



Van H. Wanggaard

Wisconsin State Senator

October 10, 2017

Testimony on Senate Bill 177

Thank you Chairman Moulton and members of the committee for considering Senate Bill 177 (SB 177) today. For the almost three years, Representative Sanfelippo and I have been working with and trying to reach consensus with stakeholders on this important issue. The bill you have before you is the product of those conversations. It seeks to resolve issues that have arisen with the current drainage district structure in my district. Certain areas have not been dredged in nearly 50 years and I authored this legislation to help expedite the process of maintaining ditches.

Current law has numerous statutes regulating the oversight, permitting process, membership, transfer and operation of drainage districts, some of which are burdensome to follow. For example, the Department of Agriculture, Trade, and Consumer Protection (DATCP) generally regulates drainage ditches, but the Department of Natural Resources (DNR) is responsible for issuing the necessary permits to dredge and maintain them. There is also nothing that mandates that any of the spots on the drainage district boards be filled by local officials who would ultimately be affected by the actions the boards take.

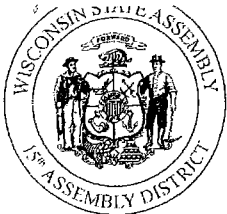
SB 177 resolves these issues by establishing necessary guidelines on drainage districts that strike a balance between protecting local control and providing the agriculture community with an efficient service that is so essential to their operations.

The bill creates an exemption from DNR permit requirements to dredge and maintain the ditches in the drainage districts provided they meet reasonable criteria. Farm fields are often considered wetlands because of their historical significance which makes placement of waste materials difficult. Under the bill, drainage districts would not have to acquire a drain maintenance permit by DNR to remove material if the board is authorized to remove it under a DNR general permit.

The bill also strengthens local control by transferring certain powers and responsibilities of drainage districts to their respective governing body. Chief executives, or their designee, of a village or city that the district is in, even if only partially, must be a member of the drainage board. Additionally, the governing body that would be effected by the creation or the expansion of a district must sign off, and expansion of a district into a different county is prohibited. Municipalities can also petition a drainage board to transfer all or part of a district to them provided they agree on maintenance terms, and the boards must notify affected municipalities of upcoming action or meetings.

Drainage districts play an important role in our agriculture community and it is vital that we create a process for maintaining ditches that is fair to local governments, residents, and farmers alike. The Wisconsin Farm Bureau Federation, Wisconsin Potato Vegetable Growers Association, Wisconsin Realtors Association, Wisconsin Corn Growers Association, National Association for Industrial and Office Parks, and the Wisconsin State Cranberry Growers Association support SB 177 and I encourage you to do so as well.

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October 10, 2017

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Rep. Sanfelippo testimony on 2017 Senate Bill 177 relating to drainage districts.

Chairman Moulton and Senate Committee on Agriculture, Small Business and Tourism members, thank you for holding a public hearing on Senate Bill 177 relating to drainage districts and regulating the removal of material from certain drainage ditches.

Farmers and communities created drainage districts to ensure proper maintenance and care of ditches that provide storm water drainage to protect their crops. Drainage districts predate Wisconsin's Statehood and were organized primarily to ensure proper draining of agricultural lands.

Over the last 30 years, there have been several attempts to identify what needs to be updated in drainage district law. The Legislative Audit Committee directed an evaluation to be done on the governance of local drainage board in 1988. In 1993 there was Assembly Bill 994, 1996 had Assembly Bill 935, 2000 Assembly Bill 785 was introduced, 2002 saw Assembly Bill 865, we had Assembly Bill 55 in 2003, 2007 there was Assembly Bills 114 – 120, Senate Bills 235 and 236, in 2008 Senate Bill 445 was introduced, in 2012 Assembly Bill 528 and last session I introduced Assembly Bill 653. There have many attempts over the years to address concerns related to drainage district law and update state statutes on the issue but it has been a challenge finding a consensus for those involved to enact comprehensive updates to drainage district law. I believe we may have found that consensus to enact the updates to drainage district law contained within Senate Bill 177, which will help drainage districts do their job and in turn let farmers do theirs while coexisting with municipalities. It is a win-win-win for everyone involved.

