

# Legislative Update

VOLUME 14, ISSUE 1

WINTER 2025



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## Drain Code Maintenance Limit Increase PASSED

After attempts during multiple legislative sessions, House Bill 5188 (now Public Act 237 of 2024) was signed into law on January 17, 2025 to increase the annual non-petitioned drain maintenance limit to \$10,000 per mile of drain with an annual adjustment for inflation. **PA 237 will become effective on April 2, 2025.**

Under PA 237, annual inflation adjustments to the maintenance limit will be based on the Consumer Price Index (CPI). Because the Act specifies that the annual adjustments begin in 2025, MACDC will send an email blast to its members providing the adjusted 2025 maintenance limit prior to the April 2 effective date. Drain commissioners will also be able to view the annual inflation adjustment for future years on the Michigan Department of Agriculture and Rural Development’s (MDARD) website.

The non-petitioned maintenance limit caps both the amount of maintenance work that can be performed *and* the amount that can be pre-assessed in a given year (unless a specific exception applies). In other words, under the new maintenance limit, a drain commissioner cannot perform or pre-assess more than \$10,000 per mile plus inflation in a single year. (This does not include costs related

to inspections, engineering, legal fees, publications, or mailings.

### **PA 237 “Quick Facts”**

- **Bill Sponsor: Rep. O’Neal**
- **Bill Number: HB 5188**
- **Drain Code Section: 196**
- **Effective Date: April 2, 2025**

In addition to the maintenance limit increase, PA 237 also increases the pre-assessment limit for drains and the threshold for when pre-assessments can be levied. Specifically, the Act allows a drain commissioner to pre-assess up to \$5,000 per mile if the drain account contains less than \$10,000 per mile. The pre-assessment limit and threshold for pre-assessments do not include an annual adjustment for inflation.

### **Update on Per Diem Amendment**

House Bill 5190, which proposed to replace instances of “per diem” in the Drain Code with “reasonable compensation” and “necessary expenses,” was passed by both the House and Senate and presented to Governor Whitmer. Unfortunately, Governor Whitmer failed to sign the bill into law within 14 days after presentation, giving the effect of a pocket veto.

## Election Update: Changes in State Legislature

Several changes took place in the state legislature as a result of the November 2024 general election. Here's what you need to know:

- **End of the Democratic Trifecta** – After two years of a Democratic trifecta in the state legislature, the Republicans reclaimed the majority in the House of Representatives. Because the Democrats still hold the majority in the Senate and the Governor's Office, this change will make it necessary to obtain bipartisan support for bills over the next two years.
- **Republican Speaker of the House** – With the new Republican majority, Representative Matt Hall was elected Speaker of the House after serving as the House Republican Leader during the 2023-2024 term. Representative Hall was originally elected in 2018 and represents the 42nd House District, including portions of Kalamazoo and Allegan Counties. During his time as a State Representative, he has served as Chair of the House Oversight Committee, Chair of the Joint Select Committee on the COVID-19 Pandemic, Chair of the House Tax Policy Committee, and Chair of the Republican Caucus. Prior to his election, Representative Hall

worked as a constitutional law attorney in both the private sector and as the West Michigan liaison for the Michigan Department of Attorney General.

- **Lame Duck & Part 31 Rulemaking** – While a busy lame duck was expected with the flip in the House majority, attendance issues left the House without the ability to vote on bills, and many bills remained unpassed at the end of the legislative session. The good news for MACDC is that the list of unpassed bills includes the EGLE Part 31 rulemaking bills (SB 663 and HB 5205), which would now have to be re-introduced and passed through both the House and the Senate and signed by the Governor to become effective.



## Court of Appeals Upholds Lake Level Special Assessments

The Michigan Court of Appeals recently considered the validity of special assessments for a lake level project under Part 307 of the Natural Resources and Environmental Protection Act, MCL 324.30701 *et seq.* Following the dam failures on the Four Lakes in Midland and Gladwin Counties, the Four Lakes Task Force (as the Counties' delegated authority) determined that it was necessary to levy special assessments to restore the lakes and cover operational and maintenance expenses. The Four Lakes Task Force held a public hearing regarding the assessments, which were subsequently approved by each county's board of commissioners. Property owners within the

special assessment district appealed the assessments in *Herron Cove Association v. Midland County Board of Commissioners*, arguing that the assessments were invalid and violated the property owners' due process rights.

