

No. 48

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REGULAR SESSION OF 2008

Senate Chamber, Lansing, Thursday, May 15, 2008.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor John D. Cherry, Jr.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

12:54 p.m.

The Committee of the Whole was called to order by the Chairperson, Senator Garcia.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Richardville, having assumed the Chair, the Committee reported back to the Senate, favorably and with a substitute therefor, the following bill:

Senate Bill No. 860, entitled

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 32701, 32705, 32706, 32707, 32709, 32710, 32721, 32722, 32724, and 32725 (MCL 324.32701, 324.32705, 324.32706, 324.32707, 324.32709, 324.32710, 324.32721, 324.32722, 324.32724, and 324.32725), sections 32701 and 32707 as amended and sections 32721, 32722, and 32724 as added by 2006 PA 33, section 32705 as amended by 2006 PA 35, section 32706 as amended by 1996 PA 434, sections 32709 and 32710 as added by 1995 PA 59, and section 32725 as added by 2006 PA 36, and by adding sections 32706a, 32706b, and 32706c.

Substitute (S-6).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

By unanimous consent the Senate returned to the order of

Third Reading of Bills

Senator Cropsey moved that the rules be suspended and that the following bill, now on the order of Third Reading of Bills, be placed on its immediate passage at the head of the Third Reading of Bills calendar:

Senate Bill No. 860

The motion prevailed, a majority of the members serving voting therefor.

The following bill was read a third time:

Senate Bill No. 860, entitled

A bill to amend 1994 PA 451, entitled “Natural resources and environmental protection act,” by amending sections 32701, 32702, 32703, 32705, 32706, 32707, 32708, 32708a, 32709, 32710, 32721, 32722, 32723, 32725, 32727, and 32728 (MCL 324.32701, 324.32702, 324.32703, 324.32705, 324.32706, 324.32707, 324.32708, 324.32708a, 324.32709, 324.32710, 324.32721, 324.32722, 324.32723, 324.32725, 324.32727, and 324.32728), sections 32701, 32702, 32703, and 32707 as amended and sections 32721, 32722, 32723, 32727, and 32728 as added by 2006 PA 33, sections 32705 and 32708 as amended and section 32708a as added by 2006 PA 35, section 32706 as amended by 1996 PA 434, sections 32709 and 32710 as added by 1995 PA 59, and section 32725 as added by 2006 PA 36, and by adding sections 32706a, 32706b, 32706c, 32706d, and 32729; and to repeal acts and parts of acts.

The question being on the passage of the bill,

Senator Prusi offered the following amendment:

1. Amend page 2, line 13, after the second “A” by striking out “3%” and inserting “1%”.

The amendment was not adopted, a majority of the members serving not voting therefor.

Senator Thomas requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 318 Yeas—19

Anderson Clark-Coleman Kahn Scott

Barcia Clarke Olshove Switalski

Basham Gleason Prusi Thomas

Brater Hunter Richardville Whitmer

Cherry Jacobs Schauer

Nays—19

Allen Cropsey Jansen Patterson

Birkholz Garcia Jelinek Sanborn

Bishop George Kuipers Stamas

Brown Gilbert McManus Van Woerkom

Cassis Hardiman Pappageorge

Excused—0

Not Voting—0

In The Chair: Richardville

Senator Basham offered the following amendment:

1. Amend page 25, following line 7, by inserting:

“(7) THE DEPARTMENT IN CONSULTATION WITH THE WATER RESOURCES CONSERVATION ADVISORY COUNCIL CREATED IN

SECTION 32803 SHALL DEVELOP A PROTOCOL FOR DOCUMENTING THE DIFFERENCE BETWEEN THE UNUSED PORTION OF BASELINE CAPACITY AND ACTUAL USE BY LARGE QUANTITY WATER USERS THAT EXISTED AS OF FEBRUARY 28, 2006. ONCE THE PROTOCOL HAS BEEN ESTABLISHED, THE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE DIFFERENCE WHEN MAKING SITE-SPECIFIC DETERMINATIONS OR PERMIT DECISIONS UNDER THIS PART. THE DEPARTMENT SHALL ADJUST THE ASSESSMENT TOOL TO TAKE INTO CONSIDERATION THE DIFFERENCE IF IT DETERMINES IT IS NECESSARY TO PROTECT CURRENT USERS OF WATER OR TO AVOID ADVERSE RESOURCE IMPACTS.” and renumbering the remaining subsections.

The amendment was not adopted, a majority of the members serving not voting therefor.

