

Legislative Analysis



MACKINAC ISLAND ASSESSMENT DISTRICT

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Senate Bill 1204 as passed by the Senate

Sponsor: Sen. Jason E. Allen

House Committee: Tourism, Outdoor Recreation and Natural Resources

Senate Committee: Commerce and Tourism

First Analysis 5-5-10

BRIEF SUMMARY: This bill would amend the Community Convention or Tourism Marketing Act to allow a non-profit convention or tourist bureau to levy a special assessment on hotel and motel rooms on Mackinac Island of up to two percent of the room rate. This revenue would go to a newly-formed convention or tourist bureau to fund a marketing program designed to increase convention or tourist business in the area.

FISCAL IMPACT: Permitting Mackinac Island to be included in an assessment district would have no impact on state revenue. There would be an indeterminate, but likely limited, fiscal impact to the agency responsible for oversight for reviewing the initial marketing plan, overseeing the referendum to establish the district, and enforcing the reporting requirements under the provisions of the statute.

THE APPARENT PROBLEM:

Generally speaking, the Community Convention or Tourism Marketing Act (Public Act 395 of 1980, as amended by Public Act 59 of 1984, and Public Act 224 of 1993, MCL 141.871-141.880) allows an eligible nonprofit convention or tourist bureau to levy a special assessment on hotel and motel rooms in a designated assessment district of up to two percent of the room rate (up to four percent in certain townships), if the assessment is adopted by a referendum among the hotel and motel owners subject to the assessment. This type of assessment applies to transient facilities, meaning a building or buildings under common ownership or management with 10 or more rooms used to provide lodging for transient guests (persons staying fewer than 30 consecutive days). The assessment revenues are turned over to a local non-profit convention or tourism bureau for use in a marketing program designed to increase convention or tourist business in the area. As amended in 1984, the act applies to a county with a population of less than 650,000, or a city, village, or township within a county of that size, *except for a special charter, fourth class city*. One or more municipalities, contiguous or not, are allowed to be included in the assessment district.

The exclusion of a special charter, fourth class city was apparently intended to apply to Mackinac Island, which is a special charter city. (See *Background Information*.) In 1984, when the exemption was added to the act, Mackinac Island hotel interests apparently did not wish to be included in the assessment district. However, the number of annual visitors to the island has reportedly dropped by about one third since 1998 (and about ten percent in the past five years alone), and this exclusion is no longer considered

desirable by some hotel owners and tourism officials. Instead, they now suggest that the act should be amended to allow an assessment on lodging facilities to fund a marketing campaign for Mackinac Island. Unlike hotels and motels in many other parts of the state, lodging facilities on Mackinac Island are currently not subject to an excise tax or room assessment designed to fund tourism promotion. (See *Background Information*.) Supporters say that if the bill and referendum are enacted, a newly-formed bureau to be called the "Mackinac Island Convention and Tourism Marketing Bureau" will collect the assessments and carry out the marketing program.

THE CONTENT OF THE BILL:

This bill would amend the Community Convention or Tourism Marketing Act to allow a non-profit convention or tourist bureau to levy a special assessment on hotel and motel rooms on Mackinac Island of up to two percent of the room rate. This revenue would go to a newly-formed convention or tourist bureau to fund a marketing program designed to increase convention or tourist business in the area.

Currently, under this act, an assessment district may cover one or more municipalities, with the term "municipality" referring to "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," except for a "special charter, fourth class city." The bill would remove the exclusion of a "special charter, fourth class city."

It would also amend the definition of the term "director." Currently, "director" means the director of commerce. Under the bill, the term director would refer to the director of the "Department of Energy, Labor, and Economic Growth" or DELEG.

MCL 141.872

BACKGROUND INFORMATION:

Agency responsible for administration of act. The functions under this act once handled by the Department of Commerce are now handled by "Travel Michigan," which is part of the Michigan Strategic Fund within the Department of Treasury. As drafted, the bill would change "Commerce" to "the Department of Energy, Labor, and Economic Growth," but this needs to be amended because Travel Michigan is now part of the Department of Treasury, not DELEG.

Steps to establish an assessment district. To establish an assessment district under this act, a nonprofit convention or tourist bureau must submit a notice of a proposed marketing program to Travel Michigan for approval, and, at the same time, send the notice by registered or certified mail to each owner of a transient facility (generally, a hotel or motel with ten or more rooms) in the proposed assessment district. The notice has to specify the amount of the proposed room assessment, include certain information about the bureau, and describe the marketing program to be carried out by the bureau. Travel Michigan must approve or disapprove the marketing program within 30 days.

Within 40 days after approving a marketing plan, Travel Michigan must require a written referendum on the proposal to be held by mail or in person among all owners of transient facilities in the proposed assessment district, with each owner getting one vote per room. The financial statements of the bureau must be audited at least annually by a certified public accountant and provided to hotel and motel owners and submitted to the director.

