

**17:6 LAKE IMPROVEMENTS-Part 309 of NREPA-MCL 324.30901 et seq.****17:6.1 Chronological Steps to be Followed for Improving a Lake**

Under the authority of Part 309, Inland Lake Improvements, of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, as amended.

**(1) Formation of a Lake Board, Public and Private Lakes, Sections 30902 and 30904.**

- a) On public inland lakes, a Lake Board may be formed either by petition of 2/3 of the freeholders owning land abutting the lake or upon a motion of a local governing body.
- b) On private inland lakes, a Lake Board may be formed only by petition of 2/3 of the freeholders owning land abutting the lake.

**(2) Resolution by Local Governing Body, Sections 30906 and 30908.**

In creating a Lake Board, the local governing body shall direct the Lake Board to do the following:

- a) Institute proceedings as prescribed in the Part 309 to bring about the desired lake improvement.
- b) Determine the scope of the project.
- c) Establish a special assessment district including all parcels of land and local units, which will be benefited by the improvement of the lake.

**(3) Lake Board Membership, Section 30903(1). The Lake Board shall consist of the following:**

- a) A member of the County Board of Commissioners appointed by the chairperson of the Board of Commissioners of each county in which the lake is located.
- b) A representative of each local unit of government (township, village or city) in which the lake is located.
- c) The Drain Commissioner or a member of the county road commission in counties not having a Drain Commissioner.

- d) A representative of the Department of Environmental Quality.
- e) A property owner appointed by the Board, who owns land abutting the lake.

**(4) Election of Officers, Section 30903(2).**

The first duty of the Lake Board is to elect a chairperson and a secretary. A majority of the members shall constitute a quorum.

**(5) Selection of Engineer, Section 30909(1).**

The Lake Board shall retain a registered professional engineer to provide an engineering feasibility report, an economic study report and an estimate of cost. The report shall include, when applicable, recommendations for normal lake levels and the methods for maintaining such lake levels.

*(Note: The selection of an engineering consultant can normally best be accomplished on the basis of study proposals, submitted on request, by selected qualified consultants.)*

**(6) Engineering Feasibility Study, Section 30909(2) & (3).**

The engineering feasibility study, which is to be prepared by the selected engineering consultant, shall include the following:

- a) The methods proposed to implement the recommended improvements.
- b) An investigation of the groundwater conditions and possible effects on lake levels from removal of bottom materials (if applicable).
- c) A study of existing nutrients in the lake and a projection of future lake conditions which may result from a reduction in nutrient levels.
- d) An estimate of project costs.
- e) Probable assessments for the project to individual property owners.
- f) An economic report which analyzes the existing local tax structure and the effects of the proposed assessment on the local unit(s) of government involved.

**(7) Funding by County Board of Commissioners, Sections 30905 and 30911.**

The County Board of Commissioners may provide for a revolving fund to pay for preliminary costs of improvement projects. Such funds must be repaid on collection of funds from the assessment

district. The County Board may also provide up to 25% of the cost of a lake improvement project on any public inland lake.

*(Note: **Bond Counsel.** If bonding is anticipated as a means of financing the lake improvement project, bond counsel should be retained as early in the project as possible. Whether bonding is needed depends on the cost of the project. Normally, only dredging projects require bonding because of the high cost of such projects. Bond counsel, if needed, can provide valuable assistance to a Lake board to ensure that the necessary legal steps are taken so that bonds can be sold without problems or defaults.)*

**(9) Hearing of Practicability, Section 30910.**

Within 60 days following receipt and final acceptance of the engineering feasibility study, the Lake Board shall hold a public hearing to review the report and to determine the practicability of the project. Notice of the hearing must be published twice in a newspaper of general circulation in each local unit of government affected. The first publication shall not be less than 20 days prior to the time of the hearing.

*(Note: Part 309 does not require notice of the hearing of practicability to be sent by first-class mail to all residents within the proposed special assessment district. However, it is recommended that Lake Boards do so.)*

The Lake Board shall, by resolution, determine the practicability within ten days after the hearing. The resolution shall be published once in a newspaper of general circulation in each local unit to be affected.

