



**House
Legislative
Analysis
Section**

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INLAND LAKE LEVEL ACT

House Bill 4857

Sponsor: Rep. Carl F. Gnodtke

**Committee: Conservation, Recreation &
Environment**

Complete to 10-28-91

A SUMMARY OF HOUSE BILL 4857 AS INTRODUCED 5-28-91

The Inland Lake Level Act authorizes the Department of Natural Resources, and local governments, through their respective county governing boards, to regulate and maintain water levels of public and private inland lakes by contracting to have built dams, dikes, embankments and other devices, and provides for such projects to be paid for through private gifts and public means, such as tax assessments, bond proceeds and the like. The bill would amend the act to provide a more detailed procedure for the department and county boards of commissioners to follow in determining and maintaining "normal" lake levels, notifying the public of financing methods to be used to pay for projects designed to properly maintain lake levels, and providing for the payment of such projects. Various portions of the act would be repealed and replaced with new language, and other provisions currently in the act would simply be revised.

Preliminary Study Before Proceeding. The bill specifies that before a county board of commissioners could proceed with a project to help stabilize an inland lake's water level, the board would have to get a preliminary study done by a licensed professional engineer. The act currently allows a board to require a cash deposit (from those persons who petition the board to investigate whether a lake-level project is needed) to cover the preliminary costs associated with the proceedings. The bill specifies that a cash payment could be required from petitioners to cover the actual preliminary study costs or \$5,000, whichever was less.

A preliminary study would have to include all of the following:

- * the feasibility of a project to establish and maintain an inland lake's normal lake level;
- * the expediency of the normal level project;
- * the estimated costs to construct and maintain such a project;
- * a method of financing initial costs;
- * whether a special assessment district was needed and, if so, what its tentative boundaries and special assessment roll were; and
- * other information which the board resolved was necessary.

Court Hearing, Notice. The act requires that after a county receives petitions to begin proceedings the circuit court must set a hearing on the matter, and the county or the DNR must then give notice of the hearing in one or more newspapers in the county or counties in which the inland lake is located. Under the act, the notice must be published at least once each week for six successive weeks before the date of the hearing; the bill would

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require notice to be published once weekly for only three successive weeks before the hearing date. The bill would require the county drain commissioner to notify by mail, in addition to affected landowners, the governing body of each political subdivision of the state in which the lake is located and the governing bodies of other ones affected by the project. The act now requires the county prosecuting attorney to notify the DNR of the hearing; the bill would require the county prosecutor or the county's legal counsel to serve notice to the department at least 21 days prior to the hearing date.

In a determination of an inland lake's "normal level" (which, under the bill, would mean the water level or levels that provided the most public benefit, best protected the public's health, safety and welfare, best preserved the state's natural resources, and best protected property values around the lake), the court would have to consider all of the following:

- * government surveys and reports;
- * the location of septic tanks, drain fields, sea walls, docks and other pertinent physical features;
- * fisheries and wildlife habitat protection and enhancement;
- * past lake level records, including the "ordinary" high water mark and seasonal fluctuations;
- * testimony and evidence offered by all interested persons;
- * the watershed's hydrology;
- * downstream flow requirements; and
- * all other pertinent facts and circumstances.

Creation of Special Assessment Districts. The act currently allows a county board to "direct the department to establish a special assessment district if required" and authorizes the district to issue bonds and collect assessments to pay the costs of projects designed to control inland lake water levels. In addition, county boards are authorized to "take private property" for the act's purposes. The bill would replace most of these provisions with new language governing property condemnation proceedings and procedures for creating special assessment districts for the act's purposes.

Under the bill, if the department or a county board of commissioners found it necessary to condemn private property for the act's purposes, it would have to follow procedures set forth under the Uniform Condemnation Procedures Act. A county board could determine by resolution that the whole or a part of a water project's cost would have to be defrayed by special assessments against privately-owned parcels of land, political subdivisions of the state, and state-owned lands under the DNR's jurisdiction and control that were benefitted by the project. If it was determined that a special assessment district was to be created, the county drain commissioner (or road commissioner, for counties that did not have a drain commissioner) would have to compute the project's cost and compile a special assessment roll.

