

**House Great Lakes and Environment
HB 4343, and HB's 5065 - 5073
11/28/07**

Madam Chair, thank you for the opportunity to speak today. I would like to take a few moments to review the some of the legislative history of water withdrawal issues. The water use discussion has gone on for many years, but with significant progress.

- **PA 148 2003 – Groundwater Conservation Advisory Council** – Look at what we know and what we don't know about water use.
- **PA 177 of 2003 - Conflict Resolution Process** – Conflicts limited to just two counties.
- **PA 33-37 of 2006** – Developed a regulatory structure and focused the Groundwater Conservation Advisory Council's work on development of the assessment tool.

This summer the Council released its report and the tool continues to be reviewed. Over the past several years, a great deal of work has yielded some remarkable achievements. The legislative process has been closely aligned with the development of cutting edge science. Too often regulation does not closely match science, but this has been a rare integration of the two. We are developing legislation at the same time as the science comes out of the lab.

But let me offer some perspective on this, as exciting as this process is, and as interesting as the science is, we must be very careful to make sure we don't over regulate the use of our water resources. We have seen around the nation, whether we are talking about the Governor Richardson's New Mexico, or Atlanta Georgia, the economic value of water for Michigan's economy is becoming increasing apparent. We are on the path of developing important science regarding the use of water. We need to makes sure that the regulatory scheme does not block the use of our greatest economic resource. If we over regulate, the cost of using these resources can exceed the cost of using water elsewhere, and we will continue to lose manufacturing investment. It is critical that we remain conscious of the economic benefit of the water and the economic cost of regulation.

We cannot forget the context in which we are developing this law. We are a water rich state, and we have arguably the most challenged economy in the nation. Let me offer some perspective on water availability and also some economic context.

Water Facts

- Lansing Board of Water & Light uses 30 Million gal/day or 1 Billion gal/month from 187 Groundwater Wells
- 265 billion gal/year total groundwater withdrawn
- 1 inch of rain fall on land = 970 billion gal
- 31 inches of rainfall on average per year
 - 30 trillion gal/year on surface
 - 20 trillion gal/year on state portion of GL
 - 50 Trillion gal/year total

This summer at the Great Lakes Legislative Caucus meeting this summer in Traverse City a researcher from NOAA, said that they don't even include human use in the their models that evaluate lake levels, because the volumes of use are so insignificantly small.

Economic Facts

- Michigan has the highest unemployment rate in the nation at 7.7%, a full 3 percentage points above the national average of 4.7%.
- Detroit's unemployment rate is 8.9% (Sept.)
- This state has lost 426,000 total non-farm jobs and 289,600 manufacturing jobs since 2000, according to the U.S. Department of Labor, Bureau of Labor Statistics.
- We have lost 75,000 jobs since October of 2006.
- The most recent report indicates we lost 22,400 nonfarm jobs in October of 2007 alone.

Concerns about the Package of Bills

Not supported by the new science

- Reduction of Index Flow – This change is not supported by the science or the scientists. This would abandon the years of scientific study and the million dollars of state money that funded the research.
- Constraint on bottle water use are very small compared to say a municipality, and ignores other water based products like paint, pop, beer, medicine, or baby formula.

Encourages Litigation -

- Allowing local prosecutor or any person “threatened with effects” to file action.
- Allows any interested party to challenge an existing permit.
- Allow any person to file an action in court.

Creates Regulatory Uncertainty

- DEQ can deny if there is an “unacceptable disruption to aquatic resources” – but aquatic resources are not defined and left to the discretion of the agency, outside of scientific information.
- DEQ becomes the arbiter in the “reasonable use balancing test” – fundamentally changing common law.
- Removes the “clear and convincing evidence” standard for the agency to revoke a permit.
- Eliminates the Groundwater Advisory Council

Increases Bureaucracy

- Empowers local units of government to regulate water withdrawal.
- Requires more permits by lowering thresholds.
- Unclear how many staff would be necessary, or how they would be funded.

Compact – HB 4343 (Ebli) - HB 4336 (Pavlov)

Michigan is the only state wholly within the GL Basin no other state has more than 40% of its land mass in the GL basin. Illinois has just 1/10th of one percent in the basin, yet they would have significant authority over Michigan's economic future. We must be very careful about the level of control we hand to our competitor states.

- **Sec. 9.1** of the compact says that any state laws in conflict with the compact are repealed. This is an enormous grab of authority by a regional government.
- **Prior Approval** - The council may change the standard of review and may change rules under the compact. I tend to think that is in conflict with Michigan's constitutional requirements for enactment and presentation and protections for separation of powers. But more importantly, I believe the legislature ought to have a role in make laws that affect citizens in Michigan. I suggest that the legislature should require prior approval before the governor votes on the council.
- **Scope of Impact** – the compact remains vague on whether impact means the great lakes or a very short segment of stream. How much control of Michigan do we want to hand to other states?

- **Grandfather** – Michigan law grants a grandfather based on the largest capacity in place as of 2006. The compact seems to interpret to be the smallest capacity – there is a difference and the compact constrain more than Michigan law.

With changes, MMA supports adoption of the compact.

Conclusion

We are concerned that House package tends to increase regulatory burdens, increase litigation, separate from science, and create greater disincentives for job producing investment in Michigan. If we are to improve the economy we must use the natural economic advantages in Michigan. If the cost of using these resources exceeds the cost of using water elsewhere, then we will continue to lose manufacturing investment.

We must do what is right for the environment and what is right for the economy. We believe that balance is possible.

Let me close with some thoughts from Dick Dauch, founder of American Axle about the challenges for Michigan “We operate in a global economy, at worldwide pricing, with domestic costs.” In developing new water law, it is critical that we remain conscious of the economic benefit of the water and the economic cost of regulation.

Great Lakes States	Percent of the State in the Great Lakes Basin
Illinois	0.1
Indiana	9.7
Michigan	99.9
Minnesota	7.4
New York	40.5
Ohio	28.1
Pennsylvania	1.3
Wisconsin	30.7