



Overview of Pending Water Withdrawal Legislation:

House Bills 4343, 5065-5073/Senate Bills 721-729 and Senate Bills 212 and 860

Both the Michigan House and Senate are currently holding important legislative committee hearings around competing packages of water legislation. In short, the debate is centered on corporate versus public control of our water. While the Great Lakes, Great Michigan Coalition supports House Bills 4343 and 5065-5073, and companion Senate Bills 721-729, the Coalition has a number of serious concerns with Senate Bills 212 and 860.

Great Lakes Basin Compact

House Bill 4343

HB 4343 ratifies the Great Lakes Basin Compact, a multi-state and international agreement crafted to set specific statutory standards to protect our water from abusive withdrawals and diversions.

Senate Bill 212

While SB 212 also ratifies the Great Lakes Basin Compact, it proposes to implement the agreement in a minimal way. SB 212 sets high permitting thresholds which are difficult to trigger; it requires minimal implementation of conservation standards; and it provides inadequate opportunities for community participation in decisions regarding large water withdrawals. As *the* Great Lakes State, other states are looking for Michigan's leadership in protecting Great Lakes waters. This bill falls far short of meeting these expectations.

Michigan's Water Withdrawal Legislation

House Bills 5065-5073 and Senate Bills 721-729 provide the necessary mechanisms to secure public control of our water. As introduced, Senate Bill 860 could set aside from 22-40% of the water in stretches of the state's rivers and streams for withdrawals but the withdrawals would not be permitted. Consequently, the withdrawals would not be subject to public review.

Public Waters, Public Control

House Bills 5065-5073 and Senate Bills 721-729

When Michigan began exercising its public trust duties to protect the state's water, scientists did not understand the connections between groundwater and surface water. Today these connections are accepted as fact, and Michigan's laws should be updated to reflect this scientific truth. Simply put, excluding groundwater from public trust protections is archaic.

These bills would clearly define in statute that all of the state's waters are under public control by applying public trust standards to both groundwater and surface water. The public trust protections for groundwater would be implemented through a Michigan Department of Environmental Quality (MDEQ) review using the following criteria:

- The withdrawal would not cause an adverse resource impact;
- The withdrawal would not adversely effect or interfere with the riparian rights or public trust in any groundwater;

- The withdrawal would not interfere with property rights of another person; and
- The withdrawal complies with all applicable laws.

At a minimum, the following public interest concerns must also be considered by the MDEQ:

- Whether the withdrawn water will be used within the same watershed;
- The impact of the withdrawal on other uses of the groundwater or surface water, including use for recreation, fish and wildlife, aesthetic, local government, agriculture, navigation, commerce and industry;
- The impact of the withdrawal on water quality;
- Whether the proposed withdrawal is an efficient use of water; and
- Whether the withdrawal would impair the physical character of a stream.

Public oversight is triggered by the following water withdrawal thresholds:

- All water users of 100,000 gallons or more per day must register their use and utilize the newly developed water withdrawal assessment tool to screen for potential resource harm (depending on results of the assessment tool review, water withdrawal permits could be required);
- Permits for withdrawals of 2 million gallons-per-day from the Great Lakes;
- Permits for withdrawals of 1 million gallons-per-day from inland water sources;
- Permits for withdrawals of 100,000 gallons-per-day for bottled-water;
- Permits for a 5 % reduction in the flow of the river or stream reach; and
- Permits for withdrawals occurring in sensitive areas.

These bills also create a system for public input by increasing opportunities for public participation in community water planning and in the permitting process for proposed large water withdrawals.

Senate Bill 860

By contrast, SB 860 relies solely on the newly developed ‘Water Withdrawal Assessment Tool’ for decisions about new or expanded water withdrawals. Consequently, SB 860 would not require permits for large water withdrawals even if the proposed withdrawal is in an area with marginal water availability. Without permits, there is no opportunity for local input into water withdrawal decisions. Further, as written, SB 860 designates from 22-40 % of stretches of natural wonders like the Jordan and Au Sable Rivers as available for withdrawal; in stretches of other water waterways, withdrawals as could be allowed for as much as 46% of the flow.

Meaningful Conservation Standards

House Bills 5065-5073 and Senate Bills 721-729

Under current Michigan law, water use sectors (such as manufacturing, agricultural and municipal) must develop conservation standards for their sector by February of 2008. This legislation would require large water users to actually *use* these conservation standards.

Senate Bill 860

Senate Bill 860 does not require implementation of the sector-developed standards.