

# GENERAL ASSEMBLY OF NORTH CAROLINA

## SESSION 1989

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### SENATE BILL 1616

Short Title: Drainage Comm'rs Appointments.

(Public)

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Sponsors: Senators Basnight, Martin of Pitt, Parnell, and Guy.

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Referred to: Local Government and Regional Affairs.

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July 5, 1990

1                   A BILL TO BE ENTITLED

2     AN ACT TO ALTER THE MANNER FOR SELECTING DRAINAGE  
3     COMMISSIONERS AND TO PROVIDE NOTICE PRIOR TO ASSESSMENT.

4     The General Assembly of North Carolina enacts:

5         Section 1. Chapter 156 of the General Statutes is amended by adding a new  
6     section to read:

7     **"§ 156-82.2. Appointment of drainage commissioners.**

8         Notwithstanding any other provision of law (including, where applicable, any  
9     special acts or local modification of general law), the General Assembly hereby  
10    appoints all sitting drainage district commissioners and drainage commission treasurers,  
11    as of the date of ratification of this section, as commissioners, officers, and treasurers of  
12    their respective districts. Said commissioners, officers, and treasurers shall continue in  
13    office until such time as appointments shall be made as provided in G.S. 156-81 and  
14    G.S. 156-81.1, which appointments shall be made by the clerk or clerks of the superior  
15    court not later than January 1, 1991."

16         Sec. 2. G.S. 156-79 reads as rewritten:

17     **"§ 156-79. Election Appointment and organization under original act.**

18         After the drainage district has been declared established, as aforesaid, and the survey  
19    and plan therefor approved, the court shall appoint three persons, in the manner set forth  
20    in G.S. 156-81, who shall be designated as the board of drainage commissioners. Such  
21    drainage commissioners shall first be elected by the owners of land within the drainage or levee  
22    district, or by a majority of same, in such manner as the court shall prescribe. The court shall  
23    appoint those receiving a majority of the votes. If any one or more of such proposed  
24    commissioners shall not receive the vote of a majority of such landowners the court shall

1 appoint all or the remainder from among those voted for in the election. Any vacancy  
2 thereafter occurring shall be filled by the clerk or clerks of the superior court in  
3 the manner set forth in G.S. 156-81. Such three drainage commissioners, when so  
4 appointed, shall be immediately created a body corporate under the name and style of  
5 'The Board of Drainage Commissioners of .....District,' with the right to hold property  
6 and convey the same, to sue and be sued, and shall possess such other powers as usually  
7 pertain to corporations. They shall organize by electing from among their number a  
8 chairman and a vice-chairman. They shall also elect a secretary, either within or without  
9 their body. Such board of drainage commissioners shall adopt a seal, which they may  
10 alter at pleasure. The board of drainage commissioners shall have and possess such  
11 powers as are herein granted."

12 Sec. 3. G.S. 156-81 reads as rewritten:

13 "**§ 156-81. Election Appointment and organization under amended act.**

14 (a) Method of Election.Appointment. – In the election of drainage  
15 commissioners by the owners of land, each landowner shall be entitled to cast the  
16 number of votes equaling the number of acres of land owned by him and benefited, as  
17 appears by the final report of the viewers. Each landowner may vote for the names of  
18 three persons for commissioners. If any person or persons in any district shall own land  
19 in any district containing an area greater than one half of the total area in the district,  
20 such owner shall only be permitted to elect two of the drainage commissioners, and a  
21 separate election shall be held under the direction of the clerk by the minority  
22 landowners, who shall elect one member of the drainage commissioners.

23 In lieu of the above method of election of drainage commissioners, the clerk of the  
24 superior court may, in his discretion, appoint such drainage commissioners and such  
25 drainage commissioners so appointed by the clerk shall have the same authority as if  
26 they had been elected by the method above described.

27 The manner of appointment shall be as follows:

- 28 (1) If the drainage district shall lie solely within one county, the clerk of  
29 superior court for such county shall appoint such commissioners.
- 30 (2) If the said district shall lie in more than one county, then such  
31 commissioners shall be appointed by unanimous action of the clerks of  
32 court for the counties wherein any part of such district lies.

