

Act No. 52  
Public Acts of 1992  
Approved by the Governor  
May 20, 1992  
Filed with the Secretary of State  
May 20, 1992

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1992**

Introduced by Rep. Gnodtke

# **ENROLLED HOUSE BILL No. 4857**

AN ACT to amend the title and sections 2, 3, 4, 5, 6, 8, 10, 11, 12, 14, 15, 16, 16a, 17, 18, 21, 22, 23, and 24 of Act No. 146 of the Public Acts of 1961, entitled "An act to provide for the determination and maintenance of the normal height and level of the waters in inland lakes of this state, for the protection of the public health, safety and welfare and the conservation of the natural resources of this state; to authorize the building and maintenance of dams and embankments to accomplish such purposes; to authorize the acquisition of lands and other property by gift, grant, purchase or condemnation proceedings; to authorize the acceptance of gifts and grants of funds for the construction and maintenance of such dams and embankments; to authorize the raising of money by taxation and by special assessments for the purposes of this act; to prescribe the duties and powers of boards of supervisors, the conservation department of Michigan and county drain commissioners with reference hereto; and to repeal certain acts and parts of acts," being sections 281.62, 281.63, 281.64, 281.65, 281.66, 281.68, 281.70, 281.71, 281.72, 281.74, 281.75, 281.76, 281.76a, 281.77, 281.78, 281.81, 281.82, 281.83, and 281.84 of the Michigan Compiled Laws; to add sections 17a, 17b, 17c, and 25; and to repeal certain parts of the act.

*The People of the State of Michigan enact:*

Section 1. The title and sections 2, 3, 4, 5, 6, 8, 10, 11, 12, 14, 15, 16, 16a, 17, 18, 21, 22, 23, and 24 of Act No. 146 of the Public Acts of 1961, being sections 281.62, 281.63, 281.64, 281.65, 281.66, 281.68, 281.70, 281.71, 281.72, 281.74, 281.75, 281.76, 281.76a, 281.77, 281.78, 281.81, 281.82, 281.83, and 281.84 of the Michigan Compiled Laws, are amended and sections 17a, 17b, 17c, and 25 are added to read as follows:

## **TITLE**

An act to provide for the determination, establishment, and maintenance of the normal levels of the inland lakes of this state for the protection of the public health, safety, and welfare and the conservation of the natural resources of this state; to authorize the building and maintenance of dams to accomplish those purposes; to authorize the acquisition of lands and other property by gift, grant, purchase, or condemnation proceedings; to authorize the acceptance of gifts and grants of funds for the construction and maintenance of such dams; to authorize the raising of money by taxation and by special assessments for the purposes of this act; to authorize the issuance of bonds and notes; to authorize the pledge of the full faith and credit of a county for the payment of bonds and notes; to prescribe certain duties and powers of county boards of commissioners, the department of natural resources, county drain commissioners, and certain county road commissions; and to repeal certain acts and parts of acts.

Sec. 2. As used in this act:

(a) "Commissioner" means the county drain commissioner or the county road commission in counties not having a drain commissioner, and, if more than 1 county is involved, each of the drain commissioners or drain commissioner and road commission in counties having no drain commissioner.

(b) "County board" means the county board of commissioners, and if more than 1 county is involved, the boards of commissioners of each of those counties.

(c) "Court" means a circuit court, and if more than 1 judicial circuit is involved, the circuit court designated by the county board or otherwise authorized by law to preside over an action.

(d) "Dam" means an artificial barrier, structure, or facility, and appurtenant works, used to regulate or maintain the level of an inland lake.

(e) "Delegated authority" means the county drain commissioner or any other person designated by the county board to perform duties required under this act.

(f) "Department" means the department of natural resources.

(g) "Inland lake" means a natural or artificial lake, pond, impoundment, or a part of 1 of those bodies of water. Inland lake does not include the Great Lakes or Lake St. Clair.

