

# Legislative Update

VOLUME 2, ISSUE 1

WINTER 2013

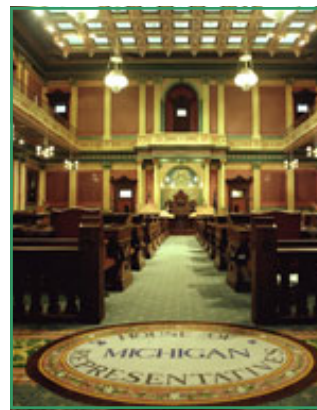
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## Lame Duck Over, New Term Begins

This Update will touch on some of the bills that passed in the wee hours of the last day of the 96th Legislative Session, including new meeting requirements under the Open Meetings Act, new grants for drain commissioners and the ability to now record affidavits identifying errors affecting real property with the Register of Deeds, and bills that will be reintroduced.

Both chambers of the 97th Legislature continue to be controlled by the Republican party, with the



House Republican's losing 5 seats in the last election, giving them an 8-member lead (59-51). The Governor's office and the Supreme Court are also Republican, making the GOP a stronghold in the Capital City.

MACDC is ready to tackle issues with the new Legislature and will present the New Legislator Video (now available at the Drain Conference!) to committees this year, including the Agriculture Committees featured in this issue.

## Open Meetings Act: Additional Notice Requirements

House Bill 5459 (H-3) was passed during the infamous lame duck push in December. Public Act 528 of 2012, signed by the Governor, amends Section 5 of the Open Meetings Act and adds certain notice requirements applicable to a public body when holding a rescheduled regular meeting, special meeting or an emergency public meeting.

Specifically, the bill provides that for a rescheduled regular meeting or a special meeting of a public body, the public notice that must be posted at least 18 hours before the meeting must:

- Be placed in a prominent and conspicuous place at both the public body's principal office; and
- If the public body directly or indirectly maintains and official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, on a por-

tion of the website that is fully accessible to the public. The website notice must be on the homepage or accessible via a conspicuous link on the homepage.

For an emergency public meeting (in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat) that does not comply with the general 18 hour notice requirement, the public body must:

- Make paper copies of the notice available at the meeting that includes an explanation of the specific reasons that the public body cannot comply;
- Post the notice on the public body's website, if applicable; and
- Within 48 hours, the public body must report to the County Board of Commissioners.

## COMMITTEE SPOTLIGHT

# Senate Agriculture Committee



**Sen. Joe Hune,  
Chairman**

**Committee Members**

Chairman Joe Hune (R-Hamburg)  
 Vice-Chair Darwin Booher (R-Evart)  
 Judy Emmons (R-Traverse City)  
 Geoff Hansen (R-Elkton)  
 Minority Vice-Chair Virgil Smith (D-Detroit)

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

## Municipal Assessments for Ch. 20 Drains Appealed to Circuit Court

On December 27, 2012, the Michigan Court of Appeals released a published opinion relating to the proper venue for appeals for a township special assessment relating to the Michigan Avenue East Central Area Drainage District Project.

In 2009, the Chapter 20 Drainage Board moved forward with a petitioned project and assessed a portion of the assessment to Pittsfield Township. The Township paid half of the cost from their general fund and created a special assessment district to finance the rest.

Ashley Ann Arbor, LLC is one of the property owners in the Township’s special assessment district.

Ashley filed a petition with the Michigan Tax Tribunal (MTT), challenging an assessment under the Public Improvements Act (PIA), within the allotted time the Township gave to appeal the assessment.

Ashley then filed an appeal in the Circuit Court and moved to transfer the MTT petition to the Circuit Court. The Township responded that the correct forum

was the MTT, and the Circuit Court agreed.

The Court of Appeals reversed, insisting the Township was assessing the property under the Drain Code, and that the Circuit Court was the proper forum for assessment appeal.

Pittsfield Township will likely appeal the Court of Appeal’s decision. The case will impact municipalities involved in Chapter 20 drain proceedings as the potential costs of litigating municipal assessment appeals in Circuit Court far exceed the costs of the MTT.



## Contractor/Consultant Anti-Indemnification Passes

House Bill 5466 passed late last legislative session, creating Public Act 468 of 2012. The new law amends the Void Construction Contracts statute, which voids certain indemnity clauses in construction contracts, by:

- Prohibiting a public entity from requiring an architect, engineer, landscape architect, surveyor, or contractor to defend the public entity or any other party from liability claims or to indemnify the public entity or other party for an amount greater their

degree of fault;

- Extending coverage to the design of a building, and include infrastructure and any improvement to real property; and
- Specifying that the Act will not affect governmental immunity.

Any agreement that indemnifies a party against liability for bodily injury or property damage caused by the party’s sole negligence is void as against public policy. This law will go into effect on March 1, 2013.

# Strategic Water Quality Grants Available

During the final hours of the 2011-2012 session, House Bill 5673 (S-2), legislation that would create new funds for strategic water quality projects, passed both the House and Senate.

The bill identified certain construction activities relating to sewage treatment, storm water treatment, and non-point source projects designed to protect water quality that are water or energy efficient, among the activities that are eligible for a low-interest loan through the Strategic Water Quality Initiatives Loan Program.

