



# Legislative Update

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## MI House of Representatives Takes Testimony on Chapter 22 Amendments

Drain and water resources commissioners across the state are coping with the increasing burdens of stormwater management resulting from a combination of factors, including rising Great Lakes and groundwater levels, record storm events, continuing development, aging drainage infrastructure, loss of wetlands and natural water storage.

In response to this crisis, on June 30, 2022, Representatives Calley and Morse introduced House Bills 6317 and 6318, respectively, to amend Chapter 22 of the Drain Code with the goal of expanding the “toolbox” of mechanisms available for stormwater management. Currently, these mechanisms are largely limited to work on individual drains, without the ability to incorporate best management practices elsewhere in the watershed. The proposed bills would amend Chapter 22 to allow for stormwater management practices at the watershed level and relieve pressure on existing drains.

The amendments are designed to complement many of the existing sections of the Drain Code. Similar to other Drain Code processes, the proposed Chapter 22 process would include a petition, necessity

hearing, water management plan, bid letting and computation of costs, apportionment of benefits, and a day of review of apportionments. However, the amendments would allow for innovation in addressing stormwater management.



House Bills 6317 and 6318 were referred to the House Committee on Local Government and Municipal Finance, of which Representative Calley is the Chair. The Committee is in the process of holding hearings on the bills, and the Michigan Association of County Drain Commissioners has provided testimony in support of the amendments.

## Open Meetings Act Amendment Would Allow Remote Meeting Attendance in Qualifying Circumstances

On June 30, 2022, Representative Julie Calley introduced House Bill 6283 to amend the Michigan Open Meetings Act (“OMA”). If enacted, House Bill 6283 would amend the remote attendance standards for public meetings for both the public attendees as well as public bodies.



The bill would allow for remote electronic attendance by phone or video conferencing by members

of the public body, with certain limitations and notice requirements. It would also “encourage” public bodies to make their meetings remotely accessible to the public.

The bill would also clarify that a public body is required to accommodate a request for remote attendance and participation by a member of the public body or a member of the public who is entitled to an accommodation under the Americans with Disabilities Act and/or the Persons with Disabilities Civil Rights Act.

House Bill 6283 is currently before the House Committee on Local Government and Municipal Finance. The Michigan Association of County Drain Commissioners is involved in discussions on proposed amendments to the bill language.

## Court of Appeals Considers Challenge to CAFO Wastewater Discharge Permit

In *Michigan Farm Bureau v. Department of Environment, Great Lakes, and Energy*, a group of farms regulated as concentrated feeding operations (“CAFOs”) under the federal Clean Water Act and Part 31 of the Michigan Natural Resources and Environmental Protection Act challenged new CAFO permit requirements imposed by the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”). Under federal and state law, CAFOs are defined as lots or facilities where animals are confined and fed or maintained for a specified period, and are regulated as point sources from which pollutants may be discharged. Because they are point sources, CAFOs must obtain a wastewater discharge permit from EGLE in order to discharge waste into surface or groundwaters.

In the case, EGLE issued a 2020 permit that included additional requirements that were not previously included in the CAFO farms’ 2010 and 2015 permits, including a prohibition against applying CAFO waste



or manure within 100 feet of any surface water, open tile line intake structures, sinkholes, agriculture well-heads, or roadside ditches connected to surface waters, and a requirement that CAFOs and farms that receive manure from CAFOs install permanent 35-foot buffer strips.

The CAFO farms petitioned for a contested case hearing to appeal the new permit requirements. The farms argued that the additional requirements exceeded EGLE’s statutory authority and were contra-

ry to the existing federal and state regulations regarding CAFOs. Before a contested case hearing was held, the farms also filed suit for declaratory and injunctive relief, using similar arguments to those in the contested case. Specifically, the CAFOs argued that EGLE was not allowed to make policy determinations to impose new permit requirements beyond existing state and federal regulations.

The Michigan Court of Appeals explained that EGLE's new permit requirements expanded the scope of the existing CAFO permit without going

through the process for creating new rules. Because of this, the CAFO farms had a right to challenge the validity of the new permit requirements. However, the Court held that the CAFO farms failed to request a declaratory ruling from EGLE prior to filing an action for declaratory judgment, as required by statute. Because the CAFO farms failed to meet the statutory requirements to file for declaratory judgment, the Court lacked jurisdiction to decide the case.

