

**THE DRAIN CODE OF 1956 (EXCERPT)**  
**Act 40 of 1956**

**280.21 County drain commissioner; election; term; temporary replacement; vacancy; bond; abolishment of office in certain counties; transfer of power and duties; effect of establishing department of public works or public improvement agency; election of public works commissioner; public hearing; abolishing office of public works commissioner; referring to office as drain commissioner; county governed by MCL 280.21a; change of name to office of water resources commissioner; criteria.**

Sec. 21. (1) At the general election to be held in November, 1976, and each fourth year after November, 1976, a county drain commissioner shall be elected in each county having a drain commissioner by the qualified electors of the county. The term of office of a commissioner shall begin on the January 1 following the drain commissioner's election and continue for a period of 4 years and until his or her successor is elected and qualified, whichever occurs earlier. If a drain commissioner is unable to execute the duties of his or her office and a deputy commissioner has not been appointed under section 24, the county clerk and prosecuting attorney of that county may appoint a temporary replacement to hold the office until the commissioner is able to return to his or her duties or until the expiration of the commissioner's term of office. The temporary replacement shall perform the same duties, have the same responsibilities, and receive the same compensation as the drain commissioner. The appointment shall be made in writing and filed with the clerk of the county. If a vacancy in the office of drain commissioner arises while an individual is serving as temporary drain commissioner, the temporary drain commissioner shall have all the powers and duties of a drain commissioner until a drain commissioner is elected or appointed. As determined by the county board of commissioners, a temporary drain commissioner shall be covered by a blanket bond or shall file a bond with the county clerk in a sum not less than \$100,000.00, conditioned upon the faithful discharge of his or her duties.

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

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

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

(5) A resolution provided for in subsection (4) may not be adopted unless the county board of commissioners has first held at least 1 generally publicized public hearing on the resolution.

(6) Not less than 3 years after a county establishes the office of public works commissioner pursuant to subsections (4) and (5), or a public improvement agency, the county board of commissioners, by resolution approved by a 2/3 vote of the members elected and serving, may abolish the office of public works commissioner not less than 6 months before the next primary election for that office. The office of public works commissioner shall be abolished in the county effective 180 days after a resolution is adopted pursuant to this subsection. The office shall then be referred to as the drain commissioner and the person in office at the time a resolution of abolishment is passed shall fulfill the remainder of the term of office until the next general election.

(7) A county that is organized under 1966 PA 293, MCL 45.501 to 45.521, whose charter prescribes an elected county executive, and which county has a population of more than 2,000,000 at the time the charter is adopted, shall be governed by section 21a in place of this section.

(8) Except for a county subject to subsection (7), if a drain commissioner performs functions other than acting as a drain commissioner under this act, including, but not limited to, operating sewers, lake level and

soil erosion enforcement, and facilitating compliance with federal clean water act mandates, a county may, by resolution of the majority of the members elected and serving on the board of commissioners and with the consent of the drain commissioner, change the name of the office of the drain commissioner to the office of the water resources commissioner. The water resources commissioner shall be elected in the same manner as a drain commissioner and carry out the powers and duties of a drain commissioner as provided in this act.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, 2nd Ex. Sess., Act 13, Imd. Eff. Dec. 27, 1963;—Am. 1965, Act 9, Eff. Mar. 31, 1966;—Am. 1968, Act 252, Eff. Nov. 15, 1968;—Am. 1974, Act 170, Eff. Apr. 1, 1975;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979;—Am. 1989, Act 134, Imd. Eff. June 29, 1989;—Am. 2007, Act 51, Imd. Eff. Aug. 28, 2007.

**Popular name:** Act 40