

INLAND LAKE LEVELS

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Senate Bill 662 (H-3) as reported from House committee

Sponsor: Sen. Rosemary Bayer

**House Committee: Natural Resources, Environment,
Tourism, and Outdoor Recreation**

Senate Committee: Natural Resources and Agriculture

Complete to 6-26-24

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Bill 662 would amend the Natural Resources and Environmental Protection Act (NREPA) to modify the definition of a normal lake level for an inland lake as well as to provide for certain actions that may be taken in regard to financing projects to maintain the established normal level of that lake.

FISCAL IMPACT: Senate Bill 662 is unlikely to affect costs or revenues for the Department of Environment, Great Lakes, and Energy (EGLE). The bill is similarly unlikely to directly affect costs or revenue for local units of government, though the bill would have a fiscal impact on local governments by increasing financing options for projects related to lake level monitoring and maintenance. This fiscal impact is likely to vary, as the bill does not require governments to use this increased financing flexibility.

THE APPARENT PROBLEM:

According to committee testimony, current law lacks flexibility for counties in complying with requirements to maintain established normal levels of inland lakes. Once established, current law does not provide for circumstances in which the lake level may deviate from that level without the county falling out of compliance with its requirement to maintain that normal level. Residents who live on a lake with an established level wish to see that level maintained and have assurances that special assessments levied on their properties in support of lake level projects are done so in a transparent manner, with proper accounting of funds and the desired results achieved. Legislation has been offered to address these concerns.

THE CONTENT OF THE BILL:

The bill would amend NREPA to modify the definition of a normal lake level for an inland lake and provide for certain actions that may be taken to maintain an established normal level.

Definitions

Currently as used in Part 307 (Inland Waters) of NREPA, the term *normal level* means the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake. A normal level must be measured and described as an elevation based on national geodetic vertical datum.¹

¹ https://oceanservice.noaa.gov/education/tutorial_geodesy/geo06_vert.html

The bill would amend this definition so that **normal level** would mean the *target* level or levels of the water of an inland lake, around which actual levels may fluctuate. The bill would also allow the normal level to be based on ranges based on tolerance, operational or weather conditions, seasonality, or other similar natural or regional considerations, in addition to geodetic vertical datum. An inland lake would also be considered to be maintained at its normal level during temporary water level fluctuations resulting from any of the following:

- Weather or natural events.
- Construction activities authorized by EGLE.
- If a county or its **delegated authority** operates lake level infrastructure in a manner that may affect water levels but is reasonably intended to maintain a normal level.

Delegated authority means the county drain commissioner, or any other person designated by the county board to perform duties required under Part 307 of NREPA.

The application of this revised definition would include, but would not be limited to, all normal levels established before the effective date of the bill.

The bill would also create a definition for **normal level project**, which would mean a project to establish or maintain a normal level.

Finally, the bill would define **department**, as used in Part 307, as EGLE. The bill then would amend section 30711 to clarify that state-owned lands under the control of the Department of Natural Resources (DNR) are subject to special assessments levied to cover the costs of a project to maintain an established lake level.

Financing of normal level project costs

Currently, section 30716 of NREPA allows a county board of commissioners to authorize the issuance of bonds or notes by a special assessment district that are payable by special assessments issued under Part 307, with the debt being issued through these bonds and notes subject to the Revised Municipal Finance Act. Presently, a bond or note issued cannot exceed the cost of the lake level project that is being financed. The bill would add language exempting the issuance of bonds and notes under Part 307 from section 505 of the Revised Municipal Finance Act, which limits the total amount of municipal securities secured by special assessments:

The total amount of municipal securities secured by special assessments and pledging the limited tax full faith and credit of the municipality shall at no time by reason of future issues, other than issues of refunding securities, exceed 12% of the assessed value of the taxable property in the municipality. A municipality shall not issue municipal securities secured by special assessments in any calendar year in an amount greater than 3% of the assessed value of the municipality unless authorized by majority vote of the electors or by a larger vote as may be provided by statute or charter.

NREPA currently allows a delegated authority to accept the advance of work, material, or money in connection with a normal level project, and the advance may be repaid out of money collected through the special assessment. The obligation to repay may be evidenced by a note or contract that is subject to the Revised Municipal Finance Act.