### In the Spotlight...

#### Representative Julie Calley for Michigan's 87th District

Julie Calley grew up on her family's dairy farm in Ionia County. She currently lives in Portland, Michigan with her husband and three children. Calley graduated from Northwood University with a degree in Business Administration and Management. She spent ten years in real estate management before her election as an Ionia County Commissioner. Calley served for eight years on the Ionia County Commission including three years as chairperson for the board. Prior to her election to the legislature, Calley was appointed by former Governor Rick Snyder to the Michigan Community Service Commission in 2011 and focused on promoting mentoring, literacy and volunteerism.

Calley was elected to the Michigan House in 2016 to represent the 87th District, which includes Barry County and part of Ionia County. Calley is a member of the Elections & Ethics, Rules & Competitiveness, and Tax Policy committees and serves as chair of the Local Government & Municipal Finance Committee.



### Other Legislation of Interest

**SBs 468, 469, 470 & 471** Sens. Outman (SBs 468 & 469) and Stamas (SBs 470 & 471) introduced this bill package on May 20, 2021 to amend Parts 307 and 315 of the Natural Resources and Environmental Protection Act dealing with dam safety. In enacted, SB 468 would require FERC information regarding a dam to be sent to the State if the dam comes under jurisdiction of the State and would require the

State to authorize dam abandonments only upon review by EGLE. SB 469 would establish the Michigan dam repair and improvement fund act to provide funds for the repair or replacement of the four lakes dams in Midland and Gladwin counties and other dams located in Michigan. SB 470 would create a dam risk reduction revolving loan fund and an emergency dam safety action fund within the state



## Other Legislation of Interest, Cont.

treasury and would create an emergency dam safety grant program, which would provide grant funds for dam owners to repair, alter, reconstruct, or remove an existing dam. SB 471 would allow an inland lake dam owner to temporarily draw down the lake below the level established under Part 307 in emergency situations. The bill package is currently before the Senate Committee on Environmental Quality.

**HB 4730** Rep. Calley introduced House Bill 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. As of September 28, 2022, HB 4730 was passed by both the House and the Senate with a substitute.

**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.

**SBs 864, 865, & 866** Senate Bills 864, 865, and 866 were introduced by Sens. Daley, Moss, and Outman, respectively, on February 9, 2022. If enacted, the bill package would provide updates to the Drain Code. Specifically, SB 864 would increase the Section 196 maintenance limit for drain maintenance. SB 865 would remove all instances of the term “per diem” in the Drain Code. SB 866 would clarify Section 135 and 197 language regarding the process to add or remove a county from a drainage district. The bill package is currently before the Senate Committee on Local Government.

**HBs 5921, 5922, 5923, 5924 & 5925** House Bills 5921, 5922, 5923, 5924, and 5925 were introduced by Reps. Johnson, O'Malley, VanWoerkom, Fink, and Posthumus, respectively, on March 16, 2022. The bill package, which is aimed at increasing governmental

transparency, would amend sections of the Freedom of Information Act to create more stringent requirements on public bodies. The bills were referred to the House Committee on Oversight and were reported with recommendation with a substitute on June 9, 2022.

**HBs 5953, 5954 & 5955** House Bills 5953, 5954, and 5955 were introduced by Reps. Rabhi, Hood, and Pohutsky, respectively, on March 22, 2022. 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.

**SB 1050** Rep. McBroom introduced Senate Bill 1050 on May 19, 2022. SB 1050 would allow a county board of commissioners for a county with a population of less than 75,000 to adopt a resolution to conduct nonpartisan elections for various offices including the office of drain commissioner. SB 1050 was referred to the Senate Committee on Elections on May 19, 2022.

**HB 6203** Rep. Johnson introduced House Bill 6203 on June 9, 2022. HB 6203 would amend the Natural Resources and Environmental Protection Act to require the Department of Environment, Great Lakes, and Energy to notify the Senate and House in writing, within 24 hours of issuing, continuing, or modifying an emergency order where a dam is in imminent danger of failure and is a threat to public health, safety, welfare, property, natural resources, or the public trust. HB 6203 was passed by the House on September 21, 2022 and was referred to the Senate Committee on Oversight on September 27, 2022.

**HB 6213** Rep. Eisen introduced House Bill 6213 on June 9, 2022. HB 6213 would amend Section 424 of the Drain Code to require the Department of Health and Human Services to file a petition in circuit court if it finds that a disposal plant, filtration plant, or other mechanical purification device is endangering the public health. HB 6213 would also require the Department to notify the House and Senate in writing within 24 hours after filing a petition. HB 6213 was passed by the House on September 21, 2022 and was referred to the Senate Committee on Oversight on September 27, 2022.