

HISTORICAL MARKER PROGRAM

House Bill 5889 as introduced First Analysis (5-8-02)

Sponsor: Rep. Larry Julian
Committee: Commerce

THE APPARENT PROBLEM:

According to the Michigan Historic Preservation Office,

"Michigan's Historical Marker Program was established in 1955. The first official historical marker was dedicated on October 22, 1955 at Michigan State University in East Lansing. Since then, more than 2,500 sites have been placed in the state register and approximately 1,500 markers have been erected, making it one of the largest privately funded historical marker programs in the nation. Today, the Michigan Historical Marker Program is administered by the State Historic Preservation Office, and is a vital part of the Michigan Historical Center's effort to assist the citizens of Michigan in the identification, designation and protection of historic properties. The Michigan Historical Commission holds the authority for approving the placement and wording of historical markers.

Michigan Historical Markers benefit communities and the entire state by sparking further interest in local history. Dedication ceremonies, which celebrate the installation of the markers, call attention to historic preservation efforts. Markers are well-documented histories, easily accessible to the public, and they reflect the importance a community places on its heritage. While a marker does not offer protection, it may help to discourage some development projects by serving as an obvious reminder that a site is historically significant." (Information from the web site of the Michigan Historical Marker Program)

Although the historical marker program is in operation, there is no statute that specifically authorizes the current process of obtaining a marker or the other features of the program. There is no state law that spells out the nature of the ownership and control of the official markers or that delineates the acceptable use of the markers or that imposes penalties for illegitimate uses of the marker or for the use of fraudulent markers. These and other matters are addressed in legislation that would put the historical marker program into statute.

THE CONTENT OF THE BILL:

The bill would amend Public Act 10 of 1955, which deals with the registration of historic sites, to create the Michigan Historical Markers Act. The bill would put into statute a historical marker program to be administered by the Department of History, Arts, and Libraries. (Such a program exists currently, although not in detailed statutory form.) The program would have the following goals:

- To identify and locate historic sites and subjects having historical significance;
- To educate the public about significant people, places, and things in Michigan history and thereby develop the public's knowledge of the importance of Michigan history;
- To encourage the public to preserve historic resources indicative of Michigan history and to develop a sense of identity as Michiganians;
- To enhance cultural tourism in the state by encouraging residents and visitors to investigate Michigan history and the state's historic sites; and
- To unite people from various regions of the state through improved dissemination of information about historic resources and places.

The bill would allow the department to list a historic resource or site in the state register of historic sites and commemorate it with the placement of an official Michigan historical marker if the historic resource or site met written criteria adopted by the department upon recommendation of the Michigan Historical Commission. The bill would also create a Historical Marker Fund.

Marker Application Process. Applications for a historical marker would be submitted to the Michigan Historical Center (within DHAL) accompanied by a \$250 fee, which would be deposited in the marker fund. An application could be filed by 1) a person owning or in possession of a historic site or resource or a person having written consent from the owner or

person in possession; or 2) a department or agency of the state or of a political subdivision of the state owning, controlling, or in possession of a historic resource or site. (An agency would not have to pay the fee.) The application would have to be on a form prescribed by and obtained from the historical center. It would have to include all requested information and be accompanied by current images, as prescribed by the center; documentation from a recognized and authoritative source acceptable to the center, supporting the historic significance of the historic resource; and any additional documents requested by the center. The application and attachments would become the property of the state.

Applications Review. The historical center would have to review each application for completeness and accuracy, and the review could include verification of the accuracy of furnished information and the location of the historic resource or site. The center could require the applicant to furnish additional information and could visit the site if necessary. Submission of an application would not guarantee that a historic resource or site would receive an official state historical marker. If the center concluded an application met the criteria for a marker, it would endorse the application and prepare marker text for presentation to the state historical commission. If the center concluded the application failed to meet a criterion or another requirement, the center would have to notify the applicant of the decision in writing and specify the reason or reasons for the denial. (If an application is denied, the fee would be returned.)

