

SENATE BILL No. 1117

October 18, 2016, Introduced by Senators KOWALL and JONES and referred to the
Committee on Government Operations.

A bill to amend 1956 PA 40, entitled
"The drain code of 1956,"
by amending sections 21, 21a, and 464 (MCL 280.21, 280.21a, and
280.464), section 21 as amended by 2007 PA 51 and section 21a as
added and section 464 as amended by 1989 PA 134.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21. (1) At the general election to be held in November,
2 1976, and each fourth year after November, 1976, a county drain
3 commissioner shall be elected in each county having a drain
4 commissioner by the qualified electors of the county. The term of
5 office of a commissioner shall begin on the January 1 following the
6 drain commissioner's election and continue for a period of 4 years
7 and until his or her successor is elected and qualified, whichever
8 occurs earlier. If a drain commissioner is unable to execute the

1 duties of his or her office and a deputy commissioner has not been
2 appointed under section 24, the county clerk and prosecuting
3 attorney of that county may appoint a temporary replacement to hold
4 the office until the commissioner is able to return to his or her
5 duties or until the expiration of the commissioner's term of
6 office. The temporary replacement shall perform the same duties,
7 have the same responsibilities, and receive the same compensation
8 as the drain commissioner. The appointment shall be made in writing
9 and filed with the clerk of the county. If a vacancy in the office
10 of drain commissioner arises while an individual is serving as
11 temporary drain commissioner, the temporary drain commissioner
12 shall have all the powers and duties of a drain commissioner until
13 a drain commissioner is elected or appointed. As determined by the
14 county board of commissioners, a temporary drain commissioner shall
15 be covered by a blanket bond or shall file a bond with the county
16 clerk in a sum not less than \$100,000.00, conditioned upon the
17 faithful discharge of his or her duties.

18 (2) As determined by the county board of commissioners, the
19 county drain commissioner shall be covered by a blanket bond or
20 before entering upon the duties of office, shall execute and file
21 with the county clerk a bond to the people of the state in the
22 penal sum of \$100,000.00, issued by a surety company licensed to do
23 business in this state, conditioned upon the faithful discharge of
24 the duties of the office. The county board of commissioners may fix
25 the individual bond to be required of the commissioner at a
26 different amount if, in its judgment, that is desirable.

27 (3) The county board of commissioners of a county having a

1 population of less than 12,000, by resolution of a 2/3 vote of the
2 members elect, may abolish the office of county drain commissioner
3 and transfer the powers and duties of the office to the board of
4 county road commissioners.

5 (4) If a county establishes a department of public works
6 pursuant to 1957 PA 185, MCL 123.731 to 123.786, or a public
7 improvement agency with the drain commissioner designated as the
8 county agent pursuant to the county public improvement act of 1939,
9 1939 PA 342, MCL 46.171 to 46.188, the county board of
10 commissioners, by resolution of a 2/3 vote of the members elected
11 and serving, may combine the powers, duties, and functions set
12 forth in 1957 PA 185, MCL 123.731 to 123.786, the county public
13 improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188, and
14 this act into 1 county department headed by a public works
15 commissioner. The public works commissioner shall be elected in the
16 same manner and for the same term as a drain commissioner and shall
17 carry out the powers and duties of a drain commissioner.

18 (5) ~~A resolution provided for in subsection (4) may not be~~
19 ~~adopted unless~~ **BEFORE ADOPTING A RESOLUTION UNDER SUBSECTION (4),**
20 the county board of commissioners ~~has first held~~ **SHALL HOLD** at
21 least 1 generally publicized public hearing on the resolution.

22 (6) Not less than 3 years after a county establishes the
23 office of public works commissioner pursuant to subsections (4) and
24 (5), or a public improvement agency, the county board of
25 commissioners, by resolution approved by a 2/3 vote of the members
26 elected and serving, may abolish the office of public works
27 commissioner not less than 6 months before the next primary

1 election for that office. The office of public works commissioner
 2 shall be abolished in the county effective 180 days after a ~~THE~~
 3 resolution is adopted. ~~pursuant to this subsection.~~ The office
 4 shall then be referred to as the drain commissioner, and the person
 5 in office ~~at the time a~~ **WHEN THE** resolution of ~~abolishment is~~
 6 ~~passed~~ **IS ADOPTED** shall fulfill the remainder of the term of office
 7 until the next general election.

8 (7) ~~A~~ **IF A** county ~~that~~ is organized under 1966 PA 293, MCL
 9 45.501 to 45.521, ~~whose~~ **AND THE COUNTY** charter prescribes an
 10 elected county executive, ~~and which county has a population of more~~
 11 ~~than 2,000,000 at the time the charter is adopted, shall be~~
 12 ~~governed by~~ **THE COUNTY IS SUBJECT TO** section 21a ~~in place~~ **INSTEAD**
 13 of this section.

