



Quarterly2015

Michigan Association of County Clerks

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A Message From Your President

Welcome to 2015 and to the newly appointed clerks! I am honored to serve as your President.

So many of you are now thinking of retiring this year. Each one of you have given guidance and knowledge to many of us and we will miss you dearly. You will leave many of us with "big shoes to fill". So to the newer clerks, please feel free to reach out to this organization with questions or concerns that you might have as we are here for you. I am very thankful for each one of you and encourage you to attend every conference if possible. The discussions we have with each other over a meal or otherwise are priceless.

I have found these verses in Proverbs 3: 5-6 to be my guiding force throughout my life; 'Trust in the Lord with all your heart and lean not on your own understanding; in all your ways acknowledge Him, and He will make your paths straight'. I can say without a shadow of doubt, the Lord has been faithful. This past year has been a challenge for me, but with the Lord's help and guidance I know He will lead me.

As many of you know, being a Clerk or Clerk/Register is not an easy task. Our office is so diverse that we have many bases to cover. I am very thankful for our lobbyist, Bill Zaagman who keeps us well informed of the many changes in the current laws.

There is a concern that I have and something we all need to keep in mind. MACC is not a "political" organization per se. We are in this together to work for the betterment of the office we hold. Please feel free to contact me with ideas or suggestions, as my "door" is always open.

Remember that you are in my prayers!

Marney M. Kast
MACC President - 2015
Hillsdale County Clerk

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Bill Zaagman
GCSI
MACC Legislative
Liaison

Legislative Update

Legislature Completes Work for the Session

The 97th Legislature returned the Tuesday following the Thanksgiving holiday and concluded work for the session with a flurry of activity early in the morning of Friday, December 19, 2014. In all, nearly 250 bills were enacted for presentation to the Governor during this time period.

All bills that didn't pass and were not enrolled for presentation to the Governor died on December 31 and must be reintroduced during the 98th Legislature. Prior to adjourning the session, a number of bills being followed by the MACC were enacted. A list of those bills, now Public Acts, follows below.

■ **Public Act 406 of 2014:** Recount Fees: Amends the Michigan Election Law to provide for an increase in the fee charged to conduct a recount of a precinct. Under the new Act, the fee increases from \$10 per precinct to \$125 if the vote differential is greater than one-half of one percent, or 50 votes, whichever is greater. However, for contests where the vote differential is less than one-half of one percent or 50 votes, the cost to recount a precinct is reduced to \$25. The Act takes immediate effect.

■ **Public Act 418 of 2014:** Petition Circulators: Amends the Michigan Election Law to remove restrictions stipulating that signature gatherers of nominating petitions for Congressional offices must be registered voters of the congressional district for which they are gathering signatures. Under the Act, drafted to be consistent with numerous federal court rulings, signature gatherers are no longer required to be registered voters of the Congressional district. Circulators are no longer required to reside in the district, be a registered voter or a citizen of the state. They must be at least 18 years old and sign a statement on the petition that they agree to be bound to Michigan law should the petitions be challenged. Additionally, the Act repealed an obsolete section of law (MCL 168.208) which permitted the judge of the circuit court and the circuit court commissioner to remove a county clerk from his or her position at any time during his or her term of office. The Act takes immediate effect.

■ **Public Act 464 of 2014:** Selection of Voting Equipment: Amends the Michigan Election Law to provide that the Secretary of State shall allow a county clerk—in consultation with the clerk of each city, township, and village located in that county—to determine which electronic voting system would be used in that county. The electronic voting system selected would have to be approved and certified as provided in Section 795a of the Michigan Election Law. The Act takes immediate effect.

Legislature Calls for Special Election on Road Funding

After nearly two years of heated discussion and debate on how to raise more than a billion dollars to fix our decaying roads and infrastructure, the Legislature finally came together in a show of bi-partisanship and punted to the voters. House Joint Resolution UU calls for a special election on May 5, 2015 for voters to decide the fate of a Constitutional amendment that would increase the state sales tax by one percentage point from 6 percent to 7 percent on purchases. If approved by the voters, HJR UU triggers a complex series of bills to take effect lifting sales tax off of gasoline and replacing it with a tax collected on the wholesale price. If the voters defeat the amendment, all of the companion bills fail as well.