An extensive amount of research, effort and outreach has gone into this proposal and it is the culmination of more than three years of work and incorporates input from local municipalities, drainage district board members, and members of Wisconsin's farming community.

Over that period of time, we have meticulously asked for, received and continue to incorporate input from stakeholder groups and their members including the Wisconsin Farm Bureau Federation, Wisconsin Potato and Vegetable Growers Association, Wisconsin State Cranberry Growers Association, Wisconsin Corn Growers Association, Wisconsin Association of Drainage Districts, WI Wetlands Association, League of Wisconsin Municipalities, Wisconsin Towns Association, Wisconsin Realtors Association, NAIOP Wisconsin, DATCP, DNR, Wisconsin Legislative Council and Wisconsin Legislative Reference Bureau.

Senate Bill 177 modifies various statutes relating to drainage districts. The bill reduces the regulatory burden on Wisconsin's farming community, increases transparency, encourages cooperation between farmers and urbanized communities, provides certainty on maintenance, maintains Wisconsin's high environmental standards and protects taxpayers.

The provisions of the bill address issues related to district corridors, activities associated with dredging ditches, transfer of drainage operations to a municipality, drainage board membership including municipal members, drainage district expansion, ability to use a different fiscal year, maintenance fund requirements, notice of drainage board meetings and the allowance for operation without assessment authority as long as certain conditions are met. All of these are described in a Legislative Council Memo attached to my testimony. Senate Bill 177 is the 12th draft that we have had; we have one amendment introduced and potentially one more technical amendment that was brought to our attention. We continue to address the concerns of farmers here in Wisconsin.

Thank you for allowing me to testify on this bill. I am happy to answer any questions.

A handwritten signature in black ink, appearing to read "Joe Sanfelippo". The signature is fluid and cursive, written over a light-colored background.



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director

Jessica Karls-Ruplinger, Deputy Director

TO: REPRESENTATIVE JOE SANFELIPPO

FROM: Larry Konopacki, Principal Attorney, and Andrea Brauer, Staff Attorney

RE: Summary of 2017 Assembly Bill 246, Relating to Drainage Districts and Regulating the Removal of Material From Certain Drainage Ditches, as Amended by Assembly Amendment 1

DATE: August 29, 2017

Drainage districts are governmental entities that are organized primarily for the purpose of draining lands for agriculture. All of the drainage districts in a county are managed by a county drainage board. Drainage laws allow drainage districts to manage drainage ditches and other related facilities to drain lands and to impose assessments on lands that benefit from those activities. According to the Department of Agriculture, Trade, and Consumer Protection (DATCP), which has some involvement with drainage districts, most of the drainage districts in the state were formed in the early 1900s, and the majority of drainage districts are located in the eastern and southeastern portions of the state.

This memorandum provides a brief summary of some of the key changes to current law related to drainage districts contained in 2017 Assembly Bill 246 (the bill), and also describes the changes to the bill under Assembly Amendment 1 (the amendment).

DISTRICT CORRIDORS

Under current administrative code administered by DATCP, certain requirements apply to the use of land abutting a drainage district ditch, called a district corridor. Similar provisions are codified in statute under the bill. The bill also specifies that local governments generally may not restrict a drainage board's maintenance of district corridors or ditches, and requires property assessors to value land in a district corridor based on the same class of land use as is applicable to the owner's adjoining lands.

ACTIVITIES ASSOCIATED WITH DREDGING OF DISTRICT DITCHES

Under current law, a person is generally required to obtain a permit from the Department of Natural Resources (DNR) for the dredging of material from the bed of a navigable water. The bill creates a new exemption to this requirement for maintenance dredging conducted by a drainage district in one of the district's ditches. The bill also creates a number of conditions applicable to this exemption, including conditions related to safe and appropriate handling of dredged material, control of the spread of invasive species, impacts to certain types of wetlands, and seasonal restrictions, among others.

Second, the bill also creates a new exemption from local floodplain zoning ordinances for lands that are adjacent to farm drainage ditches under the jurisdiction of a drainage district if the disposal of material in a floodplain is within the drainage district corridor and the lands are used for nonstructural agricultural uses. The amendment narrows this exemption by specifying that such local ordinances will continue to apply to the extent necessary for the municipality to maintain eligibility in the National Flood Insurance Program. The amendment also broadens this exemption to apply not only to "nonstructural agricultural use" but also to "other nonstructural use."

