

## PUBLIC WORKS DISTRICTS

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### House Bill 5129

**Sponsor: Rep. Hugh Crawford**

**Committee: Local, Intergovernmental, and Regional Affairs**

**Complete to 11-2-11**

## A SUMMARY OF HOUSE BILL 5129 AS INTRODUCED 10-27-11

House Bill 5129 would amend Public Act 185 of 1957 (MCL 123.731 et al), which establishes county public works departments and boards, in order to allow county boards of commissioners to create *public works districts* that could contract out for services.

By apportioning special assessments among "public corporations"--defined as the state, counties, cities, villages, townships, metropolitan districts and authorities--a public works district would be able to acquire, construct, operate and maintain a public works system, including among others, systems established for *water supply, sewage disposal, lake improvements, erosion control, and garbage collection and disposal*.

A more detailed description of the bill follows.

Now under the law, a board of public works is considered to be an agency of the county, and the county board of commissioners makes rules in respect to the public works department that it considers advisable. Under current law, the members of a county public works board cannot be full-time officers of the county. Further the law specifies that if the county drain commissioner, any county road commissioner, or any member of the county board of commissioners serves on the board of public works, he or she will not be compensated for these additional duties. The compensation of other members is fixed by the county board of commissioners. House Bill 5129 would retain these provisions of the law.

*Elected drain commissioner designated as board of public works.* The bill specifies, further, that in any county the county commissioners can establish a board of public works and department of public works to administer the powers conferred upon the county by this act. Additionally and under the bill, if the county had an elected drain commissioner, then the elected drain commissioner would automatically be designated as the board of public works for that county, with all the authority, powers, and duties conferred by law upon the board of public works.

*Public works district; creation; 'body corporate'.* House Bill 5129 specifies that a county board of commissioners could, by resolution, create a public works district to own or operate a public works system in any county that owned or operated a water supply system, sewage disposal system, refuse system, lake improvements, or system for erosion control (under this act); or a system or systems of water, sewer, or sewage disposal

improvements or services, or garbage or rubbish collection and disposal facilities and services (under the County Public Improvement Act).

Further, a public corporation (defined to mean the state, counties, cities, villages, townships, metropolitan districts, and authorities) that owned or operated a public works system (or had determined the need of a project) could, by resolution of its governing body, petition the county commissioners to create a public works district. Thirty days after receiving the petition, the county commissioners could do so. (If the powers and duties of the board of public works had been delegated to the county drain commissioner, then the petition would be transmitted to the drain commissioner.)

After the resolution to designate a public works district was adopted, the district would stand as a 'body corporate' with the power to sue and be sued in any court of the state, and to hold, manage, and dispose of real and personal property. The board of public works would be responsible for operating and maintaining the public works system.

***Board of public works meetings.*** House Bill 5129 describes in detail how a meeting of a board of public works would be convened, its business conducted, its hearings advertised, and its orders issued, including the way in which the public works board would be required to communicate with its constituent "public corporations"--that is, the officials from the state, counties, cities, villages, townships, metropolitan districts, and authorities who were participants in its projects (Sections 58 and 58a); further, the chair of the board of public works (or the county drain commissioner, if so delegated) would call the first meeting for the public works district.

***Proposed projects.*** At its first meeting, the board of public works would propose a project, review its worthiness, and tentatively determine which "public corporations" would be obligated to share in its costs. The district then would be composed of the public corporations that would be charged for the project's cost. A public hearing would be set for the proposed project, and assessment. House Bill 5129 describes in detail how and when public hearings for the project would be advertised and conducted (Section 58b). Among other requirements, it specifies that notices be sent by registered mail at least 20 days before any public hearing to the clerk or secretary of each public corporation proposed to be assessed, and that notices to the state be sent to the director of the Department of Transportation.

***Project plans; apportionment of cost; readjustment; final order.*** The bill would require the board of public works to secure, from a competent engineer, plans, specifications, and a cost estimate of the proposed project which, when approved by the board, would be filed with the chair of the board of public works. (The bill specifies that the board would not be limited to the route of the projects described in the petition or the final order of determination, when approving the plans and specifications.)

The board of public works would then tentatively set the percentage of the cost which would be borne by each public corporation. In making the apportionments, the board would be required to take into consideration the benefits that would accrue to each, and

also the extent to which each public corporation contributed to the conditions which made the project necessary. Before a tentative apportionment was made, the board would be required to designate the project service area, and it could divide the project into sections for purposes of either apportionment or construction.