These construction activities include testing, demonstration and construction activities for innovative wastewater and storm water technologies when identified through an asset management program or storm water project plan designed to protect water quality.

An asset management program is a program that identifies the desired level of service at the lowest life cycle cost for rehabilitating, repairing, or replacing the assets associated with a municipality's wastewater or storm water system.

Additionally, the bill authorizes the use of money from the Strategic Water Quality Initiatives Fund (SWQIF) for grants to municipalities for sewage collection and treatment systems, and grants and loans for wetland mitigation banks.

Specifically, this bill authorizes grants for municipalities for up to \$1.0 million in which the grant could cover a maximum of 90% of the costs incurred by the municipality. For grants that exceed \$1.0 million but are less than \$2.0 million, the grant can cover 90% of the

project up to the first \$1.0 million, and not more than 75% of the costs incurred above \$1.0 million.

The bill includes provisions in which a municipality could receive 100% of its construction costs through the grant money if the municipality is:

- disadvantaged community;
- in receivership;
- operating under an emergency manager or emergency financial manager; or
- operating under a consent agreement.

Finally, the bill implements an annual reporting requirement for the Michigan Department of Environmental Quality (DEQ).

House Bill 5673 was signed by the Governor and assigned Public Act 511 of 2012.

## State Representative Kevin Daley (R-Lum)

### LEGISLATOR SPOTLIGHT



**Rep. Kevin Daley**

Representative Kevin Daley, a lifelong farmer and resident of Lapeer County, represents the 82nd District of the Michigan House of Representatives. As just one of a few active farmers serving in the Legislature, he has a unique perspective on the importance of drainage.

“In the State of Michigan there are three things the entire agricultural industry needs to maintain the state's second largest economy. Sun, rain and drainage,” Daley said. “Without drainage, not much agriculture would exist in this state.”

Rep. Daley thinks the biggest issue concerning drainage facing farmers is wetland regulation. “This issue drives farmers crazy because there is great confusion as to exactly what is a

wetland and what is not,” Daley said. “We only need to govern wetlands that are ‘real wetlands.’”

In terms of the legislative process, Rep. Daley thinks that county drain commissioners should be more aggressive on policies improving water quality. “It’s important for everyone to know it’s not the DNR or the DEQ that is primarily responsible for implementing techniques that improve water quality.”

In his previous two terms, Rep. Daley has served on several committees, most notably as Chair of the Agriculture Committee. He will continue to retain his chairmanship and looks forward to working with county drain commissioners during his third and final term.

## Affidavits Now Able to Correct Recorded Documents

Public Act 336 of 2012 was passed by the Legislature last fall and allows affidavits containing corrections of certain errors or omissions in previously recorded documents to be recorded with the a county’s register of deeds office.

The new law allows drain commissioners and others to correct mistakes that may appear in recorded documents such as easements.

The types of errors or omissions that may be corrected include errors relat-

ing to the proper place of recording and any scrivener’s errors or omissions (errors made during the transcribing of legal documents or clerical errors).

The affidavit must be made by a person who has relevant factual knowledge and the competence to testify in a court regarding the contents of the affidavit.

Additionally, the affidavit must include a description of the land whose title may be affected. An instrument

such as a deed, will, mortgage, or other document that contains a full and adequate legal description can be incorporated by reference.

The new law does not prohibit anyone from recording of a corrected version of the previously recorded document indicating the corrections made and with an appropriate reference to the previous liber and page number.

P.A. 336 went into effect on October 16, 2012.

## MISS DIG Legislation to be Reintroduced Early in Term

Late in 2012, the MACDC membership was involved in what appeared to be the final stages of revamping the MISS DIG system. Key stakeholders, including the Michigan Farm Bureau, Consumers Energy and MACDC, were brought together to discuss ways to expand MISS DIG to cover more utilities, ensuring a safer process. However, no agreement could be reached prior to the end of the legislative session.

Although MACDC generally supports the MISS DIG system and recognizes the importance of staking underground utilities, there were concerns raised with certain requirements of the bill (including costs and timeliness) and

MACDC expressed those concerns to the Legislature with success.

The legislation originally required all drain commissioners to be members of MISS DIG and generate quick responses every time someone wanted to dig near any underground drain, sanitary or storm water. If a drain was in fact located in the area, the drain commissioner or staff would then have to stake the site within a certain measure of accuracy.

Many drain commissioners currently subscribe to the MISS DIG system, but generally for purposes of their county’s sanitary sewers. MACDC explained to legislators and legislative staff the

sheer magnitude of responses and staking requests the legislation as written would generate for offices and the staffing limitations that would make responding and staking impossible. An exclusion of established storm water drains was agreed upon.

According to the Michigan Association of Counties, there are plans to reintroduce the legislation early this term. The MACDC Legislative Committee will be working this term to address the MISS DIG legislation to allow drain commissioners to voluntarily participate if they have the resources to comply and to seek overall solutions for future compliance for all.

<p><b>Michigan Association of County Drain Commissioners</b> 120 N. Washington Sq., Suite 110A Lansing, MI 48933</p> <p>Phone: 517-484-9761 Fax: 517-371-1170</p>	<p><b>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.</b></p>
<p align="center"><b>We’re on the web! <a href="http://www.macdc.us">www.macdc.us</a></b></p>	