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Senate Bill 690 (Substitute S-6 as reported)
Sponsor: Senator Glenn D. Steil
Committee: Detroit Metro Airport Review

Date Completed: 1-9-02

CONTENT

The bill would create the "Code of Ethics and Efficiency in Airport Operations Law" within the Aeronautics Code to do the following:

- **Prescribe certain duties and responsibilities of a qualified airport, major airports, operating authorities of major and qualified airports, and certain airport officers and employees.**
- **Provide that each officer or managerial-level employee of a major or qualified airport, and each public official, officer, or employee of an operating authority who oversaw the airport's operation, would have to comply with all applicable local and State laws regarding conflict of interest; as well as submit financial disclosure statements and a disclosure of criminal history, licensing sanctions, civil allegations of fraud or misrepresentation, and tax delinquency.**
- **Prohibit a major or qualified airport from entering into a contract with certain airport officials or employees if one of these individuals, or a relative of one of these individuals, were the contractor or subcontractor or employed by the contractor or subcontractor.**
- **Require a qualified airport to comply with all applicable laws regarding contracts; submit to arbitration any claim of improper or unfair contracting practices; enforce contractual remedies against contractors; and ensure that all contracts involving more than \$50,000 were bid competitively.**
- **Require a qualified airport to adopt and implement an antinepotism policy; conduct specific background checks of**

employees; retain an independent auditing firm to conduct audits of the airport; appoint an ombudsman to respond to complaints and suggestions of travelers, and perform other duties as required in the bill; and appoint an office of compliance for disadvantaged businesses.

- **Prohibit a qualified airport's operating authority from establishing or maintaining a law enforcement agency with jurisdiction exclusive to the airport.**
- **Prescribe penalties for violations of the bill; create funds to receive fines from the penalties; and prescribe disbursements from the funds.**
- **Require each major airport and qualified airport to create a free, public Internet site, which would have to include certain information.**

The bill also would delete a current provision that allows a political subdivision establishing an airport to appoint police.

Under the bill, a "qualified airport" would be an airport that had 10 million or more enplanements within a 12-month period (Detroit Metropolitan Wayne County Airport), and a "major airport" would be an airport that had more than 250,000 but less than 10 million enplanements within a 12-month period. "Enplanement" would be a domestic, territorial, or international revenue passenger who boarded an aircraft at a qualified airport in scheduled or nonscheduled service of aircraft in intrastate, interstate, or foreign service, and would include an in-transit passenger who boarded an international flight that transited an airport in the United States for nontraffic purposes.

Qualified & Major Airport Requirements

(The following provisions would apply to both a qualified airport and a major airport.)

Financial Statements/Disclosure. The bill provides that each officer and managerial-level employee of an airport, and each public official, officer, or employee of an operating authority (the legal entity that operated an airport) who oversaw the operation of an airport would have to provide to the airport a financial disclosure statement listing any sources of income derived from business organizations that did business with the airport or with the operating authority. In addition, each officer and managerial-level employee and each applicant for a managerial-level position at the airport, each public official, officer, or employee of the operating authority who oversaw the operation of the airport, each applicant for such a position with the operating authority, and each officer, director, and local managerial-level employee of a contractor or subcontractor doing business with the airport, would have to provide to the airport the following disclosures:

- Whether he or she has been indicted, convicted, pleaded guilty or nolo contendere, or forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor (not including traffic violations), including the name and location of the court, the date, and the disposition of the offense.
- Whether he or she had had any license or certification, issued by a licensing authority in Michigan or any other jurisdiction, denied, restricted, suspended, revoked, or not renewed, and a statement describing the facts and circumstances concerning that action, including the name of the licensing authority, the date each action was taken, and the reason for each action.
- Whether he or she had ever had a civil action involving an allegation of fraud or misrepresentation filed against him or her, including the date of filing, the name and location of the court, the case number, and the disposition of the case.
- Whether he or she had filed, or been served with, a complaint or other notice filed with any public body regarding delinquency in the payment of any tax required under Federal, state, or local law,

including the amount, type of tax, the taxing agency, and time periods involved.

All initial disclosures by persons who were officials, officers, directors, employees, or applicants on the bill's effective date would have to be made within 30 days after that date. All initial disclosures by any person who became an official, officer, director, employee, or applicant after the bill's effective date, would have to be made within 30 days after the person became an official, officer, director, employee, or applicant. All initial disclosures would have to be posted on the airport's Internet site immediately upon receipt. Any event necessitating a change in an initial disclosure would have to be disclosed within 10 business days after the date of the event, and the airport would have to post the disclosure on its Internet site upon receiving the disclosure.

