

PUBLIC AIRPORT AUTHORITY ACT

Senate Bill 690 as passed by the Senate
Sponsor: Sen. Glenn Steil
Senate Committee: Detroit Metro Airport
Review
House Committee: Commerce

Complete to 3-4-02

A SUMMARY OF SENATE BILL 690 AS PASSED BY THE SENATE ON 2-27-02

The bill would amend the Aeronautics Code of the State of Michigan to create a new chapter to be known as the Public Airport Authority Act. The bill would create a new authority to manage a "qualified airport", with that term referring to an airport with 10 million or more enplanements in any 12-month period. The act is understood to apply to the Wayne County's Detroit Metropolitan Airport.

The new authority would be a political subdivision of and instrumentality of the local government that owns the airport (Wayne County) and would be directed and governed by a seven-member board. Two board members would be appointed by the governor; one member would be appointed by the legislative body of the local unit that owns the airport (the county board of commissioners); and four members would be appointed by the chief executive officer of the local government (the county executive). The terms would be for six years and no board member could serve more than two consecutive terms. Of the first appointees, however, two would serve four years, two six years, and three eight years. Board members would serve without compensation. The authority could not levy a tax or special assessment. The board would be subject to the Open Meetings Act and the Freedom of Information Act. (There is more information on the nature of board membership below.)

The new authority would be created on the effective date of the new act. Prior to the "approval date", the authority could organize and exercise the powers granted to it under the bill, except for those powers related to the management and operation of the airport. The "approval date" would be the effective date of the certificate issued by the Federal Aviation Administration and the concurrence by the FAA of the designation of the authority as a sponsor of the airport, including the approval of the assignment of existing grant agreements to the authority. The bill contains extensive provisions regarding the transfer of operational jurisdiction from the local government that owns the airport to the new authority. The validity of the creation or incorporation of the authority would be conclusively presumed unless questioned in an original action filed in the court of appeals within 60 days after the authority's creation or incorporation. The court of appeals would have original jurisdiction and would have to hear the action in an expedited manner. The Michigan Department of Transportation would be a necessary party in any such action.

The bill would also permit a local government that owned an airport that was not a qualified airport (i.e., one that did not meet the enplanements threshold) to create such an authority. In that case, the board would be appointed by the local chief executive officer, and the

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appointments would require the consent of the local legislative body if the chief executive officer was not elected. A local chief executive officer could be a mayor or manager of a city, a supervisor of a township, or a county executive or, when a county did not have an executive, the chair of the county board of commissioners. The creation of an authority would require the majority vote of the legislative body following a public hearing on the issue.

The governing 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. The board would also have to provide for a system of accounts that included an annual audit by an independent certified public accountant and would have to appoint an audit committee, which would consist of three members, each of whom would have been appointed by a different appointing entity.

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.

Board, CEO, CFO Conflicts of Interest. A board member, the chief executive officer, and the chief financial officer, their spouses, siblings, children, or parents, or the spouses of their siblings, children, or parents could not at the time of appointment or hiring be actively engaged or employed in any other business, vocation, or employment of any civil aeronautics enterprise connected with the airport under the control of the authority and could not have a 15 percent or greater direct pecuniary interest in any civil aeronautics enterprise connected with the airport. A board member, chief executive officer, or chief financial officer would not be considered to have a conflict of interest under Public Act 318 of 1968 (dealing with conflicts of interest) with respect to any contract or subcontract involving the airport if he or she was considered a state officer under that act. (A state officer is a person occupying one of a number of specified state offices, from the governor to members of various state commissions, and including university board members and presidents and justices of the court of appeals and supreme court.)

The bill also would specify that members of the board and officers, appointees, and employees of the authority would be public servants under Public Act 317 of 1968 (dealing with contracts of public servants with public entities) and would be subject to any other applicable conflict-of-interest laws. The board would have to establish policies and procedures requiring periodic disclosure of relationships that could give rise to conflicts of interest. The board would have to require that a member of the board, the chief executive officer, or the chief financial officer who had a direct financial interest in any matter before the authority disclose the interest and any reasons reasonably known why the transaction might not be in the best interest of the public before the board took any action on the matter. The disclosure would have to become part of the record of an authority's proceedings.

Duties of the CEO. 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; the appointment, dismissal, discipline, demotion, promotion, and classification of employees; the negotiation, supervision, and enforcement of contracts entered into by the authority, and the supervision of contractors and subcontractors in the performance of their duties; and the appointment of internal auditors. The chief executive officer would have all powers incident to the performance of his or her duties. The board could delegate additional powers to the chief executive officer, all of whose actions would have to be in conformance with the policies of the board and in compliance with the law. The chief executive officer would serve at the pleasure of the board and could be removed or discharged by a majority vote of the members serving on the board.

