

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: H.B. 665 (with amendment 5155) DATE: March 31, 1998

STATUS: In House Agriculture and Natural Resources SPONSOR: Rep. Coughlin

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: Provides that a withdrawal of water from either the Lake Erie or Ohio River drainage basin is a "diversion" for the purposes of certain permitting requirements regardless of whether the water is returned, and to declare this an emergency measure.

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Services Fund 516, Water Management Fund			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential increase of approximately \$15,000	Potential increase of at least \$30,000	Potential increase of at least \$30,000
General Services Fund 106, Attorney General			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase

- Each applicant for a state permit must pay a \$1000 fee to the Ohio Department of Natural Resources, Fund 516 (725-620) Water Management Fund.
- The Division of Water will require approximately 0.5 FTE staff person who will be responsible for reviewing and issuing state permits. This division may also pay for public hearings regarding permit applications.
- The State of Ohio diversion permits require ODNR to deny permit applications unless all conditions are met. This will probably necessitate litigation regarding permit application eligibility, requiring representation by the Attorney General.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
City of Akron and Other Potential Municipalities			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	\$1,400,000 increase for diversion permits for each affected municipality, plus potential substantial increase to return water	\$150,000 increase for monitoring and reporting requirements for each affected municipality, plus potential substantial increase to return water.	\$150,000 increase for monitoring and reporting requirements for each affected municipality, plus potential substantial increase to return water.

- Cities that propose to divert water from one basin, regardless if the water is returned, will be required to obtain a state permit, as well as the approval of the Governors of the Great Lakes States. The total cost for the permits is approximately \$1,400,000. In addition, approximately \$150,000 annually will be required for monitoring and reporting for the combined permits. Communities that began water diversions before January 1, 1998 will be grandfathered in, unless a change is made to their current diversion project at which time the requirements of this bill will become applicable. Akron is proposing a water diversion and will need to obtain the state permit.
- In addition, the communities may need to develop a means to return the same amount of water to the Lake Erie Basin, resulting in no net loss to the basin, as required for the approval of the Governors of the Great Lakes States. Costs for providing a return flow of water is unknown, due to varying conditions, but is expected to be substantial.
- The cities of Ravenna, Bucyrus and Medina would come under the “grandfather clause” and, therefore, would not require permits.

Detailed Fiscal Analysis

State Permit

Under current law, transfers of 100,000 gallons or more of water across the basin divide that are subsequently returned to the basin of origin are not considered diversions. This bill changes the definition of "diversion" in reference to the Lake Erie and Ohio River basins so that all transfers of water across the basin divide will be subject to State of Ohio diversion permit requirements, regardless of whether the transferred water is returned to the basin of origin.

Any water diversion projects that were commenced prior to January 1, 1998 will be grandfathered in, unless a change is proposed to the current diversion at which time the provisions of this bill will become applicable.

The State of Ohio diversion permit requires an application, including a fee of \$1000, per diversion. This application contains very stringent requirements, and ODNR is not permitted to

approve any application that does not adequately meet all of the requirements. Such requirements include proof that the proposed diversion will not create significant detrimental effect on the quantity or quality of water or land resources, and a discussion of why existing alternatives are not feasible. In addition, the diversion will not be permitted unless that applicant has successfully gained approval from each of the Governors of the Great Lakes States. "Great Lakes state" means Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin. Please see the next section for further information and costs regarding the Governors' approval.

This bill will increase the number of communities that will require a State of Ohio diversion permit, and ODNR anticipates that at least 0.5 FTE new staff person will be required at approximately \$30,000 per year. Public hearings may be held by ODNR, which will require an indeterminate amount of staff time and resources.

Because the application process specifically prohibits ODNR from approving any application that does not meet all of the requirements, ODNR anticipates challenges resulting from this provision. If a permit is approved, most likely those that oppose the diversion project will challenge its merits of meeting all requirements. If this happens, the Attorney General must represent ODNR in litigation procedures. If someone violates the terms or conditions of a state permit, it is a misdemeanor of the fourth degree to be tried in a county or municipal court, and it can result in a fine up to \$10,000 for each day of the violation.

