

HOUSE BILL No. 4477

March 20, 1989, Introduced by Reps. Gagliardi, Jacobetti, Stupak and Sofio and referred to the Committee on Taxation.

. A bill to promote tourism in certain regions of this state; to provide for the creation of tourism marketing programs; to provide for the imposition and collection of assessments on the owners of transient facilities to support tourism marketing programs; to provide for the disbursement of the assessments; to prescribe the powers and duties of certain state agencies and officers; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "regional tourism marketing act".

3 Sec. 2. As used in this act:

4 (a) "Assessment" means the amount levied against an owner
5 under this act.

6 (b) "Assessment revenues" means the money collected by a
7 regional marketing organization from the assessment, including

1 any interest and penalties on the assessment, imposed under this
2 act.

3 (c) "Board" means the board of directors elected by the mem-
4 bers of a regional marketing organization under section 5.

5 (d) "Director" means the director of commerce.

6 (e) "Owner" means the owner of a transient facility that is
7 located within the regional assessment district or, if the tran-
8 sient facility is operated or managed by a person other than the
9 owner, then the operator or manager of that transient facility.
10 Owner includes a person electing to come under the provisions of
11 this act pursuant to section 9.

12 (f) "Regional assessment district" means a region of this
13 state composed of a number of counties in which a regional mar-
14 keting organization operates. Regional assessment district does
15 not include a portion of the region that is a special charter,
16 fourth class city.

17 (g) "Regional marketing organization" means a nonprofit cor-
18 poration that promotes tourism within a region of this state.
19 Regional marketing organization includes only an organization
20 that has been operating for 10 or more years and that operates in
21 a region composed of 15 counties.

22 (h) "Room" means a room or other space provided for sleeping
23 that can be rented independently, including the furnishings and
24 other accessories in the room. Room includes, but is not limited
25 to, a condominium or time-sharing unit that, pursuant to a man-
26 agement agreement, may be used to provide dwelling, lodging, or
27 sleeping quarters for a transient guest.

1 (i) "Room charge" means the charge imposed for the use or
2 occupancy of a room, excluding charges for food, beverages, state
3 use tax, telephone service, or like services paid in connection
4 with the room charge, and reimbursement of the assessment as
5 allowed in section 6.

6 (j) "Transient facility" means a building or combination of
7 buildings under common ownership, operation, or management that
8 contains 10 or more rooms used in the business of providing
9 dwelling, lodging, or sleeping to transient guests, whether or
10 not membership is required for the use of the rooms. Transient
11 facility includes a building or combination of buildings, the
12 owner of which has elected to come under the provisions of this
13 act pursuant to section 9. Transient facility does not include a
14 college or school dormitory, a hospital, a nursing home, or a
15 facility owned and operated by an organization qualified for an
16 exemption from federal taxation under section 501(c) of the
17 internal revenue code.

18 (k) "Transient guest" means a person who occupies a room in
19 a transient facility for less than 30 consecutive days.

20 (l) "Tourism marketing program" means a program established
21 by a regional marketing organization to develop, encourage,
22 solicit, and promote tourism within a region of this state. The
23 encouragement and promotion of tourism shall include a service,
24 function, or activity, whether or not performed, sponsored, or
25 advertised by a regional marketing organization, that intends to
26 attract transient guests to the regional assessment district.

1 (m) "Tourism marketing program notice" means the notice
2 described in section 3.

3 Sec. 3. (1) A regional marketing organization shall file a
4 tourism marketing program notice with the director to establish a
5 tourism marketing program within a regional assessment district.

6 (2) The tourism marketing program notice shall contain all
7 of the following:

8 (a) A statement that the regional marketing association pro-
9 poses to create a tourism marketing program under this act.

10 (b) A statement that the regional marketing association pro-
11 poses to levy and collect an assessment from owners to pay the
12 costs of the tourism marketing program.

13 (c) A description of the structure, membership, and activi-
14 ties of the regional marketing organization. The description
15 shall include the business name and address of the person desig-
16 nated by the regional marketing organization to receive the pay-
17 ment of assessments under section 6 and the independent certified
18 public accountants who audit the financial statements of the
19 regional marketing organization.

20 (d) A description of the tourism marketing program to be
21 implemented by the regional marketing organization with the
22 assessment revenues.

23 (e) A statement specifying the amount of the assessment pro-
24 posed to be levied. The assessment shall not exceed 1% of the
25 room charges in the applicable payment period.

26 (f) A list of the counties comprising the regional
27 assessment district.

(g) Other information considered necessary by the director.

(3) On the same day the tourism marketing program notice is filed under subsection (1), the regional marketing organization shall mail a copy of the tourism marketing program notice to each owner of a transient facility located in the regional assessment district. The tourism marketing program notice shall be mailed by registered or certified mail to the owner at the last known address of the transient facility. The regional marketing organization shall use any information that is reasonably available to the regional marketing organization to establish the list of all transient facilities within the regional assessment district.

