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BILL ANALYSIS



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Senate Bill 472 (as enacted)
Sponsor: Senator Howard C. Walker
Senate Committee: Local Government and Elections
House Committee: Local Government

PUBLIC ACT 166 of 2014

Date Completed: 7-27-15

CONTENT

The bill amended the State Survey and Remonumentation Act to do the following:

- Re-establish the State Survey and Monumentation Commission, revise its membership, and require the Governor to appoint the members by January 1, 2015.
- Require members of the Commission to be reimbursed from the State Survey and Remonumentation Fund, rather than the General Fund.
- Transfer duties previously carried out by the Commission to the Department of Licensing and Regulatory Affairs (LARA), and revise these duties.
- Require LARA to coordinate memoranda of understanding with other agencies regarding promotion of the Act; and coordinate and administer a grant program for counties to implement the Act.
- Require LARA to promulgate rules to implement the bill's amendments.
- By the second March 1 after LARA promulgates rules, require each county to submit to LARA for approval in consultation with the Commission a county plan or revised plan that complies with the Act and the rules.
- Require a county to establish a perpetual monument maintenance plan, as well as a monumentation and remonumentation plan.
- Delete a provision allowing two or more contiguous counties to submit a multicounty monumentation and remonumentation plan.
- Prohibit a county from expediting its plan or spending or borrowing money to expedite its plan after the bill's effective date.
- Require an annual grant to a county to be at least 40% of certain recording fees collected in the county to implement its monumentation and remonumentation plan, and at least 20% of those fees to implement its perpetual monument maintenance plan.
- Require LARA to spend at least the same percentages if the Department initiates and contracts for implementation of a county's monumentation and remonumentation plan or perpetual monument maintenance plan.
- Require a county board of commissioners to appoint a grant administrator to oversee the county's obligations and money associated with the Act.
- Require a county board of commissioners to appoint a peer review group to review and provide advice on original survey corners presented by surveyors before the county accepts the corners for filing under the county plan.
- Allow a county aggrieved by a LARA decision to contest it as a contested case under the Administrative Procedures Act.
- Require LARA to consult with and consider recommendations of the Commission in promulgating rules or adopting guidelines related to administration of the Act.
- Require the employee in direct charge of the State Survey and Remonumentation Section in LARA to be a licensed professional surveyor.

The bill took effect on June 12, 2014.

State Survey & Remonumentation Commission

The State Survey and Remonumentation Commission exists within LARA and is responsible for activities specified in the Act. Members must be appointed by the Governor with the advice and consent of the Senate. Previously, the Commission consisted of one member representing the general public and four licensed professional surveyors, including three residents of designated areas of the State. In addition, under the bill, the Commission includes an additional member representing the general public and one member who is a grant administrator (described below). The bill also requires that one of the surveyor members serve as a county representative, rather than as a county surveyor as required previously. The bill required all members to be appointed by January 1, 2015.

Of the seven members first appointed after the bill's effective date, one had to be appointed for a term of one year, two for terms of two years each, two for terms of three years each, and two for terms of four years each. As previously required, successors must be appointed for four-year terms.

Members of the Commission serve without compensation, but must be reimbursed for actual and necessary expenses in accordance with standards established annually by the Legislature for similar boards and commissions. Previously, members were reimbursed from the General Fund. Under the bill, they must be reimbursed from the State Survey and Remonumentation Fund.

The bill requires the Commission to meet at least twice each year.

Commission Duties: Transfer to LARA

With some revisions, the bill transferred from the Commission to LARA all of the duties previously assigned to the Commission, except those that the bill eliminated.

The transferred duties included coordinating the restoration, maintenance, and preservation of the land survey records of vertical and horizontal monuments, the Public Land Survey System, and the property controlling corners established by the U.S. Public Land Survey and the National Geodetic Survey within Michigan. The bill retained this responsibility except in regard to property controlling corners.

