

HOUSE BILL No. 4998

May 26, 2009, Introduced by Reps. Jackson, Durhal, Johnson, Nathan, Tlaib, Womack, Kennedy, Constan, Stanley, Smith, Lemmons, Coulouris, Gregory and Leland and referred to the Committee on Regulatory Reform.

A bill to amend 2008 PA 554, entitled
"Regional convention facility authority act,"
by amending sections 11 and 19 (MCL 141.1361 and 141.1369).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) Within not more than 30 days following
2 appointment of the members of a board, the board shall hold its
3 first meeting at a date and time determined by the individual
4 appointed under section 9(1)(a). The board members shall elect from
5 among the board members an individual to serve as chairperson of
6 the board and may elect other officers as the board considers
7 necessary. All officers shall be elected annually by the board. All
8 actions of the board under this act shall require the unanimous
9 consent of all serving members of the board, excluding any members
10 prohibited from voting on an action due to a conflict of interest
11 under section 15.

1 (2) The business of the board shall be conducted at a public
2 meeting of the board held in compliance with the open meetings act,
3 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
4 and place of the meeting shall be given in the manner required by
5 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A board
6 shall adopt bylaws consistent with the open meetings act, 1976 PA
7 267, MCL 15.261 to 15.275, governing its procedures and the holding
8 of meetings. After organization, a board shall adopt a schedule of
9 regular meetings and adopt a regular meeting date, place, and time.
10 A special meeting of the board may be called by the chairperson of
11 the board or as provided in bylaws adopted by the board. Notice of
12 a special meeting shall be given in the manner required by the open
13 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

14 (3) A board shall keep a written or printed record of each
15 meeting, which record and any other document or record prepared,
16 owned, used, in the possession of, or retained by the authority in
17 the performance of an official function shall be made available to
18 the public in compliance with the freedom of information act, 1976
19 PA 442, MCL 15.231 to 15.246.

20 (4) A board shall provide for a system of accounts for the
21 authority to conform to a uniform system required by law and for
22 the auditing of the accounts of an authority. The board shall
23 obtain an annual audit of the authority by an independent certified
24 public accountant and report on the audit and auditing procedures
25 in the manner provided by sections 6 to 13 of the uniform budgeting
26 and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit
27 also shall be in accordance with generally accepted government

1 auditing standards and shall satisfy federal regulations relating
2 to federal grant compliance audit requirements.

3 (5) Before the beginning of each fiscal year, a board shall
4 cause to be prepared a budget for the authority containing an
5 itemized statement of the estimated current operational expenses
6 and the expenses for capital outlay including funds for the
7 operation and development of convention facilities under the
8 jurisdiction of the board, including the amount necessary to pay
9 the principal and interest of any outstanding bonds or other
10 obligations of the authority maturing during the next fiscal year
11 or that have previously matured and are unpaid, and an estimate of
12 the estimated revenue of the authority from all sources for the
13 next fiscal year. The board shall adopt a budget as for the fiscal
14 year in accordance with the uniform budget and accounting act, 1968
15 PA 2, MCL 141.421 to 141.440a.

16 (6) A board shall provide for the purchase of, the contracting
17 for, and the providing of supplies, materials, services, insurance,
18 utilities, third-party financing, equipment, printing, and all
19 other items as needed by the authority to efficiently and
20 effectively meet the needs of the authority using competitive
21 procurement methods to secure the best value for the authority. The
22 board shall make all discretionary decisions concerning the
23 solicitation, award, amendment, cancellation, and appeal of
24 authority contracts. A board shall provide for the acquisition of
25 professional services, including, but not limited to, architectural
26 services, engineering services, surveying services, accounting
27 services, services related to the issuance of bonds, and legal

1 services, in accordance with a competitive, qualifications-based
2 selection process and procedure for the type of professional
3 service required by the authority. An authority is not required to
4 use competitive bidding when acquiring proprietary services,
5 equipment, or information available from a single source, such as a
6 software license agreement. An authority may enter into a
7 cooperative purchasing agreement with the federal government, this
8 state, or other public entities for the purchase of goods or
9 services necessary for the authority. An authority may enter into
10 lease purchases or installment purchases for periods not exceeding
11 the anticipated useful life of the items purchased unless otherwise
12 prohibited by law. In all purchases made by the authority, all
13 other things being equal, preference shall be given first to
14 products manufactured or services offered by firms based in the
15 authority's qualified metropolitan area, including, but not limited
16 to, each qualified city and qualified county in the qualified
17 metropolitan area, and next to firms based in this state, if
18 consistent with federal law. Except as otherwise provided in this
19 section, the authority shall utilize competitive solicitation for
20 all purchases authorized under this act unless 1 or more of the
21 following apply:

22 (a) Procurement of goods or services is necessary for the
23 imminent protection of public health or safety or to mitigate an
24 imminent threat to public health or safety, as determined by the
25 authority or its chief executive officer.

