

# Legislative Update

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## INSIDE THIS ISSUE:

Energy Siting  
Legislation  
Preempts Local  
Regulation of  
Solar & Wind  
Projects

1

Spotlight on  
MDNR Director  
Scott Bowen

2

Significant  
Legislation of  
2023

2

Legislation of  
Interest

2

## Energy Siting Legislation Preempts Local Regulation of Solar & Wind Projects

In November, Governor Whitmer signed the long-awaited and much-revised energy siting legislation into law as Public Acts 233 and 234. The new acts regulate certification for the construction of:

1. Solar projects of 50 megawatts or more;
2. Wind projects of 100 megawatts or more; and
3. Energy storage facilities of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

The acts are intended to preempt local zoning and regulation of wind and solar projects, and instead allow for state certification. Energy projects meeting any of the criteria listed above can apply for a certificate from the Michigan Public Service Commission (MPSC) to move forward with construction. The application must contain a site plan and other materials, including a stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts. The applicant is also required to make “reasonable efforts” to consult with the county drain commissioner before submitting an application. If the application satisfies the MPSC requirements and a certificate is issued, the project may then move forward.

Although the certification process is geared towards state-approval, the new law provides an option for municipalities to retain

a seat at the table. To do so, a municipality can establish a “Compatible Renewable Energy Ordinance” (CREO) that is no more restrictive than the regulations provided in the statute, including those related to setbacks, height, and noise. At this time, it is unclear whether a CREO can include regulations that are not specifically addressed in the statute, such as land use impacts and other public welfare aspects. If a municipality has a CREO in place, the municipality will process a developer’s applica-



tion instead of the MPSC. However, if the municipality fails to timely approve/deny the application or if the municipality denies an application that complies with the requirements of the acts, the developer can abandon its efforts for municipal approval and instead apply to the MPSC.

There has been significant backlash to the legislation since its passage, including efforts at a voter initiative to nullify the new certification process and return to full local zoning authority. While the legislation is slated to become effective in November 2024, the MACDC will continue to monitor for any possible future amendments.

## In the Spotlight...

**Spotlight on MDNR Director Scott Bowen**

On September 5, 2023, Governor Whitmer appointed Scott Bowen as Director of the Michigan Department of Natural Resources (MDNR). Before becoming director, Bowen obtained a bachelor's in history from Michigan State University and a law degree from the University of Detroit Mercy. In his early career, Bowen worked as a private practice attorney before embarking on a long public service journey.

Bowen was appointed as judge of the 62-A District Court in Wyoming in 2003. He served as director of the Office of the State Employer and was appointed as Commissioner of the Michigan Lottery, where he served from 2008 to 2017. Prior to being appointed MDNR Director, Bowen served as Senior Vice President of Business Development at NeoPollard Interactive, LLC, a Michigan-based technology company.

Director Bowen plans to use his background working with other state agencies to help him manage Michigan's natural resources. Director Bowen specifically plans to focus on resource management, including climate change, invasive species, wildlife health, water quality, and maintenance of MDNR lands and infrastructure.

**Significant Legislation of 2023**

*The following public acts of interest to Drain Commissioners and Associate Members were passed by the Legislature in 2023. 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 104** Public Act 104 amends the Administrative Procedures Act to eliminate the prohibition on state agencies adopting rules that are more stringent than their federal counterparts, with limited exceptions. PA 104 was approved by the governor and assigned Public Act 104 of 2023 on August 22, 2023.

**PA 140** Public Act 140 of 2023 amends several fees and fee sunsets within the NREPA, including those related to groundwater discharge permits and sewer expedited permits. PA 140 was signed by the governor and assigned Public Act 140 of 2023 with immediate effect on October 3, 2023.

**PA 244** Public Act 244 amends the Michigan Campaign Finance Act to modify the requirements related to election contributions. PA 244 was approved by the governor and assigned Public Act 244 of 2023 on November 14, 2023.

**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).*

**Drain Code & Part 307 Legislation**

**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.

**HBs 4382 & 4383** House Bills 4382 and 4383 were introduced by Representatives Morse and VanderWall, respectively, on April 12, 2023. If enacted, the bills would amend Chapter 22 of the Drain Code to allow for stormwater management at the watershed level. HBs 4382 and 4383 were referred to the House Committee on Local Government and Municipal Finance.

**SB 662** Senate Bill 662 was introduced by Senator Bayer on November 9, 2023. If enacted, SB 662 would revise the definition of "normal level" under Part 307 of NREPA, exempt lake level districts from the election requirement for financing over a certain amount, and

revise the interim borrowing language related to lake level projects. SB 662 was referred to the Senate Committee on Local Government.

**HB 5188** House Bill 5188 was introduced by Representative O’Neal on October 24, 2023. If enacted, HB 5188 would increase the annual non-petitioned drain maintenance limit to \$10,000 per mile of drain with an annual adjustment for inflation. HB 5188 was referred to the House Committee on Local Government and Municipal Finance.