Contracts. The bill provides that an officer or employee of an airport or a public official, officer, or employee of the airport's operating authority, who formerly was an officer or employee of a contractor or subcontractor under a contract with the airport or was in any other way affiliated with the contractor or subcontractor, could not have any managerial or oversight duties with regard to any contract with that contractor or subcontractor.

A person who was an officer or employee of a contractor or subcontractor under a contract with an airport, or who participated in a business organization that contracted with an airport, could not be hired as an officer or employee of the airport or of its operating authority until at least 12 months after the person ended his or her relationship with the contractor, subcontractor, or business organization. An officer or managerial-level employee of an airport or a public official, officer, or employee of its operating authority could not be hired as an officer or employee of a contractor or subcontractor, or participate in a business organization that contracted with a major airport or qualified airport, until at least 12 months after the person ended his or her employment relationship with the airport.

A person who was an officer or managerial-level employee of an airport or a public official, officer, or employee of its operating authority could not simultaneously be employed as an officer or employee of a

contractor or subcontractor or participate in a business organization that contracted with the airport. Each officer or managerial-level employee of the airport and each public official, officer, or employee of its operating authority would have to disclose whether he or she, or any of his or her relatives, directly or indirectly, owned any financial interest in, had any beneficial interest in, was the creditor of, or had any other interest in, or any contractual or service relationship with, a contractor or subcontractor.

A contractor or subcontractor that was a party to a contract with, or that was a bidder on a proposed contract with, an airport, could not give a gift or loan (other than a loan made in the normal course of business), to an officer or employee of that airport or to a public official, officer, or employee of its operating authority. An officer or employee of the airport or a public official, officer, or employee of its operating authority could not solicit a gift or loan.

Qualified Airport

(The following provisions would apply only to Detroit Metropolitan Wayne County Airport.)

Requirements. The airport would have to do all of the following:

- Comply with all State and Federal law and municipal ordinances applicable to contracts to which the airport was a party.
- Advertise all requests for bids for proposed contracts, at least by posting that information on the airport's Internet site and by advertising in appropriate trade journals.
- Immediately submit to arbitration any claim of unfair bid processes or violations of contracting procedures or rules. A claim would have to be submitted to a three-member arbitration panel consisting of one arbitrator selected by the airport, one arbitrator selected by the person or entity making the complaint, and an impartial arbitrator selected by the other two arbitrators. An arbitrator would have to be a member in good standing of the State Bar of Michigan or an arbitrator of the American Arbitration Association. The arbitration would have to be conducted in accordance with the rules of the American Arbitration Association, and judgment

rendered could be entered in any court having jurisdiction.

- Immediately post on the airport's Internet site all claims of unfair bid processes or claims of violations of contracting procedures or rules and the resolution of those claims.
- Enforce all contractual remedies, including liquidated damages provisions, to the extent possible in any dispute with a contractor or subcontractor. The airport would have to post on its Internet site all instances of its enforcement of contractual remedies and an explanation of each instance in which it did not enforce contractual remedies that were available.
- Implement a clause of one year's duration in every employment contract between the airport and an officer or managerial-level employee of the airport, to prohibit the individual from becoming an employee of an organization that did business with the airport for a period of one year after terminating employment with the airport.
- Periodically review its competitive bidding process to ensure that all contracts involving a cumulative amount of more than \$50,000 were competitively bid. The airport would have to maintain on file all documentation necessary to show compliance with this requirement including, at a minimum, records of all requests for proposal, evidence of the publication of all requests for proposal, records of all bids received, and records showing how the bids were evaluated, including the actual bid evaluation sheets or forms. The documentation, except information exempt from disclosure under the Freedom of Information Act, would have to be posted on the airport's Internet site.
- Ensure that all contract change orders or contract extensions that required the approval of the airport's operating authority were, in fact, approved by the operating authority. The airport would have to maintain on file all documents necessary to show compliance with this provision.
- Adopt and implement an antinepotism policy that, at a minimum, prohibited the airport or any of its contractors or subcontractors from hiring a person who was related to an employee or officer of the airport, or a public official, officer, or employee of its operating authority, by consanguinity within the third degree as determined by the common law, or who

was a spouse or an individual related to a spouse within the third degree, or who was an individual in an adoptive relationship within the third degree.

- Establish and implement budgeting principles to track expenditures consistent with the requirements of the Uniform Budgeting and Accounting Act, and with the codification of Governmental Accounting and Financial Reporting Standards, published by the Governmental Accounting Standards Board.