Ethics Manual. The authority would have to establish an ethics manual governing the conduct of airport business and the conduct of airport employees. The authority would be required to establish policies and coordinate efforts to preclude the opportunity for and occurrence of transactions that would create a conflict of interest involving board members and employees. At a minimum, the policies would have to require each board member and employee who regularly exercised significant discretion over the award and management of procurements to immediately disclose the existence and nature of any financial interest that would reasonably expect to create a conflict of interest and to withdraw from participating in or discussing or evaluating a recommendation or decision that would reasonably be expected to create a conflict on interest.

Contracting/Competitive Bidding. The authority would have to establish contracting policies and procedures that met requirements of the new chapter. Except for negotiated construction contracts, a contract could not be awarded by an authority or the chief executive officer for the construction, repair, remodeling, or demolition of an airport facility unless it was let under a procedure requiring competitive bidding. However, competitive bidding would not be required if the contract cost was less than \$50,000; the contract was for emergency repair or construction necessitated by a sudden, unforeseen occurrence or situation of a serious and urgent nature and was not for convenience or expediency; or the repair or construction was necessary to ensure passenger safety or otherwise protect life or property. The authority would also have to establish policies and procedures for hiring professional service contractors.

The authority would also have to use competitive bidding for all purchases and all other contracts unless the board or, if so delegated, the chief executive officer determined and detailed in writing the reason that the competitive solicitation of bids or proposals was not appropriate, that procurement by competitive bids was not practicable to efficiently and effectively meet the authority's needs, or that another procurement method was in the public's best interest.

Governing Board. As mentioned earlier, the board would have seven members, four appointed by the local chief executive officer (e.g., county executive), two by the governor, and one by the legislative body (e.g., county board of commissioners), for six-year terms. However, the initial terms would be staggered. Of the two appointees of the governor, one would serve a

six-year term and one an eight-year term. Of the four local executive officer appointees, one would serve for four years, one for six years, and two for eight years. The initial appointee of the local legislative body would serve for four years. The governor's appointees would have to be U.S. citizens and residents of the area covered by the regional planning commission for the area in which the airport was located. Other appointees would have to be U.S. citizens and residents of the local unit that owned the airport. A person could not be appointed if he or she was, or had been during the previous 12 months, an elected public official or employee of the state, a local government, or the federal government, or of an agency or instrumentality of the state, local government, or federal government. However, a member of the appointing local legislative body could be on the authority board, but only while remaining a member of the local legislative body.

Employment Provisions/Collective Bargaining. The authority would have to assume and be bound by an existing collective bargaining agreement for the remainder of the term of the agreement for employees who elected to transfer from the local government to the authority and who were covered by a collective bargaining agreement. A person entitled to represent employees under the Public Employment Relations Act would continue to represent them after the transfer, and the authority would have to honor all obligations of a public sector employer after the expiration of any collective bargaining agreement for the transferring employees.

Local government airport employees could agree to transfer employment to the authority on or before a date to be established by the authority (but not later than the approval date). The authority would have to accept the transfers without a break in employment, subject to all the rights and benefits held by the transferring employees under a collective bargaining agreement. Transferring employees could not be placed in a worse position by reason of the transfer for a period of one year after the approval date or for a longer period as may be required in any applicable collective bargaining agreement with respect to wages, workers' compensation, pension, seniority, sick leave, vacation, or health and welfare insurance, or any other term and condition of employment covered under a collective bargaining agreement. The protected rights and benefits could be altered by a future collective bargaining agreement, but any employee who previously had the right to submit unresolved disputes to compulsory arbitration would continue to have that right. Further, the bill would permit an employee to return to the local government within one year after the approval date without loss of seniority, unless that was contrary to a collective bargaining agreement. The bill would also provide that a political appointee at a transferred airport could not be placed in a worse position in regards to terms and conditions of employment until December 31 of the year in which the authority was created.

