



Legislative Update

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MACDC Responds to Governor's Water Strategy

In June, the Michigan Department of Environmental Quality's Office of the Great Lakes released its draft Water Strategy: *"Sustaining Michigan Water Heritage, A Strategy for the Next Generation"*.

MACDC has submitted formal comments in response to each of the nine goal areas included in the draft Water Strategy to encourage partnership between the MDEQ and MACDC in developing the cohesive water strategy. The comments focus primarily on accountability and education in



order to sustain a long-lasting strategy. Other comments included MACDC's request to participate on an advisory panel to evaluate the Drain Code and other local land-use statutes and MACDC offering assistance in creating an inventory of county drains across the state and in developing the statewide enterprise budget for stormwater, drinking water and wastewater management.

A full copy of the draft Water Strategy can be found at:

www.michigan.gov/waterstrategy.

MDEQ Provides WOTUS Update; Federal Injunction Issued

The Michigan Department of Environmental Quality (MDEQ) held an informational meeting on August 14 to discuss their approach to the new "Waters of the United States" definition, which defines certain rivers, streams, lakes and marshes that fall under Section 404 of the Clean Water Act.

Should the U.S. EPA determine that Michigan's Wetlands Program, which administers Section 404 of the CWA, is not compliant with the federal rule, Michigan will be given two years to adjust the program through amendments to the current statute (PA 98 of 2013), which will remain in effect until the required amendments take place. According to the MDEQ, however, if an Army Corps of Engineers permit is required for a specific drain project, the new rule will apply.

Once the EPA's audit of PA 98 is complete, the MDEQ plans to form a stakeholder group to review the audit and the new federal rule to ensure Michigan's program is in compliance.

For more information on the new rule, including a chart depicting the final changes to the definition, visit: www.epa.gov/creanwaterrule. The new rule was scheduled to go into effect on August 28, however a Federal District Court in North Dakota issued a preliminary injunction to its implementation. The injunction is applicable only to the 13 states involved in that particular lawsuit and the EPA has since announced that the rule will go into effect as scheduled except for those states. Michigan is not a party to the lawsuit, therefore the new rule is in effect.

AGENCY SPOTLIGHT

William Creal, Chief MDEQ—Water Resources Division

William Creal is the Chief of the Water Resources Division in the Michigan Department of Environmental Quality. In this capacity, Creal oversees the Water Resources Program, among many others, which includes critical dunes, dam safety, floodplains, Great Lakes submerged lands, inland lakes and streams, shorelands protection and management, and wetlands.

“Over the last several years, the Michigan Association of County Drain Commissioners (MACDC) has been a valuable partner in managing and protecting Michigan’s abundant water resources,” Creal said.

“Our partnership started with the creation of the Wetland Advisory Council that resulted in improvements in Michigan’s 404 Program. Through continued discussions and negotiations, we were then successful in obtaining United States Environmental Protection Agency approval for the county drain general permit category – not an easy accomplishment; and

now we continue to work with the MACDC to provide training for both DEQ and MACDC staff, identify additional program improvements, and implement program changes.”

“The DEQ’s Water Resources Division management now meets quarterly with MACDC leadership, which has given us an opportunity to resolve potential conflicts early and work together on an expanding list of emerging issues, such as municipal separate storm sewer system (MS4) permits, green infrastructure, the Waters of the United States Rule, and the new obstruction removal amendment to the Drain Code. We look forward to our continued partnership as we continue to improve our collective management of Michigan’s water resources.”



William Creal,
WRD Chief

Court of Appeals Clarifies Meaning of ‘Resident’

The Michigan Court of Appeals recently clarified the definition of the word “resident” for purposes of holding elected or appointed office. The term “resident” is used in several sections of the Drain Code, specifically when discussing Board of Determination members (Sec. 72) and Board of Review members (Sec. 156).

In ***Zoran v Township of Cottreville (Michigan Court of Appeals, August 25, 2015)***, a Township Trustee challenged the trial court’s decision to deny his claim of quo warranto on the basis that the Township Supervisor did not reside in the Township, as required by law. An Open Meetings Act violation was already pending against the Township Supervisor for the failure to allow public comment at a public meeting, and the Trustee requested the quo warranto claim be added to inquire into the Township Supervisor’s ability to hold public office.

Although the Township Supervisor admitted that she sold her home and was in the process of building a new home within the Township, she did not in fact reside in the Township.

“Residence is made up of fact and intention. There must be the fact of abode, and the intention of remaining,” the Court explained (internal citations omitted). “Consequently, the evidence shows that, by [the Township Supervisor’s] own admission, she did not actually reside in Cottreville. Her intent to reside there in the future is relevant, but it is not the first consideration.”

The Court of Appeals reversed the trial court’s decision on the Open Meetings Act issue, finding that the trial court erred in granting summary disposition in favor of the Township Supervisor and remanded the case back to the trial court to provide for quo warranto proceedings.

