



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5394 (Substitute H-2 as reported with amendments)
 Sponsor: Representative Curtis Hertel
 House Committee: Tax Policy
 Senate Committee: Financial Services

Date Completed: 1-18-96

RATIONALE

Cultural institutions help to define a region's history, values, and quality of life and can serve as points of pride to the community. Many consider adequate funding of these institutions to be vital to an area's civic infrastructure. Over the last several years, however, as other services have assumed greater priority, there has been a significant reduction in the amount of State and local funding for some cultural organizations, particularly in southeastern Michigan. Some people believe that, in order to ensure the vitality of Michigan's cultural organizations, new funding options should be explored. They advocate allowing counties or groups of counties to establish cultural districts that, with voter approval, could levy a small property tax to dedicate revenue to the region's cultural institutions.

CONTENT

The bill would create the "Marshall Fredericks Cultural District Establishment Act" to do all of the following:

- Authorize a single county or a combination of counties to establish a cultural district as a taxing authority for the funding of "cultural organizations" within the district. ("Cultural organization" would mean a public or private nonprofit entity that had been in operation for at least 18 consecutive months, whose purpose was the production, presentation, education, exhibition, advancement, endowment, or preservation of art, science, or cultural history, including but not limited to a zoo, public library, special program of art, culture, or science developed**

especially for a school district, and a public broadcast station.)

- Specify requirements for a cultural district's articles of incorporation.**
- Provide for a cultural district's board of directors.**
- Specify the powers and duties of a cultural district's board of directors.**
- Allow a cultural district to submit to the voters a proposal for imposition of a tax of up to 1.5 mills for up to 10 years on real and tangible personal property.**

Establishment of Cultural District

A single county or a combination of counties could establish a cultural district by adopting articles of incorporation. A district would be a body corporate with power to sue and be sued in its own name. A district established under the bill could constitute an authority subject to the tax limitations of Article 9, Section 6 of the State Constitution. A cultural district's board of directors would have to comply with the Open Meetings Act, and a district would be subject to the Freedom of Information Act.

Articles of incorporation would have to be adopted by a majority vote of the board of county commissioners of each county joining in the establishment of the district and by a majority vote of the legislative body of each city with a population of 500,000 or more located within one of those counties. The proposed articles would have to be published once by the county clerk of each county joining in the district in a newspaper of general circulation within the county. The articles would have to be adopted by the county or the city's legislative body within 10 days after publication. The published notice would have to

state specifically that the county or city could adopt the proposed articles within that time period.

Within 30 days after articles of incorporation were adopted, the adoption would have to be endorsed by the county clerk, if the district were established by a single county, or by the county clerk of each county, if the district were established by a combination of counties. Within 45 days after the adoption, a printed copy of the articles would have to be filed with the Secretary of State by the county clerk of the most populous county in the district.

A county could be added to an existing district upon satisfaction of all of the following:

- The board of county commissioners and the legislative body of each city within the county that had a population of 500,000 or more each adopted by majority vote a resolution stating its desire to be added to the district.
- The district amended its articles to reflect the addition of the county.
- The board of county commissioners and the legislative body of each city within the county that had a population of 500,000 or more each adopted a second resolution stating that it accepted the requirements of the articles of incorporation, as amended to reflect the addition of the county.
- If the district had approved a tax pursuant to the bill, a majority of the qualified and registered electors of the county voting on the issue of the tax authorized the tax to be imposed by the district in the county at the same rate and with the same date of expiration as that authorized in the district.

Upon the addition of a county to a district, a printed copy of the amended articles would have to be filed with the Secretary of State.

Articles of Incorporation

A cultural district's articles of incorporation would have to include all of the following:

- The district's name.
- The name of each county in a district and of any city within a participating county with a population of 500,000 or more according to the most recent decennial census.
- The purposes for which the district was formed.
- The general method of amending the articles.

- The method of amending the articles to reflect the subsequent addition to the district of a county or the subsequent termination of participation in the district by a county.
- A requirement that the district employ annually an independent certified public accountant for the purpose of conducting an annual certified audit of the district within 90 days of the completion of the fiscal year.
- A requirement that each audit report be mailed promptly to all recipients of district funds and the chief executive officer of each of the participating counties and of the most populous city of the district.
- If required, a statement specifying the number of members of the board and the manner in which they were appointed.
- A requirement that a cultural organization receiving funding from the district submit a financial audit conducted by an independent certified public accountant within the 12-month period immediately preceding the date of submission.

Board of Directors

A district would have to be governed by a board of directors consisting of up to 12 members. Approximately one-fourth of the initial members would have to be appointed to a one-year term; one-fourth to a two-year term; one-fourth to a three-year term; and one-fourth to a four-year term. Upon the expiration of the initial terms, directors would have to be appointed annually to four-year terms. A director would hold office until his or her successor was appointed.

The number of members of a cultural district's board of directors would have to be specified in its articles of incorporation. If a cultural district included a city with a population of 500,000 or more, and not more than three counties, its board of directors would have to consist of 12 members, and the city would have to have the same number of board members as the county with the most board members. In other districts, the articles would have to specify the number of members of the board, that no members could reside in the same county commissioner district at the time of appointment, and the manner in which those members were appointed.

