

# HOUSE BILL No. 5216

July 28, 2009, Introduced by Rep. Rick Jones and referred to the Committee on Intergovernmental and Regional Affairs.

A bill to amend 1956 PA 40, entitled "The drain code of 1956," by amending section 21 (MCL 280.21), as amended by 2007 PA 51.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 21. (1) At the general election to be held in November 7  
2 ~~1976-2008~~, and each fourth year after November 7, ~~1976-2008~~, a  
3 county drain commissioner shall be elected in each county having a  
4 drain commissioner by the qualified electors of the county. The  
5 term of office of a commissioner shall begin on the January 1  
6 following the drain commissioner's election and continue for a  
7 ~~period of 4 years and~~ OR until his or her successor is elected and  
8 qualified, whichever occurs earlier.

9           (2) If a drain commissioner is unable to execute the duties of  
10 his or her office and a deputy commissioner has not been appointed

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

17 (3) ~~(2)~~—As determined by the county board of commissioners,  
18 the county drain commissioner shall be covered by a blanket bond  
19 or, before entering upon the duties of office, shall execute and  
20 file with the county clerk a bond to the people of ~~the~~**THIS** state,  
21 ~~in the penal sum of \$100,000.00,~~ issued by a surety company  
22 licensed to do business in this state ~~,~~**AND** conditioned upon the  
23 faithful discharge of the duties of the office. ~~The~~**AN INDIVIDUAL**  
24 **BOND SHALL BE IN THE AMOUNT OF \$100,000.00, UNLESS THE** county board  
25 of commissioners ~~may fix the individual bond to be required of the~~  
26 ~~commissioner at a different amount if, in its judgment, that is~~  
27 ~~desirable~~**SETS A DIFFERENT AMOUNT.**

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

6           (5) THE COUNTY BOARD OF COMMISSIONERS OF A COUNTY HAVING A  
7 POPULATION OF 12,000 OR MORE BUT LESS THAN 35,000, WITH THE WRITTEN  
8 APPROVAL OF THE INCUMBENT COUNTY DRAIN COMMISSIONER, MAY, BY  
9 RESOLUTION ADOPTED BY A 2/3 VOTE OF THE MEMBERS ELECT, DIRECT THE  
10 COUNTY CLERK TO PLACE ON THE BALLOT, AT THE AUGUST PRIMARY OR  
11 NOVEMBER GENERAL ELECTION TO BE HELD IN 2010 OR ANY FOURTH YEAR  
12 THEREAFTER, THE QUESTION OF ABOLISHING THE OFFICE OF THE COUNTY  
13 DRAIN COMMISSIONER AND TRANSFERRING THE POWERS AND DUTIES OF THE  
14 OFFICE TO THE BOARD OF COUNTY ROAD COMMISSIONERS. IF A MAJORITY OF  
15 THE ELECTORS VOTING ON THE QUESTION APPROVE, THE OFFICE OF COUNTY  
16 DRAIN COMMISSIONER IN THAT COUNTY IS ABOLISHED AND THE POWERS AND  
17 DUTIES OF THE OFFICE ARE TRANSFERRED TO THE BOARD OF COUNTY ROAD  
18 COMMISSIONERS EFFECTIVE JANUARY 1 OF THE THIRD YEAR AFTER THE  
19 ELECTION.

20           (6) IF A COUNTY HAS ABOLISHED THE OFFICE OF COUNTY DRAIN  
21 COMMISSIONER UNDER SUBSECTION (5), THE COUNTY BOARD OF  
22 COMMISSIONERS MAY, BY RESOLUTION ADOPTED BY A 2/3 VOTE OF THE  
23 MEMBERS ELECT, DIRECT THE COUNTY CLERK TO PLACE ON THE BALLOT, AT  
24 THE AUGUST PRIMARY OR NOVEMBER GENERAL ELECTION TO BE HELD IN 2010  
25 OR ANY FOURTH YEAR THEREAFTER, THE QUESTION OF REESTABLISHING THE  
26 OFFICE OF THE COUNTY DRAIN COMMISSIONER AND TRANSFERRING THE POWERS  
27 AND DUTIES OF THE OFFICE FROM THE BOARD OF COUNTY ROAD

