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BILL  ANALYSIS

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Senate Bills 553 through 565 (as enacted)

PUBLIC ACTS 176-188 of 2017

Sponsor: Senator Goeff Hansen (S.B. 553-557)
Senator Wayne Schmidt (S.B. 558-561)
Senator Mike Green (S.B. 562-565)

Senate Committee: Outdoor Recreation and Tourism
House Committee: Tourism and Outdoor Recreation

Date Completed: 12-8-17

RATIONALE

Michigan has several statutes pertaining to the history of the State, including the Michigan Historical Commission Act and the Michigan Historical Center Act. These Acts, which took effect in April 2017, were enacted by 2016 legislation that repealed Public Act 271 of 1913, which had created the Michigan Historical Commission. The 2016 legislation was designed to modernize the statutes and reflect current practices. More recently, it was suggested the Michigan Historical Markers Act should be similarly revised. Enacted in 1955, that Act establishes requirements for the approval and placement of historical markers, prescribes related responsibilities of the Michigan Historical Commission and the Michigan Historical Center, and authorizes the Department of Natural Resources (which houses the Commission and the Center) to maintain the State Register of Historic Sites. Corresponding amendments to the new Michigan Historical Center Act also were suggested.

CONTENT

Senate Bill 562 amends the Michigan Historical Markers Act to do the following:

- **Permit the Department of Natural Resources (DNR), after consultation with the Michigan Historical Commission, to enter into an agreement to assist with administration of the Michigan Historical Marker Program.**
- **Modify the goals of the program.**
- **Include in the definition of "historic resource" places associated with a significant individual, group, or event in the State.**
- **Require the DNR to maintain the State Register of Historic Sites.**
- **Require markers and locations approved by the Commission to be added to the Register.**
- **Permit the Commission, with a landowner's consent, to submit an application for the placement of an official Michigan historical marker.**
- **Require an application to be approved by the Commission, rather than the Michigan Historical Center.**
- **Require the Center to arrange for a marker to be prepared, upon the Commission's approval, and to give preference to a Michigan-based company.**
- **Require an applicant to pay the full actual cost of a marker, before it is ordered.**
- **Allow a marker to refer to Michigan as the "Great Lakes State".**
- **Require a person in possession of a resource or site where a marker is displayed to maintain the marker according to prescribed standards.**
- **Require certain funds to be deposited into the Michigan Historical Center Operations Fund, instead of the Historical Marker Fund, and transfer money in that Fund to the Operations Fund.**
- **Delete a provision making it a misdemeanor to exhibit or use the design of a marker without the DNR's permission.**

- Permit a person in possession of a marker to return it to the DNR or a sheriff without penalty, within one year after the bill's effective date.
- Require a person to return a marker to the Center or dispose of it as prescribed by the Center, if the Center withdraws a marker designation.

The bill also renames the Act as the "Governor John B. Swainson Michigan Historical Markers Act".

Senate Bill 564 amends the Michigan Historical Center Act to do the following:

- Replace the term "historical" with "history" in the names of the Act, the Michigan Historical Center, the Michigan Historical Museum, and the Michigan Historical Center Operations Fund.
- Allow money in the Fund to be spent to implement the Governor John B. Swainson Michigan Historical Markers Act.
- Require fees collected for admissions and other services to be deposited in the Operations Fund.
- Require the DNR to prepare an annual report accounting for revenue and expenditures of the Fund, and including information about the location of any markers erected during the previous fiscal year; and provide the report to legislative committees.

Senate Bill 563 amends Part 635 (Surface and Underground Coal Mine Reclamation) of the Natural Resources and Environmental Protection Act to refer to the Governor John B. Swainson Michigan Historical Markers Act in the definition of "historic resource".

Senate Bill 565 amends the Michigan Historical Commission Act to refer to the Michigan History Center, rather than the Michigan Historical Center.

Senate Bills 553 through 561 amend various acts to refer to the Michigan History Center Act, rather than Public Act 271 of 1913, in provisions concerning the retention or disposition of records.

Each bill will take effect on February 19, 2018.

Senate Bills 562 and 564 are described in more detail below. The provisions of the laws that Senate Bills 553 through 561 amend also are listed below.

Senate Bill 562

Historical Marker Program

The Michigan Historical Markers Act declares historic preservation and related public education to be public purposes, and authorizes the Department of Natural Resources to administer a Michigan Historical Marker Program in furtherance of those purposes. The bill refers to the preservation of history and culture, rather than historic preservation.

The bill permits the DNR, after formal consultation with the Michigan Historical Commission, to enter into an agreement to assist with administration of the program. The bill requires the Michigan History Center, using modern professional practices, to meet the goals listed in the Act.

Those goals include identifying and locating historic sites and subjects having historic significance to the State. The bill refers to events, objects, and people, as well as sites and subjects.

