



**House
Legislative
Analysis
Section**

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GREAT LAKES MANAGEMENT

House Bill 5186 as enrolled
Sponsor: Rep. Debbie Stabenow

Senate Bill 602 as enrolled
Sponsor: Sen. Nick Smith

Second Analysis (1-7-91)

**House Committee: Conservation, Recreation &
Environment**
**Senate Committee: Natural Resources and
Environmental Affairs**

THE APPARENT PROBLEM:

Protection of the water quality of the Great Lakes and preventing the diversion of their waters are two issues of increasing importance to Michigan as the demand for its water resources continues to grow. Since approximately 40 percent of the Great Lakes are located within the state's boundaries, it is important that Michigan take the lead role in development of programs that will address use of the Great Lakes. Consequently, the state recently joined the seven other Great Lakes states (Indiana, Illinois, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) and two Canadian provinces (Ontario and Quebec) in signing the Great Lakes Charter to improve management of the Great Lakes.

Principle V of the Great Lakes Charter sets forth the agreement by the states and provinces to "commit to pursue the development and maintenance of a common base of data and information regarding the use and management of basin water resources." The states and provinces agreed that each state and province should collect and maintain data regarding water use in order to cooperate in the sharing and exchange of such information. Michigan is the only state in the Great Lakes region that has not adopted water use reporting laws to comply with the charter's provision mandating the development of a water use reporting system. Some people feel the state should enact legislation to implement water use registration requirements in order to contribute to the region's water use data base, especially as it stands to lose the most if a diversion negatively affects the lakes.

THE CONTENT OF THE BILLS:

The bills would add new provisions to the Great Lakes Preservation Act (MCL 323.71 et al) that would require the gathering and analysis of information on Great Lakes water use by the Department of Natural Resources and other state agencies, and to require owners of facilities requiring large intakes of Great Lakes water to register with, and provide pertinent information to, the department. The bills are tie-barred to each other.

Senate Bill 602 would amend the act (MCL 323.72a and 323.77) to require a person to register with the Department of Natural Resources by December 31, 1991 on a form provided by the department if, during either 1990 or 1991, the person owned an industrial or processing facility or an irrigation facility that was able to withdraw over 100,000 gallons of water per day in any consecutive 30-day period from the Great Lakes. Beginning

January 1, 1992, a person who met these requirements would have to register with the department in the calendar year when the withdrawal occurred. A person would combine all separate withdrawals that were made or proposed to be made in calculating the total amount of an existing or proposed withdrawal, whether or not they were made for a single purpose or for related but separate purposes. Also, the bill would repeal a section in the act which provides for the act to sunset December 31, 1992.

House Bill 5186 would amend the act (MCL 323.78 to 323.85) to specify that registrations required under Senate Bill 602 would have to include a statement and supporting evidence of the place and source of the proposed or existing withdrawal, the location of any discharge or return flow, the location and nature of the proposed or existing water user, the actual or estimated average annual and monthly volumes and rate of withdrawal, and the actual or estimated average annual and monthly volumes and rates of consumptive use from the withdrawal. A registrant whose consumptive use would exceed 2 million gallons per day in any consecutive 30-day period would also have to submit the following information:

- The operating capacity of the withdrawal system identified in the registration;
- If the registration included a proposed withdrawal increase, the total new or increased operating capacity of the withdrawal system;
- The estimated average annual and monthly rates of discharge or return flow; and
- A list of all federal, state, and local approvals, permits, licenses, and other authorizations required for a withdrawal.

Reports. An owner of a facility registered under the bill would also be required to file an annual report with the department. The report would have to include information regarding the amount and rate of water withdrawn on an annual and monthly basis, sources and uses of water supply, the amount of consumptive water use, and other information required by department rule. Registrants would have to submit the first report to the department by March 31, 1992, and subsequent reports would be due within three months after the end of each calendar year. The department would have to develop reporting forms that minimized paperwork and allowed a person simply to notify the department if the person's annual water use was within four percent of the previous year's usage and other required information was the same.

The department and the Department of Agriculture, along with the Cooperative Extension Service and the Soil Conservation Districts, would have to develop a formula or model to determine the amount of water withdrawn for agricultural purposes consistent with the bill's provisions. For a period of five years after the bill's effective date, a person who used water for an agricultural purpose — who withdrew over 100,000 gallons of water per day over a month's time for irrigation — would have to provide the location of the irrigation water source or sources and other information needed to develop a formula or model. The department could contract for the preparation and distribution of informational materials to water users describing the purposes, benefits, and requirements of the bill, and could provide information on complying with the registration program and on methods used to calculate or estimate water withdrawals or consumptive uses.

Public water supply systems that are required to report water withdrawals under the Safe Drinking Water Act would be exempt from the bill's provisions.

Departmental Duties. The department would have to do all of the following:

- Cooperate with the Great Lakes states and provinces and maintain a common base of information on the use and management of Great Lakes water and set regular arrangements for information exchange;
- Collect and maintain data on the locations, types, and quantiles of water use, including water withdrawals and consumptive uses, in a form that the department felt was similar to that used by the other states and provinces;
- Collect, maintain, and exchange data on current and projected future water needs with the other states and provinces;
- Cooperate with the other states/provinces in developing a long-range plan for developing, conserving, and managing Great Lakes waters;
- Participate in the development of a regional consultation procedure for use in exchanging data on the effects of proposed water withdrawals and other uses from the Great Lakes; and
- Develop procedures for notifying water users and potential water users of the bill's requirements.

Penalties. The department could request the attorney general's office to begin civil action, including a permanent or temporary injunction, for relief for violation of the bill. In addition to any other relief granted, the Ingham County Circuit Court could impose a civil fine of not more than \$1,000, and the office could also file suit to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the bill would necessitate the hiring of two full time employees to administer the program and an additional \$100,000 to establish a data management system, register water users, and compile and analyze annual water use information. (1-7-90)

ARGUMENTS:

For:

Until the state develops a reporting system, it will not be formally recognized as a participant in the charter agreement and will not be consulted when issues such as the diversion of the Great Lakes are addressed by the Great Lakes region states within that process. Further, without development of a reliable water use

reporting system, the state will not be able to implement some of the recommendations within the Water Planning Commission's water management plan. The bill will address these issues and will help facilitate better identification of existing water needs and future demands on the Great Lakes water supply by providing for the analysis of current uses.

For:

In the 1982 case of *Sporhase v. Nebraska*, the U.S. Supreme Court ruled that when proving the constitutionality of restricting its water use from outside sources, a state (Nebraska) must have a comprehensive water management plan in addition to other items detailing the scarcity of the water supply and the need for its conservation. Michigan now has a management plan but has no way of implementing it without the necessary data. The bill will help ensure the compilation of data needed to assess the use of water resources of the Great Lakes within the state and will also help ensure the legality of any attempts made by the state to restrict the use of the Great Lakes water resources.

Against:

The bill should not exempt public water supply systems and hydroelectric power plants from its reporting requirements. All water users should have to comply with the reporting requirements.

Response: Public water supplies are already required to report water use levels under the Michigan Safe Drinking Water Act and hydroelectric power plants are exempted because their water use occurs instream; thus, no water is withdrawn from the Great Lakes.