

REGIONAL AIRPORT AUTHORITY ACT

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House Bill 4468 as enacted

Public Act 95 of 2015

Sponsor: Rep. Rob VerHeulen

House Committee: Transportation and Infrastructure

Senate Committee: Transportation

Complete to 8-31-15

Analysis available at
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SUMMARY:

House Bill 4468, enacted as Public Act 95 of 2015, amended the State Aeronautics Code (Public Act 327 of 1945) to create a new chapter to be known as the Regional Airport Authority Act. The bill will allow for the creation of a new regional authority to develop, operate, and maintain **the Gerald R. Ford International Airport in Kent County**, although its application would extend to other local units of government as well.

[The bill as introduced was not amended during its passage through the Legislature; the bill passed by the House and Senate – on May 7, 2015 and June 10 2015, respectively – and signed by the Governor on June 30, 2015, was identical to the bill as introduced. Descriptions in this analysis of "the bill" are in effect descriptions of the bill enacted as Public Act 95 of 2015.]

Under the bill, a local government that owns or operates an airport could, by resolution, declare its intention to incorporate a regional authority. In its resolution, the legislative body of the local unit would set a date for a public hearing on the matter, to be held in accordance with the Open Meetings Act. After the public hearing, the local legislative body would, in order to proceed, adopt by majority vote a resolution adopting the articles of incorporation of the regional authority, which would take effect on being filed with the Michigan Secretary of State. (The adoption of the articles would be subject to any applicable provisions regarding executive vetoes and legislative veto overrides.)

The validity of the incorporation of the authority would be conclusively presumed unless questioned in an original action in the state court of appeals with 60 days. The court would hear the action in an expedited manner. The state Department of Transportation would be a necessary party in such an action.

The term "local government" would refer to a county, city, township, or village creating a regional airport.

The authority would be a public body corporate for purposes of state and federal law would have to comply with the Open Meetings Act, the Freedom of Information Act, and the Uniform Budget and Accounting Act. In general, a regional authority would have all the powers of a political subdivision under the act. The bill specifies that the powers granted to a regional authority are public and governmental functions.

A regional authority could not impose or levy taxes but could impose fees or charges permitted under federal law. An authority could borrow money and issue municipal securities in the same way a municipality under the Revised Municipal Finance Act. Debt would not pledge the full faith and credit of the local government without approval of the legislative body of the local government.

The bill covers a wide range of topics, including the powers of the authority; accounting and auditing systems; immunity from liability for board members, officers, appointees, and employees; contracting policies, including competitive bidding provisions; employee relations, including the transfer of employees from the local government to the authority, and the treatment of retirement systems; sources of revenue; borrowing and indebtedness; among others. Following is a summary of some of those topics.

The bill bears some similarity to the existing Public Airport Authority Act, enacted in 2002, under which the Detroit Wayne County Metropolitan Airport operates.

Authority Board

The new regional authority would be directed and governed by a board with no fewer than five or more than nine members who would serve three-year terms. (The initial terms of the board members would be staggered so that the terms of not less than 20 percent of the members expire each year.) The board would be appointed by the local legislative body. The articles of incorporation would specify the number and qualifications of board members; however, not more than 45% of board members could be elected officials, and at least one member would have to be a resident of a jurisdiction in the state outside of the boundaries of the local government. At a minimum a board member must have experience in aviation, business, accounting, finance, marketing, engineering, law, real estate, economic development, management, or another field of value to the operation of an airport. A full-time paid employee of the local government would not be eligible for appointment to the board. Board members would serve without compensation but could receive reimbursement for actual and necessary expenses.

Board members could be removed for cause, including failure to attend at least 70% of the board meetings in a fiscal year, conviction of a felony, breach of fiduciary duty to the authority, and other conduct specified in the articles of incorporation.

The board could act only by resolution or ordinance and, unless the articles or bylaws require otherwise, a vote of the majority of the board present at a meeting of the board or a committee at which a quorum was present constitutes action of the board or committee. The board would have to meet at least quarterly.

