



Legislative Update

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INSIDE THIS ISSUE:

House Committee Votes on PA 222 Amendment	1
Broadband Preemption Bill to be Introduced	1
Committee Spotlight: House Natural Resources Committee	2
Part 91 Rule Change Affects Definition of 'Landowner'	2
New Legislation of Interest to MACDC	3
Rep. Victory to Introduce Section 247 Legal Expense Amendment	3
Legislator Spotlight: Representative Roger Victory	4
Stormwater Utility Bill to be Introduced in Senate	4

House Committee Votes on PA 222 Amendment

On September 13, 2017, the House Committee on Local Government heard testimony on House Bill 4290 and voted with recommendation to report the bill to the full House of Representatives.

House Bill 4290, introduced by Representative Webber (R-Rochester Hills), amends Public Act 222 of 2001, which itself added sections to the Governmental Immunity Act of 1964 that provides for governmental immunity and specific claims, including the statutory claim filing requirements and notice procedures, for certain overflows and backups of sewage disposal systems (and stormwater drain systems).

House Bill 4290 amends PA 222 in the following ways:

- renames "contacting agency" as "governmental agency contact," which is relevant in the context of notice requirements;
- clarifies that under the Act a "sewage disposal system event" or "event" does not

include an overflow or backup occurring when rainfall, as measured by a generally recognized and accepted method, at or near the affected area, was 1.7 inches or more in any 1-hour period, or 3.3 inches or more in a continuous 24-hour period; and

- clarifies that a design defect or construction defect does not exist if the system was designed and constructed according to applicable state standards or requirements.

The nonpartisan House Fiscal Agency determined that HB 4290 would provide governmental agencies with expanded immunity in the event of the above-mentioned events and, as a result, would reduce costs for local units of government and agencies on a case by case basis.

HB 4290 now moves to the House Floor for a full vote before it moves to the Senate for further Committee hearings.

Broadband Preemption Bill to be Introduced

One of Governor Snyder's top priorities is to expand broadband internet access to rural and underserved areas in Michigan.

To allow this expansion, it is expected that legislation authorizing the installation of broadband infrastructure within the public right of way will be introduced before the year end.

The MACDC Broadband Subcommittee met to discuss potential problems with allowing

infrastructure to be installed within a drain right of way without any standards in place and the types of current permitting practices occurring at Drain offices throughout the state.

The MACDC Legislative Committee will continue to monitor any legislation as it is introduced and will keep the membership apprised of its progress through the legislative process.

House Natural Resources Committee



**Committee
Chair Gary
Howell**

Committee Members

Chair Gary Howell (R-North Branch)	<u>Phone Number</u> (517) 373-1800	<u>Office</u> S-1186 HOB
Vice-Chair Beau LaFave (R-Iron Mountain)	(517) 373-0156	S-1487 HOB
David Maturen (R-Vicksburg)	(517) 373-1787	N-997 HOB
Joseph Bellino (R-Monroe)	(517) 373-1530	N-696 HOB
Daire Rendon (R-Lake City)	(517) 373-3817	S-1387 HOB
Curt VanderWall (R-Ludington)	(517) 373-0825	S-1385 HOB
Min. Vice-Chair William Sowerby (D-Clinton Twp.)	(517) 373-0159	N-795 HOB
Stephanie Chang (D-Detroit)	(517) 373-0823	S-685 HOB
Christine Greig (D-Farmington Hills)	(517) 373-1793	C-141 Capitol Bldg.

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

Part 91 Rule Change Affects Definition of ‘Landowner’

The Michigan Department of Environmental Quality (MDEQ) has recently adopted changes to Part 17 of the Michigan Administrative Code (Code). Part 17 of the Code deals with the definitions related to the Part 91 Soil Erosion and Sedimentation Control (SESC) Program. The most significant change affects the definition of “landowner,” which is used to describe those eligible to obtain a soil erosion permit for certain types of construction work resulting in “any earth change activity which disturbs one or more acres of land or which is within 500 feet of a lake or stream.”

The previous language defined a “landowner” simply as “a person who owns or holds a recorded easement on property or who is engaged in construction in a public right of way[.]”

The new language still includes the two previous types of landowners and expands the definition to allow a third type of person to obtain a permit that satisfies all of the four following conditions:

- The type of construction project must be related to essentially any form of public transportation and the structures related to those public forms of transportation;
- The state agency or local unit of government in which the construction area lies must own, have jurisdiction over, or have a recorded easement on the property where the project will occur;
- The same state agency or local governmental unit must grant a permit or give written authorization to the agent that will conduct the work; and
- The state agency or local unit of government must not have control over the project during construction; the type of control includes, but is not limited to, having a financial interest in the project. However, the state agency or local unit of government may set construction requirements and conduct inspections, which do not count as control.

The change in the definition now allows independent contractors or tribal workers of state and federal agencies, who otherwise would have no ownership of the land but total control of the project, to obtain a soil erosion permit for construction projects. This rule change became effective July 20, 2017.

