



Legislative Update

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Wayne County Executive Urges Support for Chapter 22 Legislation

In late August, severe storms wreaked havoc across the state, leaving property damage and power outages in their wake. For Wayne County in particular, these storms also caused large-scale flooding, with some parts of the County experiencing as much as a 1000-year/3-hour storm event (which is a 3-hour rainfall event with a 1 in 1000 chance of occurring in a given year).

While the flooding was devastating for Wayne County and its residents, the timing aligned with the MACDC's efforts to overhaul Chapter 22 of the Drain Code to manage stormwater at the watershed level. House Bills 4382 and 4383, which were introduced in April of 2023, would allow for the creation of water management programs through a petition process similar to other Drain Code processes and are designed to provide drain and water resources commissioners with additional tools for stormwater management.

In an op-ed in the Detroit Free Press following the August storms, Wayne

County Executive Warren C. Evans recognized the recent flooding as the result of an "infrastructure crisis" and urged leaders to advocate for passage of the Chapter 22 legislation. Evans noted that our drainage systems are outdated, and action is needed to deal with the "new normal" of significant rain events.



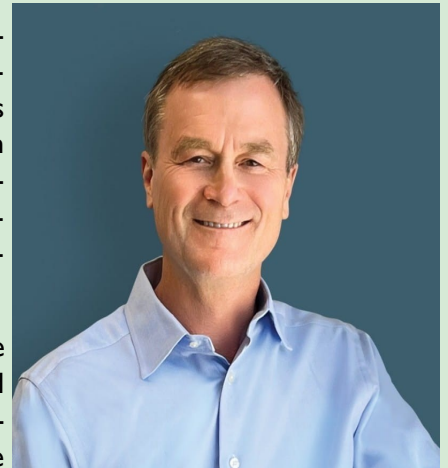
EGLE Director Phillip Roos

In the Spotlight...

Phillip Roos was appointed Director of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) in July of 2023. Prior to his appointment, Director Roos had extensive experience as an entrepreneur, business leader, and consultant. He graduated from the University of Michigan's Ross School of Business with a bachelor's degree in Business Administration and proceeded to attend Harvard Business School, where he obtained a master's degree in Business Administration. Director Roos founded two consulting firms and has held numerous positions of authority with different companies, including Little Caesars and Quaker Oats.

In addition to his business background, Director Roos has had a long-time focus on environmental protection. He has served as a board member and officer of wildlife, conservation, and health organizations, including the National Wildlife Federation, Michigan's Council on Climate Solutions, and the Michigan League of Conservation Voters.

Outside of work, Director Roos enjoys cycling, hockey, health and fitness, and music history.



Court of Appeals Interprets Natural Flow Doctrine

The Michigan natural flow doctrine governs the rights related to the natural flow of surface water from one property to another. Specifically, the natural flow doctrine protects the right for water to flow naturally from one property to another but prohibits a landowner from *increasing* the volume or velocity of water that flows onto his or her neighbor's property.

The Michigan Court of Appeals recently interpreted the natural flow doctrine in *Bishop v. Kent*, which involved an action between two neighbors where surface water naturally drained from the property with a higher elevation to the property with a lower elevation. The higher elevation property originally included an open ditch that facilitated drainage onto the lower elevation property. The owner of the higher elevation property subsequently enclosed the ditch to make farming the property more efficient.

The owner of the lower property initiated an action, claiming that the enclosure was impermissible and violated the natural flow doctrine, but did not present ex-

pert testimony or any other evidence. The contractor who performed the enclosure testified on behalf of the owner of the higher property, indicating that the enclosure actually *decreased* the volume and velocity of the water. Based on the lack of evidence to the contrary, the Court credited the contractor's testimony and found that the enclosure did not increase the volume or velocity of the flow of water onto the lower property. The Court ruled that while the enclosure changed the conditions on the land, based on the evidence presented, it did not create a greater burden on the lower property receiving the water. Therefore, the enclosure was permissible and protected by the natural flow doctrine.

Drain and water resources commissioners should be aware of the natural flow doctrine and its potential impact on private drainage disputes. Furthermore, this case demonstrates how crucial it is to present the court with evidence (likely expert engineering testimony) in favor of or in defense of this type of claim.

Court of Appeals Invalidates PFAS Standards

In 2019, the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") proposed new rules creating drinking water standards for PFAS under Sec-

tion 5 of the Safe Drinking Water Act. Because drinking water standards are tied to groundwater cleanup standards under Part 201 of the Natural Resources

and Environmental Protection Act (“Part 201”), the proposed rules would also trigger changes in groundwater cleanup standards.

As part of the rulemaking process, an agency is required to prepare a Regulatory Impact Statement (“RIS”) analyzing the impacts of the proposed rules. The RIS must include an estimate of the costs of compliance with the proposed rules for businesses and other groups. During the rulemaking process, EGLE prepared an RIS including the estimated costs to businesses related to the drinking water standards. However, the RIS did not include the estimated costs related to the corresponding changes in groundwater cleanup standards under Part 201.

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.

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 approved by the governor and assigned Public Act 104 of 2023 on August 22, 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,

The rules became effective in 2020, and 3M Company filed suit arguing that the new rules were invalid because EGLE’s RIS failed to fully account for all costs associated with the rules, specifically those resulting from the impact on groundwater cleanup standards. The Court of Appeals agreed, reasoning that because the proposed rules resulted in modified groundwater criteria under Part 201, they also triggered the possibility of additional compliance costs beyond those related solely to the drinking water criteria. Because EGLE failed to comply with the RIS requirements of the rulemaking process, the Court held the new rules invalid.

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.

SBs 299, 300 & HBs 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.

HB 4817 House Bill 4817 was introduced by Representative Carter on June 15, 2023. If enacted, HB 4817 would amend the Open Meetings Act to allow electronic meetings if specific requirements are met, including attendance by at least one member of the public body in an in-person meeting location that is available to the public. HB 4817 was referred to the House Committee on Local Government and Municipal Finance.

SB 398 & HB 4832 Senate Bill 398 and House Bill 4832 were introduced by Senator McCann and Representative Rogers, respectively, on June 21, 2023. If enacted, the bills 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, and HB 4832 was referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

HB 4939 House Bill 4939 was introduced by Representative Morgan on September 5, 2023. If enacted, HB 4939 would add a Part 4 to the Natural Resources and Environmental Protection Act dealing with public trust resources. The bill would require EGLE to review and update its rules regarding the protection of the public trust in the waters of the state, including groundwater. HB 4939 was referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

HB 5007 House Bill 5007 was introduced by Representative McKinney on September 14, 2023. If enacted, HB 5007 would amend several fees within the Natural Resources and Environmental Protection Act, including those related to floodplain, stormwater discharge, surface water discharge, groundwater discharge, and dam permits. HB 5007 was referred to the House Committee on Appropriations.

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