



HOUSE BILL No. 5093

November 3, 1999, Introduced by Rep. Tabor and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 205 (MCL 330.1205), as amended by 1996 PA
588.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 205. (1) A county community mental health agency or a
2 community mental health organization that is certified by the
3 department under section 232a may become a community mental
4 health authority as provided in this section through an enabling
5 resolution adopted by the board of commissioners of each creating
6 county after at least 3 public hearings held in accordance with
7 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
8 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws~~
9 1976 PA 267, MCL 15.261 TO 15.275. The resolution is considered
10 adopted if it is approved by a majority of the commissioners

1 elected and serving in each county creating the authority. The
2 enabling resolution is not effective until it has been filed with
3 the secretary of state and with the county clerk of each county
4 creating the authority. If ~~any~~ A provision of the enabling
5 resolution conflicts with this act, this act supersedes the con-
6 flicting provision.

7 (2) All of the following shall be stated in the enabling
8 resolution:

9 (a) The purpose and the power to be exercised by the commu-
10 nity mental health authority ~~shall be~~ IS to comply with and
11 carry out the provisions of this act.

12 (b) The duration of the existence of the community mental
13 health authority and the method by which the community mental
14 health authority may be dissolved or terminated by itself or by
15 the county board or boards of commissioners. These provisions
16 shall comply with section 220.

17 (c) The manner in which ~~any~~ net financial assets origi-
18 nally made available to the authority by the participating county
19 or counties will be returned or distributed if the authority is
20 dissolved or terminated. All other remaining assets net of
21 liabilities ~~shall be~~ ARE transferred to the community mental
22 health services program or programs that replace the authority.

23 (d) The liability of the community mental health authority
24 for costs associated with real or personal property purchased or
25 leased by the county for use by the community mental health serv-
26 ices program to the extent necessary to discharge the financial
27 liability if desired by the county or counties.

1 (e) The manner of employing, compensating, transferring, or
2 discharging necessary personnel subject to the provisions of
3 applicable civil service and merit systems, and the following
4 restrictions:

5 (i) Employees of a community mental health authority are
6 public employees. A community mental health authority and its
7 employees are subject to ~~Act No. 336 of the Public Acts of 1947,~~
8 ~~being sections 423.201 to 423.217 of the Michigan Compiled Laws~~
9 1947 PA 336, MCL 423.201 TO 423.217.

10 (ii) Upon the creation of a community mental health authori-
11 ty, the employees of the former community mental health services
12 program ~~shall be~~ ARE transferred to the new authority and
13 appointed as employees subject to all rights and benefits for
14 1 year. ~~Such~~ THESE TRANSFERRED employees of the new community
15 mental health authority shall not be placed in a worse position
16 by reason of the transfer for a period of 1 year with respect to
17 workers' compensation, pension, seniority, wages, sick leave,
18 vacation, health and welfare insurance, or ~~any other~~ ANOTHER
19 benefit that the employee enjoyed as an employee of the former
20 community mental health services program. Employees who are
21 transferred ~~shall~~ DO not by reason of the transfer have their
22 accrued pension benefits or credits diminished.

23 (iii) If the former county community mental health agency or
24 community mental health organization was the designated employer
25 or participated in the development of a collective bargaining
26 agreement, the newly established community mental health
27 authority shall assume and ~~be~~ IS bound by the existing

1 collective bargaining agreement. The formation of a community
2 mental health authority shall not adversely affect ~~any~~ THE
3 existing rights and obligations contained in the existing collec-
4 tive bargaining agreement. ~~For purposes of this provision,~~
5 ~~participation~~ AS USED IN THIS SUBPARAGRAPH, "PARTICIPATED in the
6 development of a collective bargaining agreement" means that a
7 representative of the community mental health agency or organiza-
8 tion actively participated in bargaining sessions with the
9 employer representative and union or was consulted with during
10 the bargaining process.

11 (f) Any other matter consistent with this act that is neces-
12 sary to assure operation of the community mental health authority
13 as agreed upon by the creating county or counties.

14 (3) If a county community mental health agency or a commu-
15 nity mental health organization becomes a community mental health
16 authority pursuant to this section, both of the following apply:

17 (a) All assets, debts, and obligations of the county commu-
18 nity mental health agency or community mental health organiza-
19 tion, including but not limited to equipment, furnishings, sup-
20 plies, cash, and other personal property, ~~shall be~~ ARE trans-
21 ferred to the community mental health authority.

