

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

MICHIGAN STATE LAW LIBRARY

Senate Bill 380 (as enrolled)

Senate Bill 381 (as enrolled)

Sponsor: Senator Vern Ehlers

Senate Committee: Local Government and Veterans

House Committee: State Affairs

PUBLIC ACT 345 of 1990PUBLIC ACT 346 of 1990

Date Completed: 12-18-90

**RATIONALE**

According to the Michigan Society of Registered Land Surveyors, when the United States government needed a logical and systematic plan to sell and develop the land west of the 13 colonies to pay off the war debt, Thomas Jefferson, Benjamin Franklin, and several military engineers developed the rectangular survey system that is used today. The Society reports that the public land survey system in this State was passed on from the Federal government to the State when Michigan achieved statehood. As counties were chartered, they became responsible for overseeing and maintaining the public land survey system. The survey of Michigan, conducted between 1815 and 1857, established 1,231 townships that were subdivided into 26-mile square sections. These areas were defined by approximately 165,200 section and quarter section "corners" set at half-mile intervals across the State.

Once the corners were originally determined, they commonly were marked, or "monumented", by four-foot pine or cedar posts, which have rotted away in the past 140 years. Surveyors that followed used numerous assorted items--ranging from shotgun barrels and railroad spikes to ceramic pieces--to mark a corner. Many corners that surveyors now search for have not had any work since the original surveys, while others have been covered up by the paving and repaving of roads. Yet other markers have been carelessly moved during construction or wantonly destroyed. Some corners even bear more than one marker in different locations.

Corners serve as the basis for all public and private property locations, including practically all privately owned parcels, farms, and homes,

plus thousands of miles of publicly owned roads, highways, utility lines, railroads, and other public works. Because of the disappearance, deterioration, or misplacement of section markers, however, property surveys have become more difficult, disputes more common, and surveys more expensive. According to the Society of Registered Land Surveyors, \$500 per corner is the average cost if a marker is missing and must be replaced, or if a marker that has not been used in years must be found and dug up. This cost is borne by the governmental agency or the individual requesting a survey.

In order to rectify this situation, it has been suggested that all counties engage in a remonumentation program to locate and replace section markers. Such an effort was begun in 1980 by Kent County and is almost finished; as a result, surveys in Kent County reportedly are less expensive than those in surrounding counties and can be relied upon as accurate.

**CONTENT**

Senate Bill 380 would create the "State Survey and Remonumentation Act" to do the following:

- Establish the State Survey and Remonumentation Commission in the Department of Commerce.
- Prescribe the Commission's duties, which would include creating a model county plan, and establishing and administering a grant program to assist counties in implementing the proposed Act.
- Require each county to establish a

plan for the monumentation or remonumentation of the entire county within 20 years.

- Create the State Survey and Remonumentation Fund to be used for grants to counties, the implementation of county plans by the Commission, and the payment of contracts.
- Require grants to be at least 20% of the additional and new recording fees collected under Senate Bill 381.

Senate Bill 381 would amend the Revised Judicature Act to impose an additional \$2 fee for recording an instrument with a register of deeds; and to establish a separate \$2 recording fee that would have to be deposited in the proposed Survey and Remonumentation Fund, although a county could retain up to 1.5% of each new \$2 fee to cover administrative costs.

The bills are tie-barred to each other and would take effect January 1, 1991. A more detailed description of the bills follows.

### Senate Bill 380

#### Commission Membership

The five members of the Commission would have to be appointed by the Governor with the advice and consent of the Senate, for staggered four-year terms. One member would have to represent the general public. The remaining four members would have to be licensed land surveyors, including one who was also serving as a county surveyor. One of the surveyors would have to be a resident of the Upper Peninsula, one a resident of northern Michigan in the Lower Peninsula, and one a resident of southern Michigan (according to a specified survey township line that divides the State along the county line north of Mt. Pleasant). The fourth surveyor would be a member at large residing in any area of the State.

The Commission would be required to meet at least four times each year. At its first meeting, one member would have to be selected to be chairperson by a majority of the members. Members would serve without compensation, but would be reimbursed for actual and necessary per diem expenses. The Commission would be

subject to the Open Meetings Act and the Freedom of Information Act.

