



# Legislative Update

VOLUME 4, ISSUE 1

WINTER 2015

**INSIDE THIS ISSUE:**

Drain Code Amendments Pass in 2014	1
Leadership Spotlight	2
98th Legislature Members Sworn Into Office	2
New Case Law of Interest to MACDC	3
Governor Snyder Signs New FOIA Law	4
Court of Appeals Decides Drain Code Cases	4

## Drain Code Amendments Pass in 2014

On the last day of the 97th Legislative Session, the Legislature passed four Drain Code amendments supported by MACDC. The following is a breakdown of each new law:

**PA 550 of 2014: Section 5**

PA 550 amends the Drain Code to clarify that Drainage Districts may acquire real or personal property by gift, purchase, or any other method, including condemnation.

**PA 551 of 2014: Sections 101 & 121**

PA 551 amends the Drain Code to allow a single municipality in one county to apply for an intercounty drain drainage district (Section 101) and to petition for an intercounty drain (Section 121). Previous to this amendment, a municipality could not petition to establish an intercounty drainage district and a municipality from each county had to petition to establish an intercounty drain. The new establishment method makes the intercounty process consistent with the county process.

**PA 544 of 2014: Section 196a**

PA 544 creates a new Section 196a, which will allow Drain/Water Resources Commissioners and Drainage Boards to remove debris, such as ice, fallen trees or logjams, from natural watercourses that is adversely affecting one or more county or intercounty drains.

The law specifies that prior to any debris removal, a professional engineer must determine that the debris has caused or is causing flooding, an imminent risk of flooding, increased erosion, channel instability, reduction in capacity that may cause flooding, or other damage to one or more county or intercounty drains. Landowner permission must also be granted to access and remove debris from natural watercourse.

Costs incurred under Section 196a will be assessed to the Drainage District or Districts

that are benefitted by the removal of the debris. The expenditure limits of Section 196 remain in effect (\$5,000 per mile or fraction of a mile per year) unless the debris removal work is performed as part of a petitioned project.



**PA 552 of 2014: Section 327**

PA 552 amends the Drain Code to allow road commissions the ability to petition for a new intercounty drainage district and intercounty drain and for the maintenance and improvement of an existing intercounty drain.

***For copies of the new Public Acts, please visit the Michigan Legislature website at: [www.legislature.mi.gov](http://www.legislature.mi.gov) and select the Public Act (Signed Bills) tab on the left.***

## LEADERSHIP SPOTLIGHT

## Michigan House of Representatives (2015-2016)



Kevin Cotter  
R-Mount Pleasant  
House Speaker



Aric Nesbitt  
R-Lawton  
House Majority  
Floor Leader



Al Pscholka  
R-Stevensville  
House Appropriations  
Chair



Tim Greimel  
D-Auburn Hills  
House Minority Leader



Sam Singh  
D-East Lansing  
House Minority Floor  
Leader

## Michigan Senate (2015 - 2018)



Arlan Meekhof  
R-West Olive  
Senate Majority Leader



Mike Kowall  
R-White Lake  
Senate Majority Floor  
Leader



Dave Hildenbrand  
R-Lowell  
Senate Appropriations  
Chair



Jim Ananich  
D-Flint  
Senate Minority  
Leader



Morris Hood III  
D-Detroit  
Senate Minority Floor  
Leader

## 98th Legislature Members Sworn Into Office

Many new faces are coming to Lansing this 98th legislative session. In November, House Republicans won four additional seats, with a new majority of 63 compared to the House Democrats' 47 seats. The Senate Republicans also won an additional seat in the Senate for a total of 27 seats compared to the Senate Democrats' 11.

With new faces also comes new members on the House and Senate Committees that MACDC has worked closely with in past sessions to update the Drain Code.

The House Local Government Committee will now be chaired by Representative Lee Chatfield (R-Levering) with Representative Amanda Price serving as Vice Chair. Other members include Rep-

resentative Kurt Heise (R-Plymouth), Representative David Maturen (R-Brady Township), Representative Jim Runestad (R-White Lake), Representative Jason Sheppard (R-Temperance), Representative Lana Theis (R-Brighton), Representative Jeremy Moss (D-Southfield), Representative Charles Brunner (D-Bay City), Representative Sheldon Neeley (D-Flint) and Representative David Rutledge (D-Ypsilanti).

The Senate Local Government Committee will be chaired by Senator Dale Zorn (R-Ida). Other members include Senator John Proos (R-St. Joseph), Senator Jack Brandenburg (R-Harrison Township), Senator Tory Rocca (R-Sterling Heights) and Senator Coleman Young II (D-Detroit).

# New Case Law of Interest to MACDC

The following is a summary of cases of interest to Drain/Water Resources Commissioners and Associate Members involving topics such as the limited scope of easements, the statute of limitations for trespass and the duty of a public agency under PA 222:

## SCOPE OF EASEMENTS

If the language of an easement does **not** expressly authorize the placement of equipment or structures, the easement holder will be prohibited from doing so, according to the Michigan Court of Appeals. In *D'Andrea v AT&T*, (Michigan Court of Appeals, August 19, 2014), the Court stated there is no automatic right to place any structure within an easement unless it is specifically granted. The Court noted that doing so without express authority could be considered a trespass. Only improvements that are necessary for the purpose of the easement and least burdensome to the property owner will be allowed.