The duties also included establishing, maintaining, and providing safe storage facilities for a comprehensive system of recordation and dissemination of land information records. Under the bill, LARA has the responsibility to establish policy to maintain and provide safe storage of records required to be filed under the Act.

Additionally, the duties included fostering, encouraging, and promoting the establishment of remonumentation programs in every Michigan county. The bill refers to county plans, rather than remonumentation programs, for each county. Also, the bill requires LARA to review county plans for approval after they are submitted.

The bill added to LARA's responsibilities coordinating memoranda of understanding with other State, Federal, and local agencies to promote the activities necessary, incidental, or appropriate to promote the Act.

The bill eliminated the following duties:

- Coordinating the restoration, establishment, maintenance, and preservation of other boundary records otherwise established by law or considered important.
- Coordinating the extension, densification, and maintenance of the horizontal and vertical control networks initiated by the Federal government through the National Geodetic Survey and the U.S. Geological Survey.
- Coordinating the collection and preservation of information obtained from surveys made by people or organizations authorized to establish monuments or land boundaries, and assisting in proper recording of monuments or land boundaries by county surveyors or registers of deeds.

- Establishing and maintaining a data base of information on approved monumented vertical and horizontal control in Michigan.

Previously, in each odd-numbered year, the Commission was required to submit to the Legislature a report summarizing the Commission's activities regarding administration of the Act and providing other related information. Under the bill, LARA must submit a similar report. The bill expanded the information required in the report to include a statement of the amount of money disbursed from the Fund to each grantee, the average amount of money spent per corner by each grantee, and the percentage of work completed by each grantee in its county plan.

Previously, the Act required the Commission to appoint an executive director, who, under the direction of the Commission, had to carry out the routine duties delegated to him or her by the Commission. The executive director had to retain employees, including at least one licensed surveyor and adequate secretarial staff, as he or she considered necessary. The bill deleted all of these provisions.

The bill requires the employee in direct charge of LARA's State survey and remonumentation section who performs services for the LARA Director under the Act to be licensed as a professional surveyor under the Occupational Code.

Previously, the Commission had to enter into a contract with a geodetic advisor qualified to perform the duties pertaining to coordination of control networks initiated by the Federal government. The bill deleted this requirement.

Previously, "county plan" meant a county monumentation and remonumentation plan under the Act. Under the bill, the term also includes a county perpetual monument maintenance plan.

Previously, "property controlling corner" for a property meant a Public Land Survey corner or any property corner that did not lie on a property line of the property in question but that controlled the location of one or more of its corners. Under the bill, the term means either of the following:

- A position misidentified as and used as an original or protracted Public Land Survey corner that serves to control property lines.
- Any other corner approved by LARA, acting in consultation with the Commission.

The bill defines "original public land survey corner" as a corner established and monumented pursuant to orders and instructions issued by the U.S. government for the purposes of delineating U.S. public land and private land or subdividing public land for conveyance. "Protracted public land survey corner" means either of the following:

- A closing quarter section position along a township or range line or a center quarter section position that was not actually monumented on the ground in the field notes of the original U.S. government survey, but that serves to complete the nominal half-mile grid of government corners.
- A monumented position that is not an original Public Land Survey corner, lying on a section line or quarter line near a body of water, that serves to define the section or quarter line in lieu of a submerged government position or an omitted meander position.

The bill defines "monumentation" as all land surveying activities performed by a surveyor to monument a protracted Public Land Survey corner under the Act and in accordance with the laws of Michigan. "Re monumentation" means all land surveying activities performed by a surveyor to perpetuate a previously monumented original Public Land Survey corner, protracted Public Land Survey corner, or property controlling corner as provided in the Act.

County Plan

The Act requires each county to establish a county monumentation and remonumentation plan. By January 1, 1994, each county had to submit a county plan that was approved by the Commission.

If a county failed to establish and submit an approved plan by that date, the Commission had to initiate and contract for the implementation of a plan in that county.