26 (b) Procurement of goods or services is for emergency repair
27 or construction caused by unforeseen circumstances when the repair

1 or construction is necessary to protect life or property.

2 (c) Procurement of goods or services is in response to a
3 declared state of emergency or state of disaster under the
4 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

5 (d) Procurement of goods or services is in response to a
6 declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

7 (e) Procurement of goods or services is in response to a
8 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
9 10.89.

10 (f) Procurement of goods or services is under a cooperative
11 purchasing agreement with the federal government, this state, or
12 more public entities for the purchase of goods and services
13 necessary at fair and reasonable prices using a competitive
14 procurement method for authority operations.

15 (g) The value of the procurement is less than \$5,000.00, and
16 the board has established policies or procedures to ensure that
17 goods or services with a value of less than \$5,000.00 are purchased
18 by the board at fair and reasonable prices. Procurement of goods or
19 services with a value of less than \$5,000.00 may be negotiated with
20 or without using competitive bidding as authorized in a procurement
21 policy adopted by the board.

22 (7) A board may not enter into any cost plus construction
23 contract unless all of the following apply:

24 (a) The contract cost is less than \$50,000.00.

25 (b) The contract is for emergency repair or construction
26 caused by unforeseen circumstances.

27 (c) The repair or construction is necessary to protect life or

1 property.

2 (d) The contract complies with requirements of applicable
3 state or federal law.

4 (8) The board shall adopt a procurement policy consistent with
5 the requirements of this act and federal and state laws relating to
6 procurement. The board shall adopt a policy to govern the control,
7 supervision, management, and oversight of each contract to which
8 the authority is a party. The board shall adopt procedures to
9 monitor the performance of each contract including, but not limited
10 to, a contract that exists on transfer date, to assure execution of
11 the contract within the budget and time periods provided under the
12 contract. The monitoring shall include oversight as to whether the
13 contract is being performed in compliance with the terms of the
14 contract, this act, and federal and state law procurement law. The
15 chief executive officer or other authorized employee of an
16 authority shall not sign or execute a contract until the contract
17 is approved by the board. A board for an authority shall establish
18 policies to ensure that the authority does not enter into a
19 procurement or employment contract with a person who has been
20 convicted of a criminal offense incident to the application for or
21 performance of a contract or subcontract with a governmental entity
22 in this state. A board for an authority shall establish policies to
23 ensure that the authority does not enter into a procurement or
24 employment contract with a person who has been convicted of a
25 criminal offense, or held liable in a civil proceeding, that
26 negatively reflects on the person's business integrity, based on a
27 finding of embezzlement, theft, forgery, bribery, falsification or

1 destruction of records, receiving stolen property, or violation of
2 state or federal antitrust statutes, or similar laws. As used in
3 this subsection, if a person is a business entity, person includes
4 affiliates, subsidiaries, officers, directors, managerial
5 employees, and any person who, directly or indirectly, holds a
6 pecuniary interest in that business entity of 20% or more.

7 (9) A board may employ personnel as the board considers
8 necessary to assist the board in performing the power, duties, and
9 jurisdictions of the authority, including, but not limited to,
10 employment of a chief executive officer as authorized under section
11 13.

12 (10) A board shall establish policies to assure that the board
13 and the authority shall not do either of the following:

14 (a) Fail or refuse to hire, recruit, or promote; demote;
15 discharge; or otherwise discriminate against a person with respect
16 to employment, compensation, or a term, condition, or privilege of
17 employment, or a contract with the authority because of religion,
18 race, color, national origin, age, sex, sexual orientation, height,
19 weight, marital status, partisan considerations, or a disability or
20 genetic information that is unrelated to the person's ability to
21 perform the duties of a particular job, position, or contract.

22 (b) Limit, segregate, or classify an employee, a contractor,
23 or applicant for employment or a contract in a way that deprives or
24 tends to deprive the employee, contractor, or applicant of an
25 employment opportunity or otherwise adversely affects the status of
26 an employee, contractor, or applicant because of religion, race,
27 color, national origin, age, sex, sexual orientation, height,

1 weight, marital status, partisan considerations, or a disability or
2 genetic information that is unrelated to the person's ability to
3 perform the duties of a particular job or position.

