



# Legislative Update

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## MI House of Representatives Hears Testimony on Chapter 22 Legislation

In June, the House Local Government and Municipal Finance Committee heard testimony from various stakeholders on House Bills 4382 and 4383, which would amend Chapter 22 of the Drain Code to provide drain and water resources commissioners with additional tools for stormwater management. If enacted, the bills would allow for the creation of water management programs through a petition process that has similar attributes to other Drain Code processes. This would allow for work to be conducted at a watershed level, rather than just on individual drains.

On the first day of Committee testimony, the MACDC set the stage by displaying several pictures depicting recent flood events in Michigan and providing an explanation as to how the proposed Chapter 22 amendments could help to mitigate similar issues in the future. The MACDC explained how water management districts created under the legislation could utilize a combination of allowable activities aimed at better stormwater management to take pressure off of existing drains. Allowable activities could include:

1. Regional detention basins;
2. Buffer strips;
3. Rain gardens;
4. Roadside infiltration systems;

5. Property owner education; and
6. Stormwater ordinance drafting.

During the second day of testimony, the Committee heard from various other stakeholder groups, both in support of and opposed to the legislation. Those testifying against the legislation included the Home Builders Association of Michigan, the Grand Rapids Chamber of Commerce, and Michigan Realtors. Elmeka Steele, Wayne County Drain Commissioner and MACDC Second Vice President, and Matt Meersman from the Indiana Water Monitoring Council testified in favor of the amendments. The Michigan Townships Association provided testimony as neither supporting nor opposing the legislation.



## In the Spotlight...

**Spotlight: Representative Jenn Hill for Michigan's 109th District**

Representative Jenn Hill launched her career in the infrastructure sector with a master's degree in city planning from the Massachusetts Institute of Technology (MIT), where her thesis focused on how citizens gathered information to make the best case about preventing pollution in rivers and lakes. After graduation, she spent 25 years building community-focused nonprofit programs addressing the environment, public health, and youth mentorship. She assisted in both writing and analyzing grant applications and making recommendations as to how foundations should distribute funds. Representative Hill also served as a member of the Marquette City Commission and Vice President of the Citizens Utility Board of Michigan.

Representative Hill was elected to represent Michigan's 109th district, which includes Marquette, Baraga, Dickinson, and part of Alger County, in the 2022 election. Representative Hill serves as the Majority Vice Chair of the House Committee on Natural Resources, Environment, Tourism, and Outdoor Recreation, and she is a member of the House Committees on Energy, Communications, and Technology; Higher Education; and Local Government and Municipal Finance.



Representative Hill is an avid outdoorswoman, who enjoys hiking, canoeing, and gardening and has participated on the boards of Groundwork USA and Michigan Trails and Greenways Alliance.

**U.S. Supreme Court Refines Definition of “Waters of the United States”**

On May 25, 2023, the U.S. Supreme Court decided *Sackett v. EPA* in an effort to answer a question that has been debated for decades: *What does the phrase “waters of the United States” mean?* More specifically, the case addressed the circumstances under which wetlands are considered to be waters of the United States.

The Clean Water Act (“CWA”) grants federal jurisdiction over “navigable waters,” which it defines as “waters of the United States.” Over several decades, the meaning of the phrase has been interpreted by the Environmental Protection Agency (“EPA”) and Army Corps of Engineers to have an expansive reach over 270-300 million acres of wetlands. Numerous court opinions have attempted to refine the definition of the phrase but have failed to address the specific circumstances under which a wetland is considered a “water of the United States” subject to the CWA.

In *Sackett*, landowners began backfilling their property to build a home. The property contained wetlands,

which were located in the same neighborhood as a tributary that outlets into a non-navigable creek that eventually feeds into a navigable intrastate lake. The EPA sent the landowners notice that the backfilling violated the CWA under the theory that the landowners were discharging into wetlands that were “waters of the United States.”

The Supreme Court disagreed with the EPA's determination. The Court explained that “waters of the United States” applies only to “relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes.” Regarding wetlands specifically, the Court held that the CWA extends only to wetlands that have “a continuous surface connection to bodies that are ‘waters of the United States’ in their own right, so that they are indistinguishable from those waters.” Therefore, in order for the CWA to apply, a wetland must:

1. Be adjacent to a body of water that is a “water of the United States;” and
2. Have a continuous surface connection with that water, such that it is difficult to determine where the water ends and the wetland begins.