### Validity of Assessments

In reviewing the validity of the assessments, the Court explained that special assessments are presumed to be valid, and the burden is on the party *challenging* the assessments to provide evidence to the contrary. The Court further explained that a special assessment is valid if two requirements are met:

- 1) The improvement resulting from the special assessment confers a benefit on the assessed property and not just the community as a whole; and
- 2) The special assessment amount is reasonably proportionate to the benefit derived from the improvement.

A determination as to whether these requirements have been met involves consideration of the market value of the assessed properties as a result of the improvement. The Court clarified that the appropriate comparison is that of the market value of the assessed properties *with and without* the improvement, not the market value of the assessed properties *before and after the improvement, which could be impacted* by other factors. Because the property owners only provided evidence of the market value before and after the improvement and because

the evidence was only provided for a limited number of parcels, they did not meet their burden to provide evidence that the assessments were invalid.

### **Due Process**

In reviewing whether there was a violation of the property owners' due process with respect to the assessments, the Court noted that the process for establishing the special assessments included opportunities for public engagement, a public hearing and ability to provide objections, and many adjustments to the special assessment rolls based on public comments. Because all of Part 307's requirements were met in setting the assessments, the Court ultimately found that there was no violation of due process. Accordingly, the Court upheld the assessments as set by the Four Lakes Task Force.

## **Significant Public Acts of 2024**

*The following public acts of interest to Drain Commissioners and Associate Members were passed by the Legislature in 2024. 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 7-9 of 2024 (formerly HBs 4824-4826)**

Public Acts 7-9 of 2024 were enacted on February 27, 2024 with an effective date of sine die. The Acts amend the Administrative Procedures Act to abolish the Environmental Rules Committee.

### **PA 20 of 2024 (formerly SB 721)**

Public Act 20 of 2024 was enacted on March 28, 2024 with immediate effect. 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.

### **PA 102 of 2024 (formerly SB 398)**

Public Act 102 of 2024 was enacted on July 23, 2024 with an effective date of sine die. The Act allows

EGLE to issue an emergency order requiring any person in violation of Part 301 of NREPA 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. If a person fails to comply with an emergency order, the Act allows EGLE to take the necessary action and recover the costs from the person who failed to comply.

### **PA 112 of 2024 (formerly SB 662)**

Public Act 112 of 2024 was enacted on July 23, 2024 with an effective date of sine die. The Act revises the definition of "normal level" under Part 307 of NREPA, exempts lake level districts from the election requirement for financing over a certain amount, and revises the interim borrowing language related to lake level projects.

## 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).



### **SBs 1 & 2**

Senate Bills 1 and 2 were introduced by Senators Moss and McBroom, respectively, on January 8, 2025. If enacted, the bills would amend the FOIA to apply to the Executive Office of the Governor or Lieutenant Governor and the state legislature, and would provide additional FOIA exemptions for each. Both bills were passed by the Senate and referred to the House Committee on Government Operations.

### **SB 8**

Senate Bill 8 was introduced by Senator Hertel on January 8, 2025. If enacted, the bill would increase the minimum hourly wage rate to \$12.48 in 2025, \$13.73 in 2026, and \$15.00 in 2027, with certain exceptions. SB 8 is currently before the Senate Committee on Regulatory Affairs.

### **SB 10**

Senate Bill 10 was introduced by Senator Bellino on January 8, 2025. If enacted, the bill would generally prohibit a foreign government or state-sponsored enterprise, or an individual operating on behalf of a foreign government or state-sponsored enterprise, from acquiring farmland in the state of Michigan. SB 10 is currently before the Senate Committee on Government Operations.

### **SB 15**

Senate Bill 15 was introduced by Senator Singh on January 8, 2025. If enacted, the bill would make updates to the Earned Sick Time Act for both small businesses and other employers. SB 15 is currently before the Senate Committee on Regulatory Affairs.

### **HB 4002**

House Bill 4002 was introduced by Representative DeBoyer on January 9, 2025. If enacted, the bill would make updates to the Earned Sick Time Act and would exempt employers with less than 50 employees from the requirements of the Act. A substitute for HB 4002 was passed by the House and transmitted to the Senate on January 23, 2025.

### **SB 23**

Senate Bill 23 was introduced by Senator Hertel on January 22, 2025. 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 23 would also allow a municipality, or in certain cases, a county, to authorize additional splits by ordinance. SB 23 was referred to the Senate Committee on Local Government.

### **HB 4035**

House Bill 4035 was introduced by Representative Wozniak on January 28, 2025. If enacted, the bill would require a county with a population over 1,000,000 to submit a discharge reduction plan to EGLE following a discharge by the county in violation of Part 31. HB 4035 was referred to the House Committee on Natural Resources and Tourism.

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