



MEMORANDUM

TO: Local Government and Municipal Finance Committee
FROM: Michigan Association of County Drain Commissioners
DATE: January 26, 2022
RE: Senate Bill 258

The Michigan Association of County Drain Commissioners (MACDC) supports the effort to modernize and provide public notices on newspaper websites. However, there are fundamental issues related to the publication of public notices that affect our members and local governments in general. Any update to this statute should include reforms to address the following:

- 1.) **Online Publication Should Satisfy Statutory Posting Deadlines.** Local governments bear all the risk in relation to issues with publication of public notices. For most drain proceedings, newspaper publication is one aspect of noticing, which includes first-class mailings to each landowner. There have been instances of missed newspaper publication deadlines, sometimes at the fault of the newspaper, that have led to rescheduling of proceedings and the added expense of re-noticing (e.g., new mailings). This issue is compounded by the continued decline of print newspapers and opportunities to publish. MACDC proposes that the date of online publication in SB 258, which must be posted within 72 hours of receipt, qualifies as the date of publication for purposes of any statutory newspaper posting deadline.
- 2.) **Establish Publication Rate for Local Governments.** While the bill currently provides that online publication must be done “at no additional cost beyond what the person charges for the print publication,” we believe that an overall increase in publication costs is inevitable given these additional proposed requirements. To mitigate these costs, many states require newspapers to establish a local government rate. A common method for determining these local government rates is to use the lowest classified advertising rate and lowest insert rate paid by other advertisers.
- 3.) **Affidavit of Publication Provided Automatically at No Cost.** To prove publication, drain commissioners obtain affidavits of publication from newspapers. These are provided at an additional cost and only upon request. Often, it takes multiple attempts to obtain the affidavits. Affidavits of publication should be provided automatically and at no cost to local governments.
- 4.) **Allow for Abbreviated Notices in Print Publication.** Allowing for an abbreviated notice in the print publication containing a link to the full notice online would save greatly on project costs. Some publications cost thousands of dollars depending on the publication and notice content.

Attached: (1) MACDC Amendments; (2) Missed Publication Example; and (3) \$3,062 Notice Example

#1

MACDC SUGGESTED REVISIONS TO S-2

A bill to amend 1963 PA 247, entitled
"An act to define the term "newspaper" as used in the statutes of this
state regarding publication of notices," by amending section 1 (MCL
691.1051).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) ~~The term "newspaper" as~~ **As** used in any statute of
2 this state ~~, except the revised judicature act of 1961 relative in~~
3 **relation** to the publication of a notice of any kind, ~~shall be~~
4 ~~construed to refer only to a newspaper unless the statute expressly~~
5 **provides otherwise, "newspaper" means a print publication** published
6 in the English language for the dissemination of local ~~ex~~
7 ~~transmitted news and intelligence~~ of a general character or for the
8 dissemination of legal news ~~, to which~~ **all of the following apply:**
9 (a) ~~has~~ **There is** a bona fide list of paying subscribers **to the**
10 **publication or the publication** has been published at not less than
11 weekly intervals in the same community without interruption for at
12 least 2 years. ~~and~~

1 (b) **The publication** has been published and of general
2 circulation at not less than weekly intervals without interruption
3 for at least 1 year in the ~~county, township, city, village or~~
4 ~~district where the notice is required to be published~~ **required**
5 **area**. A newspaper shall not lose eligibility for interruption of
6 continuous publication ~~because of acts due to any of the following:~~

7 (i) **An act** of God. ~~labor~~

8 (ii) **Labor** disputes. ~~or because of military~~

9 (iii) **The COVID-19 pandemic, for the period beginning March 10,**
10 **2020 through the end of the COVID-19 pandemic.**

11 (iv) **Military** service of the publisher for a period ~~of~~ not to
12 exceed 2 years and provided publication is resumed within 6 months
13 following the termination of such military service. ~~and~~

14 (c) **The publication** annually averages at least 25% news and
15 editorial content per issue. ~~The term "news and editorial content"~~
16 ~~for the purpose of this section means any printed matter other than~~
17 ~~advertising.~~

18 (2) **A person that operates a newspaper in which a notice is**
19 **published under this section shall do both of the following, at no**
20 **additional cost beyond what the person charges for the print**
21 **publication:**

22 (a) **Within 72 hours of receipt of a request to publish a**
23 **notice, provide access to the notice on the website of the**
24 **newspaper. The website must satisfy all of the following**
25 **requirements:**

26 (i) **The website homepage must have a link that takes a viewer**
27 **to an area of the website where notices published under this**
28 **section are available for viewing. This area of the website cannot**

1 be placed behind any sort of pay wall and the public must be able
2 to read the notices at no charge.

