

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 289

(As amended July 17, 2003)

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32701, 32705, 32707, 32708, and 32714 (MCL
324.32701, 324.32705, 324.32707, 324.32708, and 324.32714),
sections 32701, 32707, and 32708 as amended and section 32714 as
added by 1996 PA 434 and section 32705 as added by 1995 PA 59,
and by adding part 328.

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~~ **those plants and**
4 **animals useful to human beings produced by agriculture and**
5 **includes, but is not limited to, forages and sod crops, grains**
6 **and feed crops, field crops, dairy and dairy products, poultry**
7 **and poultry products, cervidae, livestock, including breeding and**

1 grazing, equine, fish and other aquacultural products, bees and
2 bee products, berries, herbs, fruits, vegetables, flowers, seeds,
3 grasses, nursery stock, trees and tree products, mushrooms, and
4 other similar products, or any other product, as determined by
5 the commission of agriculture, that incorporates the use of food,
6 feed, fiber, or fur.

7 (b) "Consumptive use" means that portion of water withdrawn
8 or withheld from the Great Lakes basin and assumed to be lost or
9 otherwise not returned to the Great Lakes basin due to
10 evaporation, incorporation into products, or other processes.

11 (c) "Department" means the department of environmental
12 quality.

13 (d) **"Farm" means that term as it is defined in section 2 of**
14 **the Michigan right to farm act, 1981 PA 93, MCL 286.472.**

15 (e) ~~—(d)—~~ "Great Lakes basin" means the watershed of the
16 Great Lakes and the St. Lawrence river.

17 (f) ~~—(e)—~~ "Great Lakes charter" means the document
18 establishing the principles for the cooperative management of the
19 Great Lakes water resources, signed by the governors and premiers
20 of the Great Lakes region on February 11, 1985.

21 (g) ~~—(f)—~~ "Great Lakes region" means the geographic region
22 composed of the states of Illinois, Indiana, Michigan, Minnesota,
23 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,
24 and the provinces of Ontario and Quebec, Canada.

25 (h) ~~—(g)—~~ "Industrial or processing facility" means an
26 operating plant or other entity, including a thermoelectric power
27 generation plant, carrying on a common manufacturing activity,

1 trade, or business on a common site, including similar plants or
2 entities under common ownership or control located on contiguous
3 properties. Plants or entities under common ownership or control
4 located on separate sites shall be considered separate
5 facilities. Industrial or processing facility does not include
6 an irrigation facility **or a farm.**

7 (i) ~~(h)~~ "Irrigation facility" means all wells, pumps,
8 intakes, gates, tanks, pipes, or other equipment under common
9 ownership or control and located either on the same site or on
10 separate sites, which are used to withdraw, convey, or distribute
11 water for the purposes of irrigating golf courses, parks,
12 recreational areas, or other grounds. ~~, but not including~~
13 ~~irrigation for an agricultural purpose.~~ **Irrigation facility does**
14 **not include a farm.**

15 (j) ~~(i)~~ "Public water supply system" means a water system
16 that provides water for human consumption or other purposes to
17 persons other than the supplier of water.

18 (k) ~~(j)~~ "Registrant" means any industrial or processing
19 facility or irrigation facility registered under this part.

20 (l) ~~(k)~~ "Water of the Great Lakes basin" means the Great
21 Lakes and all streams, rivers, lakes, connecting channels, and
22 other bodies of water, including groundwater, within the Great
23 Lakes basin.

24 (m) ~~(l)~~ "Withdrawal" means the removal of water from its
25 source for any purpose, other than for hydroelectric generation
26 at sites certified, licensed, or permitted by the federal energy
27 regulatory commission.

1 Sec. 32705. (1) ~~A~~ **Subject to subsection (2), a person who**
2 **makes a withdrawal** shall register with the department ~~by~~
3 ~~December 31, 1991~~ on a form provided by the department if,
4 during the **calendar** year ~~1990 or 1991~~, ~~the person does either~~
5 **in which the withdrawal occurs, any** of the following **apply**:

6 (a) ~~Owns~~ **The person owns** an industrial or processing
7 facility that has the capacity to withdraw over 100,000 gallons
8 of water per day average in any consecutive 30-day period from
9 the waters of the Great Lakes basin.

10 (b) ~~Owns~~ **The person owns** an irrigation facility that has
11 the capacity to withdraw over 100,000 gallons of water per day
12 average in any consecutive 30-day period from the waters of the
13 Great Lakes basin.

14 (c) **Beginning 1 year after the effective date of the**
15 **amendatory act that added this subdivision, the person owns a**
16 **farm that has the capacity to withdraw over 100,000 gallons of**
17 **water per day average in any consecutive 30-day period from the**
18 **waters of the Great Lakes basin.**

19 (2) ~~Beginning January 1, 1992, a person who meets the~~
20 ~~requirements of subsection (1) (a) or (b) shall register with the~~
21 ~~department during the calendar year in which the withdrawal~~
22 ~~occurred.~~ **The owner of a farm who registers under section 32708**
23 **is not required to register under subsection (1).**

24 (3) In calculating the total amount of an existing or
25 proposed withdrawal for the purpose of this section, a person
26 shall combine all separate withdrawals that the person makes or
27 proposes to make, whether or not these withdrawals are for a

1 single purpose or are for related but separate purposes.

