

Lake Improvement Boards:

The Role of the Drain Commissioner

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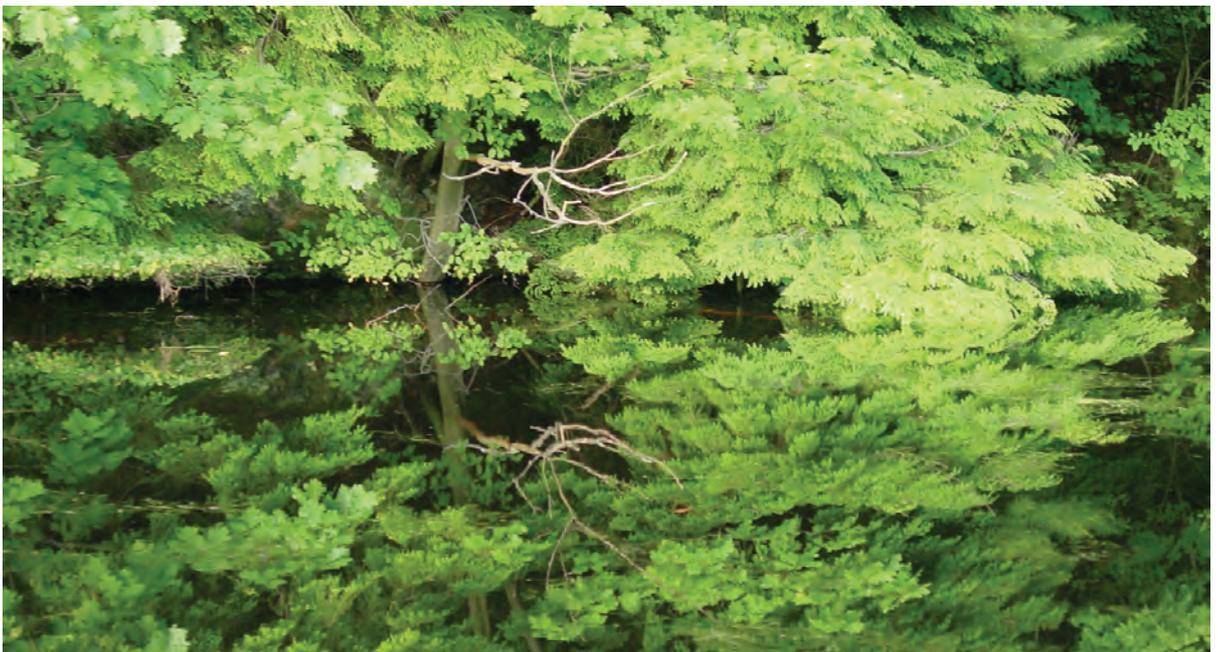
With the recent elections, many new Drain Commissioners will be surprised to find that, under Michigan law, they will wear several different hats! New Drain Commissioners will need to become familiar with their responsibilities and authority under the Michigan Drain Code; they may also find that they are the county delegated authority or agency responsible for enforcement of soil erosion and sedimentation control, maintaining legal lake levels and they may be a member of a special statutory board (such as, Act 185 Board of Public Works, or Lake Improvement Board). New Drain Commissioners will need to have a working understanding of these various statutes and their respective responsibilities. This article provides a general overview of lake improvement board procedures and offers some practical advice on how to make your lake improvement board projects run smoothly.

The statute 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 codified, along with 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 324.30901 – MCL 324.30929). The complete text of the statute can be found at www.legislature.mi.gov.

Many lake communities in Michigan have established lake improvement boards to address their lake management issues. Oakland County, for example, has 50 lake improvement boards, Montcalm County has 15 lake improvement boards, and Livingston County has 4 lake improvement boards.

On public lakes, lake improvement boards can be established by petition of 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



Lake Improvement Boards are formed by citizens and communities to manage issues such as lake levels and nuisance vegetation.



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Serving on lake boards is among the many duties assigned to Michigan's Drain Commissioners.