A board would be required to appoint an audit committee consisting of at least two members of the board. The audit committee would have to meet at least annually with the chief financial officer, the chief executive officer, and the authority's independent auditors to review the reports related to the financial condition, operations, performance, and management of the regional authority.

Chief Executive Officer & CFO

The board would have to appoint a chief executive officer, who would be a non-voting ex officio member of the board and would not count toward the presence of a quorum of the board. The chief executive officer would be required to appoint a chief financial officer, who would be the treasurer of the authority. Both the CEO and CFO would be required to have the professional qualifications commensurate with their responsibilities. The board would also require the CEO and CFO to post a suitable bond of at least \$100,000.00 by a responsible bonding company, with the authority to pay the premium of the bond.

The chief executive officer would serve at the pleasure of the board. The board could enter into a contract with the CEO for a commercially reasonable length of time, commensurate with the length of time for contracts of airport chief executive officers, directors, or managers with similar responsibilities at other airports or airport authorities with a comparable number of enplanements. A contract would be terminable at will by the board.

The chief executive officer of the authority would supervise and be responsible for the day-to-day operation of the airport, including the control, supervision, management, and oversight of the functions of the airport; the issuance of bonds and notes approved by the board; the negotiation and establishment of compensation and other terms and conditions of employment for employees of the authority within the budget approved by the board and with board approval of any collective bargaining agreements; the appointment, dismissal, discipline, demotion, promotion, and classification of employees; the negotiation, supervision, and enforcement of contracts entered into by the authority; the supervision of contractors and subcontractors in the performance of their duties; and execute and deliver contracts, leases, obligations, and other instruments approved by the board or for which the power to approve is delegated by the board to the CEO.

Conflict of Interest, Ethics, and Liability

A board member, an officer, appointee, or employee of a regional authority would be a public servant under Public Act 318 of 1968 and be subject to any other applicable law with respect to conflicts of interests. The board would need to establish an ethics policy governing the conduct of airport business and the conduct of airport employees. A regional authority would be required to establish policies no less stringent than those provided for public officers and employees under the act, and coordinate efforts to preclude the opportunity for the occurrence of transactions by the authority that would create a conflict of interest involving members of the board or its employees.

Members of the board and officers, appointees, and employees of the authority would not be subject to personal liability when acting in good faith within the scope of their authority and would not be subject to liability for any liability of the regional authority. The board could defend and indemnify a board member or an officer, appointee, or employee against liability arising out of the discharge of official duties. The authority could indemnify and procure insurance indemnifying board members, officers, appointees, and employees of the authority from personal loss or accountability for liability asserted by a person regarding bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of bonds or other obligations, or by reason of any

other action taken or failure to act by the authority. The authority could also purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by that person in any capacity arising out of the status as a member of the board, whether or not the authority would have the power to indemnify the person against the liability. The authority under bylaw, contract, agreement or resolution of the board could obligate itself in advance to defend and indemnify persons.

Additionally, the authority would have to indemnify and hold harmless the local government for any civil claim existing, or any civil action or proceeding pending by or against the local government involving or related to the airport, airport facilities, or any civil liability for obligations of the local government issued or incurred with respect to the airport pending at the time (or before) the transfer of operational jurisdiction of the airport to the regional authority.

Transfer of Employment Provisions

Under the bill, employees at an airport could transfer to the regional authority to which operational jurisdiction of the airport will be transferred on one or more dates agreed to by the regional authority and the local government. The date or dates would have to be as soon as administratively feasible, but no later than 180 days after the approval date. The initial terms of employment (including for purposes of pension and other benefits) for transferring employees would need to be similar to the terms of employment for the employees immediately before the transfer.

The regional authority would have to offer to enter into a collective bargaining agreement covering transferring employees who, on their transfer date, were covered by a collective bargaining agreement with the local government. The agreement offered by the regional authority must have similar terms of employment as the local government collective bargaining agreement and remain in effect for the same period. The regional authority would become the employer of transferring employees on the date of transfer without a break in employment and would have to recognize the length of service of the transferring employees with the local government for purposes of the regional authority's benefit plans and programs.

