



Legislative Update

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Intercounty Boundary Revisions Bill Passes House

On March 1, Rep. Victory (R-Hudsonville) introduced a bill that would amend the Drain Code to allow the addition or removal of a county to or from a drainage district either through a petition filed under Section 135 or during the process of revising the drainage district boundaries under Section 197.

Currently, under Section 135, an intercounty drainage district could be extended into another county by a landowner petition process. The bill clarifies that a petition can also be filed by a municipality and that a county could also be removed from an intercounty drainage district.

The bill also amends Section 197 to address when a review of the drainage dis-

trict boundaries under the current process results in a finding that a county should be added or removed from the drainage district. The bill would add a new subsection to Section 197 to outline a two-step process to (1) effectuate the addition or removal of a county or counties; and (2) revise the district boundaries accordingly.

Any county that is proposed to be added or removed from a drainage district would be able to appeal that determination under Section 106.

HB 4286 (H-1) was reported with recommendation from the House Committee on Local Government on March 29 and passed the House on April 26. The bill will now move to the Senate.



Bill to Prohibit Ordinances Specifying Pipe Material

Senate Bill 157 (S-2) would create a new law called the "Public Works Quality Materials Procurement Act" that would prohibit a local unit of government from adopting or enforcing an ordinance that prohibits, restricts or limits the evaluation, comparison or usage of certain types of pipe that meet current American Society for Testing and Materials (ASTM), American Water Works Association (AWWA), or NSF International standards for publicly funded projects.

In a previous version of the bill, the local units of government were prohibited from entering into contracts for publicly funded projects unless the pipe met or exceeded the ASTM standards.

SB 157 (S-2), introduced by Senator Jones (R-Grand Ledge), was reported favorably from the Senate Committee on Michigan Competitiveness on February 14 and is currently before the Senate Committee of the Whole.

House Local Government Committee



Rep. James Lower
Committee Chair

Committee Members

Chair James Lower (R-Cedar Lake)
 Vice-Chair Kathy Crawford (R-Nov)
 Jim Runestad (R-White Lake)
 Gary Howell (R-North Branch)
 Julie Alexander (R-Hanover)
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Currently scheduled meetings are available at: www.legislature.mi.gov

Governor Creates New Infrastructure Council

On April 3, 2017, Governor Snyder issued Executive Directive 2017-1 to create the Michigan Infrastructure Commission to establish a regional asset management pilot program. The directive responds to the 21st Century Infrastructure Commission's report delivered in November, which advised the Governor that large scale, strategic asset management would greatly benefit Michigan's infrastructure system. To establish well planned and coordinated infrastructure efforts, the Commission recommended the creation of a Michigan Infrastructure Council.

The Infrastructure Council will consist of the Directors of the Michigan Department of Environmental Quality (MDEQ), Michigan Department of Natural Resources (MDNR), Michigan Department of Transportation (MDOT), Michigan Agency on Energy (MAE), Michigan Public Service Commission (MPSC), Michigan Department of Technology, Management and Budget (DTMB), Department of Talent and Economic Development (TED), and Michigan Department of Agriculture and Rural Development (MDARD).

The Council will partner with regional and local governments to provide recommendations that will be used to create a comprehensive database that compiles infrastructure information from regions across the state. Data collected by this system will be used to coordinate infrastructure management on a statewide scale, so that assets are used in an efficient and cost-effective manner. The study will be focused on evaluating transportation, water, sewer, and stormwater assets.

Members of local governments will be asked to give policy direction and guidance, work alongside pilot leaders to gather existing data, identify data needs, develop reporting processes, and plan investments. Regional planning efforts, such as master use plans and capital improvement plans, will be used to identify areas with service gaps or excess capacity.

Special focus will be given to existing sewer and stormwater initiatives to identify best practices and recommend expansions and revisions. The first set of recommendations will be provided to Governor Snyder by 2018.

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.

STORMWATER UTILITY ACT

House Bill 4100, introduced by Representative McCready (R-Bloomfield Hills), would create the "Stormwater Utility Act" to 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 regulating the administration of a stormwater management plan and the fees charged to property owners.

HB 4100 was introduced on January 26 and referred to the House Committee on Local Government.

OMA: PHYSICALLY PRESENT TO VOTE

House Bill 4184, introduced by Representative Theis (R-Brighton), would amend the Open Meetings Act to specify that in order for a decision of a public body to be made at a meeting "open to the public," each member must be physically present when casting a vote.



