

Senate Fiscal Agency
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SFA

BILL ANALYSIS

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Senate Bill 360 (as enrolled)
Senate Bill 361 (as enrolled)
Sponsor: Senator Joel D. Gougeon
Committee: Local, Urban and State Affairs

PUBLIC ACT 37 of 2001
PUBLIC ACT 38 of 2001

Date Completed: 7-18-01

RATIONALE

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.

Apparently, some cities have formed, or are interested in forming, nonprofit corporations for economic development purposes. Although cities are not specifically precluded from forming a nonprofit corporation under the Nonprofit Corporation Act, there was some question as to whether a city actually had the authority to form a nonprofit corporation.

CONTENT

The bills amended separate laws to provide that a home rule city may form a nonprofit corporation, and to make the board of such a corporation subject to the Open Meetings Act. The bills were tied to each other.

Senate Bill 360

The bill amended the Home Rule City Act to provide that the legislative body of a city may by ordinance or resolution form a nonprofit corporation under the Nonprofit Corporation Act. A nonprofit corporation formed under the bill may be organized only for purposes that

are valid public purposes for cities in the State.

A nonprofit corporation formed under the bill is subject to all local, State, and Federal laws or ordinances that apply to the city that authorized its formation. It is not subject to the Municipal Finance Act or its successor act. For the purposes of the Michigan Campaign Finance Act, a nonprofit corporation formed under the bill is a public body.

(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.)

Senate Bill 361

The bill amended the Open Meetings Act, 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.

Under the Open Meetings Act, "public body" also includes 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.

MCL 117.4o (S.B. 360)
MCL 15.262 (S.B. 361)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Senate Bill 360 specifically allows cities to form a nonprofit corporation for valid public purposes. For example, Bay City has proposed a project to construct a \$28 million hotel and conference center to address the area's increased need for expanded lodging, as well as business and conference facilities. The project is expected to create 164 direct new jobs and 376 indirect new jobs, and generate new business in the city and surrounding areas. For economic development purposes, Bay City is interested in forming a nonprofit corporation. The nonprofit corporation may issue bonds for the construction of the project at the lowest interest rate without putting any city funds at risk. There have been some questions, however, as to whether a city may legally form a nonprofit corporation. According to a 1986 Opinion of the Attorney General (No. 6614), no constitutional or statutory provision grants counties the power to form private, nonprofit corporations to operate hospitals, and counties may not do so without authority. Similarly, cities did not have specific statutory authority to form nonprofit corporations. By supplying this authority, the bill makes it clear that Bay City, and other interested cities, may legally form a nonprofit corporation.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 360

The bill will have no fiscal impact on the State.

The bill will have an indeterminate fiscal impact on local units. Creation and operation of a nonprofit corporation will not necessitate

a change in a local unit's revenues or expenditures, although a local unit may choose, due to the existence of the nonprofit corporation, to make budgeting or policy changes that may alter expenditures and/or revenues.

Senate Bill 361

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: D. Zin

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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.