Senator Thomas requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 319 Yeas—17

Anderson Clark-Coleman Jacobs Scott

Barcia Clarke Olshove Switalski

Basham Gleason Prusi Thomas

Brater Hunter Schauer Whitmer

Cherry

Nays—21

Allen Garcia Jelinek Patterson

Birkholz George Kahn Richardville

Bishop Gilbert Kuipers Sanborn

Brown Hardiman McManus Stamas

Cassis Jansen Pappageorge Van Woerkom

Cropsey

Excused—0

Not Voting—0

In The Chair: Richardville

Senator Schauer offered the following amendment:

1. Amend page 31, following line 18, by inserting:

“SEC. 32706E. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE DEPARTMENT SHALL NOT AUTHORIZE, THROUGH USE OF THE ASSESSMENT TOOL, A SITE-SPECIFIC REVIEW, OR A PERMIT, A WITHDRAWAL THAT USES ADDITIONAL STREAM OR RIVER FLOW MADE AVAILABLE BY RESTORATIVE MEASURES UNLESS THE RESTORATIVE MEASURES ARE CONDUCTED IN CONJUNCTION WITH A WITHDRAWAL AND ARE SPECIFICALLY AUTHORIZED IN A PERMIT.

(2) IF A PERSON CONDUCTS RESTORATIVE MEASURES THAT ARE NOT RELATED TO A LARGE QUANTITY WITHDRAWAL, THE PERSON SHALL PROVIDE DETAILED INFORMATION TO THE DEPARTMENT DOCUMENTING THE RESTORATIVE MEASURES AND DOCUMENTING THE INCREASED STREAM OR RIVER FLOW OR TEMPERATURE IMPROVEMENTS ACHIEVED THROUGH THE RESTORATIVE MEASURES.

(3) AS USED IN THIS SECTION, “RESTORATIVE MEASURES” MEANS AN ACTION AFFECTING A STREAM OR RIVER THAT INCREASES THE FLOW OF THE STREAM OR RIVER OR IMPROVES THE TEMPERATURE GRADIENT OF THE STREAM OR RIVER.”.

The amendment was not adopted, a majority of the members serving not voting therefor.

Senator Thomas requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 320 Yeas—18

Anderson Clark-Coleman Olshove Scott

Barcia Clarke Pappageorge Switalski

Basham Gleason Prusi Thomas

Brater Hunter Schauer Whitmer

Cherry Jacobs

Nays—19

Allen Garcia Jelinek Richardville

Birkholz George Kahn Sanborn

Bishop Gilbert Kuipers Stamas

Brown Hardiman McManus Van Woerkom

Cassis Jansen Patterson

Excused—0

Not Voting—1

Cropsey

In The Chair: Richardville

Senator Basham offered the following amendments:

1. Amend page 43, following line 24, by inserting:

“(C) A PERSON WHO PROPOSES TO DEVELOP NEW OR INCREASED WITHDRAWAL CAPACITY OF MORE THAN 200,000 GALLONS OF WATER PER DAY FROM THE WATERS OF THE STATE IF THE WITHDRAWAL WOULD REDUCE THE FLOW OF A RIVER OR STREAM

BY MORE THAN 75% OF THE AMOUNT THAT WOULD CAUSE AN ADVERSE RESOURCE IMPACT.” and relettering the remaining subdivision.

2. Amend page 45, line 21, after “subsection” by striking out “**(1)(A) OR (B)**” and inserting “**(1)(A), (B), OR (C)**”.

3. Amend page 46, line 23, after “**SUBSECTION**” by striking out “**(1)(C)**” and inserting “**(1)(D)**”.

The amendments were not adopted, a majority of the members serving not voting therefor.

Senator Thomas requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendments were not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 321 Yeas—17

Anderson Clark-Coleman Jacobs Scott

Barcia Clarke Olshove Switalski

Basham Gleason Prusi Thomas

Brater Hunter Schauer Whitmer

Cherry

Nays—21

Allen Garcia Jelinek Patterson

Birkholz George Kahn Richardville

Bishop Gilbert Kuipers Sanborn

Brown Hardiman McManus Stamas

Cassis Jansen Pappageorge Van Woerkom

Cropsey

Excused—0

Not Voting—0

In The Chair: Richardville

Senator Brater offered the following amendment:

1. Amend page 47, following line 8, by inserting:

“(10) THE DEPARTMENT, IN MAKING ITS DETERMINATION UNDER THIS SECTION, SHALL ACT IN A MANNER THAT CONFORMS WITH ITS DUTIES AS SET FORTH IN SECTION 32702(1)(C).” and renumbering the remaining subsections.

The amendment was not adopted, a majority of the members serving not voting therefor.

