



Legislative Update

VOLUME 2, ISSUE 3

SUMMER 2013

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Wetland Reform Signed into Law

On July 2, 2013, Governor Snyder signed Senate Bill 163 into law. The new law, Public Act 98 of 2013, amends Part 301 (Inland Lakes and Streams) and Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act of 1994, among others, in an attempt to meet EPA audit requirements.

With the tremendous leadership of MACDC's lobbyist, Deena Bosworth, and the efforts of Doug Enos (Midland/MACDC President) and Bob Mantey (Tuscola/DEQ Liaison Committee Chair), MACDC was able to help craft the legislation to meet the specific demands of Drain Commissioners.

The following are highlights of the new law as it affects the day to day activities of Drain Commissioners:

Exempt Activities

Exempt maintenance under Part 301 includes the extension of culverts up to 24 feet, bank stabilization and excavation back to established grades. Part 303 exemptions include placement of spoils in wetland areas where spoils were previously placed.



Individual Permit

Activities such as deepening, straightening and widening will now require an individual permit from the MDEQ.

General Permit

Under PA 98, a new general permit category was created that is specific to activities performed under the Drain Code. A drain commissioner may apply for a general permit by January 20 of each year at an annual cost of \$50 per county.

The permit allows Drain Commissioners to perform activities such as installation and replacement of culverts and clear span bridges, culvert extensions and endsections, drain realignments along roadways, installation of bank and grade stabilization structures, and other common drain activities that use best management practices.

By December 31 of each year, Drain Commissioners must submit a report to the MDEQ containing the activities performed under the permit.

General Permit Category for Drains Still in Works

The specifics for the general permit category established under Public Act 98 for certain activities are still in the drafting process.

Some discussions of the qualifications include:

- Design requirements for in-stream structures, such as J-Hooks and cross veins; and
- New or replaced culverts and clear span

bridges must be approved and inspected by a licensed professional engineer.

Several representatives of MACDC are working with members of the MDEQ to perfect the language of the permit, and to address the prerequisites for the permitted activities. General permit category language will be submitted for public notice later this summer.

COMMITTEE SPOTLIGHT

House Local
Government Committee**Committee Members**

Chairman Amanda Price (R-Park Township)
 Vice-Chair Dave Pagel (R-Oronoko Township)
 Kevin Daley (R-Lum)
 Ray Franz (R-Onekama)
 Peter Pettalia (R-Presque Isle)
 Pat Somerville (R-New Boston)
 Bruce Rendon (R-Lake City)
 Joseph Graves (R-Argentine Township)
 Min. Vice-Chair David Rutledge (D-Ypsilanti)
 Woodrow Stanley (D-Flint)
 Brian Banks (D-Grosse Pointe Woods)
 Alberta Tinsley-Talabi (D-Detroit)

Phone Number

(517) 373-0838
 (517) 373-1796
 (517) 373-1800
 (517) 373-0825
 (517) 373-0833
 (517) 373-0855
 (517) 373-3817
 (517) 373-1780
 (517) 373-1771
 (517) 373-8808
 (517) 373-0154
 (517) 373-1776

Office

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Chair
Amanda Price

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

Section 197 Amendment Sees Action in House Committee

House Bill 4622, introduced by Representative Al Pscholka (R-Stevensville), made its way to the House Local Government Committee agenda for two consecutive hearings this June.

The legislation amends Section 197 of the Drain Code to allow for the revision of drainage district boundaries upon a petition or an inspection under Chapter 8. The revised boundaries would be based upon recommendations of an engineer or surveyor.

Committee Chair Amanda Price (R-Park Township) led the meetings, allowing MACDC representatives an opportunity to address the Committee and field questions that members had regarding the bill.

Roger Zilke (Berrien), Joe Bush (Ottawa) and Bill

Byl (Kent) testified in support of the legislation on behalf of MACDC, addressing the concerns regarding the inequity of current drainage district boundaries and the limitations that the Drain Code sets on the ability for revision, including the inability to remove lands from a drainage district.

MACDC and the Michigan Department of Agriculture and Rural Development are working together to develop amendment language to address the intercounty aspects of the bill.

After two hearings, the Committee has not yet taken a vote on the bill to recommend its movement to the House floor. MACDC will be working toward getting the legislation passed later this year.

Repeal of Drain Code Condemnation Process Introduced

As part of the clean up efforts for the Drain Code, Representative Al Pscholka (R-Stevensville) has introduced House Bill 4793.

This legislation would amend Sections 75 and 128 and repeal other sections of the Drain Code to specify that a drainage district may institute proceedings under the Uniform Condemnation Procedures Act (Act 87 of 1980) to

acquire necessary lands for a county drain or an intercounty drain, respectively.

Currently, the Drain Code outlines a condemnation process in which the drain commissioner must apply to the probate court for the appointment of a 3-member board of determination to determine whether the taking of the private land was necessary

for the use and benefit of the public, and if so, to determine the amount of just compensation.

With the enactment of the UCPA, this method is no longer applicable and causes confusion to courts and property owners.

HB 4793 was discussed in the House Local Government Committee along with HB 4622, but there was no vote taken.

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.