The bill would instead allow a special assessment district to borrow money or accept an advance of work, material, or money from any of the following for payment of financing of any costs in connection with a normal level project:

- A public or private corporation.
- A partnership.
- An association.
- An individual.
- The federal government or any agency of the federal government.

For purposes of the above, costs in connection with a normal level project would include any of the following:

- Costs of easement and land acquisition.
- Engineering fees.
- Financing fees.
- Legal fees.
- Costs of a preliminary, feasibility, practicality, environmental assessment, or impact study.
- Any other permissible costs allowed under Part 307.

The obligation relating to a loan or advance described above could be demonstrated with a contract or note, which could pledge the full faith and credit of the special assessment district. The district would have to pay or provide reimbursement for the loan or advance when funds are available. The following sources could be used to pay an obligation:

- Assessments made or to be made against public corporations at large or against lands in the special assessment district.
- Proceeds of lake level orders, notes, or bonds issued by the special assessment district.
- Any other available funds.

By a majority vote, the county board of commissioners could pledge the county's full faith and credit for payment of a special assessment district's contract or note.

The bill would also provide that the Revised Municipal Finance Act applies only to contracts or notes where the principal amount of the obligation is greater than \$600,000. If the principal amount is \$600,000 or less, the contract or note would be subject to the Agency Financing Reporting Act. However, a contract or note for an advance or loan made by any public corporation, the federal government, or any agency of the federal government would not be subject to either of those acts.

Finally, the bill would add a provision stating that all notes previously issued under section 30717 of NREPA must be considered to have been validly issued.

MCL 324.30701 et seq.

BACKGROUND:

Under current law, the process to set a normal lake level begins with the approval of a motion to begin that process by the county board that has jurisdiction where the lake is located. The process may also be initiated if at least two-thirds of property owners around the lake petition

the county board to begin. If such a petition is submitted, the county board has 45 days to begin the process. A study of various factors is then conducted, and, if the board finds it expedient to have the normal level determined, a motion is filed in the circuit court with jurisdiction in that county. The court then follows a process to set the normal level, which the county is then obligated to maintain.

However, counties are not always able to maintain the established lake level due to factors that arise after the normal level is established, and the state is not obligated to allow projects taken by counties to maintain lake levels, such as pumping water from aquifers to bolster lake levels when those levels decline. For property owners along the lake, this means that water levels may be lower than the established depth, preventing recreational uses, or, if water levels remain above the established level, that parts of their property may be unusable.

Current statute says the county “shall maintain” the established level and does not articulate circumstances during which a county may, even temporarily, be relieved of that obligation.

ARGUMENTS:

For:

Supporters of the bill say that it will provide needed flexibility to local governments in complying with established normal lake levels, as current law does not include language that allows those levels to fluctuate for any reason. Additionally, supporters say allowing counties to pledge their “full faith and credit” to lake level projects will allow those projects to be undertaken more quickly and enable better interest rates on loans to be secured. Finally, supporters note that lake levels have a natural variance based on factors outside of what is currently allowed to be considered for established the normal level, and state law should incorporate those criteria.

Against:

Opponents of the bill include property owners on inland lakes who say the bill would allow counties tasked with maintaining established lake levels (especially those set through the court process) to continue skirting their statutory responsibility to maintain an established level. Some property owner associations have begun litigation against counties to order enforcement of the established level, and testimony was offered suggesting that the bill would improperly deny property owners relief on their claims.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-23-24):

- Department of Environment, Great Lakes, and Energy (support with changes)
- Michigan Association of County Drain Commissioners

The following entities indicated support for the bill:

- Huron River Watershed Council (5-23-24)
- Michigan Boating Industries Association (5-23-24)
- Michigan Environmental Council (6-13-24)
- Michigan League of Conservation Voters (5-23-24)
- Oakland County Water Resources Commissioner (5-23-24)

- Sierra Club (5-23-24)
- Southeast Michigan Council of Governments (6-13-24)

Representatives of the following entities testified in opposition to the bill (5-23-24):

- Higgins Lake Property Owners Association
- Michigan Waterfront Alliance

Legislative Analyst: Josh Roesner
Fiscal Analyst: Austin Scott

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