Third, the bill creates an exemption from wetlands permitting requirements for the deposit of material into a wetland that is a result of activity undertaken by a drainage district to maintain district drains in accordance with plans and specifications approved by DATCP.

Finally, the amendment codifies certain storm water permit exemptions currently contained in administrative rules and creates a new exemption from storm water permit requirements for discharge of storm water from land containing dredged material removed from an adjacent drainage district ditch.

TRANSFER OF DRAINAGE OPERATIONS TO A MUNICIPALITY

Under the bill, the requirements in current law related to the transfer of part of a drainage district to a municipality are modified to ensure that the municipality and the district enter into an agreement describing ongoing responsibilities for maintenance and repair of district infrastructure and costs associated with those activities. This agreement must include a number of specified provisions, including authority for the drainage district to conduct maintenance work in the transferred area if the municipality fails to do so, and a method for the drainage district to recoup its cost from the municipality if certain requirements are met.

DRAINAGE BOARD MEMBERSHIP

Under current law, county drainage boards may be comprised of three or five members. For drainage districts located at least in part within one or more cities or villages, the bill allows each city or village to recommend its chief executive (or the chief executive's designee) for appointment to the county drainage board. If at least one such recommendation is made in a county, the county drainage board must change from a three-member board to a five-member

board if it has not done so previously, and the county circuit court is required to appoint one of the five drainage board members from the list of those recommended by cities and villages under this process. If there comes a time when no such cities or villages wish to recommend board members, the board may transition back to a three-member board.

DRAINAGE DISTRICT EXPANSION

This bill prohibits the creation of a drainage district that includes property within a city or village or expansion of a drainage district in a city or village unless the governing body of the city or village approves. The bill also prohibits the creation or expansion of a drainage district in areas of a town, if the town is permitted for storm water management, unless the town approves. In addition, the bill prohibits expansion of a drainage district into a county in which no portion of the drainage district is already located.

OTHER PROVISIONS

The bill allows a drainage district to elect to use a different fiscal year than provided under statute; eliminates the requirement that drainage boards maintain a fund for maintenance and repair of district infrastructure that is equal to 5% of the confirmed benefits to lands in the drainage district; requires notice of drainage board meetings to be given to affected municipalities; and allows a specified drainage district to operate without assessment authority unless certain conditions are satisfied.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

LAK:AB;jal

October 2, 2017

Representative Lee Nerison, Chair [Rep.Nerison@legis.wisconsin.gov]

Assembly Committee on Agriculture

Senator Van Wanggaard [Sen.Wanggaard@legis.wisconsin.gov]

Lead Senate author of Assembly Bill 246

Rep. Joe Sanfelippo [Rep.Sanfelippo@legis.wisconsin.gov]

Lead Assembly author of Assembly Bill 246

Re: Assembly Bill 246 regarding drain districts

Chairman Nerison, Senator Wanggaard, and Representative Sanfelippo:

Having participated in many discussions that lead to the piece of legislation now that is under consideration by the Assembly Committee on Agriculture, I wish I could be present today to share my support in person. Since that is not possible, please be so kind as to include this correspondence in the Committee's October 3, 2017 hearing record.

I have reviewed the language of AB 246, its fiscal notes, drainage legislation drafted during previous legislative sessions and notes that I had compiled at various meetings that I attended. I note this bill has been about a decade in the making, a number of modifications made, and find there is much to like.

First and foremost, by incorporating what is now rule, as statute, provides judges, landowners, drain board members, municipal officials, assessors, and zoning administrators, language they can make sense of. While the fiscal notes focus on actual costs to the agencies, I noted that no mention is made of increased efficiencies of drain boards who shoulder the responsibility of enforcement and having to act to ensure that drain district corridors are open, maintained to design specifications, and clear of obstructions, buildings, and sedimentation. It is rather unique set of responsibilities, to be sure, but when not carried through to completion, many suffer the consequences. Once drain boards can operate in the manner intended of a quasi-judicial body, there is strong likelihood of reduced flooding, reduced crop and/or property damages that result of flooding. This bill could reduce much of the legal wrangling that goes on, between agencies, between drain boards and landowners, between landowners and zoning administrators, between municipalities and drain boards, as the bill clarifies when annexation is not appropriate, and it contains language that compels municipalities and drain boards to work together

to resolve matters that impact rural and urban residents, and takes into account the role of Stormwater Management Districts. If litigation and costs of litigation are avoided, this bill offers much in the way of bettering the overall economy of the State of Wisconsin!