#### Commission Responsibilities

The Commission would be required to coordinate the restoration, maintenance, and preservation of the land survey records of vertical and horizontal monuments, the public land survey system, and the property controlling corners established by the United States public land survey and by the national geodetic survey within this State, including all pertinent field notes, plats, and documents. The Commission also would have to coordinate the restoration, establishment, maintenance, and preservation of other boundary records otherwise established by law, or considered important by the Commission.

In addition, the Commission would be required to do the following:

- Establish, maintain, and provide safe storage facilities for a comprehensive system of recordation and dissemination of land information records.
- Coordinate the extension, densification, and maintenance of the horizontal and vertical control networks initiated by the Federal government through the national geodetic survey and the United States geological survey. The Commission would have to enter into a contract with a geodetic advisor qualified to perform this function.
- Coordinate the collection and preservation of information obtained from surveys made by persons or organizations authorized to establish monuments or land boundaries, and assist in proper recording of monuments or land boundaries by county surveyors or registers of deeds.
- Foster, encourage, and promote the establishment of remonumentation programs in every county in the State.
- Establish and maintain a data base of information on approved monumented horizontal and vertical control in the State.

Not later than one year after the bill's effective date, the Commission would be required to create and distribute a model county plan.

By October 1, 1993, and every two years thereafter, the Commission would have to report to the Legislature. A copy of the initial report also would have to be submitted by that date to each county board of commissioners. The report would have to contain at least all of the following:

- A summary of the Commission's activities regarding administration of the proposed Act.
- An assessment of the progress of the implementation of county monumentation and remonumentation plans throughout the State.
- A statement regarding the amount of money that was received by and disbursed from the proposed Fund.
- An assessment of how much money was necessary to carry out monumentation or remonumentation of the entire State.
- An assessment of whether the money in the Fund was adequate to implement the Act.
- Recommendations, including the level of funding necessary to implement the Act.

The Commission would have to appoint an executive director who, under the Commission's direction, would be required to carry out the routine duties of the Commission that it delegated to the director. The director would have to retain employees, including at least one licensed surveyor and adequate secretarial staff, as he or she considered necessary. The employees would be classified civil servants.

#### County Plan

Each county would be required to establish a county monumentation and remonumentation plan. A county could adopt the model plan created by the Commission, with any changes appropriate for the county. Within three years of the bill's effective date, each county would have to have submitted a county plan that was approved by the Commission.

A county plan would have to provide for all of the following:

- The monumentation or remonumentation of the entire county, within 20 years, under the guidelines of the manual of instructions for the survey of public lands

of the United States, 1973, prepared by the Bureau of Land Management of the Department of Interior.

- A perpetual monument maintenance plan that provided for all corners to be checked, and remonumented if necessary, at least every 20 years.
- The provision of copies of all survey monumentation information produced by the county plan to the county surveyor and the Commission.
- The filing with the county surveyor and the Commission of copies of all monumentation or remonumentation documents required to be recorded with the register of deeds pursuant to the Corner Recordation Act or Public Act 132 of 1970, which provides for filing surveys relative to land divisions.
- Any other provisions reasonably required by the Commission for purposes of the proposed Act.

Two or more contiguous counties could submit a multicounty plan, which would have to meet within each county the same requirements established by the Act for a county plan.

If a county failed to establish and submit an approved plan within three years of the Act's effective date, the Commission would have to initiate and contract for the implementation of a county plan.

The county surveyor in each county would have to be the county representative for all surveying projects approved by or initiated through the Commission. In a county that did not have a county surveyor, a licensed surveyor would have to be appointed to perform this duty.

#### Fund

The State Survey and Remonumentation Fund would be created in the State Treasury as a separate fund, and would be administered by the Commission. The Commission could direct the Department of Treasury to establish restricted subaccounts within the Fund as necessary to administer it. Money deposited in the Fund, and all interest and earnings generated by it, would remain in the Fund at the end of a fiscal year. The Fund could accept money received as gifts and donations, or funds received from individuals or corporations to be used for

purposes of the Act.

