

VIA: Ms. Legan Rose, Clerk (LRose@house.mi.gov)
Anderson House Office Building
124 North Capitol Avenue
Lansing, Michigan 48933

Hon. Representative Members- Natural Resources, Environment, Tourism and Outdoor Recreation
Committee of the Michigan House of Representatives

RE: SUPPORT TESTIMONY
Senate Bill No. 662
2024 Legislative Session

Hon. Representative Pohutsky, Representative Hill, Representative Martin and Committee Members:

Greetings and thank you for your service to our Great Lakes State. Please accept this letter as testimony of support for Senate Bill (SB) 662, which I understand has been committed to your review in Committee. SB-662 amends Part 307 of the Natural Resources and Environmental Protection Act (NREPA) that deals with Inland Lake Levels.

Particularly important in this bill before you is the proposed reform to the definition of “normal level”, currently codified under MCL 324.30701(h). Amendment to the “normal level” definition is essential if the inland lake and stream natural resources of the State are to be adequately protected.

The Senate’s review of the bill included the testimony received by the Local Government Committee. I’ve enclosed one submittal to that Committee with this letter of support. This letter attachment is prepared by Lucas Trumble, PE. Mr. Trumble is Supervisor of the Dam Safety Unit of the Water Resources Division of the Department of Environment Great Lakes and Energy (EGLE). His testimony to the Senate is authoritative and comprehensive. The EGLE testimony captures much of what I hope to offer in support to your Committee deliberations. I’ve taken the liberty to highlight portions of the EGLE testimony, beginning on page 2 of the attachment.

The EGLE testimony highlights the impracticality of attempting to control any of the 352 Circuit Court-ordered lake level to an absolute, fixed level- there is an absence of infrastructure ability to control flows out of the lakes. I experience this “limited control” with the lake level control structures (dams) I operate as Drain Commissioner for Grand Travers County. These include Silver Lake and Duck Lake.

Silver Lake is just outside Traverse City limits in Garfield and Blair Townships. The lake level control structure provides no mechanism to increase flow out of Silver Lake aside from the piping associated with the dam at the south end of the lake. Beyond the dam and its controls, the water exiting the lake must navigate several culverts and open channels which are beyond the jurisdiction of the Drain Commissioner. These controlling structures are owned/operated by the:

- ❖ Michigan Department of Transportation,
- ❖ Grand Traverse County Road Commission,
- ❖ Great Lakes Central Railroad, and
- ❖ Several private property owners

Level control on Silver Lake requires control of the rate of water exiting the lake and this water then reaching, without restriction; Beitner Creek, then the Boardman/Ottaway River and, finally Grand Traverse Bay.

If any of the downstream culverts impede flow out of the lake- whether by collapse, sedimentation, ice or other obstruction- then outflow cannot be controlled and lake level may rise above the “normal level”. As Mr. Trumble accurately identified on page 1 of his testimony, “normal level” **was not** generally understood to be an absolute, finite elevation prior to the recent litigation and ruling from the Michigan Court of Appeals.

The Silver Lake downstream limitation is just one example of the inability to maintain a “normal level” at a solitary, unwavering, and absolute elevation. Please let me offer another different example from Duck Lake in Grand Traverse County. This lake is in Green Lake Township and discharges its flows through the Duck Lake Dam- a Part 307 lake level control structure. This flow forms the headwaters of the Betsie River. The Betsie River is a cold-water trout stream that meets Lake Michigan as it flows into Betsie Lake at the Frankfort-Elberta estuary.

To maintain the Circuit Court ordered “normal level” for Duck Lake, the County also must comply with an EGLE Administrative Consent Order (ACO) that mandates minimum outflows for each month of the year that must pass through the dam. Thus, “normal level” maintenance is a tightrope walk with an EGLE ACO to maintain flow and a Court order that might dictate **no-flow**.

These conflicting maintenance requirements create operating conditions that are harmful to the ecology of the Betsie River. This “order whipsaw” produces unnatural flows that can emerge stream bed during low flows or fill the stream beyond its banks during high flows. This erodes the upper Betsie River when endeavoring to maintain “normal level”. Further; downstream factors beyond the County’s control structure include culverts (like those cited above at Silver Lake) but also include natural impediments to stream flow such as beaver dams and forest deadfall.

SB 662 amends the definition of “normal level” to allow for ranges in the Court-ordered lake elevation, providing a tolerance to the discrete elevation to accommodate weather conditions, seasonal fluctuations, natural events (beaver, etc.). Accommodating these natural variations in inflow and outflows allows operation and maintenance of “normal level” in harmony with the natural environment. This is necessary to mitigate harm to our precious, freshwater natural resources and the environment nourished by natural flows.

