

Act No. 134  
Public Act of 1989  
July 11, 1989  
Filed by the Secretary of State  
July 11, 1989

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1989**

Introduced by Reps. Kosteva and Gnodtke

# **ENROLLED HOUSE BILL No. 4727**

AN ACT to amend sections 4, 21, and 464 of Act No. 40 of the Public Acts of 1956, entitled as amended "An act to codify the laws relating to the laying out of drainage districts, the consolidation of drainage districts, the construction and maintenance of drains, sewers, pumping equipment, bridges, culverts, fords, and the structures and mechanical devices to properly purify the flow of drains; to provide for flood control projects; to provide for water management, water management districts, and subdistricts, and for flood control and drainage projects within drainage districts; to provide for the assessment and collection of taxes; to provide for the investment of funds; to provide for the deposit of funds for future maintenance of drains; to authorize public corporations to impose taxes for the payment of assessments in anticipation of which bonds are issued; to provide for the issuance of bonds by drainage districts and for the pledge of the full faith and credit of counties for payment of the bonds; to authorize counties to impose taxes when necessary to pay principal and interest on bonds for which full faith and credit is pledged; to validate certain acts and bonds; and to prescribe penalties," being sections 280.4, 280.21, and 280.464 of the Michigan Compiled Laws; and to add section 21a.

*The People of the State of Michigan enact:*

Section 1. Sections 4, 21, and 464 of Act No. 40 of the Public Acts of 1956, being sections 280.4, 280.21, and 280.464 of the Michigan Compiled Laws, are amended and section 21a is added to read as follows:

Sec. 4. As used in this act, "commissioner", "drain commissioner", or "county drain commissioner" means the elected county drain commissioner or the person or persons designated to perform the duties of the elected county drain commissioner as provided in sections 21 and 21a.

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 the 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.

(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 \$5,000.00, 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 Act No. 185 of the Public Acts of 1957, as amended, being sections 123.731 to 123.786 of the Michigan Compiled Laws, or a public improvement agency with the drain commissioner designated as the county agent pursuant to the county public improvement act of 1939, Act No. 342 of the Public Acts of 1939, as amended, being sections 46.171 to 46.188 of the Michigan Compiled Laws, 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 Act No. 185 of the Public Acts of 1957, as amended, Act No. 342 of the Public Acts of 1939, as amended, 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 Act No. 293 of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled Laws, 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.

Sec. 21a. In a county organized under a charter adopted under Act No. 293 of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled Laws, 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, the powers and duties of the drain commissioner, under this act, shall be performed by a person or persons designated in accordance with the county's charter.

Sec. 464. (1) There is created for each project petitioned for under this chapter, a drainage board that, except as otherwise provided in subsection (2), shall consist of the drain commissioner of the county, the chairperson of the county board of commissioners, and the chairperson of the board of county auditors. If there is no board of county auditors in the county, then the chairperson of the finance committee of the county board of commissioners shall act as a member of the drainage board, and if there is neither a board of county auditors nor finance committee, then the chairperson of the county board of commissioners shall select from time to time 1 member of the county board of commissioners to act as a member of the drainage board. If a member of the drainage board who is a commissioner, as provided in this section or section 487, is interested in a project petitioned for under this chapter, by reason of his or her holding an elected or appointed office in a public corporation to be assessed for the cost of the project, he or she is disqualified to act as a member of the drainage board with respect to the project. In such case the vice-chairperson or chairperson pro tempore of the county board of commissioners or of the finance committee of the county board of commissioners, if not also disqualified, shall act as the member. If the vice-chairperson or chairperson pro tempore is disqualified, the drain commissioner of the county shall designate a member of the county board of commissioners who is not disqualified to act as a member of the drainage board for the project. The chairperson of the county board of commissioners and any member of a county board of commissioners serving on the drainage board shall receive the compensation, mileage, and expenses as provided by the drainage board. However, compensation paid to a member shall not exceed \$25.00 per diem, exclusive of mileage and expenses, for attendance at drainage board meetings. The county drain commissioner shall be chairperson of the drainage board. The chairperson shall keep minutes of the proceedings of the drainage board and all records and files of the board shall be kept in his or her office. In counties of less than 500,000 population, the commissioner shall be paid the same compensation as other members of the drainage board.

(2) In a county organized under a charter adopted under Act No. 293 of the Public Acts of 1966, being sections 45.501 to 45.521 of the Michigan Compiled Laws, that has a population of more than 2,000,000 at the time the charter is adopted and whose charter prescribes an elected county executive, the drainage board shall consist of the following members:

(a) The person designated by the charter to carry out the administrative duties of the drain commissioner or that person's designee, who shall also serve as chairperson of the drainage board.

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

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

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

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.