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SFA**BILL ANALYSIS**

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Senate Bill 690 (as enrolled)
Sponsor: Senator Glenn D. Steil
Senate Committee: Detroit Metro Airport Review
House Committee: Commerce

PUBLIC ACT 90 of 2002

Date Completed: 4-8-02

CONTENT

The bill created the "Public Airport Authority Act" within the Aeronautics Code to do the following:

- Create a public airport authority for a local government that owns or operates a qualified airport (Detroit Metropolitan Wayne County Airport); and provide that the authority is a political subdivision of the local government (Wayne County) and is vested with the power to manage and operate the airport and airport facilities.
- Provide that the authority of a qualified airport is to be directed and governed by a seven-member board consisting of two members appointed by the Governor; one appointed by the county board of commissioners; and four appointed by the county executive.
- Allow a local government that owns or operates an airport that is not a qualified airport to declare its intentions to incorporate a public airport authority; and provide for appointment of its board.
- Prescribe the powers and duties of a board and an authority to manage and operate the airport.
- Provide for the transfer of operational jurisdiction over an airport to an authority.
- Authorize an authority to issue bonds and/or notes.
- Prohibit an authority from levying a tax or a special assessment.
- Require an authority's board to provide for a system of accounting, and an annual audit, of the authority; and to appoint an audit committee.

- Require an authority to establish contracting policies and procedures, and require competitive bidding.
- Require officials and employees of the local unit and an authority to cooperate actively with each other and the State and Federal government to the end that the Federal Aviation Administration (FAA) will recognize the authority as a "sponsor" of the airport (eligible to request and receive Federal grants, and impose a passenger facility charge), and to obtain FAA approval of the transfers prescribed in the bill.
- Require the Michigan Department of Transportation (MDOT) to coordinate any action required by the State related to FAA approval, but prohibit the Department from promulgating rules under the bill.

Airport Authority

Status. The bill provides that a public airport authority created under or pursuant to the Public Airport Authority Act is a political subdivision and instrumentality of the local government that owns the airport, and must be considered a public agency of the local government for purposes of State and Federal law. An authority also is the airport owner, for purposes of appointing and designating an airport manager. (A local government is a county, city, township, or village that owns or operates an airport.) The validity of the creation or incorporation of an authority must be conclusively presumed unless questioned in an original action filed in the Court of Appeals within 60 days after the creation or incorporation of the authority. The Court of Appeals has original jurisdiction to hear an

action, and must hear it in an expedited manner. The State Transportation Department is a necessary party in any such action.

Qualified Airport. On its effective date, the bill created an authority for a qualified airport owned or operated by a local government. (A "qualified airport" is defined as an airport, other than a military airport, that has 10 million or more enplanements in any 12-month period; therefore, this provision applies only to the Detroit Metropolitan Wayne County Airport. (An enplanement is a domestic, territorial, or international revenue passenger who boards an aircraft at an airport in scheduled or nonscheduled service of aircraft in intrastate, interstate, or foreign service, and includes an in-transit passenger who boards an international flight that transits an airport in the United States for nontraffic purposes.) For a local government that operates an airport that becomes a qualified airport after the bill's effective date, an authority will be created on the date the airport becomes a qualified airport.

An authority is vested with powers granted in the bill to manage and operate the qualified airport and its facilities, and any other airport and related airport facilities owned or operated by the local government on the "approval date". Before that date, an authority may organize and exercise all powers granted under the bill, except those related to the management and operation of a qualified airport. Officials and employees of the local government and the authority must actively cooperate with the local government, the authority, the State, and the Federal government, to the end that the FAA will recognize the authority as the sponsor of the qualified airport, and to obtain FAA approval of the transfers provided in the bill. Any action required by the State related to the approval must be coordinated by MDOT. The local government must execute additional documents as necessary to obtain FAA approval of the transfers and to obtain recognition of the authority as the sponsor.

The bill defines "approval date" as the effective date of the issuance by the FAA to the authority of a certificate issued under the Code of Federal Regulations with respect to the airport, and the concurrence by the FAA of the designation of the authority as a sponsor

of the airport, including the FAA's approval of the assignment of existing grant agreements to the authority.

"Sponsor" means the public agency authorized by Federal law (49 USC 47101 to 47134) to submit requests for, and thereafter accept, and be responsible for performing all of the assurances associated with accepting grant agreements with respect to airports from the FAA or the State; to impose a "passenger facility charge" at airports; and to perform certain duties and responsibilities previously assumed by the local government before the transfer of operational jurisdiction of the airport to the authority, by virtue of the local government's acceptance before the approval date of grants for the benefit of the airport from the FAA or any other agency of the United States or the State. (Under 49 USC 47101 to 47134, a sponsor is a public agency that submits an application for financial assistance to the U.S. Secretary of Transportation; and a "public agency" is a state, political subdivision of the state, or a tax-supported organization. The Secretary may make airport project grants "...to maintain a safe and efficient nationwide system of public use airports..."; upon approval of a project grant application, the Secretary may offer a sponsor a grant to pay the U.S. government's share of a project's costs.)

The bill defines a "passenger facility charge" as a fee authorized under 49 USC 40117. (Section 40117 allows the U.S. Secretary of Transportation to authorize an eligible agency (a public agency that controls a commercial service airport) to impose a passenger facility fee on each paying passenger boarding an aircraft at an airport, to finance an eligible airport project, including payments on debt service.)

