

HOUSE BILL NO. 4078

January 23, 2019, Introduced by Rep. Neeley and referred to the Committee on Health Policy.

A bill to amend 1987 PA 230, entitled "Municipal health facilities corporations act," by amending sections 251, 253, 254, 255, 256, and 258 (MCL 331.1251, 331.1253, 331.1254, 331.1255, 331.1256, and 331.1258), sections 251, 253, 254, and 255 as added by 1988 PA 502, section 256 as amended by 2010 PA 331, section 258 as amended by 2011 PA 195, and by adding section 252a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 251. **(1)** The city council of a city or the village
2 council of a village that owns or operates a public hospital may
3 incorporate 1 or more corporations under this act. The city council
4 of a city or the village council of a village that does not own or
5 operate a public hospital may also establish ~~such a~~ **public** hospital
6 or other health care facility, or both, by incorporating 1 or more
7 corporations under this act.

8 **(2)** ~~The~~ **Except as provided in section 252a, the** question of
9 establishing 1 or more corporations under this act shall be
10 presented to the city or village electors at a special or regular
11 city or village election before incorporation. An election under
12 this section shall be conducted ~~pursuant to~~ **under** the Michigan
13 election law, ~~Act No. 116 of the Public Acts of 1954, being~~
14 ~~sections 168.1 to 168.992 of the Michigan Compiled Laws.~~ **1954 PA**
15 **116, MCL 168.1 to 168.992.**

16 **Sec. 252a. (1)** A city hospital that was established under the
17 home rule cities act, 1909 PA 279, MCL 117.1 to 117.38, is in a
18 city that has a population of fewer than 103,000 as of the most
19 recent federal decennial census, and is not incorporated as of the
20 effective date of this section, is considered a corporation
21 incorporated and existing under this act, without the adoption or
22 filing of articles of incorporation, without a vote of the
23 electors, and without diminishing the terms of office of
24 individuals serving on the board of the city hospital on the
25 effective date of this section.

26 **(2)** The city council of a city that operates a hospital that
27 is considered incorporated by operation of subsection (1) may at
28 any time after the effective date of this section adopt articles of
29 incorporation for the corporation under sections 255(2) and 256.

1 **Until the effective date of articles of incorporation adopted under**
 2 **this subsection, the provisions of this act are considered to**
 3 **constitute the articles of incorporation of the corporation.**

4 Sec. 253. (1) If the city or village electors approve the
 5 incorporation of a corporation under this act, ~~the~~**or if a city**
 6 **hospital is incorporated by operation of section 252a(1), all of**
 7 **the following apply:**

8 **(a) The** corporation ~~shall be~~**is** considered to be the successor
 9 to the city public hospital for the city or the village public
 10 hospital for the village, and the terms of office of the trustees
 11 of the city public hospital or village public hospital shall
 12 continue.

13 **(b) The** corporation ~~shall have~~**has** all of the rights,
 14 privileges, immunities, and franchises of its predecessor city
 15 public hospital or village public hospital, all personal property,
 16 all debts due on whatever account, and all choses in action.

17 **(c) All** interests and licenses of or belonging to the city
 18 public hospital or village public hospital ~~shall be~~**are** considered
 19 to be transferred to, and vested in, the corporation without
 20 further act or deed, ~~Such and those~~ interests and licenses shall
 21 not be considered to have undergone any change of ownership for the
 22 purpose of any law or regulation. ~~nor shall the~~

23 **(d) The** fiscal year of any city public hospital or village
 24 public hospital **shall not** be considered to have ended solely
 25 because the city or village incorporates a corporation under this
 26 act.

27 **(e) The** title to any real estate, or any interest in real
 28 estate, vested in any city or city public hospital or village or
 29 village public hospital, ~~shall~~**does** not revert ~~or in any way be~~**and**

1 **is not** impaired because a corporation succeeds a city public
 2 hospital or village public hospital ~~pursuant to~~**under** this act.

3 (2) A corporation incorporated by a city or village under this
 4 act ~~shall be~~**or incorporated by operation of section 252a(1) is**
 5 considered to be the owner of all money and other property then
 6 deposited in the treasury of the city or village to the credit of
 7 the hospital fund and ~~shall be~~**is** entitled to all interest and
 8 other earnings accruing on those funds on and after the effective
 9 date of the incorporation. The corporation ~~shall be~~**is** the owner of
 10 all other personal property used exclusively by or for the city
 11 public hospital or village public hospital. The treasurer of any
 12 city or village ~~having~~**that has** custody of money and other property
 13 ~~belonging~~**that belongs** to a corporation ~~pursuant to~~**under** this
 14 subsection shall arrange for the prompt transfer of ~~such~~**that** money
 15 and other property to the custody of the corporation.

