



September 4, 2019

SB 322 & 323 would make permanent Public Acts 236 & 237 of 2015 (HB 4212 & 4215), which extended the time frame of Public Act 14 and 15 of 2012 (HB 5125 & 5126). These bills originally enacted in February 2012 allows a county board of commissioners to "dissolve and transfer" the duties and responsibilities of their appointed and elected county road commissioners. It "eliminates" their duly elected road commissions by a simple county board majority resolution vote after two public hearings. In counties where road commissioners are appointed it's that simple. If elected road commissioners, the county board of commissioners shall put a question before voters to dissolve and transfer the duties and responsibilities of the road commission. If successful, the county board of commissioners would effectively become the "county road agencies" operating and adhering to the County Road Law, P.A. 51 of 1951 (MTF), the Michigan Vehicle Code, and any applicable federal and state transportation rules and regulations.

Some facts on county road commissions:

- 77 county road commissions.
- 6 county road departments (Wayne, Macomb, Ingham, Jackson, Calhoun and Berrien).
- 34 elected road commissions.
- 43 appointed road commissions.
- 1 road commission elected, transitioning to appointed (Otsego).
- 32 are 5-member road commission boards.
- 45 are 3-member road commission boards.
- Average road commissioner receives just under \$5,000 annual salary.
- Average per diem is just under \$50.00, several counties have no salary or per diem.
- Approximately one-third of road commissioners receive some sort of benefit; any benefits are set by the county board of commissioners.

Options already available for county board oversight of road commission:

- Determine if road commissioners are appointed or elected.
- Reappoint road commissioners.
- Set road commissioner salaries, benefits (if any).
- Can transfer road commission from elected to appointed and vice versa.

- Can remove commissioner(s) for inappropriate action (doesn't have to be malfeasance's or misfeasance's).
- Place a question on a local ballot to dissolve the road commission (appointed or elected).

Loss of specialized training:

- Unable to participate in specialized safety training.
- Don't receive weekly safety messages from insurance pools.

Why the County Road Association opposes SB 322 and 323:

- Over the nearly 7-year period with P.A. 14 and 15 of 2012 in effect, well over 30 counties held formal and informal meetings, only 4 counties took advantage of this option (Ingham, Calhoun and Jackson) and one (Berrien) since P.A. 263 and 267 of 2015 took effect. None of these counties have provided to the public significant documentation of any savings from making this change.
- County road commissions were established by a vote of the people and 77 counties are still operating that way today. Reinstating this option allowing a county board to dissolve and transfer the duties and responsibilities of the board of road commissioners by a simple majority resolution vote of the board, nullifies the vote of the people that created the road commission to maintain and improve their local road system.
- Without the passage of SB 322 and 323, the county board of commissioners retains the authority to place a county-wide ballot proposal before voters allowing for the county board to take over the duties and responsibilities of the board of road commissioners. The County Road Association (CRA) of Michigan does not oppose the use of this option. Both Wayne and Macomb Counties used this option to determine how and who will manage their local road system.
- Road commissions have a difficult job maintaining roads with revenues that are insufficient to meet the need. They are subject to annual independent financial audits, which now include performance audits. Audit information is shared with Treasury, MDOT, the county and townships and is available on the Treasury website and the Asset Management Council website, county road agency dashboard page since 2015.
- This legislation simply nullifies a well thought out and independent entity whose sole responsibility is the local road and bridge network. County road commissions and county road departments are held to the same state and federal oversight standards.
- An independent county road commission, however, has commissioners elected or appointed to represent the entire county rather than by regions of the county. They are charged with making decisions that ensure the road

system meets the needs of the county and its connection with state and federal highways.

- MCL 224.6 (4) specifies the process for removing a road commissioner from office. "A county road commissioner appointed under this subsection shall not be removed from office before the expiration of his or her term of office without being given written notice of the charges made against him or her and an opportunity to appear before the county board of commissioners for a hearing on the charges."

The County Road Association of Michigan recommends a "no" vote on SB 322 & 323.

PUBLIC HIGHWAYS AND PRIVATE ROADS (EXCERPT)

a.k.a. - COUNTY ROAD LAW

Act 283 of 1909

MCL 224.6 Board of county road commissioners; election or appointment; notice of election; date; term of office; removal from office; notice of charges; county with population of 750,000 or more; powers and duties; reorganization; expenditure of funds; alteration of number of county road commissions; transfer of powers and duties of county road commissioners to county board of commissioners; resolution.

Sec. 6 (4) reads:

"(4) The election of county road commissioners shall not be mandatory in any county that contains all or part of 12 surveyed townships as determined by the government survey of the county. Except as provided under subsection (5), in a county under this subsection the county board of commissioners, by a majority of its members elect, may appoint the county road commissioners. A county road commissioner appointed under this subsection shall not be removed from office before the expiration of his or her term of office without being given written notice of the charges made against him or her and an opportunity to appear before the county board of commissioners for a hearing on the charges."

Under County Road Law the County Board may remove a Road Commissioner on "charges." The term "charges" is undefined in MCL 224.6. CRA was unable find any cases that provide a specific definition of that term or set out parameters for what are proper charges and what charges are improper.

COUNTY BOARDS OF COMMISSIONERS (EXCERPT)

Act 156 of 1851

MCL 46.11 Power of county boards of commissioners.

Under county boards' general powers county boards may remove any county officer including road commissioners.

Sec. 11 (n) reads:

"(n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be

removed for that misconduct or neglect unless charges of misconduct or neglect are preferred to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel."