Other Airports. A local government that owns or operates an airport that is not a qualified airport may, by resolution, declare its intention to incorporate an authority. In the resolution of intent, the legislative body of the local government must set a date for holding a public hearing on the adoption of a proposed resolution incorporating the authority. After a public hearing, if the legislative body of the local government intends to proceed with the incorporation of the authority, it must adopt a resolution incorporating the authority. The

adoption of the resolution is subject to any applicable statutory or charter provisions in respect to the approval or disapproval by the local chief executive officer or other officer of the local government and the adoption of an ordinance over his or her veto. The resolution will take effect upon being filed with the Secretary of State.

Authority Board

Board Membership. An authority created under or pursuant to the bill must be directed and governed by a seven-member board. The board for the authority created for the Detroit Metropolitan Wayne County Airport must be appointed as follows:

- Two board members must be appointed by the Governor, one for an initial term of six years and one for an initial term of eight years. A member appointed by the Governor must reside within the local regional planning commission area (created under Public Act 281 of 1945) that contains the airport.
- One member must be appointed by the Wayne County board of commissioners, for an initial term of four years. The member may be a member of the board of commissioners, but only while continuing to serve as a commissioner.
- Four members must be appointed by the Wayne County executive, one for an initial term of four years, one for an initial term of two years, and two for an initial term of six years. These members must be residents of Wayne County. Appointments made by the Wayne County executive are not subject to the approval of the board of commissioners.

All of the board members must be U.S. citizens. Each appointing entity must file each appointment, as well as each subsequent appointment to fill a vacancy, with MDOT.

Upon the incorporation of an authority for an airport that is not a qualified airport, the local chief executive officer, with the consent of the legislative body of the local government if the local chief executive officer is not elected, must appoint the members of the authority board, for terms specified in the bill. Members must be residents of the local government that owns the airport.

A person may not be appointed to an airport authority board if he or she is, or was during the 12 months preceding the date of appointment, an elected public official or employee of the State, a local government, the Federal government, or an agency or instrumentality of the State, a local government, or the Federal government.

Appointment of Officers. A board must appoint a chief executive officer of the authority who will be an ex officio member, without vote, of the board and may not be considered in determining the presence of a quorum. The chief executive officer (CEO) must have professional qualifications commensurate with the responsibility of the jobs to be performed. The board may enter into a contract with the CEO for a commercially reasonable length of time commensurate with the length of time for contracts of airport CEOs, directors, or managers with similar responsibilities at other airports or airport authorities, in or out of the State, with a comparable number of annual enplanements.

The CEO must appoint a chief financial officer who will be the treasurer of the authority, and who must have professional qualifications commensurate with the responsibility of the jobs to be performed by such officials. Notwithstanding any law or charter provision to the contrary, it will be the duty and right of the chief financial officer (CFO) to receive all money belonging to the authority, or arising or received in connection with the airport, from whatever source. Money of the authority must be deposited, invested, and paid by the CFO only in accordance with policies, procedures, ordinances, or resolutions adopted by the board.

Upon the approval date, the authority must be considered to be the owner of all money or other property then or thereafter received by the treasurer of the local government or deposited in the treasury of a local government to the credit of the airport. The authority is entitled to all interest and other earnings on those funds on and after the effective date of the bill, or the date on which the authority is created or incorporated, whichever is later. The treasurer of any local government receiving or having custody of money or other property belonging to the authority must promptly transfer the money

and other property to the custody of the authority's chief financial officer. The CFO must give the board copies of all reports made by him or her to the CEO.

Conflict of Interest Restrictions. A board member, CEO, or CFO of an authority, at the time of appointment or hiring, may not 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 may not have a 15% or greater direct pecuniary interest in any civil aeronautics enterprise connected with the airport. These provisions also apply to a board member's, CEO's, or CFO's spouse and his or her siblings, children and their spouses, parents, and siblings and their spouses. A board member who, at any time during his or her term, violates this pecuniary interest maximum, will have 30 days to divest, or arrange for the divestment of, the interest that caused the violation. If the board member or his or her relative is still in violation after 30 days, the entity that appointed the member must remove him or her from the board.

A board member, CEO, or CFO would not be considered to have a conflict of interest under Public Act 318 of 1968 in respect to any contract or subcontract involving the airport, if the person were considered a State officer under that Act. (Public Act 318 implements Article 4, Section 10 of the State Constitution, which provides that no legislator or State officer may have a direct or indirect pecuniary interest in any contract with the State or a political subdivision that causes a substantial conflict of interest. Public Act 318 lists several circumstances that are not considered to be a substantial conflict of interest.)

Members of a board and officers, appointees, and employees of an authority will be considered public servants under Public Act 317 of 1968, and subject to any other applicable law with respect to conflict of interest. (Public Act 317 regulates the conduct of public servants in respect to governmental decisions and contracts with public entities, and prescribes limits on the conduct of public servants and exceptions to those limits.) The board must establish policies and procedures requiring periodic disclosure of relationships that may give rise to conflicts of interest. The board must

require that a member of the board, the CEO, or the CFO who has a direct interest in any matter before the authority disclose his or her interest, and any reasons reasonably known to the member or officer why the transaction may not be in the best interest of the public or the authority, before the board takes any action on the matter. The disclosure must become part of the record of the authority's proceedings.

Board Members' Terms. Upon the expiration of a board member's initial appointment, all full-term appointments will be for a term of six years. The expiration date of a member's term of office will be on October 1 of the year in which the term expires, but a board member may hold office until his or her successor is appointed and qualified, or until resignation or removal. If a member is unable to complete his or her term of office, a successor must be appointed in the same manner as the original appointment to complete the term. A member may resign by written notice to the authority. The resignation will be effective upon its receipt by the secretary or chairperson of the authority or at a subsequent time as set forth in the resignation.