(h) "Interested person" means a person who has a record interest in the title to, right of ingress to, or reversionary right to land which would be affected by a permanent change in the natural or normal level of an inland lake; and the department.

(i) "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 shall be measured and described as an elevation based on national geodetic vertical datum.

Sec. 3. (1) The county board of a county in which an inland lake is located may upon the board's own motion, or shall within 45 days following receipt of a petition to the board of 2/3 of the owners of lands abutting the inland lake, initiate action to take the necessary steps to cause to be determined the normal level of the inland lake.

(2) Unless required to act by resolution as provided in this act, the county board may delegate powers and duties under this act to that county's commissioner, road commission, or other delegated authority.

(3) If a court determined normal level is established pursuant to this act, the delegated authority of the county or counties in which the lake is located shall maintain that normal level.

Sec. 4. (1) Before proceeding on a motion made or a petition filed under section 3, the county board may require that a preliminary study be conducted by a licensed professional engineer. The county board, by resolution, may require a cash payment from the petitioners sufficient to cover the actual preliminary study costs or \$10,000.00, whichever is less.

(2) A preliminary study shall include all of the following:

(a) The feasibility of a project to establish and maintain a normal level of the inland lake.

(b) The expediency of the normal level project.

(c) Feasible and prudent alternative methods and designs for controlling the normal level.

(d) The estimated costs of construction and maintenance of the normal level project.

(e) A method of financing initial costs.

(f) The necessity of a special assessment district and the tentative boundaries if a district is necessary.

(g) Other information which the county board resolves is necessary.

Sec. 5. (1) If the county board, based on the preliminary study, finds it expedient and resolves to have determined and established the normal level of an inland lake, the county board shall direct the prosecuting attorney or other legal counsel of the county to initiate by proper petition in the court of that county a proceeding for determination of the normal level for that inland lake and for establishing a special assessment district if the county board determines by resolution that one is necessary as provided in section 15.

(2) If the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined in the same manner if the county boards of all counties involved, by resolution, direct the prosecuting attorney or other legal counsel of 1 or more of the counties to institute proceedings. All counties may make a single preliminary study.

(3) The department may join a proceeding initiated under this section.

Sec. 6. (1) The special assessment district may issue bonds or lake level orders in anticipation of special assessments. All proceedings relating to the making, levying, and collection of special assessments authorized by this act and the issuance of bonds or lake level orders in anticipation of the collection of bonds or orders shall conform as near as may be to the proceedings for levying special assessments and issuing special assessment bonds or lake level orders as set forth in the drain code of 1956, Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.630 of the Michigan Compiled Laws.

(2) The special assessment district may issue notes in anticipation of special assessments made against lands in the special assessment district or public corporation at large. The final maturity of the notes shall be not later than 10 years from their date. The notes shall not be considered to be obligations within the meaning of the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, unless the principal amount exceeds \$500,000.00.

(3) A county board by a vote of 2/3 of its members may pledge the full faith and credit of a county for payment of bonds or notes issued by a special assessment district.

Sec. 8. If the department finds it expedient to have the normal level of an inland lake determined, the director of the department may initiate a civil action on behalf of the state, in the court of any county in which the lake is located, a proceeding for determination of the normal level.

Sec. 10. (1) Upon filing of a civil action under this act, the court shall set a day for a hearing. The prosecuting attorney or other legal counsel of the county or counties or the department shall give notice of the hearing by publication in 1 or more newspapers of general circulation in the county and, if the waters of the inland lake are situated in 2 or more counties, in 1 or more newspapers of general circulation in each of the counties in which the inland lake is located. The notice shall be published at least once each week for 3 successive weeks before the date set for the hearing.

