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BILL ANALYSIS

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House Bill 4261 (Substitute H-1 as passed by the House)  
Sponsor: Representative Michael Sak  
House Committee: Commerce  
Senate Committee: Commerce and Tourism

Date Completed: 5-22-07

### **CONTENT**

**The bill would enact the "Convention and Tourism Promotion Act" to permit a bureau (a nonprofit membership organization) to create a marketing program to promote convention business and tourism, and collect an assessment of up to 2% of the revenue generated from transient facilities in an assessment district (Kent County or the greater Lansing area) for the expenses of the program, unless the assessment were rejected by the facility owners.**

#### Notice of Marketing Program

The bill would permit a bureau that had its principal place of business in an assessment district to file a marketing program notice with the director (the chief executive officer of the Michigan Economic Development Corporation (MEDC) or his or her designee), stating that the bureau proposed to create a marketing program and collect an assessment from owners of transient facilities within the assessment district to pay the costs of the program.

"Assessment district" would mean a municipality (city, county, village, or township) or combination of municipalities as described in a marketing program. The bill specifies that a bureau could impose an assessment of up to 2% of the room charges in the applicable payment period if the assessment district included either of the following:

-- A municipality having a population of more than 570,000 and less than 775,000.

-- A municipality within which a 4% marketing assessment is levied under the Community Convention or Tourism Marketing Act.

(According to U.S. Census Bureau data, only Kent County meets the population criteria. According to the Greater Lansing Convention and Visitors Bureau, the 4% marketing assessment under the Community Convention or Tourism Marketing Act currently is assessed only within local units in the greater Lansing area. That Act applies to a county with a population of less than 650,000 and cities, villages, and townships within such a county.)

"Bureau" would mean a nonprofit corporation incorporated under State laws that exists solely to promote convention business and tourism within the State or a portion of the State and that meets all of the following requirements:

- Has at least 200 dues-paying members, of which at least 25 are owners of transient facilities.
- Has been engaged actively in promoting convention business and tourism for at least 10 years.
- Has a board of directors elected by its members.
- Has a full-time chief executive officer and at least 14 full-time employees.
- Is a member of one or more nationally recognized associations of travel and convention bureaus.
- Regularly books conventions at the community's largest convention center,

which generate hotel room nights throughout the surrounding area.

The notice would have to describe the structure, history, membership, and activities of the bureau in sufficient detail to enable the MEDC director to determine whether the bureau satisfied all of those requirements.

The notice also would have to indicate the municipality or municipalities comprising the assessment district, describe the marketing program to be implemented with the assessment revenue, and specify the amount of the assessment proposed to be levied, which could not exceed 2% of the room charges in the applicable payment period. In an assessment district that included more than one municipality, the assessment could be different in each of the municipalities.

In addition, the notice would have to include the right of owners to request a referendum, as described below.

When it filed the marketing program notice with the director, the bureau would have to mail a copy of the notice by registered or certified mail to each owner of a transient facility located in the assessment district specified in the notice, in care of the respective transient facility. In assembling the list of owners to whom the notices would have to be mailed, the bureau would have to use any data reasonably available to it.

"Transient facility" would mean a building that contains 35 or more rooms used in the business of providing dwelling, lodging, or sleeping to transient guests, whether or not membership is required for the use of the rooms. A transient facility would not include a nursing home. "Transient guest" would mean a person who occupies a room in a transient facility for less than 30 consecutive days.

"Marketing program" would mean a program established by a bureau to develop, encourage, solicit, and promote convention business and tourism within the State or a portion of the State within which the bureau operated. The encouragement of convention business and promotion of tourism could include any service, function, or activity, whether or not performed, sponsored, or advertised by a bureau, that intended to attract transient guests to the assessment district.

## Referendum

The assessment described in the notice would take effect on the first day of the month following the expiration of 40 days after the notice was mailed, unless the MEDC director received written requests for a referendum by at least 40% of the total number of owners, or those owners representing at least 40% of the total number of rooms in all of the transient facilities.

If the director received a sufficient number of referendum requests in the time permitted, he or she would have to conduct a written referendum by mail or in person, as he or she chose, among all owners of transient facilities in the assessment district within 20 days after the end of the 40-day period. For the purposes of the referendum, each owner would have one vote for each room in each of the owner's transient facilities within the assessment district. If a majority of votes cast approved of the assessment as proposed by the bureau in its notice, then the assessment would take effect for all owners of transient facilities located in the assessment district on the first day of the month following the expiration of 30 days after the director certified the results of the referendum.

If a majority of votes cast were opposed to the assessment, then it would not take effect. If the assessment were defeated, the bureau could file and serve a new notice of intention after at least 60 days had passed from the date the results of the earlier referendum had been certified. Not more than two referenda or notices could be held or filed in any one calendar year.

Only one assessment under the proposed Act could exist in an assessment district or a part of an assessment district at any one time. Additionally, an assessment could not take effect before January 1, 2007.

## Marketing Program

A marketing program could include provisions for all or any of the following:

- Establishing and paying the costs of advertising, marketing, and promotional programs to encourage convention business and tourism in the assessment district.

- Assisting transient facilities within the district in promoting convention business and tourism.
- Acquiring personal property considered appropriate by the bureau in furtherance of the purposes of the marketing program.
- Hiring and paying for personnel employed by the bureau to implement the marketing program.
- Contracting with organizations, agencies, or persons for carrying out activities in furtherance of the purposes of the marketing program.

