



INSIDE THIS ISSUE:

MI Court of Appeals Requires Strict Compliance with Lake Level Orders 1

In the Spotlight: Representative Pat Outman for Michigan's 70th District 2

MI Legislature Introduces Proposed FOIA Amendments 2

Three Proposed Drain Code Amendments Introduced in MI Senate 3

Court of Appeals Holds State Land Bank Authority Must Pay for Sanitary and Stormwater Sewer Services 3

Other Legislation of Interest 4

MICHIGAN ASSOCIATION OF COUNTY DRAIN COMMISSIONERS

Legislative Update

VOLUME 11, ISSUE 2

SPRING 2022

MI Court of Appeals Requires Strict Compliance with Lake Level Orders

Many lakes in Michigan are home to legal lake levels established pursuant to Part 307 of Michigan's Natural Resources and Environmental Protection Act ("Part 307"). Generally, the steps for establishing a legal level under the Part 307 process include:

1. The circuit court sets a normal lake level in an order;
2. The county names a delegated authority (often the drain commissioner); and
3. The delegated authority is responsible for maintaining the legal level.

In *Citizens for Higgins Lake Legal Levels v. Roscommon County Board of Commissioners*, Higgins Lake experienced slight variations during which its actual lake level was lower than its legal lake level as a result of weather and other factors. Because of these variations, a group of landowners around the lake sued Roscommon County for a violation of its duty to maintain the legal lake level. The trial court found in favor of the County, recognizing that while reasonable efforts must be made to maintain the legal lake level, slight variations are expected.

The Michigan Court of Appeals overturned the trial court's decision and held that the legal lake level must be strictly maintained. The Court explained that because the lake level order for Higgins Lake does not explicitly allow for variations due to weather or other factors, the County has an obligation to maintain the legal lake level at all times. The Court also noted that if the County is unable to maintain the legal lake level, its proper course of action is to petition the circuit court to change the level. This case has significant implications for drain commissioners who serve as the Part 307 delegated authority in their counties.



In the Spotlight...

Representative Pat Outman for Michigan's 70th District

Representative Pat Outman, son of Senator Rick Outman, began his career in the skilled trades where he worked in excavating and carpentry. He went on to obtain a bachelor's degree in business administration and management from Ferris State University.

Early in his public service career, Representative Outman worked in the House committee clerks' office and served as the House district liaison for Montcalm County. He was elected to the Michigan House of Representatives in the 2020 election. Representative Outman serves on the Montcalm County Farm Bureau and is vice chair of the Montcalm County Republican Party. He is also a member of the National Rifle Association.

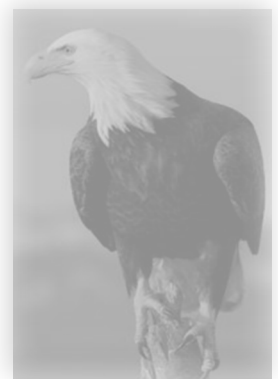
When he is not working in Lansing, Representative Outman lives and works on his family's cattle farm.

**MI Legislature Introduces Proposed FOIA Amendments**

In March, state legislatures across the country celebrated "Sunshine Week" – a week dedicated to governmental transparency. As part of the celebration, the Michigan House of Representatives introduced a bill package proposing several amendments to the Michigan Freedom of Information Act ("FOIA"). The proposed amendments would:

- In an appeal of the denial of an exemption, prevent a public body from arguing any basis for the denial that was not provided in its written notice of denial (HB 5921);
- Require a public body to post the contact information of its FOIA coordinator or his/her designee physically, and if the public body maintains an official internet presence, on its website (HB 5922);
- Define a "business day" under the FOIA as any week-day that is not a holiday (HB 5923);
- Require a public body to confirm receipt of a FOIA request within 2 business days of receiving the request (HB 5923);
- When a public body withholds a record from disclosure on the basis of an exemption, require it to acknowledge the existence of the record, generally describe it, and explain the grounds for the exemption (HB 5923);

- Provide that a public record possessed by a public body's legal counsel is considered to be in the custody of the public body and subject to disclosure under the FOIA unless an exemption applies (HB 5924);
- Clarify that the exemption for security measures does not apply to records that identify a working group or its members (HB 5924);
- Provide for an appeal of a public body's determination not to reduce or waive fees for a primary public benefit (HB 5925); and
- Require a public body to accept electronic payment of a FOIA fee if it accepts electronic payment for other transactions (HB 5925).



The bill package has been referred to the House Committee on Oversight. The MACDC will continue to update drain commissioners on the status of the legislation.

Three Proposed Drain Code Amendments Introduced in MI Senate

In February, three proposed amendments to the Drain Code were introduced in the Michigan Senate:

Senate Bill 864 was introduced by Senator Daley and proposes to increase the maintenance limit in Section 196 from \$5,000 per mile of drain per year to \$10,000 per mile of drain per year. This change recognizes the increasing costs of critical drain maintenance on aging drainage infrastructure throughout the state. It attempts to alleviate some of this burden by increasing the dollar limitation on non-petitioned maintenance.

Senate Bill 865 was introduced by Senator Moss and proposes to remove all instances of the term “per diem” in the Drain Code. Instead of “per diem,” the

bill uses the terms “reasonable compensation” and “reasonable expenses,” with the goal of clarifying whether compensation is intended to be for actual services or reimbursement for expenses only.