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

- A member of the County Board of Commissioners of each county affected by the project; such members are appointed by the Chairperson of the County Board.
- A representative of each local unit of government involved. If there is only one local unit of government involved, two representatives must be appointed.
- The County Drain Commissioner or his/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 improvement board.

On newly established boards, the first order of business is to appoint the waterfront property owner representative and a chairperson, secretary, and treasurer. In accordance with Part 309, lake improvement boards must do the following:

1. Retain a registered professional engineer to prepare an engineering feasibility report, an economic study, and an estimate of project costs. A proposed special assessment district and a recommendation for the apportionment of benefits must be included. The assessment district may include all parcels of land and local units benefited by the improvement project. The lake study report 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.
3. If a project is determined to be practical and the special assessment district and apportionment of benefits are defined, the lake improvement board may then proceed to finalize plans for the approved lake improvement project and prepare an assessment roll.
4. The lake improvement board must hold a hearing to review 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.

Lake improvement boards can undertake a broad array of projects, from dredging to watershed management. Many lake improvement board projects focus primarily on aquatic plant control. These types of projects typically have multiple year timeframes with public hearing proceedings held periodically (every five 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 Part 309 (Section 324.30929).

Under Part 309, most project costs can be



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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 309
INLAND LAKE IMPROVEMENTS

324.30901 Definitions.

Sec. 30901. As used in this part:

(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.

(b) "Inland lake" means a public inland lake or a private inland lake.

(c) "Interested person" means a person who has a record interest in the title to, right of ingress to, or reversionary right to a piece or parcel of land that would be affected by a permanent change in the bottomland of a natural or artificial, public or private inland lake, or adjacent wetland. In all cases, whether having such

recouped through special assessment. These costs may include preliminary engineering, inspections, costs of publishing notices, legal expenses, attorney fees, permit fees, compensation to lake improvement board members, compilation and retention of records, and costs related to state, county, or local governmental staff services.

Practical Tips and Considerations

Follow Procedure. As in any special assessment proceeding, it is imperative that statutory procedures are followed closely. Proper notice must be provided for meetings and hearings. 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 improvement board law.

Public Hearings. Part 309 requires that hearings must be held to determine the practicability of

the project and review the special assessment roll. It is often helpful to have the project consultant in attendance to explain the project scope and costs, and to help answer questions. Although not required by statute, it is recommended that all property owners in the special assessment district 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.

Assessment Apportionments. Allocating project costs for assessment can be tricky business. There is no sure-fire method 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 proportional to the benefit derived from the project. A simple assessment plan is easier to administer and easier for property owners to understand than a



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more complex formula. For example, many lake improvement board assessment districts only include waterfront properties and back lots that have deeded or dedicated lake access. Waterfront properties are often assessed one unit of benefit and back lots with access are assessed at a lesser rate (perhaps one-half or one-quarter unit of benefit).

Drain Office Responsibilities. Compared to most other lake improvement board members, drain commissioners often have more experience regarding special assessments, the bidding process, the letting of contracts, project administration, record-keeping and other project-related tasks. As such, the drain office often plays a major role in the administrative aspects of lake improvement board projects. The amount of time a particular Drain Commissioner may want to commit to lake improvement board projects varies. In counties with multiple lake improvement boards, it may make sense for the Drain Commissioner to designate a representative to serve on the lake improvement board, and/or to have record-keeping and other administrative functions handled by a local unit of government rather than the drain office. Part 309 provides some flexibility in how to administer lake improvement board projects in your jurisdiction.

Managing Resources With Lake Improvement Boards

Fragmented authority can present a major challenge to effective lake management. A lake

improvement board can provide an efficient way for local units of government to work together toward a common goal. In many communities, lake improvement boards are the primary vehicle under which lake improvement projects are implemented.

Often, the County Drain Commissioner plays a key role in these projects; the more you know going in, the better off you will be. A comprehensive manual regarding lake improvement boards is available through the office of the Oakland County Water Resources Commissioner and can be downloaded from the Oakland County Water Resources Commissioner web site. To find out more about lake improvement boards and inland lakes, visit Michiganlakeinfo.com.



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