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BILL



ANALYSIS

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Senate Bill 945 (Substitute S-3 as passed by the Senate)

Sponsor: Senator Laura M. Toy

Committee: Local, Urban and State Affairs

Date Completed: 3-20-06

RATIONALE

Under Michigan's Drain Code, the responsibilities of a county drain commissioner include the maintenance of all legally established county drains, the management and financing of drain construction projects, and the correction of the county's drainage and flooding issues. Additionally, the drain commissioner is responsible for apportioning assessments and accounting for collections and expenditures. Under the Michigan Election Law, a county drain commissioner must be elected every four years. In the event of a vacancy, a new drain commissioner may be appointed until a successor is elected. Recently, the Kent County drain commissioner died and the office is currently vacant. Some people believe that the Kent County board of commissioners should be allowed to appoint a new drain commissioner to serve a four-year term, in order to avoid the expense of an election.

CONTENT

The bill would amend the Michigan Election Law to allow a county board of commissioners to convert the position of drain commissioner to an elected office or an appointed position in a county with a population of 500,000 to 750,000; require a public hearing on the question; and require that a vacancy in the office of county drain commissioner be filled by appointment by a vote of the county board of commissioners.

Under the Law, a county clerk, a county treasurer, a register of deeds, a prosecuting attorney, a sheriff, a drain commissioner, and a surveyor must be elected every fourth year, except in a county in which one of

these offices is abolished or combined as provided by law. The bill would add an exception for an office that became an appointed position.

Under the bill, in a county with a population of at least 500,000 but not more than 750,000, the county board of commissioners could by resolution of the commissioners elected and serving convert the position of drain commissioner to an elected office or an appointed position. If the position were appointed, the appointment would have to be made by a two-thirds majority vote of the board of commissioners and would have to be for a term of four years. The resolution could not take effect until there was a vacancy in the office of drain commissioner.

The Law provides that, before adopting a resolution to combine the offices of county clerk and register of deeds, or to separate the offices, a county board of commissioners must study the question of combining or separating the offices. The board may satisfy this requirement by conducting a public hearing. Under the bill, these provisions also would apply to the question of creating an appointed position of drain commissioner.

The Law also requires the county board of commissioners to hold at least one public hearing on the question of combining or separating the offices of county clerk and register of deeds. The board may vote on it as a regularly scheduled agenda item between 10 and 30 days after the last public hearing. Under the bill, these provisions also would apply to the question of

converting the position of drain commissioner.

Under the Law, by the sixth Tuesday before the deadline for filing the nominating petitions for the office of county clerk, register of deeds, or clerk register, the county board of commissioners may by a vote of two-thirds combine or separate the offices of county clerk and register of deeds. Under the bill, the vote required to combine or separate those offices or convert the position of drain commissioner would have to be held in the same time frame. If the next general election for drain commissioner in a county were in the 2006 general November election, to fill a vacancy, the county commissioners' vote on converting the position to an appointed position would have to be held before the deadline for filing nominating petitions for the office of drain commissioner.

Section 209 of the Law prescribes how a vacancy in an elective or appointive county office must be filled. A vacancy in the office of county clerk or prosecuting attorney must be filled by appointment by the judge or judges of that judicial circuit. If a vacancy occurs in any other county office, the presiding or senior probate judge, the county clerk, and the prosecuting attorney must appoint a person to fill the vacancy. Under the bill, if the vacancy were in the office of county drain commissioner, it would have to be filled by appointment by a two-thirds vote of the county board of commissioners elected and serving either under Section 209 or under the provision of the bill that would allow a county board of commissioners to convert the position to an elected office or an appointed position. The bill states that this requirement could not be construed to affect or limit the powers and duties of the county board of commissioners otherwise provided by law regarding the office of county drain commissioner.

MCL 168.200 & 168.209

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

The Kent County board of commissioners is seeking to streamline the county

government so that it will operate more efficiently. By authorizing the commissioners to appoint a drain commissioner, the bill would allow them to pick the most qualified person for the job and avoid the future expense of an election to fill the vacancy. The Kent County drain commissioner died recently, and the vacancy in the office makes this the best time to convert it from an elected to an appointed position.

Opposing Argument

An appointed drain commissioner would not be directly accountable to the voters because he or she would not be elected or re-elected every four years. A key part of a drain commissioner's job is determining who should be assessed for a drain and how large the assessment should be. Since some property owners pay drain assessments that run more than \$100,000, it is important that an assessor be accountable to the voters. An appointed drain commissioner also would face a potential conflict of interest if he or she had to apportion an assessment on property owned by a county commissioner.

Additionally, the State recently took steps to ensure that some intercounty drain commissions have at least one elected representative serving on their board. Public Act 16 of 2006 provides that, if a drain project involves Wayne County, the drainage board must include an elected individual (or an appointee of that individual) appointed by each participating county's drain commissioner. Rather than making drain boards more accountable to their constituents, as Public Act 16 is designed to do, it appears that the bill would go in the opposite direction.

Opposing Argument

The bill would conflict with Section 21 of the Drain Code, which requires that drain commissioners be elected. Section 21 provides that every fourth year, a county drain commissioner must be elected in each county having a drain commissioner by the qualified electors of the county (although the duties of a drain commissioner in Wayne County must be performed by a person designated in accordance with the county's charter).

Opposing Argument

The bill would to allow Kent County (and other counties meeting the population criteria) to alternate between an elected and an appointed drain commissioner whenever the county commissioners decided to do so. This would create a situation in which the county board of commissioners could change the position from one that was elected to one that was appointed whenever its top candidate did not want to run for the office.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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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.