



# KEEPING WATER PUBLIC & PROTECTED FOR ALL



PHOTO BY CHELSEA BAY DENNIS

## LEGISLATIVE RECOMMENDATIONS FOR MICHIGAN'S 102<sup>ND</sup> LEGISLATURE

For Love of Water (“FLOW”) is a non-partisan, nonprofit law and policy center based in Traverse City, Michigan, that works to ensure the waters of the Great Lakes Basin are healthy, public, and protected for all. A key component of our mission is to help Michigan’s elected leaders uphold their duties under [Article IV, Section 52](#) of the state constitution, the [Michigan Environmental Protection Act](#), and the [public trust doctrine](#) to protect the waters of the state from pollution, impairment, and destruction. Our policy recommendations are responsive to these legal duties, best available science, and pragmatism.

To fulfill its legal duties in 2023, the 102nd Legislature should prioritize enactment of three bills:

### 1. STATEWIDE SEPTIC CODE

**PROBLEM:** Michigan is the *only* U.S. state without a uniform septic code governing the construction, maintenance, and inspection of septic systems. As a result, according to the Michigan Department of Environment, Great Lakes, and Energy, roughly 330,000 failing septic systems are polluting ground and surface waters with human fecal microbial waste. In addition to harming our natural resources, this septic contamination poses a serious public health problem to the drinking water of nearly 4 million Michiganders who rely on private wells.

**SOLUTION:** The keys to overcoming more than 30 years of legislative gridlock in passing a statewide septic code are establishing a reasonable inspection schedule, ensuring county health departments have sufficient resources to administer inspections, and providing financial assistance to septic owners who may not be able to afford the cost of septic repairs or replacements. Septic codes from other states and recent bills from Michigan (e.g. [HB 5752](#) and [HB 5753](#) of 2018) provide numerous alternatives to overcome these impediments.

## 2. POLLUTER ACCOUNTABILITY ACT

**PROBLEM:** The Michigan Legislature has enacted a number of polluter entitlement laws that prevent state agencies from adequately protecting water resources. These legislative actions include:

- A: [Elimination of “polluter pay” law](#) (1995), which effectively shifts the cost of cleaning up contaminated sites (including state waters) from the entities that caused the pollution to the taxpayers that are harmed by it.
- B: Reliance on [“institutional controls”](#) (2018), which allows polluters to leave new releases of contamination in state waters subject to use restrictions, rather than clean them up.
- C: [Enactment of “no stricter than federal” law](#) (2018), which prevents state agencies from requiring necessary safeguards to protect our globally unique Great Lakes.

As a result of these and other polluter entitlements, Michigan now has 24,000 known contaminated sites, including thousands of known and unknown sources of groundwater and surface water contamination. More than half are “orphaned” sites with no known responsible party, resulting in the state being responsible for assessing and remediating these sites without adequate funding.

**SOLUTION:** Pass omnibus legislation that restores polluter pay, limits the use of “institutional controls” as a cleanup option unless other remedial alternatives would increase exposure to the contaminants at issue, and eliminates Michigan’s “no stricter than federal” law.

## 3. MICHIGAN WATER TRUST FUND ACT

**PROBLEM:** Bottled water plants in Michigan make hundreds of millions of dollars each year selling waters of the state without providing a significant benefit to Michiganders. Michigan has the right and obligation to secure greater benefits for its citizens based on the sale of a publicly owned natural resource. This is especially true when a large and increasing number of Michiganders in [both urban and rural communities](#) cannot afford to pay their water bills and face the prospect of water shutoffs.

**SOLUTION:** Enact a bill that expressly affirms public ownership of Michigan’s ground and surface waters. Create a licensing system for bottled water facilities that generates state revenue through a royalty fee. Channel this revenue into a trust fund that helps put an end to water shutoffs.



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