REGIONAL TOURISM MARKETING ACT

Act 244 of 1989

AN ACT to promote tourism in certain regions of this state; to provide for the creation of tourism marketing programs; to provide for the imposition and collection of assessments on the owners of transient facilities to support tourism marketing programs; to provide for the disbursement of the assessments; to prescribe the oversight powers and duties of certain state departments, state agencies, and state employees; and to prescribe remedies and penalties.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989 ;-- Am. 2018, Act 466, Eff. Mar. 29, 2019

The People of the State of Michigan enact:

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141.891 Short title.

Sec. 1.

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

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

141.891a Legislative findings.

Sec. 1a.

(1) The legislature finds all of the following:

(a) Tourism is a major source of employment, income, and tax revenues in this state, and the expansion of the tourism industry is vital to the growth of this state's economy.

(b) The tourism industry is important to this state, not only because of the number of people it serves and the vast human, financial, and physical resources it employs, but because of the benefits tourism and related activities confer on individuals and on society as a whole.

(c) State oversight and resources are needed to implement a coordinated and effective marketing program consistent with the master plan developed by this state to promote travel to, and within, this state under the Michigan tourism policy act, 1945 PA 106, MCL 2.101 to 2.103a, and to optimize the considerable investment of time, energy, capital, and resources being made by the tourism industry.

(d) This state can best undertake effective tourism marketing through the coordinated efforts of existing state government agencies in tourism promotion and private convention and tourism promotional bureaus who are better able than state agencies to market and promote their unique assessment districts, which will maximize the economic and employment benefits of the tourism industry to this state and its citizens.

(e) The coordinated efforts within this act to market and promote tourism represent a broader regulator scheme that does not impinge on an individual's First Amendment rights.

(2) Nothing in this act shall be construed to do 1 or more of the following:

(a) Restrain an owner or participant from communicating its own message or marketing plan.

(b) Require any owner or participant to adopt any actual or symbolic speech.

(c) Endorse or finance any political speech or ideological view.

History: Add. 2018, Act 466, Eff. Mar. 29, 2019

141.892 Definitions.

Sec. 2.

As used in this act:

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

(b) "Assessment revenues" means the money collected by a regional marketing organization from the assessment, including any interest and penalties on the assessment, imposed under this act.

(c) "Board" means the board of directors elected by the members of a regional marketing organization.

(d) "Director" means the president of the Michigan strategic fund or his or her designee.

(e) "Master plan" means the comprehensive, long-range master plan developed by the Michigan travel commission and the travel bureau under section 2c of the Michigan tourism policy act, 1945 PA 106, MCL 2.102c.

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

(g) "Regional assessment district" means a region of this state composed of a number of counties in which a regional marketing organization operates. Regional assessment district does not include a portion of the region that is a special charter, fourth class city.

(h) "Regional marketing organization" means a nonprofit corporation that promotes tourism within a region of this state. Regional marketing organization includes only an organization that has been operating for 10 or more years and that operates in a region composed of 15 counties.

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

(j) "Room charge" means 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 room charge, and reimbursement of the assessment as allowed in section 6.

(k) "Transient facility" means a building or combination of buildings under common ownership, operation, or management that contains 10 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. Transient facility includes a building or combination of buildings, the owner of which has elected to come under the provisions of this act pursuant to section 9. Transient facility does not include a college or school dormitory; a hospital; a nursing home; a hospice; a building or combination of buildings that is otherwise a transient facility, but that is located within 1 mile of a ski lift as defined in section 2 of the ski area safety act of 1962, 1962 PA 199, MCL 408.322; or a facility owned and operated by an organization qualified for an exemption from federal taxation under section 501(c) of the internal revenue code.

(l) "Transient guest" means a natural person who occupies a room in a transient facility for less than 30 consecutive days regardless of who pays the room charge.

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(m) "Tourism marketing program" means a program established by a regional marketing organization to develop, encourage, solicit, and promote tourism within a region of this state. The encouragement and promotion of tourism includes a service, function, or activity, whether or not performed, sponsored, or advertised by a regional marketing organization, that intends to attract transient guests to the regional assessment district.

(n) "Tourism marketing program notice" means the notice described in section 3.