Drain boards must be allowed to operate in a manner that is akin to other units of government; they incur customary costs of meeting, providing notice, and they have the additional responsibility of enforcement and allows them to work on preventing problems, as opposed to mainly focusing on intervention when problems have already occurred. This bill, adequately addresses those concerns.

I commend each and all who have expended time and energy to create a proposal that would be a major step forward in a state that has a lot of waterways and sometimes not enough capacity to keep water within the banks of its drains, ditches and corridors.

I support AB 246; I hope it becomes law. I urge the Assembly Committee on Agriculture to vote to advance the bill.

Thank you.

Sheryl Albers-Anders, former Legislator – 50th Assembly District [sherylalbers@charter.net]

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State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Senate Committee on Agriculture, Small Business and Tourism DATCP Testimony on Senate Bill 177

Thank you to Chairman Moulton and members of the committee for the opportunity to testify before you today. My name is Chris Clayton and I am the Program Manager for the Farm Drainage Program at Department of Agriculture Trade, and Consumer Protection. Under chapter 88 of the statutes, DATCP is assigned various responsibilities to assist drainage districts including review and approval of ditch designs and maintenance plans, and compliance oversight in regard to the drainage law.

I am providing testimony for informational purposes only in connection with the following provisions in Senate Bill 177 that fall within DATCP's purview and have a fiscal impact on drainage districts:

1. **The drainage board's filing of annual reports.** The change in filing dates will have no impact on DATCP, and should provide boards additional flexibility to prepare and submit reports.
2. **Reduced costs based on permit exemption.** There will be reduced costs based on the new exemption from the requirement to obtain a DNR permit for dredging drainage ditches that are also navigable waters. Drainage boards that conduct maintenance activities in district ditches that are navigable waters will incur lower costs due to not having to pay DNR permit fees.
3. **DATCP approved plans and specifications for district drains.** One provision in the bill references drain system plans and specifications approved by DATCP. This provision, 281.36 (4m), ties approved plans and specifications to a wetland permit exemption for placing dredged spoils in wetlands due to maintenance of ditches in accordance with DATCP approved specifications. Every district is required to have approved plans. However, DATCP grant funds to pay for the preparation of such plans ended in 2006. As a result, not every district has approved plans. DATCP estimates that 116 of the 175 drainage districts are active, and 61 of the active drainage districts have DATCP approved plans. In terms of the proposed legislation, the lack of an approved plan and specification will disqualify a district from the exemption and require the district to follow the existing wetland permitting process. This is among the few areas where drainage boards may face increased costs related to proposed legislation.

Thank you for the opportunity to testify before you today, and I would be happy to answer any questions you may have at this time.

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Wisconsin Department of Agriculture, Trade and Consumer Protection

About Us

We support the drainage program by:

- Reviewing and approving designs and maintenance plans.
- Preparing environmental assessments when required.
- Maintaining information including approved engineer list.
- Providing technical and other assistance.

Contact Us

For more information, contact:

Chris Clayton, Program Manager
(608) 224-4630

Richard Castelnuovo, (608) 224-4608

Matt Woodrow, State Drainage Engineer

DATCP

Agricultural Resource Management Division 2811

Agriculture Drive

P.O. Box 8911

Madison, WI 53708 – 8911

Drainage Program Website:

[https://datcp.wi.gov/Pages/
Programs_Services/DrainageDistricts.aspx](https://datcp.wi.gov/Pages/Programs_Services/DrainageDistricts.aspx)



DRAINAGE DISTRICTS
IN WISCONSIN

April 2016

Wisconsin Department of
Agriculture, Trade and
Consumer Protection



WHAT IS A DRAINAGE DISTRICT?

