

**PROCEDURES FOR STABILIZING INLAND LAKE LEVELS UNDER
PART 307, INLAND LAKE LEVELS, OF THE
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
1994 PA 451, AS AMENDED**

This document is intended to familiarize interested parties, including local government officials and lake property owners, with the procedures for establishing and maintaining normal (legal) lake levels under Part 307 of Act 451.

I. Establishing a Legal Level(s)

- A. Action to establish a legal level(s) can be initiated by:
 - 1. Petition to the County Board of Commissioners of two-thirds of the owners of land abutting the lake.
 - 2. Motion of the County Board of Commissioners.

- B. Before proceeding on a motion or a petition to establish a legal level, the County Board of Commissioners may require the preparation of a preliminary study to determine the feasibility of establishing and maintaining a legal level(s) of the lake. The county may require a cash payment of up to \$10,000 to cover the cost of the preliminary study.

- C. Upon a finding by the County Board, based on the preliminary study, that it is feasible to proceed, directs the prosecutor or other legal counsel to petition the circuit court for a proceeding for determination.

- D. The County Board of Commissioners may, by resolution, determine that the cost of a project to establish and maintain a lake level be defrayed by a special assessment district of benefited property owners, political subdivisions and state-owned lands. The assessment district boundaries are presented to and confirmed by the circuit court.

- E. The Drain Commissioner, or other authority delegated by the County Board, needs to hire the expertise to gather data and to conduct lake level studies necessary to provide the circuit court with sufficient information on which to base its lake level determination.

- F. Circuit Court acts on petition.
 - 1. Sets a hearing date.
 - 2. Directs the prosecuting attorney or drain commissioner to make proper notification by newspaper and first class mail to persons in the tentative special assessment district, the Department of Environmental Quality, and the Department of Natural Resources.

- G. The Circuit Court holds a hearing so that evidence may be presented and testimony taken to assist in determining the legal level(s).
- H. The Circuit Court issues an order determining the level (or levels) to be established and maintained, and confirms the proposed special assessment district boundaries within 60 days following the lake level determination.

II. Steps to be Taken to Maintain the Normal Height and Level of the Waters in Inland Lakes

- A. The Drain Commissioner or other delegated authority has a Licensed Professional Engineer prepare final engineering plans and apportions benefits to property owners and political subdivision within the special assessment district, subject to the approval of the County Board. The Act requires the delegated authority to follow, as closely as possible, the proceeding set forth in the Drain Code, 1996 PA 1956, as amended, in making, levying and collecting special assessments.
- B. The County Board, the Drain Commissioner, or other delegated authority, on behalf of the County Board, must acquire the necessary permits and/or approvals from the Department of Environmental Quality, as well as any other, local, state, or federal permits as required to construct the necessary lake level control facilities. In most cases, a permit under Part 301, Inland Lakes and Streams, of the Natural Resource and Environmental Protection Act, 1994 PA 451, as amended, is required.
- C. The delegated authority holds a hearing on the assessment roll after proper notice.
- D. The delegated authority, acting as agent for the County Board of Commissioners, acquires the necessary land and constructs the necessary facilities to maintain the legal lake level(s).
- E. Engineering Inspection Reports of lake level control facilities must be prepared by a Licensed Professional Engineer every three (3) years and submitted to the Dam Safety Unit, Water Resources Division, Department of Environmental Quality.
- F. The delegated authority may spend not more than \$10,000 annually for maintenance and repair of each lake level control project. Expenditures of more than \$10,000 must be approved by the County Board.

**ADVANTAGES AND/OR DISADVANTAGES OF ESTABLISHING
NORMAL (LEGAL) LAKE LEVELS UNDER THE PROVISIONS OF
PART 307, INLAND LAKE LEVELS, OF THE NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION ACT,
1994 PA 451, AS AMENDED**

The advantages and/or disadvantages of establishing normal (legal) lake levels varies from lake to lake. Legal levels have been established on over 300 lakes in Michigan for a variety of reasons. The particular advantages and/or disadvantages many times differ for lakes having existing lake level control structures from those that do not. Normally, the advantages far outweigh the disadvantages.