(4) A regional marketing organization may file and serve an amended tourism marketing program notice under this section if the original tourism marketing program has been in effect for 2 years or more in the regional assessment district. The amended tourism marketing program notice may specify an assessment proposed to be levied, which assessment shall not exceed 2% of the room charges in the applicable payment period. An amended tourism marketing program notice under this section shall be subject to section 4.

Sec. 4. (1) The director shall approve or disapprove a tourism marketing program within 30 days after a tourism marketing program notice is filed. The director shall not disapprove a tourism marketing program unless the tourism marketing program violates this act.

1 (2) The director shall conduct a written referendum, by mail
2 or in person, on whether the tourism marketing program should be
3 approved among all owners within 40 days after approval of a
4 tourism marketing program under subsection (1). For the purpose
5 of the referendum, each owner shall have 1 vote for each room in
6 the owner's transient facility.

7 (3) The tourism marketing program and assessment set forth
8 in the tourism marketing program notice shall become effective on
9 the first day of the month that is more than 30 days after certi-
10 fication by the director of the results of the referendum if the
11 tourism marketing program was approved by a majority of the votes
12 actually cast in the regional assessment district. A regional
13 marketing organization may file and serve another tourism market-
14 ing program notice under section 3 at least 60 days after certi-
15 fication by the director of the results of a referendum if the
16 referendum failed.

17 Sec. 5. A tourism marketing program may include 1 or more
18 of the following:

19 (a) A provision for establishing and paying the costs of
20 advertising, marketing, and promotional programs to encourage
21 tourism in the regional assessment district.

22 (b) A provision for assisting a transient facility within
23 the regional assessment district to promote tourism.

24 (c) A provision for the acquisition of personal property
25 considered appropriate by the regional marketing organization to
26 achieve the purpose of the tourism marketing program.

1 (d) A provision for the hiring of and payment for personnel
2 employed by the regional marketing organization to implement the
3 tourism marketing program.

4 (e) A provision for contracting with organizations, agen-
5 cies, or persons to carry out activities to achieve the purpose
6 of the tourism marketing program.

7 (f) A program to establish and pay for the costs of research
8 designed to encourage tourism in the regional assessment
9 district.

10 (g) A provision to incur any other expense or cost that the
11 board, in the exercise of its reasonable business judgment, con-
12 siderers reasonably related to the promotion of tourism within the
13 regional assessment district.

14 (h) A procedure for election of the board. The procedure
15 shall require that a majority of the members of the board are
16 owners.

17 Sec. 6. (1) Upon the effective date of an assessment under
18 section 4, each owner shall be liable for payment of the assess-
19 ment, computed by multiplying the percentage set forth in the
20 tourism marketing program notice by the aggregate room charges
21 imposed by the transient facility during a calendar month.
22 Except as provided in subsection (2), the assessment shall be
23 paid by the owner to the person designated by the regional mar-
24 keting organization, which person is independent of the accoun-
25 tants who audit the financial statements of the regional market-
26 ing organization, within 30 days after the end of each calendar
27 month, and shall be accompanied by a statement of room charges

1 imposed by the transient facility for that calendar month. This
2 act does not prohibit an owner from reimbursing the transient
3 facility by adding the assessment imposed under this act to room
4 charges payable by a transient guest. However, the owner shall
5 disclose that the transient facility has been reimbursed for the
6 assessment imposed under this act on the bill presented to the
7 transient guest.

8 (2) If an owner is subject to an assessment under this act
9 and the community convention or tourism marketing act, Act
10 No. 395 of the Public Acts of 1980, being sections 141.871 to
11 141.880 of the Michigan Compiled Laws, the owner may satisfy the
12 payment requirements under subsection (1) by paying the assess-
13 ment under this act to the bureau or the person designated by the
14 bureau under Act No. 395 of the Public Acts of 1980 at the same
15 time the assessment under Act No. 395 of the Public Acts of 1980
16 is paid by the owner. The regional marketing organization shall
17 reimburse a bureau or the person designated by the bureau under
18 Act No. 395 of the Public Acts of 1980 for reasonable administra-
19 tive costs incurred to receive and forward assessments due a
20 regional marketing organization under this act. The regional
21 marketing organization may agree with the bureau to allow the
22 bureau or the person designated by the bureau under Act No. 395
23 of the Public Acts of 1980 to withhold a portion of an assessment
24 received on behalf of the regional marketing organization as
25 reimbursement for the reasonable administrative costs incurred.

26 (3) Within 30 days after the close of each calendar quarter,
27 each owner shall forward to the independent certified public

1 accountants who audit the financial statements of the regional
2 marketing organization copies of the state use tax returns of the
3 transient facility for the preceding quarter. The copies of the
4 state use tax returns shall be used solely by the certified
5 public accountants to verify and audit the payment of the assess-
6 ment by the owner under this act, and shall not be disclosed to
7 the regional marketing organization except as the director deter-
8 mines necessary to enforce this act.

