COMMUNITY CONVENTION OR TOURISM MARKETING ACT

Act 395 of 1980

AN ACT relating to the promotion of convention business or tourism in municipalities in this state; to provide for tourism or convention marketing programs in municipalities through nonprofit convention and tourist bureaus; to provide for the imposition and collection of assessments on the owners of transient facilities to support tourism or convention marketing programs; to provide for the disbursement of the assessments; to establish the oversight functions and duties of certain state departments, state agencies, and state employees; and to prescribe remedies and penalties.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984 ;-- Am. 2018, Act 626, Eff. Mar. 29, 2019

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The People of the State of Michigan enact:

141.871 Short title.

Sec. 1.

This act shall be known and may be cited as the "community convention or tourism marketing act".

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984

141.871a 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 the 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 626, Eff. Mar. 29, 2019

141.872 Definitions.

Sec. 2.

As used in this act:

(a) "Assessment" means the amount levied against an owner of a transient facility within an assessment district, computed by application of the applicable percentage against aggregate room charges with respect to that transient facility during the applicable assessment period.

(b) "Assessment district" means a municipality or combination of municipalities as described in a marketing program. A combination of municipalities is not required to be contiguous.

(c) "Assessment revenues" means the money derived from the assessment, including any interest and penalties on the assessment, imposed by this act.

(d) "Board" means the board of directors elected by the members of a bureau. A majority of the members of a board shall be owners of transient facilities.

(e) "Bureau" means a nonprofit corporation existing to promote convention business or tourism within this state or a portion of this state.

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

(g) "Marketing program" means a program established by a bureau to develop, encourage, solicit, and promote convention business or tourism within this state or a portion of this state within which the bureau operates. The encouragement and promotion of convention business or tourism includes any service, function, or activity, whether or not performed, sponsored, or advertised by a bureau, that intends to attract transient guests to the assessment district. For a bureau described in section 3(8), a marketing program includes a contract with a nonprofit organization formed to promote convention business or tourism that receives funding from a tax levied under 1974 PA 263, MCL 141.861 to 141.867, in a contiguous county to provide for the promotion of convention business or tourism.

(h) "Marketing program notice" means the notice described in section 3.

(i) "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.

(j) "Municipality" means a county with a population of less than 650,000 or a city, village, or township within a county with a population of less than 650,000.

(k) "Owner" means the owner of a transient facility to be served by the bureau 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.

(l) "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.

(m) "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

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connection with the charge, and excluding reimbursement of the assessment imposed by this act.

(n) "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 does not include a college or school dormitory, a hospital, a nursing home, 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.

(o) "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.

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

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984 ;-- Am. 1993, Act 224, Imd. Eff. Nov. 1, 1993 ;-- Am. 2010, Act 82, Imd. Eff. May 21, 2010 ;-- Am. 2018, Act 626, Eff. Mar. 29, 2019

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141.873 Marketing program and assessment district; establishment; marketing program notice; filing; contents; exclusion; excise or other tax; copies of notice; list of owners.

Sec. 3.

(1) A bureau that intends to establish a marketing program and assessment district shall file a marketing program notice with the director. The marketing program notice shall state that the bureau proposes to create a marketing program under this act and cause an assessment to be collected from owners of transient facilities within the assessment district to pay the costs of the marketing program.

(2) The marketing program notice shall describe the structure, membership, and activities of the bureau.

(3) The marketing program notice shall describe the marketing program to be implemented by the bureau with the assessment revenues, specify the amount of the assessment proposed to be levied, which, except as provided in this subsection, shall not exceed 5% of the room charges in the applicable payment period, and describe the municipalities comprising the assessment district.

(4) Except as provided in section 10, an area shall not be included in the marketing program notice filed under this act and the assessment district specified in the notice if the area is part of an existing assessment district under this act for which a marketing program is in effect.

(5) If on the date of the mailing of the marketing program notice under this act an excise tax or other tax based on a room charge is not being collected, a municipality included in the marketing program notice shall not be subject to the collection of an excise tax imposed under 1974 PA 263, MCL 141.861 to 141.867, or another tax based on a room charge.

(6) If a part of a municipality is subject to an assessment under the convention and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, that part of the municipality shall not be included in a marketing program notice or assessment district under this act.

(7) Simultaneously with the filing of the marketing program notice with the director, the bureau shall 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 shall be mailed, the bureau shall use any data that is reasonably available to the bureau.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984 ;-- Am. 1989, Act 245, Imd. Eff. Dec. 21, 1989 ;-- Am. 1991, Act 92, Imd. Eff. July 31, 1991 ;-- Am. 1993, Act 224, Imd. Eff. Nov. 1, 1993 ;-- Am. 1996, Act 589, Imd. Eff. Jan. 21, 1997 ;-- Am. 2010, Act 283, Imd. Eff. Dec. 16, 2010

141.873a Marketing program; approval or disapproval; referendum; effective date of marketing program and assessment; filing and serving another marketing program notice.

Sec. 3a.

