



Legislative Update

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New MISS DIG Procedure for Sanitary Sewers

On April 1, the new MISS DIG law took effect, repealing and replacing the previous version. Along with new definitions and stylistic improvements, the new law exempts Drain Commissioners and Drainage Boards from marking county or intercounty drains. However, this exemption applies **only** to stormwater drains.

The new law still requires owners or operators of sanitary sewers to mark the location of their underground



facilities with green flags in accordance with the American National Standards Institute utility color code system. Although the previous MISS DIG law used green flags for stormwater drains and brown flags for sanitary sewers, the Legislature adopted the national system which uses green flags to cover both stormwater and sanitary. **Note: while stormwater drains are exempt, many Drain Commissioners may choose to be voluntary members of MISS DIG and comply with the marking requirements.**

The new law also changes when an excavator must notify MISS DIG before blasting or excavating. An excavator must provide a dig notice at least 72 hours before starting blasting or excavating. Additionally, notice cannot be given more than 14 days before

blasting or excavating. If notice is given between 7 a.m. and 5 p.m., the 72 hours begins to count as soon as it is made, however, if notice is given outside of business hours, the 72 hours will not

count until the next business day at 7 a.m.

After receiving notice, an owner or operator must mark the area to be excavated before the start of any blasting or excavating. If the flags become covered or destroyed, the owner or operator has 24 hours to remark the locations if notice is given during business hours.

Before a complaint of a violation can be filed with the Michigan Public Service Commission, the new law requires some form of dispute resolution to occur.

House Passes FOIA Legislation

What has been deemed a "massive overhaul" of the Freedom of Information Act (FOIA) is one step closer to becoming law.

On March 20, the Michigan House of Representatives passed House Bill 4001, sponsored by Rep. Mike Shirkey (R-Clarklake).

The legislation includes new fee restrictions and reductions. Important to drain

offices, the legislation's ten cent cap on copying documents applies only to standard and legal size documents. Actual costs may be charged for copying larger documents such as maps and plans.

House Bill 4001 has been referred to the Senate Committee on Government Operations.

COMMITTEE SPOTLIGHT

Senate Committee on Local Government and Elections

Committee Members

Chairman David B. Robertson (R-Grand Blanc Township)
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 Jack Brandenburg (R-Harrison Township)
 Min. Vice-Chair Coleman Young II (D - Detroit)

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Chairman David B. Robertson

Currently scheduled meetings are available at: www.legislature.mi.gov

EPA Addresses “Waters of the United States”

The Environmental Protection Agency (EPA) has recently proposed a new rule regarding “waters of the United States.” The purpose of the rule is to categorize “waters of the United States,” and provide exemptions from the definition. The rule would also create a catch-all category for operations not contained in a category.

If the final rule categorizes a body of water as a “water of the United States,” the EPA will have jurisdiction under the Clean Water Act (CWA).

In *Rapanos v. US*, the Supreme Court stressed the need for a clear definition of what are “waters of the United States” when used in the CWA.

The proposed rule lists seven categories of “waters of the United States.” include:

- 1) all waters used now, or in the past, for interstate or foreign commerce;
- 2) all interstate waters including interstate wetlands;
- 3) territorial seas;
- 4) tributaries of the previous categories
- 5) pooling water from the previous categories;
- 6) waters, including wetlands, next to the previous categories; and
- 7) water with a **significant nexus** to the first three categories. A

significant nexus means the body of water significantly affects the chemical, physical or biological integrity of the first three categories. The effect must be more than speculative or insubstantial.

Even if a body of water meets one of the seven categories, the proposed rule will exclude:

- 1) waste treatment systems under the CWA;
- 2) prior converted cropland;
- 3) ditches that are located wholly in uplands, drain only upland and which do not run year round;
- 4) ditches which do not contribute to flow into the first three and the fifth category;
- 5) features including: artificial lakes or ponds created by excavation or diking of dry land and used exclusively for stock watering, irrigation, or settling basins; water-filled areas from construction; and groundwater drained through subsurface drainage systems.

Currently exempt discharges will remain in place. These include agricultural stormwater discharges, return flows from irrigated agriculture, construction or maintenance of farm or stock ponds or irrigation ditches, and maintenance of drainage ditches.

The proposed rule will also not change Michigan’s delegated authority under Part 404 of the CWA.



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.