A board member may not be appointed to serve more than two consecutive full terms. An initial term for the board of the Detroit Metropolitan Wayne County Airport Authority, and an appointment to fill a vacancy in a term with more than three years remaining, will count as full terms.

The appointing entity for any board member may remove a board member appointed by that entity only for cause before assuming the duties of office, a board member must take and subscribe to the constitutional oath of office.

Board Powers & Duties. Upon the appointment of at least four members of the board of the authority of the Detroit Metropolitan Wayne County Airport, the board may hold its first meeting.

Within 60 days after an authority is incorporated at an airport that is not a qualified airport, the authority's board must hold its first meeting. At the first meeting, the board must elect a chairperson, a vice-chairperson, a secretary, and additional

officers it considers necessary. All officers of the board are to be elected annually by the board. All officers of the authority, except the CEO and the CFO, must be board members.

The business that a board may perform must be conducted at a public meeting of the board held in compliance with the Open Meetings Act. The board also is subject to the Freedom of Information Act.

Except for those powers reserved or delegated to the CEO of an authority by the bill or by the board, a board may not delegate any of its power to any other officer or committee of the authority (except as provided in the bill for an audit committee appointed by a board). A board may withdraw from the CEO any power that it has delegated.

An authority may reimburse members of a board for actual and necessary expenses incurred in the discharge of their official duties. Board members may not be compensated for service to the authority or attendance at any meetings.

A board may act only by resolution or ordinance. A majority of the members of the board then in office, or of any committee of the board, will constitute a quorum for the transaction of business. A vote of a majority of the board members serving at the time of the vote is necessary to approve the issuance by the authority of bonds, including special facilities bonds, or other obligations payable from revenues, including special facilities revenues derived from the airport; to approve or amend the annual budget of the authority; or to hire, remove, discharge, or set the salary of the CEO.

After organization, a board must adopt a schedule of regular meetings and adopt a regular meeting date, place, and time; however, the board may not meet less than quarterly. The board chairperson must call a special meeting upon request of three board members.

A board must provide for a system of accounts to conform to a uniform system required by law, and for the auditing at least once a year of the accounts of the authority by an independent certified public accountant. A board must meet any and all auditing or financial reporting requirements imposed by

law, and file a copy of its annual audit with MDOT, the Secretary of the Senate, and the Clerk of the House. An authority must provide the necessary reports to the local government that owns the airport in a timely manner in order to enable the local government to comply with the reporting requirements of the Government Finance Officers Association of the United States and Canada. A board must require of the authority's CEO and CFO a suitable bond of not less than \$50,000 by a responsible bonding company; the authority must pay the cost of the premium of the bond.

Audit Committee. A board must appoint an audit committee consisting of three members of the board. (For the authority board of the Detroit Metropolitan Wayne County Airport, the audit committee must consist of one board member who has been appointed to the board by the Governor, one appointed by the county executive, and one appointed by the county board of commissioners.) The audit committee must meet at least four times each year with the authority's CFO and CEO, and independent public auditors, to review the reports related to the financial condition, operations, performance, and management of the authority and airport, including all contractors and subcontractors. The audit committee also may order special investigations or audits, the cost of which must be reimbursed by the authority. The audit committee must review the activities and reports of the internal auditor of the authority (appointed by the authority's CEO).

The audit committee of the board appointed for the Detroit Metropolitan Wayne County Airport, once every two years, must recommend three independent certified public accounting firms that, in the judgment of the committee, possess sufficient resources and qualifications to conduct annual financial audits of the authority's accounts.

The three recommendations of the audit committee must be presented to the Wayne County board of commissioners, which may select, within 30 days after receiving the recommendations, the independent certified public accounting firm. The authority must execute an agreement to conduct annual financial audits for the succeeding two fiscal years of its accounts. If the board of

commissioners does not select one of the recommended accounting firms to conduct the annual financial audits, within 30 days after receiving the recommendations, the audit committee will have the sole power to select the accounting firm, and must execute the two-year agreement. The terms and conditions of a contract to be entered into with an accounting firm selected by the board of commissioners are to be exclusively established by the authority, and the board of commissioners will not have the right or power to modify any proposed terms and conditions of a contract between the authority and an independent certified public accounting firm.

Neither the board of commissioners nor any of its members may impose any requirement, restriction, or condition upon, or solicit any agreement or contribution from, the accounting firm or any of its employees. No charter provision or resolution of Wayne County may contradict, supplement, or expand these provisions. A person may not prevent or prohibit the internal auditor or the audit committee from carrying out or completing any audit or investigation. The internal auditor and members of the audit committee will be protected under the Whistleblowers' Protection Act.

Budget Preparation. Before the beginning of each fiscal year, a board must prepare a budget containing an itemized statement of the estimated current operational expenses and the expenses for capital outlay, including funds for the operation and development of the airport; the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the authority maturing during the ensuing fiscal year or that have previously matured and are unpaid; and an estimate of the revenue of the authority from all sources for the ensuing fiscal year. The board must adopt that budget in accordance with the Uniform Budgeting and Accounting Act.

Authority CEO

A board must fix the compensation of the CEO of the authority, and prescribe those duties and responsibilities of the CEO that are in addition to the duties and responsibilities imposed by the bill. The CEO will serve at the pleasure of the board and may be removed or discharged by a vote of a majority of the

board members then serving. The CEO must supervise, and be responsible for, the following:

- The day-to-day operation of the airport, including the control, supervision, management, and oversight of its functions.
- The issuance of bonds and notes approved by the board.
- The negotiation and establishment of compensation and other terms and conditions of employment for authority employees.
- The appointment, dismissal, discipline, demotion, promotion, and classification of authority employees.
- The negotiation, supervision, and enforcement of contracts entered into by the authority, and the supervision of contractors and subcontractors of the authority in performance of their duties.