Retirement Systems. Employees who elected to transfer would not as a result have their accrued local government pension benefits or credits diminished. If a transferring employee was not vested in the local government pension system at the time of transfer, the post-transfer service with the authority would be credited toward vesting in the prior system but would not be credited for any other purpose (unless the employee remained in the local system after transfer). A transferred employee or a new hire of the authority could remain or become a participant in the local government retirement system until the authority established its own. During that time, service with the authority would count towards both eligibility and benefit amount. A transferring employee, moreover, could elect to remain in the local government retirement system rather than joining the authority's system, and in that case service with the authority

would count towards both eligibility and the pension amount with the local government system. An election would have to be made within 60 days following the establishment of the authority's system and would be irrevocable. In such a case, the authority would be responsible for making certain specified contributions to the local government retirement system.

Sources of Revenue/Borrowing. The authority could not levy a tax or a special assessment. Otherwise it would be permitted to raise revenues to fund its activities, operations, and investments consistent with its purposes. Sources of revenue could include fees, rents, or other charges for airport facilities, and revenues raised could be pledged, in whole or in part, for the repayment of bonded indebtedness and other expenditures. The bill would specify that to the extent practicable, the authority would have to endeavor to maximize the revenues generated from enterprises located at the airport. The authority also could seek loans, grants, guarantees, and other financial assistance from state, federal, county, and municipal governments and agencies, as well as other public and private sources, including financial assistance for planning, constructing, improving, and operating the airport, for providing security at the airport, and for providing ground access to the airport.

The authority would be authorized to borrow money and issue municipal securities under and exercise all of the powers conferred on municipalities by the Revised Municipal Finance Act. For the purpose of acquiring, purchasing, constructing, improving, enlarging, furnishing, equipping, re-equipping, or repairing airports and airport facilities, the authority could issue self-liquidating bonds under and otherwise exercise all the powers conferred on public corporations by the Revenue Bond Act. Bonds and other evidences of indebtedness would be exempt from taxation within the state, except for transfer and franchise taxes. At the discretion of the legislative body, the local unit from which operational jurisdiction has been transferred could pledge its full faith and credit behind any obligation or evidence of indebtedness of the authority; advance funds to the authority for working capital and other purposes on terms and conditions agreed to by the local government and the authority; appropriate and grant funds to the authority; and grant and convey real or personal property of any kind or nature, or any interest in real or personal property to the authority.

Powers of the Authority. The bill provides an extensive list of the powers of the new authority, primarily addressing the control, operation, development and maintenance of the airport, but also including such powers as the ability to sue and be sued, to self-insure, and to enter into a variety of contracts and agreements; the right of eminent domain under the Uniform Condemnation Procedures Act; and to 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 could fix, charge, and collect rates, fees, rentals, and charges within and for the use of the airport; 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; could adopt and enforce in court reasonable rules, regulations, and ordinances for the orderly, safe, efficient, and sanitary operation and use of airport facilities, including penalties of a misdemeanor punishable by imprisonment for up to one year for a specific violation; could enter into exclusive or non-exclusive contracts, leases, franchises, or other arrangements for terms not exceeding 50 years 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. Also, generally speaking, the authority would have all the powers of a political subdivision.

Transfer of Operational Jurisdiction. As of the approval date, the authority would acquire, succeed to, 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, including all lands, buildings, improvements, structures, aviation easements, rights of access, and all other privileges and appurtenances pertaining to the airport (subject only to restrictions elsewhere in the act being created). The authority would also assume, accept, and become liable for all the lawful obligations, promises, covenants, commitments, and other requirements in respect of the airport of the local government, whether known or unknown, contingent or matured, but excepting any full faith and credit pledge of the local government in respect of bonds; 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, as well as the benefit of contracts and agreements; and all of the local government's duties, liabilities, responsibilities, and obligations as sponsor of the airport. The authority would assume unfunded obligations to provide pensions or retiree health insurance in an amount and manner determined by a professional actuary acceptable to the local government and the authority. However, the authority would not assume any such obligations in excess of the amount properly allocable to the airport, and the amount of obligations assumed could not exceed the authority's pro rata share of such obligations.

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 owned by the local government for which operational jurisdiction had been transferred; take all action reasonably necessary to cure any defects in title to airport facilities; grant, at the authority's request, any license, easement, or right-of-way to the extent the authority had not been empowered to take the actions; and maintain and repair, including providing snow removal for, any road to and out of the airport for which the local government retained responsibility. 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 authority would have to indemnify and hold harmless the local government that owned the airport for any civil claim existing or any civil action or proceeding pending by or against local government involving or relating to the airport, airport facilities, or any civil liability incurred with respect to the airport pending at the time of transfer or which had been incurred prior to transfer.

Severability. The new chapter would be declared to be severable; if any portion was found invalid by a court, the invalidity would not affect the remaining portions.

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