

# **Great Lakes Compact Bill Overlooks Science, Leaving Our Streams, Rivers, and Lake Erie at Risk**

*Environmental- conservation groups, scientists and small businesses believe newly introduced Compact legislation simply won't hold water*

Environmental-conservation organizations, small businesses, lawyers and scientists from across Ohio, collectively known as the Coalition for Sustainable Communities, agree that legislation introduced recently in the Ohio House and Senate to implement the Great Lakes Compact falls far short of the comprehensive, science-based approach required and necessary to protect the surface and ground water that sustain Lake Erie and its related wildlife, industry and related jobs.

House Bill 231 (Wachtmann-R) and Senate Bill 170 (Grendell-R) recently were introduced in their respective chambers. While both bills have the support of certain industry interests, the Coalition for Sustainable Communities points out that the bills leave approximately 80 percent of Ohio's streams wholly unprotected by only regulating water withdrawals from a stream if it is included in the "Gazetteer of Ohio Streams." The Gazetteer is a geographical reference tool of Ohio's streams and rivers, first published in 1954. It has been replaced for many purposes, and it is no longer widely used by agencies managing the waters of the state because this classic reference does not list most streams—only the larger, named ones.

The Great Lakes Compact defines waters of the Great Lakes basin as the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Great Lakes basin. It protects these waters from new or increased large water withdrawals, consumptive uses and diversions. The Compact was created through the collective legislative action of its eight US member states, adopted by Congress and signed into law by President George W. Bush. The Compact went into effect December 8, 2008 and requires each Great Lakes state to develop and implement conservation and water management programs grounded in science by 2010 and 2013 respectively.

The proposed legislation, however, seeks to re-write the Great Lakes Compact by focusing the water management program on the whole Lake Erie basin while giving a nonbinding preference to a tributary of the Lake, as long as the tributary is referenced in the Gazetteer. Examples include the Cuyahoga, Maumee, Grand, and Sandusky Rivers, among others. The approach places the drinking water of nearly 3 million Ohioans, jobs, our economy and recreational opportunities at risk. It also leaves Ohio vulnerable to litigation for not upholding the Compact's covenants.

H.B. 231 and S.B. 170 also require an industrial facility to obtain a permit for a new or increased withdrawal or consumptive use of at least 2 million gallons of water per day averaged over a 90-day period for streams and rivers that are not of high water quality, and at least 300,000 gallons of water per day averaged over a 90-day period for small streams and rivers of high water quality.

Water withdrawal thresholds of this magnitude will lead to higher concentrated water pollution levels, potentially resulting in increased algal blooms thereby impacting tourism and recreational sportfishing.

Increased concentrated pollution also results in higher water and waste water treatment rates for residents.

A science-based tool that was developed by The Nature Conservancy in collaboration with the Midwest Biodiversity Institute would enable the State to easily determine appropriate water use thresholds based on the size and water quality of the stream, as well as the impact of a specific water withdrawal on a river or stream. This tool helps water users avoid costs by directing them to withdrawal sites that would provide sustainable water supplies, and helps them to avoid withdrawals in streams that have little to no water to serve as a reliable and higher quality source. The tool was designed using the U.S. Geological Service's (USGS) flow data and more than 20 years of ecological data collected by the State, which links the amount of water withdrawn to a percentage of flow-sensitive species lost within a particular river watershed. The USGS in Ohio has received some funding to begin work to develop the groundwater component of this tool.

Utilizing a science-based approach to identify appropriate water withdrawal thresholds will ensure that businesses are provided the predictability they seek, while protecting our drinking water; recreational opportunities like fishing and boating; jobs; and the tourism industry.

Lake Erie supplies the state of Ohio with more than \$10 billion in economic revenue each year and more than a quarter of a million jobs resulting from recreational and commercial fishing, wildlife watching, tourism and travel. Any legislation to implement the Great Lakes Compact must provide certainty and sustainability for this vitally important recreationally based business sector, by providing adequate water levels in coastal areas and streams where many important sportfish such as walleye, yellow perch, or steelhead trout spawn or reside for part of the year and outdoor enthusiasts recreate.

H.B. 231 and S.B 170 breach the spirit and the letter of the Compact and leaves Ohio vulnerable to lawsuits and litigation costs. Specifically, these bills violate Section 1522.01 of the Ohio Revised Code and the Compact by:

- Not following the minimum standard in the Compact to assess new or increased water withdrawals and consumptive uses. States may not approve water uses under their program unless the uses meet the criteria in the decision-making standard, found in Section 4.11 of the Compact. Among other criteria, the Compact standard requires (a) the use to be implemented so as to incorporate "Environmentally Sound and Economically Feasible Water Conservation Measures" and (b) the use to be reasonable under certain factors. The bills fail to include either of these criteria. Applicants are not required to implement conservation measures, and there is no evaluation of reasonableness unless a court determines a use is unreasonable.
- Not creating a water conservation program for all water users, including existing water users. Under Section 4.2.5 of the Compact, the state must create a program for all, including existing water users. The voluntary conservation program in the bills only targets new or increased water users.
- Constraining the chief of the Division of Soil and Water Resources from requiring any information on water conservation measures undertaken. Under the decision-making standard, Section 4.11 of the Compact, for any new permit an applicant must show how they are incorporating "Environmentally Sound and Economically Feasible Water Conservation Measures" before a permit can be approved.

The sponsors have stated that the bills are designed to promote smaller government and less oversight, but the proposed legislation would impose increased governmental oversight and appears to violate Ohio constitution's separation of powers. This is demonstrated through a provision in the bill that would require the General Assembly to vote on rules drafted by the Division of Soil and Water Resources to implement the Compact. Under the normal rule process, rules would be drafted and feedback would be sought, including from members of the General Assembly. The Division then reviews and considers comments and the rules are revised and finalized. This extra step proposed in the legislation is counter-intuitive to the Governor's Common Sense Initiative, which emphasizes smaller government and less bureaucracy.

The General Assembly is required to pass enabling legislation to fulfill Ohio's responsibilities as a member of the Great Lakes Compact by 2013.

In the coming week, alternate legislation will be introduced that will meet the requirements of the Compact. This legislation will employ a science-based methodology to (a) determine appropriate water withdrawal levels and (b) determine when an impact is significant.

In addition to Ohio, Compact member states include Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, and Wisconsin.

**Contact:**

Kristy Meyer, Ohio Environmental Council, 614-487-5842 (work); 614-638-8948 (cell)

John Stark, The Nature Conservancy, 614-717-2770

Adrienne Dziak, The Nature Conservancy, 614-717-2770

Marc Smith, National Wildlife Federation, 734-887-7116