33 (b) Organization. – Immediately after the election.appointment of the board of  
34 drainage commissioners, and after the members of the board shall be appointed by the clerk,  
35 the clerk of the court of the county wherein such drainage proceeding is pending shall  
36 notify each of themthe commissioners in writing to appear at a certain time and place  
37 within the countydistrict and organize. The clerk of the superior court or clerks of court,  
38 as the case may be, shall appoint one of the three members as chairman of the board of  
39 drainage commissioners, and in doing so he or they shall consider carefully and  
40 impartially the respective qualifications of each of the members for the position.

41 (c) Term of Office. – The term of service of the members of the board of  
42 drainage commissioners so elected and appointed shall begin immediately after their  
43 organization upon their appointment. Where all three commissioners are appointed at  
44 once, one Commissioner shall serve for one year, one for two years, and the other

1 for three years, the term to be computed from the first day of October following their  
2 organization. The members so serving for one, two, and three years, respectively, shall  
3 be unanimously designated by the clerk or clerks of the court or designated by lot among  
4 the members, in the discretion of the clerk-court. Thereafter each member shall be elected  
5 appointed for three years. In the year when the term of any member or members shall expire  
6 the clerk of the court shall provide for an election of their successors to be held on the second  
7 Monday in August preceding the expiration of their term on the thirtieth day of September.  
8 The clerk of the court for the county wherein the proceeding is pending shall record in  
9 the drainage record the date of election, appointment, the members elected, appointed,  
10 and the beginning and expiration of their term of office.

11 (d) Vacancies Filled. – If a vacancy shall occur in the office of any commissioner  
12 by death, resignation, or otherwise, the remaining two members are to discharge the  
13 necessary duties of the board until the vacancy shall be filled; and if the vacancy shall  
14 be in the office of chairman or secretary, the two remaining members may elect a  
15 secretary, and the clerk or clerks, as the case may be, shall appoint one of the two  
16 remaining members to act as chairman to hold until the vacancy in the board shall be  
17 filled. The clerk of the county wherein the proceeding is pending shall keep a similar  
18 record of any election appointment to fill vacancies, and the member or members shall be  
19 elected in like manner as the original members, vacancies. The person appointed to fill the  
20 vacancy shall be appointed in the manner set forth in subsection (a) of this section and  
21 shall serve until the expiration of the term of his predecessor. The secretary of the board  
22 of drainage commissioners shall promptly notify the appropriate clerk or clerks of the  
23 superior court of any vacancy in the board.

24 (e) Failure to Elect Appoint. – If for any reason the clerk or clerks of the court  
25 shall fail to provide for an election the appointment of drainage commissioners on the  
26 second Monday in August to succeed those whose terms will expire on the thirtieth day of  
27 September, the clerk shall have authority at the most convenient date thereafter to provide for  
28 such election, and in the meantime prior to the expiration of a term, the incumbents shall  
29 continue to hold their office as commissioners until their successors are elected  
30 appointed and qualified. The term of office of boards of drainage commissioners  
31 heretofore elected and appointed shall expire on the thirtieth day of September, 1917, and  
32 their successors shall be elected on the second Monday in August, 1917, in the manner  
33 provided by law immediately upon the appointment of new commissioners pursuant to  
34 subsection (a) of this section.

35 (f) Meetings. – The board shall meet once each month at a stated time and place  
36 during the progress of drainage construction, and more often if necessary. After the  
37 drainage work is completed, or at any time, the chairman shall have the power to call  
38 special meetings of the board at a certain time and place. The chairman shall also call a  
39 meeting at any time upon the written request of the owner-owners of a majority in area  
40 of the land in the district.

41 (g) Compensation. – The chairman of the board of drainage commissioners shall  
42 receive compensation and allowances as fixed by the clerk of the superior court. In  
43 fixing such compensation and allowances, the clerk shall give due consideration to the  
44 duties and responsibilities imposed upon the chairman of the board. The other members

1 of the board shall receive a per diem not to exceed twenty-five dollars (\$25.00) a day,  
2 while engaged in attendance upon meetings of the board, or in the discharge of duties  
3 imposed by the board. The secretary of the board shall receive such compensation and  
4 expense allowances as may be determined by the board.

5 The chairman and members of the board of drainage commissioners shall also  
6 receive their actual travel and subsistence expenses while engaged in attendance upon  
7 meetings of the board, or in the discharge of duties imposed by the board. The  
8 compensation and expense allowances as herein set out shall be paid from the  
9 assessments made annually for the purpose of maintaining the canals of the drainage  
10 district, or from any other funds of the district.