16 (3) A corporation incorporated by a city or village under this
 17 act ~~shall be~~**or incorporated by operation of section 252a(1) is** the
 18 employer of all ~~persons~~**individuals who are** employed by the city
 19 public hospital or village public hospital and shall assume and be
 20 bound by any labor agreement in existence on the effective date of
 21 the incorporation and applicable to the city public hospital or
 22 village public hospital, but shall not be subject to greater
 23 obligations with respect to the terms, conditions, or duration of
 24 employment than was the city public hospital or village public
 25 hospital immediately preceding the effective date of the
 26 incorporation. A representative of the employees or a group of
 27 employees who is entitled to represent the employees or group of
 28 employees under ~~Act No. 336 of the Public Acts of 1947, being~~
 29 ~~sections 423.201 to 423.216 of the Michigan Compiled Laws, 1947 PA~~

1 **336, MCL 423.201 to 423.217**, shall continue to be the
 2 representative of the employees or group of employees. This
 3 subsection does not limit the rights of the hospital employees,
 4 under applicable law, to assert that a bargaining representative
 5 protected by this subsection is no longer the representative of the
 6 employees.

7 (4) A corporation incorporated by a city or village under this
 8 act ~~shall be or incorporated by operation of section 252a(1) is~~
 9 responsible and liable for all liabilities and obligations of the
 10 city public hospital or village public hospital it succeeds. A
 11 claim existing or an action or proceeding pending by or against a
 12 city public hospital or village public hospital may be prosecuted
 13 by the corporation succeeding it in the name of the city public
 14 hospital or village public hospital, or the corporation may be
 15 substituted. The rights of creditors and any lien upon the property
 16 of a city or a city public hospital or a village or village public
 17 hospital existing on the effective date of the incorporation shall
 18 not be impaired.

19 Sec. 254. **(1)** ~~If, in accordance with sections 251 and 252,~~
 20 **connection with the incorporation of a corporation for which a vote**
 21 **of electors is required under section 251**, a majority of all the
 22 votes cast upon the question are in favor of establishing a
 23 corporation, the city council or village council may incorporate a
 24 corporation in order to implement or further the public purposes
 25 stated in section 102 through the exercise of all or some of the
 26 powers provided ~~in~~**under** this act.

27 **(2)** The board of trustees of a corporation may incorporate 1
 28 or more subsidiary corporations in order to implement or further
 29 the public purposes stated in section 102 through the exercise of

1 all or some of the powers provided in this act.

2 **(3)** The city council or village council shall adopt a suitable
 3 name for any corporation ~~which—that~~ it incorporates **or that is**
 4 **incorporated by operation of section 252a(1)**. The board of trustees
 5 of a corporation shall adopt a suitable name for any subsidiary
 6 corporation ~~which—that~~ it incorporates.

7 Sec. 255. **(1)** ~~The—~~**Except as provided in section 252a, the**
 8 incorporation of a corporation by a city or village shall be
 9 accomplished by approval of articles of incorporation by resolution
 10 of the city council or village council. The incorporation of a
 11 subsidiary corporation shall be accomplished by approval of
 12 articles of incorporation by resolution of the city council or
 13 village council.

14 **(2)** The articles of incorporation **approved under subsection**
 15 **(1) or section 252a(2)** shall set forth the name of the corporation
 16 or subsidiary corporation; the purposes for which it is created,
 17 which may include all of the purposes for which a corporation or
 18 subsidiary corporation may be organized under this act; the number,
 19 terms, and manner of selection of the officers of its board of
 20 trustees or subsidiary board, which shall include a chairperson and
 21 a secretary, and a general description of their respective powers
 22 and duties; the **effective** date ~~upon which—of~~ the incorporation;
 23 ~~shall become effective;~~ and the name of the newspaper in which the
 24 articles of incorporation shall be published. The articles of
 25 incorporation of a subsidiary corporation shall also contain the
 26 name of the corporation acting as its parent, and shall specify the
 27 size of the subsidiary board in accordance with section 258(2). The
 28 articles of incorporation of a corporation may specify transactions
 29 otherwise within the powers of its board of trustees ~~which shall~~

1 **that** require approval by resolution of the city council or village
2 council, and may also contain other matters considered expedient to
3 be included in the articles of incorporation. The articles of
4 incorporation of a subsidiary corporation may specify transactions
5 otherwise within the powers of its subsidiary board ~~which shall~~
6 **that** require approval by resolution of the board of trustees of its
7 designated parent corporation, and may also contain other matters
8 considered expedient to be included in the articles of
9 incorporation.