The City of Akron Engineering Department has completed an estimation of the costs that will be associated with the State of Ohio diversion permit. This estimate does not include the costs associated with obtaining approval of each Governor of the Great Lakes States. Please note that Akron estimates it will cost \$150,000 annually to perform monitoring, reporting, and maintenance. It is assumed that this proposal would cost about the same for other communities to complete. The estimate of costs is as follows:

Estimate to Obtain State of Ohio Diversion Permit

Activity	Initial Cost	Annual Cost
Formulate Plan for ODNR (planning & engineering services related to alternative analysis, project selection criteria and project design)	\$200,000	
Environmental Analysis (planning & engineering services related to assessment of environmental impacts, biological & chemical sampling, laboratory services, stream flow modeling, mitigation planning, etc.)	\$250,000	
Administrative Coordination (staff time & associated expenses related to presenting the proposal and other information dissemination, attendance at plan coordination meetings, public hearings, city staff assistance and coordination in preparing the report, coordination with State of Ohio agencies, and coordination of local effort.)	\$250,000	
Flow monitoring equipment	\$200,000	
Annual monitoring and maintenance of flow equipment		\$100,000

City Staff recording and reporting of flow information		\$ 50,000
TOTAL	\$900,000	\$150,000

* Information provided by ODNR Division of Water and Akron City Bureau of Engineering

Approval by Governor of Each Great Lakes State

Section 1109 of the Federal Water Resources Development Act of 1986 (42 U.S.C. 1962d-20) requires any project that diverts water from the Great Lakes basin for use in another basin to obtain approval from the Governor of each of the Great Lake States. The State of Ohio diversion permit will require approval of each Great Lakes State Governor as a prerequisite to the state permit.

Because New York utilizes water from the Great Lakes to produce hydroelectric power, in addition to protecting the overall health and integrity of the Great Lakes ecosystems, the Governors will not approve any application that will result in a net loss of water from the basin. In essence, if water is to be withdrawn, then the same amount of water must be returned, even if it is not the same water. This may potentially cause high expenditures for those communities that currently divert water from the Lake Erie Basin without providing for a return of an equal amount of water. The costs to provide for a return flow of water are unknown at this time, based on varying conditions that exist in each community, but costs are expected to be extremely high.

The City of Akron Engineering Department recently completed and submitted a proposal to request approval of each of the Great Lakes States Governors. This proposal does not include the costs to provide a return flow of water since Akron currently does this via the Ohio & Erie Canal. Not including return flow costs, it is assumed that this proposal would cost about the same for other communities to complete. This proposal must contain information, such as how the diversion will result in no net loss to the Lake Erie Basin, that is different from the state diversion application. Please note that Akron estimates it will cost \$125,000 annually to perform monitoring, reporting, and maintenance. The following expenditures were associated with the proposal:

Cost for Akron to Obtain Approval of Each Governor of Great Lakes States

Activity	Initial Cost	Annual Cost
Prepare report for approval by each Great Lakes States Governor	\$250,000	
City staff assistance and coordination in preparing the report, coordination with State of Ohio agencies, coordination of local effort	\$100,000	
Stream, water and sewage pump station meters to record water use and return flows	\$150,000	
Annual monitoring and maintenance of stream, water and sewage pump station meters		\$ 75,000
City staff recording and reporting of water use and return flows		\$ 50,000
TOTAL	\$500,000	\$125,000

* Information provided by ODNR Division of Water and Akron City Bureau of Engineering

Impacted Communities

There are several communities that will or potentially may be affected by this bill. Such communities include: (1) those which straddle the basin divide and may change existing diversion requirements, (2) those which are close to the basin divide and which may extend their boundaries to straddle it in the future, and (3) those which are close to the basin divide and which may wish to regionalize water and/or wastewater facilities to serve communities across the divide. The assumption for the communities that currently divert and return water is that they will not be grandfathered in, as there is no mention of it in the bill.

Communities that Straddle the Basin Divide

The most obvious community that will be impacted is the City of Akron, which straddles the basin divide and provides water to its residents on both sides of the divide from its source in the Lake Erie Basin. Water provided across the divide in the Ohio River Basin is subsequently collected and returned to the Lake Erie Basin via Akron's wastewater system. Akron is proposing to extend its drinking water service area into three townships south and west of the City, most of which are in the Ohio Rivers Basin (providing for the subsequent return of the water to the Lake Erie Basin by extending its wastewater system to parts of the area and by using the Ohio & Erie Canal via a lease agreement with ODNR). Should the current bill become law, Akron would need to obtain a permit both for the existing transfer of water to its residents in the Ohio River Basin and for the proposed transfer of water into that part of three-township service area which is in the Ohio River Basin. It is expected to cost Akron \$900,000 for each permit, plus an additional \$150,000 annually to perform monitoring, reporting, and maintenance.

