary corporation, or the sale or transfer of ownership or operation of some or all of the health care facilities and related assets or health services, to a business organization.**
-- **Allow the board of trustees or subsidiary board, in establishing the terms of a sale or transfer, to take into account the ability or willingness of the business organization to provide certain services or its assumption of certain liabilities and risks, in addition to any monetary consideration.**
-- **Require a board of trustees or a subsidiary board that sells or transfers a corporation or health facility to require, for at least 30 years, that the facilities would be open to all regardless of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment.**
-- **Require the approval of the governing body of the local unit of government for the sale or transfer of ownership of a corporation or subsidiary corporation.**
-- **Require the approval of the governing body of the local unit of government for the sale or transfer of ownership of the operation of health care facilities or health services if either of two conditions existed.**
-- **Specify that a prohibition against a local governmental unit, corporation, or subsidiary corporation entering into certain arrangements with a contractor or transferee under which it agrees or can reasonably be expected to continue the operation of the affected health care facility unless certain conditions apply would apply to arrangements authorized under proposed Section 306a.**

The bill would take effect 90 days after its enactment.

Powers of Health Facilities Corporation

The Act specifies that each corporation and subsidiary corporation governed under the Act possesses all of the powers necessary to carry out the purposes of its incorporation. The Act also grants a board of trustees and subsidiary board the power, among other things, to dispose of its real and personal property by sale, lease, sublease, installment sale agreement, land contract, or other lawful means. Under the bill, this would be subject to Section 306s and 306a.

(Section 306 allows a board of trustees or a subsidiary board to enter into and carry out agreements for the sale or transfer of the ownership of a corporation or subsidiary corporation, or the sale or transfer of ownership or operation of some or all of its health care facilities and related assets or health services, to a nonprofit health care organization.)

The bill also would authorize a board of trustees or subsidiary board to file a petition under the appropriate chapter of, and exercise powers pursuant to, Federal bankruptcy law.

Agreement to Sell of Transfer Corporation or Facilities

The bill would add Section 306a to allow, subject to applicable licensing and other regulatory requirements, and subject to the requirements described below, a board of trustees or a subsidiary board to enter into and carry out agreements for the sale or transfer of the ownership of a corporation or a subsidiary corporation, or the sale or transfer of ownership or operation of some or all of the corporation's health care facilities and related assets or health services, to a business organization by sale, installment sales agreement, land contract, lease, lease with an option to purchase, sublease, contract, option, or by any other means. ("Business organization" would mean any of the following: a domestic business corporation or foreign business corporation as defined under the Nonprofit Corporation Act, a domestic or foreign limited liability company, a partnership, or any other form of business entity.)

Other Considerations; Forms of Payment

In establishing the terms of a sale or transfer, the board of trustees or subsidiary board could take into account, in addition to the monetary consideration for the sale or transfer, if any, one or more of the following:

-- The ability and willingness of the business organization to continue to provide health services to residents of the local governmental unit.
-- The business organization's assumption of liabilities, obligations, and risks associated with ownership or operation of the corporation or health care facilities and health services sold or transferred, including those associated with outstanding bonds, notes and obligations, pension, retirement, and other benefits for employees and employees and conditions attached to public or private grants.
-- The willingness and ability of the business organization to provide services to those unable to pay fully for their care.
-- The elimination or reduction in support required for the corporation or health care facilities or health services from tax revenue or other public sources.
-- The ability and willingness of the business organization to expand or improve the corporation or health care facilities or health services being sold or transferred.
-- Any other factors bearing on the health and welfare of the residents of the local governmental unit that the board of trustees or subsidiary board considered appropriate.

The board of trustees or subsidiary board could accept secured or unsecured notes, bonds, or obligations given by or on behalf of a business organization or any other forms of payment it considered appropriate in full or partial satisfaction of any monetary consideration provided under an agreement for a sale or transfer.

Nondiscrimination for Services or Employment

A board that sells or transfers a corporation, subsidiary corporation, or health facilities would have to require, for a term of at least 30 years, that use of the facilities owned by the sold or transferred corporation or health care facilities would have to be open to all regardless of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment, and that the business organization acquiring those facilities or the corporation would have to provide an equal opportunity for employment, without discrimination as to race, religion, color, national origin, sex, age, disability, marital status, or sexual preference.

Prior Approval Required

Any transfer made by a subsidiary board in reliance on the bill's provisions would have to be made only with the prior approval of the board of trustees of its parent corporation.

A sale or transfer of ownership of a corporation or subsidiary corporation would have to be made only with the prior approval of the county board of commissioners, city council, or village council. A sale or transfer of ownership or operation of health care facilities or health services by a corporation or a subsidiary corporation could be made only with the prior approval of the county board of commissioners, city council, or village council, if either of the following applied:

-- The facilities or services to be transferred provided more than 10% of the gross revenue of the corporation or subsidiary corporation making the transfer, determined in accordance with generally accepted accounting principles, in either of the corporation's two full fiscal years completed immediately preceding the date of the transfer.
-- A majority of the acquiring business organization's governing body was composed of individuals who were also serving as trustees of the corporation making the transfer.

Notwithstanding any other provisions, no sale or transfer could be made in such a way as to impair the obligation of the corporation or the subsidiary corporation with respect to any outstanding corporation obligation, bond, note, or contract.

Retention of Employees

A local governmental unit, corporation, or subsidiary corporation may not enter into a contract, agreement, or other arrangement authorized in Section 303(h) (e.g., agreements with direct providers of health care to provide health services to patients), 304(d) (disposition of real or personal property), 304(e) (purchase or acquire administrative, management, and other services from a local governmental unit), 304(l) (transfer real or personal property to subsidiary or parent corporation), 305(b) (allow a local governmental unit to transfer or make available health care facilities and other property to a corporation), 305(i) (allows local unit to sell to a corporation established by the local unit administrative, management, or other services), or Section 306 with a contractor or transferee under which the contractor or transferee agrees or can reasonably be expected to continue the operation of the affected health care facility for the purpose of providing health services unless the local governmental unit, corporation, or subsidiary corporation agrees to retain the employees of the affected facility and continue all collective bargaining agreements covering such employees or unless the contractor or transferee agree to certain conditions.

Under the bill, the above also would apply to contracts, leases, agreements, transfers, or other arrangements authorized under Section 306a. Also, the contract, agreement, or arrangement would be prohibited unless the local governmental unit, corporation, or subsidiary corporation agreed to retain the employees of the affected health care facility and to continue all collective bargaining agreements covering *those employees existing on the date of the closing of the contract, lease, agreement, transfer, or other agreement*, or unless the transferee agreed to the listed conditions.

MCL 333.1103 et al. Legislative Analyst: Jeff Mann

## FISCAL IMPACT

The bill would have no fiscal impact on the State and could have a positive fiscal impact on certain local governments. The sale or transfer of ownership of a public hospital owned by a city, village, county, or other local entity to a business organization would lead to local savings if the local government were subsidizing the hospital's operation. The transfer or sale also would be a one-time positive fiscal impact for the local unit if there were monetary consideration for the transfer.

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