(2) The commissioner shall serve a copy of the published notice of hearing by first class mail at least 3 weeks prior to the date set for the hearing to each person whose name appears upon the latest city or township tax assessment roll as owning land within a tentative special assessment district at the address shown on the roll; to the governing body of each political subdivision of the state in which the lake is located; and to the governing body of each affected political subdivision of the state. If an address does not appear on the roll, then a notice need not be mailed to the person. The commissioner shall make an affidavit of mailing. The failure to receive a notice properly mailed shall not constitute a jurisdictional defect invalidating proceedings under this act.

(3) The prosecuting attorney or the legal counsel of the county shall serve notice on the department at least 21 days prior to the date of the hearing.

(4) In a determination of the normal level of an inland lake, the court shall consider all of the following:

- (a) Past lake level records, including the ordinary high water mark and seasonal fluctuations.
- (b) The location of septic tanks, drain fields, sea walls, docks, and other pertinent physical features.
- (c) Government surveys and reports.
- (d) The hydrology of the watershed.
- (e) Downstream flow requirements and impacts on downstream riparians.
- (f) Fisheries and wildlife habitat protection and enhancement.
- (g) Upstream drainage.
- (h) Rights of riparians.
- (i) Testimony and evidence offered by all interested persons.
- (j) Other pertinent facts and circumstances.

(5) The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this act. The court shall confirm the special assessment district boundaries within 60 days following the lake level determination. The court may determine that the normal level shall vary seasonally.

Sec. 11. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the county, the delegated authority of any county or counties in which the inland lake is located shall provide for and maintain that normal level.

(2) A county may acquire, in the name of the county by gift, grant, purchase, or condemnation proceedings, an existing dam which may affect the normal level of the inland lake, sites for dams, or rights in land needed or convenient in order to carry out the purposes of this act. A county may enter into a contract for operation and maintenance of an existing dam. The county may construct and maintain a dam that is determined by the delegated authority to be necessary for the purpose of maintaining the normal level. A dam may be acquired, constructed, or maintained in a county adjoining the county in which the lake is located.

(3) For the purpose of maintaining the normal level, a delegated authority may drill wells or pump water from another source to supply an inland lake with additional water, may lower the level of the lake by pumping water from the lake, and may purchase power to operate pumps, wells, or other devices installed as part of a normal level project.

Sec. 12. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the department, the department may provide for and maintain that normal level.

(2) In a proceeding initiated by the department, the department has the same powers in connection with a normal level project as a county has under sections 11, 16a, and 18.

Sec. 14. If the department or the delegated authority determines that it is necessary to condemn private property for the purpose of this act, the department or county may condemn the property in accordance with the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

Sec. 15. (1) The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following which are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under the jurisdiction and control of the department. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

(2) If the revenues raised pursuant to the special assessment are insufficient to meet the computation of cost included in section 16, or if these revenues are insufficient to meet bond obligations, the special assessment district may be reassessed without hearing using the same apportioned percentage used for the original assessment.

Sec. 16. (1) Computation of the cost of a normal level project shall include the cost of all of the following:

(a) The preliminary study.

(b) Surveys.

(c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments.

(d) Acquiring land and other property.

(e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level.

(f) Legal fees, including estimated costs of appeals if assessments are not upheld.

(g) Court costs.

(h) Interest on bonds and other financing costs for the first year, if the project is so financed.

(i) Any other costs necessary for the project which can be specifically itemized.

(2) The delegated authority may add as a cost not more than 15% of the sum calculated under subsection (1) to cover contingent expenses.

Sec. 16a. The delegated authority of a county in which an inland lake is located may contract with a state or federal government agency, or a public or private corporation, in connection with a project for the establishment and maintenance of a normal level. The contract may specify that the agency or corporation will pay the whole or a part of the cost of the project or will perform the whole or a part of the work connected with the project. The contract may provide that payment made or work done relieves the agency or corporation in whole or in part from assessment for the cost of establishment and construction of the project.

Sec. 17. (1) A special assessment roll shall describe the parcels of land to be assessed; the name of the owner of each parcel, if known; and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper which circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

Sec. 17a. (1) The county board may provide that assessments under this act are payable in installments.