Please schedule a hearing on this bill. Please amend the Inland Lake Levels statute to modify “normal level” and thereby protect and preserve the environment. Please move this legislation forward to the Governor’s desk as soon as possible. The benefits to the environment summarized here and all the benefits outlined in EGLE’s testimony are worthy of your Committee’s expeditious consideration.

Respectfully submitted:



Andrew Smits, PE
Drain Commissioner

enc. EGLE Testimony to Michigan Senate Local Government Committee in Support of SB-662

cc: Hon. Representative John Roth
Hon. Representative Betsy Coffia
Mr. Brian McAllister, Grand Traverse County Commissioner- District #1
Mr. Brad Jewett, Grand Traverse County Commissioner- District #4
Ms. T. J. Andrews Grand Traverse County Commissioner- District #7
Mr. Marvin D. Radtke, Jr., Supervisor- Green Lake Township
Mr. Chuck Korn, Supervisor- Garfield Charter Township
Ms. Nicole Blonshine, Supervisor- Blair Township
Mr. Ken Kaufman, President- Silver Lake Improvement Association
Mr. Ken Schonhoff, President- Duck Lake Peninsular Shores Association
Mr. Edward Dewey, President- Green Lake and Duck Lake Association
Mr. Joe Bush, Legislative Committee Chair- Michigan Association of County Drain Commissioners

EGLE-WRD

Supplemental Background Information for SB662

Prepared by: Lucas A. Trumble, P.E., Supervisor
Dam Safety Unit
Water Resources Division, EGLE
February 6, 2024

Background

Part 307, Inland Lake Levels, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (“Part 307”, MCL 324.307), provides the framework for establishing normal levels, currently defined as follows:

“(h) "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.”

Once a normal level of an inland lake is established in circuit court, the County assigns the responsibility to maintain that lake level to a “delegated authority”, which is typically the County Drain Commissioner but not in all cases. Section 30701(e) (MCL 324.30701e) defines delegated authority as follows:

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

Section 30702(3) (MCL 324.30702(3)) further defines the responsibility of the delegated authority:

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

In practice, the delegated authority will typically maintain a normal lake level through acquisition of property and construction and/or maintenance of a dam.

In 2019, Citizens for Higgins Lake Legal Levels sued Roscommon County for failing to maintain the normal levels* of Higgins Lake exactly as defined in the 1982 court order which established the normal levels of the lake. A March 18, 2022, opinion by the State of Michigan Court of Appeals overturned a previous Roscommon County Circuit Court decision that stated that the “normal level” as defined under Part 307 was a target level, and that minor deviations from the normal level did not constitute violation of the lake level order. The Court of Appeals opinion differed from the lower court’s decision in that it concludes that the intent of the legislature, when drafting Part 307, was that a delegated authority “shall” maintain the “normal level” of the lake and therefore should petition the circuit court each time

**The 1982 circuit court order establishing the normal level of Higgins Lake contains both a summer (1154.11 feet NGVD29) and winter level (1153.61 feet NGVD29).*

any departure from the normal level is necessary and that there is no discretion built into the statute or circuit court order.

The below analysis demonstrates that, given the inconsistent nature of precipitation and stream flows, coupled with the limited ability of dams to regulated water levels; it is impractical or even impossible to maintain normal lake levels exactly, and that departures from the normal level occur very frequently. If the provisions in SB662 redefining “normal level” are not adopted, counties who maintain lake level control structures will, more often than not, be in violation of Part 307 and the circuit court orders which established the normal levels on their lakes.

At the time of this analysis, there were 352 lakes in Michigan with circuit court ordered normal levels, either established under Part 307 or one of its predecessors. Of those 352 lakes, only 131 had dams at the outlet with what’s known as a controlled spillway, or a spillway which has any ability to regulate flows out of the lake such as stoplogs, gates, valves, etc. Of the remaining lakes, 180 had dams with uncontrolled spillways, or what’s known as “fixed crest” spillways which do not have any mechanisms for regulating flows or controlling lake levels. The remaining 41 have undefined spillway control, indicating that EGLE’s Dam Safety Unit either does not have enough information to establish the nature of the spillway, or has not updated the inventory database to indicate spillway control.