Contract Approval & Monitoring. The bill provides that an airport contract that required prior approval by the airport's operating authority could not be entered into unless prior approval was obtained; retroactive approval of such a contract would not be valid. This provision would not apply to a contract for a cumulative amount less than \$20,000, or to an emergency contract. If the airport entered into an emergency contract, it immediately would have to post on its Internet site a detailed description of the contract and the reasons for treating it as an emergency contract.

The airport's operating authority would have to monitor the performance of each contract to which the airport was a party, including a contract that existed on the bill's effective date, to ensure execution of the contract within the budget and time periods stated in the original provisions. Monitoring would have to include oversight as to whether the contract was being performed in compliance with its terms, with Federal, State, and local contract law, and with the provisions of the bill. The operating authority would have to establish written procedures that prescribed contract monitoring in a manner designed to ensure compliance with and timely completion of a contract. The operating authority would have to maintain on file all documentation necessary to show compliance with these requirements. The airport would have to post on its Internet site the written procedures and documentation immediately upon receipt.

Employee Background Checks. The bill would require the airport to conduct a background check of a prospective employee, before hiring the individual, to determine if he or she had the credentials and qualifications required in the position's job description; and if the individual had any criminal convictions or

pending criminal charges at the time of application. The airport's operating authority would have to conduct this background check before hiring an individual who would have supervisory authority over the airport. These requirements would be subject to the laws of this State.

Beginning on the bill's effective date, an individual who had been convicted of a felony or who was subject to any felony charges could not be employed by the airport in any position, or by the operating authority in any position that involved oversight of the airport's operation.

Independent Audit. A national or international independent auditing firm with demonstrated proficiency in auditing large airports would have to be retained by the airport to conduct audits of the airport's activities. The firm would have to be compensated from airport-generated revenue. If the operating authority were a charter county that elected a county executive, the executive would have to select the auditing firm, subject to the approval of the Michigan Aeronautics Commission and the county commission. Otherwise, the airport's operating authority would have to recommend the auditing firm, subject to the approval of the Michigan Aeronautics Commission.

The independent auditor would have to conduct a complete financial, operational compliance, and performance audit of the airport every two years. The airport would have to implement all actions recommended in the performance audit. The independent auditor would have to consult with the airport's operating authority, the airport, and the airport ombudsman as to the subject matter, scope, and objectives of the two-year audit.

The airport would have to have on-site at least one auditor for each 2 million enplanements annually or fraction of 2 million enplanements. The auditor or auditors would remain employees of the auditing firm and would not be employees of the airport. The auditor or auditors would have to provide services at the direction of the county commission, the county executive, the airport, or the airport's operating authority, as applicable.

In addition to any other auditing duties required by the bill, the auditor or auditors

would have to audit any contract under which the cumulative amount paid exceeded the original contractual amount by 20% or more. The auditor or auditors would have to determine the reason for the deviations and whether any provision of the bill had been violated.

When conducting a financial, operational compliance, or performance audit, the independent auditor, or an authorized employee of the independent auditor, would have access to and authority to examine all books, accounts, reports, vouchers, correspondence, files, bank accounts, and other records or property of the airport. An officer or employee of the airport or a public official, officer, or employee of its operating authority would have to produce all such items as requested by the auditor or the auditor's authorized employee. An officer or employee of the airport or a public official, officer, or employee of the operating authority could not obstruct, and would have to facilitate, the auditor's or authorized employee's access to and examination of the requested records or property.

Ombudsman. The bill would require the airport to appoint an ombudsman to accept, review, and respond to questions, complaints, and suggestions from travelers using the airport; contractors, contract bidders, and concessionaires; airlines providing flight service to the airport; and residents, businesses, and local governments near the airport.

The airport would have to employ personnel who would be under the ombudsman's direction, adequate to perform all the functions of the ombudsman. Compensation for all personnel assigned to the ombudsman would be from airport-generated revenue. When performing its duties, the ombudsman or an authorized employee would have access to and authority to examine all books, accounts, reports, vouchers, correspondence, files, bank accounts, and other records or property of the airport. An officer or employee of the airport or a public official, officer, or employee of the airport's operating authority would have to produce all records or property as requested by the ombudsman or an authorized employee. An officer or employee of the airport or a public official, officer, or employee of the airport's operating

authority could not obstruct, and would have to facilitate, the ombudsman's or employee's access to and examination of records or property.