In addition, the goals include encouraging the public to preserve historic resources indicative of Michigan history and to develop a sense of identity as Michiganders. The bill, instead, includes

encouraging the public to preserve historic resources and to develop a sense of identity as Michiganders.

The goals also include uniting people from various regions of the State through improved dissemination of information about historic resources and places. The bill refers to the State's heritage and cultural resources, rather than places.

The Act permits the DNR to list a historic resource or site in the State Register of Historic Sites, and to commemorate the resource or site with the placement of an official Michigan historical marker if the resource or site meets written criteria adopted by the Department upon recommendation of the Commission. The bill deletes this language.

The bill instead requires the DNR to maintain the State Register of Historic Sites, and requires markers and locations approved by the Commission to be added to the Register. The bill also requires the DNR to provide information to the public regarding the Register, the marker database, and the Michigan Historical Marker Program through online, printed, or other media.

Marker Application & Approval; Preparation; Text; & Maintenance

The Act allows the following to file an application (a request for the placement of an official Michigan historical marker at the location of a historic resource or site and for its listing in the Register):

- A person owning or in possession of a historic resource or a person having written consent from the owner or person in possession of a historic resource.
- A department or agency of the State or a political subdivision of the State that owns, controls, or is in possession of a historic resource.

The bill also allows the Commission on its own motion with consent from the landowner to file an application.

The Act requires an applicant other than an agency to pay the Center a \$250 application fee when submitting an application. The bill deletes the exception for an agency.

Currently, the Center must deposit the fee in the Historical Marker Fund. The bill, instead, requires the Center to forward the fee to the State Treasurer for deposit into the Michigan History Center Operations Fund.

The Act requires the Center to review an application for completeness and accuracy. The bill deletes a provision that allows Center representatives to visit a site if necessary.

Currently, if the Center concludes that an application meets the criteria for placement of an official marker, it must endorse the application and prepare marker text for presentation to the Commission. Under the bill, instead, if the Commission concludes that an application meets the criteria, it must approve the application and the Center must work with the sponsor to prepare the marker text for presentation to the Commission.

The bill also requires the Center to arrange for a marker to be prepared if the Commission approves an application. The Center must give preference to a Michigan-based company for the preparation. Before a marker is ordered, the applicant must pay its full actual cost.

The Act requires a marker to include the words "Michigan Historical Center" and the name of the Department. The bill instead requires a marker to include the words "Michigan History Center and Michigan Historical Commission". The Act also requires a marker to have a logo or seal with a wolverine emblem and include the words "registered Michigan historic site". Under the bill, a marker also must be dark green with gold lettering and may refer to Michigan as the "Great Lakes State".

The bill requires a person or agency in possession of a resource or site where a marker is displayed to maintain the marker according to standards prescribed by the DNR upon consultation with the Commission. Failure to do so may result in the marker's removal by the Department.

Operations Fund; Fund Revenue

The Act creates the Historical Marker Fund, and requires the State Treasurer to direct the investment of the Fund and credit to it interest and earnings from investments. Money in the Fund must remain in it at the end of the fiscal year and not lapse to the General Fund. The bill deletes these provisions. On the bill's effective date, any money in the Historical Marker Fund will be transferred to the Operations Fund.

(The Operations Fund is created under the Michigan Historical Center Act, as described below in the summary of Senate Bill 564.)

The Historical Markers Act allows the DNR to accept gifts, grants, bequests, and appropriations for the purpose of administering the Michigan Historical Marker Program, including the manufacture and placement of markers, repair and maintenance of markers, program administration, application reviews, marker restoration, marker recovery, and enforcement of the Act. Senate Bill 562 includes in these purposes tourism and education programs.

The Act also permits the DNR to register as a trademark or service mark the logo, seal, and emblem associated with official historical markers, as well as license or sell rights to publish or otherwise use the logo, seal, or emblem.

Upon discovering that a marker has been marred, vandalized, or otherwise damaged, the DNR may bring an action to recover the actual replacement cost, plus taxable costs, reasonable attorney fees, and interest.

All of the money described above must be deposited in the Historical Marker Fund. The bill instead requires the money to be forwarded to the State Treasurer for deposit into the Operations Fund.

Prohibited Conduct; Fines

The Act prohibits a person or agency from exhibiting, displaying, or using an official Michigan historical marker's distinctive design, configuration, pattern, or color combination for any purpose without the DNR's written permission. A violation is a misdemeanor punishable by imprisonment for up to 90 days or a maximum fine of \$1,000, or both. The bill deletes these provisions.

The Act also makes it a misdemeanor for a person or agency to damage, destroy, remove, or possess an official historical marker without the Department's permission. In addition to a penalty of imprisonment and a fine, an offender is liable to the State in an amount double the cost of repair, replacement, and restoration of the site and the marker.