ELECTRONIC CAMPAIGN FILING

Senate Bill 441, introduced by Sen. Robertson (R-Grand Blanc), would authorize a county to adopt an electronic filing and internet disclosure system approved by the Secretary of State to allow required campaign statements or reports to be submitted electronically to the county. This bill is in the Senate Committee on Local Government.

ELECTRONIC SEAL ALLOWED ON PLANS

House Bill 4585, introduced by Rep. VerHeulen (R-Walker), would amend the Occupational Code to allow a licensed architect, professional engineer or profes-

sional surveyor to use an electronic seal on plans submitted to a public authority. This bill is in the House Committee on Regulatory Reform.

AFFIDAVIT FOR MALPRACTICE CLAIM

Senate Bill 309, introduced by Sen. Brandenburg (R-Harrison Township), would require a plaintiff in a malpractice claim against an architect or engineer to file an affidavit of merit with the complaint.

In the affidavit, the affiant must state that (1) the affiant has reviewed the records, (2) the applicable standard of care, (3) that in his or her opinion there was a breach of that standard, (4) the actions which should have been taken and (5) the manner in which the breach was the proximate cause of the alleged injury to the plaintiff.

The affidavit must be signed by licensed architect or engineer involved in the prac-

tice, instruction or research of the field. This bill is in the Senate Committee on Judiciary.

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. **UPDATE:** This bill passed in the House and is now in the Senate Committee on Government Operations.

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.

Senator Mike Green (R-Mayville)

LEGISLATOR SPOTLIGHT



Sen. Mike Green

Michigan Senator Mike Green (R-Mayville) is no stranger to Lansing. From 1995-2001, Senator Green was the state representative for the 84th District in the Michigan House of Representatives.

While in the House, Senator Green worked hard to strengthen the Right-to-Farm Act, modernize the Michigan Drain Code, expand natural resources preservation and recreational opportunities, and enhance the freedoms of Michigan gunowners.

He was awarded two “Silver Plow” awards from the Michigan Farm Bureau and given the highest recognitions from the National Federation of Independent Business, the Michigan United Conservation Clubs, Safari Club International and the Michigan Coalition for Responsible Gun Owners.

Between his time spent as a public servant, Senator Green owned and operated a successful business, Green’s Log Rails and Custom Log Furniture.

On November 2, 2010, Senator Green was elected to serve in the Michigan State Senate. He represents the 31st State Senate District which includes Arenac, Bay, Huron, Sanilac and Tuscola counties.

Before serving in the legislature, Senator Green was a tool and die maker at General Motors, retiring with 30 years in the skilled trades. While working at GM, he also operated a family farm for 17 years and served his local community as a county commissioner for 8 years.

Senator Green and his wife, Paula, reside in Mayville, Michigan.

Legislature Attempts Clean Up of Act 222

Under the Michigan Governmental Immunity Act (Public Act 170 of 1964), governmental entities are given broad immunity from tort claims. The Act contains several exceptions for injuries or damages caused by an entity's negligence.

In 2001, the Legislature sought to clarify an exception for damages caused by the backup or overflow of sanitary sewer systems by enacting Public Act 222 of 2001.

As a result, a property owner could file a claim against a governmental entity if they could prove (1) the sewage disposal system had a defect; (2) the governmental entity knew, or in the exercise of reasonable diligence, should have known, about the defect;

(4) the entity, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect; and (5) the defect was a substantial proximate cause of the event and the property damage or physical injury.

Since PA 222's passage, several Southeast Michigan governmental entities have been saddled with defending class action lawsuits after heavy rain events and are seeking a legislative fix.

Senate Bill 336, introduced by Senator Tonya Schuitmaker (R-Lawton) attempts to implement an administrative hearing process prior to the commencement of any civil action.

Under the bill, a property owner with damages or injuries from a backup or overflow could file a claim with the governmental entity within the specified notification requirements and that entity would be required to hold an administrative hearing within 30 days. The governmental entity would also be required to select a licensed engineer to serve as the neutral hearing officer. Both sides would be allowed to present evidence and the decision of the hearing officer could be appealed to the circuit court.

SB 336 is in the Senate Committee on Local Government and Elections. MACDC is working with stakeholders to ensure that the chosen process effectively handles claims.

MACDC Creates New Farm Bureau Liaison Committee

MACDC and Michigan Farm Bureau have been working side by side during the height of negotiations for the wetland reform legislation. This year, the MACDC Farm Bureau Liaison Committee was created to help foster a good working relationship with those representing the agriculture interests of Michigan.

The committee, chaired by Sanilac County Drain Commissioner Greg Alexander, is tasked with developing rela-

tionships and working with representatives of Farm Bureau to create a healthy alliance for the future when Farm Bureau and MACDC's common interests are at stake.

"My goal for 2013 is to facilitate an understanding between those who push environmental agendas using other peoples' money and those who back up their words with their wallet," said Alexander. "This has been achieved through sound scientific stud-

ies and best management practices that are already in place."

Other members of the committee include Tony Newman (Shiawassee County Drain Commissioner), Brian Jonckheere (Livingston County Drain Commissioner), and Mike Quaine (BMJ Engineers & Surveyors, Inc.). The members will be working primarily with Matt Smego and Laura Campbell as representatives of the Michigan Farm Bureau.

**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