

LAKE BOARDS – COMMONLY ASKED QUESTIONS

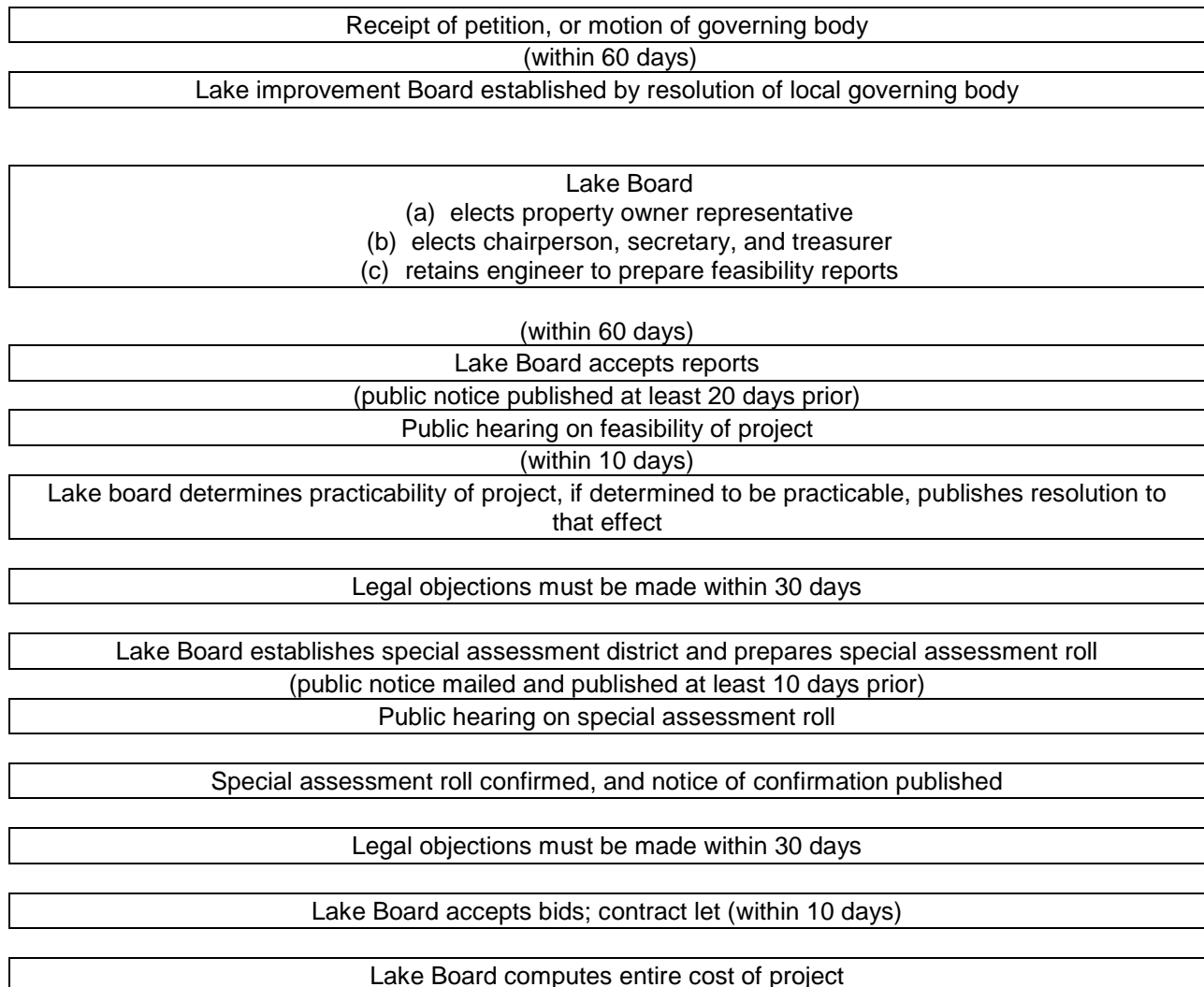
(22nd April, 2010 – Tony Groves, Pam Tynning, Paul Hausler – Progressive AE)

Michigan has thousands of inland lakes. For over 40 years, Michigan's lake board law has been used to implement lake improvement projects. This article provides an overview of lake board procedures and addresses some commonly asked questions regarding lake boards.

What is the lake board law?

Lake boards operate under provisions of Part 309, Inland Lake Improvements, of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended (MCL 324.30901-324.30929). In organizing a project under Part 309, it is important that proper procedures be followed. A chronological summary of lake board procedures is provided in the flow chart below.

Chronological Summary of Lake Board Procedures



How is a lake board established?

Lake boards can be established either by petition of 2/3 of the freeholders owning lands abutting the lake, or by a motion of a local unit of government bordering the lake. On private inland lakes, a lake board can only be established by petition of property owners owning lands abutting the lake.