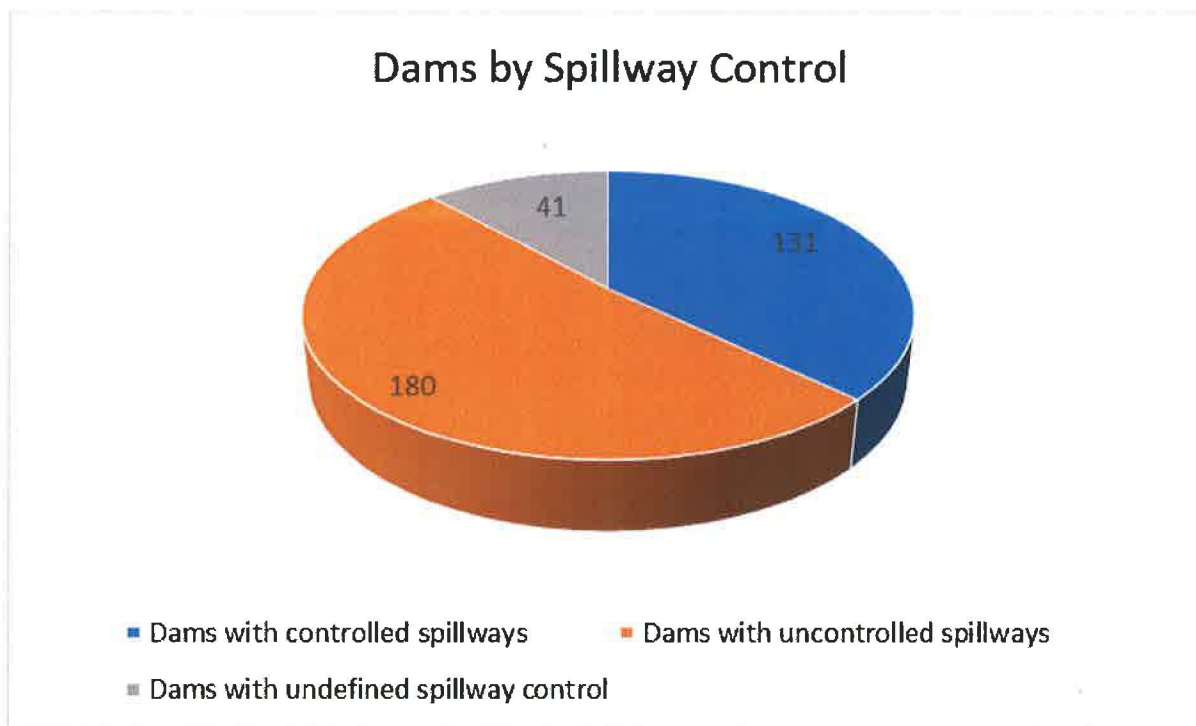


Figure 1. Dams in Michigan by Spillway Control Type
Source: EGLE-WRD Dam Inventory Database as of March 22, 2022

By nature, controlled spillways have some ability to regulate lake levels by adjust stoplog levels or gate/valve openings increase or decrease outflow from the lake. However, controlled spillways have a finite capacity to maintain an exact lake level. When flows increase beyond the capacity of the gates or valves to incrementally control the water surface elevation, increases in lake levels will occur.



Figure 2. Example of a controlled spillway with several gates.

Source: EGLE 2019 Dam Safety Inspection Report – Hamlin Lake Dam

Uncontrolled spillways have no mechanism to perform this function, so flow depths, and lake levels, are subject to fluctuation with increased rainfall or drought conditions. Any change in flow rate, up or down, will cause an increase or decrease in lake level, respectively.



Figure 3. Example of an uncontrolled spillway with a fixed crest.

Source: EGLE 2019 Dam Safety Inspection Report – Hoister Lake Dam

No matter what type of spillway exists, all dams have limitations in which they can incrementally control lake levels, in that if rainfall and inflows to the dam increase beyond the hydraulic capacity of the dam, increases in lake level will occur. Conversely, if drought conditions persist, losses from the reservoir from evaporation, irrigation, infiltration, or other means can cause the flows at the dam to decrease, and the lake level will fall. It is impossible for dam operators to maintain exact lake level levels when these factors are considered. Additionally, natural fluctuations improve ecology of lakes, including the health of native plants and fish communities. Eliminating these fluctuations would be expected to have negative impacts on the health of the lake.

In conclusion, EGLE-WRD supports the amendments proposed in SB662, in that:

1. An exact level from which any departure would result in violation of Part 307 and the circuit court order establishing the level would seem to be a too-literal interpretation of legislative intent.

2. Per the above analysis, less than 40% of all Part 307 regulated dams have any ability to regulate lake levels over a range of flow conditions. The remaining >60% have no ability to regulate lake levels over any range of flow conditions. All dams will fail to maintain a static lake level at some point.
3. There has been a large uptick in Counties petitioning the circuit courts to amend lake level orders to allow for deviations from the normal level. This is in direct response to the Higgins Lake decision and has placed additional burden on the Counties and State Agencies.
4. The proposed amendments would allow for fluctuations of lake levels to occur due to flow conditions and as otherwise permitted by EGLE. This both protects the health of the lakes and will also protect counties from being sued for not maintaining lake levels exactly and lessen the burden associated with lake level order amendments to allow for deviations.