Senator Thomas requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The amendment was not adopted, a majority of the members serving not voting therefor, as follows:

Roll Call No. 322 Yeas—19

Anderson Clark-Coleman Kahn Scott

Barcia Clarke Olshove Switalski

Basham Gleason Prusi Thomas

Brater Hunter Richardville Whitmer

Cherry Jacobs Schauer

Nays—18

Allen Garcia Jelinek Patterson

Birkholz George Kuipers Sanborn

Bishop Gilbert McManus Stamas

Brown Hardiman Pappageorge Van Woerkom

Cassis Jansen

Excused—0

Not Voting—1

Cropsey

In The Chair: Richardville

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 323 Yeas—24

Allen Cropsey Jansen Patterson

Barcia Garcia Jelinek Richardville

Birkholz George Kahn Sanborn

Bishop Gilbert Kuipers Stamas

Brown Gleason McManus Switalski

Cassis Hardiman Pappageorge Van Woerkom

Nays—14

Anderson Clark-Coleman Olshove Scott

Basham Clarke Prusi Thomas

Brater Hunter Schauer Whitmer

Cherry Jacobs

Excused—0

Not Voting—0

In The Chair: Richardville

The Senate agreed to the title of the bill.

Protests

Senators Brater, Prusi, Cherry and Jacobs, under their constitutional right of protest (Art. 4, Sec. 18), protested against the passage of Senate Bill No. 860.

Senators Brater and Prusi moved that the statements they made during the discussion of the bill be printed as their reasons for voting “no.”

The motion prevailed.

Senator Brater’s statement, in which Senator Jacobs concurred, is as follows:

Mr. President and colleagues, this today is a major historic opportunity of our generation to protect the waters of the Great Lakes, their tributaries, inland lakes and streams, and the water that flows forth mysteriously and wonderfully underground and is also linked to the Great Lakes watershed. Michigan is the only state completely within the Great Lakes Basin. We have the most interest of any state in the Union in making sure that the laws are strongly protective of the Great Lakes and their tributaries. We are home to cold water streams that are unique habitat for trout and other sport fishing. These streams draw fishermen and women, girls and boys from near and far.

It is urgent that we move forward with the Great Lakes Compact so that as a region the states and provinces that border the Great Lakes can work together to maintain control of these waters, preventing large scale diversions, and siphoning off the water to thirsty states and countries, standing in the way of those who would turn into a commodity that which is essential to all life on Earth.

We took this important step yesterday in broad agreement, and I want to recognize the good work of the good chair of the natural resources committee, the Democratic vice chair, and all of the members of that committee, as well as those who are toiling on the other side of the Rotunda to work with us on this issue.

We do have a great deal of agreement on this package, but there are some crucial unresolved differences. First and foremost, the substitute that we adopted today—that was adopted today—under some objection delays for a year implementation of the limitations imposed by this bill. Now, what that means is that people are going to run around and say, “Uh oh, they are going to regulating; let’s put in our pumps; let’s put in our wells; let’s start sucking up this water as quickly as possible and get grandfathered in so that we can’t be regulated, and the Legislature can’t protect the waters of the Great Lakes as they think they are going do.” This is unacceptable; that must be changed. There are other problems with the bills that have been listed by my colleagues’ lack of adequate protection for fish populations, which are the canary and mind of our ecosystem.

Being fair to users of the waters to make sure that those who would come after do not interfere with those who are already using the waters, that is a huge protection for farmers against suburban infringement on farmland to make sure that agriculture can continue to flourish in this state. We need to make those protections stronger for our farmers.

Another crucial issues is the public trust making clear that the laws that govern the waters of the state of Michigan makes clear that those waters belong to all of us and that no one can use them in a way that impairs our right to use them.

Now, this legislation regulates and requires permits for those who would take as much as 2 million gallons a day of water out of our ground water and surface water. That regulates very few people in the state of Michigan. I am told by the department that would be a matter of regulating currently five to six people or users a year. Next year it would be even fewer, after that first spurt of registration.

We cannot wait; we cannot dally; we cannot tarry when it comes to protecting our Great Lakes. We should do this today. We should adopt legislation in this chamber that is a model for the other chamber. Those of us who have been working together for many, many years know very well what it takes to make this statute strong. We should be doing it here in this chamber. Why don’t we act today to safeguard our waters for today and tomorrow for our children and grandchildren and their grandchildren? What are we waiting for?

Colleagues, I urge a “no” vote on this piece of legislation. Even though I know it has been worked on very hard, it needs a little more work and we can come together on it.