4 (11) A BOARD SHALL ESTABLISH POLICIES TO ASSURE THAT, IF THE
5 UNEMPLOYMENT RATE IN THE CITY, VILLAGE, OR TOWNSHIP IN WHICH THE
6 CONVENTION FACILITY IS LOCATED IS 25% OR MORE GREATER THAN THE
7 UNEMPLOYMENT RATE IN THIS STATE, THE BOARD AND THE AUTHORITY, WHEN
8 HIRING, SHALL MAKE A GOOD FAITH EFFORT TO HIRE RESIDENTS WHO RESIDE
9 IN THE CITY, VILLAGE, OR TOWNSHIP IN WHICH THE CONVENTION FACILITY
10 IS LOCATED.

11 Sec. 19. (1) Within 45 days of ~~the effective date of this act~~
12 **JANUARY 20, 2009** or the date on which a metropolitan area becomes a
13 qualified metropolitan area and prior to a transfer date, the
14 legislative body of the qualified city in which a qualified
15 convention facility is located may disapprove the transfer of the
16 qualified convention facility to the authority by adopting a
17 resolution disapproving the transfer. If the transfer is not
18 disapproved, the qualified convention facility is transferred to
19 the authority on the ninetieth day after ~~the effective date of this~~
20 ~~act~~ **JANUARY 20, 2009** or the date on which a convention facility
21 becomes a qualified convention facility. All of the following shall
22 occur on a transfer date:

23 (a) All right, title, and interest of a local government in
24 and to a qualified convention facility located in a qualified
25 metropolitan area shall by operation of this act be conveyed and
26 transferred from the local government to the authority for the
27 qualified metropolitan area, and the authority shall receive,

1 succeed to, and assume the exclusive right, responsibility, and
2 authority to own, occupy, operate, control, develop, and use the
3 qualified convention facility from and after the transfer date,
4 including, but not limited to, all real property, buildings,
5 improvements, structures, easements, rights of access, and all
6 other privileges and appurtenances pertaining to the qualified
7 convention facility, subject only to those restrictions imposed by
8 this act.

9 (b) All right, title, and interest in and to the fixtures,
10 equipment, materials, furnishings, and other personal property of a
11 local government owned or controlled and used for purposes of the
12 qualified convention facility by the local government shall by
13 operation of this act be conveyed and transferred from the local
14 government to the authority for the qualified metropolitan area,
15 and the authority shall receive, succeed to, and assume the
16 exclusive right, responsibility, and authority to possess and
17 control the property from and after the transfer date.

18 (c) All licenses, permits, approvals, or awards of a local
19 government related to the ownership, occupancy, operation, control,
20 development, or use of a qualified convention facility by the local
21 government shall by operation of this act be conveyed and
22 transferred from the local government to the authority for the
23 qualified metropolitan area and be assumed by the authority.

24 (d) All grant agreements, grant preapplications, grant
25 applications, rights to receive the balance of any funds payable
26 under the agreements or applications, the right to receive any
27 amounts payable from and after the transfer date, and the benefits

1 of contracts or agreements of a local government related to the
2 ownership, occupancy, operation, control, development, or use of a
3 qualified convention facility by the local government shall by
4 operation of this act be conveyed and transferred from the local
5 government to the authority for the qualified metropolitan area and
6 be assumed by the authority.

7 (e) All of the duties, liabilities, responsibilities, and
8 obligations of a local government related to the ownership,
9 occupancy, operation, control, development, or use of a qualified
10 convention facility by the local government shall by operation of
11 this act be conveyed and transferred from the local government to
12 the authority for the qualified metropolitan area and assumed by
13 the authority, except for any liabilities, responsibilities, or
14 obligations that are contested in good faith by, or, as of the
15 transfer date, unknown to, the authority or as otherwise provided
16 in this act.

17 (f) An authority for a qualified metropolitan area shall
18 assume all of the outstanding securities of the local government
19 that are special limited obligations payable from and secured by a
20 lien on distributions received under the state convention facility
21 development act, 1985 PA 106, MCL 207.621 to 207.640, and were
22 originally issued to finance the acquisition or construction of,
23 development of, or improvements to the qualified convention
24 facility conveyed and transferred to the authority for the
25 qualified metropolitan area under this section, and the authority
26 may refund or defease the securities. If the authority refunds the
27 outstanding securities assumed under this subsection, that

1 refunding shall be considered, as a matter of law, to be necessary
2 to eliminate requirements of covenants applicable to the existing
3 outstanding securities.