The local government would not be an employer of any employee at the airport after the transfer date. The accrued local government pension benefits or credits of a transferring employee could not be diminished because of the transfer. However, the pension benefits and credits would have to be transferred to the retirement system or pension plan established by the regional authority as provided.

By the approval date, the regional authority would have to establish a retirement system or pension plan that initially provides benefits to each transferring employee that would be substantially similar to the benefits provided by the local government's retirement system or pension plan before the approval date. The authority's retirement system or pension plan would have to credit a transferring employee for prior employment with the local government, including for purposes of eligibility, vesting, and accruals, and the employee

would have to make any mandatory employee contribution to the authority's retirement system or pension plan.

The bill says the local government would have to, as soon as administratively feasible, and no later than 180 days after all employee transfers, transfer to the trustees of the regional authority retirement system or pension plan both of the following:

- For Defined Benefit Plans, all accrued benefits, all accrued liabilities, and a share of the assets of the local government's plan sufficient to fund the transferring employees' accrued benefits to the extent that the benefits have been funded by the local government on or before the transfer date.
- For Defined Contribution Plans, the amount credited to each transferring employee's account in the local government's retirement system or pension plan on or before the transfer date. (The local government would be required to fully vest the account of the transferring employee on the day immediately preceding the transfer date and make contributions on behalf of the transferring employee for the portion of the transfer year in which the employee was employed by the local government and eligible to participate in the plans regardless of any allocation requirements that otherwise might prevent the transferring employee from receiving a contribution for the year of the transfer).

The local government would have to transfer the amounts in cash or in some other form acceptable to the trustees. The transfer of money to the trustees would terminate the local government's obligation to the transferring employees and the transferring employees' rights under the local government's retirement system and pension plans.

If the local government has an obligation to provide retiree health benefits or payments to transferring employees, it would be required to assume the obligations. The regional authority would not assume obligations in excess of the amount properly allocable to the transferring employees. The local government would have to, as soon as administratively feasible but not later than 180 days after all employee transfers, transfer to the regional authority an amount sufficient to fund the transferring employees' accrued benefits to the extent that the benefits have been funded by the local government on or before the transfer date. The authority would be required to transfer the amounts required to a qualifying entity established by the regional authority in cash, or in some other form acceptable to the qualifying entity. The transfer of money to a qualifying entity would terminate the local government's obligations to the transferring employees and the transferring employees' rights to receive the benefits from the local government.

Powers of the Authority

Section 143 of the bill provides an extensive list of the powers of the new regional authority, primarily addressing the control, operation, development, maintenance, and expansion of the airport. In general, a regional authority would have all the powers of a political subdivision under the act. The bill specifies that the powers granted to a regional authority are public and governmental functions.

Among the specified powers are the ability to sue and be sued, to procure insurance and self-insure, to enter into a variety of contracts and agreements, to exercise of the right of eminent domain, and to fix, charge, and collect rates, fees, rentals, and charges in and for the use and operation of the airport or airports under the operational jurisdiction of the authority.

The authority could appoint and vest with police powers airport law enforcement officers, guards, or police officers. The law enforcement officers, guards, and police officers of the authority would have the full police powers and authority of peace officers within the areas over which the authority had operational jurisdiction, including the prevention and detection of crime; the power to investigate and enforce state laws, as well as the rules, regulations and ordinances of the authority and the requirements of federal law governing airport security. Officers could issue summons, make arrests, and initiate criminal proceedings. An authority would be responsible for all actions of its police officers committed under color of their official position and authority.

