

HB 5126 (H-6)
Legal Issues with Subdivision (1)(k) [MCL 46.11(1)(k)]

Summary of Legal Issues

1. Duplicative Bond Requirement
2. Duplicative and Inconsistent Provision for Removal of County Officers
3. Inconsistent Provision for Filling Vacancies in County Offices

Duplicative Bond Requirement (page 4, line 13)

HB 5126 / MCL 46.11(1)(k):

“A county board of commissioners, at a lawfully held meeting, may

...

(k) Require a county officer whose salary or compensation is paid by the county to . . . give a bond reasonable or necessary for the faithful performance of the duties of the office.”

MCL 168.204:

“Every person elected to an office named in section 200 of this act [county clerk, county treasurer, register of deeds, prosecuting attorney, sheriff, drain commissioner, surveyor, and board of commissioners] before entering upon the duties of his office, shall take and subscribe to the oath as provided in section 1 of article 11 of the state constitution and, with the exception of the prosecuting attorney, shall give bond in the amount and manner prescribed by law and shall deposit said oath with the county clerk and said bond with the county treasurer. The county treasurer shall file his bond with the county clerk.”

Duplicative and Inconsistent Removal Provisions (page 4, line 17)

HB 5126 / MCL 46.11(1)(k):

“An officer [of the county] who neglects or refuses either to make a report or give a bond within a reasonable time after being required to do so may be removed from office by the board [of commissioners] by a vote of 2/3 of the members elected or appointed, and the office declared vacant.”

MCL 168.207:

“The governor may remove any and all county officers named in section 200 of this chapter when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer has been guilty of official misconduct, or of wilful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this state that such officer, after his election or appointment, shall have been convicted of a felony. . . No officer who has been removed in accordance with the provisions of this section shall be eligible to election or appointment to any office for a period of 3 years from the date of such removal.”

Inconsistent Vacancy Filling Provisions (page 4, line 19)

HB 5126 / MCL 46.11(1)(k):

“The board may fill the vacancy for the unexpired portion of the term for which the officer was elected or appointed. If an election occurs before the expiration of the unexpired term, and if the office is elective, the vacancy shall be filled at that election. The board shall give reasonable notice of the election to fill the vacancy.”

MCL 168.209:

“If a vacancy occurs in an elective or appointive county office, it shall be filled in the following manner:

(1) If the vacancy is in the office of county clerk or prosecuting attorney, it shall be filled by appointment by the judge or judges of that judicial circuit.

(2) If the vacancy is in any other county office, the presiding or senior judge of probate, the county clerk, and the prosecuting attorney shall appoint a suitable person to fill the vacancy.

(3) A person appointed shall take and subscribe to the oath as provided in section 1 of article XI of the state constitution of 1963, give bond in the manner required by law, and hold office for the remainder of the unexpired term and until a successor is elected and qualified. However, if the next general November election is to be held more than 182 days after the vacancy occurs, and it is not the general November election at which a successor in office would be elected if there were no vacancy, the person appointed shall hold office only until a successor is elected at the next general November election in the manner provided by law and qualifies for office. The successor shall hold the office for the remainder of the unexpired term.”

When does a vacancy arise in a county office? Michigan law answers the question twice:

MCL 201.3 provides: “Every office shall become vacant, on the happening of any of the following events, before the expiration of the term of such office:

1. The death of the incumbent;
2. His resignation;
3. ***His removal from office;***
4. His ceasing to be an inhabitant of this state; or, if the office be local, of the district, county, township, city, or village, for which he shall have been appointed, or within which the duties of his office are required to be discharged;
5. His conviction of any infamous crime, or of any offense involving a violation of his oath of office;
6. The decision of a competent tribunal, declaring void his appointment, or,
7. His refusal or neglect to take his oath of office, or to give, or renew any official bond, or to deposit such oath, or bond, in the manner and within the time prescribed by law.” [Emphasis added.]

MCL 168.206 provides: “The office of county clerk, county treasurer, register of deeds, prosecuting attorney, sheriff, drain commissioner, surveyor or coroner in any county in this state shall become vacant upon the happening of any of the following events: Death of the incumbent; his resignation; ***his removal from office for cause;*** his ceasing to be a resident of the county in which his office is

located; his conviction of an infamous crime or an offense involving the violation of his oath of office; the decision of a competent tribunal declaring his election or appointment void; his refusal or neglect to take and subscribe to the constitutional oath of office and deposit the same in the manner and within the time prescribed by law; or his refusal or neglect to give bond in the amount and manner and within the time prescribed by law." [Emphasis added.]

A Fix:

Amend MCL 46.11(1)(k) as follows:

"(k) Require a county officer whose salary or compensation is paid by the county to make a report under oath to the county board of commissioners on any subject connected with the duties of that office and require the officer to give a bond reasonable or necessary for the faithful performance of the duties of the office **IF A BOND IS NOT REQUIRED UNDER SECTION 204 OF THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.204**. An officer who neglects or refuses either to make a report or give a bond within a reasonable time after being required to do so may be removed from office by the board by a vote of 2/3 of the members elected or appointed, and the office declared vacant, **IF THE OFFICER IS NOT SUBJECT TO REMOVAL UNDER SECTION 207 OF THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.207**. The board may fill the vacancy for the unexpired portion of the term for which the officer was elected or appointed, **IF THE VACANCY MAY NOT BE FILLED UNDER SECTION 209 OF THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.209**. If ~~an~~ **A GENERAL** election occurs before the expiration of the unexpired term, and if the office is elective, the vacancy shall be filled at that election. The board shall give reasonable notice of the election to fill the vacancy."

Questions?

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Senator _____ offered the following amendments to House Bill 5126 (H-6):

1. Amend page 4, line 14, after "office" by inserting "IF A BOND IS NOT REQUIRED UNDER SECTION 204 OF THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.204".

2. Amend page 4, line 18, after "vacant" by inserting a comma and "IF THE OFFICER IS NOT SUBJECT TO REMOVAL UNDER SECTION 207 OF THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.207".

3. Amend page 4, line 20, after "appointed" by inserting a comma and "IF THE VACANCY MAY NOT BE FILLED UNDER SECTION 209 OF THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.209".

4. Amend page 4, line 20, after "If" by striking out "an" and inserting "A GENERAL".

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