As the realization that a generation of children in Flint, Mich., has been exposed to lead poisoning by their own water sets in, some Michigan lawmakers are pushing to enshrine access to clean, safe water in state law as a basic human right.

If such a law is enacted, Michigan would be the second state to do so, following California, whose 2012 statute declaring “every human being has the right to clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes” requires state agencies to consider this right when formulating policies, regulations and grant programs that impact water for domestic consumption.

Michigan’s version is HB 5101, introduced in December 2015 by Rep. Julie Plawecki to frame a 10-bill package dealing with — among other subjects — water access, billing, service shutoffs and testing. (An identical bill, SB 643, was filed in the state’s upper chamber by Sen. Coleman Young II.)

Taken word for word from California’s law, the proposed “human right to water act” would require state agencies to “employ all reasonable means” to adapt their policies, regulations and grant criteria “by establishing water affordability criteria as appropriate, to the extent that those actions do not affect eligibility for federal funds.”

Like a mission statement, the proposed law would underlie all future water policy, Plawecki says. “We’ve had so many issues with water that I felt we had to make a bold statement,” she says. “Anything that could possibly affect drinking water should be held up to that standard.”

The key language in California’s law is that state agencies “shall consider,” which in and of itself isn’t enough to really protect the rights it guarantees, says Roxanna Altholz, an assistant clinical professor of law at the University of California-Berkeley Law School and associate director of the International Human Rights Law Clinic.

So far, Altholz says, the law’s greatest impact has been threefold: changing how state agency leadership in California thinks about priorities and agendas, cementing public participation as part of that process, and reprioritizing how grants are distributed. Because the human rights standard embraces non-discrimination, state agencies must now identify disadvantaged communities like unincorporated areas, which tended to be left out when federal grants for water services were awarded, she adds.

The statute’s weakness, she adds, is its exclusive focus on state agencies, with no references to local governments. “But it is important because it’s the first time in the United States that the right to water was enacted as legislation,” Altholz says. “The bottom line is we think the law provides a moral compass to state agencies involved in water issues and policies.”

A new group, the National Coalition for Legislation on Affordable Water, is watching California’s struggle to integrate its law into policy, says Alice Jennings, an attorney representing several Detroit residents in a class action lawsuit against the city alleging that the pattern of water shutoffs there discriminates against African American residents.

The notion of clean water as a human right includes access and affordability, and if water utilities won’t adopt affordability plans to help those willing but unable to pay in full when presented with four- or five-figure bills, a human right to water law will help force their hand, Jennings says.
The idea here is the same one underlying food stamps, or the Low Income Home Energy Assistance Program for electric and gas utility customers, she says. Since those programs have been around for decades to provide temporary help to those who need it, “there is a statutory basis that already exists in federal law” that would allow municipalities in Michigan to begin similar initiatives for water utilities, Jennings adds.

Several thousand Detroiter are still without water after having service shut off, which is priming a potential public health crisis, Jennings says. Between that and aging water infrastructure, “this is a problem that’s not going away,” she says.

Exposure to high levels of lead still a health problem nationwide

At least 4 million households across the United States have high levels of exposure to lead, and at least half a million children ages 1-5 have blood lead levels above the point where public health actions should be taken, according to the U.S. Centers for Disease Control and Prevention.

The CDC recommends action for blood lead levels at or above 5 micrograms per deciliter (abbreviated “µg/dL”), but it also warns that “no safe blood lead level in children has been identified.”

Because there are no overt symptoms, lead poisoning can go unrecognized. A blood lead test is the only way to determine whether a child has lead in his or her blood and, if so, how much. Lead can be swallowed or breathed in; once in the body it affects the brain and nervous system and can slow growth and development; damage speech and hearing; and lead to attention, behavior and learning disorders.

Myriad studies have shown that exposure to leaded gasoline was a direct cause of the crime wave of the late 1960s and ‘70s. Amherst College researchers (among others) found that as lead levels in the ambient environment dropped during the 1980s, so did violent crimes during the 1990s.

While the primary source of lead poisoning today remains old paint in houses built before 1978, plenty of municipal water systems still have lead pipes. Madison, Wis., spent $15.5 million over 11 years to remove all lead pipes in the late 1990s and early 2000s; Lansing, Mich., is doing so now and has offered technical assistance to Flint.

A federal interagency strategy, “Healthy People 2020 [5],” has set the goal of eliminating lead poisoning as a public health problem by that year. Its goals are to identify and control lead paint hazards, care for children with “elevated” blood lead levels, track those elevated levels to monitor progress, and conduct research to improve lead poisoning prevention.

Over the past few decades, the prevalence of elevated blood lead levels in children has dropped considerably (see state-by-state data below). According to the U.S. Environmental Protection Agency, a mix of federal and state policies has helped to reduce the amount of lead in air, drinking water, soil, consumer products, food and occupational settings.

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