22 (b) All the privileges and immunities from liability and
23 exemptions from laws, ordinances, and rules that are applicable
24 to county community mental health agencies or community mental
25 health organizations and their board members, officers, and
26 administrators, and county elected officials and employees of
27 county government are retained by the authority and the board

1 members, officers, agents, and employees of an authority created
2 under this section.

3 (4) In addition to other powers of a community mental health
4 services program as set forth in this act, a community mental
5 health authority has all of the following powers, whether or not
6 they are specified in the enabling resolution:

7 (a) To fix and collect charges, rates, rents, fees, or other
8 charges and to collect interest.

9 (b) To make purchases and contracts.

10 (c) To transfer, divide, or distribute assets, liabilities,
11 or contingent liabilities, unless the community mental health
12 authority is a single-county community mental health services
13 program and the county has notified the department of its inten-
14 tion to terminate participation in the community mental health
15 services program. During the interim period between notification
16 by a county under section 220 of its intent to terminate partici-
17 pation in a multi-county community mental health services program
18 and the official termination of that participation, a community
19 mental health authority's power under this subdivision is subject
20 to ~~any~~ AN agreement between the community mental health author-
21 ity and the county that is terminating participation, if that
22 agreement is consistent with the enabling resolution that created
23 the authority.

24 (d) To accept gifts, grants, or bequests and determine the
25 manner in which those gifts, grants, or bequests may be used con-
26 sistent with the donor's request.

1 (e) To acquire, own, operate, maintain, lease, or sell real
2 or personal property. Before taking official action to sell
3 residential property, however, the authority shall do all of the
4 following:

5 (i) Implement a plan for alternative housing arrangements
6 for recipients residing on the property.

7 (ii) Provide the recipients residing on the property or
8 their legal guardians, if any, an opportunity to offer their com-
9 ments and concerns regarding the sale and planned alternatives.

10 (iii) Respond to those comments and concerns in writing.

11 (f) To do the following in its own name:

12 (i) Enter into contracts and agreements.

13 (ii) Employ staff.

14 (iii) Acquire, construct, manage, maintain, or operate
15 buildings or improvements.

16 (iv) Subject to subdivision (e), acquire, own, operate,
17 maintain, lease, or dispose of real or personal property, unless
18 the community mental health authority is a single-county mental
19 health services program and the county has notified the depart-
20 ment of its intention to terminate participation in the community
21 mental health services program. During the interim period
22 between notification by a county under section 220 of its intent
23 to terminate participation in a multi-county community mental
24 health services program and the official termination of that par-
25 ticipation, a community mental health authority's power under
26 this subdivision is subject to ~~any~~ AN agreement between the
27 community mental health authority and the county that is

1 terminating participation, if that agreement is consistent with
2 the enabling resolution that created the authority.

3 (v) Incur debts, liabilities, or obligations that do not
4 constitute the debts, liabilities, or obligations of the creating
5 county or counties.

6 (vi) Commence litigation and defend itself in litigation.

7 (g) To invest funds in accordance with statutes regarding
8 investments.

9 (h) To set up reserve accounts, utilizing state funds in the
10 same proportion that state funds relate to all revenue sources,
11 to cover vested employee benefits including but not limited to
12 accrued vacation, health benefits, the employee payout portion of
13 accrued sick leave, if any, and worker's compensation. In addi-
14 tion, an authority may set up reserve accounts for depreciation
15 of capital assets and for expected future expenditures for an
16 organizational retirement plan.

17 (i) To develop a charge schedule for services provided to
18 the public and utilize the charge schedule for first and
19 third-party payers. The charge schedule may include charges that
20 are higher than costs for some service units by spreading nonrev-
21 enue service unit costs to revenue-producing service unit costs
22 with total charges not exceeding total costs. All revenue over
23 cost generated in this manner shall be utilized to provide serv-
24 ices to priority populations.

25 (5) In addition to other duties and responsibilities of a
26 community mental health services program as set forth in this

1 act, a community mental health authority shall do all of the
2 following:

3 (a) Provide to each county creating the authority and to the
4 department a copy of an annual independent audit performed by a
5 certified public accountant in accordance with governmental
6 auditing standards issued by the comptroller of the United
7 States.

8 (b) Be responsible for all executive administration, person-
9 nel administration, finance, accounting, and management informa-
10 tion system functions. The authority may discharge this respon-
11 sibility through direct staff or by contracting for services.

