

Legislative Analysis



CONSTITUTIONAL BAN ON OIL & GAS DRILLING IN THE GREAT LAKES

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House Joint Resolution GGG (Substitute H-2)

Sponsor: Rep. Dan Scripps

Committee: Great Lakes and Environment

First Analysis (9-1-10)

BRIEF SUMMARY: House Joint Resolution GGG would add a provision banning oil and gas drilling in or under the Great Lakes to the Michigan Constitution. If approved by the Legislature at least 60 days before the next general election, the resolution would be placed on the ballot of that election. (When the resolution was introduced, the next general election would have been November 2, 2010.)

FISCAL IMPACT: Under current state law, Michigan may not enter into a contract that allows drilling operations beneath the Great Lakes, the connected bays or harbors of the Great lakes, or the connecting waterways (MCL 324.502). There is an exception to this prohibition if the drilling lease was in effect prior to April of 2002 (MCL 324.61505a). Currently, federal law also prohibits drilling operations in the Great Lakes.

House Joint Resolution GGG, if approved by Michigan voters, would add this prohibition to the Michigan Constitution. Because this drilling prohibition is already authorized in statute, this resolution would have no immediate fiscal impact to the State of Michigan.

However, by constitutionally banning future drilling operations on the Great Lakes, the resolution could reduce future revenue to the State of Michigan that would have been deposited into the Michigan Natural Resources Trust Fund. The amount of any potential lease or royalty revenue to the state would be dependent upon the revenue from the sale of leases, the amount of the oil or gas produced and the production life of any successful wells.

THE APPARENT PROBLEM:

The Great Lakes watershed contains about 20 percent of the world's surface freshwater and about 90 percent of the surface freshwater of the United States. The Great Lakes sustain the region's ecosystems, and are relied on for jobs, shipping, and recreation. The Great Lakes supply drinking water — the most basic of all human needs — for millions of people. Because of the importance of the Great Lakes to life in Michigan and the region, supporters of HJR GGG want to place a ban on drilling for oil or gas in or under the Great Lakes into the Michigan Constitution.

No offshore oil or gas drilling — that is, vertical drilling from a platform or rig over the lake directly downward through the lake bottom to explore for or to extract oil or gas below — has ever taken place in portions of the Great Lakes under U.S. jurisdiction. In the past, however, several states, including Ohio, Pennsylvania, and Michigan, allowed

horizontal, slant, or directional drilling — drilling methods in which the wellhead is located on land, not over the lake, and the boring is then angled under the lake without going through the lake bottom. In contrast, Canada permits offshore gas wells, but not offshore oil wells. An offshore gas well that produces any oil must be closed and plugged. Canada also allows onshore directional drilling for both oil and gas, which has occurred primarily under Lake Erie.

In 1982, the Michigan Legislature banned offshore drilling in the Great Lakes. In 2002, the Legislature also banned directional or slant drilling under the Great Lakes. According to the Department of Natural Resources and Environment (DNRE), before directional drilling was banned, about 12 oil or gas wells were drilled under Lake Michigan or Lake Huron using directional drilling. Five of these wells were dry; seven — one oil well and six natural gas wells — were productive and remain in operation today. Five are under Lake Michigan near Manistee; two are under Lake Huron in Bay County.

In addition to the state ban, in 2001 the federal government placed a temporary moratorium on the issuance of permits for drilling under the Great Lakes, which was subsequently extended twice. Finally, Section 386 of the Energy Policy Act of 2005 banned the issuance of federal or state permits or leases for any new drilling (slant, directional, or offshore) for oil or natural gas in or under one or more of the Great Lakes.

The recent oil well disaster in the Gulf of Mexico has led to calls to impose the strongest possible state ban on drilling in or under the Great Lakes. On April 20, 2010, the Deepwater Horizon drilling rig under contract to BP exploded about 50 miles off the coast of Louisiana, killing 11 workers, and leading to the release of an estimated 4.9 million barrels of oil into the Gulf of Mexico. This major disaster caused negative environmental, economic, and health effects, the extent of which are still unknown.