11 (h) Application of Section. – The provisions of this section shall apply to all  
12 drainage districts now or hereafter existing in this State, without regard to the date of  
13 organization, whether before or after April 14, 1949. organization.

14 (i) Appointment by Clerk of Superior Court as Alternative to Election. In lieu  
15 of the methods of election and filling of vacancies in the position of drainage  
16 commissioner as provided in G.S. 156-79 and this section, the clerk of the superior  
17 court may, in his discretion, appoint such drainage commissioners and fill such  
18 vacancies, and such drainage commissioners so appointed by the clerk shall have the  
19 same authority and responsibility as if they had been elected or appointed as provided  
20 under G.S. 156-79 or this section."

21 Sec. 4. G.S. 156-93.1(a) reads as rewritten:

22 "(a) The board of drainage commissioners may annually levy maintenance  
23 assessments in the same ratio as the existing classification of the lands within the  
24 district. The amount of these assessments shall be determined by the board of drainage  
25 commissioners and must be approved by the clerk of the superior court prior to their annual  
26 levy. of the district. The proceeds of these assessments shall be used for the purpose of  
27 maintaining canals of the drainage district in an efficient operating condition and for the  
28 necessary operating expenses of the district as approved by the clerk of the superior court.  
29 In the event that any interested and aggrieved party disagrees with the said  
30 assessment, he may, within 20 days of the mailing of the notice of the assessment, file  
31 with the clerk for the county wherein the proceeding is pending, a notice specifically  
32 setting forth his objection. The Secretary of the District shall file in the records of the  
33 proceeding a certification setting forth the date of the mailing of the notice of the annual  
34 maintenance assessments. The clerk shall thereupon notify the senior resident superior  
35 court judge of such district who shall set the objection down for hearing at the earliest  
36 possible time. The court shall hear the matter upon the objections duly set forth in the  
37 notice of objection. Notice of the meeting at which the board of drainage  
38 commissioners determines the amount of the annual levy shall be published in a  
39 newspaper of general circulation in the area for four successive days, not more than 30  
40 or less than 10 days prior to the meeting. The notice shall be not less than one-fourth  
41 page in size and shall state the time, place, and purpose of the meeting. At such meeting  
42 any interested person shall have the right to be heard prior to action on the proposed  
43 assessment.

1       The board of drainage commissioners shall have the authority to employ engineering  
2 assistance, construction equipment, superintendents and operators for the equipment  
3 necessary for the efficient maintenance of the canals, or the maintenance may be done  
4 by private contract made after due advertisement as required for the original  
5 construction work."

6       Sec. 5. Chapter 156 of the General Statutes is amended by adding a new  
7 section to read:

8 "**§ 156-82.3. Validation of Previous Actions.**

9       (a) All expenditures heretofore incurred, and all actions heretofore taken, by a  
10 drainage district for purposes authorized by this Chapter are hereby validated  
11 notwithstanding any defect in the selection of any or all of its commissioners or any  
12 other defect.

13       (b) The provisions of this section are expressly made applicable to any and all  
14 bonds and other financial obligations of any such district. No action based on the  
15 alleged invalidity of the assessments heretofore made or of any such bonds or other  
16 obligations of a district shall lie after January 1, 1991, to enjoin or contest the  
17 enforceability of any such assessment, bond, or other obligation."

18       Sec. 6. G.S. 156-81.1 reads as rewritten:

19 "**§ 156-81.1. Treasurer.**

20       The clerk of the superior court for the county where the district was organized, appointing  
21 authority as determined by G.S. 156-81 shall appoint a treasurer for the drainage district  
22 for a term not to exceed 12 months. The treasurer so appointed may be a member of the  
23 board of commissioners of the district or some other person deemed competent, and  
24 shall furnish bond as may be required by the said clerk of the superior court. The  
25 treasurer shall continue in office until a successor has been appointed and qualified.

26       All references in Subchapter III of Chapter 156 of the General Statutes of North  
27 Carolina, to 'treasurer' or 'county treasurer' or 'county auditor' are hereby amended to  
28 refer exclusively to the treasurer appointed as hereinbefore provided."

29       Sec. 7. If any provision or clause of this Chapter or application thereof to any  
30 person or circumstances is held invalid, such invalidity shall not affect other provisions  
31 or applications of this Chapter that can be given effect without the invalid provision or  
32 application, and to this end the provisions of this Chapter are declared to be severable.

33       Sec. 8. This act is effective upon ratification.