



# Legislative Update

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## Law Passes Requiring New Notice for Property Entry

Public Act 171 of 2016 (formerly 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 new law 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," he said.

"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 law was signed by the Governor on June 12, 2016 and takes effect on September 12, 2016.***

## Court Reinstates Straight-Ticket Voting Option

In January 2016, Governor Snyder signed a new law that banned straight-ticket voting in Michigan.

This new law was challenged in federal court, with opponents raising concerns about the ban creating longer voting lines and that



people would be discouraged from voting, particularly minority voters. Supporters of the new law argue that the elimination of straight-ticket voting would help create a more in-

formed electorate.

On July 22, the U.S. District Court granted a preliminary injunction on the new law, citing a possible violation of the Voting Rights Act.

The Michigan Attorney General and Secretary of State have filed notices of intent to appeal the decision and have asked the Court to issue an order allowing the November election to proceed without the option of straight-ticket voting until the case is fully decided. If the injunction is to be overturned in time for the November election, a decision must be reached by September 24, which is when county clerks must print absentee ballots.

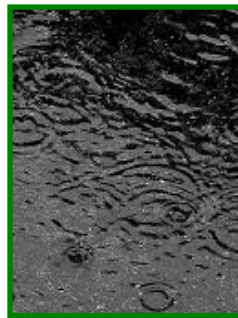
## House Bill to Clarify Public Act 222

Under the sewage disposal system and storm water system exception of the Governmental Immunity Act, known as Public Act 222, a governmental body is only liable for injuries or damages related to the overflow or backup of a sewage disposal system or storm water system “event” when certain statutory criteria are met.

Many governmental bodies are overwhelmed by the number of Public Act 222 claims they receive and are required to respond to following extreme rain events that result in flooding.

House Bill 5282, introduced by Representative Michael Webber (R-Rochester Hills), is a response to several municipalities in Oakland County that have been exposed to significant lawsuits due to extreme rain events and related flooding.

The bill would revise the definition of an “event” (which includes storm water system events) to account for such extreme rain events. If flooding occurs in an area that receives rainfall that measures either 1.7 inches or more in an one-hour period, or 3.3 inches or more in any 24-hour period, an “event” would not exist, and therefore the governmental body would have no liability for any injuries or damages that result.



The bill would also clarify the definition of “defect” as required by Public Act 222, to ensure that a defect does not exist if the system was designed and constructed according to applicable state standards or requirements set forth in statute, rule, permit, court order, administrative order, or consent order.

The amendment to Public Act 222 has been a collaborative effort between many entities, including the Michigan Association of Counties, MML, MACDC, legislative staff, and various drain commissioners and their staffs.

Oakland County Water Resources Commissioner Jim Nash, who has been actively involved in this process, be-

lieves this bill will be of a great benefit to taxpayers across the state. “This legislation, if adopted, will save taxpayer dollars and resources that are currently being used on defending claims and lawsuits. It will make it clear that sewer service providers are not liable when rainfall is so intense that it overwhelms collection and treatment infrastructure.”

***A substitute version of this bill (H-2) was approved by the House Committee on Local Government on May 25, 2016.***

## Certificate of Insurance Law Not Widely Followed

More than two years ago, Governor Snyder signed into law an amendment to the Insurance Code that prohibits the issuance of a certificate of insurance that alters any provision of the underlying insurance policy. Notably, many certificates of insurance provided for additional insureds to be named and the right to notice of the cancellation of coverage that was not contained in the actual insurance policy.

Many contractors (and even their insurance companies) are still only providing a certificate of insurance to demonstrate the additional insured status and the right to notice of cancellation. These certificates of insurance are unenforceable in Michigan.

The only way to ensure proper coverage is to obtain the actual policy that demonstrates such coverage.

## Senate Elections & Government Reform Committee

## COMMITTEE SPOTLIGHT



**Senator David Robertson**  
Committee Chair

**Committee Members**

Chair David Robertson (R-Grand Blanc Twp)  
 Vice-Chair Patrick Colbeck (R-Canton)  
 Judy Emmons (R-Sheridan)  
 Mike Shirkey (R-Clarklake)  
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Currently scheduled meetings are available at: [www.legislature.mi.gov](http://www.legislature.mi.gov)

# 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).

**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 (H-2) was passed and signed by the Governor on June 22, 2016. It takes effect on October 1, 2016**

**DRAIN CODE FINANCING PROCESS**

**Public Act 115 of 2016 (formerly House Bill 5278)**, introduced by Representative Ben Glardon (R-Owosso) clarifies what expenses can be assessed or

apportioned under Sections 306 and 307 when revolving fund money is spent or owed.

Previously, under Section 306, when revolving fund money was 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 could then either spread this cost over the drainage district, or if the sum is minimal, the sum could be spread against the property of the original petitioner.

PA 115 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 incom-

plete 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 were made to Section 307, which addresses intercounty drains.

***This bill was approved by the Governor on May 10, 2016 and was given immediate effect.***

**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 was approved by the Governor on June 20, 2016, but does not take effect unless House Bill 5503 is enacted into law. HB 5503 has been passed by the House and is currently in the Senate Committee of the Whole.***

## AGENCY SPOTLIGHT

### Michigan Department of Environmental Quality Director Heidi Grether



Governor Snyder has appointed Heidi Grether of Williamston to replace interim DEQ Director Keith Creagh, effective August 1, 2016. Creagh will return to his previous position as DNR Director.

Director Grether previously served as deputy director of Michigan’s Agency for Energy, where she was responsible for ensuring the state’s compliance with federal pollution regulations.

In a statement, Governor Snyder stated that Director Grether “has decades of experience in environmental quality issues, and has effectively served during times of crises and recovery.”

Director Grether received her bachelor’s and master’s degrees from Michigan State University, and has previous experience as a legislative staffer and in government affairs work for the private sector.

## Court Finds No Easement For Use of Private Water Line

The case of **Brookfield East Lansing LLC v 125 N. Hagadorn, LLC** (Michigan Court of Appeals, June 28, 2016) involves a neighboring dispute of property rights following the discovery that one property was receiving its municipal water supply from a private line of the adjoining property, instead of directly connecting to the municipal water system.

The Court ruled that the apartment building that had been receiving the water supply through the neighboring strip mall’s private

line, did not have an easement to continue to do so and that strip mall could remove the connecting line.

The Court noted there was no easement implied by necessity because the cost for the apartment to connect to the municipal water system was only approximately \$12,000.00.

Likewise, the Court found no implied easement from prior use because there was no unity of title (the apartment building and strip mall would have needed to be one

parcel at the time the apartment building was hooked up to the water line).

The Court also found that no prescriptive easement existed because the apartment building’s use of the line was not open or notorious. For land uses that are not visible (such as an underground pipe), they are not open unless a reasonably diligent landowner would become aware of them. To be notorious, the strip mall owner would have to have had knowledge of the line, which was not shown.

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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)