Closer to home, a leak in the Lakehead oil pipeline system near a pumping station in Marshall, Michigan, spilled about 877,000 gallons of oil into the Talmadge Creek and the Kalamazoo River on July 22, 2010, according to estimates from Enbridge Energy Partners, the Canadian company responsible for the spill and its cleanup. The 30-inch pipeline that leaked in Calhoun County carries about 8 million gallons of oil per day from Griffith, Indiana, to Sarnia, Ontario. This pipeline is part of a large international pipeline system that also includes two 20-inch pipes placed under the Straits of Mackinac in 1953, just west of the Mackinac Bridge. Although the Calhoun County oil spill was from a faulty pipeline, not from drilling, it has focused attention on the need to protect the Great Lakes from oil or gas spills — whether from drilling disasters or pipeline ruptures — and the potential economic, environmental, and public health consequences of such spills. (In addition, if drilling were resumed under the Great Lakes, and new oil or gas wells placed in operation, one of the associated risks would be oil spills or natural gas leaks from the pipelines or trucks used to carry the oil or natural gas from the new wells to refineries or storage locations.)

Many Michigan residents consider the Great Lakes to be the state's most valuable natural resource and deserving of the maximum protection available under Michigan law. It has been suggested, therefore, that a ban on drilling in or under the Great Lakes be placed in the Michigan Constitution because of the concern that the state law banning drilling could be too easily overturned by a future Legislature.

THE CONTENT OF THE BILL:

House Joint Resolution GGG would add a new Section 31 to Article V (Executive Branch) of the State Constitution of 1963 to prohibit oil and gas drilling in or under the Great Lakes.

As of the resolution's effective date (45 days after approval by voters), no person could drill a well — and the State of Michigan could not authorize the drilling of a well — within the Great Lakes or beneath the bottomlands of the Great Lakes to explore for or to produce oil or natural gas. As amended by the committee, "Great Lakes" would include "the connected bays and harbors of the Great Lakes and the St. Marys River, the Detroit River, the St. Clair River, and Lake St. Clair."

If approved by the Legislature, the joint resolution would be submitted to the voters at the next general election under the procedure described in Article XII, Section 1 of the Constitution. (See ***Background Information.***) Legislative approval requires a two-thirds majority of the members elected and serving in both the House and the Senate at least 60 days before the general election.

Similar resolutions, Senate Joint Resolutions Z (sponsored by Senator Roger Kahn) and AA (sponsored by Senator Glenn Anderson) have been introduced in the Senate. SJR Z has been referred to the Committee of the Whole as a Substitute S-2.

BACKGROUND INFORMATION:

Constitutional amendment by legislative proposal and vote of electors. This resolution, if approved by the Legislature, would be put before the voters under Article XII, Section 1 of the Michigan Constitution:

Amendments to this constitution may be proposed in the Senate or House of Representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

Additional information. Additional information about oil and gas drilling in the Great Lakes is available from the following sources:

- CRS Report for Congress, *Drilling in the Great Lakes: Background and Issues*, June 1, 2006, available online at: <http://ncseonline.org/NLE/CRSreports/06Jul/RL33455.pdf> [accessed August 11, 2010].
- U.S. Army Corps of Engineers, *Known and Potential Environmental Effects of Oil and gas Drilling Activity in the Great Lakes*, November 2005, available

online at <http://www.lrc.usace.army.mil/GrtLakes/OilGas/FinalReport.pdf> [accessed August 20, 2010].

- Michigan Environmental Science Board, *Evaluation of Directional Drilling under the Great Lakes*, October 1997, available online at http://www.michigan.gov/documents/dd-rpt_3722_7.pdf [accessed August 16, 2010].

