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BILL



ANALYSIS

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Senate Bills 586, 587, and 588 (as enacted)
House Bill 4998 (as enacted)
Sponsor: Senator Tony Stamas (S.B. 586)
Senator Jason E. Allen (S.B. 587)
Senator Mark C. Jansen (S.B. 588)
Representative Shanelle Jackson (H.B. 4998)
Senate Committee: Commerce and Tourism
House Committee: Commerce (S.B. 586, 587, & 588)
Regulatory Reform (H.B. 4988)

PUBLIC ACTS 60, 61, & 62 of 2009
PUBLIC ACT 63 of 2009

Date Completed: 8-3-10

CONTENT

House Bill 4998 and Senate Bills 586, 587, and 588 amended, respectively, the Regional Convention Facility Authority Act, the Health and Safety Fund Act, the State Convention Facility Development Act, and the Michigan Trust Fund Act to do all of the following:

- **Require the chief executive of a qualified city (Detroit) and a regional convention facility authority to enter into a lease agreement for a qualified convention facility (Cobo Center) (if Detroit did not disapprove the lease by August 1, 2009).**
- **Revise provisions regarding local preferences for contracts, vendors, and employees.**
- **Require an authority to establish a citizens advisory council.**
- **Appropriate funds and provide other funding for a qualified convention facility leased to an authority.**
- **Require \$9.0 million of tobacco settlement revenue to be used to develop a convention facility.**

The bills were tie-barred and took effect on July 2, 2009.

The Regional Convention Facility Authority Act defines "qualified city" as a city with a population of more than 700,000, according to the most recent decennial census, that contains a qualified convention facility.

(Detroit is the only Michigan city that currently qualifies.)

"Qualified convention facility" means a publicly owned convention facility with at least 600,000 square feet of usable exhibition area that is located in a qualified city. (Cobo Center in Detroit, originally known as Cobo Hall, is the only facility that currently qualifies.)

(House Bill 4998 and Senate Bills 586 and 587 contain various provisions that would have applied if the lease of the convention facility had been disapproved. Since the lease was not disapproved, most of those provisions are not described below.)

House Bill 4998

Transfer/Lease of Convention Facility

The Regional Convention Facility Authority Act was enacted in 2008 to provide for the creation of a regional convention facility authority in the Detroit metropolitan area and to transfer a qualified convention facility (Cobo Center in Detroit) to the regional authority. The Act allowed the legislative body of a qualified city in which a qualified convention facility is located (Detroit) to disapprove the transfer of the facility to the authority by adopting a resolution disapproving the transfer, within 45 days of the Act's effective date. (As explained in **BACKGROUND**, below, that transfer of

Cobo Center was disapproved and did not take place.)

Under the bill, by August 1, 2009, or 75 days after a later date on which a metropolitan area becomes a qualified metropolitan area, the qualified city in which a qualified convention facility is located could disapprove leasing the qualified convention facility to the authority by adopting a resolution disapproving a lease. (As explained in **BACKGROUND**, the city did not adopt a resolution disapproving the lease of Cobo Center. If the city had disapproved the lease, the authority created for the qualified metropolitan area in which the qualified convention facility was located would have been dissolved.)

Since the City of Detroit did not disapprove the lease, the qualified convention facility is considered leased to the authority and the local chief executive officer of the city and the authority are required to enter into a lease agreement prescribed by the Act. The agreement must provide for the lease of the qualified convention facility to the authority for at least 30 years or the period necessary to repay outstanding obligations issued by the authority under the Act, whichever is earlier. The lease must require the authority to renovate, rehabilitate, and expand the qualified convention facility. The lease is effective 238 days after January 20, 2009 (the effective date of the Regional Convention Facility Authority Act).

The Act contains a number of provisions regarding the transfer or lease of Cobo Center to the authority, and the authority's responsibility to operate and improve the facility after the transfer or lease. The bill specifies that those provisions apply while the lease agreement is effective.

The bill specifies that the validity of the transfer or lease of a qualified convention facility to an authority under the Act must be conclusively presumed unless questioned in an original action filed in the Court of Appeals within 30 days after the bill's effective date.

Payment to City

The Act requires the authority to provide \$20.0 million to the qualified city as compensation for any revenue otherwise payable to the city from parking facilities

operated by the city at the qualified convention facility and for other costs incurred by the city associated with the transfer or lease of the convention facility to the authority. Previously, the Act referred to payment of compensation "not exceeding" \$20.0 million for that revenue associated with the transfer of the facility to the authority.

