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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 602 (as enrolled)

House Bill 5186 (as enrolled)

Sponsor: Senator Nick Smith (S.B. 602)

Representative Debbie Stabenow (H.B. 5186)

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Conservation, Recreation, and Environment

Date Completed: 1-9-91

PUBLIC ACT 326 of 1990**PUBLIC ACT 327 of 1990****RATIONALE**

The Great Lakes Charter is a cooperative agreement signed by the governors and premiers of the states and provinces of the Great Lakes region on February 11, 1985. The Charter has been called "the region's primary instrument for preventing unwarranted water diversions" from the Great Lakes basin. In Principle V of the Great Lakes Charter, the governors and premiers agreed 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". In order to implement the Charter's principles, the governors and premiers agreed that each state and province should collect and maintain data regarding water used and to cooperate in the sharing and exchange of such information. Many people feel that Michigan should join the states and provinces in enacting legislation to implement water use registration requirements for large-scale users in order to contribute to the region's water use data base.

CONTENT

Senate Bill 602 and House Bill 5186 would amend the Great Lakes Preservation Act to require certain facilities to register their water use practices with the Department of Natural Resources (DNR). Senate Bill 602 also would repeal the Act's December 31, 1992, sunset date, and expand the Act's legislative findings and declarations. House Bill 5186 would require certain facilities to report annually to the DNR, beginning on March 31, 1992, certain aspects of water withdrawal from

the Great Lakes basin; specify the DNR's duties and responsibilities under the Act; prescribe penalties for violations of the Act; and make other provisions relating to the development of a formula for determining Great Lakes basin water withdrawals for agricultural uses and the distribution of information about the Act's requirements. The bills are tie-barred.

Senate Bill 602

The bill would require a person to register with the DNR by December 31, 1991, if during 1990 or 1991 the person owned an industrial or processing facility or an irrigation facility that had the capacity to withdraw from the Great Lakes basin an average of over 100,000 gallons of water per day in a consecutive 30-day period. Beginning on January 1, 1992, such a person would have to register during the calendar year in which the withdrawal occurred. In calculating the total amount of an existing or proposed withdrawal, all separate withdrawals that a person made or proposed to make would have to be combined, regardless of whether the withdrawals were for a single purpose or related but separate purposes.

An "industrial or processing facility" would be "an operating plant or other entity, including a thermoelectric power generation plant, carrying on a common manufacturing activity, trade, or business on a common site, including similar plants or entities under common ownership or control located on contiguous properties". Plants or other entities that were under common

S.B. 602 & H.B. 5186 (1-9-91)

ownership or control, but were not located on contiguous sites would be considered separate facilities. "Irrigation facility" would mean "all wells, pumps, intakes, gates, tanks, pipes, or other equipment under common ownership or control and located either on the same site or on separate sites, that are used to withdraw, convey, or distribute water for the purposes of irrigating golf courses, parks, recreational areas, or other grounds, but not including irrigation for an agricultural purpose".

The bill would add the following to the Act's findings and declarations of the Legislature:

- Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support Michigan's opposition to the diversion of water from the Great Lakes basin, and provide a source of information on water use.
- Michigan's waters are valuable public natural resources and the State has a duty to manage them effectively for present and future use and enjoyment and for environmental protection.
- Michigan and the other states and provinces of the Great Lakes region share a common interest in the preservation of the waters of the Great Lakes basin.
- New diversions of water from the Great Lakes basin for use outside the basin will adversely affect the economy and environment of the region.
- The continued availability of water is vital to the future economic health of the states and provinces in the Great Lakes region.
- Future interbasin diversions and consumptive uses could have significant adverse effects upon the region's environment, economy, and welfare.
- It is the duty of the states and provinces of the region to protect, conserve, and manage the water resources of the Great Lakes basin for present and future residents' use and enjoyment.

House Bill 5186

Great Lakes Withdrawal: Registration

Each registration would have to consist of a statement and documentation that included all

of the following:

- The place and source of the existing or proposed withdrawal and the location of any discharge or return flow.
- The location and nature of the proposed or existing water user.
- The estimated or actual average monthly and annual volumes and rates of withdrawal and of consumptive use from the withdrawal.

A registration that would result in a consumptive use averaging more than 2 million gallons per day in a 30-day period also would have to provide a statement and documentation that included all of the following:

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

A "consumptive use" would be "that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products, or other processes".

A public water supply system required to report water withdrawals under the Safe Drinking Water Act would be exempt from the Act's requirements. A "public water supply system" would be "a water system that provides water for human consumption or other purposes to persons other than the supplier of water".