The authority would have the exclusive responsibility to study and plan any improvements, expansion, and enhancements that affect the airport; could commission studies for making decisions about the location, design, management, and other features of the airport; participate in demonstration programs and economic development; could adopt and enforce in court reasonable rules, regulations, and ordinances for the orderly, safe, efficient, and sanitary operation and use of airport facilities; and establish any civil and criminal penalties for the violation of rules, regulations, and ordinances to the same extent as the local government; could enter into exclusive or non-exclusive contracts, leases, franchises, or other arrangements for granting the privilege of using or improving, or having access to, the airport for commercial airline-related purposes; and could enter into other kinds of exclusive or non-exclusive contracts, leases, or other arrangements for commercially reasonable terms consistent with its obligations under applicable federal law, regulations, and assurances associated with accepting federal grants. The authority also could apply for and receive loans, grants, guarantees, or other financial assistance in aid of airport facilities and operations of the airport from state, federal, county, and municipal government agencies, or from other public or private sources, including financial assistance for planning, constructing, improving, or operating the airport or for providing ground access to the airport.

Transfer of Operational Jurisdiction

As of the approval date, the authority would acquire and assume the exclusive right, responsibility, and authority to occupy, operate, control, and use the airport and the airport facilities of an airport owned by the local government on that date (subject only to restrictions elsewhere in the act being created). The local government would have to convey title or enter into a lease of real property comprising the airport with the regional authority, which would also acquire and succeed to all rights, title, interest in the fixtures, equipment, materials, furnishings, and other personal property owned and used by the airport on that date by the local government.

The regional authority would assume, accept, and become solely liable for all the lawful obligations, promises, covenants, commitments, and other requirements in respect of the airport, whether known or unknown, contingent or matured, except for any full faith and credit pledge of the local government in respect of bonds issued by the local government for airport purposes; would perform all of the duties and obligations and would be entitled to all of the rights of the local government under any ordinances, agreements, or other instruments under law. This would include the transfer of all licenses, permits, approvals, or awards, as well as grant agreements, grant pre-applications; the right to receive the balance of any funds payable under the agreements; the right to receive any amounts payable to the local government on the approval date and amounts paid after that date, including any passenger facility charges; the benefit of contracts and agreements; and all of the local government's duties, liabilities, responsibilities, and obligations as sponsor of the airport (except for any obligation or liabilities contested in good faith by the authority.)

All lawful actions, commitments, and proceedings of the local government, including but not limited to revenue bond financings for which a notice of intent resolution has been adopted, made, given, or undertaken before the date of assumption by the authority are ratified, confirmed, and validated on assumption by the authority. Actions, commitments, or proceedings of the local government in respect to the airport in the process of being undertaken by, but not yet a commitment or obligation of, the local government in respect of the airport may, from and after the date of assumption by the authority, be completed by the authority.

On the transfer of operational jurisdiction, the local government would, generally speaking, be relieved from all further costs and responsibilities arising from or associated with control, operation, development, and maintenance of the airport. The local government would be required to refrain from any action that would impair an authority's exercise of powers or that would impair the efficient operation and management of the airport; refrain from any action to sell, transfer, or otherwise encumber or dispose of airport facilities without consent of the authority; take all action reasonably necessary to cure any defects in title to airport facilities transferred to the authority; maintain and repair (including providing snow removal) any road providing ingress and regress to the airport over which it maintains responsibility; and provide transitional services at the request of the authority. The local government would also be required to conduct operations of the airport between the time the authority was created or incorporated and the FAA approval date.

The regional authority would be required to pay the cost of services in compliance with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or other grants from another agency, including but not limited to policies of the FAA that prohibit revenue diversion or payment of fees that exceed the value of services provided by a governmental agency.

FISCAL IMPACT:

The Federal Aviation Administration (FAA) 2015-2019 National Plan of Integrated Airport Systems (NPIAS) identifies 230 public use airports in Michigan. Of these, 95 are

identified as significant to national air transportation and thus eligible to receive grants under the federal Airport Improvement Program (AIP). And of the 95 AIP-eligible airports, 15 are described as *Commercial service–primary* airports, i.e. publicly owned airports that receive scheduled passenger service and have more than 10,000 passenger boardings (enplanements) each year. These 15 *Commercial service–primary* airports are: Alpena County Regional, Charlevoix Municipal, Detroit Metropolitan Wayne County, Delta County (Escanaba), Bishop International (Flint), Gerald R. Ford International (Grand Rapids), Houghton County Memorial (Hancock/Calumet), Kalamazoo/Battle Creek International, Capital Regional International (Lansing), Sawyer International (Marquette/Gwinn), Muskegon County, Pellston Regional Airport of Emmet County, MBS International (Saginaw), Chippewa County International (Sault Ste. Marie), and Cherry Capital (Traverse City).

