



# Legislative Update

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## Intercountry District Revisions Bill Signed into Law

On June 28, 2017, Governor Snyder signed Public Act 62 of 2017 into law. Public Act 62, formerly House Bill 4286, was introduced by Representative Roger Victory (R-Hudsonville) in March. The law was signed with immediate effect.

Public Act 62 amends Section 135 and Section 197 of the Drain Code to allow the addition or removal of a county to or from a drainage district under certain circumstances.

Prior to the amendment, an intercounty drainage district could be extended into another county only by a landowner petition process under Section 135. Under the amended Section 135, a petition may now be filed by landowners or a village, township or city, and lands from a county may now be removed from an intercounty drainage district.

Upon receipt of a petition under the amended Section 135, all members of the proposed revised drainage board must meet at a public hearing to consider the petition and to determine whether the addition or removal of lands is necessary for the public health, convenience, or welfare. If found necessary, the new drainage board must issue an order to that effect.

Prior to the amendment, Section 197 authorized the addition or removal of lands, but did not address a situation when the addition or removal would add or remove an entire county to or from a drainage district.

Under the amended Section 197, a two-step process is now provided to address situations when a county should be added to or removed from a drainage district. The process requires the proposed revised drainage board to meet to determine whether the addition

or removal of the lands is just and equitable and file an order to that effect. After the order, the new drainage board shall revise the district boundaries at the Hearing of Necessity or hold a Day of Review of Drainage District Boundaries. If the new drainage district is in one county, the drain commissioner shall revise the district boundaries at the Board of Determination or hold a Day of Review of Drainage District Boundaries.

Any county that is added or removed under Section 197 is able to appeal that determination under Section 106.

Information regarding Public Act 62 can be found at: <http://legislature.mi.gov/doc.aspx?2017-HB-4286>.



## Senate Appropriations Committee



**Sen. Dave  
Hildenbrand**  
Committee  
Chair

### Committee Members

Chair Dave Hildenbrand (R-Lowell)  
 Vice-Chair Peter MacGregor (R-Rockford)  
 Geoff Hansen (R-Hart)  
 Jim Stamas (R-Midland)  
 Tonya Schuitmaker (R-Lawton)  
 Marty Knollegnberg (R-Troy)  
 Darwin L. Booher (R-Evart)  
 Mike Shirkey (R-Clarklake)  
 John Proos (R-St. Joseph)  
 Mike Nofs (R-Battle Creek)  
 Mike Green (R-Mayville)  
 Jim Marleau (R-Lake Orion)  
 Min. Vice-Chair Vincent Gregory (D-Lathrup Village)  
 Hoon-Yung Hopgood (D-Taylor)  
 Curtis Hertel Jr. (D-East Lansing)  
 David Knezak (D-Dearborn Heights)  
 Coleman Young II (D-Detroit)

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 S-132 Capitol  
 6100 Binsfeld Bldg  
 S-2 Capitol  
 6400 Binsfeld Bldg  
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Currently scheduled meetings are available at: [www.legislature.mi.gov](http://www.legislature.mi.gov)

## FOIA Legislation Prohibits Public Body from Filing Suit

House Bill 4077, introduced by Representative Kesto (R-Commerce Township), would amend the Freedom of Information Act (FOIA) to add a new section that would prohibit a public body from commencing a civil suit against the person requesting public records. The prohibition only applies to civil suits under the FOIA.

The new legislation is intended to address a situation in which a local newspaper requested certain information from Montcalm County pertaining to several candidates running for county office.

Upon receiving the request, Montcalm County filed suit in circuit court, asking the court for a declarative judgment as to whether

they had to provide the requested documents. Montcalm County argued the documents were protected by another statute protecting employee privacy rights in certain discipline records.

The court found that, upon receiving a request for public records under the FOIA, a public body may only grant, grant in part and deny in part, or deny the request, and that seeking a declarative judgment was not a proper action.

House Bill 4077 was introduced on January 24, 2017, passed unanimously in the House on March 26, 2017, and has been referred to the Senate Committee on Government Operations.

# 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](http://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. The requirement of physical presence is only applicable to public bodies consisting of election positions.

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 (H-1) passed the House on May 31, 2017, and has been referred to the Senate Committee on Elections and Government Reform.

## **PA 222: RAIN/DESIGN EXCEPTIONS**

House Bill 4290, introduced by Representative 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.

## **PIPE MATERIAL: LOCAL PREEMPTION**

Senate Bill 157 (S-2) would create a new law called the “Public Works Qual-

ity 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, the bill prohibited local units of government 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.

## **LEGAL NOTICE FEE ADJUSTMENT**

House Bill 4575, introduced by Representative LaFave (R-Iron Mountain), would amend the Revised Judicature Act to require the Michigan Department of Treasury to adjust the fees that a newspaper may charge for certain legal notices to reflect the Consumer Price Index inflation rate.

According to the Senate Fiscal Agency, the adjusted minimum price of a legal notice for one publication would be \$50.40, and \$67.55 for two or more publications.

HB 4575 (H-2) passed the House on May 31, 2017, was referred to the Senate Committee on Judiciary, where it was reported favorably and referred to the Senate Committee of the Whole on June 8, 2017.



## Groundwater Ownership in Michigan Not ‘Exclusive’

The Michigan Court of Appeals in *Kowalchuk v City of Jackson* (Michigan Court of Appeals, May 23, 2017) reaffirmed that groundwater cannot be private property. Rather, water rights are governed by a long-standing “reasonable use” test in Michigan.

In *Kowalchuk*, the Court ruled against a property owner who believed that he was entitled to legal remedies stemming from the City of Jackson allegedly taking his groundwater with municipal wells.

The City operates four water-utility wells near the property owner’s house. The property owner asserted that the groundwater withdrawals from these wells was causing structural damage to his home and the surrounding land from subsidence, or the gradual caving in or sinking of an area of land.

The Court dismissed the property owner’s claim as groundwater is not subject to exclusive ownership rights. Instead, Michigan uses a “reasonable use balancing test”. The “reasonable use” doctrine is broad and generally seeks to grant the public the greatest access to groundwater while protecting against unreasonable harms from improper uses. The balancing test must be applied on a case-by-case basis to determine what is reasonable.

Since both the City and property owner were entitled to “reasonable” uses of groundwater and the City’s use was not interfering with the property owner’s reasonable use, the Court dismissed the property owner’s claim. Groundwater is not subject to private ownership rights in Michigan.

## Court of Appeals Dismisses PA 222 Claim Against Township

In *Lanzi v Township of St. Clair* (Michigan Court of Appeals, May 23, 2017), property owners sued the Township under Public Act 222 after the Township sanitary sewer pump station’s electric circuit board failed, resulting in “grey water” seeping into the property owners’ basement.

The property owners argued that the failure of the electronics system was a “defect” under PA 222 and that the Township could have predicted the defect. However, the Michigan Court of Appeals disagreed, reasoning that because the circuit board was only three years old and the systems have very low failure rates, the Township could not have predicted the fail-

ure. The property owners also claimed that the Township did not take reasonable steps to remedy the defect. Once notified of the pump station defect, the Township manually turned the sanitary sewer pump back on, fixing the issue within 2.5 hours. Once the pumps were turned back on, the property owners’ basement water began to recede.

Because the Township did not know, or should not have known about the electric circuit board failure, and because the Township took reasonable steps in a reasonable amount of time to repair, correct or remedy the failure, the Court dismissed the PA 222 claim in favor of the Township.

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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](http://www.macdc.us)**