It also is a misdemeanor for a person, including a salvage company, commercial business, or collector, to knowingly accept in trade or possess an official historical marker. In addition to a penalty of imprisonment and a fine, an offender is liable to the State in an amount three times the cost of the repair, restoration, or replacement.

These amounts must be deposited in the Historical Marker Fund. The bill refers to the amounts as civil fines, and requires them to be forwarded to the State Treasurer for deposit into the Operations Fund.

Return of Marker without Penalty

Within one year after its effective date, the bill permits a person possessing an official historical marker to return it to the DNR or the sheriff of the person's county of residence without penalty

for larceny or violating the Act, unless the removal of a marker resulted in death or personal injury. In consultation with the Commission, the Department must determine the disposition of a returned marker.

Withdrawal of Marker

Currently, if the Center withdraws a marker designation, the person or agency in possession of the historic resource or site must immediately return the marker to the Center. The bill requires the person or agency to return the marker or dispose of it in a manner prescribed by the Center and documented in writing.

Senate Bill 564

The Michigan Historical Center Act creates the Michigan Historical Center Operations Fund in the State Treasury. The DNR may spend money in the Fund, upon appropriation, to do any of the following:

- Purchase artifacts for the collections of the Michigan Historical Center.
- Restore artifacts in the collections of the Center.
- Advertise and pay for educational programs, special exhibits, and special events presented at the Center or another museum or historical facility operated by the DNR.
- Provide free material to school groups.
- Purchase items offered for sale at the store operated by the Center.
- Pay for any other expense incurred by the Center.

The bill also allows money in the Fund to be spent to implement the Governor John B. Swainson Michigan Historical Markers Act.

(As noted above, the bill refers to the Michigan History Center, rather than the Michigan Historical Center.)

The bill requires the DNR annually to prepare a report containing an accounting of revenue and expenditures from the Fund for the previous fiscal year. The report must include information about the location of any markers erected during the previous year. The report must be given to the Senate and House of Representatives Appropriations Committees and the standing committees with jurisdiction over issues pertaining to natural resources and the environment.

Currently, money collected by the Center for historical markers, document reproduction and services, conferences, admissions, workshops, training classes, and the use of specialized equipment, facilities, exhibits, collections, and software must be used for expenses necessary to provide the required services. The bill instead requires the money to be forwarded to the State Treasurer for deposit into the Operations Fund.

The Act permits the Center, subject to the annual appropriations process, to charge reasonable fees for admissions and other services described above. The bill requires these fees to be forwarded to the State Treasurer for deposit into the Operations Fund.

Senate Bills 553 through 561

As noted above, the bills amends various acts to refer to the Michigan History Center Act, rather than Public Act 271 of 1913, in provisions concerning the retention or disposition of records.

Senate Bill 553 amends a provision in the General Property Tax Act that requires a local tax collecting unit to maintain a retention policy that complies with the 1913 statute.

Senate Bills 554 and 555 amend provisions in the Business Corporation Act and the Nonprofit Corporation Act, respectively, that allow a county clerk, in accordance with Public Act 271 of 1913,

to destroy or dispose of corporate documents that were forwarded to the clerk's office under a statute that governs certain corporations.

Senate Bill 556 amends a provision in the Revised Judicature Act that requires the State Court Administrative Office to develop and maintain a record retention and disposal schedule as prescribed in Public Act 271 of 1913.

Senate Bill 557 amends Public Act 105 of 1964, which provides for the reproduction of State, local unit of government, and municipal court records and the use of those reproductions as evidence, and allows the original records to be disposed of or destroyed pursuant to the Management and Budget Act, if applicable, and Public Act 271 of 1913.

Senate Bill 558 amends Public Act 29 of 1957, which allows a probate court, subject to Public Act 271 of 1913, to order the destruction of files and records related to proceedings for the hospitalization of a child or youth with special health care needs.

Senate Bill 559 amends a section of the Michigan Penal Code that provides that all official books, papers, or records created by or received in any office or agency of the State or its political subdivisions are public property and may be destroyed only as provided in Public Act 271 of 1913; and prescribes a misdemeanor penalty for unlawfully taking, mutilating, destroying, retaining, or refusing to deliver those books, papers, or records to the Michigan Historical Commission. In addition to referring to the Michigan History Center Act, instead of Public Act 271, the bill refers to the Michigan History Center, rather than the Historical Commission.

Senate Bills 560 amends a provision in the Legal Defense Fund Act, and Senate Bill 561 amends a provision in Michigan Campaign Finance Act, that permits statements and reports filed under the respective Act, or reproductions of them, to be disposed of as prescribed in the Management and Budget Act and Public Act 271 of 1913.