ARGUMENTS:

For:

Protecting Michigan against the potential environmental, economic, and public health consequences of an oil or gas spill in the Great Lakes is of critical importance to Michigan. The Great Lakes support the ecosystems, economy, and way of life for Michigan's people. Major Michigan industries, such as tourism, boating, fishing, agriculture, and manufacturing, rely on the Great Lakes. Perhaps most fundamentally, the Great Lakes supply drinking water to about 20 million people in the region. Because of the critical importance of the Great Lakes and their coastlines to Michigan, the state should place a ban on drilling for oil or natural gas in or under the Great Lakes into the constitution to protect the state's natural resources, public health, and prosperity. Extraction of oil and gas under Lake Huron and Lake Erie is not worth the potential risks and costs — to the environment, the economy, and to public health. The door must not be left open to a BP-style catastrophe that could devastate Michigan.

A constitutional ban would be more protective than a statutory ban. Although oil and gas drilling are already banned under state and federal law, the bans could be easily reversed by legislators sympathetic to oil and gas industry interests. A constitutional ban would be more difficult to overturn. Michigan's people, economy, and the largest freshwater ecosystem in the world must be protected against hasty or ill-conceived attempts to resume oil and gas drilling in or under the Great Lakes.

Legislative approval of the resolution would allow Michigan's voters to decide whether the current drilling ban should be placed in the Constitution. Legislative approval of the resolution would allow it to go before the voters, letting Michigan's citizens decide this question.

Against:

With proper precautions, directional drilling would benefit Michigan's economy at little risk to the environment. Although no organization or individual publicly opposed HJR GGG at the committee hearing, the Mackinac Center for Public Policy is on record as opposing Michigan's current statutory ban on directional drilling, and the proposed constitutional ban.

In 2008, Russ Harding of the Mackinac Center (former head of the Department of Environmental Quality under Governor John Engler) argued that the ban on directional drilling under the Great Lakes was and is bad energy policy.¹ He noted that many directional wells were drilled without incident before the ban, and that many more could be drilled if the ban were lifted. He said that a report issued by the Michigan

¹ Russ Harding, *Great Lakes Directional Drilling Ban Should Be Lifted*, Mackinac Center for Public Policy, July 2, 2008, available at <http://www.macinac.org/9623> [accessed 8-16-10].

Environmental Science Board during the Engler administration concluded that directional drilling posed little or no risk of contaminating the Great Lakes from the bottom hole portion of the wells, and that steps could be taken to mitigate the small risk of contamination that did exist at the wellhead. Lifting the ban, he suggested, would yield additional revenue for the state, help meet transportation and energy needs, and create jobs. In July 2010,² Mr. Harding criticized the federal moratorium on deep water oil drilling in the Gulf of Mexico, the state ban on Great Lakes drilling, and the effort to place a constitutional ban on Great Lakes drilling on the November 2010 ballot as being short on science and technical merit, and long on political posturing.

A constitutional amendment is unnecessary. Some people say that a constitutional ban on drilling is unnecessary because both offshore and onshore forms of drilling for oil or gas in or under the Great Lakes are already banned in state and federal law. Even if the Michigan Legislature overturned the state law ban, the federal ban would also have to be lifted before drilling could proceed. Because the odds that both ban bans would be lifted are low, a constitutional ban is unnecessary. Also, because drilling is already banned, some people say that attention should be focused instead on efforts to reduce more immediate risks to the Great Lakes, such as the risk of another pipeline rupture.

POSITIONS:

Clean Water Action supports the resolution as reported from committee. (6-24-10)

The Michigan Boating Industries Association supports the resolution as reported. (6-24-10)

The Michigan Environmental Council supports the resolution as reported. (7-8-10)

The Sierra Club supports the joint resolution as reported. (7-8-10)

The Michigan Oil and Gas Association has no position on the resolution as reported. (6-24-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

² Russ Harding, *Gulf Drilling Moratorium Similar to Great Lakes Drilling Ban*, Mackinac Center for Public Policy, July 13, 2010, available at <http://www.mackinac.org/13176> [accessed 8-19-10].