Under the bill, if the transfer or lease of parking facilities to the authority would impair covenants of bonds issued by the local government that owns the qualified convention facility to finance the parking facilities, the authority and the local government may enter into an agreement providing for the local government to retain title to parking facilities until the authority pays the \$20.0 million to the local government to avoid a default of bond covenants by the local government. These provisions apply while the lease agreement is effective.

Local Preferences

The Act gives the authority board the responsibility to undertake certain activities, including providing supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and other items; acquiring professional services; entering into cooperative purchasing agreements with other public entities; and entering into lease purchases or installment purchases. In all purchases made by the authority, all other things being equal, preference must be given first to products manufactured or services offered by firms based in the authority's qualified metropolitan area, including the qualified city and each county in the qualified metropolitan area, and next to firms based in Michigan, if consistent with applicable law. Previously, this applied if consistent with Federal law. The bill also requires the authority actively to solicit lists of potential bidders for authority contracts from each qualified city and each county in the qualified metropolitan area. (The qualified metropolitan area includes the qualified city, the county in which it is located, and the two counties bordering that county with the largest populations.)

The Act requires the board to adopt a procurement policy consistent with the Act and Federal and State laws relating to

procurement. Under the bill, the procurement policy must include a requirement for the authority to use its best efforts within the Act's competitive solicitation requirements to achieve fairness in the number and value of contracts for goods or services entered into by the authority with firms based in the qualified city and each county within the qualified metropolitan area, consistent with applicable law.

The bill also requires the authority to prepare an annual report to the board, the qualified city, and each county within the qualified metropolitan area detailing all contracts entered into by the authority during the immediately preceding fiscal year.

The Act allows the authority board to employ personnel as it considers necessary. The bill requires the board to adopt an employment policy that includes a requirement for the authority to use best efforts to achieve fairness in the hiring of employees from among residents of the qualified city and each county within the qualified metropolitan area, consistent with applicable law.

The bill specifies that the requirements described above are not to be construed as creating a quota or set-aside for any qualified city or any county in the qualified metropolitan area.

Citizens Advisory Council

The bill required the authority to establish a citizens advisory council within 60 days after the transfer date (the effective date of the lease agreement), to provide public input and advise the board on the impact of redevelopment and management of a qualified convention facility upon the qualified city and each county within the qualified metropolitan area. The council must have eight members, including one resident of the qualified city appointed by the local chief executive officer of the city; one resident of the city appointed by its legislative body; one county resident appointed by each chief executive officer for each county within the qualified metropolitan area; and one county resident appointed by the legislative body for each of those counties. An elected State or local official is not eligible to serve as a member of the citizens advisory council.

Council members must be appointed for four-year terms. A vacancy arising other than by expiration of a term must be filled for the remainder of a term in the same manner as the original appointment. The council must comply with the Open Meetings Act and the Freedom of Information Act.

The advisory council must organize and make its own policies and procedures and adopt bylaws, not inconsistent with the Act, governing its operations. The council may request and must receive from the authority information and technical assistance relating to the development and management of the qualified convention facility.

A member of the citizens advisory council may not be compensated for being a member and may not be reimbursed for any expenses incurred as a member of the council.

Senate Bill 586

The Health and Safety Fund Act requires the State Treasurer to distribute certain amounts from the Health and Safety Fund for specific purposes. Public Act 586 of 2008 amended the Act to require that, in fiscal year (FY) 2008-09 through FY 2014-15, \$16.0 million be transferred to and deposited in the Convention Facility Development Fund created under the State Convention Facility Development Act for distribution and use only in the manner and for the purposes stated in that Act. In FY 2015-16 through FY 2038-39, \$15.0 million is to be transferred to and deposited in the Convention Facility Development Fund for distribution and use in the manner and for the purposes stated in that Act.

The bill made the FY 2015-16 through FY 2038-39 distributions contingent on the transfer or lease of a qualified convention facility to a metropolitan authority taking place as provided in the Regional Convention Facility Authority Act.

Senate Bill 587

Appropriations & Distributions for Convention Facility

Public Act 553 of 2008 amended the State Convention Facility Development Act to make revisions consistent with the Regional Convention Facility Authority Act. Among other things, Public Act 553 appropriated

\$9.0 million for FY 2008-09 from the 21st Century Jobs Trust Fund to a regional convention facility authority created under the Regional Convention Facility Authority Act for the purpose of developing a qualified convention facility. Under the bill, the \$9.0 million appropriation is for FY 2009-10, and must be transferred and deposited in the Convention Facility Development Fund for purposes authorized under the Regional Convention Facility Authority Act.

