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BILL ANALYSIS



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Senate Bills 1097 through 1100 (as enrolled)
Sponsor: Senator Peter MacGregor (S.B. 1097)
Senator Dave Hildenbrand (S.B. 1098 & 1100)
Senator Jim Stamas (S.B. 1099)
Senate Committee: Veterans, Military Affairs and Homeland Security
House Committee: Appropriations

Date Completed: 12-15-16

CONTENT

Senate Bill 1100 would enact the "Michigan Veterans' Facility Authority Act" to create the Authority within the Department of Veterans and Military Affairs (DMVA) and do the following:

- Permit the Authority to develop or operate veterans' facilities; and specify other powers and duties of the Authority.
- Require the Authority to exercise its duties through a board of directors, and provide for the composition and operation of the board.
- Provide that the DMVA Director would serve as chairperson of the board until one year after the second facility operated by the Authority was open and housing veterans.
- Specify that the DMVA Director then would serve as a nonvoting board member; the board would have to elect a new chairperson; and a new member, who was a veteran, would have to be appointed by the Governor.
- Require the Authority to give hiring preference to employees currently employed by the Michigan Veterans' Facility under Public Act 152 of 1885.
- Require the Authority to consider nationally recognized models and guidelines for the delivery of health care and follow Civil Service Commission rules and regulations, when determining the operation and staffing needs of a veterans' facility.
- Exempt the Authority's property and its income and operations from State and local taxation.
- Allow the Authority to issue bonds in order to provide funds for achieving its authorized purposes.
- Require the Authority to give notice to the Senate Majority Leader and the Speaker of the House of its intent to issue bonds, including the estimated principal amount and authorized purpose of issuing the bonds.
- Cap the amount of bonds the Authority could issue at \$150.0 million.
- Prohibit the Authority from issuing bonds for the purpose of paying operating costs or other recurring costs.
- Prohibit the Authority from issuing bonds for qualified residential rental projects, qualified mortgage bonds, or mortgage credit certificates, as those terms are defined in the Internal Revenue Code.

- Specify that an Authority board member, officer, appointee, or employee would not be subject to personal liability when acting in good faith within the scope of his or her authority or due to the liability of the Authority.
- Prohibit a board member, officer, employee, or agent of the Authority from having a conflict of interest in the business of the Authority.
- Require the Authority to submit an annual report, and certain supplemental reports, to the Governor and the Legislature.
- Require the Authority to be subject to annual audits by the Auditor General or a certified public accountant appointed by the Auditor General.

Senate Bill 1097 would amend Public Act 152 of 1885, which governs veterans' facilities, to define "Michigan veterans' facility" and specify that the term would not include a veterans' facility as that term would be defined in the proposed Michigan Veterans' Facility Authority Act.

Senate Bill 1098 would amend Public Act 152 of 1885 to do the following:

- Allow the board of managers of the Michigan veterans' facility to enter into contracts with an authority under the proposed Michigan Veterans' Facility Authority Act for certain purposes.
- Require the board to provide staffing to an authority operated under the proposed Act that was sufficient to provide for the care of veterans and operations of a veterans' facility as defined in that Act.

Senate Bill 1099 would amend Public Act 152 of 1885 to do the following:

- Require the board of managers to file annual and supplemental reports with the Governor and the Legislature.
- Require the board's accounts to be subject to annual audits.

Senate Bill 1100

Michigan Veterans' Facility Authority

The Michigan Veterans' Facility Authority would be created as a public body corporate and politic within the DMVA. The bills states, "The exercise by the authority of the powers conferred by this act is an essential governmental function of this state."

The Authority would have to be treated and accounted for as a separate legal entity with its separate corporate purposes as set forth in the bill. The Authority's assets, liabilities, and funds could not be consolidated or commingled with those of the State.

The Authority would have to exercise its duties independently of the DMVA. The Authority's staffing, budgeting, procurement, and related administrative functions, however, could be performed under the direction and supervision of the DMVA Director.

In addition to its other powers, the Authority could develop or operate one or more veterans' facilities.

"Veterans' facility" would mean a long-term care facility and ancillary facilities for veterans and their dependents as determined by the Authority. "Veteran" would mean an individual who is a veteran, as that term is defined in Public Act 190 of 1965, and was honorably discharged. (Public Act 190, which provides for uniformity of service dates, defines "veteran" as an individual who served in the United States Armed Forces, including the reserve components, and was discharged or released under conditions other than dishonorable.)