3 (ii) Notices published under this section must remain on the
4 website during the full required publication period.

5 (iii) Notices published under this section must remain
6 searchable on the website as a permanent record of the publication.

7 (b) Place the notice on a website that is established and
8 maintained by a state association of newspapers that represents a
9 majority of newspapers in this state as a comprehensive central
10 repository for notices published under this section throughout this
11 state. The website must do all of the following:

12 (i) Provide for searching for a notice published under this
13 section by criteria contained in the notice.

14 (ii) Maintain all notices published under this section on a
15 permanent basis.

16 (iii) Provide access through standard computer browsers and
17 mobile platforms, such as smartphones and tablets.

18 (iv) Provide a method to alert the public of notices published
19 under this section by text message or email notification, or both.

20 (3) An error or omission in the posting of a notice on the
21 internet under subsection (2) does not invalidate the notice
22 published in the print version of the newspaper.

23 (4) If there is no newspaper so ~~qualifies~~ publication that
24 meets the definition in subsection (1) in the county where the
25 court is situated, the term ~~required area~~, "newspaper" shall
26 include any newspaper means a publication in an adjoining county
27 which by this act is qualified to publish notice of actions
28 commenced therein county, township, city, village, district, or

1 other geographic territory, as applicable, that meets the
2 definition in subsection (1).

3 (5) A person that operates a newspaper that publishes a notice
4 shall maintain a permanent and complete printed copy of each
5 published edition that contains the notice for archival and
6 verification purposes in the required area.

7 (6) A publication that meets the definition under subsection
8 (1) but that is controlled by the person on whose behalf the notice
9 is published or by an officer, employee, agent, or affiliate of the
10 person is not qualified to serve as a newspaper for publication of
11 the notice.

12 (7) For purposes of a notice publication deadline in any
13 statute requiring the publication of a notice in a newspaper, the
14 date of publication of the notice shall be considered the earlier
15 of the following:

16 (i) The date of print publication in newspaper.

17 (ii) The date of posting of a notice on the internet under
18 subsection (2).

19 (8) For notices required to be published by a county, city,
20 village, township, school district, or other political subdivision,
21 a person that operates a newspaper shall establish a government
22 rate. The government rate shall not exceed the lowest classified
23 advertising rate and lowest insert rate paid by other advertisers.

24 (9) For notices required to be published by a county, city,
25 village, township, school district, or other political subdivision,
26 a person that operates a newspaper shall provide, at no additional
27 cost, an affidavit of publication that attests to the date on which
28 the notice was published in the print newspaper and on the internet
29 as required by subsection (2).

1 (10) A notice published in a printed newspaper need only
2 contain an abbreviated description of the purpose of the notice,
3 including the time, date, and location of any related public
4 meeting, and need not contain all required information under the
5 statute requiring publication of the notice if all the following
6 are met:

7 (i) A full notice containing all required information under
8 the statute requiring publication of the notice is posted on the
9 newspaper website.

10 (ii) A full notice containing all required information under
11 the statute requiring publication of the notice is posted on the
12 website of the public body when a public body is required to post
13 the notice on its website by the Michigan Open Meetings Act, Act
14 267 of 1976, as amended.

15 (iii) A website link to a posting of the full notice, either
16 on the public body website or newspaper website, is included in the
17 abbreviated notice printed in the newspaper.

18 (iv) A request to a newspaper owner for publication of a
19 notice includes both the abbreviated print version, with a
20 designated location for the newspaper owner to insert a link to the
21 full notice on the website where applicable, and the full notice to
22 be posted on the internet under subsection (3).

23 (11) As used in this section:

24 (a) "Controlled" means that the person has 1 or more of the
25 following:

26 (i) Ownership of or the power to vote, directly or indirectly,
27 more than 50% of a class of voting securities or voting interests
28 of the person that operates the publication.

1 (ii) Power by the person's own action to elect or appoint a
2 majority of executive officers, managers, directors, trustees, or
3 other persons exercising managerial authority of the person that
4 operates the publication.

5 (iii) The legal right by the person's own action to direct,
6 restrict, regulate, govern, or administer the management or
7 policies of the person that operates the publication.

8 (b) "End of the COVID-19 pandemic" means the earliest date
9 after March 10, 2020 on which none of the following are in effect:

10 (i) A presidential declaration of national emergency under the
11 national emergencies act, 50 USC 1601 to 1651, relating to COVID-
12 19.