Similarly, in *Blackhawk Development v Village of Dexter*, (Michigan Court of Appeals, July, 13 2005), the Village of Dexter proposed installing sidewalks, trees, and water and sewer lines within a road easement. The Village's easement was for "relocating, establishing, opening and improving" of a road. The Court held that the proposed work was unnecessary for the purpose of the easement and would unreasonably increase the burden on the owner of the property.

Further in *Wiggins v City of Burton*, (Michigan Court of Appeals, February, 8 2011), the Court relied on the plain language of the easement which was

for private "storm detention" when it determined that the installation of drain pipe was not permitted. The Court noted that "if the language of the easement is clear, it is to be enforced as written and no further inquiry is permitted."

## TRESPASS

In order to recover damages for trespass, an action must be filed within three years of the "trespassory act." Determining when the "trespassory act" has occurred, however, has led to considerable litigation on the topic.

In *Guastello v LaFon*, (Michigan Court of Appeals, September 23, 2014), the Court held a property owner could not sue his neighbor for installing a drain on his property in 2006, even though it was not discovered until several years later. The Court found the property owner's lawsuit untimely when brought in 2011, or 5 years after the installation.

However, a somewhat different result occurred in *Wells Venture v GTR Glacier Club*, (Michigan Court of Appeals, September 23, 2014). The Court allowed the case to proceed because the property in question was subject to a land contract, even though it was brought six years after a detention pond was installed on the property without permission. The Court noted that when a property owner is selling property on land contract ("vendor"), they only hold "legal title" to the property, while the purchaser ("vendee") holds "equitable

title." The court reasoned that the property owner/vendor did not have an equitable interest in the property until the land contract was forfeited in 2009, bringing the 2011 suit within the three year time period.

## PA 222

In *Fingerle v Ann Arbor*, (Michigan Court of Appeals, December 2, 2014), the Court dismissed a PA 222 claim, against the City of Ann Arbor. In the early 1990's and without any legal obligation to do so, the City constructed a retention basin in an area that was historically prone to flooding. After a heavy rain, the property owner's basement flooded and he brought a PA 222 claim against the City, claiming the retention pond was defective because it did not have adequate capacity. The Court noted that PA 222 has never imposed a duty on a public body to prevent damage to private property caused by extreme weather.

In *Zmudzinski v Cassopolis Area Utilities Authority*, (Michigan Court of Appeals, September 25, 2014), the Court dismissed a PA 222 claim since the

property owner's expert witness testimony was "nothing more than speculation and conjecture" and not based on any evidence that would link the Authority to the sewage overflow. Nor was there any evidence that the Authority knew or should have known of a blockage in the system or failed to take reasonable steps to correct the defect. Because the landowner could not prove these elements, the Court held that the Authority was not liable.



# Governor Snyder Signs New FOIA Law

Several changes to Michigan’s Freedom of Information Act (FOIA), will take effect on July 1, 2015. Public Act 563 of 2014 amends FOIA to clarify the fees a public body may charge, provide a new right of appeal, impose new fines for violations and clarify the proper venue for bringing a claim. Some specific changes include:

- Public bodies must have established procedures and guidelines detailing the six fee elements in order to charge fees.
- Public bodies may require a good faith deposit of either half or all of the estimated costs under certain circumstances.
- Failure to meet the deadline to

respond results in a 5% reduction of any chargeable fees, up to a maximum 50%.

- Copies are capped at 10 cents per page for standard and legal size paper.
- Public bodies may charge for contracted labor to separate exempt from non-exempt materials at a rate of 6 times the state minimum wage rate.
- Requestors may now appeal an “excessive fee” if they believe the fee is above and beyond those in



the established guidelines and procedures.

- FOIA lawsuits against public bodies must be brought in the circuit court, unless the claim involves a state agency, which must be brought in the Court of Claims.
- Arbitrarily and capriciously refusing to disclose a record results in a \$1,000 civil fine and \$1,000 in punitive damages.
- Arbitrarily and capriciously charging an excessive fee record results in a \$500 civil fine and \$500 in punitive damages.
- A civil fine ranging from \$2,500 to \$7,500 will be imposed if a public body “willfully and intentionally” violated FOIA.

# Court of Appeals Decides Drain Code Cases

The Michigan Court of Appeals recently handed down two decisions—both affirming the Court’s deferential view of the Drain Code’s administrative bodies.

In *Vanmeerbeeck v Wright* (Michigan Court of Appeals, October 21, 2014) residents appealed a Board of Determination’s finding of no necessity. The Board was first ordered to make additional findings and again found no necessity. The residents again appealed. The circuit court affirmed the Board’s decision and an appeal was taken to the Court of Appeals. The Court of

Appeals upheld the Board’s finding of no necessity, reasoning that the circuit court did not clearly err in upholding the Board’s finding since it was supported by competent, material and substantial evidence.

Similarly, in *Charter Tp. of Lansing v Ingham County Drain Comm’r* (Michigan Court of Appeals, December 2, 2014), the Court of Appeals upheld a Board of Review’s apportionment since the Township could not show that their decision was not based on competent, material and substantial evidence.

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**