Drainage districts are local governmental entities organized under a county drainage board for the primary purpose of draining lands for agriculture. A drainage district establishes a legal mechanism for managing drains and related facilities to ensure reliable drainage. Landowners who benefit from drainage must pay assessments to cover the cost of constructing, maintaining, and repairing district drains. The majority of the existing drainage districts in the state were formed in the early 1900s.

The Department of Agriculture, Trade and Consumer Protection (DATCP) is aware of about 176 active drainage districts in Wisconsin. Of the 72 counties in Wisconsin, 31 of them contain one or more drainage districts. The majority of the drainage districts are located in the eastern and southeastern portions of the state.

DATCP has an interactive web map, <https://datcpGIS.wi.gov/maps/viewer=dd>, that can be used to identify districts.

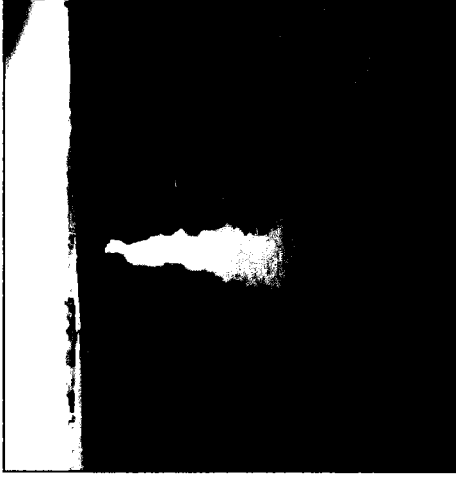
WHAT ARE THE ADVANTAGES OF BEING IN A DRAINAGE DISTRICT?

Wisconsin's water law establishes the framework for the orderly drainage of farm land. Unlike western states, where limited amounts of water are available for agricultural production, most midwestern farmland has too much water. Consequently, farmers in Wisconsin rely on surface and subsurface drainage systems to remove water from fields in order to grow crops. These drainage systems also protect structures built below grade (i.e., basements and septic tanks) from periodic flooding. Therefore, drainage is a benefit to many who live in Wisconsin's rural lands.

When landowners take it upon themselves to drain their fields, divert stormwater, or pump out their basements, it is frequently at the expense of the landowner downstream. As you can imagine, this causes problems. Often the solution to the removal of surface water and groundwater is best approached regionally, or with many neighbors working together for a common goal.

By organizing a drainage district, landowners gain these advantages:

- Pooling resources and sharing responsibilities to achieve a common good.
- Securing an engineered system that provides reliable drainage.
- Supporting an organized framework for effective management of operations.
- Avoiding and resolving landowner conflicts related to water management.



Agricultural drainage lowers the water table to make land more suitable for farming.

HOW DO DRAINAGE DISTRICTS OPERATE?

The county drainage board holds public meetings to discuss issues involving drainage districts and to make decisions regarding those districts. The county drainage board is required to ensure that all drainage districts under its jurisdiction comply with the standards in the drainage rule (Ch. ATCP 48, Wis. Admin. Code) and statute (Ch. 88, Wis. Stats.).

The county drainage board has the power to:

- Manage district boundaries including annexing or withdrawing land.
- Conduct inspections annually and when necessary.
- Undertake drain maintenance and construction projects.
- Levy assessments and borrow money.
- Hire attorneys and engineers.

Dear Committee,

Thank you for allowing me to speak today in support of this bill.

My Name is Tom Halter I am a third generation farmer in Racine county and I have been involved for the last 12 years obtaining 2 dredging permits on the same canal system in Racine County within the Norway/Dover drainage district. Also involved in a third permit request on another ditch within the Hoosier creek district.

My goal in speaking here is to give you an overview of how the current procedures of obtaining permits and permission for a drainage district to clean and maintain their ditches is extremely difficult.

Our private drainage district ditch (Wind Lake Canal) is the main channel for drainage for over 55,000 acres of farmland, residential property, commercial property, roads, sanitary districts, and the outlet for several area lakes. This watershed reaches from the fox river in rochester to as far north as New Berlin. Just like some roads in the area, this ditch was originally dug through low areas including now classified wetlands, but just like roads, this canal needs to have maintenance performed in order to protect all interested parties. This drainage ditch and all of its laterals were originally dug for farm drainage and now are required to provide drainage for all this development.

