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BILL ANALYSIS

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House Bill 5281 (as reported without amendment)
Sponsor: Representative Edward Gaffney, Jr.
House Committee: Government Operations
Senate Committee: Local, Urban and State Affairs

Date Completed: 1-10-06

RATIONALE

Chapter 21 of the Drain Code permits a public corporation (such as a county, city, village, or township) to petition the Michigan Department of Agriculture (MDA) for the establishment of an intercounty drain when necessary for the public health. The Code creates a drainage board for the project and requires the board to consist of the MDA Director and the drain commissioner of each county involved in the project. There is a concern that, in some cases, this does not allow adequate representation of the affected property owners who may be assessed for the project.

The Milk River Intercounty Drain was established in Wayne County pursuant to Chapter 21 as a combined sewer overflow project. Reportedly, nearly all of the costs of the drain have been assessed to property owners in Harper Woods and Grosse Pointe Woods. Some in the affected communities evidently believe that their interests are not properly represented on the board because they have no elected representatives serving on it, since the Wayne County drain commissioner is appointed by the county executive. Some people believe the Drain Code should require a drain board to include a representative of a local community from each county involved in an intercounty drain that includes Wayne County.

CONTENT

The bill would amend Chapter 21 of the Drain Code to provide that, if a drain project involved a county with a population over 1 million, the drainage board would have to include an individual appointed by each participating county's drain commissioner. (The requirement would apply only to an intercounty drain project involving Wayne County.)

Specifically, if an intercounty drain project involved a county with a population of more than 1 million, the drainage board would have to consist of the MDA Director, the drain commissioner of each county involved in the project, and an individual appointed by each drain commissioner.

The appointee would have to be an elected official, or the designee of an elected official, of a city, village, or township subject to assessment for the project. The appointee would have to serve for a two-year term and could not be appointed for successive terms unless the city, village, or township that he or she represented was the only municipality in the county subject to assessment. After the two-year term was completed, the drain commissioner would be required, if possible, to appoint an elected official, or his or her designee, from a different city, village, or township subject to assessment for the project.

If an appointee failed or refused to serve or were disqualified, the drain commissioner would have to appoint a successor to complete the remainder of his or her term.

The bill's provisions would not apply to a project that involved a county with a population of more than 1 million that was organized pursuant to Public Act 139 of 1973 (the optional unified form of county government). (This would exempt Oakland County.)

MCL 280.514

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

As required by the Drain Code, the board of the Milk River Intercounty Drain consists of the Director of the Department of Agriculture and the drain commissioner of each county involved in the project. Apparently, some Wayne County homeowners pay more than $600 annually in assessments for the drain and do not believe that the drainage board is responsive to their concerns about the size of the assessments because their drain commissioner is appointed, not elected. The board of an intercounty drainage project including Wayne County would be more accountable to the property owners affected by the project if a locally elected representative from each county involved were added to the board.

Opposing Argument

Intercounty drains are expensive undertakings and usually require property owners in several communities to pay assessments, with property owners in some communities paying larger assessments than others. Reportedly, a board's most difficult task often is determining the size of the assessment that property owners in each community must pay. Since the bill would require the appointment of an elected representative from only one community affected by the drain in each county, it is possible that an elected representative from that community would influence the board to reduce the size of his or her community's assessments and increase the assessments in other communities.

Opposing Argument

Although the bill would affect only intercounty drains that include Wayne County, it would set a precedent of requiring that local elected representatives (or their designees) be appointed to intercounty drain boards. The Drain Code is regularly amended and there is a concern that subsequent amendments would extend this requirement to all of the State's intercounty drain projects. The appointment of an elected official representing just one city, village, or township affected by a drain could make it more difficult for an intercounty drain board to divide the assessments fairly among the communities.

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.