



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**NONPROFIT CORPORATIONS
FORMED BY CITIES**

Senate Bill 360 (Substitute H-1)

Sponsor: Sen. Joel Gougeon

Senate Bill 361 as passed by the Senate

Sponsor: Sen. Joel Gougeon

**House Committee: Local Government
and Urban Policy**

**Senate Committee: Local, Urban and
State Affairs**

First Analysis (6-7-01)

THE APPARENT PROBLEM:

In general, nonprofit corporations are organized to operate for charitable, religious, scientific, literary, or educational purposes. Nonprofit corporations do not pay state or local business taxes, and they may be able to obtain exemptions from the state’s sales and use taxes, the federal income tax, and local property taxes. In addition, nonprofit corporations are permitted to raise funds by receiving public and private grant money and donations from individuals and companies. Further, nonprofit corporation status protects the corporation’s directors, officers, and members from personal liability for the corporation’s debts and liabilities.

Some cities have formed, and others are interested in forming, nonprofit corporations for economic development purposes. For instance, Bay City is interested in forming a nonprofit corporation to oversee the construction of, and eventually operate, a \$28 million hotel and conference center. According to committee testimony, private industry is not willing to risk such a project at this time and has been supportive of the city’s plans to form a nonprofit corporation. Supporters of the project argue that it would address the area’s need for expanded lodging, and business and conference facilities, and would “jumpstart” downtown development generally. The project is expected to create 164 new jobs directly and 376 new jobs indirectly and to generate new business in the city and surrounding areas. According to the city’s web site, funds from grants, loans, and bonds will be used to pay all expenses associated with the project. No city revenue will be used to pay for either the construction or the operation of the hotel and conference center.

Proponents of the plan contend that a nonprofit corporation would have certain funding options— e.g., federal and state grants and the ability to issue tax-exempt bonds—that would enable the hotel and conference center to operate successfully with a far lower average occupancy than a for-profit business would require.

The Nonprofit Corporation Act does not preclude cities from forming nonprofit corporations, but a 1989 attorney general’s opinion stated that “in the absence of constitutional or statutory provision, a county has no authority to do so”. The attorney general’s opinion raises significant doubt as to whether cities may form nonprofit corporations since the Home Rule Cities Act does not grant the authority to do so. Although other municipalities have done so, Bay City wants to ensure that it has clear legal authority before it finalizes the project.

THE CONTENT OF THE BILLS:

The bills would amend current law to specifically authorize a home rule city to form a nonprofit corporation, and to make the board of such a corporation subject to the Open Meetings Act. The bills are tie-barred to each other.

Senate Bill 360 would amend the Home Rule City Act (MCL 117.4o) to provide that the legislative body of a city could, by ordinance or resolution, form a nonprofit corporation under the Nonprofit Corporation Act. A nonprofit corporation formed under the bill could be organized only for purposes that are valid public purposes for cities in the state.

Senate Bills 360 and 361 (6-7-01)

(The Nonprofit Corporation Act defines "nonprofit corporation" as a corporation incorporated to carry out any lawful purpose or purposes not involving pecuniary profit or gain for its directors, officers, shareholders, or members.) The nonprofit corporation would not be subject to the Municipal Finance Act (MCL 131.1 et al.), which governs the way that municipalities may borrow money and issue bonds. The Nonprofit Corporation Act (450.2101) establishes a nonprofit corporation's authority to borrow money, at rates of interest that it determines, and issue bonds and other obligations. Except for the Municipal Finance Act, the nonprofit corporation would be subject to all local, state, and federal laws and ordinances that applied to the city that authorized its formation. (Among other things, this is said to clarify that the nonprofit corporation would be subject to living wage and prevailing wage laws and ordinances that apply to the city that forms it.) Finally, a nonprofit corporation created by a city for valid public purposes would be considered a public body for the purposes of the Michigan Campaign Finance Act. (This would effectively prohibit such nonprofit corporations from making contributions to candidates or contributions to support ballot issue campaigns.)

Senate Bill 361 would amend the Open Meetings Act, (MCL 15.262), which requires meetings of certain public bodies to be open to the public, to include under the definition of "public body", the board of a nonprofit corporation formed by a city under the Home Rule City Act (pursuant to Senate Bill 360); and to include under the definition of "meeting", any meeting of the board of a nonprofit corporation formed by a city.

The Open Meetings Act currently defines "public body" as any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; or a lessee performing an essential public purpose and function under the lease agreement. The term "meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

HOUSE COMMITTEE ACTION:

The House Committee on Local Government and Urban Policy adopted a Substitute H-1 for Senate Bill 360, which differs from the Senate-passed version of

the bill in two ways. First, a nonprofit corporation formed by a city would be subject to all local, state, and federal laws and ordinances that applied to the city that authorized its formation, except for the Municipal Finance Act. Second, such a nonprofit corporation would be considered a public body for the purposes of the Michigan Campaign Finance Act.

FISCAL IMPLICATIONS:

With regard to the Senate-passed versions of the bills, the Senate Fiscal Agency has reported that the bills would have no fiscal impact on the state, and that Senate Bill 360 would have an indeterminate fiscal impact on local units of government. (4-30-01)

ARGUMENTS:

For:

The bills would specifically authorize cities to form nonprofit corporations for a valid public purpose. Currently the law is silent on the issue of whether cities can form nonprofit corporations for valid public purposes of the state, and the attorney general has only stated that cities cannot do so without statutory authority. In general, the bills would provide a powerful tool, expanding cities' repertoire of options for initiating projects that benefit their communities. One reason why forming a nonprofit corporation might be attractive is that a nonprofit may take advantage of funding options that are unavailable to private businesses, and thus may be able to responsibly initiate successful projects when it is not feasible for private entities. Changes made by the House version of the bill address initial objections to the nonprofit corporations' potential for making political contributions and doubts over whether the nonprofit corporation would be subject to living wage and prevailing wage laws and ordinances.

Against:

By allowing cities to form nonprofit corporations for economic development purposes, the bills may lead to competition between public and private entities. It is not clear that the bills adequately address such a conflict of interest.

POSITIONS:

The Michigan Municipal League supports the bills. (6-5-01)

The Michigan Chamber of Commerce supports the bills. (6-6-01)

The Department of Treasury does not oppose the bills. (6-6-01)

Analyst: J. Caver

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.