MCL 211.24 (S.B. 553)
450.1913 (S.B. 554)
450.2913 (S.B. 555)
600.1428 (S.B. 556)
691.1101 (S.B. 557)
720.551 (S.B. 558)
750.491 (S.B. 559)
15.531 (S.B. 560)
169.216 (S.B. 561)
399.151-399.160 (S.B. 562)
324.63502 (S.B. 563)
399.801 et al. (S.B. 564)
399.832 & 399.833 (S.B. 565)

BACKGROUND

After the Michigan Historical Commission was created by Public Act 271 of 1913, the Commission and the Mackinac Island State Park Commission formed a partnership that involved the erection of several historical markers recognizing the history of the island. In 1917, the Legislature authorized county boards of supervisors to appropriate money for the purpose of marking historical places and erecting monuments or other memorials to commemorate notable events. In 1941, the Legislature authorized the Commission to lead a historical marking program, but the effort was abandoned when the United States entered World War II.

In 1953, then-Governor G. Mennen Williams appointed a committee to study methods by which Michigan's historical resources could receive greater attention. Based on the committee's research, the Commission drafted legislation to provide authority to mark historical sites. This led to the enactment of Public Act 10 of 1955, which is now called the Michigan Historical Markers Act.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since the historical marker program was created in 1955, it has approved and placed more than 1,700 markers throughout Michigan, as well as in several other states and Europe at sites commemorating Michigan historical events or figures. Originally, markers were placed at highway rest areas, in State parks, and at locations where historical events occurred. Today, historical markers can be found virtually anywhere, including on the sides of buildings, in the yards of homes and businesses, and at schools. Recently, the DNR launched a website with an interactive map that shows marker sites across the State and enables users to search for markers.

Just as legislation enacted in 2016 updated the laws governing the Michigan Historical Commission and the Michigan History Center, Senate Bill 562 brings the Michigan Historical Markers Act into the 21st century. The bill codifies current practices, aligning the statute with the actual program, which will result in increased transparency. The bill also requires the person or agency in possession of a resource or site where a marker is displayed to maintain it according to prescribed standards. If a person fails to do so, the DNR may remove the marker. These provisions will help ensure that markers are not neglected.

Also, Senate Bills 562 and 564 make several statutory changes related to program revenue. Under Senate Bill 562, any money in the Historical Markers Fund will be transferred to the Operations Fund, which already is created under the Michigan History Center Act, and revenue from various sources will be directed to that Fund. Under Senate Bill 564, money collected by the History Center also must be forwarded to the Operations Fund, and money in the Fund may be spent to implement the Michigan Historical Markers Act. These provisions essentially consolidate the revenue into the Operations Fund. Senate Bill 564 also codifies a requirement that the DNR prepare an annual report accounting for the revenue and expenditures of the Fund, and providing information about the location of markers erected during the previous year.

In addition, the package of bills follows up on the legislation enacted in 2016 by replacing the term "historical" with "history" in references to the Michigan Historical Center Act, the Center, the Museum, and the Operations Fund; and by referring to the Michigan History Center Act rather than now-repealed Public Act 271 of 1913 in a number of other statutes.

Supporting Argument

Naming the Michigan Historical Markers Act after Governor John B. Swainson is a fitting tribute to the former Governor. After serving as a Michigan Senator and Lieutenant Governor, Swainson was elected Governor in November 1960 and served for three years. From 1971 to 1975, he served on the Michigan Supreme Court. In 1985, Governor Swainson was appointed president of the Michigan Historical Commission and held that post until his death in 1994. The Commission established the "Governor John B. Swainson Award" in 1996. The award is presented each year to a State, county, municipal, or township employee who has contributed to the preservation of Michigan history even though that activity is not part of his or her primary job responsibilities.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Overall, the bills will have no significant fiscal impact on the Department of Natural Resources or local units of government. While the bills make a number of changes to the Historical Marker Program administered by the Michigan History Center, the bills will not significantly change the scope, and hence the cost, of the program. Currently, as well as under the bills, those requesting historical markers pay the full cost of purchasing, installing, and maintaining the markers.

From an administrative standpoint, the bills will transfer the remaining balance and future revenue of the Historical Marker Fund to the Michigan History Center Operations Fund. The DNR has reported that the Historical Marker Fund has a balance of about \$56,000; under the bills, that balance will be combined with the balance of the Michigan History Center Operations Fund, which is estimated to be about \$500,000 currently. The Operations Fund is used by the Michigan History Center to fund the operations of the museum gift shop as well as to receive revenue from admissions, training programs, conferences, and other services. That revenue is used to offset some of the cost related to operation of the Michigan History Center. Under the bills, the scope of use for the Operations Fund will be expanded to include administration of the Historical Marker Program.

Finally, the bills remove the misdemeanor penalty for improperly using or displaying the design of a historical marker. It is unknown how many individuals have been prosecuted for that offense, but it is likely few; therefore, this amendment will have little fiscal impact on local courts or law enforcement.

Fiscal Analyst: Josh Sefton

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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.