The CEO must appoint an internal auditor who has professional qualifications commensurate with the responsibility of the jobs to be performed. The internal auditor must report to the CEO and provide information to the board and its audit committee as required under the bill; receive and investigate any allegations that false or misleading information was received in evaluating the authority's internal accounting and administrative control system; conduct and supervise audits relating to financial activities of the authority's operations; recommend policies for activities to protect the authority's assets and to prevent and detect fraud and abuse; conduct other audit and investigative activities as assigned by the board, the audit committee, or the CEO; and adhere to appropriate professional and auditing standards.

The internal auditor also must provide to the audit committee an annual report on the evaluation of the authority's internal accounting and administrative control system. For the period reviewed, the report must include a description of any material inadequacy or weakness discovered in connection with that evaluation; a time schedule for correcting the accounting and control system; and a listing of each audit or investigation performed by the internal auditor.

The CEO will have the power and authority to execute and deliver, and to delegate signatory power for, contracts, leases, obligations, and other instruments approved by the board, and will have all powers incident to the performance of his or her duties as prescribed by the bill or by the board. The board may delegate additional powers to the CEO. All actions of the CEO must be in conformance with the policies of the board and in compliance with law. The CEO must attend the meetings of the board and submit to it a regular report covering the activities and financial condition of the airport. If the CEO is temporarily absent or disabled, he or she may designate a qualified person as acting CEO to perform the duties of the office. If the CEO fails or is unable to do so, the board must designate an acting CEO for the period of absence or disability. The CEO must furnish the board with information or reports governing the operation of the airport as the board requires.

The CEO must comply with all Federal and State contracting requirements pertaining to disadvantaged business enterprises, minority business enterprises, and other targeted business enterprises, and must seek to ensure maximum participation of such business enterprises in contracting opportunities.

Authority Powers & Duties

In General. The bill specifies that an authority is a public body corporate with all the powers of a political subdivision (except the power to tax or levy a special assessment). It has the power and duty of planning, promoting, maintaining, acquiring, constructing, improving, repairing, and operating all airports and airport facilities under its operational jurisdiction. The authority may assume and perform the obligations and the covenants related to the airport that are contained in an agreement or other document, between or by the local government that owns the airport for which operational jurisdiction has been transferred to the authority, and the State or the FAA relative to grants for the airport.

An authority has the exclusive responsibility to study and plan any improvements, expansion, or enhancements that affect the airport, and may commission planning, engineering, economic, and other studies to provide information for making decisions about the

location, design, management, and other features of the airport.

An authority is responsible for developing all aspects of the airport and airport facilities, including the location of terminals, hangars, aids to air navigation, parking lots and structures, cargo facilities, all other facilities and services necessary to serve passengers and other customers of the airport, and street and highway access and egress with the objective of minimizing, to the extent practicable, traffic congestion on access routes in the vicinity of the airport. An authority must work with appropriate local units of government to implement any Federally sanctioned and funded programs for the mitigation of aircraft noise and fuel fumes.

An authority may enter into agreements to use the facilities or services of the State, and of its subdivisions or departments, any county or municipality, or the Federal government or any agency of the Federal government as necessary or desirable to accomplish the purposes of the bill "...for that consideration or pursuant to that cost allocation formula that may be acceptable to the authority in compliance with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state, including, but not limited to, policies of the FAA prohibiting revenue diversion or the payment of fees exceeding the value of services provided by a governmental agency". An authority also may allow those State, local, or Federal entities to use airport facilities or the services of the authority as necessary or desirable to accomplish the purposes of the bill, for consideration acceptable to the authority in compliance with its obligations under applicable Federal law, regulations, and assurances associated with accepting Federal or State grants.

An authority may procure insurance or become a self-funded insurer against loss in connection with its property, assets, or activities. An authority may invest its money, at the board's discretion, in instruments, obligations, securities, or property.

An authority may fix, charge, and collect rates, fees, rentals, and charges within the airport for the use and operation of the

airport.

A local government, or an official of the local government acting in an official capacity, may not take any action, including action pursuant to charter provision, ordinance, resolution, contract, regulation, or rule, to impede the exercise of powers or duties under the bill.

An authority may exercise its powers and duties under the bill notwithstanding any charter provision, ordinance, resolution, contract, regulation, or rule of a local government to the contrary; however, this does not apply to a contract entered into by a local government after the authority is created, if the contract also has been approved or ratified by the authority. The bill specifies that nothing in it may be construed to limit the exercise of the powers of a local government in which an airport is located to zone property under the City and Village Zoning Act or to engage in land planning under Public Act 285 of 1931, with respect to property that is not part of the airport. (Public Act 285 provides for city, village, and municipal planning, and the creation of planning commissions.)

Contracting. An authority must establish contracting policies and procedures that provide that a contract may not be awarded by the authority or its CEO for the construction, repair, remodeling, or demolition of an airport facility, unless the contract is let pursuant to a procedure that requires competitive bidding. A negotiated construction contract does not have to be let by competitive bidding if the board, or the CEO with delegated authority to enter into contracts, determines that any of the following apply:

- The contract amount is less than \$50,000. If the amount, including change orders, subsequently exceeds \$50,000, the authority must detail, in writing, the reasons why the contract amount exceeded \$50,000.
- As determined in writing by the board or the CEO, the contract is for emergency repair or construction necessitated by a sudden, unforeseen occurrence or situation of a serious and urgent nature and is not for convenience or expediency.
- As determined in writing by the board or the CEO, the repair or construction is necessary to ensure passenger safety or otherwise protect life or property.

