



Legislative Update

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MACDC Unveils Video to Lawmakers

As a continued effort to raise MACDC visibility amongst the current Legislature, several MACDC members have attended and testified at key House and Senate committee meetings.

Legislative Chair and Kent County Drain Commissioner Bill Byl, former President and Livingston County Drain Commissioner Brian Jonckheere and MAC lobbyist Deena Bosworth attended the House and Senate Transportation Committees.

During the meetings, they debuted the “New Legislator

Video” created by the MACDC Education Committee last fall to give legislators a better understanding of drainage issues.

The nine and a half minute video covers the basic functions and limitations of drain and water resource commissioners set forth in the Michigan Drain Code.

The video includes several interviews with members and a special guest commentary from Representative Kevin Daley (R-Lum).

The video is available at www.macdc.mi.us.



Part 301/303 Bill Reintroduced

The Legislature is one step closer to seeing changes to the Part 301 (Inland Lakes and Streams) and Part 303 (Wetlands Protection) exemptions this term, including extensive revisions to exemptions for drain commissioners.

After the House attempt at revisions to meet EPA requirements failed late last term, Senator Mike Green (R-Mayville) has reintroduced the legislation as Senate Bill 163. This bill will reduce exemptions from the permitting process that drain commissioners currently hold.

MACDC plans to work with legislative and department staff and representatives from Michigan Farm Bureau throughout this term in reaching an agreement on the final bill language.

“Senate Bill 163 touches on some very sensitive issues for all parties involved,” said Bob Mantey, Tuscola County Drain Commissioner and Chair of MACDC’s DEQ Liaison Committee. “Working with Senator Green and Representa-

tive Stamas has been a very positive experience. They have been very pro-active in trying to understand what issues are the most important to drain commissioners. They are also very concerned how any changes made will affect the general public.”

Senate Bill 163 is in the Senate Committee on Natural Resources, Environmental and Great Lakes. The bill must pass both chambers and be signed by the Governor to become law.

The bill and related information can be found online at www.legislature.mi.gov and is available in PDF form at: www.legislature.mi.gov/documents/2013-2014/billintroduced/Senate/pdf/2013-SIB-0163.pdf.



Senator Mike Green

COMMITTEE SPOTLIGHT

Senate Infrastructure Modernization Committee



**Chairman
Roger Kahn**

Committee Members

Chairman Roger Kahn (R-Saginaw Twp)
 Vice-Chair John Pappageorge (R-Troy)
 Darwin Booher (R-Evart)
 Jack Brandenburg (R-Harrison Twp)
 Mark C Jansen (R-Gaines Twp)
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Currently scheduled meetings are available at: www.legislature.mi.gov

Supreme Court Sets Bright Line Rule for §161 Review

The Michigan Supreme Court released its opinion in *Elba Township v Gratiot County Drain Commissioner*, Docket No. 144166 (Decided April 9, 2013).

This decision creates a bright line rule for judicial review under Section 161 of the Drain Code. Under §161, “the proceedings in establishing any drain and levying taxes therefor shall be subject to review on certiorari as herein provided.” The section provides a 10-day limitation to file a writ of certiorari for an error after the filing of a final order, day of review, or filing of the board of review report, depending on

when the claimed error occurred.

Under Michigan Court Rules, a superintending control order replaces a writ of certiorari when directed to lower courts, meaning that courts are to expedite the dispute. The Drain Code was set up to allow for this expedited case process to avoid lengthy litigation holding up time-sensitive drain projects.

The Court held that a challenge to drain proceedings *must* be brought within the time and manner requirements set forth in §161. The only exceptions to the limited review under §161 is for claims of fraud or constitutional

violation. Any technical defects in the proceedings must be so egregious as to implicate a constitutional violation.

The Court held that no constitutional liberty is at stake and therefore no due process is required during drain proceedings until the point at which notice is sent for the Day of Review for assessments.

The Court, holding that both the Circuit Court and Court of Appeals erred in exercising equitable jurisdiction to hear the merits of the signature requirement argument, did not decide the issue.



Proposed Part 31 Rule Revisions

The Michigan Department of Environmental Quality created a workgroup for initial discussions on proposed administrative rule changes for floodplain regulation under Part 31 of the Natural Resources and Environmental Protection Act.

MDEQ is authorized by statute to promulgate rules and propose any rule changes for Part 31. The proposed rules must be submit-

ted for public comment before approval.

Shawn Middleton of Spicer Group, Inc. and Evan Pratt, Washtenaw County Water Resources Commissioner are serving as MACDC’s representatives for the workgroup.

If you have questions regarding the proposed rule changes, please contact Shawn via e-mail at shawnm@spicergroup.com or Evan at pratte@ewashtenaw.org.

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 Michigan Legislature’s website at www.legislature.mi.gov.

ROAD COMMISSION BID REQUIRED

House Bill 4251, introduced by Rep. Kotter (R-Mt. Pleasant), would authorize a township contributing 50% or more of a road project cost to require the county road commission to contract for the work on the road project through the competitive bidding process. This bill is in the House Transportation and Infrastructure Committee.

OPEN GOVERNMENT COMMISSION

House Bill 4314, introduced by Rep. McMillin (R-Rochester Hills), would create the Open Government Commission, consisting of members of the Legislature and

the press and one gubernatorial appointee. The Commission would receive, investigate, and respond to citizen complaints regarding responses to FOIA requests. This bill is in the House Committee on Oversight.