Board of Directors/Employees

The Authority would have to exercise its duties through a nine-member board of directors. The board would consist of the DMVA Director and the following members who had professional knowledge, skill, or experience in long-term care, health care licensure or finance, or medicine:

- Three members appointed by the Governor with the advice and consent of the Senate, who represented the interests of one or more congressionally chartered veterans' organizations.
- Three members, including a resident of the Upper Peninsula, appointed by the Governor with the advice and consent of the Senate.
- One member appointed by the Governor from a list of two or more individuals selected by the Senate Majority Leader.
- One member appointed by the Governor from a list of two or more individuals selected by the Speaker of the House of Representatives.

Appointed members of the board would serve staggered, four-year terms, and would serve until a successor was appointed. A vacancy would have to be filled in the same manner as original appointment. Members would serve without compensation but could receive reasonable reimbursement for necessary travel and expenses.

The director of a State department who was a designated member of the board could appoint a representative to serve in his or her absence.

The DMVA Director would serve as the chairperson of the board until one year after the second facility operated by the Authority was open and housing veterans. At that time, the board members would have to elect a new chairperson who was not the director of a State department or his or her designee. One year after the second facility operated by the Authority was open and housing veterans, the DMVA Director would serve as a nonvoting member of the board. A new member who was a veteran and had professional knowledge, skill, or experience in long-term care, health care licensure or finance, or medicine would have to be appointed by the Governor with the advice and consent of the Senate.

A majority of the appointed and serving members would constitute a quorum.

The Authority could employ or contract for legal, financial, and technical experts, and other permanent and temporary officers, agents, and employees. The Authority would have to determine their qualifications, duties, and compensation. The board could delegate powers or duties to one or more agents or employees, with limitations it considered proper.

When hiring employees for a veterans' facility, the Authority would have to give preference to employees currently employed by the Michigan Veterans' Facility under Public Act 152 of 1885. In determining the operation and staffing of a veterans' facility, the Authority would have to do both of the following:

- Consider nationally recognized models and guidelines for the delivery of health care in veterans' facilities.
- Follow rules and regulations of the Civil Service Commission.

Board members and officers and employees of the Authority would be subject to Public Act 317 of 1968 (which governs public employees' contracts with public entities) and Public Act 318 of 1968 (which relates to conflicts of interest of legislators and State officers in contracts with the State and its political subdivisions).

A member of the board or an officer, employee, or agent of the Authority would have to discharge his or her duties in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

The board would have to organize and make its own policies and procedures, and would have to comply with the Open Meetings Act.

Upon request by a member of the Legislature, the board would have to make nonprivileged information regarding the Authority's operations and accounts and nonprivileged information regarding care provided to veterans at a veterans' facility available to members of the Legislature.

Powers of the Authority

The powers of the Michigan Veterans' Facility Authority would include the power to do the following:

- Develop or operate one or more veterans' facilities.
- Solicit and accept gifts, grants, and loans from any person, and solicit Federal funds and other funding sources to develop veterans' facilities.
- Invest any money of the Authority in any obligations it determined proper.
- Make and amend bylaws.
- Pay its operating expenses and financing costs.
- Pledge revenue or other assets as security for the payment of the principal of, and interest on, any bonds.
- Procure insurance, letters of credit, or other credit enhancement with respect to any bonds for the payment of tenders of bonds, or for the payment upon maturity of short-term bonds.
- Make and execute contracts.

The Authority also could engage the services of financial advisors and experts, legal counsel, placement agents, underwriters, appraisers and other advisors, consultants, and fiduciaries as necessary to effectuate the purposes of the proposed Act.

Tax Exemptions

The Authority's property and its income and operations would be exempt from taxation by the State and any political subdivision of the State.

In the case of any bonds whose interest was intended to be exempt from Federal income tax, the Authority would have to prescribe restrictions on the use of the proceeds of those bonds and related matters as necessary to assure the exemption. Any recipient of the proceeds of those bonds would be authorized to execute a tax regulatory agreement with the Authority. Any political subdivision that was a recipient of the proceeds of such bonds also could execute a tax regulatory agreement with the State.

Issuance of Bonds

The Michigan Veterans' Facility Authority would be authorized to issue bonds in the principal amount or amounts and with the maturities that the Authority determined necessary to provide sufficient funds for achieving its authorized purposes. The Department of Treasury would have to provide technical expertise for the Authority to issue bonds.

The Authority would be required to provide notice to the Senate Majority Leader and the Speaker of the House of its intent to issue bonds under the proposed Act. The notice would

have to include estimated principal amount or amounts and authorized purposes of issuing the bond or bonds.

The Authority could not issue bonds that, in total, exceeded \$150.0 million. The Authority could not issue bonds for the purpose of paying operating costs or other recurring costs.

