

SENATE BILL 837

M1, M3

4lr1582
CF HB 910

By: **Senator McKay**

Introduced and read first time: February 2, 2024

Assigned to: Education, Energy, and the Environment

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 3, 2024

CHAPTER _____

1 AN ACT concerning

2 **Deep Creek Lake – Lower Lake Levels – Requirement and Impact Study**

3 FOR the purpose of requiring the Water and Science Administration in the Department of
4 the Environment, under certain circumstances, to require Brookfield Power Piney &
5 Deep Creek LLC to lower the level of Deep Creek Lake for a certain period of time
6 during a certain time frame; requiring the Department of Natural Resources or a
7 contractor hired by the Department of Natural Resources to conduct a certain study
8 while the lake level is lowered; requiring each unit of the State that issues, renews,
9 or modifies a permit regarding Deep Creek Lake to consider a certain report when
10 taking certain actions; and generally relating to Deep Creek Lake.

11 BY adding to
12 Article – Natural Resources
13 Section 5–215.2
14 Annotated Code of Maryland
15 (2023 Replacement Volume and 2023 Supplement)

16 Preamble

17 WHEREAS, The freezing of water bodies during cold winter months has been
18 demonstrated to be an effective management tool for controlling the growth of some aquatic
19 vegetation; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



WHEREAS, High water flows can move accumulated shallow-water bottom sediments to deeper waters, resulting in a reduced impact to critical recreational and living resource habitats; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Natural Resources

5–215.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “BROOKFIELD” MEANS BROOKFIELD POWER PINEY & DEEP CREEK LLC.

(3) “LAKE LEVEL” MEANS THE WATER SURFACE ELEVATION ABOVE THE NORTH AMERICAN VERTICAL DATUM OF 1988.

(B) (1) ~~ON~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ON OR BEFORE SEPTEMBER 30 EACH YEAR, BEGINNING IN 2024 THROUGH 2028, THE WATER AND SCIENCE ADMINISTRATION IN THE DEPARTMENT OF THE ENVIRONMENT SHALL REQUIRE BROOKFIELD TO LOWER THE LAKE LEVEL OF DEEP CREEK LAKE TO A LEVEL NOT GREATER THAN 2,456.5 2,457 FEET FOR A PERIOD OF AT LEAST 4 WEEKS BETWEEN ~~NOVEMBER 30~~ OCTOBER 31 AND ~~FEBRUARY 28~~ JANUARY 1, BOTH INCLUSIVE.

(2) BROOKFIELD MAY BEGIN TO LOWER THE LAKE LEVEL UNDER PARAGRAPH (1) OF THIS SUBSECTION BEFORE OCTOBER 31 OF EACH YEAR.

(C) WHILE THE LAKE LEVEL OF DEEP CREEK LAKE IS LOWERED IN ACCORDANCE WITH THIS SECTION, THE DEPARTMENT, OR A CONTRACTOR HIRED BY THE DEPARTMENT, SHALL CONDUCT A STUDY TO DETERMINE THE IMPACT OF LOWER LAKE LEVELS ON:

(1) THE SPREAD AND GROWTH OF AQUATIC INVASIVE PLANT SPECIES AND AQUATIC NUISANCE PLANT SPECIES IN DEEP CREEK LAKE; ~~AND~~

(2) ACCUMULATED SEDIMENT DEPOSITION IN DEEP CREEK LAKE; AND

(3) THE WHITEWATER INDUSTRY.

1 (D) (1) ON COMPLETION OF EACH STUDY REQUIRED UNDER THIS
2 SECTION, THE DEPARTMENT SHALL:

3 (I) COMPILE A REPORT OF THE FINDINGS OF THE STUDY; AND

4 (II) ON OR BEFORE JUNE 30 EACH YEAR THAT THE LAKE LEVEL
5 IS LOWERED, BEGINNING IN 2025 THROUGH 2029, SUBMIT THE REPORT TO THE
6 DEPARTMENT OF THE ENVIRONMENT AND THE DEEP CREEK LAKE POLICY AND
7 REVIEW BOARD.

8 (2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
9 SUBSECTION SHALL INCLUDE:

10 (I) A LIST OF THE AQUATIC INVASIVE PLANT SPECIES AND
11 AQUATIC NUISANCE PLANT SPECIES FOUND IN DEEP CREEK LAKE;

12 (II) THE STATUS AND VARIATION OF AQUATIC INVASIVE PLANT
13 SPECIES AND AQUATIC NUISANCE PLANT SPECIES IN DEEP CREEK LAKE;

14 (III) AN ANALYSIS OF THE IMPACT OF LOWER LAKE LEVELS ON
15 AQUATIC INVASIVE PLANT SPECIES AND AQUATIC NUISANCE PLANT SPECIES IN
16 DEEP CREEK LAKE;

17 (IV) RECOMMENDATIONS FOR AN AQUATIC VEGETATION
18 MANAGEMENT PLAN TO CONTROL THE GROWTH AND SPREAD OF AQUATIC INVASIVE
19 PLANT SPECIES AND AQUATIC NUISANCE PLANT SPECIES IN DEEP CREEK LAKE;
20 ~~AND~~

21 (V) THE EXTENT OF SHALLOW WATER SEDIMENT EROSION AND
22 DEPOSITION IN DEEP CREEK LAKE; AND

23 (VI) AN ANALYSIS OF THE IMPACT OF LOWER LAKE LEVELS ON
24 THE WHITEWATER INDUSTRY.

25 (E) BEGINNING ON SUBMISSION OF THE INITIAL REPORT UNDER
26 SUBSECTION (D)(1) OF THIS SECTION, EACH UNIT OF THE STATE THAT ISSUES,
27 RENEWS, OR MODIFIES A PERMIT REGARDING DEEP CREEK LAKE SHALL CONSIDER
28 THE MOST RECENT REPORT REQUIRED UNDER THIS SECTION WHEN ISSUING,
29 REVIEWING, OR MODIFYING THE PERMIT.

30 (F) NOTHING IN THIS SECTION MAY BE CONSTRUED TO AUTHORIZE
31 BROOKFIELD TO LOWER THE LAKE LEVEL OF DEEP CREEK LAKE BELOW THE
32 LEVELS AUTHORIZED IN ITS PERMIT.

(G) THE DEPARTMENT MAY WAIVE THE REQUIREMENTS OF THIS SECTION UNDER EXTRAORDINARY CIRCUMSTANCES, AS DETERMINED IN THE DISCRETION OF THE DEPARTMENT.

(H) FUNDING FOR THE STUDIES REQUIRED UNDER THIS SECTION SHALL BE PROVIDED FROM:

(1) THE STATE LAKES PROTECTION AND RESTORATION FUND ESTABLISHED UNDER § 8–205 OF THIS ARTICLE;

(2) THE DEEP CREEK LAKE RECREATION MAINTENANCE AND MANAGEMENT FUND ESTABLISHED UNDER § 5–215 OF THIS SUBTITLE; OR

(3) ANY OTHER APPROPRIATE SOURCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2024.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.