



**House
Legislative
Analysis
Section**

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EMERGENCY DREDGING LOANS

**House Bill 5854 as enrolled
Public Act 280 of 2000
Second Analysis (7-17-00)**

**Sponsor: Rep. Scott Shackleton
House Committee: Appropriations
Senate Committee: None (Placed on
Immediate Passage)**

THE APPARENT PROBLEM:

A combination of lower precipitation and high temperatures, coupled with relatively little snow, has caused water levels in the Great Lakes basin to drop dramatically during the past three years. In fact, according to the National Oceanic and Atmospheric Administration's Great Lakes Environmental Research Laboratory in Ann Arbor, Lakes Huron and Michigan, which are really one body of water, have dropped about three feet, the biggest drop in 140 years of record keeping (*New York Times*, April 25, 2000). These levels appear to be due mainly to natural cycles: drought is a persistent and permanent feature of weather and climate that affects some part of the country almost every year. However, the result is a strain on a region's natural resources. In particular, Michigan's billion-dollar water recreation industry will be hard hit. In fact, many marinas indicate they may have to close for the 2000 boating season, since they no longer have enough water to hold boats.

Concern over the situation spurred the Michigan Boating Industries Association (MBIA) to engage the services of Michigan State University (MSU) in conducting a study to estimate the effects of low water on the state's commercial marinas in 1999 (*The Impacts of Low Water on Michigan Great Lakes Marinas, A Report for Michigan Boating Industries Association*, Edward Mahoney, Chang Tzu-Ching, Charles Pistis, and Lori Martin, Michigan State University, April 2000). The study concluded that the impact was significant: 51 percent of the area's commercial marinas were affected negatively. In some cases, the impact was catastrophic:

- Low water levels impacted more than 51 percent of the marinas during 1999.
- 35 percent of the marinas had slips that were unusable, and 27 percent had slips that could not hold the size of boats they were designed to accommodate.

- 26 percent of the commercial marinas had to do unscheduled dredging because of low water.
- 19 percent had facilities, such as fuel docks, pump-outs, and launches, that were inaccessible.
- It was estimated that low water levels cost Michigan's commercial marinas \$11.1 million.

Money has been budgeted this year to dredge public harbors and Michigan Waterways Commission-sponsored harbors. However, these are only a small percentage of the state's marinas. The majority are privately owned. In spite of heavy spring rains, long range forecasts predict below-normal rainfall. As a result, low lake levels will again affect the 2000 boating season. Suggestions on how to help privately-owned marinas in this situation include providing low-interest loans. This approach has been used in the past, for example, for farm loan programs, and for the Chrysler "bailout" program.

THE CONTENT OF THE BILL:

The bill would amend Public Act 105 of 1855, which regulates the disposition of surplus funds in the state treasury, to permit such funds to be invested in certificates of deposit (CDS), or other financial instruments, and used for marina dredging loans (defined under the bill to mean a loan of up to \$75,000 each made to a marina owner by a financial institution for dredging costs that were incurred after January 1, 2000, and that were necessitated by low water levels to accommodate the use of the marina by recreational watercraft). The key points of the bill are as follows:

- The bill would permit the state treasurer to invest up to \$20 million in surplus state revenues.
- Loans would have to be paid back within seven years.

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- The amount that could be loaned could not exceed \$75,000.
- Financial institutions would not be required to repay any principal within the first three years.
- Loans would have to be conveniently available in all geographic regions of the state.
- Loans could not be released by a financial institution unless the loan applicant had certified that the marina qualified as an “eligible marina.”

(Note: To be eligible, under the bill, a marina would have to be a privately owned commercial facility that extended into or over the Great Lakes and their connecting waters navigable by motorized watercraft from a Great Lake; that provided docking, mooring or launching services available to the general public for recreational boating; that provided mooring facilities for no more than 200 recreational watercraft through the use of docks, slips, or broadside mooring; and that had received the required permits from the Departments of Natural Resources and Environmental Quality and the U.S. Army Corps of Engineers.)