4 (2) An authority shall assume, accept, or become liable for
5 lawful agreements, obligations, promises, covenants, commitments,
6 and other requirements of a local government relating to operating
7 a qualified convention facility conveyed and transferred under this
8 section, except as provided in subsection (4). An authority shall
9 perform all of the duties and obligations and shall be entitled to
10 all of the rights of a local government and under any agreements
11 expressly assumed and accepted by the authority related to the
12 transfer of a qualified convention facility from the local
13 government to the authority under this section.

14 (3) The local chief executive officer of a local government
15 from which the rights, responsibility, and authority to own,
16 occupy, operate, control, develop, and use a qualified convention
17 facility are conveyed and transferred from the local government to
18 an authority for a qualified metropolitan area under this section
19 shall execute the instruments of conveyance, assignment, and
20 transfer or other documents as may, in the authority's and the
21 officer's reasonable judgment, as necessary or appropriate to
22 recognize, facilitate, or accomplish the transfer of the qualified
23 convention facility from the local government to the authority
24 under this section.

25 (4) An authority for a qualified metropolitan area shall not
26 assume any unfunded obligations of a local government transferring
27 a qualified convention facility under this section to provide

1 pensions or retiree health insurance. Upon request by the
2 authority, the local government shall provide the authority with a
3 statement of the amount of the unfunded obligations, determined by
4 a professional actuary acceptable to the authority.

5 (5) All lawful actions, commitments, and proceedings of a
6 local government made, given, or undertaken before the transfer
7 date and assumed by an authority under this section are ratified,
8 confirmed, and validated upon assumption. All actions, commitments,
9 or proceedings of the local government relating to a qualified
10 convention facility in the process of being undertaken by, but not
11 yet a commitment or obligation of, the local government regarding
12 the qualified convention facility may, from and after the date of
13 assumption by the authority under this section, be undertaken and
14 completed by the authority in the manner and at the times provided
15 in this act or other applicable law and in any lawful agreements
16 made by the local government before the date of assumption by the
17 authority under this section.

18 (6) The exclusive right and authorization to own, occupy,
19 operate, control, develop, and use a qualified convention facility
20 transferred under this section shall include, but not be limited
21 to:

22 (a) Ownership and operational jurisdiction over all real
23 property of the qualified convention facility, subject to any liens
24 of record and legal restrictions and limitations on the use of the
25 property.

26 (b) The local government's right, title, and interest in, and
27 all of the local government's responsibilities arising under,

1 operating leases and concessions relating to a qualified convention
2 facility.

3 (7) The transfers described under this section shall include,
4 but need not be limited to, all of the following:

5 (a) All contracts with licensees, franchisees, tenants,
6 concessionaires, and leaseholders.

7 (b) All operating financial obligations secured by revenues
8 and fees generated from the operations of the qualified convention
9 facility.

10 (c) All cash balances and investments relating to or resulting
11 from operations of the qualified convention facility, all funds
12 held under an ordinance, resolution, or indenture related to or
13 securing obligations of the local government assumed by the
14 authority, and all of the accounts receivable or choses in action
15 arising from operations of the qualified convention facility. Fund
16 transfers under this subdivision are limited to funds received
17 after the transfer date and funds necessary to pay obligations
18 related to the operation of the qualified convention facility
19 accrued before the transfer date and not paid by the local
20 government.

21 (d) All office equipment, including, but not limited to,
22 computers, records and files, software, and software licenses
23 required for financial management, personnel management, accounting
24 and inventory systems, and general administration.

25 (8) The transfer of the real and personal property and
26 operational jurisdiction over a qualified convention facility to an
27 authority may not in any way impair any contracts with licensees,

1 franchisees, vendors, tenants, bondholders, or other parties in
2 privity with the local government that owned a qualified convention
3 facility transferred to an authority under this section, if the
4 contracts were not entered into or modified in violation of this
5 act.

6 (9) From and after the transfer date, a local government from
7 which a qualified convention facility has been transferred shall be
8 relieved from all further costs, responsibility, and liability
9 arising from, or associated with, control, operation, development,
10 and maintenance of the qualified convention facility. The local
11 government shall continue to be responsible for all costs
12 associated with local municipal services, including, but not
13 limited to, police, fire, and emergency medical services, without
14 any additional compensation from the authority. The authority shall
15 provide for the payment of compensation not exceeding
16 \$20,000,000.00 to the qualified city for any revenue otherwise
17 payable to the qualified city from parking facilities operated by
18 the qualified city at the qualified convention facility and for
19 other costs incurred by the qualified city associated with the
20 transfer of the qualified convention facility to the authority
21 under this section.

