

HOUSE BILL No. 5115

June 17, 2009, Introduced by Rep. Durhal and referred to the Committee on Regulatory Reform.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 19. (1) Within **NOT LESS THAN 45 days OR MORE THAN 90 DAYS**
2 ~~of the effective date of this act~~ **JANUARY 20, 2009** or the date on
3 which a metropolitan area becomes a qualified metropolitan area and
4 prior to a transfer date, the legislative body of the qualified
5 city in which a qualified convention facility is located may
6 disapprove the transfer of the qualified convention facility to the
7 authority by adopting a resolution disapproving the transfer. If
8 the transfer is not disapproved, the qualified convention facility
9 is transferred to the authority on the ninetieth day after ~~the~~

~~effective date of this act~~ **JANUARY 20, 2009** or the date on which a convention facility becomes a qualified convention facility. All of the following shall occur on a transfer date:

(a) All right, title, and interest of a local government in and to a qualified convention facility located in a qualified metropolitan area shall by operation of this act be conveyed and transferred from the local government to the authority for the qualified metropolitan area, and the authority shall receive, succeed to, and assume the exclusive right, responsibility, and authority to own, occupy, operate, control, develop, and use the qualified convention facility from and after the transfer date, including, but not limited to, all real property, buildings, improvements, structures, easements, rights of access, and all other privileges and appurtenances pertaining to the qualified convention facility, subject only to those restrictions imposed by this act.

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

(c) All licenses, permits, approvals, or awards of a local government related to the ownership, occupancy, operation, control,

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

5 (d) All grant agreements, grant preapplications, grant
6 applications, rights to receive the balance of any funds payable
7 under the agreements or applications, the right to receive any
8 amounts payable from and after the transfer date, and the benefits
9 of contracts or agreements of a local government related to the
10 ownership, occupancy, operation, control, development, or use of a
11 qualified convention facility by the local government shall by
12 operation of this act be conveyed and transferred from the local
13 government to the authority for the qualified metropolitan area and
14 be assumed by the authority.

15 (e) All of the duties, liabilities, responsibilities, and
16 obligations of a local government related to the ownership,
17 occupancy, operation, control, development, or use of a qualified
18 convention facility by the local government shall by operation of
19 this act be conveyed and transferred from the local government to
20 the authority for the qualified metropolitan area and assumed by
21 the authority, except for any liabilities, responsibilities, or
22 obligations that are contested in good faith by, or, as of the
23 transfer date, unknown to, the authority or as otherwise provided
24 in this act.

25 (f) An authority for a qualified metropolitan area shall
26 assume all of the outstanding securities of the local government
27 that are special limited obligations payable from and secured by a

1 lien on distributions received under the state convention facility
2 development act, 1985 PA 106, MCL 207.621 to 207.640, and were
3 originally issued to finance the acquisition or construction of,
4 development of, or improvements to the qualified convention
5 facility conveyed and transferred to the authority for the
6 qualified metropolitan area under this section, and the authority
7 may refund or defease the securities. If the authority refunds the
8 outstanding securities assumed under this subsection, that
9 refunding shall be considered, as a matter of law, to be necessary
10 to eliminate requirements of covenants applicable to the existing
11 outstanding securities.

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

22 (3) The local chief executive officer of a local government
23 from which the rights, responsibility, and authority to own,
24 occupy, operate, control, develop, and use a qualified convention
25 facility are conveyed and transferred from the local government to
26 an authority for a qualified metropolitan area under this section
27 shall execute the instruments of conveyance, assignment, and

1 transfer or other documents as may, in the authority's and the
2 officer's reasonable judgment, as necessary or appropriate to
3 recognize, facilitate, or accomplish the transfer of the qualified
4 convention facility from the local government to the authority
5 under this section.

6 (4) An authority for a qualified metropolitan area shall not
7 assume any unfunded obligations of a local government transferring
8 a qualified convention facility under this section to provide
9 pensions or retiree health insurance. Upon request by the
10 authority, the local government shall provide the authority with a
11 statement of the amount of the unfunded obligations, determined by
12 a professional actuary acceptable to the authority.

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

26 (6) The exclusive right and authorization to own, occupy,
27 operate, control, develop, and use a qualified convention facility

1 transferred under this section shall include, but not be limited
2 to:

3 (a) Ownership and operational jurisdiction over all real
4 property of the qualified convention facility, subject to any liens
5 of record and legal restrictions and limitations on the use of the
6 property.