**HB 5189** House Bill 5189 was introduced by Representative Bezotte on October 24, 2023. The bill would amend the process for adding or removing a county to a drainage district under Sections 135 and 197 of the Drain Code to create consistency with other sections of the Drain Code. HB 5189 was referred to the House Committee on Local Government and Municipal Finance.

**HB 5190** House Bill 5190 was introduced by Representative Hill on October 24, 2023. If enacted, HB 5190 would replace instances of “per diem” in the Drain Code with “reasonable compensation” and “necessary expenses” in order to clarify the difference between reimbursement for expenses and compensation for service. HB 5190 was referred to the House Committee on Local Government and Municipal Finance.

**HB 5335** House Bill 5335 was introduced by Representative Andrews on November 11, 2023. If enacted, HB 5335 would amend the Drain Code to allow assessment of lands owned or controlled by the Michigan Department of Natural Resources. HB 5335 was referred to the House Committee on Local Government and Municipal Finance.

### Other Legislation

**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 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 defini-

tion 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 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.

**SBs 393 & 394** Senate Bills 393 and 394 were introduced by Senator Bayer on June 15, 2023. If enacted, the bills would eliminate the Environmental Science Advisory Board and the Environmental Permit Review Commission and environmental permit panel relating to permits under Part 13 of NREPA. SB 393 and a substitute for SB 394 were passed by the Senate and referred to the House Committee on Natural Resources, Environment, Tourism, and Outdoor Recreation on November 2, 2023.

**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 bot-

tomlands to immediately repair or remove said structure or fill to prevent 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. A substitute for HB 4832 was reported with recommendation and referred to a second reading on October 12, 2023.

**HB 4939** House Bill 4939 was introduced by Representative Morgan on September 5, 2023. If enacted, HB 4939 would add a Part 4 to NREPA 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.

**SB 480** Senate Bill 480 was introduced by Senator Hertel on September 12, 2023. If enacted, the bill would amend the Land Division Act to increase the number of parcel splits allowed for the first 10 acres of a parent parcel or tract. SB 480 would also allow a municipality to authorize additional splits by ordinance. A substitute for SB 480 was passed by the Senate and referred to the House Committee on Local Government and Municipal Finance on November 8, 2023.

**HB 4981** House Bill 4981 was introduced by Representative BeGole on September 14, 2023. If enacted, HB 4981 would create additional eligibility requirements for the office of county sheriff. A substitute for the bill was passed by the House and referred to the Senate Committee on Elections and Ethics on November 7, 2023.

**HBs 5118 & 5119** House Bills 5118 and 5119 were introduced by Representative Hood on October 10, 2023. If enacted, HB 5118 would authorize a local unit of government to create a property assessed clean energy program to finance projects related to renewable energy systems, energy efficiency improvements, water usage and sewage treatment improvements, air quality improvements, and environmental hazard projects. The tie-barred bills were referred to the House Committee on Energy, Communications, and Technology.

**SBs 605-611 & HBs 5241-5247** Senate Bills 605-611 were introduced by Senators Irwin, Moss, Chang, Geiss, McCann, Shink, and McMorro on October 24, 2023, and House Bills 5241-5247 were introduced by Representatives McKinney, Morgan, Neeley, Skaggs, Arbit, Tsernoglou, and Koleszar on October 25, 2023. The bills are part of a "Polluter Pay" package that would create more stringent cleanup standards and require polluter accountability for environmental cleanup and other im-

pacts of pollution. The Senate bills were referred to the Senate Committee on Energy and Environment, and the House bills were referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

**SB 641** Senate Bill 641 was introduced by Senator McBroom on November 7, 2023. If enacted, SB 641 would amend the Open Meetings Act to provide requirements and procedures for remote attendance at a public meeting. SB 641 was referred to the Senate Committee on Oversight.

**SB 660** Senate Bill 660 was introduced by Senator Bayer on November 9, 2023. If enacted, SB 660 would create the "Stormwater Management Utility Act" to set forth procedures for a local unit of government to create a stormwater management utility. SB 660 was referred to the Senate Committee on Local Government.

**HB 5205 and SB 663** House Bill 5205 was introduced by Representative Dievendorf on October 24, 2023, and Senate Bill 663 was introduced by Senator Shink on November 9, 2023. If enacted, the bills would amend Part 31 of NREPA to remove the prohibition on EGLE from promulgating rules under Part 31 beyond those specifically authorized in the statute. HB 5205 was referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation, and SB 663 was referred to the Senate Committee on Energy and Environment.

**SBs 669 & 670** Senate Bills 669 & 670 were introduced by Senators Moss and McBroom, respectively, on November 9, 2023. If enacted, the tie-barred bills would amend the Freedom of Information Act to create provisions to apply the statute to the governor and state legislature. The bills were referred to the Senate Committee on Oversight.

**HB 5351** House Bill 5351 was introduced by Representative Scott on November 14, 2023. If enacted, HB 5351 would amend the Freedom of Information Act to require a public body to exempt from disclosure records in connection with an investigation by an office of inspector general for a certain period following the investigation. HB 5351 was referred to the House Committee on Government Operations.

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