**(10) Preparation of Assessment Roll, Section 30912.**

After finally accepting the special assessment district, the Lake Board shall prepare an assessment roll based upon benefits to be derived from the proposed lake improvement, and shall direct the assessing official of each local unit of government to be affected to join in making the assessment roll.

**(11) Public Hearing and Confirmation of Assessment Roll, Section 30913.**

After the assessment roll is reported to the Lake Board by the local assessing officials, the Lake Board shall hold a public hearing on the assessment roll. Notice of the hearing must be published twice in a newspaper of general circulation in each local unit of government affected. The first publication shall not be less than ten days prior to the time of the hearing. Notice of the public hearing

must also be mailed first class to all property owners in the special assessment district in accordance with Act 162, Public Acts of 1962.

After the hearing, the Lake Board may confirm the assessment roll as reported, or as amended or corrected by it, or may refer it back to the assessing officials for revision, or may annul it and direct a new roll to be made. When an assessment roll has been confirmed, the Lake Board shall direct the assessments therein to be collected, and the clerk of each local unit shall endorse therein the date of confirmation. Notice of confirmation of the special assessment roll must be published in the same manner as the notice of the public hearing on the roll.

**(12) Project Financing, Section 30922.**

Lake Boards have three methods available to finance lake improvement projects in anticipation of the collection of special assessments. They are:

- a) Borrow money from a local lending institution.
- b) Issue lake level orders. These are promissory notes issued to the contractor that promises payment upon collection of funds from the special assessment district. In cases where the contractor does not wish to hold such a note, a purchaser for the lake level orders would have to be found. In some cases, local units of government have purchased lake level orders.
- c) Bonding.

*(Note: Bond counsel may not render a favorable opinion on the salability of bonds issued under Part 309 of Act 451. Therefore, it is recommended bonds be sold under a different statute, but may be paid for via the special assessment district established by the Lake Board.)*

**(13) Advertising for and Letting of Contract, Section 30926(1) and (2).**

Except as provided below, the chairperson of the Lake Board shall advertise for bids. The contract shall be let to the lowest bidder giving adequate security for the performance of the contract, but the Lake Board shall reserve the right to reject any and all bids.

The Lake Board may contract with a local homeowner association without advertising for public bids provided the homeowner association could provide adequate security for the performance of the contract.

**(14) Computation of Project Costs, Section 30927.**

Within ten days after the letting of contracts, or after appeals have been decided, the Lake Board shall make a computation of the entire cost of a project (items to be included in computing total project costs are listed in Section 30927).