HJR UU would exempt sales of gasoline and diesel motor fuel from the state general sales and use tax after October 1, 2015 creating a negative impact to both school funding and revenue sharing. To address the revenue hit to schools and locals that results from lifting sales tax off of gas, the 6 percent sales tax on other general purchases would be increased by one percentage point to seven percent. Additionally, HJR UU provides that the School Aid Fund shall be used exclusively for aid to school districts, public community colleges, public career and technical educations programs, scholarships for students attending either public community colleges or public career and technical educations programs, and school employees' retirement systems, as provided by law. This would remove the ability of the Legislature to appropriate monies to state universities. Finally, HJR UU would hold harmless both schools and municipalities by constitutionally guaranteeing portions of the new revenue to the School Aid Fund and revenue sharing.

If passed by the voters, the total impact of the HJR UU and all of the tied trailer bills would be an estimated increase in state revenue of \$1.7 billion. The additional revenue would be ear-marked in the following way:

- \$1.2 billion per year for distribution to road agencies (39.1% to the State Trunkline Fund, 39.1% to county road commissions, and 21.8% to cities and villages). However, for FY 2015-16 an estimated \$800 million of this revenue would be dedicated for pay-down of transportation-related debt and for FY 2016-17.
- \$300 million to the School Aid Fund.
- \$130 million to the Comprehensive Transportation Fund, for public transportation purposes.
- \$95 million for constitutional revenue sharing payments to cities, villages, and townships.

As mentioned, passage of House Joint Resolution UU triggers a number of bills to take effect. If the voters defeat the amendment, none of the trailer bills take effect. Those bills include:

House Bill 4630 would implement three changes to the Michigan Vehicle Code by increasing fees for commercial trucks under the elected gross vehicle weight category; increases registration fees by eliminating the three-year "depreciation" of ad valorem tax rates for passenger cars, vans, and light trucks; and, establishes a "make-up" tax on the registration fees for vehicles powered partially, predominately, or solely by electricity.

House Bill 5477 would, among other changes, amend the Motor Fuel Tax Act by converting the current fixed taxes of 19 cents per gallon for gasoline and 15 cents per gallon for diesel into a tax calculation based on 14.9% of the average wholesale prices of gasoline and diesel, effective October 1, 2015.

House Bill 5493 would amend the Motor Fuel Carrier Tax Act such that beginning October 1, 2015, the per-gallon tax rates for motor fuels are the same as specified in Section 8 (1) of the Motor Fuel Tax Act. Alternative fuels would be subject to the same treatment.

House Bill 4539 and **House Bill 5492** would, respectively, amend the General Sales Tax Act and the Use Tax Act to exempt gasoline and diesel fuel from sales and use taxes after October 1, 2015.

Senate Bill 847 would amend the Income Tax Act to increase the Earned Income Tax Credit (EITC) from 6% to 20% of the credit allowed under Section 32 of the federal Internal Revenue Code, beginning with the 2016 tax year. Senate Bill 847 would also reduce the Household income qualifiers for the homestead property tax credit for those seniors or disabled filers with household resources under \$6,000. The fiscal impact of the EITC will not be realized until the 2016 individual income tax returns are filed in 2017, meaning FY 2016-17 would be the first year state revenues are impacted by the increase in the credit. When implemented, the impact would reduce income tax revenue to the State General Fund by approximately \$260 million.

House Bill 4251 and **House Bill 5167** would establish requirements related to competitive bidding and performance-based systems for state and local road construction projects.

House Bill 5460 would establish requirements related to road construction project warranties.

At this time, the Legislature has not appropriated the \$10 million or so that would be necessary to reimburse locals for conducting the election. However, I expect this to be addressed in the new Session.

Governor Signs Sweeping FOIA Changes

Governor Snyder gave the green light to a bill making major changes to the Freedom of Information Act. Public Act 563 of 2014 provides for, among other things, significant revisions on how the fees charged for public records are calculated, requires public bodies to establish procedures and guidelines to implement the Act, and significantly enhances fines that may be levied by a court on a public body for failure to comply with the Act.

Under the new law, a public body may only charge fees allowed under the Act if the public body has established, makes publicly available and follows procedures and guidelines to implement this Act as required under MCL 15.234(4). Public bodies may not charge a fee that exceeds their costs in the following six areas:

- Labor for searching for, locating an examining requested records. The labor costs shall not exceed hourly wage of its lowest paid employee capable of performing the task.
- Labor for separating and redacting exempt information from nonexempt information. (municipalities who perform the review in-house, the labor costs are limited to the hourly wage of its alowest paid employee capable of performing the task. For municipalities who contract out this function, the total labor costs shall not exceed an amount equal to six times the state hourly minimum wage.)
- Labor for making copies of paper records, making digital copies, or transferring digital records to media. The labor costs shall not exceed the hourly wage of its lowest paid employee capable of performing the task.
- The actual and reasonable cost of the CD, tape or other digital media, if media device is not provided by the requester.
- The actual total incremental cost of duplication and publication, not to exceed 10 cents per page.
- The actual cost of postage for sending requested records.