An authority must establish policies and procedures for hiring professional service contractors.

An authority must use competitive bidding for all purchases and all other contracts unless the board, or, if authorized by the board to approve procurements, the CEO, determines and details in writing the reason that competitive solicitation of bids or proposals is not appropriate; that procurement by competitive bids is not practicable to meet the authority's needs efficiently and effectively; or that another procurement method is in the public's best interests.

An authority may enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items purchased. The authority may enter into a cooperative purchasing agreement with the State or other public entities for the purchase of goods, including recycled goods, and services necessary for the authority.

An authority may make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers, with any department or agency of the United States, with any state or local governmental agency, or with any other person, public or private, upon those terms and conditions acceptable to the authority consistent with its established policies and procedures for contracting.

An authority may enter into exclusive or nonexclusive contracts, leases, franchises, or other arrangements with any person or persons for terms up to 50 years, for granting the privilege of using or improving, or having access to, the airport or any airport facility for commercial airline-related purposes; and may enter into other exclusive or nonexclusive contracts, leases, or other arrangements for commercially reasonable terms. Any of these arrangements must be consistent with the authority's obligations under applicable Federal law, regulations, and assurances associated with accepting grants from the FAA or any other Federal or State agency.

Ethics. An authority must establish an ethics manual governing the conducting of airport business and the conduct of airport employees. An authority also must establish policies and coordinate its efforts to preclude

the opportunity for, and the occurrence of, transactions by the authority that would create a conflict of interest involving board members and authority employees. At a minimum, these policies must include compliance by each board member and employees who regularly exercise significant discretion over the award and management of authority procurements, with the policies governing the immediate disclosure of the existence and nature of any financial interest that would reasonably be expected to create a conflict of interest; and withdrawal by an employee or member from participation in, or discussion or evaluation of, any recommendation or decision involving an authority procurement that would reasonably be expected to create a conflict of interest for that employee or member.

Property Acquisition. An authority may take by grant, purchase, devise, or lease, or by the exercise of the right of eminent domain, or otherwise acquire and hold, real and personal property, in fee simple or any lesser interest or easement, as the authority deems necessary either for the construction of airport facilities or for the efficient operation or extension of airport facilities. An authority may hold in its name, lease, and dispose of all real and personal property it owns. If land is acquired by condemnation, the provisions of the Uniform Condemnation Procedures Act or any successor statute must be adopted and used for the purpose of instituting and prosecuting the condemnation proceedings. For the purpose of making surveys and examinations relative to any condemnation proceedings, the bill provides that it is lawful to enter upon any land, doing no unnecessary damage. The acquisition of any land by an authority for an airport or airport facilities to further the purposes of the authority, and the exercise of any other powers, is declared by the bill "...as a matter of legislative determination to be public, governmental and municipal functions, purposes and uses exercised for a public purpose, and matters of public necessity".

Acting as a Sponsor. The bill allows an authority to act as a sponsor and submit requests for, accept, and be responsible to perform all of the assurances associated with accepting grant agreements from the FAA or any other agency of the United States or the State, with respect to the airport under its

operational jurisdiction. Further, the authority may perform the duties and responsibilities previously assumed by the local government that owns the airport, by virtue of its acceptance of grants from the FAA or any other agency of the United States or the State.

Airport Police. Subject to provisions in the bill pertaining to airport employees, an authority may appoint and vest with police powers airport law enforcement officers, guards, or police officers. These individuals will have the full police powers of peace officers within the areas over which the authority has operational jurisdiction, including the prevention and detection of crime, the power to investigate and enforce laws of the State, rules, regulations, and ordinances issued by the authority and, to the extent permitted or required by Federal law and regulations, requirements of Federal law and regulations governing airport security. The officers may issue summons, make arrests, and initiate criminal proceedings. An authority is responsible for all actions of its officers committed in their official position and authority.

Penalties. An authority may adopt and enforce in a State court reasonable rules, regulations, and ordinances for the orderly, safe, efficient, and sanitary operation and use of airport facilities. An authority also may establish civil and criminal penalties for a violation of the rules, regulations, and ordinances, to the same extent as the local government that owns the airport.

Liability. A member of a board or an officer, appointee, or employee of an authority will not be subject to personal liability when acting in good faith within the scope of his or her authority, or on account of liability of the authority, and the board may defend and indemnify a member of the board or an officer, appointee, or employee of the authority against liability arising out of the discharge of his or her official duties. An authority may indemnify and procure insurance indemnifying members of the board and other officers and employees of the authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action

taken or the failure to act by the authority. The authority also may purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a board member or an officer or employee of the authority, whether or not the authority would have the power to indemnify the person against that liability under these provisions.

Pursuant to bylaw, contract, agreement, or resolution of its board, an authority may obligate itself in advance to defend and indemnify persons. An authority must indemnify and hold harmless the local government that owns the airport for any civil claim existing, or any civil action or proceeding pending, by or against the local government involving or relating to the airport or airport facilities; or any civil liability related to the obligations of the local government issued or incurred with respect to the airport that was pending at the time of, or had been incurred before, the transfer of operational jurisdiction of the airport to the authority.

Indebtedness/Grants. Unless an authority obtains the approval of the legislative body of the local government that owns the airport, the authority may not incur any indebtedness pledging, on a parity or superior basis, any revenues from airport facilities that are otherwise pledged to secure any obligation, note, bond, or other instrument of indebtedness for which the full faith and credit of the local government has been pledged.