**(15) Further Lake Board Meetings.**

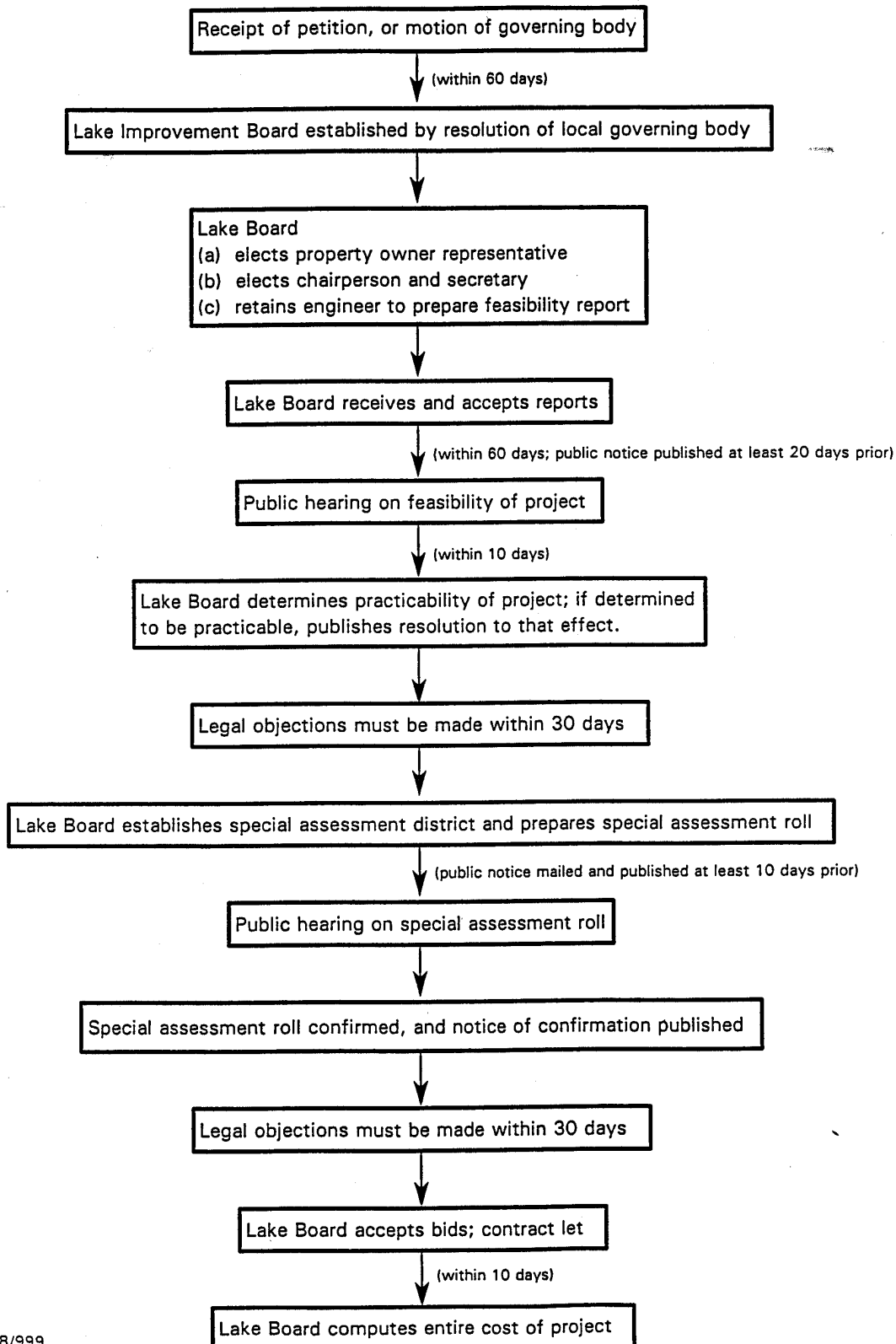
After letting of the contract(s), the Lake Board will need to meet periodically to review the progress of the project and to take Action on the payment of bills. The Lake Board must act annually on delinquent assessments as reported by the Treasurer of each local unit of government involved.

## **APPENDIX**

1. Chronological Summary of Lake Board Procedures
2. Petition to Establish a Lake Board
3. Resolution

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

### Chronological Summary of Lake Board Procedures



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PETITION TO ESTABLISH A LAKE BOARD
PURSUANT TO PART 309, INLAND LAKE IMPROVEMENTS,
OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
PUBLIC ACT 451 OF 1994, AS AMENDED

We, the undersigned being owners of property abutting \_\_\_\_\_ Lake, located in Section \_\_\_\_\_,
\_\_\_\_\_ Township, \_\_\_\_\_ County, State of Michigan, do hereby petition the Township Board of
\_\_\_\_\_ Township, \_\_\_\_\_ County, Michigan, to provide for the improvement of \_\_\_\_\_ Lake
and to take steps necessary to improve the lake as authorized by Part 309, Inland Lake Improvements, of the
Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended.

We acknowledge that the Lake Board will create a Special Assessment District and levy assessments
thereunder to pay the cost of an improvement program, if approved.

Table with 4 columns: NAME, ADDRESS, DATE. Rows 1-15 for signature collection.

(Note: Signatures are required of two-thirds of all freeholders owning property on the lake including canals.
Freeholders include husband, wife and all tenants joint and in common.)