Detroit Metropolitan Wayne County is the state's busiest airport with 15.8 million 2014 enplanements. The Gerald R. Ford International Airport is the second busiest in the state with 1.2 million enplanements in 2014.

All airports in Michigan are licensed by the State Aeronautics Commission under authority of Section 86 of the State Aeronautics Code. However, public airports are organized in different ways under different statutory authority:

The Community Airports Act (1957 PA 206) authorizes any two or more counties, cities, villages, or townships, or any combination of those political subdivisions, to form an airport authority. There appears to be only one airport organized under this act, the Flint/Genesee County Bishop International Airport.

The Airport Authorities Act (1970 PA 73) was enacted in order to transfer ownership of the commercial airport in Lansing from the state of Michigan to an airport authority created under the act. The act is effectively specific to the Lansing Capital Regional Airport.

Most publicly owned airports are administrative units of a state political subdivision, such as a county, city, village, or township. This form of organization is authorized under Section 126 of the State Aeronautics Code. In addition, Section 134 of the Code authorizes two or more political subdivisions of the state to create a board to jointly own and operate airports. The Northwestern Regional Airport Commission, created by Grand Traverse and Leelanau Counties, owns and operates the Cherry Capitol Airport (Traverse City) under authority of Section 134. The MBS International (Saginaw) is also established under Section 134.

The Public Airport Authorities Act, which added Chapter VIA to the State Aeronautics Code in 2002, established the Wayne County Airport Authority as the owner-operator of the Detroit Metropolitan Wayne County Airport, effective March 26, 2002. Prior to that date, the Detroit Metropolitan Airport was an administrative unit within Wayne County government. (The Wayne County Airport Authority also owns and operates Willow Run Airport in Ypsilanti.)

House Bill 4468 would add a new chapter, Chapter VIIA, to the State Aeronautics Code to provide for the organization of a *regional airport authority*. The bill as enacted is to be cited as the Regional Airport Authority Act. As noted above, the bill is similar in many respects to the 2002 Public Airport Authority Act. One of the principal differences between the two chapters is that the Public Airport Authority Act established a new public airport authority on the effective date of the act, and was effectively specific to the Detroit Metropolitan Wayne County. The Regional Airport Authority Act is permissive; it authorizes the formation of regional airport authorities under certain terms and conditions.

The Gerald R. Ford International Airport (Grand Rapids) is an administrative unit within Kent County government. Representatives of Kent County and the Gerald R. Ford International Airport have expressed interest reorganizing the airport as a regional authority and supported House Bill 4468. However, provisions of House Bill 4468 are not specific to the Gerald R. Ford International Airport and other airports in the state could be organized under the authority of the bill, as enacted.

House Bill 4468 does not appear to have a direct fiscal impact on local government, although it would allow for the transfer of administrative responsibility for an airport from one local unit of government, in this case, Kent County, to a new airport authority authorized under the bill. The enacted Regional Airport Authority Act, like the Public Airport Authority Act, expressly excludes the power to impose or levy taxes from the authority's powers.

The bill does not have an impact on state government. The State of Michigan does not provide operating assistance to state airports. The Michigan Department of Transportation does administer the federal AIP on behalf of eligible local public airports, including planning and contract administration. The department also provides matching funds for AIP projects. Federal AIP grants support 90% of eligible project cost with the state and local airport owner each providing half the required matching funds, i.e. each providing 5% of eligible project cost. Historically, the state's 5% share has been appropriated from the state restricted State Aeronautics Fund, although from FY 2012-13 through FY 2015-16 this restricted funding has been supplemented with state General Fund appropriations. The bill would not change state program responsibility with respect to local public airports.

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