A person would not be eligible for appointment as a board member unless he or she were a qualified and registered elector of the county or municipality from which he or she was appointed. Directors would serve without compensation, but could be

reimbursed for actual and necessary expenses. A person employed by a cultural organization that received funds under the bill would not be eligible to serve as a member of the board of directors. A director could be removed with or without cause and with or without notice by the chief executive officer of the unit of government that appointed him or her.

Powers and Duties

If authorized by a cultural district's articles of incorporation, the board of directors could do any of the following: allocate district funds collected under the bill to cultural organizations located within the district; appoint and remove officers from among its members; hire employees, consultants, attorneys, and other professionals; enter into contracts on behalf of the district; reimburse a director for actual and necessary expenses incurred in the performance of official duties in accordance with and at a rate that did not exceed standard travel and expense allowances authorized by the Department of Management and Budget; and adopt bylaws and procedures, not inconsistent with the bill or the district's articles of incorporation, governing the board and the district.

Also, if authorized by the articles, the board could establish conditions for funding a cultural organization. (The bill specifies that "The legislature prefers that a condition include the organization's submission to the district of a written agreement that the organization will provide some free or discounted services and/or programs such as free or discounted admission days, exhibitions, performances, or other events to the residents of the taxing district or the organization's submission of a written agreement that it will not condition employment by the organization based on the residence of the applicant or employee.")

In addition, if authorized by the articles, a board could impose taxes pursuant to the bill; amend the district's articles of incorporation; and perform any other act necessary and proper to implement the purposes of the cultural district, if that act were not inconsistent with the bill or the district's articles of incorporation.

A cultural district board could not accept a grant or funding appropriated by the Legislature. This provision, however, would not prohibit direct funding of a cultural organization by the Legislature.

A cultural district board could not allocate funds to finance the construction of a professional sports arena or stadium, or to finance the infrastructure leading to or servicing a professional sports arena or stadium.

Taxation

A cultural district could submit to the voters of the district a proposal for imposition of a tax of up to 1.5 mills for up to 10 years upon all real and tangible personal property within the district except property that was exempt by law from ad valorem taxation or utility property that was subject to taxation under Public Act 282 of 1905. If a district included more than one county, the district could not impose a tax unless the tax were approved by the electors of each participating county. Subject to the bill's taxing limitations, the rate of a tax could be increased, and authorization to levy the tax could be renewed or extended.

A proposal for imposition of a tax under the bill could be submitted to voters only at a regularly scheduled election, other than a presidential primary election. A district could not submit a proposal for voter approval more than twice in one calendar year. Unless the electors of each participating county approved the levy of a tax pursuant to the bill within two years after the district was established, the district would be dissolved. A tax imposed under the bill would have to be collected and distributed by each local tax collecting unit within the district, at the same time and in the same manner as county taxes imposed under the General Property Tax Act, and would be in addition to any other taxes, charges, or fees authorized by law.

SENATE COMMITTEE ACTION

The Senate Committee on Financial Services adopted amendments to the House-passed version of the bill that would do all of the following:

- Express the Legislature's preference that a cultural district's funding conditions include a cultural organization's written agreement to provide free or discounted services and/or programs to residents of the taxing district or a written agreement that the organization would not condition employment by the organization based on the residence of an applicant or employee. (The House-passed version simply included these as allowable conditions.)

- Prohibit a cultural district board from using its funds to finance the construction of or infrastructure servicing a professional sports stadium or arena.
- Provide that a tax proposal under the bill could not be submitted to voters at a presidential primary election.
- Name the proposed act for Marshall Fredericks (sculptor of the "Spirit of Detroit" statue in downtown Detroit).

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

By allowing the creation of special cultural districts that, upon approval of the electorate, could levy up to 1.5 mills of property tax, the bill would provide an innovative option for regional funding of cultural organizations. This could provide supplemental funding for museums, science centers, zoos, and other cultural organizations at a time when traditional government support is declining. The State, and particularly its central cities, needs a strong, vibrant cultural infrastructure that contributes to its quality of life and enhances the education of its young people. The regional approach embodied by the bill recognizes that often the key cultural institutions are in central cities, such as Detroit, while many of the supporters and users of those institutions are in the suburbs. Improving the capacity of citizens to support cultural activities would make those cities more attractive to residents and visitors.

Response: While the bill's goals are laudable, it should place some restrictions on organizations that received tax dollars under its framework. For instance, an institution that accepted money from a *regional* tax should be prohibited from enforcing *local* residency requirements, either for employment or for use and enjoyment of the facility. Also, perhaps there should be a requirement that institutions receiving funding under the bill charge an admission fee to keep them from becoming too dependent on the regional tax. In addition, the bill does not specifically identify the make-up of members of a cultural district board, how it should represent a district's populace, or who would appoint the members.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Counties that established cultural districts would incur costs associated with hiring employees, annually employing an independent certified public accountant, and reimbursing actual and necessary expenses incurred by the director. These counties also, with approval from a vote of the people, could levy up to 1.5 mills on real and tangible personal property, except exempt property, for up to 10 years. This bill would have no State fiscal impact.

Fiscal Analyst: R. Ross

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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.