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The Great (Inland) Lakes State

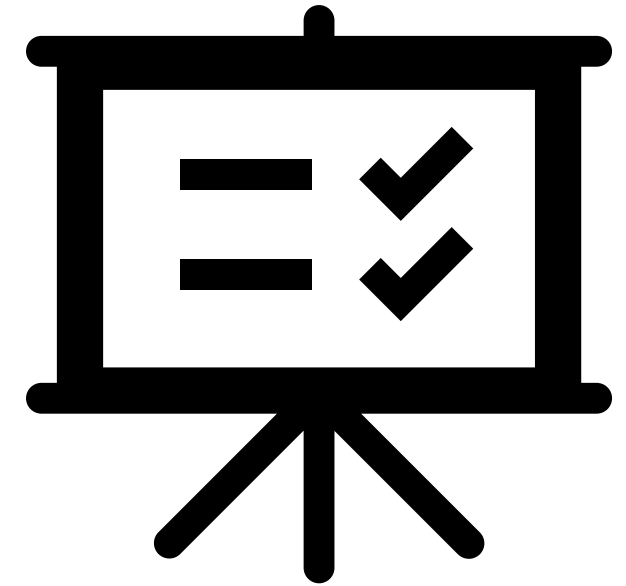
Township Inland Lake Improvements

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OCTOBER 19, 2021

Goals

- ✓ Discuss reasons why a township may want to facilitate lake improvements
- ✓ Understand the various lake improvement statutes including how they operate and common mistakes
- ✓ Develop a “checklist” to facilitate a lake improvement project
- ✓ **Answer questions!**



This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation. Please contact an attorney if you need assistance related to a specific legal issue.



An aerial photograph of a serene lake, likely in Michigan, surrounded by a thick forest of green trees. The water is calm, reflecting the surrounding greenery. The image serves as a background for the text overlay.

Inland Lake Improvement Projects

- Michigan is home to over 11,000 inland lakes!
- Most of those lakes are located in Michigan's townships as townships makes up 96% of the state's land area.
- Lakes offer many benefits to townships: (1) recreational opportunities; (2) tax base and economic development; and (3) attract visitors.
- Most importantly, township residents will live on lakes!

Why Lake Residents May Approach a Township

- Lakes throughout Michigan generally have reoccurring improvement projects including: (1) aquatic weed control; (2) dredging; and (3) lake level control.
 - Sometimes a property owner's (or lake) association may administer such projects but are reliant on **voluntary** dues.
 - For dredging and lake level control projects, costs may necessitate some form of municipal financing (e.g., bonds).
 - Private lake and property owner's associations are having difficulty insuring lake level control structures after the Midland dam failures.





1. Act 188

*Township
Special
Assessments*

2. Part 309

*Lake
Improvement
Board Special
Assessments*

3. Part 307

*County Lake
Level Special
Assessments*

The Three Main Lake Improvement Statutes





Special Assessments: The Basics

- **Special Assessments:** A specific levy designed to recover the costs of a *specific* improvement. *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993).
- **Special Assessment District:** A group of properties that will be benefitted by a particular improvement and are subject to special assessments. *Id.*
 - *Lakes often have multiple special assessment districts!*
- **Assessment Roll:** Typically, a spread sheet or similar document that lists properties within a special assessment district and lists their: (1) apportionments; and (2) annual assessment amounts.
 - **Apportionment:** Percentage of benefit from a particular project. For lakes, think: (1) lakefront lots; (2) backlots; (3) commercial marinas/boat launches.
- Most, if not, special assessment statutes will allow a public entity to assess costs with ensuring permissible assessments (e.g., notice costs, legal costs, engineering/plans costs) to property owners within a special assessment district.