Additionally, the Act specifically states that the public body may add up to 50 percent of the applicable labor charge to cover or partially cover the cost of fringe benefits if the public body clearly notes the multiplier used in the estimate provided to the requester. The public body is prohibited from charging more than the actual cost of fringe benefits and can't factor in overtime wages in calculating the fringe benefit component.

Other changes to the FOIA process include:

A public body is required to establish procedures and guidelines to implement this Act and shall create a publicly available summary of the specific policy as to how a member of the public may submit records requests. The Department of Technology, Management and Budget is charged with designing a form that complies with the Act that public bodies may adopt as its own.

A public body that maintains an internet presence may not charge for any records that are available on the website. In lieu of providing paper copies of any requested documents available on the website, the public is required to notify the requester that the documents are available on a website maintained by the public body and may provide a link to any requested documents. If the requester stipulates that these documents be provided in a paper format, the public body may charge a fee for performing the request.

A public body may charge a good-faith deposit not to exceed half of the estimate if the total estimated fee exceeds \$50. However, a public body may charge a requester 100 percent of an estimated fee if the requester, within the last 365 days, has previously failed to pay the full fee for a previous document request that the public body prepared and made available to the individual. A public body can deny further requests until the requester settles previous charges or 365 days passes, whichever occurs sooner.

The Act also includes enhanced and significant penalties for violations. A public body that does not respond to a written request in a timely manner shall reduce allowable labor costs by 5 percent for each day the public body exceeds the permitted time, up to a 50 percent reduction if the late response was willful and intentional. A judge can order a public body found in violation of the Act to pay civil fines of \$1,000 and punitive damages to a requester of \$1,000, if a court holds that the public body acted arbitrarily and capriciously in violating the Act. For willful and intentional violations of the Act, a court of jurisdiction shall order a public body to pay a civil fine of between \$2,500 and \$7,500 per occurrence. A court can order a public body to pay a \$500 civil fine and \$500 in compensatory damages if it determines that the public body arbitrarily and capriciously violated the Act by charging an excessive fee. The changes take effect July 1, 2015.

**Please note that I have attempted to provide a general overview of the new Act and this article does not constitute legal advice to any public body on how to comply. Each public body should conduct a legal review of Public Act 563 of 2014 to determine its impact on the public body and how best to comply with the new provisions.*

Bills to Set March 2016 Presidential Primary Die

Bills to establish a March 2016 presidential preference primary passed the Senate, but were not taken up by the House, despite being given a hearing. **Senate Bills 1159** and **1160** cancelled the February 2016 regular election date and established the presidential primary as March 15, 2016 to coincide with the date adopted by the Michigan Republican Party. At this point, the Michigan Democratic Party has not altered its date from the scheduled February 23, 2016 regular election date. The bills passed the Senate 35-2 and were referred to the House Elections and Ethics Committee. A hearing was held for the bills; however, no one spoke to the bills nor were they reported. I expect the bills to be reintroduced this session.

Governor Vetoes Bill Nixing County Gun Boards

In a surprise move, Governor Snyder vetoed legislation that would have abolished county gun boards and made significant changes to the CPL process. **Senate Bill 789** created a furor with domestic violence groups when it was discovered that provisions prohibiting the issuance of a CPL to individuals who have an active PPO on them would have been removed. In essence, this would have allowed individuals who have an active PPO against them to obtain a CPL. In his veto message, the Governor said that he could not support the bill knowing that an individual who has a protective order against them could potentially get a CPL. He further stated that he could not support exposing victims of domestic violence to additional intimidation or exposure to harm.

As passed, those other changes included dissolving each county gun board and transferring those duties and responsibilities to the county clerks and the Michigan State Police (MSP). Under the bill, each county clerk's responsibilities would remain largely the same with MSP assuming the investigative responsibility previously held by the county gun boards. The county clerk would still take initial and renewal applications, mail appropriate and necessary

correspondence or information regarding approval and denials of applications and suspensions, revocations and in-person renewals of existing licenses. Under the bill, the MSP would have been required to setup an on-line renewal process and be charged with verifying an applicant's eligibility under the statute and report any statutory disqualifications to the county clerk. The clerk would be required to issue a license or denial letter based on the MSP report.

