

Michigan's Inland Lake Improvement Act

A Half-Century of Cooperation and Accomplishment

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For half a century the Lake Board Law has been one of the primary statutes used to manage Michigan's inland lakes. The law that allows for the establishment of a lake improvement board was originally known as the Inland Lake Improvement Act (Public Act 345 of 1966). The statute was later re-codified, as were a number of other environmental statutes, and became part of Michigan's Natural Resources and Environmental Protection Act (NREPA, Public Act 451 of 1994). Procedures regarding lake improvement boards are contained in NREPA Part 309, Inland Lake Improvements (MCL 324.30910 – MCL 324.30929). The complete text of the statute can be found at www.legislature.mi.gov. Hereinafter, the statute will be referred to as the Lake Board Law.

This article discusses some of the key provisions and mechanics of the Lake Board Law and provides some practical tips regarding lake board procedures.

STARTING OUT

Often, it is a lake association or group of concerned residents that begins the process to establish a lake board. On public lakes, lake improvement boards can be established by petition of two-thirds of the property owners bordering the lake or by a motion of a local unit of government. On private lakes, a lake improvement board can only be established by petition.

LAKE BOARD COMPOSITION

By statute, lake improvement boards are composed of the following:

- A member of the county board of commissioners appointed by the chairperson of the county board of each county affected by the project.
- A representative of each local unit of government or, if there is only one local unit of government abutting the lake, two representatives must be appointed.
- The County Drain (or Water Resources) Commissioner or his or her designee (or a representative of the county road commission in counties not having a drain commissioner).
- A waterfront property owner (riparian) appointed by the lake improvement board.

On lakes with a lake association representing a majority of lakefront property owners, the association may submit up to

three names for the riparian position on the lake board from which the lake board must make its selection. The waterfront property representative on the lake board has a four-year term.

Local units of government may appoint a member of the township board (or city council, or village council, etc.) to sit on the board, or the local units of government may appoint someone (such as a lake resident) to represent them.

LAKE BOARD PROCEDURES

On newly established lake boards, the first order of business is to appoint the riparian representative and a chairperson, secretary, and treasurer. In accordance with the Lake Board Law, lake improvement boards must do the following:

1. Retain a registered professional engineer to prepare an engineering feasibility report, an economic study report, and an estimate of project costs. The report must include a proposed special assessment district and a recommendation for the apportionment of benefits. The assessment district may include all parcels of land and local units benefited by the improvement project. The lake study is important in that it provides the basis for decision-making and future expenditures.
2. Publish notice and hold a public hearing to review the feasibility report, the proposed special assessment district, the apportionment of benefits, and to determine the practicability of the project. It is only after the public hearing that the lake board makes a decision on whether or not to proceed with the recommended lake improvement project.
3. If a project is determined to be practical and the special assessment district and apportionment of benefits are determined, the lake improvement board may then proceed to finalize the plans for the approved lake improvement project and prepare an assessment roll.
4. Before confirming the assessment roll, the lake improvement board must hold a hearing to review and hear any objections to the assessment roll. Notice of the hearing must be both published and mailed.
5. After the hearing, the lake improvement board may confirm the assessment roll and proceed with carrying out the approved lake improvement project.

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Part 309, Inland Lake Improvements Natural Resources and Environmental Protection Act (P.A. 451 of 1994)

Chronological Summary of Lake Board Procedures

Receipt of petition, or motion of governing body

within 60 days

Lake Improvement Board established by resolution of local governing body

Lake Board
(a) elects lakefront property owner representative
(b) elects chairperson, secretary, and treasurer
(c) retains engineer to prepare feasibility reports

Lake Board accepts reports and within 60 days holds hearing

public notice published at least 20 days prior

Public hearing on practicability of project

within 10 days

Lake Board determines practicability of project; if determined to be practicable, publishes resolution to that effect

Legal objections must be made within 30 days

Lake Board establishes special assessment district and prepares special assessment roll

public notice mailed and published at least 10 days prior

Public hearing on special assessment roll

Special assessment roll confirmed, and notice of confirmation published

Legal objections must be made within 30 days

Lake Board accepts bids; lets contract(s)

Lake Board computes entire cost of project

Lake improvement boards can undertake a broad array of projects, from dredging to watershed management. However, many lake improvement board projects focus primarily on aquatic plant control. These types of projects typically have multiple-year time frames with public hearing proceedings held periodically (every 5 or so years) to evaluate project costs and the necessity of continuing the project. Lake improvement boards are required by statute to adopt an annual budget. Once established, a lake improvement board remains in place unless the board is formally dissolved in accordance with the dissolution provisions of the Lake Board Law.

