



## **Legislative Advisory**

***Prepared by Water Utility Committee  
Michigan Section AWWA***

**Analysis of Water Withdrawal Legislation:  
SB 850, 851, 852, 876 (all tie-barred)  
November 18, 2005**

### **Summary**

Proposed water withdrawal legislation currently in committee has the potential to impact public water supplies (PWS's) in the permitting process for new or increased withdrawal permitting under PA 399.

### **Background**

- SB 850 through 852 introduced on October 27, 2005 (Sponsors: Birkholz, Patterson, Van Woerkom).
- Bills amend PA 451 (Natural Resources and Environmental Protection Act) for regulation of water withdrawals, including registration and permitting requirements for new or increased withdrawals, with attention to potential adverse impacts on water resources. Public water supplies were initially exempt from the reporting requirements, but still subject to the proposed permitting requirements.
- In workgroup negotiations, original bills were modified to include an exemption for PWS's in conjunction with the introduction of SB 876 on November 9, 2005, which requires environmental impact review of PA 399 permit applications.
- Critics of the bills as proposed continue to push for more restrictive language related to environmental impacts and conservation.

### **Bill Summary**

#### **SB 876 – Bill to amend PA 399**

- DEQ to evaluate environmental impact of proposals for water system changes as submitted with PA 399 permit.
- For new or increased withdrawal of more than 2 mgd, DEQ to determine if the proposed facilities will cause adverse impacts, as defined by PA 451 (as amended by SB 850-852). If adverse impacts are determined to exist, the permit can only be issued if there is no other reasonable alternative for location of the withdrawal, and DEQ would then stipulate design and operational conditions to balance the identified impact with public health, safety, and welfare.

#### **SB 850 – Bill to amend PA 451**

- Provides for a public comment period for any regional diversion proposals.
- No large quantity (100,000 gpd ave in any 30 day period) withdrawal that causes an adverse impact to a designated trout stream (adverse impact defined as decreasing the base flow of a stream or decreasing the level of a body of surface water such that the stream or surface water will no longer support characteristic fish populations). Withdrawals from a confined aquifer are exempted.
- A large quantity withdrawal that exists on the date of the enactment of the bill is presumed (rebuttable) not to cause an adverse impact.
- Prior to development of a withdrawal assessment tool (see SB 851), an increase to an existing large quantity withdrawal or a new large quantity water withdrawal is presumed (rebuttable) not to cause an adverse impact if it is more than 1,320 feet from a trout stream, or if the well is at least 150 feet deep.
- A water withdrawal assessment tool is to be developed that will serve as the basis for assessing adverse impacts (See SB 851).
- Permits are required for new or increased withdrawals to supply a common distribution system of over 2 mgd in any 90 day period; however, PWS's are exempt from permitting if holding a permit under PA 399.

SB 851 – Bill to amend PA 451

- Identifies additional members to be appointed to the Groundwater Conservation Advisory Council (GWAC), including one member appointed by the Governor to represent municipal water suppliers.
- GWAC to develop recommendation for mediation process for resolving disputes and assuring no adverse impact of groundwater withdrawals.
- GWAC to develop a water withdrawal assessment tool for use in evaluating new or increased large quantity withdrawals.

SB 852 – Bill to amend PA 451

- Registration and annual reporting required for new or increased water withdrawals of 100,000 gpd or greater in any 30 day period; PWS's exempt from permitting if already doing so under PA 399 (exemption referenced in SB 850).
- DEQ to encourage each water use sector to develop conservation practices, with reporting of progress to the legislature.

**Analysis**

As currently proposed (replacement versions issued November 8, 2005), these bills provide fairly minimal impact to PWS's, assuming reasonable interpretation of adverse impacts. Biggest risk may be to groundwater systems that are within the proposed 1,320 feet of a trout stream or less than 150 feet deep. The proposed conservation practices development does not mandate implementation of such practices, but could lead to this in the future.

Although PWS's are exempted from the permitting process proposed under PA 451, the definition of adverse impacts as it relates to the proposed modified PA 399 permit requirements refer back to PA 451, and the ability exists for the DEQ (or others via complaint to the DEQ) to restrict water withdrawals if an adverse impact is suspected. In addition, current versions of the bills put the responsibility on DEQ for identification and evaluation of any adverse impacts. However, the potential exists for DEQ to simply modify the current PA 399 permit application to require applicant to provide information (e.g., similar to treatment of wetland or floodplain impacts: "Is the project construction activity within a wetland; if so, a wetland permit must be obtained"). Ultimately, the impact to PWS's may depend on the details of the proposed withdrawal assessment tool.

Critics of these versions of the bill package continue to push for elimination of exemptions, more stringent conservation and resource protection requirements, as well as return flow requirements and resource improvement requirements (language similar to that proposed in the original version of the Annex Implementing Agreements; refer to the Water Utility Committee page of the MI-AWWA website for Section position and comments on Annex language). Others have pushed for "standard of review" language that incorporates a "one size fits all" approach to impact evaluation. Some examples, and related concerns, include:

- Withdrawal must not disrupt the natural thermal stratification of turnover patterns of the source water. This could be troublesome if return flow responsibility is made a part of proposed regulations.
- Withdrawal must be implemented to ensure no significant individual or cumulative adverse impact to the quantity or quality of the waters of water dependent resources. This language leaves much to interpretation, and does not recognize the importance of public health and safety afforded by PWS's.

The currently proposed presumptions of "no adverse impact" – confined aquifers, more than 1,320 feet from a trout stream, wells more than 150 feet deep – do not appear to have any technical basis; however, it is likely in the interest of PWS's to stay silent on this in the interest of maintaining these exemptions.

SB 851 appears to be leading to a more comprehensive groundwater dispute program than already provided by PA 177 to include adverse impacts in addition to conflicts between users. This also has the potential to allow frivolous or unfounded complaints to be filed against PWS's.

### Talking Points

- The overall message to legislators should be that impacts to PWS's need to be carefully considered, as PWS's are already a heavily regulated water use sector, and PWS's serve the important mission of protecting public health and safety, and providing a service to support economic health of our communities.
- A document illustrating the exist regulations under which PWS's must operate and are permitted, including compliance with state and federal environmental protection regulations related to wetlands, floodplains, critical dune areas, Great Lakes bottomlands, etc., and examples of permit applications, is available on the Water Utility Committee page of the Section's website. This document provides an impressive look at the scope of existing PA 399 water withdrawal facility permitting.
- Any attempt to include language in anticipation of potential Annex Implementing Agreement language is premature, and should not be included at this time.
- There is no overwhelming evidence in the 100 year history of public water supplies in Michigan of significant adverse environmental impacts due to public water supply withdrawals. Existing permit programs and regulations have worked thus far, and public water supplies should not be subject to additional regulations.
- PWS's (through MI-AWWA) should be allowed input on the proposed appointment of a GWAC municipal representative.
- Conservation practices for PWS's should not be arbitrarily applied on a supply-side basis. PWS's are supportive of efficient water use practices in their operations when such practices make economic sense, and in the promotion of wise water use by our customers. However, arbitrary mandated conservation can be a detriment to economic growth and can affect PWS's ability to recover capital investments in water infrastructure.
- Consideration should be made to limit regulatory roadblocks to PWS withdrawal proposals that are planned to meet the requirements of water system reliability as required by PA 399. Recognition should be made that "public health, safety, and welfare" as referenced in SB 876 includes meeting documented system demand projections of PA 399 reliability studies.

For more information, please contact Water Utility Committee Chair Dave Koch at (616) 459-2360 or [kochds@bv.com](mailto:kochds@bv.com).