

Legislative Update



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Court Rules Statute of Limitations Begins When Trespass, Not Damage, Occurs

As Michigan experiences rising water levels and significant rain events, property damage from flooding has become an increasing concern across the state. The Michigan Court of Appeals recently considered when the applicable statute of limitations for real property damage from a flooding event begins to run in *Kesti v. Williams*.

The defendants in *Kesti* were responsible for maintaining a bridge located upstream of Kesti's property on a river. The defendants performed work on the bridge on two occasions:

1. Between 2006 and 2008, the defendants placed vertical poles in the center of the bridge and anchored them to the riverbed.
2. In 2015, the defendants expanded the bridge abutments by adding riprap and created a pier.

In 2018, the area received heavy rainfall that flooded Kesti's property and washed away his cabin. In 2021, Kesti filed a claim against the defendants for: (1) declaratory judgment; (2)

trespass; (3) nuisance; (4) negligence; and (5) interference with riparian rights. Kesti argued that the defendants' previous work on the bridge ultimately caused the flooding damage to his property.

The Court made two determinations related to Kesti's claims. First, the Court found that the "gravamen" (i.e., the essence) of Kesti's claims was based on the property damage from the 2018 flood. Second, the Court explained that the applicable statute of limitations for the property damage was three years from the time the wrong was done, *regardless of when the damage occurred*. Because the evidence showed that the previous work performed on the bridge in 2006-2008 and 2015 ultimately caused the property damage during the flood, the Court held that the statute of limitations began to run when that work occurred (and not when the flooding itself occurred). Therefore, Kesti's 2021 claim was outside of the three-year statute of limitations and was barred.

Legislation of
Interest

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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.

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. A substitute for SB 662 was passed by the Senate and referred to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

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 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 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. The bills were reported with recommendation and referred to a second reading in the House on February 22, 2024.

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, SB 398 would allow EGLE to issue an emergency order requiring

any person in violation of Part 301 to take emergency action to prevent significant harm to the public health, safety, welfare, property, natural resources, or the public trust, which could include immediate repair or removal of a structure or fill located on bottomlands. The bill would specifically exempt violations arising from residential property. Similarly, HB 4832 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 to prevent significant harm to the public health, safety, welfare, property, natural resources, or the public trust. A substitute for SB 398 was passed by the Senate and referred to the House Committee on Natural Resources, Environment, Tourism, and Outdoor Recreation on March 19, 2024. 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 McMorrow 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 impacts 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.

HBs 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 on October 24, 2023. SB 663 was referred to the Senate Committee of the Whole on March 13, 2024.

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. A substitute for each bill was referred to the Senate Committee of the Whole on March 14, 2024.

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.

SB 645 Senate Bill 645 was introduced by Senator Shink on November 8, 2023. If enacted, the bill would add mosquito pesticides to the list of pesticides that the MDARD must notify individuals on the Pesticide Notification Registry of prior to application. It would also update the distance at which MDARD must notify a registrant from a physician recommended distance to 500 feet from the registrant's primary residence. SB 645 was referred to the Senate Committee on Natural Resources and Agriculture.

HBs 5419 and 5420 House Bills 5419 and 5420 were introduced by Representatives Schuette and Hoadley, respectively, on February 1, 2024. If enacted, the tie-barred bills would defer the payment of special assessments for an owner of a homestead who is 65 or older or totally and permanently disabled and who meets certain household income requirements until one year after the owner's death or upon transfer of the property. HBs 5419 and 5420 were referred to the House Committee on Tax Policy.

HB 5532 House Bill 5532 was introduced by Representative Rogers on February 29, 2024. If enacted, HB 5532

would prohibit the operation of boats in "wake sport mode" in water depths less than 20 feet and closer than 500 feet from the shoreline or dock, a raft, a designated bathing area, or a moored or anchored vessel. HB 5532 was referred to the House Committee on Natural Resources, Environment, Tourism, and Outdoor Recreation.

SBs 785-787 Senate Bills 785, 786, and 787 were introduced by Senator Runestad on March 13, 2024. If enacted, the "sunshine bills" would create a FOIA ombudsman office to investigate FOIA complaints and expand the definition of "public body" under both the FOIA and the Open Meetings Act. The bills were referred to the Senate Committee on Oversight.

HB 4987 House Bill 4987 was introduced by Representative Wozniak on September 14, 2023. If enacted, HB 4987 would amend the Marketable Record Title Act to allow a property owners' association to file a notice of claim to preserve an interest subject to expiration. The bill would also specifically exempt certain interests from extinguishment, including conservation easements, subdivision restrictions, and master deeds. HB 4987 was referred to the House Committee on Regulatory Reform.

PA 20 of 2024 Public Act 20 of 2024 was signed into law on March 28, 2024. The Act extends the deadline to file a notice of claim to preserve an interest subject to expiration under the Marketable Record Title Act to September 29, 2025.

In the Spotlight...

Spotlight on Representative Joey Andrews for Michigan's 38th District

Representative Andrews began his career with a bachelor's degree from Carson-Newman University in Tennessee and a law degree from Wayne State University. After graduation, he returned to his home in Southwest Michigan, where he helped with his family's business and started a solar panel installation company. Representative Andrews became a community organizer in 2018 and assisted in multiple campaigns in his region. He later worked as the West Michigan regional field director and then as a policy analyst for the Michigan American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

Representative Andrews was elected to the Michigan House of Representatives in 2022 to represent the 38th District, which includes parts of Allegan, Berrien, and Van Buren Counties. He serves as the Majority Vice Chair of the Criminal Justice Committee and the Energy, Communications, and Technology Committee. He also serves on the Labor Committee and the Economic Development and Small Business Subcommittee on Housing.

Representative Andrews prioritizes water issues, including erosion, flooding, lead and aging infrastructure. Representative Andrews is also the sponsor of House Bill 5335 regarding MDNR payment of drain assessments.