The ombudsman would have to maintain a toll-free telephone number available to the public and promptly respond to any questions, complaints, or suggestions submitted to it; and issue an annual written report of its activities and findings, which would have to be posted on the airport's Internet site and delivered in written form to the Secretary of the Senate and the Clerk of the House of Representatives.

The airport would have to post notices in high-traffic areas of the airport that informed patrons how they could submit complaints or suggestions to the ombudsman or report alleged wrongdoing at the airport. The notices would have to include the ombudsman's Internet site address, mailing address, and toll-free telephone number. The airport would have to post copies of the notices on its Internet site immediately upon receipt.

Office of Compliance. The airport would have to appoint an office of compliance for disadvantaged businesses, which would have to ensure that the airport complied with all Federal, State, and local contracting requirements pertaining to disadvantaged business enterprises, minority business enterprises, and other business enterprises that qualified under Federal, State, or local set-aside programs. The office would have to assist in determining whether potential contractors would qualify as disadvantaged business enterprises or minority business enterprises or for those set-aside programs in bidding for contracts.

A contracting compliance officer would have to post on the airport's Internet site all disadvantaged business enterprises, minority business enterprises, or other businesses that qualified for set-aside programs that did business with the airport, and all contracting requirements and procedures pertaining to contracts for which disadvantaged business enterprises or minority business enterprises could qualify.

Annual Report. The airport would have to issue a comprehensive annual report, evaluating all airport operations. The written

report would have to be posted on the airport's Internet site by February 15 of each year, and a copy of the report delivered to the Secretary of the Senate and the Clerk of the House of Representatives.

Law Enforcement. The bill would prohibit the airport's operating authority from establishing or maintaining a law enforcement agency whose jurisdiction was exclusively the airport. If the operating authority was a political subdivision, its law enforcement agency would have to provide law enforcement services at the airport.

Reporting Program. The bill would establish a fraud and inefficiency reporting program at the airport. The program would have to be administered by the airport's ombudsman and pay rewards for information that led to the discovery of improper or wasteful expenditures, or the discovery of acts or omissions that would constitute a violation of the bill or otherwise would constitute fraud or abuse relating to the business, financial, or hiring practices of the airport. A reward would be the greater of 10% of the amount of any money recovered or saved pursuant to the information provided, or \$500. The reward money would have to be paid from the proposed Qualified Airport Fraud Reward Fund.

To be eligible for a reward, an individual would have to provide information that related to the activities of a specific individual or individuals and specifies the time or times when the alleged activities occurred. Information that already was being reviewed by a law enforcement agency could not be used in claiming a reward.

Any person could submit information. If more than one person were eligible for a reward for reporting the same information, the reward would have to be allocated among them. The identity of a person who submitted information would be exempt from disclosure under the Freedom of Information Act, and could not be revealed by the ombudsman or the Michigan Aeronautics Commission, except as otherwise provided by law. If, after a reward was accepted, the ombudsman or the Commission determined that the person who received the reward was not eligible for it, the person would have to refund the reward to the ombudsman or the Commission.

Penalties

An individual who engaged in an act or omission that constituted a violation of the bill would be liable for a civil fine of \$100 per day that the violation was committed, up to \$1,000 for any violation. An entity other than an individual that committed a violation would be subject to a civil fine of \$1,000 per day, up to \$10,000 for any violation.

A fine from a violation at the qualified airport would have to be collected by the airport's ombudsman and placed in the Airport Fraud Reward Fund. A fine from a violation at a major airport would have to be collected by the Michigan Aeronautics Commission and forwarded to the State Treasurer for deposit in the Major Airport Civil Fine Fund.

Funds

The bill would create the "Major Airport Civil Fine Fund" for all major airports, collectively. The State Treasurer would receive money from fines paid for violations pertaining to those airports and deposit the fines into the Fund. The State Treasurer would have to direct the investment of the Fund and credit it with interest and earnings.

The Michigan Aeronautics Commission would have to spend the total amount in the Fund each year, first to the Commission to reimburse its costs for assessing and collecting fines; and second, if money remained in the Fund, to county libraries in the counties in which those airports were located. A major airport would have to post on its Internet site all financial records of the Fund.

The bill also would create the "Qualified Airport Fraud Reward Fund" within the ombudsman's office. The ombudsman would receive money from fines paid for violations pertaining to the qualified airport and deposit those fines into the Fund. The ombudsman would have to spend the total amount in the Fund each year, first to pay any rewards for which persons were eligible; second, if money remained in the Fund, to reimburse the ombudsman for its costs for operating the fraud and inefficiency reporting program; and third, if money remained in the Fund, to county libraries in Wayne County. The ombudsman would have to post on the airport's Internet site all financial records of the Fund.