The Authority board would have to authorize the issuance of bonds by resolution. It could issue bonds, including refunding bonds, without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the occurrence of any other conditions other than those specifically required by the proposed Act. Every issue of bonds would have to be special revenue obligations payable from and secured by a pledge of revenue and other assets, including without limitation the proceeds of the bonds deposited in a reserve fund for the benefit of the bond owners, earnings on funds of the Authority, and other funds that became available, upon the terms and conditions specified by the Authority.

For each bond issue, the Authority would have to determine all of the following:

- The date of issuance.
- Whether the bonds would bear no interest, appreciate as to principal amount, bear interest at fixed or variable rates, or any combination of those conditions.
- Whether the bonds would be payable at or before maturity.
- When the bonds would mature.
- Whether the Authority could redeem the bonds before maturity, at what price, and under what conditions.
- The method of payment of principal of and interest on the bonds.
- The form, denominations, and places of payment of principal of and interest on the bonds.
- Any other terms and conditions necessary to issue the bonds in fully marketable form.

The Authority could sell bonds in the manner determined by the board, at public or private sale, and on either a competitive or negotiated basis.

The Authority could not issue bonds for any of the following:

- Qualified residential rental projects, as defined in the Internal Revenue Code (IRC).
- Qualified mortgage bonds, as defined in the IRC.
- Mortgage credit certificates, as defined in the IRC.

The proposed Act would govern the creation, perfection, priority, and enforcement of any pledge of revenue or other security made by the Authority. The Act also would govern the negotiability of bonds issued under it. In the discretion of the Authority, any bonds could be secured by a trust agreement or trust indenture by and between the Authority and a trustee, which could be any trust company or bank having the powers of a trust company, whether located in or outside of Michigan.

Bonds issued under the proposed Act would not be subject to the Revised Municipal Finance Act or the Agency Financing Reporting Act.

Notwithstanding any legal restriction to the contrary, the State and all its political subdivisions, their officers, boards, commissioners, departments, or other agencies, governmental pension funds, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and others carrying on a banking or investment business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other people authorized to invest in bonds or other obligations of the State, could properly and legally invest any sinking funds, money or other funds, including capital, belonging to them or within their control, in any bond. Bonds

issued by the Authority could properly and legally be deposited with, and received by, any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State was authorized by law.

Liability & Indemnification

A board member or an officer, appointee, or employee of the Authority would not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the Authority. The board could defend and indemnify a board member or an Authority officer, appointee, or employee against liability arising out of the discharge of his or her official duties. The Authority could indemnify and procure insurance indemnifying members of the board and other officers and employees from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the Authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the Authority.

The Authority also could purchase and maintain insurance on behalf of any person against the liability asserted against and incurred by him or her in any capacity or arising out of the status of the person as a member of the board or an Authority officer or employee, regardless of whether the Authority would have the power to indemnify the person against that liability.

Conflict of Interest

A member, officer, employee, or agent of the Authority could not have an interest, either directly or indirectly, in any business organization engaged in any business, contract, or transaction with the Authority or in any contract of any other person engaged in any business with the Authority, or in the purchase, sale, lease, or transfer of any property to or from the Authority.

Annual & Supplemental Report

The Authority annually would have to submit a written report on its activities of the preceding year. The report would have to be filed with the Governor, each house of the Legislature, and the chairperson of the Senate and House Appropriations Subcommittee with jurisdiction over military and veterans affairs. The report would have to be submitted within 90 days after the end of the fiscal year, and specify all of the following:

- The status of development of each veterans' facility.
- A statement whether a veterans' facility would likely be opening in the next fiscal year.
- The census of each veterans' facility.
- Accounting of all revenue received and spent.
- Statistics on veterans living in each veterans' facility.
- Recommendations for improvements at each veterans' facility.
- Salaries and benefit costs of all staff positions within the Authority and at all veterans' facilities.
- Any other matters the board considered pertinent.

If the Authority indicated that a veterans' facility likely would be opening in the next fiscal year, it would have to file a supplemental report on its activities every 90 days until the facility was open and operational. Within 60 days after the 90-day period covered in the supplemental report, the Authority would have to file the supplemental report with the Governor, each house of the Legislature, and the chairperson of the Senate and House Appropriations Subcommittees with jurisdiction over military and veterans' affairs. The supplemental report would have to include the same information required to be included in the annual report.

Audits

The Authority's accounts would be subject to annual audits by the State Auditor General or a CPA appointed by the Auditor General. For the first four years of the Authority's existence, however, the Auditor General would have to conduct a financial audit for the first year and biennially after that and conduct a performance audit for the second year and biennially after that. After the initial four-year period, the Auditor General would have to conduct a performance audit if a veterans' facility received a Centers for Medicare and Medicaid Services (CMS) survey finding that indicated a substandard quality of care as defined in Federal regulations, upon request by either the Senate or the House, or as otherwise determined by the Auditor General. Records would have to be maintained according to generally accepted auditing principles.