Reporting

Unless the information were submitted to the DNR in conjunction with a permit or for any other purpose, an owner of an industrial or processing facility or an irrigation facility registered under the bill would have to file an annual report with the DNR. The first report would have to be submitted by March 31, 1992,

and subsequent reports would have to be submitted within three months after the end of each calendar year. The reports would have to include the following information:

- The amount and rate of water withdrawn on an annual and monthly basis.
- The source or sources of the water supply and the use or uses of the water withdrawn.
- The amount of consumptive water use.
- Other information specified by DNR rule.

Upon the request of a person required to report the above information, the DNR would have to accept a formula or model that provided the information to the DNR's satisfaction. The DNR also would have to develop forms for reporting the required information that minimized paperwork. If the annual amount of water withdrawn were within 4% of the amount last reported and other information required to be reported had not changed since the previous report, the DNR would have to allow a person to notify, rather than report to, the DNR.

DNR's Duties and Responsibilities

The bill would require the DNR to do all of the following:

- Cooperate with the states and provinces of the Great Lakes region to develop, maintain, and exchange information on the management and use of water resources in the Great Lakes basin.
- Collect and maintain information pertaining to the locations, types, and quantities of water use in a form comparable to that used by other states and provinces in the region.
- Collect, maintain, and exchange information on water needs with other states and provinces in the region.
- Cooperate with other states and provinces in the region in the development of a long-range plan for developing, conserving, and managing the Great Lakes basin's water resources.
- Participate in the development of a procedure for regional consultation in exchanging information on the effects of proposed withdrawals and water losses.
- Develop procedures to notify current and potential water users of the registration

and reporting requirements.

The bill specifies that the Act could not be construed to authorize the DNR to impose or collect fees, mandate permits, or regulate water withdrawal.

Penalties

The DNR could request the Attorney General to begin a civil action for appropriate relief, including an injunction, for a violation of the Act or a rule promulgated under it. Such an action could be brought in the Circuit Court for Ingham County or the county in which the defendant was located, resided, or did business. The Circuit Court could restrain the violation and require compliance. In addition to any other relief, the Court could impose a civil fine of up to \$1,000. The Attorney General also could sue to recover the State's costs of enforcement and surveillance resulting from the violation.

Other Provisions

Agricultural Withdrawals. The DNR and the Department of Agriculture, in consultation 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 reporting requirements for industrial or processing and irrigation facilities. For a period of up to five years after the bill's effective date, a person using water for agricultural purposes who withdrew an average of over 100,000 gallons per day in a 30-day period would have to provide the location of the irrigation source or sources and other information that the DNR needed in calculating the formula or model.

Information Distribution. The bill would authorize the DNR to contract for the preparation and distribution of informational materials to persons who withdrew water for irrigation or industrial purposes regarding the Act's purposes, benefits, and requirements. The DNR also could provide information on compliance with the registration program and on any general or applicable methods for calculating or estimating withdrawals or consumptive uses.

MCL 323.72 et al. (S.B. 602)

Proposed MCL 323.78 - 323.85 (H.B. 5186)

FISCAL IMPACT

The bills' fiscal impact is indeterminate at this time. The DNR estimated that a water use registration program would require 2.0 FTEs and \$100,000 to administer.

ARGUMENTS

Supporting Argument

The bills would bring Michigan into compliance with the data collection provisions of the Great Lakes Charter. By requiring reporting of Great Lakes water use, the bills would allow Michigan to participate with other states and provinces in the management of a resource valuable to the region. Reliable water use information would help Michigan and the other states and provinces in the region to determine the effects of cumulative water diversions and consumptive uses on Great Lakes water levels. In addition, a comprehensive water use data base would enable states and provinces to identify existing water needs and project future demands.

Opposing Argument

If reporting and/or registration is to be required, all users should be required to participate. The bills should not exempt public water supply systems and agricultural users.

Response: Public water supply systems would be exempt from the reporting requirements because those facilities are required to report to the Department of Public Health under the Safe Drinking Water Act. House Bill 5186 would require the DNR and the Department of Agriculture to come up with a formula or model for reporting water use for agricultural purposes.

Opposing Argument

While the bills would provide only for the registration and/or reporting of water uses, they would establish an opening for the DNR to begin a water use regulation program. Once the DNR began collecting data on water use, it could easily adapt that program to one that restricted use.

Response: House Bill 5186 specifies that it could not be construed to authorize the DNR to impose or collect fees, mandate permits, or regulate water withdrawal.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.