New 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.

INLAND LAKE & STREAM GAUGES

House Bill 4402, introduced by Rep. Lasinski (D-Ann Arbor), would amend Part 30 of NREPA to expressly state that a permit is not required to install and use stream gauges to measure water levels in inland lakes and streams if, generally:

- The gauge meets certain size and detail specifications;
- The gauge can be installed without changing the site elevation and without using any other structure or fill;
- The landowner gives written permission to install the gauge;
- The gauge has no more than *minimal adverse effect* on navigation and wildlife, *does not interfere* with flow, and *does not unreason-*

ably interfere with other riparian owners’ rights; and

- The gauge is fully removed after use.

HB 4402 was introduced on March 22 and referred to the House Committee on Natural Resources.

COUNTY OFFICE FILING FEE

House Bill 4750, introduced by Rep. Potvin (R-Cadillac), would amend Section 193 of the Michigan Election Law. The amendment would increase the party primary filing fee, required from candidates seeking inclusion on the party’s official primary ballot for county office, including the office of the Drain Commissioner, to a \$200.00 nonrefundable filing fee.



Under the current election law, the filing fee is \$100.00 and must be refunded to the nominated candidate and to an equal number of candidates who receive the next highest

number of votes in the primary.

HB 4750 was introduced on June 13 and referred to the House Committee on Elections and Ethics.

PART 31 PERMIT AMENDMENT

House Bill 4806, introduced by Rep. Lucido (Shelby Township), would amend Part 31 of NREPA to require those seeking a permit for a discharge from a combined sewer system to satisfy one more additional condition. Currently, the permit only requires the applicant to ensure that stormwater collecting eavestroughs and downspouts in the tributary service area not be directly connected to the sewer system.

The proposed condition would require the permittee to implement a notification system to alert all users of the combined sewer system that atmospheric conditions pose a threat of sewage discharge and that reduction of water usage could minimize the threat.

HB 4806 was introduced on June 20 and referred to the Committee on Natural Resources.

Rep. Victory to Introduce Section 247 Legal Expense Amendment

Representative Victory (R-Hudsonville) is expected to introduce an amendment to Section 247 of the Drain Code, which authorizes the drain commissioner to employ an attorney and charge legal expenses to the drainage district.

Currently, Section 247 provides that the legal expenses charged to the drainage district shall be paid out of the revolving fund and reimbursed by first moneys available.

This amendment seeks to address the unpublished decision of *City of South Lyon v Oakland County Drain*

Com’r (Michigan Court of Appeals, September 22, 2005) where the court relied on the language of Section 247 to hold that the revolving drain fund could only be reimbursed through the collection of general taxes and could not be replenished through the levying of special assessments.

The amendment would clarify and further explain that legal expenses incurred by a drainage district are to be paid for by the drain fund or the revolving fund and then reimbursed from special assessments to the drainage district.

LEGISLATOR SPOTLIGHT

Representative Roger Victory (R–Hudsonville)



**Representative
Roger Victory**

State Representative Roger Victory represents the 88th District in the Michigan House of Representatives, which includes Allendale, Georgetown, Tallmadge, Wright, Chester, Coopersville, and Polkton Townships in Ottawa County. He is currently in his third term and serves on the Appropriations Committee and the Appropriations Subcommittees on Agricultural and Rural Development, Environmental Quality, Natural Resources, and Transportation.

As the owner of Victory Farms, LLC, which produces specialty crops year-round, and Victory Sales, LLC, a national produce distributor, as well as a serving executive board member of several agricultural councils, Victory understands the need for drain commissioners to effectively administer the

Drain Code.

Recently, Governor Snyder signed into law Public Act 62 of 2017, sponsored by Rep. Victory, that allows the ability to add or remove counties from established drainage districts through a petition or while revising the drainage district boundaries.

“There are thousands of drainage districts throughout the state. Many of them are old and not updated as our community landscapes change. As a result, determining the correct number of property owner signatures and reviewing those deeds takes time and is problematic,” said Victory. “This is common-sense legislation that makes the job easier for our elected commissioners and ensures that community members will receive fair and accurate drain fees within a reasonable time frame.”

Rep. Victory was presented with the first annual MACDC Legislator of the Year Award at the 2017 MACDC Summer Conference.

Stormwater Utility Bill to be Introduced in Senate

The Senate is proposing to introduce legislation to create the “Stormwater Utility Act” as the current House legislation, House Bill 4100, has not seen any movement since being introduced by Rep. McCready (R-Bloomfield Hills) in January. The Stormwater Utility Act

would provide for the establishment, regulation and administration of stormwater utilities by local units of government and the collection of stormwater utility fees.

Under the proposed law, local units of government could adopt ordinances to regulate the admin-

istration of a stormwater management plan and the fees charged to property owners.

MACDC Legislative Counsel will monitor the legislation as it is introduced and will keep the membership apprised of its progress through the legislative process.

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