



# Legislative Update

VOLUME 3, ISSUE 4

FALL 2014

## INSIDE THIS ISSUE:

- Open Meetings Act Amendment Passes House 1
- FOIA Denial Must Include Description of Exempted Material 1
- Senate Takes up Sewage Discharge Exemption 2
- House Committee Discusses Drain Code Bills 2
- Notice of Insurance Cancellation No Longer Required for Certificate Holders Under New Law 3
- Committee Spotlight: House Committee on Natural Resources 3
- Agency Spotlight: Jim Johnson, Michigan Department of Agriculture & Rural Development 4
- MACDC Comments on Proposed EPA Waters of US Rule 4

## Open Meetings Act Amendment Passes House

The House of Representatives passed legislation to amend the Open Meetings Act to require physical presence at public meetings. The legislation must still pass the Senate and be signed by the Governor to become law.

House Bill 4363, sponsored by Representative Tom McMillin (R-Rochester Hills) requires the physical presence of elected members of a governing board at



meetings for any vote to count. If a quorum of elected members are not physically present for a meeting, the meeting would not be considered open to the public and any action would be void.

The Michigan Townships Association opposes the legislation because it would prevent elected members from utilizing technol-

ogy that people use to conduct business around the world every day. Additionally, this could prevent intergovernmental bodies from conducting business when weather prevents members from driving to the meetings. This is especially true in the Upper Peninsula and for public bodies whose board comprise representatives from several counties which would have to cancel public meetings instead of operating remotely.

Proponents of the legislation argue it would allow the public to interact with their elected officials first hand and avoid the possibility of "absentee government." They also argue remote participation prevents the public from interacting with their elected officials before and after meetings.

## FOIA Denial Must Include Description of Exempted Material

A denial of public document disclosure under the Freedom of Information Act (FOIA) must include more than a repeat of the statutory exemption language, according to the Michigan Court of Appeals.

In *Anklam v Delta College District* (Michigan Court of Appeals, June 26, 2014), the Court clarified that, in order to properly deny a FOIA request for information, a governmental agency must include a description of the public record that is being denied or the information that is being redacted pursu-

ant to an exemption listed in the statute. Further, when issuing a denial, the governmental agency must provide justification as to why the public record is being denied or the information on a public record is being redacted.

The Court noted that affidavits could be supplied along with a denial letter that would describe the information withheld and provide justification as to why the described material is exempt under one or more of FOIA's listed exemptions.

## Senate Takes up Sewage Discharge Exemption

On August 13, 2014, the Senate passed Senate Bill 753, which would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act (NREPA) to add certain exemptions for municipalities.

Senate Bill 753, sponsored by Senator Bruce Caswell (R-Hillsdale), would exempt a municipality from Part 31's remedies and penalties for unauthorized discharges of sewage from private sewer systems if the discharge is from three or fewer on-site wastewater treatment systems.

Currently, Part 31 prohibits discharging substances that are or may become injurious to the public health, safety or welfare. Any discharge of human waste is considered evidence of a violation of Part 31 by the municipality where the discharge occurred. If a discharge is not subject to a permit, or if a discharge is subject to a permit but in violation of the permit, a municipality can be

held liable for the discharge. A municipality is exempt from liability under Part 31 if the unauthorized discharge is from a sewerage system as defined under Part 41 (Sewerage Systems) of NREPA, permitted under Part 31 and the system is owned by a third party, unless the municipality has taken responsibility for the system in writing.

The bill defines an "on-site wastewater treatment system" as a system of components, other than a sewerage system under Part 41, used to collect and treat sanitary sewage or the equivalent from one or more dwellings, buildings, or structures and discharge the resulting effluent to a soil dispersal system on property owned by or under the control of the same individual or entity that owns or controls the dwellings, buildings, or structures.

Senate Bill 753 was referred to the House Committee on Natural Resources.

## House Committee Discusses Drain Code Bills

On September 18, the House Committee on Local Government heard testimony on three of the four recently introduced amendments to the Drain Code—House Bills 5684 - 5686.

Kirstie Seloff, legislative aide to Representative Al Pscholka, provided an overview of the legislation, while Stacy Hissong, Legislative Counsel to MACDC, detailed the specific changes proposed in

each bill. The Michigan Municipal League also testified in support of the concept of the legislation. Several members of the Committee had questions regarding the legislation. The Committee plans to hold further hearings prior to taking action on the bills.

A summary of the bills are as follows:

**House Bill 5684 (Section 5):** This bill clarifies that Drainage Districts may

acquire real or personal property by gift, purchase, or any other method, including condemnation.

**House Bill 5685 (Sections 101 & 121):** Currently, municipalities may not apply for an intercounty drain drainage district and a petition to establish an intercounty drain must be signed by a municipality from **each county** involved.

This bill would allow a **single** municipality in either county to apply for an intercounty drain drainage district (Section 101) and to petition for an intercounty drain (Section 121).

**House Bill 5686 (Section 327):** This bill would allow road commissions to petition for a new intercounty drainage district, a new intercounty drain and the maintenance and improvement of an existing intercounty drain. Currently, road commissions may only petition for **county** drains.



# Notice of Insurance Cancellation No Longer Required for Certificate Holders under New Law

In July, Governor Snyder signed an amendment to the Michigan Insurance Code regulating the information that may be contained in certificates of insurance.

