



Legislative Update

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INSIDE THIS ISSUE:

Bill Introduced to Require Maintenance Notice	1
Waters of the United States Rule Finalized	1
Legislator Spotlight: Representative Brett Roberts	2
MDEQ Releases 30-Year Water Strategy	2
New Legislation of Interest to MACDC	3
Committee Spotlight: Senate Natural Resources Committee	3
Drain Code Term Bond Legislation Re-Introduced	4
FOIA Changes in Effect as of July 1	4
Court of Appeals Rules on Easement Limits	4

Bill Introduced to Require Maintenance Notice

Representative Joel Johnson (R-Clare) introduced House Bill 4656 on May 27, 2015. The bill amends the Drain Code to require notice to property owners prior to entering their property to perform routine drain maintenance.

The bill would amend Sections 154 and 191 to require that, if costs of routine drain maintenance under Chapter 8 are being apportioned, the Drain or Water Resources Commissioner must send individual notice by first-class mail to each person informing them that their property is expected to be entered for purposes of the maintenance.



Additionally, the bill amends Section 196 to require notice of any inspection, repair, or maintenance of the drain and any related assessment be provided to property owners by first-class mail and publication regardless of the amount of money to be spent or whether the drain fund contains sufficient funds to cover the costs.

MACDC is monitoring this legislation and has met with the sponsor of the legislation to address concerns related to these increased notification requirements. *This bill is in the House Committee on Local Govern-*

Waters of the United States Rule Finalized

The Environmental Protection Agency (EPA) and Army Corps of Engineers (ACOE) has released the final version of the "Waters of the United States" definition, which defines certain rivers, streams, lakes and marshes that fall under Section 404 of the Clean Water Act.

Opponents of the new language argue that it grants too much authority to EPA/ACOE bureaucrats and will increase penalties to landowners.

Supporters of the new rule claim that it is necessary to supplement weak regulations at the state and local level that are not doing enough to protect water resources.

The EPA/ACOE claims that the new rule

will only expand their jurisdiction under the Clean Water Act by about 3 percent.

The MDEQ is still evaluating the new language, but has indicated that there will be little effect on drain commissioners as Michigan will continue to administer Section 404 through the State's current program. However, if the state's program is found inconsistent with the new rule, Michigan will be given time for legislative fixes to adjust and achieve compliance.

For more information on the new rule, including a chart depicting the final changes to the definition, visit: www.epa.gov/creanwaterule. The new rule will go into effect on August 28, 2015.

LEGISLATOR SPOTLIGHT

Michigan Representative Brett Roberts (R-Eaton Township) was elected to the Michigan State House of Representatives in November 2014. He represents the 65th House District, which includes portions of Jackson County and portions of Eaton County.

As a sixth-generation farmer, Representative Roberts is an active member of the Michigan Farm Bureau and serves on the Michigan Farm Bureau Young Farmers Committee.

Representative Roberts brings his agricultural background to Lansing while serving on the Committee on Agriculture. Rep. Roberts recently introduced legislation to exempt

certain agricultural practices from soil erosion and sedimentation control permit requirements (See page 3). "As a farmer, I know just how unnecessary it is that county permits are needed for simple earth changes on my land," said Rep. Roberts. "This measure ensures that, by removing one more bureaucratic barrier, crop growers can continue normal workday efforts without the frustration of government intervention."

Representative Roberts and his wife, Megan, reside in Eaton Township with their two children, Devin and Ion.



Rep. Brett Roberts

MDEQ Releases Draft 30-Year Water Strategy

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

Following Governor Snyder's request for a comprehensive water strategy in 2012, the Office of the Great Lakes has been tasked with developing a water strategy that encompasses a 30 year vision to support Michigan's water resources. MACDC has been working with the Office of the Great Lakes in the development of the strategy as county and inter-county drains are seen as a key component in the successful implementation of the water strategy.

Some of the goals of the draft water strategy specific to county drain commissioners include:

- Develop a database and conduct a statewide inventory of county and intercounty drains, including maintenance intervals and associated costs; and

- Evaluate and implement necessary changes to the Michigan Drain Code to create a more integrated, watershed based system for managing water.

The Water Strategy can be found at www.michigan.gov/waterstrategy.

The Office of the Great Lakes will be hosting up to five Water Strategy Community Conversations across the state to discuss the draft strategy. Dates and locations will be announced soon. Written comments on the draft Water Strategy may be submitted to:

Office of the Great Lakes
MI Department of Environmental Quality
PO Box 30473-7973
Lansing, Michigan 48909

Comments may also be submitted by fax at (517) 335-4053 or online to: MI-WaterStrategy@michigan.gov. All comments are due by Friday, August 28, 2015.