After the apportionment of cost was established, the board of public works would be required to set a time, date, and place for a public hearing. House Bill 5129 describes in detail when and how the notice for the public hearing must be advertised, and to whom it must be sent (Section 58d). If the state is a participating "public corporation," the notice is sent to the director of the Department of Transportation; if a county, then to both the county clerk and the county road commission. The notice must include tentative apportionments to the several public corporations.

After the public hearing, the board of public works would confirm the apportionments of cost tentatively made, or find them to be inequitable and readjust them. If readjusted, then a second public hearing would be held.

After confirming the readjusted apportionments of cost, the board of public works would issue an order, setting forth the confirmed apportionment(s). The order would be known as the Final Order of Apportionment.

***Additional project costs.*** Under the bill, the county would not be prohibited from assuming any additional cost of the project, if two-thirds of the members elected to the county board of commissioners voted in favor of assuming the added costs.

***Land & right-of-way acquisition.*** If necessary, the board of public works would then proceed to secure the necessary land or rights-of-way for the proposed project, either by negotiation, or through condemnation (acting as a "state agency"). If the federal government was participating, then the lands or rights-of-way could be acquired through proceedings brought by the federal government, and the amount of awards would be part of the project cost.

***Federal participation.*** The board of public works could contract with any agency of the federal government, and the federal government could pay for all or part of the costs of a project, or perform the work.

***Private corporation contract.*** The board of public works could also contract with any private corporation or with any public corporation, in respect to any matter connected with the construction, operating, maintenance, use, or services of any project. A contract could provide for service or transportation charges, and it could provide that any payments made or any work done by the corporation would relieve it, in whole or in part, from assessment for the costs of the project(s) or its maintenance and operation.

***Bids.*** The bill prohibits construction work from being undertaken until the board of public works has advertised for and received bids for the performance of the work

(except for construction work to be performed by the federal government or a public corporation).

***Responsibilities of county treasurer.*** The county treasurer would serve as the custodian of the funds of the public works district, could be bonded, and could pay out money only upon order of the board of public works.

***Special assessment roll.*** After the confirmation of the apportionments by the board of public works, the board chairman would be required to prepare a special assessment roll, assessing the estimated (or actual, if known) cost of the project against the several public corporations in accord with the apportionments. The board could provide for up to 30 annual installment payments, but no installment could be less than one-quarter of any subsequent installment. The board would fix the date interest would begin, to be paid upon unpaid installments, not to exceed an amount sufficient to pay interest on bonds or other indebtedness issued by the public works district. The board of public works would also fix the date, not later than four years after confirmation, on which the first installment of special assessments would be due, so that each public corporation could make a tax levy for the payment. Then subsequent installments would be due annually on the same day and month.

The special assessment roll would have to contain the name of each public corporation assessed, the total estimated cost of the project, the percentage apportioned to each public corporation, the amount of the assessment against each public corporation based upon the percentage of apportionment, and the amount of each installment, if the assessment was divided into annual installments.

After the special assessment roll had been prepared, it would be presented to the board of public works for approval. The bill then describes in detail the manner in which the chairman of the public works board must certify each of the public corporations, notifying them of their installment and repayment schedules, and doing so at least 30 days before the time of the levying of taxes by each public corporation.

***Special assessment default.*** If the public corporation failed to account to the county treasurer for the amount of an installment and interest, then the county treasurer would be required to advance the amount from county funds, if bonds or other indebtedness had been issued to finance the project, and if the county board of commissioners had by a resolution (adopted by a two-thirds vote of its elected members) pledge the full faith and credit of the county for the prompt payment on the bonds or other debts. Then, the county treasurer would immediately notify the public corporation of the amount of money advanced, together with interest, and also notify the state treasurer (or other appropriate disbursing official) who would deduct that amount from money in his or her possession that belonged to the public corporation. However, the bill specifies that the state treasurer could not withhold in any one year, more than 25 percent of the total amount owed by the delinquent public corporation, as stated in the notice from the county treasurer.

The county board of commissioners which had advanced the money for a public corporation, and which had not been reimbursed, could order that the public corporation and its officers levy, upon its next tax roll, an amount sufficient to make the reimbursement on or before the date when its taxes became delinquent. (The bill specifies that assessments against the state would be certified to the director of the State Department of Transportation, and paid from state highway funds.)

The bill specifies that to pay for a delinquent special assessment installment, a city or village could elect to spread the tax levy upon the county tax roll, instead of the city or village tax roll.

***Project cost correction.*** If a special assessment roll was prepared on the basis of a project cost estimate, then after the actual cost had been determined by the board of public works, the special assessment and the installments would be corrected by adding any deficiency or by deducting any excess.