Some of the more common advantages and/or disadvantages are as follows:

Advantages

- I. Provide for stabilized water levels to protect property values and the lake environment.
- II. Maximize recreational benefits.
- III. Provide for a winter drawdown level to
 - A. Minimize shoreline ice damage.
 - B. Minimize erosion damage during periods of high water in the fall and spring.
 - C. Minimize flooding by providing a cushion against high water, particularly in the spring.
 - D. Control of some aquatic weeds.
- IV. Maximize fisheries, wildlife and aesthetic values.
- V. Place responsibility of maintaining the desired lake level(s) in the hands of the County Board of Commissioners, the County Drain Commissioner, or other authority designated by the County Board.
- VI. Provide a means whereby all benefited property owners and political subdivisions share in the cost of maintaining the necessary lake level control facilities.
- VII. Liabilities for accidents at the control structure may be insured by the County at a lower cost.
- VIII. The cost of repairs and maintenance at the control structure may be spread over a period of years and is tax deductible for Federal Returns, if the tax payer itemizes.

Disadvantages

- I. Costs are incurred in establishing normal (legal) levels; i.e. costs of studies and surveys, court costs, cost of preparing assessment roll and noticing, cost of acquiring, constructing, operation and maintaining the control structures necessary for maintaining the legally established level(s). These costs are normally passed along to the benefited property owners by special assessment.
- II. Length of time to get a legal level(s) established can be long, (one year or more).
- III. Stabilizing lake levels can have an adverse impact on pike spawning, if flooding of marshes on the lake fringe is reduced or eliminated during pike spawning periods.

**DUTIES OF COUNTY DELEGATED AUTHORITIES
UNDER PART 307, INLAND LAKE LEVELS, OF
THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
1994 PA 451, AS AMENDED**

In proceedings involving Part 307, Inland Lake Levels, of the Natural Resource and Environmental Protection Act, 1994 PA 451, as amended, County Boards of Commissioners may delegate certain duties required under the act to the County Drain Commissioner, or any other person designated by the County Board. Normally, those duties include the following:

1. Retain a Licensed Professional Engineer to prepare a preliminary study, when determined necessary by the County Board.
2. Provide for the necessary surveys, data and studies necessary for the circuit court to determine the legal level(s).
3. Draw up assessment district boundaries for consideration and confirmation by the county circuit court.
4. Testify at circuit court lake level hearings.
5. Prepare assessment roll after confirmation of assessment district boundaries by the circuit court.
6. Hold hearing on the assessment roll.
7. Provide for the preparation of necessary final engineering plans of the maintenance of the established lake level.
8. Acquire necessary construction permits and/or approvals from the Water Resources Division, Department of Environmental Quality.
9. Construct necessary lake level control facilities.
10. Maintain the lake at the level, or levels, established by order of the circuit court.
11. Every three (3) years, engage a Licensed Professional Engineer to prepare an inspection report on the lake level control structure and submit a copy to the Dam Safety Unit, Water Resources Division, Department of Environmental Quality. This requirement pertains to all lake level control structures for which a normal level has been established under Act 451 or any previous lake level statute.
12. Based on the recommendations of three year inspection reports, maintain the lake level control structure in good repair. May spend up to \$10,000/year on maintenance and repair without County Board's approval.

PETITION TO THE BOARD OF COMMISSIONERS

_____ County

Your petitioners, the undersigned property owners of land abutting _____

_____ Lake, _____ Township,

_____ County, a lake occupying all or portions of
Sections _____, Town _____, Range _____ respectfully submit
unto this Board as follows:

That the seasonable variations of inflow and evaporation or other losses, combined with a lack of suitable control over outflow, causes the water level of said Lake to vary to a degree which is harmful to our interests.

That the maintenance of a stable, normal water level is necessary on said Lake to protect the public health, welfare and safety; to preserve the natural resources of the State of Michigan; and to protect the value of properties developed around said lake.

We, therefore, do hereby petition your honorable body to take the following action as provided by Part 307, Inland Lake Levels, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

To cause to be determined and established a normal water level for said Lake, at an established normal water level.