Previously, the Act required the Commission to create and distribute a model county plan that a county could adopt with any changes appropriate for that county. Under the bill, LARA must create and distribute the model plan in consultation with the Commission.

The bill requires a county to establish a county monumentation and remonumentation plan and a perpetual monument maintenance plan. By the second March 1 after LARA promulgates rules to implement the bill's amendments, each county must submit to the Department for approval, in consultation with the Commission, a county plan or, if the county has submitted a plan previously, a revised county plan that complies with the bill's amendments and any rules promulgated after the bill's effective date and before the plan or revised plan is to be submitted.

Previously, a county plan had to provide for the monumentation or remonumentation of the entire county, within 20 years, under the guidelines of the Manual of Instructions for the Survey of the Public Lands of the United States prepared by the Bureau of Land Management of the U.S. Department of the Interior. Under the bill, instead, the plan must provide for a monumentation and remonumentation plan that provides for the remonumentation of all of the original Public Land Survey corners and any associated property controlling corners, as well as the monumentation or remonumentation of all of the protracted Public Land Survey corners and any associated property controlling corners, identified in the county plan. The monumentation and remonumentation must consist of the following:

- The filing of a land corner recordation certificate pursuant to the requirements of the Corner Recordation Act for each original and protracted Public Land Survey corner in the county.
- The inclusion in the certificate of any property controlling corner associated with the original or protracted corner that is the subject of the certificate.
- The filing of geodetic coordinates for each original and protracted corner in the county.

The bill also requires a county plan to provide for the filing with LARA of copies of all recorded land corner recordation certificates produced pursuant to the plan. Previously, a county plan had to provide for the provision of survey monumentation information produced by the plan to the county surveyor and the Commission. The bill also eliminated a requirement that a county plan provide for the filing with the county surveyor and the Commission of copies of all monumentation or remonumentation documents required to be recorded with the register of deeds under the Corner Recordation Act or Public Act 132 of 1970 (which governs certified surveys).

In addition, the bill requires a county plan to provide for the exclusion or addition by the county of original or protracted Public Land Survey corners, with the approval of LARA acting in consultation with the Commission.

Previously, the Act required a county plan to include a perpetual monument maintenance plan that provided for all corners to be checked, and if necessary remonumented, at least once every 20 years. Under the bill, instead, a county plan must include a perpetual monument maintenance plan that provides for all original or protracted Public Land Survey corners included in the county plan, as well as associated geodetic coordinates, to be maintained by requiring the filing of a land corner recordation certificate as required by the Corner Recordation Act, as necessary.

Additionally, the bill requires a county plan to provide for a peer review group (described below).

The bill deleted a provision allowing two or more contiguous counties to submit a multicounty plan as long as it met the same requirements within each member county as those established for a county plan. The bill also deleted references to multicounty plans throughout the Act.

Under the bill, if a county fails to establish and submit a plan or revised plan, LARA must initiate and contract for implementation of a plan in that county as prescribed in the Act. Until June 12, 2014, after the establishment and approval of a county plan, a county could spend or borrow money to expedite plan completion. If a county elected to do this, LARA had to enter into a contract

to provide that the costs to expedite the plan were reimbursed or paid from the Fund. (Previously, the Act contained generally the same requirements but referred to the Commission, rather than LARA.)

The bill prohibits a county from expediting its county plan or spending or borrowing money to expedite its plan after June 12, 2014. A county that expedited its plan or spent or borrowed money to do so before that date had to either have a contract with LARA on file with the Department or execute one by June 12, 2015.

Previously, upon the establishment and approval of a county or multicounty plan, a county could by resolution of its board of commissioners issue bonds payable primarily from the money received or to be received under the contract. The bonds could be secured by a limited tax full faith and credit pledge of the county. The bill deleted these provisions.

Under the bill, a county plan may provide for the support by a county program of the extension, densification, upgrade, and maintenance of active and passive geodetic control stations.