12 (6) A county that has created a community mental health
13 authority is not liable for ~~any~~ AN intentional, negligent, or
14 grossly negligent act or omission, for any financial affairs, or
15 for ~~any~~ AN obligation of a community mental health authority,
16 its board, employees, representatives, or agents. This subsec-
17 tion applies only to county government.

18 (7) A community mental health authority shall not levy any
19 type of tax or, EXCEPT AS PROVIDED IN SUBSECTION (10), issue any
20 type of bond in its own name or financially obligate any unit of
21 government other than itself.

22 (8) An employee of a community mental health authority is
23 not a county employee. The community mental health authority is
24 the employer with regard to all laws pertaining to employee and
25 employer rights, benefits, and responsibilities.

26 (9) As a public governmental body, a community mental health
27 authority is subject to the open meetings act, ~~Act No. 267 of~~

~~1 the Public Acts of 1976, being sections 15.261 to 15.275 of the~~
~~2 Michigan Compiled Laws~~ 1976 PA 267, MCL 15.261 TO 15.275, and
3 the freedom of information act, ~~Act No. 442 of the Public Acts~~
~~4 of 1976, being sections 15.231 to 15.246 of the Michigan Compiled~~
~~5 Laws~~ 1976 PA 442, MCL 15.231 TO 15.246, except for those docu-
6 ments produced as a part of the peer review process required in
7 section 143a and made confidential by section 748(9).

8 (10) A COMMUNITY MENTAL HEALTH AUTHORITY CREATED UNDER THIS
9 SECTION MAY BORROW MONEY AND ISSUE BONDS IN ITS OWN NAME TO PUR-
10 CHASE, LEASE, OR OPERATE REAL OR PERSONAL PROPERTY TO CARRY OUT
11 THE PROVISIONS OF THIS ACT. EXCEPT TO THE EXTENT SECURED BY THE
12 REAL OR PERSONAL PROPERTY PURCHASED, THE BONDS OR NOTES SHALL BE
13 SECURED SOLELY BY THE REVENUE DERIVED FROM GIFTS, GRANTS, OR
14 BEQUESTS TO THE AUTHORITY; INTEREST EARNED ON FUNDS HELD BY THE
15 AUTHORITY; AND REVENUE DERIVED FROM PROVIDING MENTAL HEALTH SERV-
16 ICES UNDER THE PROVISIONS OF THIS ACT, WHETHER THE REVENUE FROM
17 SERVICES IS RECEIVED FROM A RECIPIENT OF SERVICES, PRIVATE INSUR-
18 ER, HEALTH MAINTENANCE ORGANIZATION, OR STATE OR FEDERAL MEDICAL
19 ASSISTANCE PROGRAM. THE BONDS OR NOTES ARE NOT GENERAL OBLIGA-
20 TIONS OF THE COUNTY OR COUNTIES THAT ESTABLISHED THE AUTHORITY.
21 BONDS OR NOTES ISSUED UNDER THIS SECTION SHALL BE APPROVED BY THE
22 DEPARTMENT OF TREASURY BEFORE ISSUANCE BUT ARE NOT SUBJECT TO THE
23 PROVISIONS OF THE MUNICIPAL FINANCE ACT, 1943 PA 202, MCL 131.1
24 TO 139.3. IN DETERMINING WHETHER TO APPROVE ISSUANCE OF THE
25 BONDS OR NOTES, THE DEPARTMENT OF TREASURY SHALL CONSIDER ALL OF
26 THE FOLLOWING:

1 (A) WHETHER THE BONDS OR NOTES CONFORM TO THE LAWS OF THIS
2 STATE.

3 (B) WHETHER THE PROBABLE REVENUE AND PROPERTIES PLEDGED FOR
4 THE PAYMENT OF THE BONDS OR NOTES WILL BE SUFFICIENT TO PAY THE
5 PRINCIPAL AND INTEREST ON THE BONDS OR NOTES WHEN DUE.

6 (C) WHETHER THE AMOUNT OF THE PROPOSED ISSUE IS SUFFICIENT
7 OR EXCESSIVE FOR THE PURPOSE THAT THE BONDS OR NOTES ARE ISSUED.

8 (11) BONDS OR NOTES ISSUED UNDER SUBSECTION (10) ARE ISSUED
9 FOR AN ESSENTIAL PUBLIC AND GOVERNMENTAL PURPOSE, AND, TOGETHER
10 WITH INTEREST ON THE BONDS OR NOTES AND INCOME FROM THE BONDS OR
11 NOTES, ARE EXEMPTED FROM ALL TAXES.