Certain exemptions are included for emergency sessions or meetings to address critical issues, or when a member is called for military duty. The public body could also waive the requirement for each member for one meeting each year with good cause.

HB 4184 was introduced on February 9 and referred to the House Committee on Oversight.

PA 222: RAINFALL/DESIGN EXCEPTIONS

House Bill 4290, introduced by Repre-

sentative Webber (R-Rochester Hills), would amend Public Act 222 of 2001, dealing with governmental immunity provided for certain overflows and backups of sewage disposal systems (and stormwater drain systems):

- to clarify that a "sewage disposal system event" or "event" under the Act 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
- to clarify that a design defect or construction defect does not exist if the system was designed and constructed according to applicable state standards or requirements.

HB 4290 was introduced on March 1 and referred to the House Committee on Local Government.

Trump Issues Executive Order to Review CWA Rule

On February 28, President Trump signed an executive order directing the Environmental Protection Agency (EPA) and Army Corps of Engineers (ACOE) to formally review and reconsider the Waters of the United States (WOTUS) Rule issued under former President Obama in 2015.

The WOTUS Rule expands the term "navigable waters" under the Clean Water Act to give the EPA jurisdiction over small waterways, like wetlands, rivers, lakes and streams, for the purpose of controlling pollution. Following the issuance of the WOTUS Rule in 2015, 31 states and several stakeholder groups filed lawsuits challenging the Rule. The Rule has been on hold pending further action in the 6th Circuit Court of Appeals since October 9, 2015.

The Executive Order, entitled "Restoring the Rule of

Law, Federalism, and Economic Growth By Reviewing the 'Waters of the United States' Rule," cites minimizing regulatory uncertainty and showing due regard for the roles of Congress and the States as reasons for the review.

In the Executive Order, President Trump orders the interpretation of "navigable waters" in future rulemaking to be in a manner consistent with the opinion in *Rapanos v. United States*, 547 U.S. 715 (2006).

The EPA and ACOE signed and published an Intent to Review and Rescind or Revise the Clean Water Rule in the Federal Register. Following the review of the WOTUS Rule, the EPA and ACOE will publish any proposed rule rescinding or revising the Rule, as deemed appropriate, in the Federal Register and will provide opportunities for comment.

Municipal Bonds Could Lose Tax-Exempt Status

Among the changes the 115th Congress is considering to the U.S. Tax Code as part of its focus on comprehensive tax reform is the potential elimination of tax-exempt status of municipal bonds. Congress has not yet taken any formal action but the repercussions could be severe.

Nearly two-thirds of core infrastructure investments in the United States are financed with municipal bonds. The federal tax exemption reduces the cost of issuing municipal bonds by enticing investors to

allow lower interest rates on the borrowing, which reduces the overall cost of a public infrastructure project.

Eliminating the tax-exempt status of municipal bonds could affect public infrastructure as, according to the National Association of Counties (NACo), tax-exempt municipal bonds have funded over \$3 trillion in state and local government infrastructure, including roads, schools, and water and sewer facilities over the last ten years.

A derivative of this plan could be

to instead cap the value of the tax exemption for interest paid by municipal bonds, but this could still cause great expense for municipalities. According to NACo, if municipal bond tax-free interest was capped at 28% between 2002 and 2012, the additional cost to state and local governments would have been \$173 billion. A total elimination of the tax-exempt status over that same period would have been almost \$495 billion in additional borrowing costs to state and local governments.

Court of Appeals Holds ‘Taking’ Requires Affirmative Act

In *Leonard Gust v Lenawee County Road Commission* (Michigan Court of Appeals, February 21, 2017), landowners sued the Road Commission for inverse condemnation, trespass and negligence after flooding occurred near a road that divided their property into two parcels.

The landowners claimed that the drainage pipe under the road ceased to function, essentially serving as a dam to the natural flow of water, causing a back up and flooding upstream of the road on their property.

The Michigan Court of Appeals explained that an inverse condemnation, or a “taking” claim requires an “affirmative act directed at plaintiff’s property.” The

landowners claimed that the flooding was caused by an affirmative act aimed at their property – the Road Commission’s faulty construction of and lack of maintenance of the road and the drainage pipe beneath it.

In determining the issue of inverse condemnation, the Court held that an affirmative act did not include a “negligent failure” to provide maintenance, but that the construction, maintenance or improvement of the road “could denote an affirmative act.”

Since there was no evidence presented that the Road Commission constructed, maintained or improved the road, the case was dismissed.

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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