The State Convention Facility Development Act includes amounts that must be distributed each year through FY 2022-23 to a metropolitan authority created under the Regional Convention Facility Authority Act for the operational deficit costs of a qualified convention facility operated by the authority under that Act. The bill deleted a \$9.4 million distribution for FY 2008-09, and provided instead for that amount to be distributed that year to a metropolitan authority for the costs incurred by the authority for the implementation of the Regional Convention Facility Authority Act, creation of the authority, and transfer or lease of a qualified convention facility to the authority, as well as other costs relating to the management, operation, and development of a qualified convention facility.

Bond Limit

Under the State Convention Facility Development Act, a metropolitan authority that becomes a qualified local governmental unit after December 1, 2008, may not issue bonds, obligations, or other evidences of indebtedness to which distributions under the Act are pledged in order to finance a total cost for all projects undertaken that exceeds \$299.0 million. The Act previously referred to a local governmental unit that became a qualified local governmental unit after December 1, 2008.

"Qualified local governmental unit" means a city, village, township, county, or authority that is located in, or includes within its territory or jurisdiction, a county in which convention hotels are located and that meets other criteria regarding convention facility exhibit space. The bill added that "qualified local governmental unit" includes a metropolitan authority that leases, develops, operates, and maintains a

qualified convention facility under the Regional Convention Facility Authority Act.

Senate Bill 588

The bill amended the Michigan Trust Fund Act to require that, for FY 2009-10, \$9.0 million of the tobacco settlement revenue received by the State that is not considered a "TSR" as that term is defined under the Michigan Tobacco Settlement Finance Authority Act, be used as provided in the State Convention Facility Development Act. (Under the Michigan Tobacco Settlement Finance Authority Act, "TSR" means the portion, which may include any or all, of the State's tobacco receipts sold to the Michigan tobacco settlement finance authority under that Act and any sale agreement.)

MCL 141.475 (S.B. 586)
207.623 et al. (S.B. 587)
12.257 (S.B. 588)
141.1355 et al. (H.B. 4998)

BACKGROUND

On February 24, 2009, the Detroit City Council passed a resolution to disapprove the transfer of Cobo Center from the city to the regional authority created in the Regional Convention Facility Authority Act. On March 4, 2009, the Mayor of Detroit vetoed the resolution. The City Council did not override the mayor's veto, but challenged it in circuit court because the Act gave exclusive power to disapprove the transfer to the Council.

The circuit court ruled that the mayoral veto was null and void under the plain language of the Act. The mayor appealed that decision to the Michigan Court of Appeals, which affirmed the lower court's ruling.

In July 2009, the Detroit City Council opted not to vote on a resolution to disapprove leasing Cobo Center to the regional authority.

On September 15, 2009, the regional authority assumed control over the operation of Cobo Center.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will not affect State revenue but placed new provisions on the distribution of revenue based on whether a convention facility (Cobo Center) was transferred or leased to a metropolitan authority under the Regional Convention Facility Authority Act. House Bill 4998 permits the transfer of Cobo Center from the City of Detroit to a metropolitan authority through a lease agreement.

Senate Bill 586 authorizes the Health and Safety Fund to transfer \$15.0 million annually to the Convention Facility Development Fund beginning in FY 2015-16 through FY 2038-39 if the transfer or lease of a convention facility (Cobo Center) to the metropolitan authority takes place, but only through FY 2029-30 if this transfer or lease had not been approved.

Senate Bill 587 provides for the transfer of \$9.0 million from the 21st Century Jobs Trust Fund to the Convention Facility Development Fund in FY 2009-10. If the transfer and lease of Cobo Center to the metropolitan authority had been disapproved and the authority dissolved, the transfers from the Health and Safety Fund to the Convention Facility Development Fund (\$16.0 million from FY 2009-10 through FY 2014-15 and \$15.0 million beginning in FY 2015-16) would have gone to a building authority in Oakland County. The bill distributed \$9.4 million in FY 2008-09 to the metropolitan authority (Cobo Center), or to the building authority (Oakland County) if the transfer and lease of Cobo Center to the metropolitan authority had been disapproved.

Under Senate Bill 587, if the facility had not been transferred or leased, certain changes scheduled to be made to the distribution of revenue in FY 2015-16 would not occur: Specifically, liquor tax distributions under the Convention Facility Development Fund would not be capped at an annual 1.0% increase, as was required under Public Act 553 of 2008, accommodations tax revenue would be distributed to Wayne, Oakland, and Macomb Counties, and the City of Detroit would receive the amount generated from the accommodations tax rate it assesses in excess of the tax rate assessed elsewhere in Wayne County.

Senate Bill 588 requires that \$9.0 million of tobacco settlement revenue be used for development of a convention facility as provided in the Convention Facility Development Act (under Senate Bill 586).

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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.