Certificate of Circulator

The undersigned circulator of the above petition asserts that he/she is a freeholder of property abutting
\_\_\_\_\_ Lake and that each signature on the petition was signed in his/her presence, that to his/her
best knowledge and belief each signature is the genuine signature of the person purporting to sign the same and
to the best of his/her knowledge the person was a freeholder of property abutting \_\_\_\_\_ Lake at the
time of signing.

\_\_\_\_\_  
Circulator

◆◆SAMPLE◆◆

**RESOLUTION  
FOR FORMATION OF A LAKE BOARD INITIATED BY PETITION  
IN ACCORDANCE WITH PART 309, INLAND LAKE IMPROVEMENTS,  
OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,  
PUBLIC ACT 451 OF 1994, AS AMENDED**

Whereas the township of \_\_\_\_\_ has received petitions bearing signatures of 2/3 of the freeholders owning lands abutting \_\_\_\_\_ Lake meeting the requirement for the establishment of a Lake Board, the Township of \_\_\_\_\_, \_\_\_\_\_ County does hereby create a Lake Board pursuant to Section 30902 of Part 309, Inland Lake Improvements, Public Act 451 of 1994. The Township of \_\_\_\_\_ instructs said Lake Board to study and determine necessary Action for the improvement of \_\_\_\_\_ Lake. The Township of \_\_\_\_\_ further instructs the lake Board to:

- a. Initiate proceedings as described in Part 309 to bring about the desired lake improvement. (Note: *Specific areas of concern, e.g. nuisance aquatic plant growth, may be described here.*)
- b. Determine the scope of the project.
- c. Establish a special assessment district, including all parcels of land and local units, which will be benefited by improvement of the lake.

This resolution was passed at the \_\_\_\_\_ Township meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## QUESTIONS AND ANSWERS

**1: How do I calculate the number of signatures required for the petition?**

**A:** The Act states that “2/3 of the freeholders owning lands abutting the lake” must sign the petition. To calculate this number, the entity accepting the petition should count the number of owners of lands abutting the lake. For example, there are five parcels of land with the following ownership:

Parcel A: Jack Smith and Jill Smith (husband and wife)

Parcel B: Jack Smith and Jill Smith (husband and wife)

Parcel C: Joe Black

Parcel D: Amy Jones, David Jones, Jim Jones, and Cheryl Jones

Parcel E: Ed Grant and John Grant

To calculate the number of signatures required, you must add all of the owners of land. Accordingly, there are nine owners of lands abutting the lake (only count Jack and Jill once).

Therefore, six signatures are required for this petition. Please note that the local governing body of any local unit of government in which any part of the lake is situated can request the improvement of a lake through resolution, bypassing the petition process. However, if a project is requested by resolution from a local unit, concurrence is required of all other local units on which any part of the lake is situated. Register of Deeds research will be required to ascertain all property owners.

**2: If someone wants to appeal an assessment, where is the appeal filed?**

**A:** Although the statute is silent as to where appeals are filed, assessment appeals are heard by the Michigan Tax Tribunal.

**3: Can Lake Improvement Board members be paid for attending meetings?**

**A:** There is no specific reference as to payment of Lake Board members for attending meetings. However, Section 30927 states that the computation of costs can include the compensation paid to the board. Accordingly, the Lake Board members may be paid a per diem fee, and the fee amount should be based on county policy.

**4: Do Lake Improvement Boards continue to exist after the completion of a project?**

**A:** Yes. Once a project is completed, then the Board can be inactive. However, whether a subsequent petition is required to do work at a later time is dependent upon the original petition language. For example, if the petition calls for aquatic nuisance control to be done on an annual basis, then it is not necessary for the Lake Board to receive a new petition or resolution annually.

**5. Can Cities, Villages, and Townships be assessed at-large for a lake improvement project.**

**A:** Unlike the Drain Code, Part 309 does not specifically state that municipalities can be assessed at-large for benefits received by a lake improvement project. However, by reviewing the definition of benefit and other sections within Part 309, it can be interpreted that at-large assessments are allowable if the benefit as defined can be shown. Specifically, "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.