



# Legislative Update

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## Drain Code Bill to Modify Financing Process

House Bill 5278 (H-2), introduced by Representative Glardon (R-Owosso), would clarify what expenses can be assessed or apportioned under Sections 306 and 307 when revolving fund money is spent or owed.

Currently under Section 306, when revolving fund money is spent on engineering, legal and administrative services, and the improvement has not been completed within five years of the Order Designating a Drainage District or the First Order of Determination (whichever is later), the Drain Commissioner must report this to the County Board of Commissioners. The Drain Commissioner can then either spread this cost over the drainage district, or if the sum is minimal, the sum can be spread against the property of the original petitioner.



HB 5278 makes several modifications. First, it adds payment of principle or interest on notes as an expense that can be assessed to the drainage district. Second, it adds the filing of a petition as an action that could start the running of the five-year period that must pass before the Drain Commissioner can assess costs for an incomplete improvement. Third, if the expense is assessed against the petitioner's property, it is assessed as the County Board deems just and equitable, removing the requirement that the determination be based on the benefit the property owner would have received if the improvement was completed.

Similar changes are proposed to Section 307, which addresses intercounty drains. **HB 5278 (H-2) was approved by the Legislature and presented to the Governor on April 28, 2016.**

## Property Entry Notice Requirements Proposed

Pending legislation would require notice to property owners for certain maintenance performed under Chapter 8 of the Drain Code. House Bill 4656, introduced by Representative Joel Johnson (R-Clare), requires written notification to property owners for expected entry onto their land to perform maintenance in the form of excavation or tree removal. Notice must be given at least seven days in advance, except in the case of an emergency.

Rep. Johnson saw a need for the bill due to constituent concerns received by his office. "HB 4656 came to us from constituents in our district who were not notified of certain drain maintenance projects happening on their property until equipment arrived and the work had begun. Advance notice by mail would have allowed the property owners a chance to interact with their drain commissioner to better understand the scope and necessity of the work involved. We understand that this is standard

practice in a majority of counties, and HB 4656 puts this 'best practice' in statute across all counties."

MACDC collaborated with Rep. Johnson to craft language that would achieve his goals, while limiting the burden placed on drain commissioners. MACDC President Roger Zilke believes that HB 4656 is a fair solution to the concerns of Rep. Johnson. "Although it may create more administrative work in the drain office, it seems to be common sense to give property owners a bit of notice before you send contractors out to excavate or cut down trees. Some drain offices already make this a standard practice, so I think this legislation shows that our association can work effectively with the Legislature and come to a solution we can all agree on."

**The bill was approved by the House of Representatives by a vote of 108-0 on April 19, 2016, and sent to the Senate Committee on Local Government.**

## LEGISLATOR SPOTLIGHT

## Rep. Ben Gardon

(R - Owosso)

State Representative Ben Gardon represents the 85<sup>th</sup> District, encompassing Shiawassee County and portions of Saginaw County. During his time in the House, Rep. Gardon has worked closely with drain commissioners to solve problems for constituents in and by proposing legislation to amend the Drain Code.

Rep. Gardon is the sponsor of several Drain Code amendments, including HB 5278, which



Rep. Ben Gardon and Shiawassee County Drain Commissioner Tony Newman

clarifies expenses that may be assessed when a project is not

completed. “As this bill has moved through the legislative

system, Tony [Newman] has been extremely involved with

the whole process, even coming to Lansing to testify in front of the House and Senate Committees,” Gardon said.

“Drains are vital to the community and people depend on them in all areas, residential, commercial and agriculture.

The people we represent and work for should be the focus when working on these issues” Gardon said.

## Law Prohibits Adverse Possession of Public Land

Under Public Act 52 of 2016, municipal corporations, political subdivisions and county road commissions are not subject to claims for the recovery or possession of property under several legal theories.

These theories include:

- (1) **adverse possession** (gaining title by exclusively and continuously possessing property for a certain length of time);
- (2) **laches** (the inability to claim title to property due to neglect or delay in claiming a right to the property);
- (3) **prescriptive easements** (similar to adverse possession, an easement created from an open, adverse, and continuous use over time); and
- (4) **acquiescence** (the implied consent of a municipal corporation to grant a property right by not taking any action).

Act 52 expanded these protections to apply when an action is brought by either party (municipality or property owner), not just when an action is brought by a municipal corporation to recover property, as was the case before the amendment.

Act 52 applies to public lands including public highways, streets, alleys, or other public grounds, and also protects easements.

Public Act 52 does not specifically mention drainage districts, but it does prevent adverse possession and other claims against a municipal corporation. Municipal corporations have been defined in other laws to include drainage districts. Accordingly, these expanded protections apply to drainage districts.

**Public Act 52 was approved by the Governor on March 22, 2016 and becomes effective on June 20, 2016.**

# Legislation of Interest to MACDC

The following bills of interest to Drain Commissioners and Associate Members are currently pending before, or recently passed by, 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](http://www.legislature.mi.gov).