Act 188 - Township Special Assessments

- **The Township Statute:** Act 188 of 1954, MCL 41.721 *et seq.*
- **Scope of Improvements:** The most expansive of the three statutes and includes: (1) aquatic weed management; (2) building/maintaining dams/lake level control structures; (3) dredging; and (4) general “improvements.” See MCL 41.722.
- **Project Process:**
 - 1) Optional property owner petition
 - 2) Development of proposed costs and plans
 - 3) Public Hearing #1 of #2 (review plans and costs, outline special assessment district)
 - 4) Develop proposed special assessment roll
 - 5) Public Hearing #2 of #2 (consider special assessment roll)
- **Advantages:**
 - 1) Township control
 - 2) Authorizes many improvements
 - 3) Flexible plans and costs requirements
- **Disadvantages:**
 - 1) Township control 😊
 - 2) Objection petitions. See MCL 41.723.
 - 3) Assistance from County for financing



Act 188 – Common Mistakes (1/2)



- **Following the Process:**

- Admittedly, the process is very nuanced requiring separate public hearings and numerous approvals.
 - *Sometimes this leads to current Act 188 districts being approved by motion at one meeting (without a roll etc.)*
- Recent case law discusses special assessments not being valid if defects with the special assessment process. See *Village of Sparta v Clark Hill, PLC*, unpublished opinion of the Court of Appeals, issued December 22, 2020 (Docket No. 352837).
- There are ways to “fix” districts that may have been formed with procedural defects (MCL 41.733).



Act 188 – Common Mistakes (2/2)

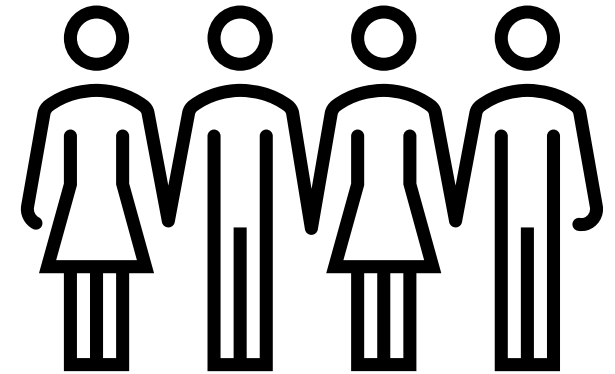
- **Forgetting the importance of thinking strategically and forward thinking:**

- A township should think about the below before creating assessments and districts:
 - 1) How long do we want this district to last?
 - 2) What ways can we involve residents in this process?
 - 3) Have we looked at plans, costs, and proposed assessments from a lake association to ensure consistency with Act 188?
 - 4) Did we prepare a schedule?



Part 309 – Lake Improvement Boards

- **Lake Improvement Boards:** Act 451 of 1994, MCL 324.30901 *et seq.*
- **Scope of Improvements:** Dredging, weed control, and lake improvements other than lake level control.
- **Process:**
 - 1) Optional property owner petition (*but see for private lakes!*)
 - 2) Formation of lake improvement board
 - Typically consists of county commissioner, two township board appointees, drain commissioner, and property owner representative
 - 3) Report or study for proposed improvements
 - 4) Public Hearing #1 of #2 (practicability of project and plans and costs)
 - 5) Public Hearing #2 of #2 (confirmation of special assessment roll)
 - 6) Lake Improvement Board then self-governs and administers (for the most part) future projects
- **Advantages:**
 - 1) Mix of control and stakeholder buy-in
 - 2) Also has county involvement for financing
 - 3) Provides some shelter to a township related to lake disputes
- **Disadvantages:**
 - 1) Engineering report for improvements. MCL 324.30909.
 - 2) Townships can sometimes be the “middle-man”
 - 3) Still requires quite a bit of township involvement such as preparing the assessment roll. MCL 324.30914.



Part 309 – Common Issues

• 1) Membership Quarrels

- Ironically, one of the most common issues with Part 309 Boards is selecting who serves on a board.
- A township board (in a lake within one township) will select two representatives. MCL 324.30903(1)(a).
- If there is a property owner's or lake association on a lake, they can submit three persons (individuals with a property interest in a lakefront parcel) to a lake improvement board to select its property owner representative.
 - Sources of conflict include: (1) multiple associations and (2) names not being shared with the board.
 - **Solutions:** Plan a process for nominations and do not hesitate to take time.



