

REGIONAL CONVENTION FACILITY AUTHORITY ACT (EXCERPT)
Act 554 of 2008

141.1369 Transfer of qualified convention facility to authority; resolution disapproving transfer; leasing of qualified convention facility to authority; lease requirements; actions to occur on transfer date; duties and obligations of authority; certain contracts, agreements, conveyances, rights, obligations, or liabilities as voidable; cancellation or termination of agreement to which local government is party; reversion; agreement to make capital improvements.

Sec. 19.

(1) Within 45 days of January 20, 2009 or the date on which a metropolitan area becomes a qualified metropolitan area and prior to a transfer date, the legislative body of the qualified city in which a qualified convention facility is located may disapprove the transfer of the qualified convention facility to the authority by adopting a resolution disapproving the transfer. If the transfer is not disapproved, the qualified convention facility is transferred to the authority on the ninetieth day after January 20, 2009 or the date on which a convention facility becomes a qualified convention facility. If the transfer is disapproved, not later than 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 may disapprove leasing the qualified convention facility to the authority by adopting a resolution disapproving a lease of the qualified convention facility to the authority. The resolution shall be adopted and effective as provided by law, including any charter of the qualified city. If a resolution disapproving the lease is adopted and effective, an authority created for the qualified metropolitan area in which the qualified convention facility is located is dissolved. If the lease is not disapproved within the period provided, the qualified convention facility will be considered leased to the authority and the local chief executive officer of the qualified city and the authority shall enter into a lease agreement, provisions of which are prescribed in this act, and shall provide for the lease of the qualified convention facility to the authority for a term of not less than 30 years or the time period necessary to repay the outstanding obligations issued by the authority under sections 25 and 27, whichever is earlier. The lease shall require the authority to renovate, rehabilitate, and expand the qualified convention facility. The lease shall be effective 238 days after January 20, 2009 or the date on which a metropolitan area becomes a qualified metropolitan area. 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 or leased 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 or lease, 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. If a qualified convention facility is leased to an authority under this subsection, this subdivision shall apply while the lease agreement is effective.

(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 by the local government and used for purposes of the qualified convention facility by the local government shall by operation of this act be conveyed and transferred or leased 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. If a qualified convention facility is leased to an authority under this subsection, this subdivision shall apply while the lease agreement is effective.

(c) All licenses, permits, approvals, or awards of a local government related to the possession, occupancy, operation, control, development, or use of a 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 be assumed by the authority. If a qualified convention facility is leased to an authority under this subsection, this subdivision shall apply while the lease agreement is effective.

(d) All grant agreements, grant preapplications, grant applications, rights to receive the balance of any funds payable under the agreements or applications, the right to receive any amounts payable from and after the transfer date, and the benefits of contracts or agreements of a local government related to the possession, occupancy, operation, control, development, or use of a 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 be assumed by the authority. If a qualified convention facility is leased to an authority under this subsection, this subdivision shall apply while the lease agreement is effective.

(e) All of the duties, liabilities, responsibilities, and obligations of a local government related to the possession, occupancy, operation, control, development, or use of a 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 assumed by the authority, except for any liabilities, responsibilities, or obligations that are contested in good faith by the authority. If a qualified convention facility is leased to an authority under this subsection, this subdivision shall apply while the lease agreement is effective.

(f) An authority for a qualified metropolitan area shall assume all of the outstanding securities of the local government that are special limited obligations payable from and secured by a lien on distributions received under the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, and were originally issued to finance the acquisition or construction of, development of, or improvements to the qualified convention facility conveyed and transferred to the authority for the qualified metropolitan area under this section, and the authority may refund or defease the securities. If the authority refunds the outstanding securities assumed under this subsection, that refunding shall be considered, as a matter of law, to be necessary to eliminate requirements of covenants applicable to the existing outstanding securities.

(2) An authority shall assume, accept, or become liable for lawful agreements, obligations, promises, covenants, commitments, and other requirements of a local government relating to operating a qualified convention facility conveyed and transferred under this section, except as provided in subsection (4). An authority shall perform all of the duties and obligations and shall be entitled to all of the rights of a local government and under any agreements expressly assumed and accepted by the authority related to the transfer of a qualified convention facility from the local government to the authority under this section. If a qualified convention facility is leased to an authority under subsection (1), this subsection shall apply while the lease agreement is effective.

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

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

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

(6) The exclusive right and authorization to possess, occupy, operate, control, develop, and use a qualified convention facility transferred or leased under this section shall include, but not be limited to:

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

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

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

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

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

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

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

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

(9) From and after the transfer date, a local government from which a qualified convention facility has been transferred or leased shall be relieved from all further costs, responsibility, and liability arising from, or associated with, control, operation, development, and maintenance of the qualified convention facility. The local government shall continue to be responsible for all costs associated with local municipal services, including police, fire, and emergency medical services, without any additional compensation from the authority. An authority created prior to the effective date of the amendatory act that added subsection (14) shall provide for the payment of compensation of \$20,000,000.00 to the qualified city as compensation for any revenue otherwise payable to the qualified city from parking facilities operated by the qualified city at the qualified convention facility and for other costs incurred by the qualified city associated with the transfer or lease of the qualified convention facility to the authority under this section. 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 and control of the parking facilities and revenue generated by the parking facilities until the compensation of \$20,000,000.00 is paid by the authority to the local government to avoid a default of bond covenants by the local government. If a qualified convention facility is leased to an authority under subsection (1), this subsection shall apply while the lease agreement is effective.

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

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

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

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

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

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

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

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

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

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

(b) The agreement provides for cancellation or termination.

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

(13) If real property transferred from a qualified city to an authority under this section is no longer used by the authority for the purpose of maintaining or operating a convention facility as determined by a vote of the board or a lease agreement providing for the lease of the qualified convention facility is no longer effective, all right, title, and interest of the authority in the real property shall revert from the authority to the qualified city and upon payment by the qualified city to the authority of an amount equal to the compensation paid to the qualified city under subsection (9).

(14) After the creation of an authority for a qualified metropolitan area and before the transfer date, the local chief executive officer of the qualified city that owns or operates a qualified convention facility and the authority may enter into an agreement authorizing the qualified city to make capital improvements to the qualified convention facility, including, but not limited to, electrical system improvements, with costs of the management, design, and

construction of capital improvements incurred by the qualified city in an amount not to exceed \$3,000,000.00 to be reimbursed by the authority with the proceeds of bonds issued by the authority as provided in the agreement. Any reimbursement for capital improvements agreed to by the local chief executive officer and the authority under this subsection shall be in addition to any compensation paid to the qualified city under subsection (9).

History: 2008, Act 554, Eff. Jan. 20, 2009 ;-- Am. 2009, Act 63, Imd. Eff. July 2, 2009