<u>DATE</u>	<u>PROPERTY OWNER</u> (if joint, both should sign)	<u>POST OFFICE ADDRESS</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SAMPLE

***Resolution requiring preliminary survey and cash bond**

**RESOLUTION OF THE _____ COUNTY BOARD OF
COMMISSIONERS
_____ LAKE**

WHEREAS, the _____ County Board of Commissioners is in receipt of a petition signed by 2/3 of the owners of lands abutting _____ Lake, as required by the Natural Resources and Environmental Protection Act in Part 307 (Inland Lake Levels), MCL 324.30701 *et seq.* The petition requests that a normal lake level for _____ Lake be determined and established; and

WHEREAS, the seasonable variations of inflow and evaporation or other losses, combined with a lack of suitable control over outflow, causes the water level of _____ Lake to vary to a degree which is harmful to the property owners' interests; and

WHEREAS, MCL 324.30703 provides that the County Board of Commissioners may require that a preliminary study be conducted by a licensed professional engineer; and

WHEREAS, MCL 324.30703 further provides that the County Board of Commissioner may require a cash payment from the petitioners pursuant to cover the actual preliminary study costs or of \$10,000.00, whichever is less; and

WHEREAS, MCL 324.30711 provides that the County Board of Commissioners may determine that a whole or part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessment by those benefited, including privately owned parcels of land, political subdivisions of the State, and State owned lands under the jurisdiction and control of the Department of Natural Resources.

NOW, THEREFORE BE IT RESOLVED, that the _____ County Drain Commissioner shall serve as the delegated authority under the provisions of Part 307 of the Natural Resources Environmental Protection Act, and shall cause a preliminary study to be conducted by a licensed professional engineer. After the preliminary study is completed, a copy shall be forwarded to the Board of Commissioners, and the Board will determine whether to resolve to initiate an action in _____ County Circuit Court to have determined and established the normal level(s) of _____ Lake pursuant to MCL 324.30704.

BE IT FURTHER RESOLVED, that before the preliminary study is conducted, the _____ County Drain Commissioner will require a cash payment from the petitioners to cover the actual preliminary study costs or of \$10,000.00, whichever is less.

Approved: _____

Date: _____

Clerk

Motion No.: _____

SAMPLE

***Resolution that does not require preliminary engineering study or cash bond**

**RESOLUTION OF THE _____ COUNTY BOARD OF COMMISSIONERS
_____ LAKE**

WHEREAS, the _____ County Board of Commissioners is in receipt of a petition signed by 2/3 of the owners of lands abutting _____ Lake, as required by the Natural Resources and Environmental Protection Act in Part 307 (Inland Lake Levels), MCL 324.30701 *et seq.* The petition requests that a normal lake level for _____ Lake be determined and established; and

WHEREAS, the seasonable variations of inflow and evaporation or other losses, combined with a lack of suitable control over outflow, causes the water level of _____ Lake to vary to a degree which is harmful to the property owners' interests; and

WHEREAS, MCL 324.30711 provides that the County Board of Commissioners may determine that a whole or part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessment by those benefited, including privately owned parcels of land, political subdivisions of the State, and State owned lands under the jurisdiction and control of the Department of Natural Resources.

NOW, THEREFORE BE IT RESOLVED, that legal counsel on behalf of the County initiate proceedings by petition to the _____ County Circuit Court for determination and establishment of a normal lake level(s) and for the determination of a special assessment district to defray all of the costs of a project to establish and maintain that lake level so that a special assessment can be made against those benefited by the project to include privately owned parcels of land, political subdivisions of the State, and State owned lands under the jurisdiction and control of the Department of Natural Resources.

BE IT FURTHER RESOLVED, that the _____ County Drain Commissioner shall serve as the delegated authority under the provisions of Part 307 of the Natural Resources Environmental Protection Act, and upon the Court Order determining the normal level(s) of _____ Lake and the establishment of a special assessment district, the _____ County Drain Commissioner, as delegated authority, shall prepare a computation of the cost of the project and prepare a special assessment roll.