22 (10) A local government that owns a qualified convention
23 facility subject to transfer under this section or that owned a
24 qualified convention facility transferred to an authority under
25 this section shall comply with all of the following, before and
26 after the transfer:

27 (a) Refrain from any action to sell, transfer, or otherwise

1 dispose of a qualified convention facility other than to the
2 authority or incur new or expanded obligations related to qualified
3 convention facility, without the consent of the authority.

4 (b) Refrain from any approval of or material modification to
5 any collective bargaining agreement applicable to local government
6 employees employed at or assigned to the qualified convention
7 facility or to terms of employment for employees at or assigned to
8 the qualified convention facility. Any approval or modification
9 subject to this subsection shall be null and void.

10 (c) Refrain from any action that, in the authority's judgment,
11 would impair the authority's exercise of the powers granted to the
12 authority under this act or that would impair the efficient
13 operation and management of the qualified convention facility by
14 the authority.

15 (d) Take all actions reasonably necessary to cure any defects
16 in title to the qualified convention facility and related property
17 transferred under this section, including, but not limited to,
18 providing documents, records, and proceedings in respect of title.

19 (e) At the request of an authority, grant any license,
20 easement, or right-of-way in connection with the qualified
21 convention facility to the extent the authority has not been
22 empowered to take these actions.

23 (f) Upon creation, an authority for the qualified metropolitan
24 area in which the local government is located and before the
25 transfer date may conduct operations, maintenance, and repair of
26 the convention facility in the ordinary and usual course of
27 business.

1 (11) Any contract, agreement, lease, sale, disposition,
2 transfer, or other conveyance, easement, license, right,
3 obligation, debt, or liability assumed, approved, entered into,
4 amended, or modified in violation of this section shall be voidable
5 as a matter of law to the extent that the authority would otherwise
6 assume, become party to or transferee of, or otherwise be obligated
7 under the contract, agreement, lease, sale, disposition, transfer,
8 conveyance, easement, license, right, obligation, debt, or
9 liability.

10 (12) Unless otherwise provided in this act, the local chief
11 executive officer of a local government that owns a qualified
12 convention facility subject to transfer under this section is
13 authorized and shall take all reasonable steps to cancel or
14 terminate any agreement to which the local government is a party
15 that relates to the qualified convention facility and meets all the
16 following criteria:

17 (a) The agreement relates to the qualified convention facility
18 and the authority has not expressly assumed or accepted the
19 agreement under subsection (2).

20 (b) The agreement provides for cancellation or termination.

21 (c) In the absence of cancellation or termination, the
22 authority would become a party to the agreement by succession,
23 assignment, operation of law, or any other involuntary means.

24 (13) If real property transferred from a qualified city to an
25 authority under this section is no longer used by the authority for
26 the purpose of maintaining or operating a convention facility as
27 determined by a vote of the board, all right, title, and interest

1 of the authority in the real property shall revert from the
2 authority to the qualified city with the consent of the qualified
3 city and upon payment by the qualified city to the authority of an
4 amount equal to the compensation paid to the qualified city under
5 section 19(9).

6 (14) IF THE LEGISLATIVE BODY OF A QUALIFIED CITY IN WHICH A
7 QUALIFIED CONVENTION FACILITY IS LOCATED DISAPPROVES THE TRANSFER
8 OF THE QUALIFIED CONVENTION FACILITY AS PROVIDED IN SUBSECTIONS (1)
9 THROUGH (13), THE LEGISLATIVE BODY OF THE QUALIFIED CITY IN WHICH
10 THE QUALIFIED CONVENTION FACILITY IS LOCATED MAY, WITH THE APPROVAL
11 OF THE MAYOR OF THE QUALIFIED CITY, AUTHORIZE THE LEASE OF THE
12 QUALIFIED CONVENTION FACILITY TO THE AUTHORITY. THE LEASE AGREEMENT
13 SHALL BE FOR A TERM OF 30 YEARS WITH THE RENTAL FEE OF
14 \$20,000,000.00 PAYABLE WHEN THE LEASE AGREEMENT IS ENTERED INTO.
15 THE LEASE AGREEMENT MAY BE RENEWED.