

# Legislative Analysis



## LAKE IMPROVEMENT BOARDS

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**Senate Bill 1266 (Substitute H-1)**

**Sponsor: Sen. Michael D. Bishop**

**House Committee: Local Government and Urban Policy**

**Senate Committee: Local, Urban, and State Affairs**

### **First Analysis (12-7-04)**

**BRIEF SUMMARY:** The bill would revise the law that allows the creation of inland lake improvement boards. Revisions to the law would change board membership, establish a process to dissolve the board, provide for record-keeping responsibilities, and include administrative expenses in the cost of a lake improvement project.

**FISCAL IMPACT:** This bill would not have a fiscal impact on the State of Michigan. Local governments would be able to charge lake boards for costs related to lake improvement projects.

### **THE APPARENT PROBLEM:**

Forty-three lake improvement boards have been formed in Oakland County, to provide for the improvement of lakes or adjacent wetlands. Some local government officials have expressed concern they are inadequately represented on the boards. Further, they report the recurring conflicts between representatives of the Department of Environmental Quality (DEQ), and other board members are impeding the boards' work. Finally, they note that the current law requires the county drain commissioner to serve on every lake board within the county—a requirement that cannot be met in a county having as many lake boards as does Oakland.

Some have suggested that local government representation on the boards be increased; that a DEQ member no longer be required to serve on each board; and that the drain commissioner be allowed to designate others to serve on the board in his or her stead.

### **THE CONTENT OF THE BILL:**

The bill would amend Part 309 (Inland Lake Improvement) of the Natural Resources and Environmental Protection Act (MCL 324.30903 et al.) to do the following:

- Revise the membership of a lake improvement board.
- Establish a process for the dissolution of a lake board.
- Provide for record-keeping responsibilities for a lake board.
- Include administrative expenses in the cost of a lake improvement project.

Under Part 309, the governing body of a local unit of government containing all or part of a public inland lake may provide for the improvement of the lake or adjacent wetland upon its own motion or by petition of two-thirds of the owners of land abutting the lake. The governing body then must set up a lake board to proceed with improving the lake or to void the project. When instructed by the local governing body, the lake board must determine the scope of the project and establish a special assessment district, including all parcels of land and local units that will be benefited by the lake improvement.

Currently, a lake board consists of a member of the county board of commissioners appointed by the board's chairperson for each county affected by the lake improvement project; a representative from each local unit of government affected by the project, other than a county, appointed by the legislative body; the county drain commissioner, or a member of the county road commission in a county not having a drain commissioner; and a representative of the DEQ.

Under the bill, a second representative from each local government would be appointed to the lake board; the county drain commissioner would be allowed to appoint a designee to the board; and a representative of the DEQ would not serve on the board.

A lake board could be dissolved upon petition of two-thirds of the landowners owning land abutting the lake, or if the governing body of each local unit of government (in which all or part of the public inland lake was situated) determined that the lake board was no longer necessary for lake improvement. The lake board could only be dissolved if all outstanding indebtedness and expenses were paid in full and any excess funds had been refunded based on the last approved assessment roll.

Before dissolution of a lake board, each local governing body would have to hold a public hearing, and notice of the hearing would have to be published twice in a newspaper of general circulation in each local unit of government that was affected. The first notice would have to be published at least 10 days before the date of the public hearing.

The act requires a lake board to elect a chairperson and a secretary. Under the bill, the secretary would have to be one of the representatives from the local units of government. The secretary would have to attend meetings of the lake board and would have to keep a record of the proceedings and perform other duties delegated by the lake board.

The treasurer for the local unit of government affected most by the project would have to keep the financial records and sign all vouchers for expenditures approved by the lake board. All other records of the lake board would have to be transmitted to the clerk for a local unit of government. The clerk would have to maintain all records for the lake board. A local unit of government could charge a lake board for the cost of maintaining records and the administration of financial affairs of the lake board, which would be an expense to the special assessment district.

A lake board would have to meet at least once a year to establish a budget for improvements, services, or other expenditures approved by the board. A lake board could retain an attorney to advise the board in the proper performance of its duties. The attorney would have to represent the board in actions brought by or against it.

Currently, within 10 days after the letting of contracts or immediately after an appeal has been decided, a lake board must compute the entire cost of a project, including all preliminary costs and engineering and inspection costs incurred and all of the following: the fees and expenses of special commissioners; the compensation to be paid the board; the contracts for dredging or other work to be done on the project; the estimated cost of an appeal if the apportionment made by the lake board is not sustained; the estimated cost of inspection; the cost of publishing all notices required; all costs of the circuit court; attorney fees for legal services in connection with the project; interest on bonds for the first year, if bonds are to be issued.

The bill would add to this list any other costs necessary for the administration of lake board proceedings, including compensation of county or local representatives serving on the lake board, record compilation and retention, and state, county, or local government professional staff services.

#### ***HOUSE COMMITTEE ACTION:***

The House Committee on Local Government and Urban Policy adopted three amendments to the Senate-passed version of Senate Bill 1266, and reported it to the House floor as Substitute H-1.

Two of the three amendments adopted by the committee clarify the role of local governing bodies on lake boards when the lake board is dissolved. Under the law, there are four requirements for dissolution, and all must be met. The first of the four requirements was amended in two ways: One amendment clarifies that a public inland lake board is dissolved "upon petition of two-thirds of the freeholders owning land abutting the lake, or [if] the governing body of each local unit of government (in which all or a part of the lake is located) determines that the lake board is no longer necessary for the improvement of the lake...and approves its dissolution." The second amendment clarifies that each local governing body must hold a public hearing on the proposed dissolution, before approving it.

The third amendment adopted by the committee clarifies that "if costs are to be incurred by a lake board," the board must meet at least once a year to establish a budget or improvements, services, or other expenditures.

#### ***FISCAL INFORMATION:***

This bill would not have a fiscal impact on the State of Michigan. Local governments would be able to charge lake boards for costs related to lake improvement projects.

## ***ARGUMENTS:***

### ***For:***

Lake improvement boards are usually formed for projects that affect only one or two local governments. By increasing the number of representatives from each local government on a board from one to two, the bill would ensure that they had a greater say in the board's decisions. Additionally, permitting the drain commissioner to appoint a designee would free the commissioner from having to serve on dozens of separate boards in counties with a large number of them. Finally, the bill would delete the requirement that a representative of the DEQ serve on each board, thus eliminating a major cause of friction on many boards.

Additionally, the bill would improve the record-keeping of the lake boards by clarifying which local government officials would be responsible for that task. Currently, there is no uniformity among the individual boards as to the person responsible for their records, and records are kept by both local and county officials.

### ***Against:***

The bill would require local clerks and treasurers to take on record-keeping responsibilities for the lake improvement boards. There is some concern, however, about whether small township and village governments would be able to handle the additional paperwork. Although the bill would address the situation in Oakland County, where most local governments are well staffed and have good record-keeping capabilities, many of Michigan's smaller villages and townships might not have the capacity to perform the additional record-keeping responsibilities.

## ***POSITIONS:***

The Department of Environmental Quality supports the bill. (12-7-04)

The Michigan Association of County Drain Commissioners supports the bill. (12-7-04)

The Michigan Township Association supports the bill. (12-7-04)

The Oakland County Board of Commissioners supports the bill. (12-7-04)

The Michigan Association of Counties supports the bill. (12-7-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.