Commission Review of Proposed Marker. Upon receiving an application and proposed marker text from the historical center, the state historical commission would review, modify if necessary, and approve the text, and review and approve the location for each requested marker. A marker could not include or mention the name of a living commissioner or any other living state official. It would have to include the words, "Michigan Historical Center, Department of History, Arts, and Libraries". The department could retrofit a marker that does not include these words. The marker would have to bear a logo or seal with a wolverine emblem in its upper area or crest and include the words, "Registered Michigan Historic Site". The department could enter into a written agreement with another state, local, or federal agency regarding the placement of a state historical marker on property under the agency's jurisdiction, and the agreement could address security, payment for the marker, and other appropriate matters.

Copyrights and Licensing. The department would be able to copyright the text on an official marker and register as a trademark or service mark the logo, seal, and emblem associated with historical markers. The department could license or sell rights to publish or otherwise use copyrighted marker text and to use the registered logo, seal, or emblem. Amounts received from sales and licensing would be deposited in the marker fund.

Control of the Markers. An official historical marker would be property of the state and would be subject to the exclusive control of the department, whether erected on public or private property. In addition to other text, each marker would have to include the conspicuous statement, "Property of the State of Michigan". The department would be prohibited from abandoning a marker. In all legal proceedings, there would be an irrebuttable presumption against abandonment of the state's ownership of an official marker. A person or agency in possession of a historical resource or site where a marker was displayed would be prohibited from attempting to convey, sell, or otherwise transfer the marker. Any such conveyance, sale, or transfer would be void unless made with written permission of the department. The department, with the advice and assistance of the attorney general, could commence an action to recover a marker that had been stolen or otherwise improperly or unlawfully removed. Further, if the department discovered that a historical marker had been marred, vandalized, or otherwise damaged, it could commence an action to recover the actual replacement cost of the marker (again with the advice and assistance of the attorney general), plus taxable costs, reasonable attorney fees, and interest calculated under the provisions of the Revised Judicature Act. Such revenue would go to the historical marker fund.

Marketing and other Marker Uses. The distinctive design, configuration, pattern, and color combination of an official historical marker could not be used for any purpose without written permission from the department (including a facsimile of a marker). A violation would be a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both. A person or agency could not use any portion of the seal, emblem, and logo appearing in the marker's crest for advertising, retail sales, or other commercial purposes without the department's permission. A violation would be a misdemeanor, punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000, or both.

It would also be a misdemeanor to exhibit, display, or use a marker's seal, emblem, or logo, or a marker's distinctive design, configuration, pattern, or color combination to represent his or her property as a registered Michigan historic site or use them in a manner that led others to believe that the person's property was an official historic site. This misdemeanor would carry a penalty of imprisonment for up to six months, or a fine of not less than \$2,000 or more than \$10,000, or both. Prosecution would be barred if a person ceased the violation within 60 days of the mailing of a written notice from the department notifying the person of the apparent violation.

Removal, Destruction of Markers, and Amnesty. The bill would make it a misdemeanor to damage, destroy, deface, remove, tamper with, alter, or possess an official historical marker without the department's permission. A violation would be punishable by imprisonment for not more than 93 days or a fine of not less than \$500 or more than \$5,000, or both. A person pleading guilty or nolo contendere, or who was determined guilty would be liable to the state in an amount double the cost of repair, replacement, and restoration of the site and marker. A person, including a salvage company, commercial business, or a collector, would be prohibited from knowingly accepting in trade or possessing an official marker. This would be a misdemeanor, punishable by imprisonment for not more than six months or a fine of not less than \$1,000 or more than 10,000, or both. A person pleading guilty or nolo contendere or found guilty would also be liable to the state in an amount equal to three times the cost of the repair, restoration, or replacement of the marker.