A special assessment roll would have to describe the parcels of land to be assessed, the names of those who owned the parcels, if known, and the percent and dollar amount of the assessment against each parcel. The county board would have to set a time and place for one or more public hearings on the project's cost, special assessment district and special

assessment roll. Notice of a hearing would have to be given 1) by publication at least twice (the first time at least ten days before the hearing) prior to the hearing in a general circulation newspaper in the special assessment district and 2) as provided in Public Act 162 of 1962, which provides guidelines for giving notice of special assessment hearings.

The county board could provide that assessments under the act could be paid in installments. Assessment payments would have to be sufficient to meet bond obligations of the district, and special assessments would have to be placed onto the county tax rolls, would be subject to the same interest and penalty charges and would have to be collected just as county taxes were. When approved by the board, a special assessment would constitute a lien on the parcel assessed; the lien would have to be of the same character and effect as a lien created for county taxes. A payment for the cost of the preliminary study required in the bill would have to be credited against an assessment for the amount of the payment made by the person assessed.

Upon approval of the county board and subject to the Municipal Finance Act, the special district could issue bonds that would be payable by special assessments as provided. Bonds could not be issued exceeding that part of the project's cost that was to be financed. However, upon board approval the drain or road commissioner could accept the advance of work, material or money for a project. Also, the obligation to repay an advance out of special assessments could be evidenced by a note or contract. If the principal amount of all notes or contracts issued for a single project did not exceed \$300,000, a contract or note could not be considered an "obligation" as this term is defined under the Municipal Finance Act.

Computation of a Project's Cost. A computation of a normal level project's cost would have to include the cost of all of the following:

- * the preliminary study;
- * surveys;
- * establishing a special assessment district, including preparation of assessment rolls and levying assessments;
- * acquiring land and other property;
- * locating, constructing, operating, repairing and maintaining a dam or works of improvement needed to maintain the normal level;
- * legal fees, including estimated costs of appeals if assessments are not upheld;
- * court costs;
- * interest on bonds and other financing costs for the first year, if the project is financed in this manner; and
- * any other costs necessary for the project which could be specifically itemized.

At or after a public hearing, the county board could approve, or refer back to the drain or road commissioner for revision, the cost of the project, the special assessment district or the special assessment roll. Before a project was begun, the county board would have to approve the cost, district and special assessment roll by resolution. The special assessment roll with the assessments listed would be final and conclusive unless appealed in a court within 15 days after county board approval.

DNR Approval of Plans. The plans and specifications of a water level project would have to be approved by the DNR before construction could begin. The department would have to review and approve or reject the plans and specifications within 30 days after it received them. If they were rejected the department would have to propose changes so they could be approved. The department could require that a dam be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

The act currently specifies that a normal water level cannot be set for an artificial lake whose purpose is to provide a reservoir for a municipal water supply system unless this was petitioned for by a municipality's governing body. This provision would also apply when the state had title, flowage rights or easements to all riparian land surrounding the lake, unless the department petitioned for a water level determination.

The act requires counties to provide for the inspection of dams once every three years and requires inspection reports to be promptly submitted to the DNR director. If a report suggests that repairs are needed, the DNR must then conduct its own inspection to confirm the report. If the need for repairs is confirmed, the DNR may require the county to make them within six months after the inspection or to remove the dam. The bill specifies that plans and specifications for repairs to or replacement of a dam would have to be prepared by a licensed professional engineer under the county board's direction, and would have to be approved by the DNR before construction could begin. The DNR would have to review and approve or reject them within 30 days after it received them. If rejected, the department would have to propose changes to them so they could be approved. If a dam was in imminent danger of failure, the department could order an immediate lowering of the lake level until the dam was repaired or replaced.

The act now provides that if an inspection shows that a repair is needed, the drain or road commissioner may spend up to \$1,500 annually to accomplish this without the county board's approval. The bill would raise this threshold to \$5,000. Any expenditures needed for repairs above this amount would have to be approved by board resolution.

MCL 281.62 et al.