THE COMPETITIVE BIDDING PROCESS

For contract work such as plant harvesting, herbicide treatments or dredging, the Lake Board Law requires that lake boards advertise for bids and that a contract be let to the lowest bidder giving adequate security for the performance of the contract. However, a lake board reserves the right to reject any and all bids.

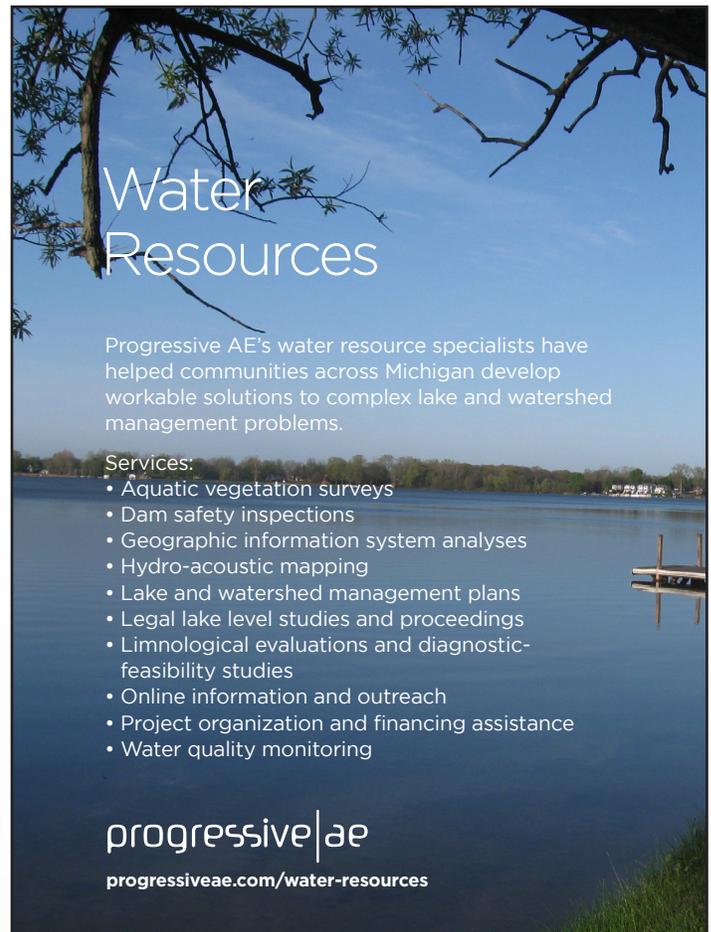
Lake boards also have the option of contracting directly with a local, incorporated, nonprofit lake association whose membership is open to all residents in the special assessment district, without advertising for public bids. If a lake board elects to contract with a lake association, care should be taken to ensure the association is properly insured and that the lake board is named as an additional insured. Finally, the association must provide adequate security for the performance of the contract.

LAKE BOARDS VERSUS TOWNSHIP BOARDS

The Township Special Assessment Act, PA 188 of 1954, was amended in 1994 to provide a mechanism to finance certain types of lake improvement projects, including aquatic plant control. With Act 188, projects are organized under an existing township board. With respect to process, the Lake Board Law and Act 188 are similar. Both the Lake Board Law and Act 188 provide for the establishment of a special assessment district to finance lake improvements. Both statutes also require a public hearing on the necessity (or practicability) of the project, and a public hearing on the special assessment roll. There is nothing inherent in lake board proceedings that make lake board projects more expensive to set up and administer.

With respect to procedure, neither statute is superior over the other. However, there are some instances where one act may be preferred over the other. For example, if a lake is located entirely within one township and the township board

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is willing to undertake the project, then Act 188 may be a more expedient way to proceed. If, on the other hand, a lake is located in several townships, Act 188 would require each township involved to undertake separate assessment proceedings which could be both time-consuming and cumbersome. In addition, no single entity would be administering the project. In situations in which a lake is located in more than one township, a lake board established under the Lake Board Law may be a better way to go.

Another issue that should be considered is that township boards often have a myriad of issues to address at township board meetings. Many of these issues will have little, if any, bearing on the lake in question. By contrast, lake boards have a single

purpose and focus, and the only issue on the table at a lake board meeting is the lake in question.

