

INLAKE LAKE LEVELS

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Senate Bill 662 (S-2) as passed by the Senate
Sponsor: Sen. Rosemary Bayer
**House Committee: Natural Resources, Environment,
Tourism, and Outdoor Recreation**
Senate Committee: Natural Resources and Agriculture
Revised 5-23-24

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

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.

Definitions

Currently as used in Part 307 (Inland Waters), 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

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.
- Authorized construction activities.
- 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.

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

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, 324.30716, and 324.30717

FISCAL IMPACT:

Senate Bill 662 is unlikely to affect costs or revenues for the Department of Environment, Great Lakes, and Energy. 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.

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■ 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.