After 2.5 years of meetings, jumping through hoops, and providing all the information requested, the drainage district received the DNR permit in 2007 to clean phase one of this channel. Weather conditions through out the 2008 winter months prevented the dredging from being performed that year, but the majority of the dredging was completed in winter months of 2009. For the next phase an EA and press release were completed in May of 2010 in preparing for approval of permitting phase 2 by the same DNR official. then with the permitting responsibilities changing between 4 different DNR officials over the next 3 years, of which 2 also required the entire permit process to start completely over. 5 years later we were granted the permit for phase 2. But not after hiring additional engineers, countless DNR meetings which some included DATCP officials present, numerous site and boat trips, and additional costs of over \$100,000 in obtaining this permit. Yes, I said 5 years later!

The third dredging permit process was pursued on a ditch in 2014 within the Hoosier Creek District in Racine County and Kenosha County. Into that process for over a year, we then received a 14 page letter informing of additional permits that might be required, including an archeologists review, Wetland delineation, Wetland Disturbance Individual Permit, Wetland Mitigation, Waste water permit, and other requirements including 8 pages of check lists. This is one of those hoops I was referring to earlier. Had to hire engineers to deal with all these issues.

The need to protect our natural resources has never been in question. Districts need to be good stewards of the earth as work is being performed. But districts need to be allowed to perform needed maintenance on drainage ditches in order to also protect our communities. That is why we need an exemption from permitting. The intentions of cleaning ditches are to provide benefits for all interested parties, not to harm the environment.

We need to be able to perform this work with common sense, reasonable and viable costs, and in a timely manner. That is why I support this bill!

Thank You

RESOLUTION

WHEREAS, Assembly Bill 246 and Senate Bill 177 are being considered by the Wisconsin Legislature to modify the provisions of Chapter 88, Wisconsin Statutes, regarding drainage districts and regulating the removal of material from drainage ditches;

And WHEREAS, the Racine County Board of Drainage Commissioners believe that such Legislation will improve the operation and maintenance of drainage canals and tiles in their District.

NOW, THEREFORE, Be It Resolved:

That the Racine County Board of Drainage Commissioners support Assembly Bill 246 and Senate Bill 177 and strongly encourage the Wisconsin Legislature to adopt such Legislation.

Dated this 14th day of September, 2017.

Alvin Wilks, Chairman

Alan Jasperson, Secretary

Greg Foat, Commissioner

John Vyvyan, Commissioner

Russ Weis, Commissioner

PORTAGE COUNTY DRAINAGE DISTRICT

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Dear Senate Committee on Agriculture, Small Business and Tourism

- 1) I'm the Chair of the Portage County Drainage District and Have been on the Board for 13 years and I'm also Member of the State Drainage Board (WADD) working on these Imputes for this Bill And also the Town Chair for Buena Vista were as we have over 10,500 acres of the district in our town ship and rely on drainage for our Town Roads*
- 2) The PCDD is the Largest district in the state with 54,000 acres and one of only a few Districts with Stream History which means in 1905 our predecessors Straightened 7 Streams of our 10 main ditches to make drainage ditches and we have a little over 130 miles of ditches in our District.*
- 3) I Support of SB177 because of Maintaining our ditches. We have a 10 Year MOU with the DNR for Maintenance and a 10 year Dredging permit also But when we get to leveling our Spoil banks we run into Issues it's taking as long as 6 months to get through all of our Paperwork to even get to the position to apply for a*

NR216 Permit. Reviews have been the hold up by so many different departments. DATCP requires us to level spoil banks I feel we should be able to use our 100' corridor to do so without jumping through red tape. We are a partner with the KBB program and work closely with all agencies (NRCS, DATCP, ARMY CORP, PLANING AND ZONING and DNR) to assure Wildlife is a utmost importance. The Village of Plover will Most likely be Moving into the PCDD in the next few years and we believe this Bill will help this transition in the Future. Portage County adds 1.1 Billion Dollars to economic activity and we raise over 72,000 acres of vegetables in Portage County which makes us the Top Producing County in the State. I encourage you to please pass SB177 to help us do our job efficiently and Stream lined as possible.

4) Thank you for your time today Paul Cieslewicz Chair of the Portage County Drainage District