County Board of Commissioners Appointments

The Act provides that the county surveyor in each county is the county representative for all surveying projects approved by or initiated under the Act. In a county that does not have a county surveyor, a licensed professional surveyor must be appointed and perform these duties. The bill requires the county board of commissioners to make the appointment.

The bill also requires a county board of commissioners to appoint a grant administrator to be responsible for and oversee the county's obligations and money associated with the Act.

In addition, the bill requires a county board of commissioners to appoint a county peer review group to act as a panel of surveyors to review and provide advice on original or protracted Public Land Survey corners for filing under its county plan.

Survey & Remonumentation Fund

The Act prescribes the purposes for which money in the Fund may be used. The purposes include annual grants to counties to implement their monumentation and remonumentation plans. Under the bill, such an annual grant must be in an amount that is equal to at least 40% of the money collected in that county under Section 2567a of the Revised Judicature Act (RJA) during the State fiscal year that began two years before the beginning of the State fiscal year in which the grant is made. A similar provision requires LARA (rather than the Commission) to spend the same amount if it initiates and contracts for implementation of a county plan. Previously, these amounts had to be at least 40% of the amount collected during the calendar year before the year in which the grant or expenditure was made.

(Section 2657a of the Revised Judicature Act requires the county register of deeds to collect a fee of \$4 for recording any instrument. The fees, minus administration costs, must be remitted to the State Treasurer for deposit in the Fund.)

The purposes also include annual grants to counties to implement their perpetual monument maintenance plan. Previously, not more than 5% of the total amount of the Fund could be made available for these grants. The bill deleted that limit. Additionally, the bill specifies that such a grant must be equal to at least 20% of the amount collected in that county under Section 2567a of the RJA during the State fiscal year that began two years before the beginning of the State fiscal year in which the grant is made. The bill requires LARA to spend a similar amount for the purposes of a perpetual monument maintenance plan, if it initiates and contracts for the implementation of a county plan.

The Act prescribes conditions that an applicant must meet in order to receive a grant to implement a monumentation and remonumentation plan. The bill deleted a requirement that the applicant

had established a county plan or a multicounty plan that had been approved by the Commission by December 31 of the calendar year before the year in which the grant was made.

Previously, the Commission could not make a grant for a perpetual monument maintenance plan unless the applicant demonstrated that it had completed its monumentation and remonumentation plan. Under the bill, LARA must make such a grant if the applicant demonstrates that it has completed the monumentation and remonumentation plan or voluntarily chooses to proceed to the perpetual monument maintenance plan.

Rules

The Act requires the Department of Licensing and Regulatory Affairs to promulgate rules to implement the Act. In doing so, LARA must consult with and consider recommendations provided by the Commission. Under the bill, this requirement also applies when LARA adopts a guideline related to the administration of the Act.

The bill also requires LARA to promulgate rules to implement the Act as amended.

Contested Decision

Under the bill, if a county is aggrieved by a LARA decision that affects the county made under the Act or related rules, the county may contest it as a contested case under the Administrative Procedures Act.

MCL 54.262 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill has a neutral fiscal impact on the Department of Licensing and Regulatory Affairs and a neutral fiscal impact on local units of government.

The bill re-created the State Survey and Remonumentation Commission, which must meet at least twice annually. Members of the Commission are unpaid, but are reimbursed for travel and other costs, which are paid by LARA, presumably from the Survey and Remonumentation Fund.

The bill requires grants from the Survey and Remonumentation Fund for implementation of perpetual maintenance plans to be not less than 20% of the revenue from certain recording fees collected from the county receiving the grant. The bill also includes a similar requirement for counties where LARA has contracted for the perpetual maintenance plan. These changes will have an indeterminate effect on the amounts awarded to or spent in each county, but will ultimately not affect the total amount of funds available for all counties collectively.

Fiscal Analyst: Josh Sefton

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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.