13 (ii) An executive order issued by the governor during a state
14 of disaster or emergency declared under the emergency management
15 act, 1976 PA 390, MCL 30.401 to 30.421, or 1945 PA 302, MCL 10.31
16 to 10.33, relating to COVID-19.

17 (iii) An emergency order issued under section 2253 of the public
18 health code, 1978 PA 368, MCL 333.2253, relating to COVID-19.

19 (c) "Internet" means that term as defined in 47 USC 230.

20 (d) "News and editorial content" means any content other than
21 paid advertising.

22 (e) "Notice" includes an order, ordinance, advertisement,
23 report, and any other statement or information required by statute
24 to be published.

25 (f) "Required area" means the county, township, city, village,
26 district, or other geographic territory where the statute requires
27 the notice to be published or the newspaper to be published,
28 circulated, or printed.

1 (g) "Website" means a collection of pages of the internet,
2 usually in html format, with clickable or hypertext links to enable
3 navigation from 1 page or section to another, that often uses
4 associated graphics files to provide illustration and may contain
5 other clickable or hypertext links.

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. 259 of the 101st Legislature is enacted into
8 law.

9 Enacting section 2. Section 1(1)(b)(iii) of 1963 PA 247, MCL
10 691.1051, as amended by this amendatory act, is intended to be
11 retroactive and applies retroactively beginning March 10, 2020.

#2

-----Original Message-----

From: [REDACTED]
Sent: Friday, January 29, 2021 9:20 AM
To: legalads@support.mlivemailhub.com; legalads@mlive.com
Subject: RE: Kent County Drain Commissioner- Notice

[REDACTED]

I need the ad run ASAP for the next publication in the Grand Rapids Press. The original notice was sent January 15 to be published on Thursday, January 28 & Tuesday February 2. Please verify that it can be placed in Sunday's paper on January 31 and Feb 2.

I've attached again the notice to be published.
Please call me back as soon as possible to verify this.

Sincerely,

[REDACTED]
Office of the Kent County Drain Commissioner

Main Office: (616) 632-7910

[REDACTED]
Fax: (616) 632-7915

This message has been prepared on resources owned by Kent County, MI. It is subject to the Acceptable Use Policy of Kent County.

-----Original Message-----

From: legalads@support.mlivemailhub.com <legalads@support.mlivemailhub.com>
Sent: Friday, January 29, 2021 8:03 AM
To: [REDACTED]
Subject: Re: Kent County Drain Commissioner- Notice

CAUTION: This email was sent from an external source. Please do not open suspicious links or attachments.

Hi [REDACTED] has retired and I am afraid this ad was not entered. Can I enter it for another date? [REDACTED]
216-999-[REDACTED]

On Tue, 19 Jan 2021, [REDACTED] wrote:

- > Please confirm that this email sent Friday, January 15 was received
- > and will be published. In the past, an email receipt was generated and
- > sent. I have not received one.
- >
- > Thank you.

>

[Redacted]

> Office of the Kent County Drain Commissioner

>

> Main Office: (616) 632-7910

[Redacted]

> Fax: (616) 632-7915

>

> This message has been prepared on resources owned by Kent County, MI.

> It is subject to the Acceptable Use Policy of Kent County.

>

> [KentSeal]

>

> From: [Redacted]

> Sent: Friday, January 15, 2021 3:34 PM

> To: 'MLive Legal Ads' <legalads@mlive.com<<mailto:legalads@mlive.com>>>

> Subject: RE: Kent County Drain Commissioner- Notice

>

> Please run the attached legal notice in the Thursday, January 28, 2021

> and Tuesday, February 2, 2021 editions in the Grand Rapids Press.

> Provide an affidavit of publication for each publication.

>

> Contact person:

>

[Redacted]

> Office of the Kent County Drain Commissioner

> 1500 Scribner Ave. NW

> Grand Rapids, MI 49504

> Ph: 616-632-7910

> Email:

[Redacted]

> ov>

>

> Please confirm the receipt of this request by email or phone.

>

> Sincerely,

>

[Redacted]

> Office of the Kent County Drain Commissioner

>

> Main Office: (616) 632-7910

[Redacted]

> Fax: (616) 632-7915

>

> This message has been prepared on resources owned by Kent County, MI.

> It is subject to the Acceptable Use Policy of Kent County.