Senate Bill 866 was introduced by Senator Outman and proposes to clarify language in Sections 135 and 197 regarding the process to add or remove a county from a drainage district. The bill also specifically clarifies that a drain commissioner may appeal the addition or removal of a county or the apportionment between counties to an arbitration board. All three of the bills have been referred to the Senate Committee on Local Government.

Court of Appeals Holds State Land Bank Authority Must Pay for Sanitary & Stormwater Sewer Services

The State Land Bank Authority (“Land Bank”) was created pursuant to the Land Bank Fast Track Act (“LBFTA”) to “acquire, assemble, dispose of, and quiet title” property under the LBFTA. In *City of Highland Park v. State Land Bank Authority*, the Land Bank owned hundreds of parcels within the City of Highland Park (“Highland Park”), which it acquired via tax reversion. Highland Park owned and operated a combined sanitary and stormwater sewer system and enacted an ordinance requiring landowners to pay for its services. The Land Bank failed to pay for these services, and Highland Park sued for violation of the ordinance.

The LBFTA provides that when title to tax-reverted property is involuntarily transferred to an authority like the Land Bank, the authority assumes “any governmental immunity or other legal defenses of this state, the foreclosing governmental unit, or the local unit of government related to the property.” The Land Bank argued that because it had acquired its properties through tax reversion, it was an involuntary landowner and subject to governmental immunity under the LBFTA. Therefore, the Land Bank argued, it was not

subject to the sanitary and stormwater system charges.

The Court of Appeals explained that Highland Park’s claim was of a contractual nature – because the Land Bank accepted sanitary and stormwater services, it had an implied obligation to pay for them. The Court held that the governmental immunity provided by the LBFTA would not shield the Land Bank from a contractual claim. The Court further held that although the Land Bank is exempt from all taxes and special assessments, it is not exempt from laws that are generally applicable to other persons or entities, including Highland Park’s sanitary and stormwater sewer ordinance.

Finally, the Court of Appeals held that the Revenue Bond Act (“RBA”) prohibited Highland Park from providing a free service to the Land Bank. The RBA provides that a public improvement shall not furnish a free service to a public corporation, which includes “a county, city, village, township,” and “an authority created by or under an act of the legislature.” Because the Land Bank is an “authority” contemplated by the RBA, it is a public corporation and is impliedly obligated to pay for its sanitary and stormwater sewer services.

Other Legislation of Interest

The following bills of interest to Drain Commissioners and Associate Members are currently pending before, or were 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.



HB 4284 Rep. Koleszar introduced House Bill 4284 on February 23, 2021. HB 4284 would make the candidate filing fee that may be submitted in lieu of a nominating petition for county offices, including the office of Drain Commissioner, nonrefundable. HB 4284 was passed by both the House and the Senate and assigned Public Act 146 of 2021 with immediate effect on December 15, 2021.

SB 258 Sen. Vanderwall introduced Senate Bill 258 on March 18, 2021. SB 258 affects all statutes in Michigan requiring public notice for meetings. If enacted, it would require newspapers, when publishing public notices in print newspapers, to also post the notices on their websites and on a central website. SB 258 is tie-barred with SB 259 introduced by Sen. Santana. SB 258 was passed by the Senate and referred to the House Committee on Local Government and Municipal Finance. It was reported with recommendation without amendment and referred to a second reading on March 16, 2022.

HB 4730 Rep. Calley introduced HB 4730 on April 29, 2021 as part of a bill package that would revise procedures, fees, and the scope of provisions related to accessing and copying records on file with a register of deeds or county treasurer under the General Property Tax Act. If enacted, HB 4730 would revise the definition of "qualified data file" as it relates to county treasurers. A substitute was introduced and was read a third time and postponed for the day on December 8, 2021.

SB 565 Sen. Bumstead introduced Senate Bill 565 on June 24, 2021. SB 565 is a \$4.7 billion supplemental with

funding to address water infrastructure issues, including drinking water infrastructure, lead and other contaminants, and dam safety. SB 565 was passed by both the Senate and the House and assigned Public Act 53 of 2022 with immediate effect on April 12, 2022.

HB 5330 Rep. Morse introduced House Bill 5330 on September 22, 2021. HB 5330 would create a water management infrastructure fund and water management infrastructure program to provide grants and loans to political subdivisions for projects related to infrastructure for stormwater, sewage treatment, flood control, and green infrastructure. HB 5330 is currently before the House Committee on Appropriations.

HB 5661 & SB 813 Rep. Rogers introduced House Bill 5661 on December 29, 2021, and Sen. McCann introduced Senate Bill 813 on January 12, 2022. The identical bills would allow the state Department of Natural Resources to issue an emergency order if a structure or fill located on bottomlands is in imminent danger of failure or is a threat to public health, safety, welfare, property, natural resources, or the public trust. The order would require the owner of the structure to immediately repair or remove the structure or take other action required by the Department. HB 5661 is currently before the House Committee on Natural Resources and Outdoor Recreation, and SB 813 is currently before the Senate Committee on Natural Resources.

HBs 5953, 5954 & 5955 House Bills 5953, 5954, and 5955 were introduced by Reps. Rabhi, Hood, and Pohutsky, respectively. If enacted, the bill package would amend sections of the Natural Resources and Environmental Protection Act providing protections for state waters and the public trust. HB 5953 would also add a new section related to the protection of the public trust. The bill package is currently before the House Committee on Natural Resources and Outdoor Recreation.

Michigan Association of County Drain Commissioners
120 N. Washington Sq., Suite 110A
Lansing, MI 48933

Phone: 517.484.9761

Fax: 517.371.1170

Email: admin@macdc.us

Web: WWW.MACDC.US