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.

SOIL EROSION EXEMPTION FOR AG

House Bill 4604, introduced by Rep. Roberts (R-Eaton Township) would exempt persons from having to obtain a permit for earth changes associated with certain agricultural practices if the activities do not result in, or contribute to, soil erosion or sedimentation of the waters of the state or a sediment discharge off-site:

- The construction, maintenance, or removal of fences and fence lines;
- The removal of tree or shrub stumps or roots; or
- The installation of drainage tile, irrigation, or electrical lines.

This bill is in the House Committee on Agriculture.

FOIA EXEMPTION FOR OIL & GAS

House Bill 4540, introduced by Rep. Heise (R-Plymouth) would exempt from disclosure, among other

things, records related to critical energy infrastructure. Critical energy infrastructure means existing and proposed systems relating to oil, petroleum, electricity, or natural gas. The purpose of exempting these records is to avoid threats to public security, economic security, and the health and safety of the public. *This bill is in the House Committee on Oversight and Ethics.*

RECORDING REQUIREMENTS

Senate Bill 62, introduced by Sen. Hertel (R-Meridian Township) prescribes certain requirements for recording documents with the register of deeds. The bill would require any instrument conveying title to or an interest in real estate to contain the original signature of each person executing the instrument. The bill would also require any recorded document have the name of each person signing the document printed below the original signature, the name of the notary public printed beneath his or her signature and the address of each grantee in the conveyance of real estate.

This bill passed in the Senate on

June 3 and was reported with recommendation by the House Committee on Local Government on June 17.

MUNICIPAL ADVERSE POSSESSION

House Bill 4747, introduced by Rep. Hughes (R-Montague) would prohibit a claim of adverse possession or prescriptive easement be brought against a local unit of government. Generally, a person can claim superior title in lands of another after 15 years of use. This bill would exempt lands owned by a municipal corporation. *This bill is currently in the House Committee on Judiciary.*

OPEN MEETINGS ACT:

PHYSICAL PRESENCE REQUIRED

House Bill 4182, introduced by Rep. Price (R-Park Township) would amend the Open Meetings Act to mandate that each member of a public body must be physically present when casting his or her vote in order for the vote to be considered made at a meeting open to the public.

This bill passed the House and is in the Senate Committee on Elections and Government Reform.

COMMITTEE SPOTLIGHT



Committee Members

- Chair Tom Casperson (R-Escanaba)
- Vice-Chair Phil Pavlov (R-St. Clair Township)
- David Robertson (R-Grand Blanc Township)
- Jim Stamas (R-Midland)
- Min. Vice-Chair Rebekah Warren (D-Ann Arbor)

Senate Natural Resources Committee

Phone Number

- (517) 373-7840
- (517) 373-7708
- (517) 373-1636
- (517) 373-7946
- (517) 373-2406

Office

- 705 Farnum
- 905 Farnum
- 305 Farnum
- 920 Farnum
- 415 Farnum

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

Drain Code Term Bond Legislation Re-Introduced

Representative Al Pscholka (R-Stevensville) introduced House Bill 4758 on June 18 to 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 legislation would allow the issuance of term bonds, potentially reducing interest rates. Essentially, these “term” bonds allow one bond certificate to be used with a larger principal amount, rather than several bond certificates with smaller amounts, which may attract larger financial institutions offering lower interest rates.

FOIA Changes in Effect as of July 1

The amendments to the Freedom of Information Act (“FOIA”) are now in effect, as of 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. 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.

Many counties have already established these procedures and guidelines. If a public body is not in compliance with the new requirements to FOIA, no fee may be charged to fulfill a FOIA request.

Court of Appeals Rules on Easement Limits

In *Bellville v Matuszak* (Michigan Court of Appeals, May 19, 2015), landowners created a drainage system on a 40-acre section of their farmland. The landowners subsequently sold the 40-acre section, subject to an easement for the existing drainage system. The Court of Appeals ruled against the previous landowners, finding that the specific language of the easement only provided the previous owners with the right to enter the property to use, maintain, repair, and/or replace existing tile lines and water ways, and did not specify that grass must cover the tile line.

Eventually, the new owners planted crops on the land above the drainage tile and removed grass cover from the tile, which the previous owner, who still owned the surrounding farmland, claimed was disrupting the drainage system, and thus, violating the easement.

The Court of Appeals ruled against the previous landowners, finding that the specific language of the easement only provided the previous owners with the right to enter the property to use, maintain, repair, and/or replace existing tile lines and water ways, and did not specify that grass must cover the tile line.

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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