10 Sec. 256. (1) The articles of incorporation of a corporation
11 incorporated by a city or village **adopted under section 252a(2)**
12 shall be executed in duplicate by the chairperson of the city
13 council or the president of the village council or other member of
14 the city council or village council designated by the city council
15 or village council. The articles of incorporation of a subsidiary
16 corporation of a corporation incorporated by a city or village
17 shall be executed in duplicate by the chairperson of the board of
18 trustees of the parent corporation, or other trustee designated by
19 the board of trustees. The articles of incorporation shall then be
20 delivered to the city clerk or village clerk who shall file 1 copy
21 in his or her office and the other with the secretary of the
22 corporation or subsidiary corporation when a secretary is selected.
23 The city clerk or village clerk shall cause a copy of the articles
24 of incorporation to be published once in a newspaper designated in
25 the articles of incorporation and circulating within the city or
26 village, accompanied by a statement that the right exists to
27 question the validity of the incorporation in court as provided ~~in~~
28 **under** this section, **if applicable**.

29 (2) The city clerk or village clerk shall file 1 printed copy

1 of articles of incorporation delivered to him or her under
2 subsection (1) with the secretary of state and 1 printed copy in
3 his or her office. The city clerk or village clerk shall attach to
4 each of the printed copies his or her certificate setting forth
5 that the copy is a true and complete copy of the original articles
6 of incorporation on file in his or her office.

7 (3) ~~The~~ **Except as provided in section 252a(2), the**
8 incorporation of a corporation or a subsidiary corporation
9 described in this section is effective at the time provided in the
10 articles of incorporation, but not before approval of the question
11 of incorporation by the city or village electors under section 251.

12 (4) The validity of the incorporation of a corporation or a
13 subsidiary corporation described in this section is conclusively
14 presumed unless questioned in a court of competent jurisdiction
15 within 60 days after the certified copy of the articles of
16 incorporation of that corporation or subsidiary corporation is
17 filed with the secretary of state under subsection (2). **This**
18 **subsection does not apply to a corporation incorporated by**
19 **operation of section 252a(1).**

20 (5) This section does not apply to articles of incorporation
21 of a restructured corporation or restructured subsidiary
22 corporation described in section 305a.

23 Sec. 258. (1) All of the following apply to each board of
24 trustees and subsidiary board of a corporation incorporated by a
25 city or village, **or to a corporation incorporated by operation of**
26 **section 252a(1) that has adopted articles of incorporation under**
27 **section 252a(2):**

28 (a) The board shall consist of at least 5 and not more than 15
29 trustees. The exact number of trustees and the length of their

1 terms of office shall be as specified in the articles of
2 incorporation.

3 (b) Except for the initial appointments to a board of trustees
4 or subsidiary board of a newly incorporated corporation or
5 subsidiary corporation, **or to the initial appointment to the board**
6 **of trustees of a corporation incorporated by operation of section**
7 **252a(1) that has adopted articles of incorporation under section**
8 **252a(2)**, the term of office of a trustee begins on January 1.

9 (c) The terms of office of trustees shall be staggered so that
10 an approximately equal number of terms expire at the end of each
11 year or each 2 years, except that terms may be fixed so that the
12 shortest terms do not expire until the end of the second year
13 following the incorporation of a corporation or a subsidiary
14 corporation **or the effective date of articles of incorporation**
15 **adopted under section 252a(2) by a corporation incorporated by**
16 **operation of section 252a(1)**. A trustee whose term of office ~~has~~
17 ~~expired~~**expires** shall continue to serve until his or her successor
18 is appointed.