WETLAND MITIGATION: COUNTY ROAD COMMISSION EXEMPTION

House Bill 4339, introduced by Rep. McBroom (R-Vulcan), would create an exemption from compensatory wetland mitigation as a condition for a road work permit for county road commissions if the road is in existence at the time of the bill taking effect and the road work is within the road right-of-way. This bill is in the House Committee on Transportation and Infrastructure.

OMA: PHYSICALLY PRESENT TO VOTE

House Bill 4363, introduced by Rep. Price (R-Park Township), would require that a quorum of a public body could only be

met by members who are physically present and the members must be physically present to vote. This bill is in the House Committee on Oversight.

SPLIT TICKET PRIMARY VOTING

House Bill 4367, introduced by Rep. Schor (D-Lansing), would amend the Michigan Election Law to allow split or mixed ticket voting in primary elections. Currently, a voter must choose one party’s ballot in primary elections. This bill is in the House Committee on Elections and Ethics.

STATEWIDE FOIA COST STANDARD

House Bill 4001, introduced by Rep. Shirkey (R-Clarklake), establishes a statewide cost standard for public bodies when charging fees for public documents, including a 10-cent per page limit and forfeiture of costs if produced post-deadline. This bill is in the House Committee on Oversight.

Majority Floor Leader Jim Stamas (R-Midland)

LEGISLATOR SPOTLIGHT



Rep. Jim Stamas

Majority Floor Leader Jim Stamas, a small business owner and lifelong resident of Midland County, represents the 98th District of the Michigan House of Representatives.

Prior to joining the Legislature, Rep. Stamas served as a township trustee and a county commissioner and credits his and others’ local experience for their better understanding of local issues. “Many of us elected officials began at the local level, so we understand the importance of those working in the counties and have worked alongside the drain commissioners for many years.”

Rep. Stamas sponsored the wetland reform legislation last term that ultimately failed. “I spent countless hours debating the issue of what would be best for Michigan: sending the program back to the feds, or maintaining what state control we can. I can tell you there is no doubt in my mind

that we should do everything in our ability to keep the wetlands program under state control.

“Jim has always been a leader,” noted Doug Enos, Midland County Drain Commissioner and current MACDC President. “He is leading the effort to retain the Michigan wetlands program and the joint permit process with the United States Corps of Engineers, while attempting to maintain a delicate balance with individual rights, with agriculture, and with the Michigan Drain Code.”

Rep. Stamas currently chairs the House Committee on Military and Veterans Affairs and is the vice-chair of the Joint Committee on Administrative Rules and Michigan Capitol Committee. His leadership role also allows him to serve on the Legislative Council and the House Fiscal Agency Governing Committee.

Rep. Stamas can be reached at 517-373-1791 or toll-free at 800-626-8887.

Court of Appeals Releases Opinion Involving Intercounty Drains

In late March, the Michigan Court of Appeals released its opinion involving the Big Marsh Intercounty Drain.

The case revolves around Section 327 of the Drain Code, which authorizes a county road commission to petition the drain commissioner to establish a drain or perform maintenance to an established drain when it becomes necessary for the construction or maintenance of any highway to take the surplus water across adjacent lands.

In this case, the Calhoun County Road Commission petitioned certain

maintenance, improvements and consolidation involving the Big Marsh Intercounty Drain.

The Intercounty Drainage Board determined the proposed project was practicable, but prior to the hearing of necessity, the underlying petition was challenged in circuit court and then appealed to the Court of Appeals. The Court of Appeals held:

- A road commission is not a proper petitioner if the majority of the roads within the proposed project are located outside of their jurisdiction.

- Consolidation is not a permitted activity under §327. The Court found that the proposed project went beyond the drainage of highways as §327 intends.

- A petition under §327 is proper only for the establishment or maintenance of a *county* drain, not an *inter-county* drain.

The Intercounty Drainage Board voted to ask the Court of Appeals to reconsider its opinion in light of the Supreme Court decision involving the No. 181 Drain (see page 2).

MACDC Names New Members to Legislative Committee

MACDC President Doug Enos has named the new members of the 2013-2014 Legislative Committee.

The members of the Legislative Committee will continue to work with

MACDC's lobbyist, Deena Bosworth, on tracking newly introduced legislation that will affect drain commissioners and following their progression throughout the legislative process.

If you have any questions on pending legislation or have an idea for proposed legislation, Deena can be reached at Bosworth@micounties.org or 517-372-5374.

Bill Byl (Chair), *Kent*

Doug Enos, *Midland*

Roger Zilke, *Berrien*

Jackie Fitzgerald, *Mecosta*

Brian Jonckheere, *Livingston*

Phil Hanses, *Clinton*

Dave Thompson, *Monroe*

John Pekkala, *Houghton*

Mike Gregg, *MDARD*

Pat Lindemann, *Ingham*

Evan Pratt, *Washtenaw*

Pat Crowley, *Kalamazoo*

Brian Denman, *Gratiot*

Robert Mantey, *Tuscola*

Greg Alexander, *Sanilac*

Joe Parman, *Van Buren*

Cameron Cavitt, *Cheboygan*

Steve May, *Lenawee*

Jim Nash, *Oakland*

Joe Bush, *Ottawa*

Joseph Rivet, *Bay*

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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