2 Sec. 32707. (1) Except as provided in ~~subsection~~
3 **subsections (2) and (3)**, a person who owns an industrial or
4 processing facility, ~~or~~ an irrigation facility, **or a farm**
5 registered under this ~~section~~ **part** shall file a report annually
6 with the department on a form provided by the department. ~~The~~
7 ~~first report shall be submitted to the department by March 31,~~
8 ~~1992. Subsequent reports~~ **Reports** shall be submitted ~~within 3~~
9 ~~months after the end~~ **by April 1** of each ~~calendar~~ year.

10 Reports shall include the following information:

11 (a) ~~Amount~~ **The amount** and rate of water withdrawn on an
12 annual and monthly basis.

13 (b) ~~Source~~ **The source** or sources of **the** water supply.

14 (c) ~~Use~~ **The use** or uses of **the** water **withdrawn**.

15 (d) ~~Amount~~ **The amount** of consumptive ~~water~~ **use of water**
16 **withdrawn**.

17 (e) **If the source of the water withdrawn is groundwater, the**
18 **location of the well or wells in latitude and longitude, with the**
19 **accuracy of the reported location data to within 15 feet.**

20 (f) **If the source of water withdrawn is groundwater, the**
21 **static water level of the aquifer or aquifers.**

22 (g) ~~(e)~~ Other information specified by rule of the
23 department.

24 (2) If a person reports the information required by this
25 section to the department in conjunction with a permit or for any
26 other purpose, that reporting, upon approval of the department,
27 shall satisfy the reporting requirements of this section.

1 (3) The owner of a farm who reports water use under section
2 32708 is not required to report under subsection (1).

3 (4) ~~—(3)—~~ The department ~~shall~~ **may**, upon request from a
4 person required to report under this section, accept a formula or
5 model that provides to the department's satisfaction the
6 information required in subsection (1).

7 (5) ~~—(4)—~~ The department shall develop forms for reporting
8 under this section that minimize paperwork and allow for a
9 notification to the department instead of a report if the annual
10 amount of water withdrawn by a person required to report under
11 this section is within 4% of the amount last reported and the
12 other information required in subsection (1) has not changed
13 since the last year in which a report was filed.

14 (6) ~~—(5)—~~ A person who files an annual report or notification
15 ~~pursuant to~~ **under** this section shall annually remit a water use
16 reporting fee of ~~—\$50.00—~~ **\$100.00** to the department. Water use
17 reporting fees shall be remitted to the department in conjunction
18 with the annual report or notification submitted ~~pursuant to~~
19 **under** this section. The department shall transmit water use
20 reporting fees collected under this section to the state
21 treasurer to be credited to the water use protection fund created
22 in section 32714. **A water use reporting fee is not required for**
23 **a report or notification related to a farm that reports water use**
24 **under section 32708.**

25 Sec. 32708. (1) **Beginning 1 year after the effective date**
26 **of the 2003 amendatory act that amended this section, the owner**
27 **of a farm described in section 32705(1)(c) who makes a withdrawal**

1 for an agricultural purpose, including irrigation for an
2 agricultural purpose, may register the farm address and report
3 the water use on the farm by annually submitting to the
4 department of agriculture a water use conservation plan. The
5 water use conservation plan shall include, but need not be
6 limited to, all of the following information:

7 (a) The amount and rate of water withdrawn on an annual and
8 monthly basis in either gallons or acre inches.

9 (b) The type of crop irrigated, if applicable.

10 (c) The acreage of each irrigated crop, if applicable.

11 (d) The source or sources of the water supply.

12 (e) If the water withdrawn is not used entirely for
13 irrigation, the use or uses of the water withdrawn.

14 (f) If the source of water withdrawn is groundwater, the
15 static water level of the aquifer or aquifers.

16 (g) Applicable water conservation practices and an
17 implementation plan for those practices.