Upon the creation or incorporation of an authority under the bill, the local government that owns the airport may not pledge airport facilities or assets to secure any instrument of indebtedness, except to secure airport revenue bonds issued for airport capital improvement projects after the creation or incorporation of the authority and before the approval date.

An authority may not take any action contrary to obligations assumed or entered into under Federal rules or regulations, or any agreement entered into or assumed with respect to State or FAA grants. A local government may not take any action contrary to obligations or covenants under applicable Federal law, regulations, and assurances associated with the State or Federal government.

If a local government previously acted as a sponsor and action by, or concurrence of, the local government is required to complete a project related to the airport or airport facilities, the local government may not withhold, condition, or delay concurrence with any authority action necessary to complete the project, in accordance with obligations under applicable Federal law, regulations, and assurances associated with accepting grants from the FAA or any other Federal or State agency.

The authority to which operational jurisdiction for an airport is transferred will be the agent of a local government for the preparation, submission, and administration of all State or Federal grants pending as of the approval date. The authority also will be the custodian of all funds received or to be received by the local government or the authority for the projects for which the grants were awarded.

Approval Date/Operation Transfer

The bill provides that on the approval date (the date the FAA certifies an authority as a sponsor of an airport), the following occur:

- The authority acquires, succeeds to, and assumes the exclusive right, responsibility, and authority to occupy, operate, control, and use the airport and its facilities, subject only to the restrictions imposed by the bill.
- The authority acquires and succeeds to all rights, title, and interests in and to the fixtures, equipment, and other personal property owned and used for purposes of the airport. The officers of the local government that owns the airport must execute those instruments of conveyance, assignment, and transfer as necessary or appropriate.
- The authority assumes, accepts, and becomes liable for all of the lawful obligations, promises, covenants, commitments, and other requirements of the airport, whether known or unknown, contingent or matured, except any full faith and credit pledge of the local government in respect of bonds it issued for airport purposes. The authority must perform all of the duties and obligations and is entitled to all of the rights of the local government in respect of the airport under any ordinances, agreements, or other instruments and under law.
- The authority assumes unfunded

obligations to provide pensions or retiree health insurance in an amount and manner determined by a professional actuary acceptable to the authority and the local government; however, the authority does not assume such obligations in excess of the amount properly allocable to the airport, as provided in the bill.

Also, on the approval date, there are transferred to the authority all licenses, permits, approvals, or awards related to the airport, all 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, the benefit of contracts and agreements, and all of the local government's duties, liabilities, responsibilities, and obligations as sponsor of the airport, except for any obligation or liabilities contested in good faith by the authority.

The bill states that all lawful actions, commitments, and proceedings, including revenue bond financing (for which a notice of intent resolution has been adopted), of the local government made, given, or undertaken before the date of assumption by the authority are ratified, confirmed, and validated upon assumption by the authority.

All actions, commitments, or proceedings undertaken by the authority from and after the date of assumption must be undertaken and completed by the authority in the manner and at the times provided in the bill or other applicable law and in lawful agreements made by the local government before the date of assumption. The authority also may undertake and complete a local government's actions, commitments, and proceedings regarding the airport that are in the process of being undertaken by, but not yet a commitment or obligation of, the local government.

The exclusive right and authority to occupy, operate, control, and use the airport facilities include, but are limited to, operational jurisdiction over all real property of the airport, including terminals, runways, taxiways, hangars, emergency vehicles or facilities, parking facilities, and buildings and facilities used to operate, maintain, and manage the airport (subject to any liens on

the real property and restrictions and limitations on its use); and the local government's right, title, and interest in, and all of the local government's responsibilities arising under, leases, concessions, and other contracts for airport facilities.

The acquisitions, assumptions, successions, or transfers described in these provisions include all of the following:

- All contracts with airlines, tenants, concessionaires, leaseholders, and others at the airport.
- All financial obligations secured by revenues and fees generated from the operations of the airport, including airport revenue bonds, special facilities revenue bonds, and all bonded indebtedness associated with the airport.
- All cash balances and investments relating to or resulting from operations of the airport; all funds held under an ordinance, resolution, or indenture related to or securing obligations of the local unit that have been assumed by the authority; and all of the accounts receivable or choses in action arising from operations of the airport as well as all benefits of contracts and agreements.
- All office equipment, including computers, records and files, software, and software licenses required for financial management, personnel management, accounting and inventory systems, and general administration.

The transfer of the operational jurisdiction of an airport to an authority may not in any way impair any contracts with airlines, vendors, tenants, bondholders, or other parties in privity with the local government. Upon the transfer of operational jurisdiction, a local government will be relieved from all further costs and responsibility arising from or associated with control, operation, development, and maintenance of that airport, except as otherwise required under obligations retained by the local government under the bill or as otherwise agreed by the local government.

A local government that owns an airport for which an authority has been created or incorporated must refrain from any action that would impair an authority's exercise of the powers granted to it under the bill or that would impair the efficient operation and

management of the airport; and must refrain from any action to sell, transfer, or otherwise encumber or dispose of airport facilities owned by the local government without the consent of the authority and, where necessary, the FAA. The local government also must take all action reasonably necessary to cure any defects in title to airport facilities, and at the request of the authority, grant any license, easement, or right-of-way in connection with the airport to the extent the authority has not been empowered to take these actions. Further, upon creation or incorporation of an authority and before the approval date, the local government must conduct operations of the airport in the ordinary and usual course of business. The local government also must maintain and repair, including providing snow removal for, any road providing ingress and egress to the airport over which responsibility for maintenance and repair is retained by the local government by agreement or law.

