



Legislative Update

VOLUME 5, ISSUE 1

WINTER 2016

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Drain Code Bills to be Introduced Early 2016

Several amendments to the Drain Code are set to be introduced by Representative Ben Glardon (R - Owosso). The following is a summary of the proposed legislation:

House Bill 5279: This legislation would amend Sections 441 and 441a to authorize a village to petition to consolidate drainage districts. Currently, the Drain Code only specifies that cities and townships may file a petition for consolidation.

House Bill 5278: This legislation would amend Sections 306 and 307 to allow drain commissioners or drainage boards to assess engineering, legal and administrative costs and principal and interest



on notes, to a drainage district if the improvement has not been completed within five years after the filing of an order designating a drainage district, a petition or the first order of determination.

Sections 135 & 197: This legislation would allow a drain commissioner or a drainage board to add or remove lands that would result in the addition or removal of a county through a petition under Section 135 or pursuant to a public hearing and a day of review under Section 197.

MACDC will provide updates regarding the bills and their progress as they move through the legislative process.

Term Bond Legislation Moving Forward

House Bill 4758, introduced by Representative Al Pscholka (R-Stevensville), which would the issuance of “term” bonds for projects performed under the Drain Code, passed the House unanimously on October 14, 2015.

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” and therefore drain projects are potentially facing higher borrowing costs than necessary. This bill would update the Drain Code to come in line with other municipal financing options.

From an investor perspective, term bonds are more efficient debt obligations and are more attractive. Term bonded projects may attract more investors which would result in lower interest rates.

HB 4758 is currently in the Senate Local Government Committee. Testimony was taken on January 19.

SPOTLIGHT

Keith Creagh

Keith Creagh has worked within Michigan state government in some capacity since 1974. Most notably, he has served as Director of the Michigan Department of Agriculture and Rural Development and now serves as the Director of the Michigan Department of Natural Resources. Most recently, Creagh has been named the interim Director of the Michigan Department of Environmental Quality.

While working with drain commissioners and MACDC, he noted the “high degree of professionalism and knowledge” drain commissioners brought to complex issues from environmental impacts to public health and safety.

Director Creagh noted that drain commissioners have a thorough knowledge of their responsibilities and also the DNR mission, which creates a unique relationship allowing the two groups to “get past platitudes and actually get down to details on important issues.”

One important example of this positive relation-

ship is the opportunity to use public lands as green infrastructure. “The DNR manages 4.6 million acres of land on behalf of the public,” which should be “working lands,” he notes.

“So, how can we responsibly use public lands, for instance, to aid water retention? Or can we explore opportunities for wetlands mitigation banking on public land to benefit wildlife in addition to benefiting the environment by providing larger areas of high-quality wetlands?”

Director Creagh encourages drain commissioners to get to know local DNR staff and involve them during the planning process to accomplish the goals and objectives of each. “Drain commissioners can assist us in the local relationships with communities the DNR touches across the state.”



Keith Creagh

Local Units Oppose Reimbursement of Utility Relocation Costs

House Bill 5016, introduced by Representative Eric Leutheuser (R - Hillsdale) would require local governments to partially reimburse telecommunications companies for temporary or permanent relocation costs under certain circumstances.

The legislation, as currently drafted, requires a city, village, township, county or the Department of Transportation to send written notification to the entity owning the facilities at least one year before any relocation is to occur.

The notice must identify the specific rights-of-way affected, including beginning and ending points, affected cross streets and structures, and the planned start date of the project. If notice is not provided, the municipality must reimburse the entity 50% of its relocation costs, including boring and labor costs.

A local government would not be required to reim-

burse any relocation costs if the work is due to an act of God or other emergency, including flooding not caused by an act of God, a water main break or sewer line failure.

A local government may require permits for relocation, but must waive the permit fees and must reimburse the utility for any survey or study costs arising from the relocation.

As of December, MACDC, M-1 Rail, Michigan Coalition to Protect Public Rights-Of-Way, Great Lakes Water Authority and the Detroit Water and Sewage Department oppose the bill. The Michigan Department of Transportation is neutral.

House Bill 5016 (Substitute H-5) has been reported favorably from the House Committee on Communications and Technology and now awaits a vote in the House.

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.

INVASIVE SPECIES CONTROL

Senate Bill 104, introduced by Senator Tom Casperson (R-Escanaba) would amend Part 33 (Aquatic Nuisance Control) of NREPA to grant local units of government the authority to adopt ordinances for the control or eradication of aquatic invasive species in a body of water. Local governments could adopt a daily \$10 fee at boat launches, not to exceed \$45 per boat, per year.

