

Act No. 522
Public Acts of 1996
Approved by the Governor
January 12, 1997
Filed with the Secretary of State
January 13, 1997

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Gilmer, Johnson and Emerson

ENROLLED HOUSE BILL No. 6192

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.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as "the Michigan biologic products institute transfer act".

Sec. 2. The legislature finds and declares all of the following:

(a) That increasing regulatory costs, the need to replace manufacturing facilities, the need to develop and the cost of developing new biologic products, the changing pediatric vaccine market, and the need to serve other markets outside the borders of this state have adversely affected the ability of the state to sustain a viable, self-supporting operation for the manufacture and distribution of vaccines and blood derivative products.

(b) That allowing the Michigan biologic products institute to be conveyed to a private enterprise would assist the institute to become self-sustaining, avoid the need for future state general fund subsidies, retain the employment of many employees of the institute, and assure the state's access to biologic products to protect Michigan's citizens from infectious disease.

(c) That the conveyance of the assets associated with the institute will not impair the public health mission of the department of community health and, if the institute is not conveyed to a private enterprise, the operations of the institute could be discontinued. If the operations of the institute are discontinued, the legislature recognizes the need for the disposal of the facilities and the expense to the state of costs related to employee separation from the institute

and of costs related to disposal of the assets associated with the institute, both of which the legislature desires to offset by authorizing the conveyance of the assets associated with the institute to a private enterprise.

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.

(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.

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

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

(h) "Public health code" means Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws.

(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 Act No. 2 of the Public Acts of 1921, being sections 17.1 to 17.11 of the Michigan Compiled Laws.

Sec. 4. (1) Subject to the requirements of this act, including the approval of the state administrative board, the commission may perform 1 or more of the following acts relative to the conveyance of assets under this act:

- (a) Determine the assets that are subject to the proposed conveyance.
- (b) Determine the liabilities of the institute, if any, that a proposed transferee would be required to assume.
- (c) Negotiate and approve agreements on behalf 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. An agreement negotiated and approved under this subdivision may include any term determined by the commission to be necessary or convenient for the conveyance of the assets, including, but not limited to, 1 or more of the following:
 - (i) The retention of rights, interests, and easements in or in the favor of the state to certain assets.
 - (ii) An agreement on behalf of the state to grant rights for the future purchase of assets retained by the state.
 - (iii) An agreement on behalf of the state to buy or sell steam and other utility services from assets retained by the state or conveyed by the state to a transferee.
 - (iv) A joint production agreement on behalf of the state related to steam and other utility services from assets conveyed by the state to a transferee.
 - (v) Agreements on behalf of the state for the provision of service or products by 1 or more state agencies to a transferee and agreements for the provision of service or products by a transferee to 1 or more state agencies.
 - (vi) Option or similar agreements on behalf of and in favor of the state related to the repurchase of all or a portion of the conveyed assets upon the occurrence of events specified in the option or similar agreement.
 - (vii) Deeds and other instruments of conveyance associated with real property.
- (d) Retain a selling agent to assist the commission in marketing the assets and the liabilities of the institute.
- (e) Solicit prospective purchasers or other transferees for the assets using the method or methods considered most appropriate by the commission.
- (f) Recommend to the state administrative board the terms of 1 or more proposed agreements with 1 or more proposed transferees 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.
- (g) Upon approval of the state administrative board, authorize the chair or his or her designee to execute agreements, deeds and other instruments of conveyance, bills of sale, and closing documents necessary to complete the conveyance of all or a portion of the assets.
- (h) Exercise any other power necessary or convenient to effect or complete the transactions permitted under this act, including, but not limited to, all actions necessary to transfer permits and licenses related to the operation of the institute.

(2) The commission, for and on behalf of the state, without giving any reasons and without any liability therefor, at any time and in any respect, may amend or terminate any activities with respect to the conveyance of the assets, commence and terminate discussion with any or all persons seeking to acquire the assets, reject any or all proposals to acquire the assets, and negotiate and consummate the conveyance of the assets with any person. This subsection does not restrict the right of the commission to enter into a binding purchase agreement upon approval of the state administrative board pursuant to section 5.

(3) The commission shall identify in an agreement for the conveyance of the assets the consideration to be received in exchange for the conveyance of the assets. In addition to the consideration recognized by the legislature in section 2, the commission may accept as part of the conveyance any other valuable consideration.