The language of MCL 46.11(n) is very broad. Even so, MCL 46.11(n) provides slightly more specific language as what may be the basis of charges to support removal of a road commissioner.

A written statement of the charges means a written statement of the reasons for removal or suspension. The statement of charges should contain the reason and specific allegations of the grounds for action, sufficient for the commissioner (or road commissioner) to prepare a defense. When you read MCL 224.6 together with MCL 46.11(n) just about any statement that gives an adequate explanation of the grounds under which the board is seeking a commissioner's removal would likely be sufficient to go forward on a claim that the commissioner is incompetent to properly execute the duties of the office or is neglectful. "Official misconduct" and "willful neglect of duty" are more specific terms for which there is case law that adequately defines those terms.

Technically, a threshold as low as "lack of management skills" would likely not be the basis for bring charges because under the statute a county road commission is "an administrative board only and the function of the board shall be limited to the formulation of policy and the performance of official duties imposed by law and delegated by the county board of commissioners." Interfering with operations definitely could be the basis of "charges" because a commissioner who interfered with operations would be acting outside of his or her authority.

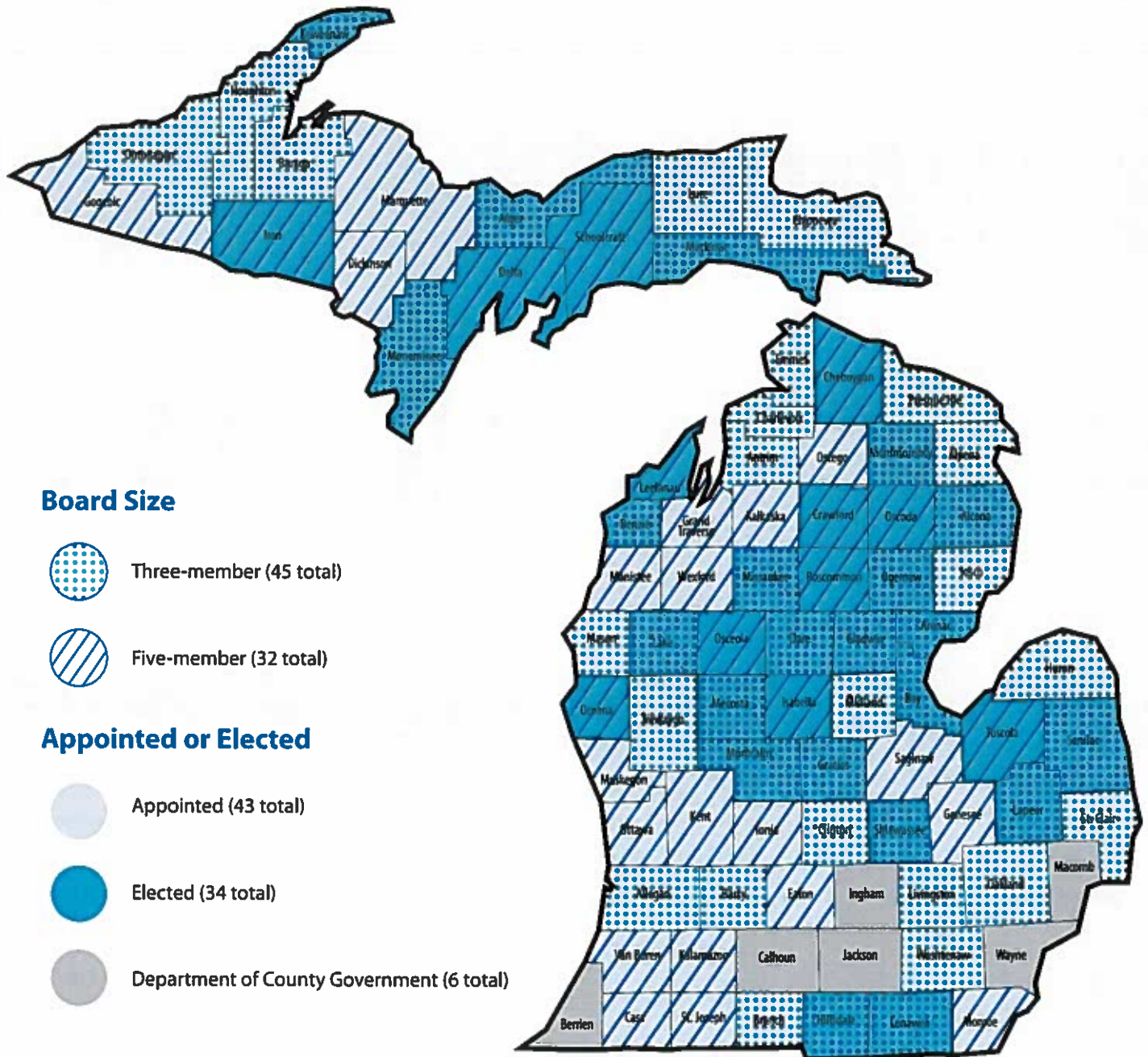
This question arises every 3 or 4 years. There a few recent reported cases. The most recent case involving removal of road commissioners that CRA found was an unpublished opinion of the Court of Appeals from 2003 that upheld the removal of road commissioners by the county board of commissioners for failing, in the opinion of the county board of commissioners, to comply with the Open Meeting Act.



**County Road Association
OF MICHIGAN**

COUNTY ROAD COMMISSIONER INFORMATION AND MAP

Counties with elected or appointed road commissioners, and three- or five-member boards



For more information contact:

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