

Legislative Analysis



PROHIBITED ACTS AT MACKINAC ISLAND STATE PARK

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House Bill 5681 as enrolled
Public Act 176 of 2004
Sponsor: Rep. Scott Shackleton

House Committee: Conservation and Outdoor Recreation
Senate Committee: Natural Resources and Environmental Affairs
Second Analysis (7-27-04)

BRIEF SUMMARY: The bill provides criminal penalties for the unauthorized use of a motor vehicle on the Mackinac Island State Park and provides for civil penalties for the destruction of trees in the park.

FISCAL IMPACT: There would be an indeterminate fiscal impact on local governmental units. Fine revenue would be provided to public libraries, pursuant to the State Constitution (Section 9 of Article VIII) and the Revised Judicature Act of 1961. Actual revenue collected by local governments would depend on the number of violations and the severity of each infraction.

THE APPARENT PROBLEM:

The use of motor vehicles has been prohibited on Mackinac Island since the enactment of a local ordinance in 1898. In 1901, the Mackinac Island State Park Commission promulgated a rule prohibiting the use of motor vehicles on lands of the state park. The prohibition was upheld by a 1906 attorney general's opinion stating "[T]he exclusive control and management of the said park being vested in the Mackinac Island State Park Commission, I am of the opinion that it has the right to make and enforce an order forbidding the running of automobiles on the roads and driveways of said park." The prohibition on the use motor vehicle on the lands of the state park was placed in statute with the enactment of Public Act 109 of 1960. That act added a provision to Public Act 355 of 1927 stating, "[t]he commission shall make no rule permitting the use of motor vehicles except motor vehicles owned by the state or any political subdivision or by a public utility and used in the exercise of its franchise but the commission is authorized to provide by rule for the issuance of temporary permits for the operation of motor vehicles over any roads situated on state park lands." [See now MCL 324.76504(4)]

While commission rules (R. 318.122) generally prohibit the use of motor vehicles in the state park, the commission does allow for the limited use of motor vehicles pursuant to a temporary permit, such as the temporary use of construction vehicles. Also, the commission and the City of Mackinac Island are under increased pressure to allow for the use of "e-bicycles" - electric powered bicycles. Upon review of state statutes and regulations related to the state park, it has been found that there is no substantial penalty for the unauthorized use of a motor vehicle. There is a city ordinance, but that only covers the use of a vehicle within the boundaries of the city. Commission rule 27 (R.

318.127) provides that any person who violates any rule may have his or her licensed revoked and the right to drive any vehicle may be suspended. This penalty provision seems more appropriate for violations of the commission's rules related to the regulation of taxicabs and carriages. Legislation has been introduced to place in statute a penalty for the unauthorized use of a motor vehicle within the boundaries of the state park. It would, at the same time, delete duplicative and outdated language regarding littering and the destruction of trees.

THE CONTENT OF THE BILL:

The bill would amend Part 765 (Mackinac Island State Park) of the Natural Resources and Environmental Protection Act to specify that a person who operates a motor vehicle on land within the Mackinac Island State Park without a permit, with certain exceptions, would be guilty of a misdemeanor punishable by imprisonment not exceeding 93 days and/or a fine not exceeding \$500, plus any prosecution costs.

Part 765 provides that any person who willfully cuts, peels, or otherwise injures or destroys any tree in the park or carries, draws, leaves, or deposits garbage anywhere within the park is guilty of a misdemeanor punishable by imprisonment between 10 and 60 days and/or a fine between \$10 and \$50. House Bill 5681 would state, instead, that a person who cuts, peels, damages, destroys, or removes a tree or other vegetation, or state property located in any park or other property controlled by the Mackinac Island State Park Commission, without written permission from the director of the commission, would be civilly liable to the commission for a sum three times the amount of damage, destruction, or the value of the property. The bill would delete the other penalties. Penalties already in the Penal Code address the destruction of trees (MCL 750.382) and littering (MCL 750.552a).