Senator Prusi’s statement, in which Senator Cherry concurred, is as follows:

I would like to add my thanks and my gratitude to the chair and the ranking member and the hardworking staff who have put so many hours and so much sweat and toil into this package of bills. I think it is going to be a landmark piece of legislation when we finally get it into shape. I was prepared to support Senate Bill No. 860 until the substitute that is before us was introduced. And without a tremendous amount of debate or justification, things were inserted into the bill that make it unpalatable from my perspective, such as the prohibition of instituting fees or promulgating rules as well as expanding the definition of a single-family dwelling to four-unit condominiums.

I look forward to the day when the parties that have worked so hard on this piece of legislation, both inside chamber as well as the outside interest groups, can come together and put together a package of bills or piece of legislation that takes into account everybody's needs and makes those compromises that are necessary. But at this point, I don't feel that I can offer my support to this bill, even though I would dearly love to see something move. I would dearly love to see us get this issue behind us in a satisfactory manner. I don't think we are quite there yet, and I would ask my colleagues to join me in opposing Senate Bill No. 860.

Senators Switalski, Basham and Birkholz asked and were granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator Switalski's statement is as follows:

I want to thank all the Senators and the interest groups who have been involved in working on this bill. I think they have toiled for many long and hard hours, days, weeks, and months, and I guess it is even years now. There has been a lot of movement and a lot of narrowing of differences, but there is still a gap, and we seem at this late hour with that gap we have a battle between irresistible force and an unmovable object.

I want to thank, in particular, Senator Birkholz and Senator Basham, who have worked tirelessly to try to bring these two sides together. They have got them very close, but they are still slightly apart. But I think now is the time to act. We want the best bill possible, but we can't permit the best to be the enemy of the good. We are far better off with a bill rather than no bill.

Personally, I am embarrassed that we call ourselves the Great Lakes State, yet we are practically the last state to sign the compact. We approved the compact yesterday, but without Senate Bill No. 860, there is no mechanism for regulation and enforcement.

Are we content with a vague endorsement of the concept without any enforcement? I think not. I supported the proposed amendments. They would have made the bill better, but I repeat: A bill is better than no bill.

So I support Senate Bill No. 860 because this is a process that will lead to a conference, and hopefully, a compromise. I hope the message I send with my vote is that I want a compromise, and both sides should move to bridge that gap.

Senator Basham's statement is as follows:

I would have liked to have been able to support Senate Bill No 860. I would commend the staffs on both sides of the aisle, both on the Republican side and the Democratic side, for their hard work in trying to help Senator Birkholz, myself, and others come to a compromise on some very, very difficult issues.

Unfortunately, when those amendments failed today, it put me in an awkward position of not being able to support my good colleague from across the aisle on this legislation. We passed a Great Lakes Compact yesterday, and it was good first step. But it didn't go far enough, and actually it could and should go further in protecting Michigan's resources, our great resource, our water. We also need to protect our water for the businesses and the farms that are economically dependent on the responsible consumption of our natural resources.

Today's proposal would have reached a compromise to do just that had those amendments passed. So it is disappointing that we have done a—we get probably a D-rating when we should have an A or an A+ rating when it comes to this water withdrawal legislation.

Again, this is a work in progress and people have worked very hard on it. I was hopeful that we would be able to resolve it without it going to conference committee. It looks like that is the direction it is going to go. Anyway, I would ask that my remarks be printed in the Journal and that members not support this Senate Bill No. 860 substitute.

Senator Birkholz's statement is as follows:

Members, today we are moving forward with landmark legislation. It's legislation that will provide for the implementation of a method of evaluating the impact of proposed large quantity water withdrawals with the key component being a science-based, self-user, automated tool on the computer. This is truly landmark and, never done in any other state in or out of the Basin; never done internationally.

We have a groundwater advisory council, which is part of the process, members of the regulated community, members of the public, and the scientific community. This tool has been peer reviewed by a national group of scientist. All of them were amazed, surprised, and said, “You folks in Michigan are doing great work. You need to continue this.” This legislation today will help place Michigan as the No. 1 leader in the Basin as well as in the nation on decision-making for large scale water withdrawals. No decision-making exists like this today. Most importantly, today this decision-making is common sense, science-based decision-making developed by a broad coalition of user groups and the public.

I want to thank my Senator colleagues from the 34th, the 7th, the 8th, 38th, and the 18th Districts and my colleague chair on the natural resources committee in the House who has worked tirelessly on this and, of course, the incredible staff work. We have spent almost three years, thousands of hours doing this, but we have moved ahead and said Michigan will be No. 1 in using science-based decision-making to decide how our water is used and protected at the same time. Thank you all for your good help.