The Commission would have to use money in the Fund for the following purposes:

- Annual grants to various counties to implement their county plans, and to two or more counties to implement their multicounty plan, excluding the perpetual monument maintenance plan.
- The implementation of county plans initiated and contracted for by the Commission in counties that failed to establish and submit a plan within the time required.
- An annual grant to each county with a county plan or to two or more counties with a multicounty plan to implement the perpetual monument maintenance plan. The Commission would have to make at least 5% of the total amount of the Fund available for such grants.
- The payment of contracts entered into by the Commission for monumentation or remonumentation.
- Other activities necessary, incidental, or appropriate to implement the Act.

Of the money deposited into the Fund pursuant to Senate Bill 381 (from a new \$2 recording fee), the following would apply:

- An annual grant to a county to implement its plan, or to two or more counties to implement their multicounty plan, would have to be at least 20% of the aggregate amount of money collected in that county or those counties pursuant to Senate Bill 381 (from an additional \$2 recording fee as well as the new \$2 recording fee) during the calendar year immediately preceding the year in which the grant was made.
- If the Commission initiated and contracted for the implementation of a county plan for a county that failed to establish and submit its own plan, the Commission would have to spend annually at least 20% of the aggregate amount of money collected in that county under Senate Bill 381 (from the additional and new \$2 recording fees) during the previous year, to implement that county plan.

## Grants

The Commission could not make a grant to a county to implement its plan unless all of the following conditions were met:

- The applicant had applied for the grant by December 31 of the calendar year immediately preceding the year in which the grant would be made.
- The applicant had established a county plan or a multicounty plan that had been approved by the Commission by the preceding December 31.
- The applicant demonstrated to the Commission the capability to carry out the county or multicounty plan.
- The applicant demonstrated that it had not completed the monumentation or remonumentation of the county, or of the various counties in a multicounty plan.

The Commission could not make a grant to a county with a county plan or to two or more counties with a multicounty plan to implement the perpetual monument maintenance plan unless the applicant demonstrated that it had completed the monumentation or remonumentation of the county or counties.

A grant recipient would have to obtain authorization from the Commission before implementing a change that significantly altered the approved county or multicounty plan.

The Commission could revoke a grant or withhold payment if the recipient failed to comply with the conditions of the grant, or with requirements of the proposed Act or rules promulgated under it. The Commission also could withhold a grant until it determined that the recipient was able to proceed with the implementation of the county or multicounty plan.

## Monumentation Contracts

Any monumentation or remonumentation conducted by the Commission would have to be pursuant to negotiated contracts. The Commission would have to prepare specifications for each contract and monitor the field work and notes of all work done under each contract to ensure compliance. The Commission would have to pay the cost of any contracts from the Survey

and Remonumentation Fund.

### Commission Records

Upon request, the Commission would be required to provide copies or certified copies of records in its possession to the public, other State agencies or officers, or local governmental agencies. The Commission could charge a reasonable fee for providing the records.

The bill specifies that a certified copy of a record provided by the Commission would be admissible in a court as evidence, without further identification, if the substance of the record were properly admissible in the proceeding.

### Department of Commerce

The Department would be required to promulgate rules to implement the proposed Act. In doing so, the Department would have to consider recommendations of the Commission.

### Senate Bill 381

Under the bill, at the time a person recorded any instrument with a county register of deeds, he or she would have to pay the register a fee of \$2 in addition to any other fees prescribed in the Revised Judicature Act for recording instruments.

Also, the county register of deeds would have to collect a separate fee of \$2 for recording any instrument, in addition to any other fees required in the Act or fees or charges otherwise required by law for the recording of instruments. The fees collected would have to be remitted to the State Treasurer quarterly, and deposited in the proposed Survey and Remonumentation Fund, although a county could keep up to 1.5% of each \$2 fee to cover the costs of administering these provisions. The new \$2 fee would not apply to the following:

- An agency of the State when filing or recording any instrument with a county register of deeds under the State Tax Lien Registration Act (which provides for liens upon personal or real property for taxes payable to the State), or under Section 67a of the General Property Tax Act (which pertains to the conveyance of land to the State for unpaid property

taxes).