Also, applicants would no longer be required to appear before MSP for a face-to-face meeting prior to issuing a license or be allowed to deny an application under discretionary provisions, both of which county gun boards can do to determine an applicant's fitness or if there was a safety concern. Both provisions have been struck under the bill moving Michigan to a true "shall issue" statute.

The bill has been reintroduced as **Senate Bill 34** and referred to the Senate Judiciary Committee. Testimony was taken on **SB 34** and it was reported from committee 4-0-1. According to the bill sponsor, all of the existing PPO language remains unchanged from the current law.

UPCOMING MACC DATES

MACC Spring Quarterly

The H Hotel, Midland
April 24 & 25, 2015

MACC Annual Conference

Boyne Highlands, Harbor Springs
August 23 - 26, 2015

MACC Fall Quarterly

Radisson, Lansing
November 20 & 21, 2015

District 4 Meetings - Southwest Lower

March 27, 2015 - Kalamazoo County
June 19, 2015 - St. Joseph County
September 18, 2015 - Montcalm County
December 4, 2015 - Calhoun County



Tim Snow
Kalamazoo
County Clerk

Recount!

A Clerk Hasn't Lived Until One Has A Countywide State Recount!

For a long time, I was referring to the November 2014 election as “the election that never ends”. It finally ended on December 10, more or less, after we completed our countywide State recount for the 20th Senate District.

The new 20th District comprises all of Kalamazoo County. We knew during the entire campaign that it would be a close race, after all, two of our current State Representatives (Margaret O'Brien – 61st District [R] and Sean McCann – 60th District [D]) were running for the Senate and a former State Representative (Lorence Wenke) entered the race as a Libertarian candidate. The third candidate added even more uncertainty, as it was unclear which of the other candidates would be more affected. It turned out to be the most expensive Senate race in the State, and one of the most expensive ever.

Election Day went fine for the most part. The usual precinct issues were there, and the turnout was only slightly more than usual. We also had a recall in a Township for two positions, but that's another story...

Then 8:00pm came and we waited for results to be modemed in. Precincts bring their ballots and programs to the local clerk, who modems in the results. Everything was going fairly well, and then we started to look at the results. It was very close (as expected) and depending on what precincts were coming in, the lead switched back and forth a few times during the evening. The results then were slowing down somewhat. At 11:00pm, I received a call from a Township Clerk stating that her AV Board's tabulator count was off, and they knew what the issue was. I gave them the approval to retabulate. That was followed by a request to retabulate on a second tabulator, as there were over 1000 ballots in this group of AVs. I approved that request, thinking that it would speed up the process a little.

Crunch Time

Shortly after midnight, there were only two or three precincts left to be modemed in. In the same township that was doing the retabulation, one of their cards would not modem in for some reason, so I told them just to bring it in with them when they came, and we would read it in then. The calls started to come in then – the difference between the two major party candidates was just over 100 votes in favor of Rep. McCann. At 2:15am, Oshtemo Township got to my office and we read in the Precinct 2 card and the AV cards. By this time, we had a crowd in the outer lobby, which has been very unusual in recent elections since we post everything on line now. We ran the report and found that with those two additions, the totals were now 60 votes in favor of Rep. O'Brien. Since we had a crowd there, I went out and made a verbal announcement of the results – such drama! Fortunately, my Chief Judge Pro-Tem was there and had observed the entire process, and was standing behind me when I made the announcement. The unofficial result was O'Brien – 36,630; McCann – 36,570; Wenke – 7,263.

The word “recount” was being discussed even on Election Night. Everyone seemed to be content (so to speak) not to make any commitments until after the canvassing process was completed.

Of course, the canvass began at 1:00pm the following day. I'm sure that most counties do not have any observers present during the canvass, but you can be sure that we did this time! Both candidates and/or Senate caucuses sent representatives to observe the canvass process. Everyone behaved themselves well and we had no major issues. My canvassers always work in teams to make the job go a little quicker, so we were able to complete the canvass by 6:00pm on November 11. We only retabulated five precincts and no one was called in to sign anything (that's a first!).

During the canvassing process, one vote for McCann was added, so the difference became 59 votes rather than 60.