Public Act 271 of 2014, sponsored by Senator Tom Casperson (R-Escanaba), creates a new Chapter 22A of the Insurance Code to prohibit insurance carriers from issuing certificates of insurance that purport to alter, amend or extend coverage provided by an insurance policy or containing false or misleading information concerning the insurance policy. Certificates of insurance are statements or summaries of an insurance policy’s coverage that are issued by insurance carriers.



Currently, many drain-related contracts require that a Drain Commissioner or the Drainage District be named as an “additional insured” on a contractor’s insurance policy. Generally, a contractor provides a certificate of insurance that lists the Drain Commissioner or Drainage District as an additional insured.

A certificate of insurance will often contain a provision that the insurance carrier may cancel the policy for any reason upon 30-day notice to

those listed as additional insureds. This 30-day notice of cancellation provision purports to provide the Drain Commissioner or the Drainage District adequate notice of when a contractor’s insurance policy lapsed although the same notice of cancellation provision may not exist in the underlying insurance policy.

Under PA 271, a notice of cancellation provision in a certificate of insurance can no longer be required by an “additional insured” since the provision modifies or expands the terms of the policy without the authorization of the insurer. In order for a Drain Commissioner or Drainage District to be notified when an existing insurance policy is cancelled, those terms must be set forth in the underlying insurance policy, not on a certificate of insurance.

Public Act 271 went into effect on July 2, 2014, and codified a 2008 bulletin issued by the Office of Financial and Insurance Regulation, now the Department of Insurance and Financial Services (DIFS), which stated that it is illegal to represent more coverage on a certificate of insurance than what is contained in the policy.

The law also provides for an administrative hearing in front of the Director of the DIFS when a violation is claimed. The Director may impose a fine of up to \$500 per violation or \$2,500 per violation if the person knew or should have known of the violation.

## COMMITTEE SPOTLIGHT

### House Committee on Natural Resources

**Committee Members**

- Chair Andrea LaFontaine (R-Columbus)
- Vice-Chair Bruce Rendon (R-Lake City)
- Ken Goike (R-Ray Township)
- Joel Johnson (R-Clare)
- Ed McBroom (R-Vulcan)
- Roger Victory (R-Hudsonville)
- Min. Vice-Chair Charles Smiley (D-Burton)
- Scott Dianda (D-Calumet)
- John Kivela (D-Marquette)

**Phone Number**

- (517) 373-0931
- (517) 373-3817
- (517) 373-0820
- (517) 373-8962
- (517) 373-0156
- (517) 373-1830
- (517) 373-3906
- (517) 373-0850
- (517) 373-0498

**Office**

- N 796 HOB
- S 1387 HOB
- N 797 HOB
- S 1286 HOB
- S 1487 HOB
- N 1192 HOB
- N 899 HOB
- S 1489 HOB
- S 1488 HOB



**Chair  
Andrea  
LaFontaine**

Currently scheduled meetings are available at: [www.legislature.mi.gov](http://www.legislature.mi.gov)

## AGENCY SPOTLIGHT



### Jim Johnson Director of Environmental Stewardship Department of Agriculture & Rural Development

Jim Johnson is the Director of the Environmental Stewardship Division (ESD) of the Michigan Department of Agriculture & Rural Development

(MDARD), which includes the Intercounty Drains Program.

As the head ESD, Jim noted that he relies on his staff to inform him of the emerging issues to be addressed through the Legislature and to make sure there is proper funding for individual department needs. Jim expressed his confidence in Mike Gregg, Brady Harrington and Peggy Snyder, who are responsible for the day-to-day operations of the Intercounty Drains Program.

Jim stated that one of the most gratifying parts of his position is getting out into the field and attending intercounty drain board meetings and witnessing first

hand the pride that drain commissioners take in their projects. He also acknowledged that in many urban places the public may not appreciate the importance of maintaining drains until there is a problem.

In working with the Legislature, Jim explains that it is through the drain commissioners' hard work that we are able to utilize the land today.

"Without drain commissioners maintaining the drains, Michigan would remain an almost uninhabitable marsh" he noted.

Jim loves being able to work with Michigan's diverse natural resources to find a balance between proper use and sustainability for the future.

Jim was appointed Director of the Environmental Stewardship Division in 2008. Before his work with MDARD, Jim worked with growers in St. Joseph County on irrigation water management.

## MACDC Comments on Proposed Waters of the U.S. Rule

MACDC has officially made a comment to the proposed change to the Clean Water Act's definition of "waters of the United States" and has requested the proposed rule be rescinded due to the threat to Drain Commissioners' ability to perform basic maintenance on established county drains.

In addition, the increase in costly and time-

consuming regulations will result in greater strains on already-scarce resources, the inability to adequately maintain drainage systems, and significant delays in emergency flooding response times, putting the general public at risk.

To read all comments, go to [www.regulations.gov](http://www.regulations.gov) and search: EPA-HQ-OW-2011-0880.

Michigan Association of  
County Drain Commissioners  
120 N. Washington Sq., Suite 110A  
Lansing, MI 48933  
  
Phone: 517-484-9761  
Fax: 517-371-1170

**The Michigan Association of County Drain Commissioners is dedicated to safeguarding the health, safety and welfare of Michigan's citizens through the protection of property, surface waters and the environment. We seek to accomplish these goals by providing storm water management, flood control, drainage, development review and water quality programs.**

**We're on the web!**

**[www.macdc.us](http://www.macdc.us)**