1 COMMISSIONERS TO THE COUNTY DRAIN COMMISSIONER. IF A MAJORITY OF  
2 THE ELECTORS VOTING ON THE QUESTION APPROVE, THE OFFICE OF COUNTY  
3 DRAIN COMMISSIONER IN THAT COUNTY IS REESTABLISHED AND THE POWERS  
4 AND DUTIES OF THE OFFICE ARE TRANSFERRED FROM THE BOARD OF COUNTY  
5 ROAD COMMISSIONERS EFFECTIVE JANUARY 1 OF THE THIRD YEAR AFTER THE  
6 ELECTION.

7 (7) ~~(4)~~—If a county establishes a department of public works  
8 pursuant to 1957 PA 185, MCL 123.731 to 123.786, or a public  
9 improvement agency with the drain commissioner designated as the  
10 county agent ~~AGENCY~~ pursuant to the county public improvement act  
11 of 1939, 1939 PA 342, MCL 46.171 to 46.188, the county board of  
12 commissioners, by resolution of a 2/3 vote of the members elected  
13 and serving, may combine the powers, duties, and functions set  
14 forth in 1957 PA 185, MCL 123.731 to 123.786, the county public  
15 improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188, and  
16 this act into 1 county department headed by a public works  
17 commissioner. The public works commissioner shall be elected in the  
18 same manner and for the same term as a drain commissioner and shall  
19 carry out the powers and duties of a drain commissioner. ~~(5)~~—A  
20 resolution ~~provided for in subsection (4)~~ may **SHALL** not be adopted  
21 **UNDER THIS SUBSECTION** unless the county board of commissioners has  
22 first held at least 1 generally publicized public hearing on the  
23 resolution.

24 (8) ~~(6)~~—Not less than 3 years after a county establishes the  
25 office of public works commissioner pursuant to ~~subsections (4) and~~  
26 ~~(5)~~ **SUBSECTION (7)**, or a public improvement agency, the county  
27 board of commissioners, by resolution approved by a 2/3 vote of the

1 members ~~elected and~~ serving, may abolish the office of public works  
2 commissioner not less than 6 months before the next primary  
3 election for that office. The office of public works commissioner  
4 ~~shall be~~ **IS** abolished in the county effective 180 days after a  
5 resolution is adopted pursuant to this subsection. The office shall  
6 then be referred to as the drain commissioner and the person in  
7 office ~~at the time a~~ **WHEN THE** resolution ~~of abolishment is passed~~  
8 **UNDER THIS SUBSECTION IS ADOPTED** shall fulfill the remainder of the  
9 term of office until the next general election.

10 (9) ~~(7) A county that is organized under 1966 PA 293, MCL~~  
11 ~~45.501 to 45.521, whose charter prescribes an elected county~~  
12 ~~executive, and which county has a population of more than 2,000,000~~  
13 ~~at the time the charter is adopted, shall be governed by section~~  
14 ~~21a in place of this section.~~ **THIS SECTION IS SUBJECT TO SECTION**  
15 **21A.**

16 (10) ~~(8) Except for a county subject to subsection (7)~~ **SECTION**  
17 **21A**, if a drain commissioner performs functions other than acting  
18 as a drain commissioner under this act, including, but not limited  
19 to, operating sewers, lake level and soil erosion enforcement, and  
20 facilitating compliance with **THE** federal ~~clean water act mandates,~~  
21 ~~a county~~ **WATER POLLUTION CONTROL ACT, 33 USC 1251 TO 1387, THE**  
22 **COUNTY BOARD OF COMMISSIONERS** may, by resolution of the majority of  
23 the members ~~elected and serving on the board of commissioners and~~  
24 with the consent of the drain commissioner, change the name of the  
25 office of the drain commissioner to the office of the water  
26 resources commissioner. The water resources commissioner shall be  
27 elected in the same manner as a drain commissioner and carry out

1 the powers and duties of a drain commissioner as provided in this  
2 act.