14 (8) Except for a county ~~subject to~~ **DESCRIBED IN** subsection
 15 (7), if a drain commissioner performs functions other than acting
 16 as a drain commissioner under this act, including, but not limited
 17 to, operating sewers, lake level and soil erosion enforcement, and
 18 facilitating compliance with federal clean water act mandates, a
 19 **THE** county may, by resolution of the majority of the members
 20 elected and serving on the board of commissioners and with the
 21 consent of the drain commissioner, change the name of the office of
 22 the drain commissioner to the office of the water resources
 23 commissioner. The water resources commissioner shall be elected in
 24 the same manner as a drain commissioner and carry out the powers
 25 and duties of a drain commissioner as provided in this act.

26 Sec. 21a. ~~In~~ **IF** a county **IS** organized under a ~~charter adopted~~
 27 ~~under Act No. 293 of the Public Acts of 1966, being sections 45.501~~

1 to ~~45.521 of the Michigan Compiled Laws, whose 1966 PA 293, MCL~~
 2 **45.501 TO 45.521, AND THE COUNTY** charter prescribes an elected
 3 county executive, and ~~which county has a population of more than~~
 4 ~~2,000,000 at the time the charter is adopted,~~ the powers and duties
 5 of the drain commissioner, ~~under this act,~~ shall be performed by
 6 a person or persons designated in accordance with the county's
 7 charter.

8 Sec. 464. (1) ~~There~~ **A DRAINAGE BOARD** is created for each
 9 project petitioned for under this chapter. ~~, a drainage board that,~~
 10 ~~except~~ **EXCEPT** as otherwise provided in subsection (2), **THE DRAINAGE**
 11 **BOARD** shall consist of the drain commissioner of the county, the
 12 chairperson of the county board of commissioners, and the
 13 chairperson of the board of county auditors. If there is no board
 14 of county auditors in the county, then the chairperson of the
 15 finance committee of the county board of commissioners shall ~~act as~~
 16 **BE** a member of the drainage board. ~~, and if~~ **IF** there is neither a
 17 board of county auditors nor finance committee, then the
 18 chairperson of the county board of commissioners shall select from
 19 time to time 1 member of the county board of commissioners to ~~act~~
 20 ~~as~~ **BE** a member of the drainage board. If a member of the drainage
 21 board who is a ~~commissioner,~~ **MEMBER OF THE COUNTY BOARD OF**
 22 **COMMISSIONERS**, as provided in this section or section 487, is
 23 interested in a project petitioned for under this chapter, by
 24 reason of his or her holding an elected or appointed office in a
 25 public corporation to be assessed for the cost of the project, he
 26 or she is disqualified to act as a member of the drainage board
 27 with respect to the project. In ~~such~~ **THAT** case the vice-chairperson

1 or chairperson pro tempore of the county board of commissioners or
2 of the finance committee of the county board of commissioners, if
3 not also disqualified, shall act as the member. If the vice-
4 chairperson or chairperson pro tempore is disqualified, the drain
5 commissioner of the county shall designate a member of the county
6 board of commissioners who is not disqualified to act as a member
7 of the drainage board for the project. The chairperson of the
8 county board of commissioners and any member of a county board of
9 commissioners serving on the drainage board shall receive the
10 compensation, mileage, and expenses as provided by the drainage
11 board. However, compensation paid to a member shall not exceed
12 \$25.00 per diem, exclusive of mileage and expenses, for attendance
13 at drainage board meetings. The county drain commissioner shall be
14 chairperson of the drainage board. The chairperson shall keep
15 minutes of the proceedings of the drainage board and all records
16 and files of the board shall be kept in his or her office. In
17 counties of less than 500,000 population, the commissioner shall be
18 paid the same compensation as other members of the drainage board.

19 (2) ~~In~~ **IF** a county **IS** organized under a charter adopted under
20 ~~Act No. 293 of the Public Acts of 1966, being sections 45.501 to~~
21 ~~45.521 of the Michigan Compiled Laws, that has a population of more~~
22 ~~than 2,000,000 at the time the charter is adopted and whose~~ **1966 PA**
23 **293, MCL 45.501 TO 45.521, AND THE** charter prescribes an elected
24 county executive, the drainage board shall consist of the following
25 members:

26 (a) The person designated by the charter to carry out the
27 administrative duties of the drain commissioner or that person's

1 designee, who shall also serve as chairperson of the drainage
2 board.

3 (b) The county commissioner whose district will be assessed
4 for the greatest portion of the cost of the project, or that county
5 commissioner's designee. The determination of which county
6 commissioner is qualified to sit under this subdivision shall
7 initially be made by the chairperson of the drainage board ~~at the~~
8 ~~time~~ **WHEN** the petition for the project is filed. After the final
9 order of apportionment is issued under section 469, the county
10 commissioner who qualifies under this section shall become the
11 county commissioner member and serve until another apportionment is
12 established requiring the seating of another commissioner.

13 (c) A person appointed by the county executive with the advice
14 and consent of a majority of the members of the county board of
15 commissioners elected or appointed and serving.

16 (3) In a county described in subsection (2), the requirements
17 in this chapter for substantive actions and determinations shall be
18 followed in administering each project petitioned for under this
19 chapter, subject to and in accordance with any applicable
20 provisions of the county charter.

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.