• 2) Private Lake Project Initiation

- Part 309 and case law infers that all improvement projects under Pat 309 on private lakes need to be initiated by a petition of 2/3 of property owners on a lake. MCL 324.30904; see also *Crane v Dir of Assessing for Charter Twp of W Bloomfield*, unpublished opinion of the Court of Appeals, issued April, 19, 2012 (Docket No. 301878).
- Private lakes are any lakes other than those “public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.”



Part 307 – Inland Lake Levels

- **Inland Lake Levels (Lake Level Control):** Act 451 of 1994, MCL 324.30701 et seq.
- **Scope of Improvements:** Lake level control (dams, lake level control structures, augmentation wells, etc.)
- **Process:**
 - 1) Optional property owner petition
 - 2) Lake level study
 - 3) Petition to circuit court
 - 4) Circuit court public hearing
 - 5) Circuit court enters order establishing: (1) lake level elevations and (2) special assessment district boundaries
 - 6) Projects approved after assessment hearing
- **Advantages:**
 - 1) Court ordered special assessment district
 - 2) Has county involvement for financing
 - 3) Assessments handled by county drain commissioner and county
 - 4) Township involvement
- **Disadvantages:**
 - 1) Township involvement
 - 2) Lake level study





Part 307 – Opportunities for Collaboration

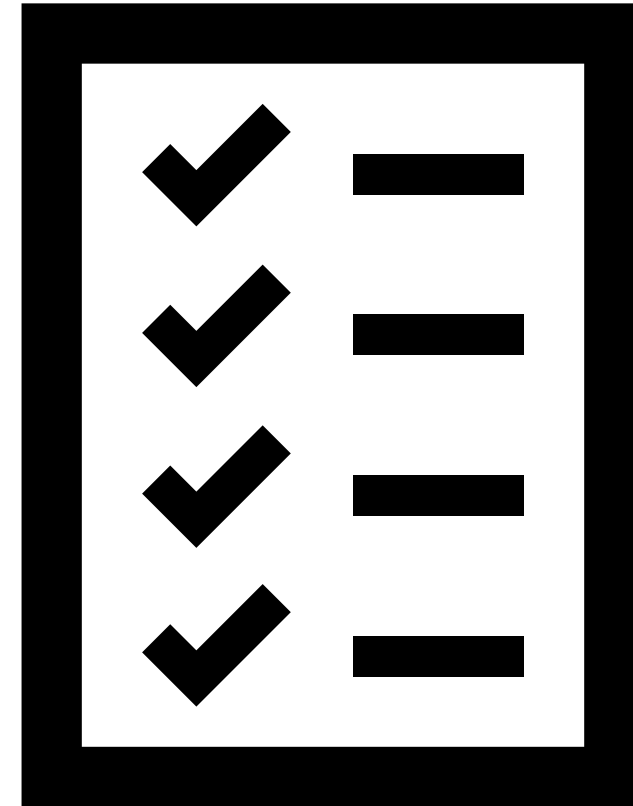
Although Part 307 is generally drafted to give counties responsibilities for inland lake levels, there are various ways that townships can help facilitate such projects including:

- 1) Agreements to operate infrastructure
- 2) Assistance with preparing a proposed special assessment district
- 3) Facilitating communication between property owners and a county
- 4) Indicating support of a project at a court hearing
- 5) Contributing towards improvements and applying for grants
- 6) Authorizing use of land for lake level improvements



Lake Improvement Project Checklist

1. Identify the type of improvement
2. Think about what statute would facilitate the improvement. Consider:
 - A. The duration of the improvement
 - B. How the township would like to be involved
 - C. The institutional knowledge of property owners
3. Gauge stakeholder support
4. Consider retaining consultants
 - A. Project plans
 - B. Financing
 - C. Legal process
5. Strategically plan the project
 1. Schedule / time needed
 2. The length/reoccurrence of assessments
 3. Property owner petitions
6. Begin the assessment process





Questions

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