(o) "Travel bureau" means the Michigan travel bureau created under section 2a of the Michigan tourism policy act, 1945 PA 106, MCL 2.102a.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989 ;-- Am. 2018, Act 466, Eff. Mar. 29, 2019

141.893 Tourism marketing program notice; filing; contents; copies; list of transient facilities.

Sec. 3.

(1) In order to establish a tourism marketing program within a regional assessment district, a regional marketing organization shall file a tourism marketing program notice with the director.

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

(a) A statement that the regional marketing association proposes to create a tourism marketing program under this act.

(b) A statement that the regional marketing association proposes to levy and collect an assessment from owners to pay the costs of the tourism marketing program.

(c) A description of the structure, membership, and activities of the regional marketing organization, including a statement that the regional marketing organization is governed by a board and that a majority of the members of the board are owners. The description shall include the business name and address of the person designated by the regional marketing organization to receive the payment of assessments under section 6 and the independent certified public accountants who audit the financial statements of the regional marketing organization.

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

(e) A statement specifying the amount of the assessment proposed to be levied. The assessment shall not exceed 1% of the room charges in the applicable payment period.

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

(g) Other information considered necessary by the director.

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

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

141.894 Tourism marketing program; approval or disapproval; written referendum; effective date; failure of referendum.

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Sec. 4.

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

(2) Within 40 days after approval of a tourism marketing program under subsection (1), the director shall conduct among all owners a written referendum by mail on whether the tourism marketing program should be approved. For the purpose of the referendum and except as provided in section 9, each owner has 1 vote for each room in the owner's transient facility.

(3) If the tourism marketing program is approved by a majority of the votes actually cast in the regional assessment district, the tourism marketing program and assessment set forth in the tourism marketing program notice become effective on the first day of the month that is more than 30 days after certification by the director of the results of the referendum. A regional marketing organization may file and serve another tourism marketing program notice under section 3 no sooner than 1 year after certification by the director of the results of a referendum if the referendum failed.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

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141.895 Tourism marketing program; scope.

Sec. 5.

A tourism marketing program may include 1 or more of the following:

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

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

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

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

(e) A provision for contracting with organizations, agencies, or persons to carry out activities to achieve the purpose of the tourism marketing program.

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

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

(h) A procedure for election of the board that requires that a majority of the members of the board are owners.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

141.896 Assessments generally.

Sec. 6.

(1) Upon the effective date of an assessment under section 4, each owner is liable for payment of the assessment computed by multiplying the percentage set forth in the tourism marketing program notice by the aggregate room charges imposed by the transient facility

during a calendar month. Except as provided in subsection (2), the owner shall pay the assessment, within 30 days after the end of each calendar month, to the person designated by the regional marketing organization, which person is independent of the accountants who audit the financial statements of the regional marketing organization. A payment shall be accompanied by a statement of room charges imposed by the transient facility for that calendar month. This act does not prohibit an owner from reimbursing the transient facility by adding the assessment imposed under this act to room charges payable by a transient guest. However, the owner shall disclose that the transient facility has been reimbursed for the assessment imposed under this act on the bill presented to the transient guest.

(2) A regional marketing organization may enter into an agreement with a bureau established under the community convention or tourism marketing act, Act No. 395 of the Public Acts of 1980, being sections 141.871 to 141.880 of the Michigan Compiled Laws, to accept assessments levied under this act. If an owner is subject to assessments under this act and Act No. 395 of the Public Acts of 1980, and an agreement is entered into under this subsection, the owner may satisfy the payment requirements under subsection (1) by paying the assessment under this act to the bureau or the person designated by the bureau under Act No. 395 of the Public Acts of 1980 at the same time the assessment under Act No. 395 of the Public Acts of 1980 is paid by the owner. The regional marketing organization shall reimburse a bureau or the person designated by the bureau under Act No. 395 of the Public Acts of 1980 for reasonable administrative costs incurred to receive and forward assessments due a regional marketing organization under this act. The regional marketing organization may agree with the bureau to allow the bureau or the person designated by the bureau under Act No. 395 of the Public Acts of 1980 to withhold a portion of an assessment received on behalf of the regional marketing organization as reimbursement for the reasonable administrative costs incurred.

(3) Within 30 days after the close of each calendar quarter, each owner shall forward to the independent certified public accountants who audit the financial statements of the regional marketing organization copies of the state use tax returns of the transient facility for the preceding quarter. The copies of the state use tax returns shall be used solely by the certified public accountants to verify and audit the payment of the assessment by the owner under this act, and shall not be disclosed to the regional marketing organization except as the director determines necessary to enforce this act.