9 (4) The owner shall pay interest to the regional marketing
10 organization on any assessment not paid within the time required
11 under this act. The interest shall accrue at the rate of 1.5%
12 per month. Owners delinquent for more than 90 days in paying an
13 assessment, in addition to interest, shall pay a penalty of 1.5%
14 per month or fraction of a month on the amount of the delinquent
15 assessment. The regional marketing organization may sue in its
16 own name to collect the assessment, interest, and penalty.

17 (5) The owner shall not be liable for payment of an assess-
18 ment until a tourism marketing program notice has been mailed to
19 the owner at the last known address of the transient facility
20 pursuant to section 3.

21 Sec. 7. (1) The assessment revenues collected under this
22 act are not state funds. The regional marketing organization
23 shall deposit assessment revenues collected under this act in a
24 bank or other depository in this state, in the name of the
25 regional marketing organization. The assessment revenues shall
26 be disbursed only for the expenses properly incurred by the
27 regional marketing organization with respect to the tourism

1 marketing program developed by the regional marketing
2 organization under this act.

3 (2) The financial statements of the regional marketing orga-
4 nization shall be audited at least annually by an independent
5 certified public accountant. The regional marketing organization
6 shall mail a copy of the audited financial statements to each
7 owner 150 days or less after the close of the regional marketing
8 organization's fiscal year. The financial statements shall
9 include a statement of all assessment revenues received by the
10 regional marketing organization during the fiscal year and shall
11 be accompanied by a detailed report, certified as correct by the
12 chief operating officer of the regional marketing organization,
13 describing the tourism marketing programs implemented or, to the
14 extent then known, to be implemented by the regional marketing
15 organization.

16 (3) On the same day copies of the audited financial state-
17 ments and certified report are mailed under subsection (2), the
18 regional marketing organization shall file a copy of the audited
19 financial statements and certified report with the director.

20 Sec. 8. (1) A regional marketing organization shall conduct
21 a referendum on whether an assessment levied under a tourism mar-
22 keting program shall be discontinued if all of the following
23 requirements are met:

24 (a) The tourism marketing program levying the assessment has
25 been in effect for 2 years or more.

26 (b) Forty percent or more of the total number of owners in
27 the regional assessment district, or owners representing 40% or

1 more of the total number of rooms in transient facilities within
2 the regional assessment district, file with the regional market-
3 ing organization a written request for a referendum under this
4 section.

5 (2) The regional marketing organization shall conduct a
6 written referendum, by mail or in person, among all owners within
7 60 days after receipt of the written request for a referendum
8 under subsection (1). For the purpose of the referendum, each
9 owner shall have 1 vote for each room in the owner's transient
10 facility.

11 (3) The assessment under a tourism marketing program shall
12 be discontinued on the first day of the month that is more than
13 60 days after certification by the regional marketing organi-
14 zation of the results of the referendum if a majority of the
15 votes actually cast at the referendum approves the discontinuance
16 of the assessment.

17 (4) The discontinuance of an assessment under this section
18 does not prevent a regional marketing organization from filing
19 and serving a new tourism marketing program notice under section
20 3 during or after the 60-day period under subsection (3).

21 (5) If a referendum held under this section does not result
22 in the discontinuance of the assessment under a tourism marketing
23 program, a further referendum on the discontinuance of that
24 assessment shall not be held until the expiration of 2 years
25 after the date of the referendum under this section.

26 Sec. 9. (1) The owner of a building or combination of
27 buildings that is within a regional assessment district, has less

1 than 10 rooms, and otherwise meets the definition of a transient
2 facility under this act may agree in writing to be subject to a
3 tourism marketing program under this act. If an owner of a
4 building or combination of buildings agrees to be subject to the
5 tourism marketing program, the building or combination of build-
6 ings is considered a transient facility for the purposes of this
7 act. The owner of the building or combination of buildings is
8 considered an owner for the purposes of this act and shall par-
9 ticipate in the tourism marketing program for that regional
10 assessment district.

11 (2) A building or combination of buildings that is consid-
12 ered a transient facility under subsection (1) shall remain
13 subject to an assessment imposed under this act until the assess-
14 ment is discontinued as provided in section 8.

15 Sec. 10. A regional marketing organization is not prohib-
16 ited from levying an assessment under this act because an assess-
17 ment or tax based on a room charge under another law of this
18 state is or may be levied on a transient facility.

19 Sec. 11. The director may promulgate rules as necessary to
20 implement this act pursuant to the Administrative Procedures Act
21 of 1969, Act No. 306 of the Public Acts of 1969, being
22 sections 24.201 to 24.328 of the Michigan Compiled Laws.