Investments. The bill would allow the state treasurer to invest surplus funds in CDS or other instruments of a financial institution that was qualified, under the provisions of the act, to receive deposits or investments of surplus funds, for the purpose of facilitating marina dredging loans. The bill would specify that an investment made under the provisions of the act would be found and declared as having a valid public purpose; that documentation for an investment would have to be approved by the attorney general as to its legal form; and that the aggregate amount of these investments could not exceed \$20 million.

The state treasurer could take actions to ensure that no new marina dredging loans were made if the directors of the Departments of Natural Resources and Environmental Quality determined that Great Lakes’ water levels had changed significantly and diminished the need to encourage marina dredging loans. Such a determination would not affect existing marina dredging loans that were attributable to an investment made under the provisions of the bill.

Investment Agreements. The treasurer could enter into an investment agreement with a financial institution to invest surplus funds in CDS or other instruments of a qualified financial institution to provide loans for the

dredging of marinas. The state would be required to make investments in financial institutions such that marina dredging loans would be conveniently available in all geographic regions in the state. The investment agreement would be required to contain all of the following:

- The term of an investment, which could not be more than ten years.
- A requirement that the interest accruing on the investment could not be more than the interest earned by the financial institution on marina dredging loans made after the investment date.
- A requirement that the financial institution would have to provide good and ample security, as would be required by the state treasurer, and identify the marina dredging loans and the terms and condition of those loans that were made after the investment date that were attributable to that investment, together with other information required under the provisions of the act.
- A requirement that a marina dredging loan that was attributable to an investment would have to be issued at a rate or rates that were established in the investment agreement.
- A requirement that a marina dredging loan made by the financial institution that was attributable to the investment would have to be made no later than three years after the effective date of the bill.
- A requirement that a loan that was attributable to the investment would be issued for a loan repayment period of not more than seven years, and in an amount that could not exceed \$75,000.
- A requirement that, to the extent that a financial institution had not made marina dredging loans in an amount at least equal to the investment amount within 90 days after the investment, the interest rate payable on that portion of an outstanding investment would be increased to a rate provided in the investment agreement, with the increase in the interest rate applied retroactively to the date on which the state treasurer had invested the surplus funds.
- The requirement that, for marina dredging loans, a financial institution would not have to repay any principal within the first three years after an investment was made, unless the investment was no longer being used to make a marina dredging loan, or to the extent the marina dredging loan had been repaid.

- Incentives for the early repayment of the investment and for the acceleration of payments in the event of a state case shortfall, as prescribed by the agreement.
- Other terms as prescribed by the state treasurer.

Investment Earnings. Earnings from an investment for a dredging loan that *exceeded* the average rate of interest earned during the same period on other surplus funds would be credited to the general fund. This condition would not apply to surplus funds invested under provisions of the act that regulate loans made to municipalities.

If interest from an investment was *below* the average rate of interest earned during the same period on other surplus funds, other than those invested under provisions regulating loans made to municipalities, the general fund would be reduced by the amount of the deficiency on an amortized basis over the remaining term of the investment.

A loss of principal from an investment would reduce the earnings of the general fund by the amount of that loss on an amortized basis over the remaining term of the investment.

Reports to the Legislature. The state treasurer would be required to prepare and submit annual reports to the legislature regarding the disposition of money invested for marina dredging loan purposes. The reports for each type of loan would have to include all of the following information: the total number of marina owners who had received such loans; the total number and amounts of loans, by county; and the name of each financial institution participating in the loan program and the amount invested in each institution for the program's purposes.

Other. The state treasurer could take any necessary action to ensure the successful operation of the provisions of the bill, including making investments with financial institutions to cover the administrative and risk-related costs associated with a marina dredging loan.

Annually, each financial institution in which the state treasurer had made an investment under the provisions of the bill would be required to file an affidavit, signed by a senior executive officer of the institution, stating that the institution was in compliance with the terms of the investment agreement.