Within the first 90 days after the bill took effect, a person possessing a marker could return it to the department or to the appropriate county sheriff without penalty for larceny or for violating the new act. However, the immunity would not apply if the removal of the marker resulted in death or personal injury.

Moving, Withdrawing Markers. An official historical marker placed at a particular site could be moved to a nearby site with the written permission of the historical commission. When making alterations to the exterior of a historic resource commemorated by an official marker, the owner or other person in possession of the resource would have to follow U.S. Department of Interior standards for rehabilitation and guidelines for rehabilitating historic buildings. The owner could ask the historical center to review work plans prior to commencement of work.

The center could withdraw a marker designation and could request the return of the marker, or could repossess a marker, if the center determined that the historic resource or site had lost its historic significance or integrity. If the center withdrew a marker designation, the person or agency in possession of the resource or site would have to return the marker to the center.

Historical Marker Fund. The Department of History, Arts, and Libraries could accept gifts, grants, bequests, and appropriations for the purpose of administering the marker program, including the manufacture and placement of markers, the repair and maintenance of markers, program administration, application reviews, marker restoration, marker recovery, and enforcement of the act. Those amounts would be credited to a Historical Marker Fund (as would the various fines and penalties, and the application fees). The state treasurer would direct the investment of the fund and credit to the fund all interest and earnings. Money in the fund at the close of a fiscal year would not lapse to the general fund. However, notwithstanding any balance in the fund, the bill would specify that the department would not be obligated to pay for the maintenance, repair, or replacement of an official marker.

MCL 339.151 et al.

BACKGROUND INFORMATION:

According to the web site of the historical marker program, three different types of markers are available. Small informational markers, measuring 24 inches wide by 36 inches high, cost between \$1,515 and \$1,720. Large markers, measuring 42 inches wide by 54 inches high, cost between \$2,062 and \$2,985. Identification plaques, measuring 12 inches wide by 14 inches high, are \$370 (and are wall-mounted only). These costs include the \$250 application fee. The sponsors of the site are responsible for paying for the markers.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or on local units of government. The current operation of the historical marker program would not be substantively affected. (HFA committee analysis dated 5-6-02)

ARGUMENTS:**For:**

The bill would provide detailed statutory authority for the state's historical marker program, which has been in operation for nearly 50 years, and is now under the control of the newly created Department of History, Arts, and Libraries. Besides the value of putting the current historical marker process into statute (including the \$250 fee for successful applicants that is now found in budget boilerplate), the bill would also make clear in law that the markers belong to the state and are subject to the exclusive control of the state, that the state can pursue those who make off with or misuse the markers, and that there are penalties for stealing, selling, vandalizing, and imitating official state historical markers. According to testimony before the House Committee on Commerce, the state has difficulty now in pursuing these cases. One case was cited in which a historical marker (commemorating Stroh's Brewery) was for sale on E-Bay. Reportedly over 50 markers are currently missing (that is, are not where they belong). The markers are aluminum and are said to have value as scrap. Moreover, the bill would provide a 90-day amnesty so that people in possession of official historical markers (either as souvenirs or otherwise) could return them without penalty. The bill would also authorize the department to copyright and license the text of official markers (and requires departmental approval for others to use the markers in advertising or marketing).

Response:

While no one has expressed opposition to putting the marker program on sounder statutory footing, some concerns have been expressed about particular provisions. There are questions about the provision requiring that exterior alterations at a site with a marker follow federal historic building rehabilitation guidelines. This raises the question of whether if a marker is removed, the rehabilitation requirement is also removed. Further, putting the new department's name on the actual marker is seen as problematic, given that state government could once again be reorganized, requiring the statute and the markers to be redesigned. It should be noted that bill restricts the use of markers by the owners of historic sites and resources, even though those owners had to bear the original cost of the marker.

POSITIONS:

The Department of History, Arts, and Libraries supports the bill. (5-7-02)

Analyst: C. Couch

■ 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.