A manual for Michigan assessment districts is available online at:

http://www.travelmichigannews.org/cm/attach/7FCE50AA-1D21-411D-A4CE-B2C55EE09612/2008_DMO_Handbook.pdf

Mackinac Island's city charter. The bill would remove the exclusion of a "special charter, fourth class city" from the definition of "municipality" in the Community Convention or Tourism Marketing Act. Although this exclusion was apparently designed to exclude Mackinac Island, Mackinac Island is perhaps more accurately described as a "special charter" city, but not a "fourth class" city (although its year-round population of a little over 500 people falls well under the limit of 10,000 for fourth class cities). According to the Michigan Manual 1979-80, p. 448, the City of Mackinac Island was created as a special charter city by the Legislature on June 9, 1899, under Local Act 1899, p.377. According to the Michigan Municipal League, every city that was originally incorporated as special charter city, except for Mackinac Island, has since been reincorporated as a home rule city. (See *Handbook for Municipal Officials — Local Government*, July 2004, published by the Michigan Municipal League, Section 1, Chapter 2, pp. 1 & 9.)

Moreover, all Michigan cities that, unlike Mackinac Island, were originally incorporated under the Fourth Class City Act, Public Act 215 of 1895, became home rule cities under Public Act 334 of 1976 (MCL 81.1c), as of January 1, 1980. (See also Michigan Attorney General Opinions No. 5525 & 5721.) Thus, there are no longer any fourth class cities under Michigan law. However, as of January 2004, there were still a few cities, originally incorporated as fourth class cities, that had not yet adopted a new home rule city charter, and thus still operate under a Fourth Class City Act charter. Those cities (Beaverton, Harrisville, Omer, Rose City, Sandusky, Whittemore, and Yale) are apparently considered home rule cities with Fourth Class City Act charters. (See *Handbook for Municipal Officials — Local Government*, Section 1, Chapter 2, pp. 1 & 9.)

Other room assessment or tax statutes. The act that this bill would amend (the Community Convention **or** Tourism Marketing Act, Public Act 395 of 1980, as amended by Public Act 59 of 1984 and Public Act 224 of 1993, MCL 141.871-141) is one of several statutes that allow room taxes or assessments, but none of these statutes currently applies to Mackinac Island. The others include:

Excise Tax on Accommodations, Public Act 263 of 1974, as amended by Public Act 13 of 1989, MCL 141.861-141.867, allows eligible *counties* to impose and collect an excise tax of not more than five percent on persons providing lodging to transient guests. This law applies to counties with a population of less than 600,000 and one or more cities of at least 40,000 population; this excise tax is collected in addition to any other taxes, charges, or fees.

Mackinac Island is part of Mackinac County which does not have an excise tax on accommodations.

The Convention and Tourism Marketing Act, Public Act 383 of 1980, MCL 141.881-141.889, adopted before the Community Convention or Tourism Marketing Act, applies only to the greater Detroit area. The assessment district under this act is a county having a population of more than 1,500,000 and designated contiguous counties; the assessment cannot exceed two percent. This law applies only in Detroit area.

Regional Tourism Marketing Act, Public Act 244 of 1989, MCL 141.891-141.900. This law applies to the Upper Peninsula, allowing an additional assessment of up to one percent that is payable to the Upper Peninsula Travel and Recreation Association.

The one percent assessment under this law would currently apply to Mackinac Island but for the exemption for a "special charter, fourth class city." MCL 141.892(f). (The current bill would not affect this exemption.)

ARGUMENTS:

For:

Although Michigan has traditionally supplied the majority of visitors to Mackinac Island, the state's economy has struggled for many years in a row, and Mackinac Island now needs to better promote itself within the Great Lakes region and beyond. Mackinac Island tourism would benefit from the kind of marketing program authorized by the act, and that is already in place in many other parts of the state. The number of annual visitors to the island has reportedly declined by about one third since 1998, and about ten percent in the last five years alone. Modern travelers have many options as to where they spend their vacations, and many travel destinations conduct aggressive marketing campaigns to compete for that business. A room assessment would provide funds to allow a new non-profit convention or tourism bureau to promote Mackinac Island as a tourism destination more effectively.

Although the bill would allow this assessment, it will only be imposed if the required referendum passes, with owners having one vote per room. Mackinac Island hotel and motel owners should be able to decide for themselves whether this assessment would be beneficial.

Against:

Some people who are generally opposed to this type of program, or who consider this type of assessment to be an indirect tax, would presumably not support expanding the current law. It could also be argued that conducting the referendum using a "one vote per room" rule allows the larger hotel and motel owners too much say in whether the assessment is imposed.

Response:

This type of law, whether authorizing an excise tax or room assessment for tourism promotion or an agricultural commodity assessment for promotion of a particular commodity, has generally been upheld in the Michigan courts against various challenges.

Against:

The bill needs a technical correction: The functions originally performed by the director of the Commerce Department under the act are now handled by Travel Michigan, part of the Michigan Strategic Fund within the Department of Treasury. As drafted, the bill would inaccurately change "Commerce" to "the Department of Energy, Labor, and Economic Growth."

POSITIONS:

Representatives of the of the Grand Hotel and the Michigan Travel Commission testified in support of the bill. (4-27-10)

The Department of Treasury is neutral on the bill provided that it is amended so that references to the director of the Department of Commerce become references to the president of the Michigan Strategic Fund. (4-30-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.