FISCAL IMPLICATIONS:

A House Fiscal Agency (HFA) estimate notes that the state would receive interest from the CDs equal to the amount collected by the financial institution, as provided in the investment agreement. This would result in indeterminate revenues. However, the HFA estimate also notes that investment revenue could be reduced should investment opportunities that offered a greater rate of return be foregone in lieu of lower-rate CDs for dredging loans. (7-17-00)

ARGUMENTS:

For:

Low water levels in the Great Lakes are going to be a major concern during the next few summers, as they approach their lowest levels in 35 years. Low water levels have some benefits, such as less erosion and bigger beaches. In fact, some lakeside property owners see this as a reprieve from the problems and negative impacts associated with high water levels in the 1980s. However, the disadvantage is the severe economic impact on the tourism that flourishes because of boating opportunities on the lakes. Many people maintain that the tourism industry will face an economic crisis unless the state intervenes with low-interest loans.

It should be noted that the provisions of the bill are intended to help small, family-owned marinas by providing low-cost loans. For these businesses the costs of digging out the bottom land of lakes to create enough room for boats can be crippling. A study conducted by Michigan State University, in cooperation with the Michigan Boating Industries Association, indicates that, if water levels fall 6 inches lower than 1999 levels, the estimated costs and lost revenues could be as high as \$30.1 million. If levels drop 12 inches, the cost could be \$41.8 million.

Response:

Some people maintain that the state has more serious issues to contend with, such as finding more funds for senior health issues and for Medicaid, than coming to the aid of private marinas. Others object to the use of public funds for what are, essentially, private purposes. Still others criticize the program as being "too little, too late," since the state is already well into the boating season. Finally, others caution against the precedent that might be set by foregoing greater interest rates from other investment opportunities in order to finance private work.

Against:

Climatologists predict long-range forecasts of below-normal rainfall and above-normal temperatures, indicating that there will be huge recreational losses in the future. In fact, many experts believe that another Dust Bowl or even worse drought could be in the country's future. Such phenomena are not rare; they occur about once or twice a century (*New York Times*, April 25, 2000). For that reason, some of those who submitted testimony before the House Conservation and Outdoor Recreation Committee on a related issue have proposed other methods of handling the problem of high water levels, as follows:

The MSU study noted that there were also problems and negative impacts associated with high water levels during the 1980s. As such, the study suggests that a long-range plan is called for. The MSU report concluded that the state should develop a recreational boating plan that includes *proactive* strategies for maintaining and enhancing the commercial and public components of the recreational boating system, and recommended that strategies for dealing with fluctuating water levels should be incorporated into the strategic plan currently being developed by the Michigan Waterways Commission. Noting that some farmland is currently taxed on a preferential basis to maintain it in farming and for public open spaces, and that other industries are provided tax advantages to locate or expand plants in Michigan, the study recommends using tax incentives to sustain and enhance commercial marinas.

In a letter to the Departments of Environmental Quality (DEQ) and Natural Resources (DNR), the Michigan United Conservation Clubs (MUCC) argued for consideration of the problem of low water levels from both a short-term and a long-term viewpoint. Specifically, they point out that proposed plans to dredge in Lake St. Clair and the St. Clair and Detroit rivers now -- during traditional "no dredge" times -- could lead to significant losses in year classes of self-sustaining coolwater fish in the region. Noting that the "no dredge" window was instituted to protect fish spawning habitat and to promote successful reproduction of age classes of fish in the rivers and lake. They point out that dredging at this time would

likely solve one crisis at the expense of creating another in three to five years. Therefore, if low water levels are only a short-term issue, they question the potential sacrifice of future fisheries to accommodate access for a relatively short period of time. Conversely, if water levels remain low and create long-term access problems, the MUCC asserts that the state should not rush into solutions to improve access without evaluating the resulting impact and trade-off.

The following are among the suggestions put forward by the MUCC in its letter:

- 1) Rather than process dredging permits on a first-come, first-served basis, consideration should be taken on issues such as the number of boats and the number of people that use the access point, and whether the area will directly impact areas critical to fish reproduction.
- 2) Since contaminants such as benzene from boat engine fuel are likely to be found in high levels at boat ramps and harbors due to spillage, it is essential that they be tested and disposed of properly.
- 3) Dredging of public bottomlands should be prioritized so that large amounts of state-owned bottomlands are not sacrificed unnecessarily.

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