(2) Assessment payments shall be sufficient to meet bond and note obligations of the special assessment district.

(3) Special assessments under this act shall be spread upon the county tax rolls, and shall be subject to the same interest and penalty charges and shall be collected in the same manner as county taxes.

(4) From the date of approval of the special assessment roll by the county board, a special assessment under this act shall constitute a lien on the parcel assessed. The lien shall be of the same character and effect as a lien created for county taxes.

(5) A payment for the cost of the preliminary study under section 4 shall be credited against an assessment for the amount of the payment made by the person assessed.

Sec. 17b. With approval of the county board and, except as provided in section 17c, subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, the district may issue bonds or notes that shall be payable by special assessments under this act. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

Sec. 17c. The delegated authority may accept the advance of work, material, or money in connection with a normal level project. The obligation to repay an advance out of special assessments under this act may be evidenced by a note or contract. If the principal amount of all notes or contracts issued under this section for a single normal level project is not more than \$500,000.00, a contract or note shall not be considered an obligation within the meaning of Act No. 202 of the Public Acts of 1943.

Sec. 18. Plans and specifications for a dam constructed or maintained under this act shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. Bids for doing the work may be advertised in the manner the delegated authority directs. The contract shall be let to the lowest responsible bidder giving adequate security for the performance of the contract but the delegated authority may reserve the right to reject any and all bids. The county may erect and maintain a dam as a work relief project in accordance with the provisions of the law applicable to a work relief project.

Sec. 21. (1) The department may require that a new dam that is proposed to be constructed be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

(2) The department may require the installation of a fish ladder or other device to permit the free passage of fish.

Sec. 22. A person who is not authorized by a delegated authority or the department to operate a dam or other normal level control facility and who changes, or causes to change, the level of an inland lake, the normal level of which has been established under this act, or any previous act governing lake levels, and for which the delegated authority or the department has taken steps to maintain the normal level, is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, and shall be required to pay the actual cost of restoration or replacement of the dam and any other property including any natural resource that is damaged or destroyed as a result of the violation.

Sec. 23. A normal level shall not be established for an inland lake in either of the following cases:

(a) The inland lake is used as a reservoir for a municipal water supply system, unless a normal level determination is petitioned for by the governing body of the municipality.

(b) The state has title, flowage rights, or easements to all riparian land surrounding the inland lake, unless a normal level determination is petitioned for by the department.

Sec. 24. (1) The delegated authority of a county shall cause an inspection to be made of each dam on an inland lake within the county which has a normal level established under this act or under any previous act

governing lake levels. The inspection shall be conducted by a licensed professional engineer. The inspection shall take place every third year from the date of completion of a new dam or every third year from the determination of a normal level for an existing dam. An inspection report shall be submitted promptly to the director of the department in the form and manner the director prescribes.

(2) If a report discloses a need for repairs or a change in condition of the dam that relates to the dam's safety or danger to natural resources, the department shall conduct an inspection to confirm the report. If the report is confirmed and the public safety or natural resources are endangered by the risk of failure of the dam, the department may require the county either to repair or replace the dam. Plans and specifications for the repairs or replacement shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. If the dam is in imminent danger of failure, the department may order an immediate lowering of the lake level until necessary repair or replacement is complete.

(3) A person failing to comply with this section, or falsely representing dam conditions, is guilty of misconduct in office.

(4) If an inspection discloses the necessity for maintenance or repair, the delegated authority, without approval of the county board, may spend not more than \$10,000.00 annually for maintenance and repair of each lake level project. An expenditure of more than \$10,000.00 annually shall be approved by resolution of the county board.

Sec. 25. This amendatory act shall not be construed to abrogate the requirements of other state statutes.

Section 2. Sections 7, 9, 13, 19, and 20 of Act No. 146 of the Public Acts of 1961, being sections 281.67, 281.69, 281.73, 281.79, and 281.80 of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.