Then we waited until the State Board of Canvassers met on November 24. It was still uncertain what Rep. McCann would do. My Chair of the Board of Canvassers is Recording Secretary of the Democratic Party in the County, and had talked to Rep. McCann to suggest that he not ask for a recount – that a 59 vote margin is a little large, and the chances of changing the end result is not that great. However, within 20 minutes of the State Canvassers approving the election, Rep. McCann filed a recount petition covering all 109 precincts and 103 Absent Voter Counting Boards.

Sally Williams from the BOE contacted me within the hour (I had already heard the news, so was ready for her call). They set the recount to begin on December 8 and gave me instructions as to what my responsibilities were. I needed to find an appropriate location, get workers to staff up to 15 tables (30 people), get all the ballot bags to the location – and store them in a secure place. As soon as I got off the phone from Sally, I sent out an e-mail to all my local clerks informing them of the recount and asking for volunteers to help hand count ballots. Within an hour or so, I had the first 10 volunteers.

I was able to locate a very large room in the building that houses our Health and Community Services Department (it's a former college dormitory and the room was a ballroom in a previous life). As it was a County facility, there was no charge and the staff was great with all the arrangements there. All the clerks were notified to bring their ballot bags to the facility on Friday afternoon before the canvass began if at all possible. We had about 75% of the bags in by 4:00pm, and the rest arrived on Monday morning when the clerks came to help with the recount.

All together, we had 35 workers – not everyone worked each day – and had 15 tables going on Monday, 13 on Tuesday and 11 on Wednesday. I determined that the County would pay \$100 per day to any worker that was not being paid a salary already (some deputy clerks and election inspectors). The Board of Canvassers was all there most of the time. We were able to be somewhat flexible with the volunteers’ time and two of the canvassers filled on tables on occasion.

I can’t say enough about the Bureau of Elections staff and how well everything worked. Chris Thomas was there most of Monday. During the three days, we saw Tom Luitje (he was the point person for the recount process), Sally Williams, Carol Pierce, Rachel Clone, Dave Foster, Kristi Dugan, Ginny VanderRoest and Melissa Malerman. Dave and I were the “muscle” moving the 150 ballot bags around and to and from the storage room down the hall. Some of those bags were really heavy!

Each candidate was allowed two observers/ challengers at each table, who sat across from my workers. All the challengers had been trained and we had very few issues with them. It took a little while for the process to get going, as each table needed to certify that the ballot bag was recountable first, then count all the ballots to make sure it balanced with the pollbook, and then count the ballots by placing them in piles for each candidate or no vote. After the ballots were sorted, they were counted and the new results were noted. About 50 of the precincts/ AVCBs had a change of some type. The biggest change

within any precinct was 3 votes. There was also a scrivener’s error in one of the precinct totals for Wenke which was corrected. Only seven precincts/AVCBs out of 212 were not recountable (about 3%). Two ballot bags were not recountable because of sealing issues. The other five were because the number of ballots in the ballot bag did not equal the number tabulated. After the recount was over, two clerks discovered that their AV Boards had not removed all the ballots from their tabulator ballot bins. Needless to say, those workers will not be doing elections again!

I estimated that we received about 500 hours of time donated by the local clerks. Even those that did not help with the recount had to spend time getting the ballot bags together, deliver them before and pick them up after the recount. The County spent about \$3500 on the various costs relating to the recount. My estimate on the cost of the volunteer time was about \$6500, for a total cost of \$10,000 (actual and in kind). Fortunately, we did not go over budget for elections this year. I was in contact with my Finance Department and they were aware that these costs could put Elections over budget.

While the process took nearly three weeks to prepare for and conduct, I can say that this recount was a good experience for all. We had no major issues, 97% of the precincts were recounted and the final difference changed by only two votes. This was an excellent example to indicate that our election process works well. However, I wouldn’t want to do it again anytime soon!

MACC Anniversaries

Shelly Myers – Lake County	15 years	September 17 (2014)
Marc Kleiman – Menominee County	5 years	October 20 (2014)
Tina Leary – Van Buren County	10 years	November 15 (2014)
Patricia Truman – Alcona County	10 years	January 1
Mary Ann Froberg – Alger County	10 years	January 1
Terry Kubasiak – Branch County	10 years	January 1
Carol Vernon – Gratiot County	10 years	January 1
Jeri Winton – Oscoda County	10 years	January 1
Susan DeFeyter – Otsego County	10 years	January 1
Lawrence Kestenbaum – Washtenaw County	10 years	January 1
Tonda Rich – Ionia County	10 years	February 28



@ The H

MACC Spring Quarterly

The H Hotel, Midland

April 24 & 25, 2015