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BILL ANALYSIS



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Senate Bill 1266 (as enrolled)
Sponsor: Senator Michael D. Bishop
Senate Committee: Local, Urban and State Affairs
House Committee: Local Government and Urban Policy

PUBLIC ACT 522 of 2004

Date Completed: 1-13-05

RATIONALE

In Oakland County, where 43 lake improvement boards have been formed to provide for the improvement of lakes or adjacent wetlands, there have been concerns among some local governments that they are not adequately represented on the boards, and that conflicts between representatives of the Department of Environmental Quality (DEQ) and other board members are impeding the boards' work. Additionally, language in the Natural Resources and Environmental Protection Act governing lake improvement boards requires that the county drain commissioner serve on each board in a county. Some people have suggested that local government representation on the boards should be increased; the requirement that a DEQ member serve on each board be deleted; and the drain commissioner be allowed to designate someone to serve on the board in his or her place.

CONTENT

The bill amends Part 309 (Inlake Lake Improvement) of the Natural Resources and Environmental Protection Act to do the following:

- **Revise the membership of a lake improvement board.**
- **Establish a process for the dissolution of a lake board.**
- **Revise the items that must be included in the cost of a lake improvement project.**
- **Provide for record-keeping responsibilities for a lake board.**

The bill will take effect March 1, 2005.

Lake Board Membership & Officers

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, one representative of each local unit of government, other than a county, affected by the project, or, if there is only one such local unit of government, two representatives of that local unit of government, must be appointed by the legislative body of the local unit of government. Also, under the bill, the county drain commissioner may appoint a designee to the board, and the board no longer will include a representative of the DEQ.

Part 309 requires a lake board to elect a chairperson and a secretary. Under the bill, the lake board also must elect a treasurer. The bill requires the secretary to attend board meetings, keep a record of the proceedings, and perform other duties delegated by the board.

Dissolution

Under the bill, a lake board for a public inland lake will be dissolved if all of the following requirements 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 the board's establishment no longer exist, and approves the dissolution. The governing body of each local unit of government may hold the public hearing on its own initiative, and must do so upon petition of two-thirds the freeholders owning land abutting the lake.
- 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 special assessment roll. However, if the amount of excess funds is de minimis, the excess funds must be distributed to the local units of government in which all or part of the lake is located, apportioned based on the amounts assessed against each local unit of government and lands in that local unit on the last approved 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.

Notice of the public hearing must be published twice in a newspaper of general circulation in each local unit of government in which all or part of the lake is located. The first notice must be published at least 10 days before the date of the hearing.

Project Costs

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 deletes from the list of costs the compensation to be paid to the board and attorney fees for legal services in connection with the project, and adds the following:

- Any legal expenses incurred in connection with the project, including litigation expenses, the costs of any judgments or orders entered against the lake board or special assessment district, and attorney fees.
- Fees for any permits required in connection with the project.
- 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.

Other Provisions

Under the bill, a lake board must not spend money for improvements, services, or other purposes unless it has adopted an annual budget.

The bill permits a lake board to retain an attorney to advise the board in the proper performance of its duties. The attorney must represent the board in actions brought by or against it.

MCL 324.30903 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Lake improvement boards are usually formed for projects that affect only one or two local governments. By increasing the number of representatives from a local government on a board from one to two when the district is within only one local unit of government, the bill will help ensure that it has a greater say in the board's decisions. Additionally, permitting the drain commissioner to appoint a designee will free the commissioner from having to serve on dozens of separate boards in counties with a large number of them. Further, by deleting the requirement that a representative of the DEQ serve on each board, the bill will eliminate a cause of friction on some boards.

Additionally, the bill will improve the record-keeping of lake boards by specifying that the secretary is responsible for keeping a record of the proceedings. 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.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill will have no fiscal impact on State government.

The bill allows the local unit of government responsible for maintaining records for a lake board to recover its costs by charging them to the lake board, which may include them as a cost of a lake improvement project.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.