***Taxes exempt from limitations.*** Taxes levied by a public corporation for the payment of assessments would not be considered to be within any statutory or charter tax limitation.

***Bond issue.*** The bill describes in some detail the manner in which a board of public works could issue bonds, on behalf of the public works districts. Collections of both principal and interest on all installments of assessments in anticipation of a bond issue would have to be kept in a separate bank account by the county treasurer, and used for no other purpose than the payment on the bonds. If for any reason the original assessment were not sufficient to pay on the bonds, then the board of public works would make additional assessment, as necessary.

***Project-specific board of public works.*** The bill requires that the board of public works for each project continue in existence (with changes in personnel that result from changes in the officers constituting the board membership), and that the board of public works be responsible for the operation and maintenance of the project. Administrative expenses incurred to operate the project that were not covered by contract would be paid by the public corporations assessed for the cost of the project (in the same proportion as the total project cost).

***Relinquishing project control.*** The board of public works could, by resolution, relinquish jurisdiction and control over all or any part of a project at any time when there was no outstanding debt or contract liability. Jurisdiction could be relinquished to a county, township, city, or village, if they consented, as indicated by a resolution adopted by the jurisdiction's governing body.

The bill describes in detail the manner in which relinquishment of jurisdiction and control would proceed, requiring, for example, that the resolution adopted by a jurisdiction's governing body specify which local agency would be responsible for the project, and how any remaining project funds would be spent.

**Public & private participation.** The bill specifies that any public or private corporation, firm, or individual could advance money for the payment of any part of the cost of a project, in which event it would be reimbursed by the public works district (with or without interest, as agreed) when funds were available. The obligation could be evidenced by a contract or note which could pledge the full faith and credit of the public works district, and could be payable out of the assessments made against public corporations or out of the proceeds of project orders or bonds issued by the public works district. The contract or note would not be subject to the Revised Municipal Finance Act.

**Project cost.** Under the bill, the cost of any project would be required to include all of the following:

- the cost of constructing or acquiring the facilities, structures, devices, and equipment required to locate, establish, and construct the project or to improve or supplement the project, including bridges and culverts and any necessary lands or rights of way.
- the administrative and other expenses of the board of public works, including the cost of service and publication of all notices.
- all engineering, legal, and other professional fees.
- interest on bonds for the first year, if bonds are to be issued, and interest on money advanced.
- an amount not exceeding 10 percent of the gross sum to cover contingent expenses.

**Township assessments.** Unless otherwise provided by the board of public works, all assessments against a township would be against the township as a whole, including any incorporated village, however the board could determine to assess separately or exclude a village.

**County full faith and credit.** The bill specifies that if bonds or notes are issued, then the county board of commissioners could, by resolution adopted by a majority of its membership, pledge the full faith and credit of the county of the amount of the principal of, and interest on, any bonds or notes. In the event that a county was required to advance any money, and if the collections of the special assessments were not sufficient to reimburse the county, then the board of public works would be required, within a two-year period from the date of advancement, reassess the public works district to provide repayment to the county of money advanced.

**System transfers.** Any county that owned or operated any water supply system, sewage disposal system, refuse system, lake improvements, or a system for erosion control under this act, or systems of water, sewer, sewage disposal improvements or services, or garbage and rubbish collection and disposal facilities and service under the County Public Improvement Act, could transfer any of those systems to a public works district as follows:



- The board of public works or the county agency would approve the transfer and forward its approval to the county board of commissions.
- The county board of commissioners would approve the transfer.
- The board of public works would convene and could, upon majority vote of the board, accept the transfer.
- Once a transfer was completed, all assets and liabilities formerly belonging to the county would belong to the public works district, and the county and the board of public works or the county agency would cease to have any control or jurisdiction, nor would the county have any further liability for any event that occurred after the effective date of the transfer.

Similarly, any public corporation (that is, any city, village, township, or combination of these governmental units) that owned or operated any water supply system, sewage disposal system, refuse system, lake improvements or system for erosion control could transfer that system following essentially the same procedure.

**Definitions.** The bill would define three terms: "project," "public corporation," and "public works system."

The term "project" is defined to mean to acquire, construct, operate, and maintain any public works system.

The term "public corporation" is defined to include this state, counties, cities, villages, townships, metropolitan districts, and authorities created by or under state law.

The term "public works system" is defined to mean water supply system, sewage disposal system, refuse system, lake improvements, system for erosion control, or any combination of these.

## **FISCAL IMPACT:**

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.