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ALLOW TIME EXTENSIONS FOR SEWER LINE CONNECTIONS

House Bill 5145 (Substitute H-1)
First Analysis (11-5-03)

Sponsor: Rep. Leon Drolet
Committee: Local Government and
Urban Policy

THE APPARENT PROBLEM:

In some sections of mature cities where homes were built before the existence of municipal sewer systems, homeowners maintain separate on-site septic systems to accommodate each residence's wastewater needs. In at least one county of the state, Oakland, those on-site septic systems serving individual homes must be inspected at least once every four years, according to a county ordinance. The cost of that inspection—which varies between \$3,000 and \$12,000—is borne by the homeowner.

When a municipal sewer system is expanded to serve more customers, all or a portion of the cost is generally assessed to the property owners who are adjacent to and would benefit from the sewer extension, and who reside within the 'special assessment district' established by the municipal government. The special assessment paid by the property owners covers the cost of the design, engineering, and construction of the improvements to the sewer system. In addition, upon the new sewer system's completion, the nearby property owners pay a one-time connection fee (customarily called a 'tap-in' fee) which varies in cost from about \$6,000 to \$10,000 depending upon the distance from the home to the sewer line.

Under Michigan's Public Health Code, homeowners must connect to a municipal sewer system if it is available, and when a new system is constructed, first-time users of the system must connect within 18 months.

In the City of Troy (in Oakland County), there are 450 separate on-site septic systems constructed about 40 years ago whose owners maintain them in accord with local ordinances and at their personal expense. Although all of the homeowners' on-site septic systems will eventually fail, many are yet functioning in an adequate fashion, and their owners do not wish to pay connection fees to any new sewer system the city might construct, since they already pay to maintain their septic fields. Their opposition has

stymied an expansion of the municipal sewer system—an expansion that is needed by some of the residents whose on-site septic fields have already failed, as well as to enable new commercial development in the region.

The City of Troy would like to give homeowners with septic fields the choice of opting out of the connection fee, as long as their septic systems remain in working order.

THE CONTENT OF THE BILL:

House Bill 5145 would amend the Public Health Code to allow for an extension of the time frame that is now specified in the law regarding required connections to available public sewer lines.

Currently under the law, structures in which sanitary sewage originates must be connected to an available public sanitary sewer in a city, village, or township, including structures lying outside the city, village or township limits, following approval of the appropriate governing bodies. The connection must be completed promptly, but not later than 18 months after the date of the last of the following events: a) publication of a newspaper notice by the governmental entity that operates the sewer system concerning the system's availability; or b) modification of a structure to become a structure in which the sewage originates. Under the law, a city, village or township can enact ordinances, or a county or district board of health can adopt regulations, to require the connection be completed within a shorter time period for reasons of public health. House Bill 5145 would retain all of these provisions, but specify that the county or district board of health also could adopt regulations to require a connection for reasons of "safety, or welfare."

In addition, the bill specifies that after the effective date of this legislation, the owner of a residential structure that was required to be connected could

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request an extension of the time specified. Upon request, a city, village, or township could grant an extension for a period of time that was determined appropriate by the governmental unit, or for as long as the existing septic tank disposal system was in satisfactory operating condition, and did not constitute a threat to the public health, safety, or welfare.

Under the bill, the Department of Public Health would be required to adopt guidelines to assist the local health departments in determining what septic tank disposal systems were in satisfactory operating condition.

MCL 333.12753

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that there would be no fiscal impact on the state or local governmental units. (10-27-03)

ARGUMENTS:

For:

Local units of government that provide sewer system services should have the option of allowing their citizens to delay connecting to a sewer extension, if the residents have an adequate, personally maintained septic system. This option will give local officials more flexibility to design and finance sewer extension projects when those projects are thwarted by citizens who resist costly tap-in fees, because they have other service.

For:

Sewer system services are a good example of a local service—one that should be free from state oversight and intervention. The conditions for participation in local services are best left to local officials who best know the circumstances and rules that should govern their provision.

Against:

The Livingston County Department of Public Health and other members of the Public Health Association have raised several concerns about the bill. They point out that sewer extensions take place with regularity, and that they sometimes affect several thousand homes and businesses. Generally, the public health departments do not have the capacity to evaluate several hundred septic systems to determine if they can safely delay connection to the new sewer system.

Further, the bill provides no funding mechanism enabling local health departments to cover their costs for providing the inspection service.

The public health department also notes that sewer extensions by municipalities are a result of a combination of various issues, including growth demand, failing septs, and groundwater and surface water protection efforts. A septic system does not necessarily have to be “failing” to be affecting surface and groundwater.

Against:

By allowing citizens the opportunity to opt out of sewer connections, local units of government will have a difficult time planning sewer expansions and apportioning the costs of the expansion to the anticipated users of the service. This legislation may have the effect of delaying or deterring entirely very necessary sewer extensions in regions of growth with the highest need.

Response:

Some argue that this legislation may well facilitate sewer extension projects that are now stymied by resistant taxpayers who will not countenance connection fees of several thousands of dollars to a new sewer system when they have recently paid a similar sum for the periodic maintenance of their septic fields.

POSITIONS:

The Mayor of Troy and the Troy City Council support the bill. (11-5-03)

The Michigan Association of Home Builders supports the bill. (11-4-03)

The Department of Environmental Quality opposes the bill. (11-5-03)

The Michigan Association of Counties opposes the bill. (11-5-03)

The Michigan Townships Association opposes the bill. (11-5-03)

The Michigan Association of Local Public Health opposes the bill. (11-4-03)

The Livingston County Department of Public Health has raised objections to the bill. (10-27-03)

Analyst: J. Hunault

■ 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.