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

(5) An owner is not liable for payment of an assessment until a tourism marketing program notice and, if the owner is eligible to vote, the referendum ballot has been mailed to the owner at the last known address of the transient facility pursuant to sections 3 and 4.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

141.897 Disposition of assessment revenues; financial statements; certified report; copies.

Sec. 7.

(1) The assessment revenues collected under this act are not state funds. The regional marketing organization shall deposit assessment revenues collected under this act in a bank or other depository in this state in the name of the regional marketing organization. The

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assessment revenues shall be disbursed only for the expenses properly incurred by the regional marketing organization with respect to the tourism marketing program developed by the regional marketing organization under this act.

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

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

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

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141.897a Board meeting; annual marketing plan.

Sec. 7a.

The board at regular intervals, but not less than twice per year, shall convene a formal meeting at which the board shall review its current annual marketing plan and its proposed annual marketing plan for the succeeding 1-year period. Once a year at these formal meetings, the board shall review and either approve or reject the proposed annual marketing plan. Subject to section 7b, an approved annual marketing plan shall be instituted by the regional marketing organization. A rejected marketing plan shall not be instituted by the regional marketing organization.

History: Add. 2018, Act 466, Eff. Mar. 29, 2019

141.897b Master plan; travel bureau; disapproval of annual marketing plan.

Sec. 7b.

(1) The vice-president of the travel bureau and the president or chief administrative officer of the regional marketing organization shall meet periodically, but at least once each year, to discuss the master plan and the annual marketing plan approved by the board.

(2) The regional marketing organization and the travel bureau shall coordinate their marketing program activities and annual marketing plan activities with the master plan with a goal of maximizing the impact of tourism and convention business on the economy of this state.

(3) The director shall disapprove of the regional marketing organization's annual marketing plan within 30 days of the meeting provided for in subsection (1) upon finding that it is detrimental to the master plan or the travel bureau's promotional programs. The regional marketing organization shall not implement an annual marketing plan that is disapproved by the travel bureau. If the director does not disapprove of an annual marketing plan within the 30-day period, the annual marketing plan shall be considered approved and may be implemented by the regional marketing organization.

History: Add. 2018, Act 466, Eff. Mar. 29, 2019

141.898 Discontinuance of assessment; referendum.

Sec. 8.

(1) A regional marketing organization shall conduct a referendum on whether an assessment levied under a tourism marketing program shall be discontinued if both of the following requirements are met:

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

(b) Forty percent or more of the total number of owners in the regional assessment district, or owners representing 40% or more of the total number of rooms in transient facilities within the regional assessment district, file with the regional marketing organization a written request for a referendum under this section.

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

(3) If a majority of the votes actually cast at the referendum approves the discontinuance of the assessment, the assessment under a tourism marketing program shall be discontinued on the first day of the month that is more than 60 days after certification by the regional marketing organization of the results of the referendum.

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

(5) If a referendum held under this section does not result in the discontinuance of the assessment under a tourism marketing program, a further referendum on the discontinuance of that assessment shall not be held until the expiration of 1 year after the date of the referendum under this section.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

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141.899 Building or combination of buildings; agreement to be subject to tourism marketing program; assessment.

Sec. 9.

(1) An owner of a building or combination of buildings that is within a regional assessment district, that has less than 10 rooms or is located within 1 mile of a ski lift, and that otherwise meets the definition of a transient facility under this act may agree in writing to be subject to a tourism marketing program under this act. If an owner of a building or combination of buildings agrees to be subject to the tourism marketing program, the building or combination of buildings is considered a transient facility for the purposes of this act. The owner of the building or combination of buildings is considered an owner for the purposes of this act except that the owner is not eligible to vote in the referendum on the tourism marketing program. The owner shall otherwise participate in the tourism marketing program for that regional assessment district.

(2) A building or combination of buildings that is considered a transient facility under subsection (1) shall remain subject to an assessment imposed under this act until the assessment is discontinued as provided in section 8.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

141.900 Effect of assessment or tax based on room charge.

Sec. 10.

A regional marketing organization is not prohibited from levying an assessment under this act because an assessment or tax based on a room charge under another law of this state is or may be levied on a transient facility.

History: 1989, Act 244, Imd. Eff. Dec. 21, 1989

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