There is a misconception that lake board projects, because of the need for professional assistance, are more expensive than Act 188 projects. However, in practice, this is not the case. Whether a special assessment district is established by a township board or a lake board, it is important to recognize that funds collected are public monies that have been earmarked for a specific public improvement. Given that public funds are involved, it is prudent to solicit bids for contract work and to have a mechanism in place to ensure work is performed in accordance with project contract documents. This way, lake residents can be assured their money is being spent wisely. It is also prudent to have an unbiased evaluation of the lake conducted to determine the scope of proposed improvements. These tasks are generally conducted by an engineering or environmental consultant. It is not wise for a township board or a lake board to make these decisions without some professional guidance. In fact, when a township or lake board simply hires a contractor with no professional assistance, they often pay more. These costs can far exceed the costs of professional assistance. Cutting a contractor loose with the directive to improve the lake or "kill the weeds" could be a recipe for over-charging and over-treatment which ultimately is not good for the pocketbook or the health of the lake.

Lake Aeration System Engineering



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POOLING RESOURCES

When establishing a special assessment district (either through the Lake Board Law or Act 188) there is always a concern that lake residents will lose control. However, it is important to realize that in the absence of a special assessment district, it is often difficult to garner sufficient funds to tackle a project. While some residents may contribute financially to help address a problem, many won't. A special assessment district allows residents to collectively pool their resources to achieve clearly defined objectives. The statutory hearing process ensures all interested property owners have an opportunity to provide comment on the scope and cost of the proposed improvements before any decisions are made. Often, input from the lake association is paramount to the final board decision. A special assessment district provides a means to build consensus and get the job done.

PRACTICAL CONSIDERATIONS

The Petition: If a project is proposed to be initiated via petition, the petition should clearly state that “a special assessment district will be established and that special assessments will be levied to finance the desired lake improvements.” Space should be provided on the petition for property owners to both sign and print their names. If property is jointly owned, all freeholders should sign the petition. Prior to circulation, the local unit(s) of government involved with the project should review the petition to ensure petition language is acceptable.

Enabling Resolution(s): The enabling resolution(s) adopted by the local unit of government(s) to establish a lake board should clearly authorize the lake board to determine the scope of the project, and to establish a special assessment district to finance the project.

Statutory Procedures: As in any special assessment proceeding, it is imperative that statutory procedures be followed closely. Meetings and hearings must be properly noticed and each step in the process must be documented. Procedural missteps can be costly, both in terms of time and money. When in doubt, contact a consultant or legal counsel with experience in lake board law.

Public Hearings: Under the Lake Board Law, hearings must be held to determine the practicability of the project and on the special assessment roll. It is often helpful to have the project consultant in attendance to explain the scope and costs of the project and to help answer questions. Although not required by statute, it is recommended that all property owners be given notice by first-class mail of the proposed scope and cost of the project prior to the hearing of practicability. This brings everyone to the table with “eyes

wide open” and allows for more fruitful and constructive deliberations at the hearing.

Special Assessments: When establishing a special assessment for a lake improvement project, care should be taken to ensure the district only includes those properties that directly benefit from the proposed improvements. Typically, this will include all waterfront properties and back lots with deeded or dedicated lake access. Spreading an assessment can be tricky business, and there is no sure-fire way to do it that will satisfy everyone. Assessments should be levied in a way that is fair, equitable and consistent. All similarly situated properties should be assessed the same, and the assessment should be reasonably proportionate to the benefit derived from the project. Often a simple assessment scheme is easier to administer (and easier for property owners to understand), than a more complex formula. For example, waterfront properties can be assessed one unit of benefit and back lots with deeded or dedicated access can be assessed at a lesser rate, perhaps one-half or one-quarter unit of benefit.

A HALF-CENTURY OF COOPERATION AND ACCOMPLISHMENT

The composition of lake boards with representatives from the lake and local governmental units helps to address one of the major obstacles to effective lake management—fragmented authority. A lake improvement board can provide an efficient way for local units of government and lake residents to work together toward a common goal. As such, a lake board is a unique partnership between lake residents and local government. In many communities, lake improvement boards are the primary vehicle under which lake improvement projects are implemented. The vast majority of lake board projects are renewed with broad support from lake residents. Since its enactment some fifty-plus years ago, hundreds of lake improvement projects have been successfully implemented under provisions of the Lake Board Law. *R.*