7 (b) The local government's right, title, and interest in, and
8 all of the local government's responsibilities arising under,
9 operating leases and concessions relating to a qualified convention
10 facility.

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

13 (a) All contracts with licensees, franchisees, tenants,
14 concessionaires, and leaseholders.

15 (b) All operating financial obligations secured by revenues
16 and fees generated from the operations of the qualified convention
17 facility.

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

1 government.

2 (d) All office equipment, including, but not limited to,
3 computers, records and files, software, and software licenses
4 required for financial management, personnel management, accounting
5 and inventory systems, and general administration.

6 (8) The transfer of the real and personal property and
7 operational jurisdiction over a qualified convention facility to an
8 authority may not in any way impair any contracts with licensees,
9 franchisees, vendors, tenants, bondholders, or other parties in
10 privity with the local government that owned a qualified convention
11 facility transferred to an authority under this section, if the
12 contracts were not entered into or modified in violation of this
13 act.

14 (9) From and after the transfer date, a local government from
15 which a qualified convention facility has been transferred shall be
16 relieved from all further costs, responsibility, and liability
17 arising from, or associated with, control, operation, development,
18 and maintenance of the qualified convention facility. The local
19 government shall continue to be responsible for all costs
20 associated with local municipal services, including, but not
21 limited to, police, fire, and emergency medical services, without
22 any additional compensation from the authority. The authority shall
23 provide for the payment of compensation not exceeding
24 \$20,000,000.00 to the qualified city for any revenue otherwise
25 payable to the qualified city from parking facilities operated by
26 the qualified city at the qualified convention facility and for
27 other costs incurred by the qualified city associated with the

1 transfer of the qualified convention facility to the authority
2 under this section.

3 (10) A local government that owns a qualified convention
4 facility subject to transfer under this section or that owned a
5 qualified convention facility transferred to an authority under
6 this section shall comply with all of the following, before and
7 after the transfer:

8 (a) Refrain from any action to sell, transfer, or otherwise
9 dispose of a qualified convention facility other than to the
10 authority or incur new or expanded obligations related to qualified
11 convention facility, without the consent of the authority.

12 (b) Refrain from any approval of or material modification to
13 any collective bargaining agreement applicable to local government
14 employees employed at or assigned to the qualified convention
15 facility or to terms of employment for employees at or assigned to
16 the qualified convention facility. Any approval or modification
17 subject to this subsection shall be null and void.

18 (c) Refrain from any action that, in the authority's judgment,
19 would impair the authority's exercise of the powers granted to the
20 authority under this act or that would impair the efficient
21 operation and management of the qualified convention facility by
22 the authority.

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

27 (e) At the request of an authority, grant any license,

1 easement, or right-of-way in connection with the qualified
2 convention facility to the extent the authority has not been
3 empowered to take these actions.

4 (f) Upon creation, an authority for the qualified metropolitan
5 area in which the local government is located and before the
6 transfer date may conduct operations, maintenance, and repair of
7 the convention facility in the ordinary and usual course of
8 business.

9 (11) Any contract, agreement, lease, sale, disposition,
10 transfer, or other conveyance, easement, license, right,
11 obligation, debt, or liability assumed, approved, entered into,
12 amended, or modified in violation of this section shall be voidable
13 as a matter of law to the extent that the authority would otherwise
14 assume, become party to or transferee of, or otherwise be obligated
15 under the contract, agreement, lease, sale, disposition, transfer,
16 conveyance, easement, license, right, obligation, debt, or
17 liability.

18 (12) Unless otherwise provided in this act, the local chief
19 executive officer of a local government that owns a qualified
20 convention facility subject to transfer under this section is
21 authorized and shall take all reasonable steps to cancel or
22 terminate any agreement to which the local government is a party
23 that relates to the qualified convention facility and meets all the
24 following criteria:

25 (a) The agreement relates to the qualified convention facility
26 and the authority has not expressly assumed or accepted the
27 agreement under subsection (2).

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

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

5 (13) If real property transferred from a qualified city to an
6 authority under this section is no longer used by the authority for
7 the purpose of maintaining or operating a convention facility as
8 determined by a vote of the board, all right, title, and interest
9 of the authority in the real property shall revert from the
10 authority to the qualified city with the consent of the qualified
11 city and upon payment by the qualified city to the authority of an
12 amount equal to the compensation paid to the qualified city under
13 section 19(9).