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

(2) Within 40 days after approval of a marketing program, the director shall require a written referendum to be held by mail or in person, as determined by the director, among all owners of transient facilities in each municipality in the proposed assessment district. For the purpose of the referendum, each owner shall have 1 vote for each room in an owner's transient facility.

(3) The marketing program and assessment set forth in the notice shall become effective on the first day of the month that is more than 30 days after certification by the director that the program was approved by a majority of the votes actually cast in each municipality in the assessment district. If a majority of the votes actually cast in any municipality counted separately is not in favor of the program and assessment, the program and assessment shall not go into effect in the assessment district. However, for purposes of tabulating the votes in the referendum for a marketing program proposed on or after April 12, 1984, each municipality in the proposed assessment district requiring a majority of votes cast in favor of the proposed assessment district shall be defined in the marketing program notice required under section 3. A bureau may file and serve another marketing program notice not less than 60 days after certification of the results of a referendum.

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History: Add. 1984, Act 59, Imd. Eff. Apr. 12, 1984 ;-- Am. 1993, Act 224, Imd. Eff. Nov. 1, 1993

141.874 Marketing program; contents.

Sec. 4.

A marketing program may include all or any of the following:

(a) Provisions for establishing and paying the costs of advertising, marketing, and promotional programs to encourage convention business or tourism in the assessment district.

(b) Provisions for assisting transient facilities within the assessment district in promoting convention business or tourism.

(c) Provisions for the acquisition of personal property considered appropriate by the bureau in furtherance of the purposes of the marketing program.

(d) Provisions for the hiring of and payment for personnel employed by the bureau to implement the marketing program.

(e) Provisions for contracting with organizations, agencies, or persons for carrying out activities in furtherance of the purposes of the marketing program.

(f) Programs for establishing and paying the costs of research designed to encourage convention business or tourism in the assessment district.

(g) Provisions for incurring any other expense or cost which the board, in the exercise of its reasonable business judgment, considers reasonably related to promotion of the convention business or tourism within the assessment district.

(h) Procedures for election of the board.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984

141.875 Transient facility; assessment; computation; payment; reimbursement; agreement to accept payment of assessments; forwarding money; withholding portion of assessment for administrative costs; verification and audit of owner's assessment payments; state use tax returns; unpaid assessments; interest and delinquency charges; suit to collect; assessments as trust funds; notice.

Sec. 5.

(1) Upon the effective date of an assessment under section 3a, each owner of a transient facility in the assessment district shall be liable for payment of the assessment, computed by multiplying the percentage set forth in the marketing program notice by the aggregate room charges imposed by the transient facility during a calendar month. The assessment shall be paid by the owner of each transient facility to the bureau or the person designated by the bureau within 30 days after the end of each calendar month, and 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 transient guests. 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 bureau or person designated by the bureau may enter into an agreement with a regional tourism marketing organization established under the regional tourism marketing act, 1989 PA 244, MCL 141.891 to 141.900, to accept from owners subject to an assessment under this act the payment of assessments that are levied by a regional marketing organization under section 6 of the regional tourism marketing act, 1989 PA 244, MCL 141.896. A bureau or the person designated by the bureau shall forward the money received in payment of an assessment levied by a regional marketing organization under the regional tourism marketing act, 1989 PA 244, MCL 141.891 to 141.900, to the person designated by the regional marketing organization to receive the payment of assessments under section 6 of the regional tourism marketing act, 1989 PA 244, MCL 141.896. The bureau may withhold the portion of an assessment received on behalf of a regional marketing organization under this subsection and section 6 of the regional tourism marketing act, 1989 PA 244, MCL 141.896, as agreed upon between the bureau and the regional marketing organization to reimburse the bureau or person designated by the bureau for reasonable administrative costs to receive and forward assessments due a regional marketing organization.

(3) Within 30 days after the close of each calendar quarter, each owner within an assessment district shall forward to the independent certified public accountants who audit the financial statements of the bureau, 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 by the owner of the assessments under this act, and shall not be disclosed to the bureau except as the director determines necessary to enforce this act.

(4) Interest shall be paid by an owner to the bureau on any assessments not paid within the time required under this act. The interest shall accrue at the rate of 1.5% per month. Owners

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delinquent for more than 90 days in paying assessments, in addition to the 1.5% interest, shall pay a delinquency charge of 1.5% per month or fraction of a month on the amount of the delinquent assessments and shall pay the costs of reasonable attorney fees and court costs incurred in collecting the delinquent assessments. In addition to any other remedy provided by law, the bureau may sue in its own name to collect the assessments, interest, and delinquency charges. All assessments collected but not paid to a bureau by an owner of a transient facility within an assessment district shall be considered trust funds and shall be remitted to the bureau as required by this section.

(5) The owner of a transient facility shall not be liable for payment of an assessment until a marketing program notice has been mailed to the transient facility of the owner pursuant to section 3.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984 ;-- Am. 1989, Act 245, Imd. Eff. Dec. 21, 1989 ;-- Am. 2014, Act 273, Eff. Sept. 30, 2014

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141.876 Assessment revenues not state funds; deposit and disbursement; financial statements; audit; report; copies; failure of bureau to provide copies; penalty.