## PROBATE COURT APPEALS

**Senate Bill 632**, introduced by Senator Tonya Schuitmaker (R-Lawton) clarifies that final judgments and orders of the Probate Court are appealable directly to the Court of Appeals. *This bill passed the Senate and was referred to the House Committee on Judiciary on January 28, 2016.*

## RECORDING FEES

**Senate Bill 599**, introduced by Senator Peter MacGregor (R-Rockford) changes the fee for recording a document to a flat \$30 fee, regardless of the number of pages and require a \$5 fee for a certified copy of a recorded document. Currently, the fee to record a document is \$8 for the first page and \$3 for each additional page.

*A substitute of this bill (S-4) was passed by the Senate and referred to the House Committee on Local Government on February 16, 2016.*

## FOIA EXEMPTION FOR CRITICAL INFRASTRUCTURE

**House Bill 4540**, introduced by Represented Kurt Heise (R-

Plymouth), would amend the Freedom of Information Act to exempt documents or information relating to cybersecurity plans or critical energy infrastructure. *A substitute of this bill (H-9) passed the House and was referred to the Senate Committee on Elections and Government Reform on April 19, 2016.*

## TERM BONDS FOR DRAIN PROJECTS

**Public Act 27 of 2016**, introduced by Representative Al Pscholka (R-Stevensville), allows for the issuance of "term" bonds for projects performed under the Drain Code. Previously, bonds issued under the Drain Code were required to be "serial bonds," and drain projects potentially faced higher borrowing costs than necessary. 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). *This Act was approved by the Governor and became effective on March 1, 2016.*

## CONSOLIDATION BY PETITION

**House Bill 5279**, introduced by Representative Ben Glardon (R-Owosso) would amend sections 441, 441a, and 446 of the Drain

Code to allow a village to sign a petition for consolidation. *This bill was referred to the House Committee on Local Government on 1/28.*

## CHAPTER 21 SECRETARY

**Senate Bill 687**, introduced by Senator Tory Rocca (R-Sterling Heights) would amend Chapter 21 of the Drain Code to require that after the order of apportionment under Sec. 521, the drain commissioner whose county has the highest aggregate apportionments can opt to become secretary of the drainage board. If that drain commissioner declines, the drainage board then elects another of its members to the position. *This bill was referred to the Senate Committee on Local Government on January 13, 2016.*

## DRAINAGE BOARD RESTRICTIONS

**House Bill 4082**, introduced by Representative Kurt Heise (R-Plymouth) would amend section 5 of the Drain Code to prohibit a Chapter 20 or 21 Drainage Board from the ability to sell, lease, transfer, monetize, lease back, or modify its interest in the assets of a drainage district unless the action is approved by resolutions adopted by the majority of the public corporations assessed for the drain. *This bill was referred to the House Committee on Local Government on January 28, 2016.*

## Senate Local Government Committee

## COMMITTEE SPOTLIGHT



**Committee Members**

- Chair Dale Zorn (R - Ida)
- Vice-Chair John Proos (R - St. Joseph)
- Jack Brandenburg (R - Harrison Township)
- Tory Rocca (R - Sterling Heights)
- Min. Vice-Chair Coleman Young II (D - Detroit)

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**Dale Zorn**  
Committee Chair

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

## Court Clarifies Riparian Rights on Man-Made Waters

The Michigan Court of Appeals recently clarified what riparian rights attach to land that borders an artificial waterway created from a natural watercourse.

In *Lake Adrian Developers v. City of Adrian and Savoy Energy, LP* (Michigan Court of Appeals, December 17, 2015), a developer owned six waterfront lots on Lake Adrian, an artificial lake created by the City of Adrian when it dammed Wolf Creek, a natural watercourse.

The City granted Savoy Energy, LP rights to explore the bottomlands of Lake Adrian for oil and gas, in exchange for royalty payments. The

developer claimed that as a waterfront owner it was entitled to riparian rights, and consequently entitled to a portion of the royalties received by the City.

The Michigan Court of Appeals made it clear that “[r]iparian rights do not attach to land that abuts an artificial watercourse. . .,” reasoning that it would not be fair to grant a landowner riparian rights to an artificial waterbody if it is created solely by the work of another landowner.

The developer argued that Part 301 of NREPA (Inland Lakes and Streams) granted riparian rights to

the bottomlands of Lake Adrian because it was created by damming the natural watercourse. The Court noted that even if the developer could use Part 301 to define itself as a riparian owner, who by statute is entitled to riparian rights on an inland lake, the “the statute does not grant or enlarge riparian rights—it simply defines those terms as commonly understood.”

The Michigan Court of Appeals held that a landowner abutting an artificial waterway has no riparian rights to the artificial waterbody, even if it was created from a natural watercourse.

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