A petition to establish a lake board should be reviewed by the local units of government bordering the lake prior to circulation to ensure the petition language is acceptable. If property is owned jointly or has multiple owners, all freeholders should sign the petition.

To help discern signatures, the petition should also include a line for the owners' names to be printed.

The enabling resolution adopted by the local unit of government that establishes the 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. If more than one governmental unit borders the lake, all should be asked to adopt the enabling resolution.

Who sits on a lake board?

Lake boards consist 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 involved, two representatives must be appointed.
- The county Drain 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 appointed by the lake board.

On lakes that have a lake association that represents a majority of lakefront property owners, the association may submit up to three names to the lake board from which the board shall make its selection. The waterfront property representative on the lake board has a four-year term. Local units of government may appoint one of their own to sit on the board or someone (such as a lake resident) to represent them. As such, a lake board is a partnership between lake residents and local units of government.

What is a lake board's first order of business?

At its first meeting, a lake board elects its lakefront property owner representative. The Lake board is also required to appoint a chairperson, secretary, and treasurer. Part 309 requires that lake boards retain a professional engineer to prepare an engineering feasibility study, and an estimate of costs and probable assessments.

The study is required to evaluate the feasibility of lake improvement alternatives and to determine the proposed scope and cost of the project. The study is important in that it provides the basis for decision-making and future expenditures.

What kinds of projects can lake boards undertake?

While many lake board projects involve aquatic plant control, lake boards can undertake a broad array of projects. Essentially, any lake project that provides a public benefit could be undertaken by a lake board. Section 30901(a) of Part 309 defines benefit as follows: (a) "Benefit" or "benefits" means advantages resulting from a project to public corporations, the inhabitants of public corporations, the inhabitants of this state, and property within public corporations. Benefit includes benefits that result from elimination of pollution and elimination of flood damage, elimination of water conditions that jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement, or development of a lake for fishing, wildlife, boating, swimming, or any other recreational, agricultural, or conservation uses.

Are public hearings required?

Before a lake board can take steps to implement a lake improvement project, a formal public hearing must be conducted on the feasibility (also called practicability) of the project. It is only after public comment has been received that the lake board makes a decision on whether or not to proceed with the recommended improvement project. A second public hearing must be held on the proposed special assessment roll. Both hearings must be properly noticed.

What properties can be included in the special assessment district?

When establishing a special assessment district for a lake project, care should be taken to ensure the district only includes those properties that directly benefit from the proposed improvement. Typically, this will include all lakefront properties and back lots with deeded or dedicated lake access. To avoid legal challenges, assessments should be levied in a fair, consistent, and equitable manner. All similarly situated properties should be assessed the same. For special assessments to be defensible, two requirements must be met: 1) the improvement funded by the special assessment must confer a special benefit upon the assessed properties beyond that provided to the community as a whole, and 2) the amount of the special assessment must be reasonably proportionate to the benefits derived from the improvement.

Do contracts need to be competitively bid?

Part 309 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 homeowners association whose membership is open to all residents in the special assessment district, without advertising for public bids.

The vast majority of lake board projects are competitively bid. However, if a lake board elects to contract with a homeowners association, care should be taken to ensure the association is properly insured and that the lake board is named as an additional insured. Further, the homeowners association should not be allowed to use this provision to contract the work to another entity to avoid the competitive bidding process. Finally, the association must provide adequate security for the performance of the contract.

What lake board costs can be covered by special assessment?

In accordance with Part 309, almost any cost related to the project may be recouped through special assessment. These costs may include preliminary engineering, inspections, costs of publishing notices, legal expenses, attorney fees, permit fees, compensation to members of the lake board, and costs related to state, county, or local governmental professional staff services.

In addition, a lake board may add between 10% and 15% of project costs to cover contingent expenses. Lake boards must adopt an annual budget before money is expended for improvements, services, or other purposes.

Can a lake board be dissolved?

A lake board can be dissolved if all of the following conditions are met:

- The governing body of each local unit of government in which all or part of the lake is located holds a public hearing on the proposed dissolution, determines that the lake board is no longer necessary for the improvement of the lake because the reasons for establishing the lake board no longer exist, and approves the dissolution of the lake board.
- All outstanding indebtedness and expenses of the lake board are paid in full.
- Any excess funds of the lake board are refunded based on the last approved assessment roll. However, if the amount of excess funds is a minimal amount, the excess funds shall be distributed to the local units involved with the project apportioned in accordance with the last approved special assessment roll.
- The lake board determines that it is no longer necessary for the improvement of the lake, because the reasons for its establishment no longer exist, and adopts an order approving its dissolution.

What about the Township Special Assessment Act?

The Township Special Assessment Act, PA188 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, Part 309 and Act 188 are similar. Both Part 309 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.

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 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 Part 309 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.

If a special assessment district is established, do lake residents lose control?

When establishing a special assessment district 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. A special assessment district provides a means to build consensus and get the job done