Sec. 6.

(1) The assessment revenues collected pursuant to this act shall not be state funds. The money shall be deposited in a bank or other depository in this state, in the name of the bureau, and shall be disbursed only for the expenses properly incurred by the bureau with respect to the marketing programs developed by the bureau under this act.

(2) The financial statements of the bureau shall be audited at least annually by a certified public accountant. A copy of the audited financial statements shall be mailed to each owner not more than 150 days after the close of the bureau's fiscal year. The financial statements shall include a statement of all assessment revenues received by the bureau during the fiscal year in question and include the amount of compensation for the chief executive director of the bureau and shall be accompanied by a detailed report, certified as correct by the chief operating officer of the bureau, describing the marketing programs implemented or, to the extent then known, to be implemented by the bureau.

(3) Copies of the audited financial statements and the certified report shall simultaneously be mailed to the director, who shall make it available to the public on the internet. If the bureau fails to submit copies of the audited financial statements and the certified report to the director as provided in this subsection, the director or his or her designee shall mail a demand letter to the bureau requesting copies of the audited financial statements and the certified report with a copy of that demand letter forwarded to the attorney general. If the director or his or her designee does not receive copies of the audited financial statement and the certified report described in this subsection within 90 days of the demand letter, upon notice by the director or the attorney general, for the period of noncompliance with this subsection, the bureau shall not expend any portion of the assessment collected during the period of noncompliance with this subsection. The attorney general may assist the director in enforcing the provisions of this act.

(4) If the bureau fails to provide the copies of the audited financial statement and the certified report within 90 days of the demand letter as provided in subsection (3), the bureau is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $10,000.00 and, in addition, the attorney general may bring action to dissolve the bureau as provided by law.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 2010, Act 283, Imd. Eff. Dec. 16, 2010

141.877 Repealed. 1984, Act 59, Imd. Eff. Apr. 12, 1984.

Compiler's Notes: The repealed section pertained to an advisory committee.

141.877a Biannual formal meeting; review 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 bureau. A rejected marketing plan shall not be instituted by the bureau.

History: Add. 2018, Act 626, Eff. Mar. 29, 2019

141.877b Master plan; annual meeting; disapproval.

Sec. 7b.

(1) The vice-president of the travel bureau and the president or chief administrative officer of the bureau 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 bureau 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 bureau'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 bureau 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 bureau.

History: Add. 2018, Act 626, Eff. Mar. 29, 2019

141.878 Discontinuance of assessment; referendum; proposing new marketing program notice; failure to adopt resolution discontinuing assessment; further referendum.

Sec. 8.

(1) At any time 2 years or more after the effective date of an assessment, and upon the written request of owners of transient facilities located within an assessment district representing not less than 40% of the total number of owners or not less than 40% of the total number of rooms in all of the transient facilities in the assessment district, the bureau shall conduct a referendum on whether the assessment shall be discontinued. The bureau shall cause a written referendum to be held by mail or in person, as the bureau chooses, among all owners of transient facilities in the petitioning assessment district within 60 days of the receipt of the requests. For the purposes of the referendum, each owner shall have 1 vote for each room in

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each of the owner's transient facilities within the petitioning assessment district. If a majority of the votes actually cast at the referendum for the assessment district supports discontinuance of the assessment, the assessment shall be discontinued for that area or county on the first day of the month following expiration of 60 days after the certification of the results of the referendum by the bureau.

(2) Passage of a resolution discontinuing the assessment shall not prevent a bureau from proposing a new marketing program notice during or after the 60-day period, in which case the procedures set forth in section 3 shall be followed.

(3) If a referendum is conducted under subsection (1) and if a resolution to discontinue the assessment is not adopted, a further referendum on the discontinuation of that assessment for the assessment district for which the referendum was held shall not be held for a period of 2 years.

History: 1980, Act 395, Imd. Eff. Jan. 7, 1981 ;-- Am. 1984, Act 59, Imd. Eff. Apr. 12, 1984

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141.879 Building or combination of buildings with less than 10 rooms; agreement to be subject to assessment; participation in marketing program; duration of assessment.

Sec. 9.

(1) The owner of a building or combination of buildings, which is within an assessment district, has less than 10 rooms, and otherwise meets the definition of transient facility, may agree in writing to be subject to the assessment. If an owner agrees to be subject to the assessment, the building or combination of buildings shall be considered a transient facility for the purposes of this act. The owner and transient facility shall participate in the marketing program for that assessment district.

(2) A building or combination of buildings which becomes a transient facility under this section shall remain subject to the assessment unless the assessment is discontinued as provided in section 8.

History: Add. 1984, Act 59, Imd. Eff. Apr. 12, 1984

141.880 Existing assessment district and marketing program.

Sec. 10.

An assessment district and marketing program under this act which is in effect before the effective date of this section shall remain in effect for 365 days after the effective date of this section or until a new marketing program and assessment district, which includes any portion of an existing assessment district and which is established under this act, becomes effective, whichever is sooner.

History: Add. 1984, Act 59, Imd. Eff. Apr. 12, 1984