- An individual or any public or private legal entity when recording a lien or the discharge of a lien pursuant to Section 15 of the Michigan Employment Security Act (which provides for liens upon employers' property for unpaid contributions under the Act).
- An agency of the Federal government when filing or recording an instrument under the Uniform Federal Lien Registration Act.
- An individual or any public or private legal entity when recording any instrument pursuant to the Uniform Commercial Code.

MCL 600.2567 et al.

### FISCAL IMPACT

#### Senate Bill 380

Senate Bill 380 would mandate new State expenditures that would be financed through increased and new fees on recording instruments at county register of deeds offices. The fees in Senate Bill 381 are expected to generate \$6.2 million annually, approximately half of which would be used to fund the provisions of Senate Bill 380.

The administrative expenses of Senate Bill 380, including expenses of the Commission, staff, and consultants, should be approximately \$300,000 annually. The cost of the individual surveying work done in each county pursuant to Section 10 of the bill is indeterminate and would be in addition to the administrative expenses.

#### Senate Bill 381

Senate Bill 381 would generate approximately \$6.2 million annually through the imposition of an increased recording fee and a separate State-assessed recording fee on instruments recorded by the county register of deeds. Currently, the recording fee charged by the register of deeds is \$5 for the first page of the document recorded and \$2 for each additional page recorded, plus \$1 per page for a document assigning or discharging more than one instrument. Senate Bill 381 would increase the recording fee by \$4 per recording made. The county would retain the revenue collected from the additional \$2 fee

(\$3.1 million); the State would receive the revenue from the new \$2 fee (\$3.1 million). The county register of deeds would be allowed to reduce the amount sent to the State by 1.5% (\$46,500) to cover the costs of administration.

## **ARGUMENTS**

### **Supporting Argument**

Implementing the county monumentation program would mark the first time in 175 years that a concerted effort was made to do this critically needed job. Since the 1850s, there has been no statewide effort to validate corners, even though surveyors' tools have advanced from a 33-foot chain and a compass to a technological arsenal that includes a device that gives automatic measurements of angles between corners, and instruments that bounce a signal off a satellite to determine the exact longitude and latitude of a given point. Orderly, consistent remonumentation with standardized markers would assist in the documentation and planning of roads and utilities, the use of public and private property, the settlement of ownership claims and disputes, and the provision of a central data base containing information on counties and townships throughout the State. Completion of the remonumentation system in a county would enable the county to implement a computerized mapping system that would include the precise location of roads, utilities, and property lines; the corners would serve as the foundation for such a map. Further, remonumenting on a countywide basis would be more economical than contracting out a few corners at a time, and individual surveys would be less expensive if surveyors could rely on monumented corners.

### **Supporting Argument**

The U.S. Bureau of Land Management supports and encourages activities that will lead to a quality land information system (LIS) for the State. The Bureau is developing its own LIS, which will have three major components: 1) spatial information from the public land survey system (PLSS), 2) land conveyancing and tenure information, and 3) cultural and natural resource information. The data contained in the Bureau's LIS will provide the basic foundation for states, counties, and other local governments to develop their own LIS. The Bureau plans to work with certain counties throughout the country to identify their LIS data needs, which

will enhance the Bureau's ability to design such data bases as its Cadastral Survey Data Base, which will contain coordinates and other technical and historic information from the PLSS. The PLSS has been in existence for over 200 years and has provided the basis for the development of manual LISs over many years, and now will provide the foundation for the automation of LISs throughout the country.

### **Supporting Argument**

In addition to raising revenue to implement the county remonumentation program, Senate Bill 381 would increase county revenue from fees paid for recording instruments. Many fees paid to county registers of deeds have not been increased since 1963, and additional revenue is needed.

**Response:** Although other fees paid to registers of deeds have not been raised since 1963, fees paid for recording deeds, mortgages, and other instruments were last raised in 1984, when the \$5 fee for a first page was increased from \$3 and the \$1 per-page fee for a document assigning or discharging more than one instrument was raised from 50 cents.

### **Opposing Argument**

Property line disputes could result from changes in the location of monuments.

Legislative Analyst: S. Margules

Fiscal Analyst: G. Olson

**A8990S380EA**

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.