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).

Sec. 6. (1) The monetary consideration received under this act for the conveyance of the assets shall be deposited in the pharmaceutical products fund and, except as otherwise provided in this section, shall be used solely for the purchase of vaccines and other biologic products necessary to promote and protect the public health.

(2) The money in the pharmaceutical products fund not needed to fund the appropriations made by Act No. 364 of the Public Acts of 1996 for the 1996-97 state fiscal year is appropriated for the following purposes and in the following order of priority:

(a) Payment of fees associated with the services provided by a selling agent in marketing the assets, if such services are retained and used by the commission.

(b) For payment of accrued sick and annual leave time to employees of the institute upon separation of employment from the state if current fiscal year appropriations available for that purpose are insufficient.

(c) For reimbursement of the state for payouts for accrued sick and annual leave time from current fiscal year appropriations available for that purpose to employees of the institute upon separation of employment from the state.

(d) To reimburse the state employees' retirement system for the actuarial cost of providing an optional early-out program for employees of the institute whose combined age and service credit equal 70 or greater, regardless of age, on the date of separation of employment from the state.

(e) Separation costs including, but not limited to, expenses incurred in moving non-institute employee work stations and other equipment in to other state office locations and converting the facilities of the institute to private operations.

(f) To pay other costs related to the negotiation and closing of the agreement for the conveyance of the assets, including title insurance and any opinions or reports required by the state administrative board, and the fees of attorneys and consultants used to develop and complete the conveyance.

(3) There is appropriated an additional \$2,000,000.00 for the institute for the fiscal year ending September 30, 1997 for the construction of phase 1-B of the renovations to building 16 for regulatory compliance purposes. Of the \$2,000,000.00, \$630,000.00 is appropriated from other federal revenues and \$1,370,000.00 is appropriated from biologic product sales and other revenue.

(4) The amounts that can be expended for the purposes prescribed in subsection (2)(a), (e), and (f) shall not exceed \$2,500,000.00. The amounts that can be expended for the purposes prescribed in subsection (2)(b), (c), and (d) shall not exceed \$2,500,000.00.

(5) All unexpended money of the pharmaceutical products fund shall be retained in the pharmaceutical products fund at the end of the fiscal year in which the conveyance of the assets is completed. After the conveyance is completed, the community public health agency within the department of community health shall administer the pharmaceutical products fund.

Sec. 7. (1) An employee of the institute or a group composed in whole or in part of employees of the institute may bid on or make a proposal to acquire the assets and enter into 1 or more agreements related to the conveyance of all or a portion of the assets to the employee or group.

(2) When acting with the knowledge or upon the direction of the commission or in entering into an agreement to accept employment with a potential acquirer of the assets, an employee of the institute shall not be considered to have violated Act No. 196 of the Public Acts of 1973, being sections 15.341 to 15.348 of the Michigan Compiled Laws, if the employee provided written notice to the commission of the proposed employment agreement and the terms of that agreement before its execution.

Sec. 8. Except for taxes otherwise imposed by the state or a political subdivision of the state, the conveyance of assets permitted under this act is free and clear of any liens, claims, or interests of the state or of a person claiming through or under the state.

Sec. 9. (1) Except for the pharmaceutical products fund any assets that have not been conveyed on or before the expiration of the life of the commission shall be transferred to the department of management and budget or any other state executive department, as the state administrative board may direct.

(2) Not less than 90 days after the conveyance of assets and liabilities is completed under this act, the state administrative board shall make a report in writing to the legislature of the terms of the conveyance.

Sec. 10. (1) The court of claims has exclusive jurisdiction over a claim asserted against the state and arising out of or related to this act.

(2) The validity of the proceedings of, or the determinations made by, the state administrative board or the commission under this act are conclusive if not challenged by filing suit with the court of claims within 60 days after the action that is the subject of the suit is taken.

(3) A person shall not bring or maintain an action related to a product manufactured by the institute or to recover damages for injuries to persons unless the action is commenced within 6 months after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims. A claim subject to this subsection accrues at the time the plaintiff or someone through whom the plaintiff claims discovered or should have discovered through reasonable diligence the existence of the claim or the injury that is the basis for the claim.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.