Approved: _____

Date: _____

Clerk

SAMPLE

Motion No.: _____

***Resolution requires study, but no bond**

**RESOLUTION OF THE _____ COUNTY BOARD OF
COMMISSIONERS
_____ LAKE**

WHEREAS, the _____ County Board of Commissioners is in receipt of a petition signed by 2/3 of the owners of lands abutting _____ Lake, as required by the Natural Resources and Environmental Protection Act in Part 307 (Inland Lake Levels), MCL 324.30701 *et seq.* The petition requests that a normal lake level for _____ Lake be determined and established; and

WHEREAS, the seasonable variations of inflow and evaporation or other losses, combined with a lack of suitable control over outflow, causes the water level of _____ Lake to vary to a degree which is harmful to the property owners' interests; and

WHEREAS, MCL 324.30703 provides that the County Board of Commissioners may require that a preliminary study be conducted by a licensed professional engineer; and

WHEREAS, MCL 324.30711 provides that the County Board of Commissioners may determine that a whole or part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessment by those benefited, including privately owned parcels of land, political subdivisions of the State, and State owned lands under the jurisdiction and control of the Department of Natural Resources.

NOW, THEREFORE BE IT RESOLVED, that the _____ County Drain Commissioner shall serve as the delegated authority under the provisions of Part 307 of the Natural Resources Environmental Protection Act, and shall cause a preliminary study to be conducted by a licensed professional engineer. After the preliminary study is completed, a copy shall be forwarded to the Board of Commissioners, and the Board will determine whether to resolve to initiate an action in _____ County Circuit Court to have determined and established the normal level(s) of _____ Lake pursuant to MCL 324.30704.

Approved: _____

Date: _____

Clerk

Motion No.: _____

SAMPLE

**GUIDELINES FOR CONDUCTING A LAKE LEVEL STUDY UNDER
PART 307, INLAND LAKE LEVELS, OF THE
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
1994 PA 451, AS AMENDED**

INTRODUCTION

Part 307, Inland Lake Levels, intends that lake levels may be established for the protection of public health, welfare, and safety and for the conservation of natural resources. To achieve this goal, a lake level study must be conducted to determine:

1. The best level/or levels for the protection of the interests of all riparians and the lake environment,
2. The type of water control structure needed, and
3. The cost.

Such a study should be conducted prior to the court proceedings since it can be very helpful to the court in its determination of the normal lake level.

A lake level study is not easily conducted by laymen. A Licensed Professional Engineer should oversee the work. To be of greatest value, the engineer should seek the assistance of experts in the field of fisheries management, aquatic biology, limnology and wildlife management, dam safety, as well as the local Health Departments and the Departments of Natural Resources and Environmental Quality.

The Office of Equal Opportunity and Legal Services, coordinates the Department of Natural Resources' involvement in establishing what legal lake level will best protect the interests of all riparians and the lake environment. Their phone number is 517-335-1582. They should be contacted early in the proceedings so that Department of Natural Resources' personnel can be available to provide testimony before the court.

The Dam Safety Program of the Water Resources Division, Department of Environmental Quality, reviews applications for the construction of lake level control structures. They can be reached at 517-281-6821.

The attached "Recommended Lake Level Study Outline" is provided as an example of the considerations which should be made when conducting a study to determine the best lake level/or levels.

RECOMMENDED LAKE LEVEL STUDY OUTLINE

- I. Hydrology of watershed.
- II. Hydraulics of outlet channel.
- III. Recommendations for the most desirable high level and low levels and duration of same, based on:
 - A. A study of past lake level records, if available.
 - B. Septic tank and drain field levels in critical low-lying areas.
 - C. A survey of property owners opinions and/or desires.
 - D. Recreational uses of the lake including dock elevations. This may be determined by taking beach profiles in critical areas.
 - E. Levels at which shore erosion and/or ice damage occurs.
 - F. Fisheries and Wildlife habitat. Assistance should be requested from Fisheries and Wildlife Divisions, Department of Natural Resources.
 - G. The effect of levels on aquatic weed growth.
- IV. Recommendations for practical methods of maintaining and manipulating legal levels (include an operational guideline for the proposed or existing structure).
- V. Estimated cost of project including annual maintenance and triennial inspections.
- VI. Recommended Assessment District Boundaries.
- VII. Recommended apportionment of assessment within the district.
- VIII. Estimated cost to individual property owners and political subdivisions.
- IX. An Environmental Assessment of the proposed action.
- X. Conclusions and recommendations.