Dissolution of Authority

The Authority could be dissolved by act of the Legislature, on condition that the Authority had no outstanding debts or obligations or that provision had been made for the payment or retirement of all debts or obligations. Upon dissolution, all property, funds, and assets of the Authority would be vested in the State.

Construction of the Act

The bill states:

This act and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes, without implied limitations on the powers of the authority, the state budget director, and the state treasurer. This act shall constitute full, complete, and additional authority for all things that are contemplated in this act to be done. All rights and powers granted in this act shall be cumulative with those derived from other sources and shall not, except as expressly stated in this act, be construed in limitation of those rights and powers. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling.

The bill also provides for the severability of any part of the proposed Act that a court found to be invalid.

Senate Bill 1097

Under Public Act 152 of 1885, the general supervision and government of the Michigan Veterans' Facility is vested in a seven-member board of managers, appointed by the Governor with the advice and consent of the Senate.

As used in the Act, the bill would define "Michigan veterans' facility" as a long-term care facility and ancillary facilities for veterans and their dependents. The term would not include a veterans' facility as defined in the proposed Michigan Veterans' Facility Authority Act.

Senate Bill 1098

The bill would permit the board of managers of the Michigan Veteran's Facility to enter into contracts with an authority under the proposed Michigan Veterans' Facility Authority Act, to do one or both of the following:

- Lease, sell, or otherwise convey property to the Authority for the development of a veterans' facility, as defined in the proposed Act.

- Enter into any other agreement regarding the care or housing of veterans in a Michigan veterans' facility.

The bill also would require the board of managers to provide staffing to any Authority operated under the Michigan Veterans' Facility Authority Act that was sufficient to provide for the care and housing of veterans, and operations of any veterans' facility as defined in the proposed Act.

Senate Bill 1099

Annual & Supplemental Reports

The bill would require the board of managers of the Michigan Veteran's Facility annually to file a written report with the Governor and each house of the Legislature on its activities of the immediately preceding year. The board would have to submit the report within 90 days of the end of the fiscal year. The report would have to specify all of the following:

- The status of development of each Michigan veterans' facility.
- A statement whether a Michigan veterans' facility would likely be closing in the next fiscal year.
- The census of each Michigan veterans' facility.
- Accounting of all revenue received and spent.
- Statistics on veterans living in each Michigan veterans' facility.
- Recommendations for improvements at each Michigan veterans' facility.
- Salaries and benefit costs of all staff positions at all Michigan veterans' facilities.
- Any other matters the board considered pertinent.

If the board indicated that a Michigan veterans' facility likely would be closing in the next fiscal year, it would have to file a supplemental report on its activities every 90 days until the facility was closed and no longer operational. The board would have to file the supplemental report with the Governor and each house of the Legislature within 60 days after the 90-day period covered in the supplemental report. The supplemental report would have to include the same information required to be included in the annual report.

Audits

The bill would require the board of managers' accounts to be subject to annual financial audits by the State Auditor General or a certified public accountant appointed by the Auditor General. The Auditor General would have to conduct a performance audit if a Michigan veterans' facility received a CMS survey finding that indicated a "substandard quality of care", an unsatisfactory audit from the U.S. Department of Veterans Affairs, upon request by either house of the Legislature, or as otherwise determined by the Auditor General. Records would have to be maintained according to generally accepted auditing principles.

MCL 36.2a (S.B. 1097)
Proposed MCL 36.10 (S.B. 1098)
Proposed MCL 36.10a (S.B. 1099)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Initially, during the first few months following their effective date, the bills would result in a moderate cost to the State, but then could require many millions in expenditures, depending entirely on the policy determinations of the Authority.

The bills would create the Michigan Veterans' Facility Authority, define its status and responsibilities, along with those of the board of managers of the State's homes for veterans, and

allow the Authority a wide range of options to hire, bond, sue, be sued, enter into contracts and purchases, and develop or operate one or more veterans' homes, among other powers.

Senate Bill 1099 would require the board of managers to file with the Governor and Legislature written annual reports, and other reports and notifications. Much of the information required in these reports is already provided through quarterly reporting requirements under the fiscal year 2016-17 appropriations act for the DMVA, Public Act 268 of 2016, Article XIV, and should impose no additional fiscal burden on the Department. The bill also would require the board of managers to be subject to annual audits by the State Auditor General or a certified public accountant appointed by the Auditor General and would require a performance audit by the Auditor General under certain circumstances. While full financial audits of programs are not necessarily performed on an annual basis for all individual State programs, it is within the existing fiscal resources of the Office of the Auditor General to do so, as any performance audit required by the bill would be.