19 (2) If a city or village incorporates a corporation under this
20 act, the city council or village council shall appoint the initial
21 board of trustees. ~~After~~**If an unincorporated city hospital that is**
22 **already in existence as of the effective date of the amendatory act**
23 **that added section 252a is automatically incorporated under section**
24 **252a(1)**, appointments to the board of trustees shall be made in the
25 manner previously specified in the city charter, until the
26 effective date of articles of incorporation adopted under section
27 252a(2) that specify otherwise. For a city hospital that is already
28 in existence as of the effective date of the amendatory act that
29 added section 252a, after the initial board of trustees, when a

1 trustee's term of office expires or if a trustee's office is
2 otherwise vacant, the remaining members of the board of trustees
3 shall fill the vacancy with the advice and consent of the city
4 council or village council. This subsection does not apply to an ex
5 officio member of a board of trustees who is appointed by a chief
6 executive officer.

7 (3) The terms of office of trustees serving on the board of a
8 city public hospital or village public hospital before
9 incorporation that is subsequently incorporated under this act **or**
10 **before the effective date of articles of incorporation adopted**
11 **under section 252a(2) by a corporation incorporated by operation of**
12 **section 252a(1)** shall not be diminished, except that the articles
13 of incorporation for that ~~successor~~ corporation may prospectively
14 establish new lengths of terms of office for the board of trustees,
15 and may prospectively alter the board size.

16 (4) If a city or village incorporates a subsidiary
17 corporation, the board of trustees of the parent corporation shall
18 appoint the initial subsidiary board with the advice and consent of
19 the city council or village council. After the initial subsidiary
20 board, when a trustee's term of office expires or if a trustee's
21 office is otherwise vacant, the board of trustees of the parent
22 corporation shall fill the vacancy with the advice and consent of
23 the city council or village council. This subsection does not apply
24 to an ex officio member of a subsidiary board who is appointed by a
25 chief executive officer.

26 (5) A trustee of a corporation or subsidiary corporation
27 established by a city or village, **or a trustee of a corporation**
28 **incorporated by operation of section 252a(1) that adopts articles**
29 **of incorporation under section 252a(2)**, shall be chosen based on

1 his or her qualifications for that office, but not more than 1/3 of
2 the trustees serving at any time shall be direct providers of
3 health care. The articles of incorporation of the corporation or
4 subsidiary corporation may require that a trustee be a resident of
5 the city or village. A trustee of the parent corporation, including
6 its chief executive officer, and the chief executive officer of a
7 subsidiary corporation are eligible for appointment to a subsidiary
8 board, and those offices are not incompatible. A trustee is
9 eligible for reappointment.

10 (6) Within 9 days after commencing his or her term of office,
11 a trustee shall take the oath of office as provided in section 1 of
12 article XI of the state constitution of 1963.

13 (7) A trustee of a corporation incorporated by a city or
14 village, **or a trustee of a corporation incorporated by operation of**
15 **section 252a(1) that adopts articles of incorporation under section**
16 **252a(2)**, may be removed from office for cause either by vote of a
17 majority of the members then serving on the city council or village
18 council or by vote of a majority of the members then serving on the
19 board of trustees of the corporation. A trustee of a subsidiary
20 corporation may be removed from office for cause either by vote of
21 a majority of the members then serving on the city council or
22 village council or by vote of a majority of the members then
23 serving on the board of trustees of the parent corporation. As used
24 in this subsection, "cause" includes, but is not limited to,
25 incompetency to properly exercise duties; official misconduct; or
26 habitual or willful neglect of duty, including, but not limited to,
27 failure to attend meetings, including committee meetings, in
28 accordance with standards determined by the board of trustees of
29 the corporation or subsidiary board.

1 (8) A trustee of a corporation incorporated by a city or
2 village, or a trustee of a corporation incorporated by operation of
3 section 252a(1) that adopts articles of incorporation under section
4 252a(2), shall not be removed from office on grounds of misconduct
5 or neglect unless the trustee is served with a notice of hearing
6 and a copy of the asserted ground for removal, and is given full
7 opportunity to be heard, either in person or by counsel, before a
8 vote is taken on the question of removal from office.

9 (9) Subsections (1) to (8) do not apply to a city hospital
10 that exists on the effective date of the amendatory act that added
11 this subsection, that is incorporated by operation of section
12 252a(1), and that has not adopted articles of incorporation under
13 section 252a(2). Until a city hospital incorporated by operation of
14 section 252a(1) adopts articles of incorporation under 252a(2), the
15 city charter of the city that established the hospital shall govern
16 the number, term of office, appointment, qualification, and removal
17 of trustees serving on the board of that corporation.

18 Enacting section 1. This amendatory act takes effect 90 days
19 after the date it is enacted into law.