The marketing program also could include programs for establishing and paying the costs of research designed to encourage convention business and tourism in the assessment district.

#### Assessment

On the assessment's effective date, each owner of a transient facility in the assessment district would be liable for payment of the assessment, computed using the percentage stated in the marketing program notice. The assessment would have to be paid by the owner of each facility to the bureau within 30 days after the end of each calendar month, and would have to be accompanied by a statement of room charges imposed by the transient facility for that month. A transient facility would not be prohibited from adding the assessment to room charges payable by transient guests, provided that the facility disclosed that it had done so on any bill presented to a transient guest.

("Room charge" would mean the charge imposed for the use or occupancy of a room, excluding charges for food, beverages, State use tax, telephone service or like services paid in connection with the charge, and reimbursement of the assessment imposed by the proposed Act.)

An owner would have to pay interest to the bureau on any assessments not paid within the specified time, at a rate of 1.5% per month. Owners delinquent for more than 90 days in paying assessments also would have to pay a delinquency charge of 10% per month or fraction of a month on the amount of the delinquent assessments. The bureau would be permitted to sue in its own name to collect the assessments, interest, and delinquency charges.

The owner of a transient facility would not be liable for payment of an assessment until a notice had been mailed to the facility as required under the bill.

The assessment revenue (including any interest and penalties on the assessment) would not be State funds, would have to be deposited in the bureau's name in a bank or other depository in the State, and could be disbursed only for the expenses properly incurred by the bureau related to the marketing programs developed under the proposed Act.

#### Independent Audits

The bureau's financial statements would have to be audited at least annually by a certified public accountant, and a copy of the audited statements would have to be mailed to each owner within 150 days after the close of the bureau's fiscal year. The financial statements would have to include a statement of all assessment revenue received by the bureau during that fiscal year and would have to be accompanied by a detailed report, certified as correct by the bureau's chief operating officer, describing the marketing programs implemented or, to the extent known, to be implemented by the bureau.

In addition, copies of the audited financial statements and the certified report would have to be mailed simultaneously to the MEDC director.

Within 30 days after the close of each calendar quarter, each owner within the assessment district would have to forward copies of its tax returns for the preceding quarter to the independent certified public accountants who audited the bureau's financial statements. Those tax returns could be used solely by the certified public accountants to verify and audit the owner's payment of the assessments and could not be disclosed to the bureau except as necessary to enforce the proposed Act.

#### Advisory Committee

On the date that an assessment took effect, the bureau would have to have an advisory committee elected. The committee would have to consist of representatives of the owners of transient facilities located within the assessment district and the MEDC director or his or her designee. The committee would have to consist of at least

five and not more than nine people, at least one of whom could not be affiliated with a bureau member. At least one member would have to be affiliated with a transient facility of 120 rooms or fewer. The bureau would have to establish procedures for the election and terms of office for the members of the advisory committee.

At regular intervals, but at least quarterly, the bureau would have to cause a formal meeting of the committee to be held. At the meetings, the bureau would have to present its current and proposed marketing programs, and the advisory committee would have to review and either approve or reject the programs. The bureau would have to institute a program approved by the committee, and could not institute a program rejected by the committee. The advisory committee also could make recommendations to the bureau and its board of directors from time to time with respect to current or proposed marketing programs.

#### Referendum to Discontinue

At any time two years or more after an assessment's effective date, and upon the written request of owners of transient facilities located within the assessment district that represented at least 40% of the total number of owners or 40% of the total number of rooms in all transient facilities, the bureau would have to conduct a referendum on whether to discontinue the assessment. The bureau could choose to hold the referendum by mail or in person among all owners of transient facilities in the assessment district, within 60 days after receiving the requests. For the purposes of the referendum, each owner would have one vote for each room in each of the owner's transient facilities within the district. If a majority of the total votes eligible to be cast supported discontinuance of the assessment, the assessment would have to be discontinued on the first day of the month following the expiration of 90 days after the bureau certified the results of the referendum.

Passage of a referendum discontinuing the assessment would not prevent the bureau from proposing a new marketing program notice during or after the 90-day period. If the bureau did propose a new marketing program, it would have to follow the procedures under the bill for creating a marketing program.

If a referendum to discontinue an assessment were not adopted, a further referendum on the discontinuation of the assessment could not be held for two years.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill could increase the administrative costs of the Michigan Economic Development Corporation (an independent agency within the Michigan Department of Treasury-Michigan Strategic Fund) by a minimal amount due to the requirement for the MEDC to determine if the application to levy an assessment met the criteria that would be established by the bill. The MEDC also could incur expenses if sufficient transient facility operators petitioned for the conduct of a referendum on the question of imposition of an assessment.

Other expenses due to administering the assessment would be borne by a "bureau", the private, nonprofit membership association levying the assessment. Similarly, all assessment revenue would go to the bureau for marketing and promotion activities. The bill would apply only to a bureau located within Kent County or any county with a population of less than 650,000 or most cities, villages and townships within such a county.

It is unknown what the effect of increasing hotel and motel costs by 2%, as would be permitted under the bill, would have on visitors' stays and other hotel/motel-related revenue. To the extent the additional costs were accommodated by shorter stays, shifts to less expensive lodging, reductions in food or other visitor-related purchases, the bill could affect a wide variety of other State and local revenue. The potential magnitude of this effect is unknown.

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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.