Senate Bill 1100 would create the nine-member Michigan Veterans Facility Authority, whose members could receive per diem meeting costs but would otherwise serve without compensation. Depending how often the Authority would meet, and assuming an average per diem cost of \$50 per member per meeting, this cost could reach several thousand dollars annually. Although the Authority would be required to exercise its duties independently of the Department, the bill states, "The staffing, budgeting, procurement, and related administrative functions of the authority may be performed under the direction and supervision of the director of the department." It has been suggested that the Department could fill this staffing and support role in the initial stages of the Authority's existence through the resources of the DMVA's veterans' health system office (or other Department offices), but with the focus of the veterans' health system office being to serve the two existing State homes for veterans, it would be a short time--should the Authority become particularly active--before a separate administrative office, including the hiring of a CEO, could be needed. Preliminary estimates for the annual cost of a fully operational authority in the startup years are in the range of \$2.2 million, which includes staffing costs of \$1.0 million. A FY 2016-17 supplemental appropriation of \$1.0 million GF/GP is contained within enrolled Senate Bill 800. It is anticipated that at some point the duties and existing positions within the existing veterans' health system office would be merged with the Authority operations, eliminating the need for the current budget of approximately \$600,000 for a separate health system office.

In regard to projecting the costs of developing a new veterans' facility, the Department of Technology, Management, and Budget has recommended the construction of two veterans homes (Grand Rapids and Detroit). This proposal emanated from a report completed by a workgroup formed to study ways to improve long-term care for Michigan veterans. The impetus for the creation of the Michigan veterans workgroup was a February 2016 Michigan Auditor General Performance Audit that identified pervasive issues at the Grand Rapids Home for Veterans. The workgroup consisted of legislators, veterans, State officials, and experts in long-term care facilities and operations. Recommendations of the workgroup included the creation of an authority that will accomplish the transition of the two State homes (Grand Rapids and Marquette) into a system that is responsive to veterans' long-term care and aging needs. Additional facilities were recommended in locations based on the greatest need. The workgroup proposed the following phases:

- First phase: Metro Detroit and Grand Rapids (replace the current aging home, but stay on the same grounds to take advantage of existing infrastructure)
- Second phase: Flint/Saginaw/Bay City
- Third phase: Jackson/Battle Creek
- Fourth phase: Marquette (replace the aging facility)
- Fifth phase: Northern Lower Peninsula
- Sixth Phase: Southeastern Michigan

Construction of the first two veteran homes will be through the State Building Authority (SBA), with revenue from those homes being used by the newly created Michigan Veterans' Facility Authority to finance the remaining five proposed homes. The Michigan Veterans' Facility Authority would be prohibited from issuing bonds that in total exceeded \$150.0 million. Enrolled Senate Bill 800 includes construction authorizations for the Grand Rapids and Detroit homes. Pursuant to boilerplate language in Public Act 268 of 2016, Article XIV, Section 605, DMVA appropriations for FY 2016-17, the Michigan Veterans Affairs Agency and the DTMB contracted with TowerPinkster for the purpose of developing program and schematic planning documents for the first two new veteran homes. One will be located on the site of the current Grand Rapids Veterans Home and the other at a yet-to-be-determined site in the City of Detroit. The facilities will be similar, consisting of 120 beds, approximately 132,000 gross square feet, a central community center for meals, programming, and related services connected through corridors to small community-based residential living areas.

The total authorized cost for both projects is \$108,049,000, with a State share of \$42,081,000 (38.9%) and estimated Federal share of \$65,968,000 (61.1%). The application deadline for Federal funds is April 2017. Construction is projected to commence in June 2018, with completion of both facilities by August 2019. While the plans are similar, the costs for the Grand Rapids and Detroit facilities vary due to land acquisition costs in Detroit, and different labor market costs. Of the total estimated \$108,049,000 cost, the Detroit facility is \$58.2 million, and the Grand Rapids facility is \$49.9 million. Based on eligible costs, the Detroit facility will receive \$34.6 million (59.4%) from Federal funding and the Grand Rapids facility will receive \$31.4 million (63.0%) from Federal funds. Financing the State share (\$42.1 million) through the SBA will result in an annual State General Fund cost of approximately \$2.9 million to \$3.7 million until the bonds are paid off (approximately 17 years).

Fiscal Analyst: Bruce Baker
Bill Bowerman

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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.