New Legislation of Interest to MACDC

The following bills of interest to Drain Commissioners and Associate Members are currently pending before the Legislature. Full text and up-to-date action for each bill can be found online on the Legislature's website at www.legislature.mi.gov.

TERM BONDS FOR DRAIN PROJECTS

House Bill 4758, introduced by Representative Al Pscholka (R-Stevensville) would allow "term bonds" under the Drain Code.

Most municipal bonds can be issued as "serial" bonds (bonds where a portion matures every year resulting in at least one separate bond certificate for each year) or "term" bonds (bonds that take principal amounts that would be due over more than one year and group them together in one bond certificate). Currently, bonds issued under the Drain Code must be "serial bonds." This bill would allow the issuance of term bonds under the Drain Code.

House Bill 4758 is in the House Committee on Local Government

and was discussed on September 9, 2015, however, no vote was taken.

REGIONAL WATER & SEWER ALLIANCE

House Bill 4770, introduced by Representative Heise (R-Plymouth) would create the "Regional Water and Sewer Alliance Act" and allow alliances to be created for the jurisdiction, control and supervision of regional water supply or sewage disposal systems.

This bill is in the House Committee on Local Government.

TELECOM PERMIT FEES

Senate Bill 399, introduced by Senator Wayne Schmidt (R-Traverse City) clarifies that a county road commission may not charge a telecommunication provider a permit in excess of \$300.00 per permit, or \$1,000.00 total per project. The legislation further prohibits a county road commission from requiring more than one form of security for their work in the road right of way, and the amount of any bond may not exceed \$10,000.00.

Senate Bill 399 is in the Senate Committee on Local Government.

REMOVAL FROM OFFICE ON FINANCIAL GROUNDS

Senate Bill 431, introduced by Senator Rick Jones (R-Grand Ledge) would allow for the an action to be filed in circuit court for the removal of an elective officer of a unit of government by a 2/3 majority vote of the members serving on its governing body. The grounds for removal must be based on:

- (a) misfeasance, malfeasance or nonfeasance pertaining to the custody or accounting of public money; or
- (b) Failing to obtain or maintain a statutorily required bond required for the office.

The circuit court would then hold a hearing on the subject of the complaint to determine if the officer should be removed from office.

Senate Bill 431 is in the Senate Committee on Elections and Government Reform.

COMMITTEE SPOTLIGHT

House Oversight and Ethics Committee



Committee Members

Chair Ed McBroom (R-Vulcan)
 Vice-Chair Martin Howrylak (R-Troy)
 Joseph Graves (R-Argentine Township)
 Lana Theis (R-Brighton)
 Min. Vice-Chair Rose Mary Robinson (D-Detroit)
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Currently scheduled meetings are available at: www.legislature.mi.gov

FOIA Policy Adoption Necessary under New Act

The amendments to the Freedom of Information Act (“FOIA”) have been in effect since July 1, 2015.

Most notably, the new Act requires public bodies to adopt written “procedures and guidelines” regarding the FOIA process and the elements of a fee. Specifically, a copy of the procedures and guidelines must be made available as a handout at the public body’s office free of charge. If the public body maintains a website, it must be published on the webpage or available to anyone as a free download. Finally, a copy must be included with the delivery of any requested records. If a public body is not in compliance with the new requirements to FOIA, no fee may be charged to fulfill a FOIA request.

FOIA defines “public body” as a “county, city, township, village, intercounty, intercity, or regional

governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof...[and] [a]ny other body which is created by state or local authority or which is primarily funded by or through state or local authority.”

While the definition of “public body” could be interpreted to include individual county and intercounty Drainage Districts, many Drain Commissioners are operating under their County’s FOIA Policy. If so, formal adoption of the County’s policy may be appropriate. The adoption of individual procedures and guidelines for Intercounty Drain Drainage Boards may also be appropriate as to avoid any potential conflicting policies amongst the counties involved.

Bill Would Prohibit Adverse Possession Against Municipalities

House Bill 4747, introduced by Representative Holly Hughes (R-Montague) would prohibit claims of adverse possession brought against a municipal corporation.

Currently, lands owned by the State of Michigan are exempt from claims of adverse possession. However, a recent Michigan Court of Appeals decision did not afford the same protections to lands owned by municipal corporations.

In *Waisanen v Superior Twp.* (**Michigan Court of Appeals, June 24, 2014**), a property owner brought an action to quiet title a portion of a public roadway that contained the property owner’s break wall and home addition. The Court of Appeals ruled in favor of the property owner because the language of the law only prohibits claims of adverse possession when brought **by** the municipal corpora-

tion, not when the actions are brought by the property owner.

House Bill 4747 seeks to amend the current statutory language and prohibit claims of adverse possession against municipal corporations no matter which party files first.

This bill was introduced on June 18 and is currently in the House Committee on Judiciary. For more information, please visit: www.legislature.mi.gov.

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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