

SENATE BILL No. 40

January 30, 2001, Introduced by Senators BENNETT, BYRUM, SIKKEMA, STILLE, STEIL, BULLARD, SCHUETTE, SMITH and HAMMERSTROM and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 32701 (MCL 324.32701), as amended by 1996 PA
434, and by adding section 32704a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32701. As used in this part:

2 (a) "Agricultural purpose" means the agricultural production
3 of forestry, livestock, food, feed, or fiber.

4 (b) "Consumptive use" means that portion of water withdrawn
5 or withheld from the Great Lakes basin and assumed to be lost or
6 otherwise not returned to the Great Lakes basin due to evapora-
7 tion, incorporation into products, or other processes.

8 (c) "Department" means the department of environmental
9 quality.

1 (D) "DIVERSION" OR "INTERBASIN DIVERSION" MEANS THE
2 WITHDRAWAL AND TRANSPORT OF WATERS OF THE GREAT LAKES BASIN TO 1
3 OR MORE LOCATIONS OUTSIDE OF THE GREAT LAKES BASIN.

4 (E) ~~-(d)-~~ "Great Lakes basin" means the watershed of the
5 Great Lakes and the St. Lawrence river.

6 (F) ~~-(e)-~~ "Great Lakes charter" means the document estab-
7 lishing the principles for the cooperative management of the
8 Great Lakes water resources, signed by the governors and premiers
9 of the Great Lakes region on February 11, 1985.

10 (G) ~~-(f)-~~ "Great Lakes region" means the geographic region
11 composed of the states of Illinois, Indiana, Michigan, Minnesota,
12 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,
13 and the provinces of Ontario and Quebec, Canada.

14 (H) ~~-(g)-~~ "Industrial or processing facility" means an oper-
15 ating plant or other entity, including a thermoelectric power
16 generation plant, carrying on a common manufacturing activity,
17 trade, or business on a common site, including similar plants or
18 entities under common ownership or control located on contiguous
19 properties. Plants or entities under common ownership or control
20 located on separate sites shall be considered separate
21 facilities. Industrial or processing facility does not include
22 an irrigation facility.

23 (I) ~~-(h)-~~ "Irrigation facility" means all wells, pumps,
24 intakes, gates, tanks, pipes, or other equipment under common
25 ownership or control and located either on the same site or on
26 separate sites, which are used to withdraw, convey, or distribute
27 water for the purposes of irrigating golf courses, parks,

1 recreational areas, or other grounds, but not including
2 irrigation for an agricultural purpose.

3 (J) ~~-(i)-~~ "Public water supply system" means a water system
4 that provides water for human consumption or other purposes to
5 persons other than the supplier of water.

6 (K) ~~-(j)-~~ "Registrant" means any industrial or processing
7 facility or irrigation facility registered under this part.

8 (l) ~~-(k)-~~ "Water of the Great Lakes basin" means the Great
9 Lakes and all streams, rivers, lakes, connecting channels, and
10 other bodies of water, including groundwater, within the Great
11 Lakes basin.

12 (M) ~~-(l)-~~ "Withdrawal" means the removal of water from its
13 source for any purpose, other than for hydroelectric generation
14 at sites certified, licensed, or permitted by the federal energy
15 regulatory commission.

16 SEC. 32704A. (1) UPON RECEIPT OF ANY OF THE FOLLOWING, THE
17 GOVERNOR SHALL NOTIFY THE DEPARTMENT:

18 (A) A REQUEST FOR APPROVAL OF A PROPOSED INTERBASIN DIVER-
19 SION FROM THE GREAT LAKES BASIN PURSUANT TO SECTION 1109 OF TITLE
20 XI OF THE WATER RESOURCES DEVELOPMENT ACT OF 1986, PUBLIC LAW
21 99-662, 42 U.S.C. 1962d-20, OR A PROPOSED INCREASE IN AN EXISTING
22 INTERBASIN DIVERSION FROM THE GREAT LAKES BASIN.

23 (B) NOTICE OF A PROPOSED CONSUMPTIVE USE OF THE WATER OF THE
24 GREAT LAKES BASIN IN EXCESS OF 1,000,000 GALLONS PER DAY AVERAGE
25 IN ANY 30-DAY PERIOD PURSUANT TO THE GREAT LAKES CHARTER.

