

House Committee on Local Government & Municipal Finance

Wednesday, December 1, 2021

SB 129 - Sen. Schmidt Businesses; associations; summer resort and parks associations; modify.

Good afternoon. My name is Tom Marriott and I am president of the Oceana Beach Association in Pentwater, MI. Our Association is more than 125 years old and was incorporated under the Summer Resort and Park Associations Act 230 of 1897. I am here today to support Senate Bill 129, a bill to amend 1897 PA 230. This amendment was approved by the Senate in September 2020 (SB 1054), but was not able to be presented to this Committee in 2020 and died. It was reintroduced by Sen. Schmidt in January 2021 as SB 129 and approved by the Senate in June 2021.

The changes in the Bill are important to associations like ours. They include:

- MCL 455.3 - Increase the amount that an association can hold from \$200,000 to \$6,000,000;
- MCL 455.10 - Increase a board's spending limit from \$1,000 to \$30,000;
- MCL 455.23 - Increase the limit of the annual special assessment from \$25/share to \$750/share; and
- MCL 455.9 - Add a sentence - "A stockholder may be allowed, in writing, to nominate any member of the stockholder's immediate family (spouse, child, step-child, or child's spouse) to serve in said stockholder's right to become a Director."

The dollar limits in the Act were set in 1897 and have never been increased. A standard inflation index calculator, e.g. <https://www.in2013dollars.com/us/inflation/1897?endYear=2019&amount=100>, indicates that \$1 in 1897 is approximately worth \$30 in today's dollars. While there is arguably an implicit adjustment for inflation in the current statute, the Bill would make this explicit through the proposed 30-fold increases in dollar amounts and the addition of an inflation index to preclude having to make future revisions. As for the sentence to be added, the average life expectancy in 1900 was approximately 47 years and today it is approximately 78 years. The increased life span of stockholders and the desire of much older stockholders to interest younger generations in association governance before stock is transferred to them make this a sensible change.

The need to update these parts of the Act is real. Our Association and its all-volunteer board members have been sued for alleged mismanagement and noncompliance with the Act. The Association has in fact been run carefully and responsibly. But the lawsuit alleges three instances of technical noncompliance, and the Bill under consideration today would eliminate any grounds for similar harassing suits against other Associations. First, the Association holds more than \$200,000 because when Association property was sold the members voted to have the proceeds invested for the future benefit of the Association. That principal, and the ability of the Association to possess it, helps the community. Dividends and interest earned from the principal provide income to the Association for the generation and maintenance of capital assets. Over the last 13 fiscal years disbursements of over \$500,000 have been made resulting in an average \$1,500 annual reduction in each member's dues. The lawsuit also alleges technical noncompliance with the expenditure limits and special assessments in the 1897 Act. It is important to Associations like ours that we have authority to make necessary expenditures and assess members for unforeseen events. For example, following the very severe, August 2018, storm in Pentwater, there were many downed power lines and all roads in OBA were blocked with fallen trees. The Association board authorized approximately \$30,000 in expenses to clear

the roads and remove debris so that trapped members, all without power for 5 days, could get to safety. This emergency expenditure was later approved by the members, but it was 50% above the \$25/share limit. Finally, many of our members, including me, are over 70 and are interested in having our children become active in Association governance even though they are not yet stockholders.

Any other association incorporated under the Act is potentially subject to a lawsuit similar to ours by plaintiffs and their lawyers seeking to gain a windfall by forcing a distribution of Association assets. Our lawsuit has led to a significant waste of money for legal expenses, of personal time, and, more importantly, of the Court's time and resources. The proposed amendment to the Act is an important and necessary update. Thank you for your time.