The City of Ravenna also straddles the basin divide and provides water to its residents on both sides of the divide from its primary source in the Lake Erie Basin. Some of the water provided across the divide in the Ohio River Basin is subsequently collected and returned to the Lake Erie Basin via Ravenna's wastewater system, but some areas in the Ohio River Basin served by the City's drinking water system are not connected to the City's wastewater system, and this water is not returned. Ravenna has already obtained a permit for the diversion of water out of the Lake Erie Basin that is not returned, but this permit does not include the water that is returned via the City's wastewater system. Should Ravenna continue its current system, Ravenna will be grandfathered in with respect to the requirements of this bill. However, if Ravenna proposes to change the current diversion requirements, Ravenna would then need to obtain a diversion permit and subsequent governors' approval under this bill.

Two other cities, Bucyrus in Crawford County and Medina in Medina County, also straddle the divide and provide water to residents on both sides of the divide from their sources in the Lake Erie Basin. Water provided across the divide in the Ohio River Basin by these cities is subsequently collected and returned to the Lake Erie Basin via their municipal wastewater systems. Should the current bill become law, Bucyrus and Medina would also be grandfathered in, unless changes are proposed to their existing systems at which time the requirements of this bill would become applicable.

The Village of Hartville in Stark County, which straddles the divide, currently does not provide drinking water or wastewater services to its residents. If the current bill becomes law, Hartville would need to obtain a diversion permit if it should develop drinking water and wastewater systems. With the statute in its current form, it is uncertain whether the Village will need to obtain a permit, depending on the specific circumstances.

Communities That May Extend Boundaries to Straddle Divide In Future

Several communities are currently located very near the basin divide and may, in the future, extend their municipal boundaries to straddle the divide. Should this occur, these communities may be situated so that drinking water would be provided across the divide with subsequent return by the wastewater system. If the current bill becomes law, they would be required to obtain State of Ohio diversion permits and approval of Great Lake States Governors in such a situation. They include:

- City of Celina in Mercer County
- City of St. Marys in Auglaize County
- Village of Kettlersville in Shelby County
- Village of Botkins in Shelby County
- Village of Waynesfield in Auglaize County
- City of Kenton in Hardin County
- City of Gallion in Crawford County
- Village of Lodi in Medina County.

Communities Close to Divide That May Choose to Regionalize

Communities and rural water systems near the divide may choose to connect with another community or rural water system across the divide for both water and wastewater services. In this situation, there would be a transfer of drinking water with subsequent return by the wastewater system, similar to the municipalities that straddle the divide. If the current bill becomes law, communities or rural water systems providing regional water and wastewater services across the divide would be required to obtain State of Ohio diversion permits, as well as the approval of the Governors of the Great Lake States. Identified community clusters near the divide that have the potential for drinking water and/or wastewater system regionalization include:

- Chickasaw/New Bremen/Minister/Fort Loramie
- Alger/McGuffey/Ada
- Galion/Crestline
- Shelby/Tiro/Plymouth/Shiloh
- Ashland/Bailey Lakes/Savannah/Rural Lorain County Water Authority
- Lodi/Burbank/Westfield Center/Seville/Creston/Medina County System
- Mantua/Hiram/Garrettsville.

Other rural areas along the divide, especially where ground water resources are poor and suburban development pressures are mounting, may also result in the formation of regional water districts across the divide.

Emergency Connections

Communities and rural water systems that are located relatively near the divide and also relatively near other communities or rural water systems across the divide have the potential to form regional water systems that could be impacted by the passage of the current bill. Such a situation would be where two existing drinking water systems on opposite sides of the divide, each with a water source on its side of the divide, connect in order to provide each system with an additional source of emergency water. Drinking water from both sides of the divide could be transferred back and forth; no water would normally move across the divide, but the potential would exist for emergency transfers either way. If an emergency transfer did take place, a subsequent transfer in either direction could be accomplished to facilitate the return. Such connections between water systems, which are encouraged by federal and state drinking water agencies because they improve system reliability, would be required to obtain two diversion permits if the current bill becomes law (one for each system.) There are no such connections across the divide that currently exist purely for emergency purposes. There is one existing connection across the divide, which involves two Medina County systems. This supplemental connection has not resulted in a water transfer large enough (100,000 gallons per day) to require a diversion permit. Considering that federal and state drinking water policy encourages inter-system emergency connections, it is likely that such connections along the divide will occur in the future.

□ *LBO staff: Erica Burnett, Budget/Policy Analyst*

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