This bill is in the Senate Committee on Natural Resources.

RECORDING E-SIGNATURES

Public Act 131 of 2015, introduced by Senator Curtis Hertel Jr. (R-Meridian Township) amends the Recording Requirements Act to exempt certain documents from certain recording requirements.

Generally, when recording a document to convey an interest in real property, original signatures are required and the names of those signing must be printed, typed or stamped below the signature. Under PA 131, if an electronically affixed signature is used, the original signature is not required.

This Act was signed by the Governor on September 30, 2015 and became effective December 29, 2015.

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 passed the Senate on January 28, 2016 and has been referred to the House Committee on Judiciary.

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 (S-4) was reported favorably from the Senate Committee on Banking and Financial Institutions on December 16, 2015.

NREPA SAFE HARBOR

House Bill 4937, introduced by Representative Joel Johnson (R-Clare) limits the liability of units of local government for NREPA violations if they timely notify the proper State Department of an inadvertent violation. The law does not excuse knowing or intentional violations.

This bill is in the House Committee on Natural Resources.

FOIA EXEMPTION FOR CRITICAL INFRASTRUCTURE

House Bill 4540, introduced by Representative Kurt Heise (R-Plymouth), would amend the Freedom of Information Act to exempt documents or information relating to

cybersecurity plans or critical energy infrastructure. The legislation provides definitions of the exemptions, which generally cover specific information about oil, natural gas or electricity systems or computer network information, hardware and software.

A substitute of this bill (H-8) was reported from the House Committee on Oversight and Ethics and is currently in the House Committee on Natural Resources.

SOIL EROSION EXEMPTION FOR AG

Public Act 2 of 2016 (formerly House Bill 4604), creates a Part 91 (SESC) permit exemption for certain land improvements where the activities do not result in soil erosion, sedimentation, or a discharge of sediment off-site. The exempt activities include the removal of fences, stumps or roots, installation of drainage tile, irrigation, or electrical lines, and the construction and maintenance of ponds under 5 acres in size.

This Act was approved by the Governor on January 26, 2016 and will take effect February 25, 2016.

MUNICIPAL ADVERSE POSSESSION

House Bill 4747, introduced by Representative Holly Hughes (R-Montague), would clarify that a municipality is not subject to adverse possession, laches, or periods of limitations, no matter who brings an action to court. As currently written, the law only protects municipalities if they are the ones bringing an action.

This bill passed the House on December 3, 2015 and was referred to the Senate Judiciary Committee.

House Communications and Technology Committee

COMMITTEE SPOTLIGHT



Bradford Jacobsen
Committee Chair

Committee Members

- Chair Bradford Jacobsen (R - Oxford)
- Vice-Chair Brandt Iden (R - Oshtemo)
- Ray A. Franz (R - Onekama)
- Ben Glardon (R - Owosso)
- Rick Outman (R - Six Lakes)
- Amanda Price (R - Park Township)
- Tom Barrett (R - Potterville)
- Eric Leutheuser (R - Hillsdale)
- Jim Tedder (R - Clarkston)
- Min. Vice-Chair Phil Phelps (D - Flushing)
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- N-892 HOB
- N-898 HOB
- S-986 HOB
- S-786 HOB
- S-886 HOB
- N-1199 HOB

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

Michigan Courts Rule on PA 222 Claims

Michigan Courts recently ruled on two cases involving Public Act 222 ("PA 222") claims. In ***Fingerle v Ann Arbor* (Michigan Supreme Court, November 4, 2015)**, the City constructed a storm sewer in an area prone to flooding. After a heavy rain, a property owner's basement flooded and he brought a PA 222 claim against the City, arguing that the storm sewer had inadequate capacity and was therefore defective. The Supreme Court ruled that the property owner could not establish the re-

quired element of substantial proximate cause.

"Substantial proximate cause" is defined as a proximate cause that is 50% or more of the cause of the event **and** property damage. The property owner did not prove that the capacity of the sewer was 50% or more of the cause of the flooding **and** 50% or more of the cause of the water entering the basement.

In ***Mielcarek v. Charter Twp. of Orion* (Michigan Court of Appeals, December 15, 2015)**, the Court of

Appeals relied on the same substantial proximate cause factor to allow a claim to proceed. This case involves a claim that the Township's failure to clean and maintain catch basins could be the substantial proximate cause of the water back up and basement damage. The Court ruled that storm water ditches or drains qualify as a "sewage disposal system" under PA 222 and that both sides presented enough evidence as to the possible causes of the back up and basement damage to continue the case.

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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