At the request of an authority, the local government that owns a qualified airport over which operational jurisdiction has been transferred must provide the authority with transitional services previously performed by the local government and related to the operation of the airport until the date the authority elects to assume these services. The authority must pay the reasonable cost of these services.

Employees

Transfer of Employment. Local government employees employed at an airport previously operated by the local government from which operational jurisdiction will be transferred to an authority may agree to transfer to the employment of the authority on or before a date established by the authority. The date established may not be later than the approval date. The authority must accept the transfers without a break in employment, subject to all rights and benefits held by the transferring employees under a collective bargaining agreement. Transferring employees may not be placed in a worse position by reason of the transfer, for a period of one year after the approval date or any longer period as required in any applicable collective bargaining agreement, with respect to wages, workers' compensation, pension, seniority, sick leave, vacation, health and welfare insurance, or any other term and condition of employment that a transferring employee has under a collective

bargaining agreement as an employee of the local government. The rights and benefits protected by this provision may be altered by a future collective bargaining agreement, except that any employee who as of the bill's effective date had the right, by contract or statute, to submit any unresolved disputes to the procedures set forth in Public Act 312 of 1969, will continue to have that right. (Public Act 312 provides for the compulsory arbitration of labor disputes in municipal police and fire departments.) The rights and benefits of employees not covered by collective bargaining agreements may be altered by benefit plans established and adopted by the authority.

For employees who elect to transfer to the authority and who are covered by the terms of a collective bargaining agreement with the local government, the authority must assume and be bound by those existing collective bargaining agreements for the remainder of their term. A representative of the employees in the local government who represented or is entitled to represent them, pursuant to the public employment relations Act, must continue to represent the employees after they transfer to the authority. The authority must honor all obligations of a public sector employer after the expiration of any collective bargaining agreement with respect to transferring employees.

An employee who elects to transfer to the authority may, upon return to employment with the local government within one year from the approval date, do so without loss of seniority unless contrary to a collective bargaining agreement. A political appointee, other than a member of the authority's board, at an airport previously operated by the local government from which operational authority has been transferred, may not be placed in a worse position in regard to terms and conditions of employment until December 31 of the year in which the authority is created.

Local government employees who do not agree to transfer to the employment of the authority must be reassigned within the local government. The local government may not, as a result of the creation or incorporation of an authority, for a period of up to one year, lay off or reduce the pay or benefits of any employee of the local government, into whose position a local government employee who was previously employed at the airport is

reassigned. The authority must consider any person hired by the authority to fill a position that had been previously filled with a local government employee, who did not agree to transfer to the employment of the authority, to be under the collective bargaining agreement covering, and to be represented by the collective bargaining representative of, the local government employee who did not agree to transfer.

Retirement/Pension Rights. The accrued local government pension benefits or credits of employees who elect to transfer may not be diminished by reason of the transfer. If a transferring employee is not vested in his or her local government pension rights at the time of transfer, his or her post-transfer service with the authority must be credited toward vesting in any local government retirement system in which the employee participated before the transfer, but the post-transfer service with the authority may not be credited for any other purpose under the local government's retirement system, except as provided below.

If a local government employee elects to transfer to an authority, or if a person is hired by the authority as a new employee after the date on which the authority assumes operational jurisdiction over the airport, the employee must remain or become a participant in the local government retirement system until the authority establishes its own retirement system or pension plan. During the period the employee remains or is a participant in the local government system, his or her post-transfer service and post-transfer compensation must be counted in determining both eligibility for, and the amount of, pension benefits that the employee will be eligible to receive from the local government system or plan.

If a local government employee elects to transfer to an authority, then he or she may elect to remain a participant in the local government retirement system in lieu of participating in any retirement system or pension plan of the authority. The employee's post-transfer service with, and post-transfer compensation from the authority must be counted in determining eligibility for and the amount of pension benefits that he or she will be eligible to receive from the local government system or plan. Any election to remain in a local government system or plan

must be made within 60 days following the date the authority establishes its own retirement system or pension plan, and will be irrevocable. Employees eligible to make this election will be those who immediately before their transfer date were participating in the local government system; agree to make any employee contributions required for continuing participation in the local government system; and agree to meet all requirements and be subject to all conditions that, from time to time, apply to employees who participate in the local government system. For each employee meeting these requirements who elects to remain a participant in the local retirement system, the authority must, on a timely basis, contribute certain amounts (as described in the bill) to the trustees of that retirement system.

Authority Revenues

An authority may raise revenues to fund all of its activities, operations, and investments consistent with its purposes; however, an authority may not levy a tax or impose a special assessment. The sources of revenue available to the authority may include, but are not limited to, fees, rents, or other charges the authority may fix, regulate, and collect for the airport facilities under its control and for services provided by the authority, including fees, rentals, and charges fixed in connection with agreements it enters into under the bill. The revenues raised by an authority may be pledged, in whole or in part, for the repayment of bonded indebtedness and other expenditures issued or incurred by the authority.

To the extent practicable, an authority must try to maximize the revenues generated from enterprises located at the airport consistent with its obligations under applicable Federal law, regulations, and assurances associated with accepting grants from the FAA or any other Federal or State agency.

An authority may apply for and receive loans, grants, guarantees, or other financial assistance in aid of airport facilities and the operation of the airport from any State, Federal, county, or municipal government or agency or from any other source, public or private, including financial assistance for purposes of planning, constructing, improving, and operating the airport, for providing security, and for providing ground access to

the airport.