The formula adopted by the Court stems from the earlier case, *Rapanos v. United States*, which also attempted to clarify the meaning of “waters of the United States.” However, the *Rapanos* case was decided by a plurality in which the individual justices could not agree on the reasoning behind the Court’s holding. *Sackett*, which was decided by a majority of the Court, simplifies the *Rapanos* holding into a two-part test and gives it precedential effect on lower courts going forward.

The *Sackett* decision may have wide-reaching impacts, including those on Michigan’s laws and regulations regarding wetlands. Part 303 of Michigan’s Natural Resources and Environmental Protection Act (Wetlands Protection) (“Part 303”) is the major statute addressing wetlands in Michigan. Part 303’s definition of wetlands uses the CWA’s definition of “waters of the United States” as one of the possible criteria for a wetland. Part 303 also notes that the state’s authority under its permitting program for discharges into navigable waters/wetlands applies only to “navigable waters” and “waters of the United States” as defined in the CWA. Accordingly, the decision may have impacts on permitting, and more specifically, on when a permit is required.

## 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 14**

Senate Bill 14 would amend the Administrative Procedures Act to eliminate the prohibition on state agencies adopting rules that are more stringent than their federal counterparts, with limited exceptions. SB 14 was passed by both the House and the Senate and was returned to the Senate on June 28, 2023.

### **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. A substitute for HB 4033 was adopted and was passed by the House. HB 4033 was referred to the Senate Committee on Elections and Ethics on May 16, 2023.

**SBs 223, 224 & HBs 4261, 4262, 4263**

Senate Bills 223 and 224 were introduced by Senator Runestad on March 21, 2023, and House Bills 4261, 4262, and 4263 were introduced by Representatives Schuette, Kunse, and Kuhn, respectively, on March 14, 2023. The very similar bill packages would amend the Freedom of Information Act to add Part 2, which would be called the Legislative Open Records Act. If enacted, the bills would subject certain public records held by state officers, legislators, departments, or other public bodies in the legislative branch to FOIA disclosures. SBs 223 and 224 were referred to the Senate Committee on Elections and Ethics, and HBs 4261, 4262, and 4263 were referred to the House Committee on Ethics and Oversight.

**SB 154 & HB 4220**

Senate Bill 154 and House Bill 4220 were introduced by Senator Webber and Representative Tisdell, respectively, on March 8, 2023. The identical bills would amend the Freedom of Information Act's definition of "public record" to include records prepared, owned, used, in the possession of, or retained by an officer, employee, contractor, volunteer, or other agent of the public body in the scope of their duties to the public body. SB 154 has been referred to the Senate Committee on Civil Rights, Judiciary, and Public Safety, and HB 4220 was referred to the House Committee on Judiciary.

**HB 4234**

House Bill 4234 was introduced by Representative Tsernoglou on March 9, 2023. HB 4234 would amend the Michigan Campaign Finance Act to modify the requirements related to election contributions. A substitute for HB 4234 was reported with recommendation from the House Committee on Elections on May 16, 2023.

**HB 4428**

House Bill 4428 was introduced by Representative Coleman on April 19, 2023. HB 4428 would create a new act entitled the "local government public notice act," which would set forth specific methods and requirements for local governments and other governmental entities to provide certain public notices. HB

4428 was referred to the House Committee on Local Government and Municipal Finance.

**SB 299, 300 & HB 4479, 4480**

Senate Bills 299 and 300 were introduced by Senator Singh and House Bills 4479 and 4480 were introduced by Representative Skaggs and Representative Rheingans, respectively, on April 27, 2023. If enacted, the sets of tie barred bills would amend the Public Health Code to create statewide septic legislation. SBs 299 and 300 were referred to the Senate Committee on Energy and Environment, and HBs 4479 and 4480 were referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

**HB 4770**

House Bill 4770 was introduced by Representative Hill on June 15, 2023. If enacted, the bill would amend sections 74 and 381 of the Drain Code to "clean up" the statutory language and include gender neutral language. House Bill 4770 was referred to the House Committee on Government Operations.

**SB 394**

Senate Bill 394 was introduced by Senator Bayer on June 15, 2023. If enacted, SB 394 would eliminate the environmental permit review commission and environmental permit panel relating to permits under Part 13 of NREPA. SB 394 was referred to the Senate Committee on Regulatory Affairs.

**SB 398**

SB 398 was introduced by Senator McCann on June 21, 2023. If enacted, SB 398 would allow EGLE to issue an emergency order requiring the owner of a structure or fill located on bottomlands to immediately repair or remove said structure or fill or take any other action necessary if it is in imminent danger of failure or may cause significant harm to the public health, safety, welfare, property, natural resources, or the public trust. SB 398 was reassigned to the Senate Committee on Energy and Environment.

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