>

> [KentSeal]

#3

CONFIRMATION



Detroit Free Press The Detroit News
A GANNETT COMPANY

Classified Advertising
160 W Fort Street
Detroit, MI 48226



PO#: Westwood Tile Drain

<u>Account</u>	<u>AD#</u>	<u>Ordered By</u>	<u>Tax Amount</u>	<u>Total Amount</u>	<u>Payment Method</u>	<u>Payment Amount</u>	<u>Amount Due</u>
DET-1708082	0004139346		\$0.00	\$3,062.10	Invoice	\$0.00	\$3,062.10
<u>Sales Rep:</u>		<u>Order Taker:</u>			<u>Order Created</u>	04/02/2020	

Product	Placement	Class	# Ins	Start Date	End Date
DET-DN-Detroit News	DET-Legals	Legal Notices	1	04/07/2020	04/07/2020
DET-DFP-Detroit Free Press	DET-Legals	Legal Notices	1	04/07/2020	04/07/2020

* ALL TRANSACTIONS CONSIDERED PAID IN FULL UPON CLEARANCE OF FINANCIAL INSTITUTION

Text of Ad: 04/02/2020

WESTWOOD TILE DRAIN

DATE: April 23, 2020
TIME: 10:00 a.m.
LOCATION: REMOTE ELECTRONIC ACCESS

QUESTIONS: (313) 752-0543

A public meeting will be convened through remote electronic access as provided for in this notice. Proceedings at this hearing are being conducted pursuant to the provisions of the Michigan Open Meetings Act and Executive Orders 2020-15 & 2020-21 (COVID-19) issued by Governor Gretchen Whitmer.

This meeting shall be held pursuant to Section 391 of Public Act 40 of 1936, as amended, for the purposes of hearing objections and determining whether the portion of the Westwood Tile Drain to be abandoned and vacated has ceased to be of public utility and is no longer necessary or conducive to the public health, convenience, or welfare.

The description of the portion of the Westwood Tile Drain to be abandoned and vacated can be found on the Wayne County website at: <https://www.waynecounty.com/departments/environmental/home.aspx>.

If the Drain Commissioner determines that the portion of the Drain has ceased to be of public utility and is no longer necessary or conducive to the public health, convenience or welfare and that the private rights of persons, acquired by reason of the establishment and construction of the portion of the Drain will not be interfered with or impaired by the abandonment and vacating of the portion of the Drain, the portion of the Drain will be ordered abandoned and vacated.

This public meeting is being convened electronically to comply with the Governor of Michigan's Executive Orders and federal and state agency recommendations to cease from any public assemblies, self-quarantine, and help prohibit the spread of COVID-19. The Wayne County Drain Commissioner's Office nonetheless recognizes its continued responsibility to facilitate responsible decision making and has established procedures to conduct this meeting in a manner that effectuates as fully as possible the purposes of the Open Meetings Act.

Individuals are invited and encouraged to actively participate through electronic means, including providing public comment during the designated portion of the proceedings.

For those seeking to participate electronically through online audio-conferencing, participants can access the electronic meeting through the following link: <https://zoom.us/j/59963999>. Participants may use any device that supports the Zoom app, which includes many computers, laptops, smartphones, and tablets. For those that choose to access through the Zoom app, you will be prompted to download the Zoom app to participate. Additionally, users on a computer or laptop will be given the option to join the meeting through a web browser without downloading the Zoom app. It is recommended that participants seeking to download the Zoom app do so well in advance to a scheduled meeting's start time so that technical advice can be obtained prior to the scheduled meeting, if necessary. If prompted to enter a Meeting ID/Access Code, it is 259 963 999.

For those seeking to participate via telephone, please call (229) 205-6099 (Non-Toll-Free Number). You will then be prompted to enter in the Meeting ID/Access Code: 259 963 999.

Once individuals have joined the meeting, the Drain Commissioner or her designated representative will provide information about procedures for participation.

Questions and comments may also be submitted prior to the meeting by calling the Drain Commissioner's Office at (313) 752-0543. All written public comment received prior to the meeting will be read by the Drain Commissioner or her designated representative during the public comment portion of the proceedings.

Proceedings conducted at this public hearing will be subject to the provisions of the Michigan Open Meetings Act and Executive Order 2020-15. Persons with disabilities needing accommodations for effective participation in the meeting should contact the Drain Commissioner at (313) 752-0543 (voice) or through the Michigan Relay Center at 7-1-1 (TDD) at least 24 hours in advance of the meeting to request mobility, visual, hearing, or other assistance. Minutes of the meeting will be on file in the Wayne County Drain Commissioner's office.

Elmeka N. Steele, Esq.
Wayne County Drain Commissioner