TERMINATION OF UTILITY SERVICES

Senate Bill 687, introduced by Senator Booher (R-Ewart) would create a new statute to regulate utility services by certain municipalities to other municipalities. Specifically, the bill would prohibit a municipality from terminating the utility service or refusing to renew an existing contract for any reason other than a lack of physical ability to continue providing the service.

The bill also specifies that the prohibition would not preclude negotiations for providing the service at a reasonable rate, not to exceed the cost of providing the service.

Further, the bill allows any aggrieved municipality to seek declaratory and equitable relief in the circuit court. This bill is in the Senate Committee on Local Government and Elections.

PROHIBITION ON LOCAL CONTRACT AWARDS TO CAMPAIGN DONORS

House Bill 5381, introduced by Rep. Townsend (D-Royal Oak), would create the “Ethics in Local Government Contracts Act.”

This bill would prohibit local governments, including a county drain commissioner, from awarding a contract of \$25,000.00 or more to a vendor or contractor if the vendor or contractor has contributed \$100.00 or more that was reportable under the Michigan Campaign Finance Act within the previous year.

Further, the bill requires a provision in all contracts of \$25,000.00 or more requiring the vendor or contractor to certify that they will not

make any contributions of \$100.00 or more during the term of the contract to the drain commissioner. This bill is in the House Committee on Elections and Ethics.

EXEMPTION: ON-SITE WASTEWATER TREATMENT SYSTEM DISCHARGE

Senate Bill 753, introduced by Senator Caswell (R-Hillsdale), would amend Part 31 of the Natural Resources and Environmental Protection Act to provide an exemption from liability for municipalities for a discharge of raw sewage into the waters of the state.

Currently, a municipality is exempt from liability if the discharge from a sewerage system is unauthorized and the system is owned by a party other than the municipality. The bill adds an exemption if the discharge is from three or fewer on-site wastewater treatment systems. This bill is in the Senate Committee on Local Government and Elections.

No Riparian Rights for Man-made Waters

A recent Michigan Court of Appeals ruling clarified that riparian rights, or the rights of landowners abutting a body of water to have equal access to the water, do not apply to artificial or man-made bodies of water, such as canals, drains or irrigation ditches.

The case, *Holton v Ward*, __ Mich App __; Docket No. 308454 (2014), involved a neighbor dispute over the right to use a 20-acre pond. The pond was created by a previous owner of the former parcel (subsequently divided into two parcels). The current owners of one parcel claimed riparian rights to use the portion of the pond on the neighbor’s parcel.

The Court held that the landowners did not have riparian rights over the neighbor’s portion of the pond as the pond was not a natural watercourse and riparian rights only exist for natural watercourses. The Court indicated that riparian rights still may exist if the artificial body of water resulted from a natural waterway.

The Court also clarified that Part 301 of the Natural Resources and Environmental Protection Act (Inland Lakes and Streams) does not give any additional riparian rights to landowners with property next to any water.

MACDC District Meetings

Friday, April 25

Northern/Upper Peninsula District
Soo Locks Tour
Sault Ste. Marie

Thursday, May 8

Northwest District
Agro-Culture Liquid Fertilizers Facility Tour
St. Johns

Friday, May 9

Southwest District
Ceresco Dam Demo Tour
Marshall

Thursday, May 29

Southeast District
EMS Facility Tour
Howell

Monday, June 9

Northeast District
Pigeon River ICD Tour
Caseville

LEGISLATOR SPOTLIGHT

Rep. Mike Shirkey (R - Clarklake)



Rep. Mike Shirkey

As the lead sponsor of the recent Freedom of Information Act reform legislation, Representative Mike Shirkey’s goal was to revise FOIA to provide citizens better access to public records.

“If we want to give citizens the opportunity to ‘trust, but verify’ what government is doing the process has to be accessible and affordable.” Representative Shirkey said.

“This legislation guarantees Michigan citizens a more equitable, clearly defined and understandable process for FOIA requests.”

Representative Shirkey is currently serving his second term in the Michigan House of Representatives. He represents the 65th district, comprised of portions of Jackson, Lenawee, and Eaton Counties.

Prior to joining the Legislature, Shirkey served on Columbia Central School Board and was a board chair of Allegiance Health System.

Shirkey is also the founder and owner of Orbitform, an engineering company which provides prototype engineering services for a wide range of industries and applications. Shirkey also worked in management and engineering for General Motors.

Representative Shirkey and his wife, Sue, reside in Clarklake, Michigan.

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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