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House Bill 5126 (as passed by the House)
Sponsor: Representative Steven Johnson
House Committee: Local Government and Municipal Finance
 Ways and Means
Senate Committee: Local Government

Date Completed: 12-8-20

CONTENT

The bill would amend the Drain Code to do the following:

- Allow a petition to add or remove land from a drainage district to be signed by any five freeholders or at least 50% of the freeholders if there were fewer than five freeholders whose lands would be liable for an assessment for benefits from a drain, or by a municipality if authorized by its governing body.
- Allow a petition to add or remove land from a drainage district to be combined with other specified petitions allowed under the Code.
- Remove a requirement that copies of an order adding lands to a drainage district be served upon all entities whose lands were added to drainage district.
- Require a drain commissioner to advertise for the receipt of bids for the construction of a drain at a specific time, date, and location, and require the commissioner to make the notice available on the commissioner's or county's website.
- Require a drain commissioner to publish a notice of a public meeting to review the apportionment of benefits in a newspaper circulated within the county at least 10 days before the date of the meeting.
- Require a notice to be personally served on the county clerk and a member of the board of county read commissioners of the county and on the supervisor of each townships and clerk of each city or village to be assessed at large.
- Modify the information that must be included in a notice.
- Prescribe the information that the drain commissioner would have to make available on the internet.
- Allow a drain commissioner to make necessary adjustments to the estimated apportionment percentage, estimated annual project assessment, or the estimated project assessment duration without further notice.
- Require the drain commissioner to correct the computation of the total cost of a drain if contracts on which the computation was based were not executed and new contracts were let at a higher price.

The bill would take effect 90 days after enactment.

Chapter 6 (Intercounty Drains)

Currently, under the Code, if after a county or intercounty drain is constructed and it appears necessary to extend the drainage district into a county that was not a part of the original

drainage district or to remove lands from the original drainage district resulting in the removal of a county from an intercounty drainage district, the lands may be added to or removed from the district through order by a drainage board or by presenting a petition to the drain commissioner of one of the counties affected by the drain. The petition must be signed by 50% of the landowners whose land is traversed by the drain or proposed extended drain or abuts on the part of a highway or street alongside which the drain or proposed drain runs. Instead of landowners, the Code allows the petition to be signed solely by a city, village, or township if authorized by its governing body or by any combination of municipalities, if the municipalities are or will be liable to assessment at large for a percentage of the costs of the drain.

Under the bill, a petition could be signed by either of the following:

- By any five freeholders or at least 50% of the freeholders if there were fewer than five freeholders whose lands would be liable for an assessment for benefits from the drain.
- By a municipality if authorized by its governing body or by any combination of municipalities if the petitioning municipality or municipalities were or would be liable for an assessment at large for benefits from the drain.

The bill would allow the petition described above to be combined with a petition under Section 192. (Under Section 192 of the Code, if a drain or a portion of a drain traverses lands in more than one county or lands in more than one county are subject to assessments and if the drain needs cleaning out, relocating, or various other modifications, any five freeholders or at least 50% of the freeholders if there are fewer than five freeholders whose lands must be liable to an assessment for benefits of the work, may make a petition in writing to the commissioner of any county having lands in the drainage district setting forth the necessity of the proposed work.)

Currently under the law, if a petition is presented to the drainage board, the board will consider the petition and any evidence offered. If the board determines that the extension of the drainage district or the removal of lands from the district is necessary for the public health, convenience, or welfare, it will then determine the just percentage of the whole cost of construction that each county must bear *and the number of installments in which the drain taxes shall be collected*. The bill would remove the italicized language.

If, in the opinion of the board, it is necessary to revise the drain district boundaries, the board will also enter an order to that effect. Copies of the order must be filed with the drain commissioner of each county in the revised drainage district.

Copies of an order adding the lands to the drainage district also must be served upon all entities whose lands have been added to the district by first-class mail at least 10 days before the date of the meeting to review the apportionment of benefits. The bill would eliminate this language.

Chapter 7 (Apportionment and Review)

Receipt of Bids. The bill would require the drain commissioner to advertise for the receipt of bids for the construction of a drain at a specified time, date, and location. If the commissioner directly or indirectly maintained an official internet presence, he or she would have to post the advertisement for the receipt of bids on a portion of the website that was fully accessible to the public at least 10 days before, and would have to maintain the posting through, the date set for the receipt of bids. If the drain commissioner did not maintain an official internet presence, the advertisement would have to be posted and maintained on the county website.

