

# Legislative Update

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## Court of Appeals Denies Challenge to Drain Proceedings on Grounds of Improper Notice

The Drain Code requires a drainage board to serve notice of a practicability hearing on a number of interested parties, including the supervisor of each township in the drainage district, at least 10 days before the meeting. In *Porter Township v. Van Cass Intercounty Drain Drainage Board*, Porter and Marcellus Townships (the “Township”) challenged drain proceedings on the grounds that Marcellus Township did not receive the statutorily required notice of the practicability hearing for a drain project.

It was undisputed that Marcellus Township did not receive statutory notice of the practicability hearing, but it did receive the required statutory notice of the subsequent necessity hearing. The Townships claimed that if Marcellus Township had received proper notice of the practicability hearing, it would have presented arguments against the drain project related to:

1. The cost of the project and its impact on the Townships;

2. The environmental impact of the drain; and
3. Alternative solutions to the flooding problem that necessitated the project.



The Michigan Court of Appeals held there was no evidence that Marcellus Township was prejudiced by its lack of notice of the practicability hearing when it received proper notice of the subsequent necessity hearing. Because Marcellus Township did not suffer prejudice, the Court held that the lack of proper notice did not constitute “substantial fault” sufficient to overturn the drain proceedings.

## **Governor Whitmer Appoints New Acting Directors of MDARD, EGLE & MDOT**

In the wake of her reelection, Governor Whitmer announced her appointments for several state departments and agencies, including the Department of Agriculture and Rural Development (“MDARD”); the Department of Environment, Great Lakes, and Energy (“EGLE”); and the Department of Transportation (“MDOT”).



### **MDARD – KATHY ANGERER**

Kathy Angerer was appointed acting director of MDARD, after serving as deputy director of the department in 2022. Angerer’s public service career also includes serving as a state representative from 2005 through 2010 and serving as the City of Hamtramck’s City Manager, Director of Community & Economic Development, and Director of Community and Governmental Affairs.

### **EGLE – DAN EICHINGER**

Dan Eichinger was appointed acting director of EGLE after serving as director of the Michigan Department of Natural Resources (“MDNR”) since 2019. Prior to his work with MDNR, Eichinger served as executive director of the Michigan United Conservation Clubs, with a mission to conserve Michigan’s natural resources and outdoor heritage.



### **MDOT – BRAD WIEFERICH**

Brad Wieferich was appointed acting director of MDOT after a long history with the department. Wieferich served as MDOT’s chief operations officer in 2022 and has previously held several different positions within the department, including Bureau of Development Director, Engineer of Design, and several regional positions.

## In the Spotlight...

**Spotlight: Representative Curtis VanderWall for Michigan's 102nd District**

Representative VanderWall was first elected to the Michigan House of Representatives in 2016, representing the 101st District. He then served on the Michigan Senate from 2018-2022. In 2022, he was again elected to the Michigan House of Representatives. Due to redistricting, he now represents the 102nd District, including Oceana, Manistee, Mason, and Muskegon counties. Representative VanderWall is the Republican vice-chair on the House Policy and Higher Education committees and also serves on the Committee on Agriculture.

Prior to his election, Representative VanderWall attended Grand Rapids Junior College. Upon joining the workforce, he worked with Eberhard Foods and Prevo's Family Market. He also served on several boards and associations, including: the Mason County Board of Commissioners, the Western

Michigan Fair Association, United Way of Mason County, Old Kent Bank, the Mason County Growth Alliance Board, the Northern Michigan Counties Association, and the Mason County Housing Board. Representative VanderWall is the owner of Turn Care Mole Man of Ludington and currently serves on the Women's Jericho House Board.

In his personal life, Representative VanderWall is involved with the Covenant Christian School in Ludington and has served as a deacon at the Mason County Reformed Church.

**Court of Appeals Upholds Board of Determination's Decision to Consolidate**

In *City of Kentwood v. Ken Yonker*, the City of Kentwood appealed a Board of Determination's decision to consolidate two drains within the same watercourse. At the meeting of the Board of Determination, evidence was presented in favor of consolidation, including:

1. A need for maintenance on both drains;
2. Work on one drain would impact the other drain; and
3. Administrative efficiencies that would result from consolidation.

After hearing arguments both in favor of and against consolidation, the Board of Determination ultimately approved the consolidation as well as maintenance and improvement, and the City of Kentwood appealed.



The Michigan Court of Appeals explained that its role on appeal was only to verify that the Board of Determination's decision to consolidate was supported by competent, material, and substantial evidence. The Court noted that the City of Kentwood failed to make any argument that the evidence presented did not constitute competent, material, and substantial evidence. Instead, the City of Kentwood relied on its own arguments against consolidation.

## Significant Legislation of 2022

*The following public acts of interest to Drain Commissioners and Associate Members were passed by the Legislature in 2022. Full text of the public acts can be found online on the Legislature's website at [www.legislature.mi.gov](http://www.legislature.mi.gov).*

### **PA 53 of 2022 (formerly SB 565)**

Public Act 53 of 2022 was enacted on April 12, 2022. The Act is a \$4.7 billion supplemental with funding to address water infrastructure issues, including drinking water infrastructure, lead and other contaminants, and dam safety.

### **PA 76 of 2022 (formerly SB 258)**

Public Act 76 of 2022 was enacted on May 17, 2022. The Act affects all statutes in Michigan requiring pub-

lic notice for meetings. It requires newspapers, when publishing public notices in print newspapers, to post the notices on their website and on a central website.

### **PA 215 of 2022 (formerly HB 4730)**

Public Act 215 of 2022 was enacted on October 14, 2022 to revise procedures, fees, and the scope of provisions related to accessing and copying records on file with the county treasurer under the General Property Tax Act. The Act requires county treasurers that manage electronic records to, upon request, provide those electronic records relating to taxable value, assessed value, special assessments, and other related information.

## New Legislation of Interest

*The following bills of interest to Drain Commissioners and Associate Members are currently pending before 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).*

### **SB 15 & HB 4041**

Senate Bill 15 and House Bill 4041 were introduced by Senator Theis and Representative Steele, respectively, on January 17 and January 24, 2023. These bills would prohibit state and local office holders and employees from using TikTok on electronic devices that are owned, managed, or controlled by the state or local government. The bills have been referred to the Senate Committee on Labor and the House Committee on Regulatory Reform.

### **SB 25**

Senate Bill 25 was introduced by Senator Bayer on January 18, 2023. If enacted, SB 25 would create a "human right to water act," providing that each individual has the right to safe, clean, affordable, and accessible water for consumption, cooking, and sanitary purposes. It would require all state departments and agencies to have policies, regulations, and grant criteria in place to implement the act. SB 25 was referred to the Senate Committee on Housing and Human Services.

### **HB 4023**

House Bill 4023 was introduced by Representative VanderWall on January 18, 2023. If enacted, HB 4023 would amend the Natural Resources and Environmental Protection Act to impose additional setback requirements for the installation of new underground storage tanks that are used to contain regulated substances or the replacement of existing underground storage tanks. HB 4023 was referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

### **HB 4033**

House Bill 4033 was introduced by Representative Paiz on January 19, 2023. If enacted, HB 4033 would amend Michigan election law to allow for the reimbursement of a county, city, or township for the cost of conducting a special election to fill a state senator or representative vacancy if directed by the governor. HB 4033 was referred to the House Committee on Elections.

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