Internet Sites

The bill would require each major airport to create an Internet site which would have to be available to the public free of charge. Except for information exempt from disclosure under the Freedom of Information Act, the airport immediately would have to post on the site all information required to be posted by a major airport under the bill.

The qualified airport also would have to create an Internet site which would be available to the public free of charge. Except for information exempt from disclosure under the Freedom of Information Act, the airport immediately would have to post on the site all of the following:

- All financial information, budgetary information, and information pertaining to bonds issued by the airport.
- All contracts to which the airport proposed to become a party, and all proposed contract amendments, change orders, and proposed contract extensions. The information would have to include documentation of each step of the contracting process, including requests for proposal, advertisement of requests for proposal, bids submitted, evaluation of bids, awarding of contracts, and documentation of the recommendation and approval of contracts by the airport's operating authority.
- Reports of any audits conducted on the airport, including the beginning date and status of any audit as it was conducted, the objectives of the audit, and the expected time of completion of the audit.
- Contracting procedures applicable to contracts to which the airport was or proposed to be a party.
- Disclosures required under the bill in regard to employees and contractors.
- A summary of any violation of the disclosure requirements.
- Reports of the ombudsman.
- All job descriptions, qualifications, and postings for managerial-level employee positions at the airport.
- Notice of any claim of unfair bidding practices or claim of violations of contracting procedures or rules, regarding a proposed contract involving the airport.
- The qualified airport's annual report.
- A list of all disadvantaged and minority business enterprises with which the airport

had done business, and other information that the office of compliance would have to post.

- The number of suggestions and complaints submitted to the ombudsman by members of the public.
- Copies of local ordinances regarding conflict of interest.
- Instances of enforcement of contractual remedies, and explanations of nonenforcement.
- Financial records of the Fraud Reward Fund.

Changes to Current Law

Under the Aeronautics Code, a political subdivision that has established or establishes an airport, landing field, or other aeronautical facility may engage in specific activities described in the Code. Under the bill, these provisions would be subject to the proposed Ethics and Efficiency in Airport Operations Law.

The authorized activities presently include appointing airport guards or police, with full police powers. Under the bill, a political subdivision still could airport guards. The bill would delete references to police and police powers.

Currently, a political subdivision may vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation of the airport, landing field, or other aeronautical facility, in an officer, a board, or body of the political subdivision. The bill would retain this provision but would delete language under which, in a county operating under the county road system with a population over 2 million, the board of county road commissioners may implement this section for the county.

MCL 259.133 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would result in increased administrative costs to a qualified airport associated with requirements to do the following:

- Create a three-member arbitration panel.
- Review its competitive bidding process.

- Establish and implement certain budgeting principles.
- Monitor the performance of every contract.
- Conduct background checks of prospective employees.
- Create an Internet site that would contain certain information and be available to the public free of charge; and advertise and post certain information on the Internet site.
- Retain an independent auditing firm to conduct audits of the activities of the airport.
- Maintain a toll-free telephone number.
- Appoint an office of compliance for disadvantaged businesses.

It is estimated that a qualified airport would have to hire at least nine auditors to comply with the requirement that the airport have, on-site, at least one auditor for every 2 million enplanements annually or fraction thereof. The estimated range of salary and fringe benefit costs of an auditor position is \$51,900 to \$92,000. Other costs associated with these positions would include equipment, travel, supplies, and office space. The bill's requirement that a qualified airport employ personnel, including personnel for the fraud and inefficiency reporting program, to work under the direction of the ombudsman would increase costs to the airport. These costs would be contingent on the size of the staff hired.

The bill would result in increased administrative costs to major airports associated with the requirement that they create an Internet site that would be available to the public free of charge.

The bill could result in additional costs to the Wayne County sheriff's office because of the transfer of law enforcement responsibilities at the airport from the airport police to the sheriff's office. It is unclear whether the sheriff's office would be able to charge the airport for these costs or whether county revenues would have to be used.

The bill could result in additional revenue associated with violations of certain provisions contained in the bill. Fine revenue resulting from violations at a qualified airport would be distributed first to pay rewards, second to reimburse the costs of the ombudsman, and third to libraries in the counties where the

airport is located. Fine revenue resulting from violations at a major airport would be deposited in a Civil Fine Fund to be administered by the State Aeronautics Commission and distributed first to the Commission for administrative costs and second to county libraries where the airports are located.

Fiscal Analyst: C. 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.