26 (C) NOTIFICATION OF AN INCREASE OR OTHER ALTERATION IN AN
27 EXISTING INTERBASIN DIVERSION FROM THE GREAT LAKES BASIN.

1 (2) UPON RECEIPT OF NOTIFICATION PURSUANT TO SUBSECTION (1),
2 THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

3 (A) NOTIFY THE PERSON PROPOSING THE DIVERSION OR CONSUMPTIVE
4 USE WHETHER SUFFICIENT INFORMATION HAS ACCOMPANIED THE PROPOSAL
5 OR IS OTHERWISE AVAILABLE TO PERMIT AN EVALUATION OF THE
6 PROPOSAL.

7 (B) NOTIFY OTHER STATE AGENCIES, INCLUDING THE DEPARTMENTS
8 OF COMMUNITY HEALTH, CONSUMER AND INDUSTRY SERVICES, AGRICULTURE,
9 AND TRANSPORTATION AND THE PUBLIC SERVICE COMMISSION OF THE PRO-
10 POSAL AND SOLICIT THEIR COMMENTS. IN ADDITION, THE DEPARTMENT
11 SHALL NOTIFY AND SOLICIT COMMENTS FROM THE INTERNATIONAL JOINT
12 COMMISSION, THE GREAT LAKES COMMISSION, AND OTHER APPROPRIATE
13 FEDERAL AGENCIES.

14 (C) PUBLISH A NOTICE IN THE MICHIGAN REGISTER CONTAINING THE
15 FOLLOWING INFORMATION:

16 (i) THE NAME OF THE PERSON PROPOSING THE DIVERSION OR CON-
17 SUMPTIVE USE, HIS OR HER RELEVANT AFFILIATION, AND HIS OR HER
18 STATE OR PROVINCE OF RESIDENCE.

19 (ii) A DESCRIPTION OF THE PROPOSED DIVERSION OR CONSUMPTIVE
20 USE, INCLUDING THE LOCATION AND SIZE OF THE DIVERSION OR CONSUMP-
21 TIVE USE, AND THE STATE OR PROVINCE TO WHICH THE WATER WILL BE
22 DIVERTED OR IN WHICH THE WATER WILL BE USED, IF APPLICABLE.

23 (iii) THE NAME AND ADDRESS WHERE MORE INFORMATION MAY BE
24 OBTAINED.

25 (3) THE NOTICE UNDER SUBSECTION (2)(C) SHALL ALSO PROVIDE
26 FOR A PUBLIC COMMENT PERIOD OF AT LEAST 30 DAYS. THE DEPARTMENT
27 SHALL HOLD A PUBLIC HEARING UPON REQUEST. WITHIN 60 DAYS OF THE

1 CLOSE OF THE PUBLIC COMMENT PERIOD OR THE PUBLIC HEARING,
2 WHICHEVER IS LATER, THE DEPARTMENT SHALL TRANSMIT A REPORT TO THE
3 GOVERNOR OR HIS OR HER DESIGNEE AND THE LEGISLATURE. THE REPORT
4 SHALL SUMMARIZE ALL COMMENTS RECEIVED FROM STATE, FEDERAL, AND
5 INTERSTATE AGENCIES AND THE PUBLIC, MAKE A RECOMMENDATION ON THE
6 PROPOSAL, AND EVALUATE ALL OF THE FOLLOWING:

7 (A) WHETHER THE PROPOSED DIVERSION OR CONSUMPTIVE USE IS
8 CONSISTENT WITH APPLICABLE STATE PLANS FOR PRESENT OR FUTURE USES
9 OF THE WATER OF THE GREAT LAKES BASIN.

10 (B) WHETHER BOTH THE CURRENT WATER USE OF THE PERSON SUBMIT-
11 TING THE PROPOSAL AND THE PERSON'S PROPOSED PLANS FOR THE DIVER-
12 SION OR CONSUMPTIVE USE, AND THE TRANSPORTATION, DEVELOPMENT, AND
13 USE OF THE WATER INCORPORATE MAXIMUM ECONOMICALLY FEASIBLE CON-
14 SERVATION PRACTICES.

15 (C) WHETHER THE PROPOSED DIVERSION OR CONSUMPTIVE USE AND
16 THE USE OF THE WATER WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON
17 NAVIGATION WITHIN THE GREAT LAKES BASIN.