MCL 324.76505 and 324.76507

BACKGROUND INFORMATION:

Mackinac Island was first established as a national park in 1875 after an act of Congress. In 1895, Congress transferred the island to the state with the requirement that it be established as a state park. The state established the state park and the commission with the enactment of Public Act 222 of 1895. That act was later replaced by Public Act 355 of 1927. That act was incorporated into the Natural Resources and Environmental Protection Act with the enactment of Public Act 58 of 1995.

Rule 318.122 of the Mackinac Island State Park Commission provides the following:

- A person shall not operate a motor vehicle within the Mackinac Island state park without a temporary permit. The commission, or its duly authorized agent, shall issue a temporary permit for the operation of motor vehicles for such emergency or public and private work as the commission shall prescribe and approve. An application for a temporary permit shall be submitted in writing to the commission or its duly

authorized agent and shall set forth fully the reasons for the request and the period of the permit. The commission has authority to require property damage and public liability insurance of any applicant in an amount sufficient, in its judgment, for adequate protection of persons and property. The director shall keep a written record of all permits issued, and the commission reserves the right to revoke any permit so issued at any time, giving notice in writing to the permit holder and setting forth the reasons for the revocation.

- The state of Michigan or any political subdivision thereof may be permitted to operate its emergency and utility vehicles over the Mackinac Island state park roads in the normal performance of its governmental functions.

Mackinac Island Code Sec. 66-33 states, “[i]t shall be unlawful for any person to possess, use, store, maintain, operate or to knowingly allow the possession, use, storage, maintenance or operation of a motor vehicle, whether that vehicle is in operation, engine running or not, within the city, unless specifically allowed and permitted as provided for within this article.” The penalty for the unauthorized use of a motor vehicle within the city is \$100 for the first violation, \$150 for a second violation contemporaneous with or within five days of the first violation, and \$200 for a third violation contemporaneous with or within 10 days of the first and second violations. Again, this provision only covers the city, not the state park.

ARGUMENTS:

For:

Apparently, there is no clear statutory penalty for the unauthorized use of a motor vehicle in the Mackinac Island State Park. The penalty provision in the commission rules only allows for the revocation and suspension of a license issued by the commission to operate taxicabs and carriages. Clearly this is not adequate to protect the natural and historical significance and unique character of the state park. While Part 741 (State Park System) of the Natural Resources and Environmental Protection Act prohibits the operation of a motor vehicle in a state park except in designated areas and provides that a violation of such is a misdemeanor, that part does not cover the Mackinac Island State Park. In this regard, the penalty added by this bill is consistent with similar violations in other state parks.

For:

The bill deletes duplicative and outdated language regarding the destruction of trees and littering on the state park. Part 765 provides that a person who litters or destroys trees in the Mackinac Island State Park is guilty of a misdemeanor punishable by imprisonment between 10 and 60 days and/or a fine between \$10 and \$50. These penalties have not changed since 1927. Clearly they must be updated. Currently there are provisions in the Penal Code related to the destruction of trees (MCL 750.382) and littering (MCL 750.552a). These existing provisions would cover littering and the destruction of trees in the state park. The Penal Code provides a variable sentence regarding the destruction of trees, depending on the amount of destruction, ranging from imprisonment for not more than 93 days and/or a fine equal to the greater of \$500 or three times the amount

destroyed, if the amount destroyed is less than \$200, to imprisonment for not more than 10 years and/or a fine equal to the greater of \$15,000 or three times the amount destroyed, if the amount destroyed is at least \$20,000 or the individual has at least two prior convictions. The Penal Code also specifies that any person who dumps, deposits or places any filth, garbage or refuse on the grounds or premises of another, without the specific permission of the owner, is guilty of a misdemeanor punishable by imprisonment of not more than 90 days and/or a fine not exceeding \$500.

In addition, the civil penalty of three times the amount of damage is consistent with Section 74122 of the Natural Resources and Environmental Protection Act, which provides that a person convicted of vandalism in a state park shall reimburse the Department of Natural Resources up to three times the amount of the damage, as determined by a court.

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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.