Notice of Public Meeting. Under the Code, a commissioner must also give notice of a public meeting to review the apportionment of benefits. The meeting must be no less than five or more than 30 days after the date set for receiving construction bids. The Code requires the notice to be given by publication of at least two insertions in a newspaper published and of general circulation in the county, and that the first publication must be at least 10 days before the date set for receiving bids. Under the bill, notice would have to be given by publication in a newspaper published and of general circulation in the county at least 10 days before the date of the review of the apportionment.

The notice described above must be personally served on the county clerk and a member of the board of county road commissioners of the county and on the supervisor of each township and clerk of each city or village to be assessed at large. Under the bill, the drain commissioner would have to serve the notice personally or by certified mail to the aforementioned parties at least 10 days before the date of the review of the apportionment.

The Code prescribed the information that must be included in a notice. The bill would require the notice to include the following:

- The name or number of the drain.
- For notices mailed to a person who appears on the last city or township tax roll as owning the land within the district, the estimated percentage and dollar amount apportioned to that person's land, the estimated annual dollar amount apportioned to that person's land, and the estimated project assessment duration.

The Code requires the notice to include the date, time, and place of receiving bids. Instead, the bill would require the notice to include a statement that commented on the apportionment of benefits that could be submitted to the drain commissioner in writing before the date of the meeting to review the apportionment or could be submitted in writing or orally at the review. The statement would have to specify the drain commissioner's mailing address and electronic mail address and indicate that comments submitted in advance would have to be received by the commissioner before the date of the meeting to ensure consideration.

The Code also requires the notice to include the following:

- The number and length of sections, the average depth and width of each section, and if the drain will be a closed drain, the amount and specifications of all tile or pipe required.
- The location, number, type and size of all culverts and bridges.
- The condition upon which the contract will be awarded.
- A description of the land constituting the district for the drain by designating the district boundaries.

Under the bill, instead, the notice would have to include a website address and statement that the above information could be found at that address. The description could be given by designating the boundaries of the district by streets, highways, parcels, or tract of land, or by describing the tracts or parcels of land constituting the district (as currently authorized), or by providing a map of the district. If a parcel or tract were partially located within the district, for the purposes of the notice description only, the drain commissioner could consider the entire parcel or tract to be in the district.

The law specifies that a notice need not contain minutes of survey or a table of cuttings. The bill would remove this language.

If the drain commissioner directly or indirectly maintained an official internet presence, the drain commissioner would be required to post the information provided in the mailed notices

on a portion of the website that was fully accessible to the public and would have to maintain the posting through the date of the meeting to review the apportionment of benefits. If the drain commissioner did not maintain an official internet presence, the information would have to be posted and maintained on the county website.

Notwithstanding the information provided in a notice sent to a person whose name appeared on the last city or township tax roll as owning land within the drainage district, the drain commissioner could make subsequent adjustments to any of the following that the commissioner or drainage board considered necessary, without further notice or an additional meeting to review the apportionment of benefits:

- The estimated apportionment percentage.
- The estimated annual project assessment.
- The estimated project assessment duration.

Computation of Costs. Under the Code, construction bids must be received, and the total cost of the drain must be computed before the time set for review of the apportionment. The computation must be open to inspection and if it is not completed before the day of review, the review may adjourn from time to time, not more than 20 days in total, for the completion of the computation, or a new hearing may be called with similar notice by publican and service at least 10 days before the hearing. The bill largely would retain this language but would replace "day of review" with "review of the apportionment". The bill also would remove language pertaining to the publication of notices and, instead, would require the drain commissioner to provide notices as prescribed above.

If the contracts on which the computation was based are not executed and new contracts are let at a higher price, the computation must be correct, and a new review held with a similar notice. Under the bill, if the contracts on which the computation was based were not executed and new contracts were let at a higher price, the drain commissioner would be required to correct the computation, and after giving notice, and hold a new review of the apportionment.

If an apportionment of benefits is made against a State trunk line highway, unless the Director of the Michigan Department of Transportation consents in writing to the apportionment, the drain commissioner must notify the director of the Department of Transportation the percentage apportioned against the highway and the date, time, and place for review of apportionment of benefits. The bill largely would retain this language but would require the notice to include the information prescribed above.

Lastly, where the Code refers to special assessment districts in the applicable sections, the bill would replace that term with "drainage district".

MCL 280.135 & 280.154

Legislative Analyst: Dana Adams

FISCAL IMPACT

The bill would have a minimal fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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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.