18 (D) WHETHER THE PROPOSED DIVERSION OR CONSUMPTIVE USE AND
19 THE USE OF THE WATER ARE CONSISTENT WITH THE PROTECTION OF PUBLIC
20 HEALTH, SAFETY, AND WELFARE IN THE GREAT LAKES BASIN AND WILL NOT
21 BE DETRIMENTAL TO THE PUBLIC INTEREST OR THE PUBLIC TRUST IN THE
22 WATER OF THE GREAT LAKES BASIN.

23 (E) FOR PROPOSED DIVERSIONS, WHETHER EACH BASIN, REGION,
24 STATE, OR PROVINCE TO WHICH THE WATER WILL BE DIVERTED HAS DEVEL-
25 OPED AND IS IMPLEMENTING A PLAN TO MANAGE AND CONSERVE ITS OWN
26 WATER QUANTITY RESOURCES, AND WHETHER FURTHER DEVELOPMENT OF ITS

1 OWN WATER RESOURCES IS ECONOMICALLY IMPRACTICABLE OR WOULD HAVE A
2 SUBSTANTIAL ADVERSE ECONOMIC, SOCIAL, OR ENVIRONMENTAL IMPACT.

3 (F) WHETHER THE PROPOSED DIVERSION OR CONSUMPTIVE USE WILL
4 IMPAIR THE ABILITY OF THE RESIDENTS OF THE GREAT LAKES BASIN IN
5 MEETING THEIR OWN WATER NEEDS.

6 (G) WHETHER THE PROPOSED DIVERSION OR CONSUMPTIVE USE ALONE,
7 OR IN COMBINATION WITH OTHER WATER USES, WILL HAVE A SIGNIFICANT
8 ADVERSE IMPACT ON LAKE LEVELS, WATER USE, OR THE ENVIRONMENT OR
9 THE ECOSYSTEM OF THE GREAT LAKES BASIN, INCLUDING THE QUALITY AND
10 QUANTITY OF THE WATER OF THE GREAT LAKES BASIN, FISHERIES, WILD-
11 LIFE, WETLANDS, SHORELINE RESOURCES AND ECOSYSTEMS, AND OTHER
12 RELATED RESOURCES.

13 (H) WHETHER THE PROPOSED DIVERSION OR CONSUMPTIVE USE IS
14 CONSISTENT WITH ALL APPLICABLE FEDERAL, REGIONAL, AND INTERSTATE
15 AND INTERNATIONAL WATER RESOURCES PLANS.

16 (4) THE DEPARTMENT SHALL SOLICIT, REVIEW, MAKE AVAILABLE TO
17 THE PUBLIC, AND PREPARE A DOCUMENT RESPONDING TO ALL COMMENTS
18 SUBMITTED BY A STATE, PROVINCE, APPROPRIATE UNITED STATES AND
19 CANADIAN FEDERAL AGENCIES, AND THE INTERNATIONAL JOINT COMMISSION
20 REGARDING A PROPOSED CONSUMPTIVE USE FROM WITHIN MICHIGAN'S
21 BOUNDARIES IN EXCESS OF 1,000,000 GALLONS PER DAY AVERAGE IN ANY
22 30-DAY PERIOD PURSUANT TO THE GREAT LAKES CHARTER. THE DEPART-
23 MENT SHALL NOT APPROVE SUCH A CONSUMPTIVE USE WITHOUT OBSERVING
24 THE PUBLIC NOTICE AND COMMENT PROCEDURES OUTLINED IN THIS
25 SECTION. THE DEPARTMENT'S DECISION ON THE CONSUMPTIVE USE SHALL
26 BE MADE AT A PUBLIC MEETING HELD IN ACCORDANCE WITH THE OPEN
27 MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

1 (5) THE GOVERNOR OR THE GOVERNOR'S DESIGNEE SHALL, UPON
2 RECEIPT OF THE REPORT PURSUANT TO SUBSECTION (3), PREPARE A
3 STATEMENT SETTING FORTH THE GOVERNOR'S OR GOVERNOR'S DESIGNEE'S
4 APPROVAL OR DISAPPROVAL OF THE PROPOSED DIVERSION AND THE REASONS
5 FOR THE APPROVAL OR DISAPPROVAL. HOWEVER, THE GOVERNOR OR THE
6 GOVERNOR'S DESIGNEE SHALL NOT APPROVE A DIVERSION IN VIOLATION OF
7 THIS PART.