Bonds & Other Obligations

For the purpose of acquiring, purchasing, constructing, improving, enlarging, furnishing, equipping, reequipping, or repairing airports and airport facilities for which operational jurisdiction is transferred or is acquired by an authority, the authority may issue its self-liquidating bonds in accordance with and exercise all of the powers conferred upon public corporations by the Revenue Bond Act. The authority may borrow money and issue municipal securities in accordance with and exercise all of the powers conferred upon municipalities by the Revised Municipal Finance Act.

All bonds or other evidences of indebtedness issued by an authority and the interest on them are exempt from all taxation within the State, except for transfer and franchise taxes.

The legislative body of any local government that owns an airport over which the operational jurisdiction has been transferred to an authority is authorized, with the consent of the authority, to 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 authority and the local government; appropriate and grant funds to the authority in furtherance of its purposes; and grant and convey to the authority real or personal property of any kind or nature, or any interest in real or personal property, for carrying out the authorized purposes of the authority. A pledge under these provisions is at the discretion of the local legislative body and may be subject to an agreement providing for terms and conditions of the pledge, and for repayment of any amount paid pursuant to the pledge as the authority and the local government determine necessary and advisable, consistent with Federal law, regulations, and assurances associated with accepting grants. Any agreement by an authority to repay an advance and any obligation incurred by the authority under that agreement, are not subject to the Revised Municipal Finance Act.

For the purpose of more effectively managing its debt service, an authority may enter into an interest rate exchange or swap, hedge, or

similar agreement or agreements in connection with the issuance or proposed issuance of obligations or other evidences of indebtedness or in connection with its then outstanding obligations or other evidences of indebtedness. In entering into an interest rate exchange or swap, hedge, or similar agreement, the authority may create a reserve fund. An agreement will not be a debt of the authority for any statutory or charter debt limitation purpose; and is payable from general funds of the authority or, subject to any existing contract, from any available money or revenue sources, including revenues specified by the agreement, securing the obligation or evidence of indebtedness in connection with the agreement.

Notwithstanding any other provisions of the bill or any other law, the provisions of all ordinances, resolutions, and other proceedings of the local government with respect to any outstanding bonds, notes, or any and all evidences of indebtedness or liability assumed by an authority will constitute a contract between the authority and the holders of the bonds, notes, or evidences of indebtedness or liability; and will be enforceable against the authority or any of its successors or assigns. Bonds, notes, or evidences of indebtedness or liability that are assumed by an authority will be payable solely from and secured solely by the sources of revenue that were pledged to the bonds, notes, or evidences of indebtedness or liability under the ordinance, resolution, or other proceedings of the local government, and will not constitute a full faith and credit obligation of the authority.

The bill states that nothing in it or in any other law may be held to relieve an authority from any bonded or other debt or liability lawfully contracted by the local government with respect to the airport and outstanding as of the effective date of the transfer of the operational jurisdiction over the airport. An authority may not take any action to impair the rights or remedies of the holders of the bonds or other obligations of the local government that owns the airport, that were lawfully issued before the transfer of operational jurisdiction.

Upon the transfer of operational jurisdiction over the airport, trustees, paying agents, and registrars for any obligation of the local government that has been assumed by the authority on the approval date must perform

all of their duties and obligations, and provide all notices related to those obligations, as if the authority were the issuer of the obligations. The trustees, paying agents, and registrars must care for and consider all revenues and funds, pledged to secure obligations of the local government that have been assumed by the authority, as revenues and funds of the authority. The authority must indemnify and hold harmless the trustees, paying agents, and registrars from liability incurred in compliance with these provisions.

Additional Transfers

An authority may accept the transfer of operational jurisdiction of other publicly owned airports that hold an air carrier operating certificate issued by the FAA, within and without the local government. In accepting a transfer, the authority may not assume financial obligations other than those associated with the operation of the airport being transferred and with debt issued to finance improvements at the airport being transferred. If a governmental entity transfers operational jurisdiction over an airport to an authority, the authority may not sell or transfer any property without the consent of the governmental entity that provided the transfer of operational jurisdiction.

The authority that operates the Detroit Metropolitan Wayne County Airport may not operate an airport located in Detroit.

Severability

If any portion of the bill or its application to any person or circumstances is found to be invalid by a court, that invalidity will not affect the remaining portions or applications of the bill that can be given effect without the invalid portion or application, as long as the remaining portions are not determined by the court to be inoperable.

Repealer

The bill repealed the International Tradeport Development Authority Act, which provided for the creation of an international tradeport development authority for the Detroit Metropolitan Wayne County Airport (MCL 125.2521-125.2546).

Legislative Analyst: George Towne

FISCAL IMPACT

The bill will have no fiscal impact on the State.

The bill will result in increased local costs associated with the creation and operation of the public airport authority that will oversee the Detroit Metropolitan Wayne County Airport. The authority will consist of an appointed board, chief executive officer, chief financial officer, and other staff. There are no data available to indicate the size or scope of the authority or the costs associated with its operation. To provide a point of reference, the Office of Auditor General reported fiscal year 1998-99 budgeted revenue and expenses of the Detroit Metropolitan Wayne County Airport of \$249.1 million.

The bill's provision allowing the authority to fix, charge, and collect rates, fees, rentals, and charges to fund all of its activities, operations, and investments will result in increased local revenues. The authority will not have the power to levy taxes or special assessments. The local revenues generated by the authority will be used to cover the costs associated with the operation of the authority and the airport.

The bill may result in additional local debt associated with the provisions allowing the authority to issue bonds and/or notes. Dedicated revenues generated by the authority will be used to cover the scheduled debt service payments. Any indebtedness will not constitute a full faith and credit obligation of the authority or the local government.

Fiscal Analyst: Craig Thiel

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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.