18 (2) ~~—(1)—~~ The department and the department of agriculture in
19 consultation with ~~the cooperative extension service and the soil~~
20 ~~conservation districts—~~ Michigan state university shall ~~develop~~
21 **validate and use** a formula or model to ~~determine the amount of~~
22 ~~water withdrawn—~~ **estimate the consumptive use of withdrawals made**
23 for agricultural purposes consistent with the objectives of
24 section 32707. ~~For a period of 3 years beginning January 1,~~
25 ~~1997,~~ a person using water for an agricultural purpose who
26 ~~withdraws over 100,000 gallons of water per day average in any~~
27 ~~consecutive 30 day period for irrigation shall provide~~

~~1 information regarding the location and source of the water, the
2 type of crop irrigated, and the acreage of each irrigated crop to
3 the county soil conservation district. The soil conservation
4 districts and the department of agriculture shall use the model
5 or formula developed to aggregate these data and provide county
6 and watershed totals by water source to the department by April 1
7 of each year for irrigation water use that occurred in the
8 previous year.~~

~~9 (2) At the end of the 3 year period provided in
10 subsection (1), the department and the department of agriculture
11 shall assess the reliability of annual irrigation water use data
12 and determine if reliable data could be deduced from surveys
13 conducted every 2 or 3 years.~~

**14 (3) The department of agriculture shall use water use
15 conservation plan information received under subsection (1) to
16 determine an estimate of water use and consumptive use data for
17 each township in the state. The department of agriculture shall
18 forward the township water use and consumptive use data to the
19 department for inclusion in the statewide groundwater inventory
20 and map prepared under section 32802.**

21 Sec. 32714. (1) The water use protection fund is created
22 within the state treasury.

23 (2) The state treasurer may receive money or other assets
24 from any source for deposit into the fund. The state treasurer
25 shall direct the investment of the fund, and shall credit to the
26 fund interest and earnings from fund investments.

27 (3) Money in the fund at the close of the fiscal year shall

1 remain in the fund and shall not lapse into the general fund.

2 (4) The department may expend money from the fund, upon
3 appropriation, only for ~~the implementation~~ 1 or more of the
4 following:

5 (a) The implementation and administration of this part.

6 (b) The preparation of the statewide groundwater inventory
7 and map under section 32802.

8 (c) The implementation and administration of part 317.

9 ~~(5) By December 31, 1999, the department shall conduct an
10 assessment of the fund and report to the legislature on the
11 overall number of irrigation and industrial or processing
12 facilities registered in the program, the annual amount of water
13 use reporting fees received by the fund, and the staff workload
14 necessary to implement this part, to determine if the amount of
15 the annual water use reporting fees can be lowered.~~

16 **PART 328 AQUIFER PROTECTION**

17 **Sec. 32801. As used in this part:**

18 (a) "Annex 2001" means the Great Lakes charter annex signed
19 by the governors and premiers of the Great Lakes region on June
20 18, 2001.

21 (b) "Aquifer" means any water bearing bed or stratum of earth
22 or rock capable of yielding groundwater to a water well in
23 sufficient quantities that can be withdrawn.

24 (c) "Base flow" means groundwater discharge to rivers and
25 streams.

26 (d) "Conflict areas" means an aquifer or a portion of an
27 aquifer in which the department has determined that there is

1 reasonable, scientifically based evidence of a pattern of
2 groundwater withdrawal conflicts or a single extended groundwater
3 withdrawal conflict.

4 (e) "Council" means the groundwater conservation advisory
5 council created under section 32803.

6 (f) "Department" means the department of environmental
7 quality.

8 (g) "Director" means the director of the department.

9 (h) "Groundwater" means water below the land surface in a
10 zone of saturation.

11 (i) "Groundwater withdrawal conflict" means the failure of an
12 existing water well that was constructed in compliance with part
13 127 of the public health code, 1978 PA 368, MCL 333.12701 to
14 333.12771, to furnish its normal supply of groundwater because of
15 a progressive decline of the static water level within the
16 aquifer due to the withdrawal of groundwater from the aquifer by
17 a high-capacity well or sump, as determined based on reasonable,
18 scientifically based evidence.

19 (j) "Static water level" means the distance between the
20 ground surface and the water level within a well that is not
21 being pumped.

22 Sec. 32802. (1) Not later than 2 years after the effective
23 date of the amendatory act that added this section, the
24 department shall collect and compile groundwater data into a
25 statewide groundwater inventory and map. The department shall
26 use existing sources of groundwater data where those data are
27 available, including information reported under part 327,

1 information reported under the safe drinking water act, 1976 PA
2 399, MCL 325.1001 to 325.1023, and information collected under
3 the groundwater dispute resolution program created in part 317,
4 but may supplement those data through additional studies if those
5 data are incomplete. Following completion of the initial
6 statewide groundwater inventory and map, the department shall
7 update the statewide groundwater inventory and map as new
8 information becomes available. The department shall include data
9 on all of the following in the statewide groundwater inventory
10 and map:

11 (a) Location and water yielding capabilities of aquifers in
12 the state.

13 (b) Aquifer recharge rates in the state, if available to the
14 department.

15 (c) Static water levels of groundwater in the state.

16 (d) Base flow of rivers and streams in the state.

17 (e) Conflict areas in the state.

18 (f) Surface waters, including designated trout lakes and
19 streams, and groundwater dependent natural resources, that are
20 identified on the natural features inventory.

21 (g) The location and pumping capacity of all of the
22 following:

23 (i) Industrial or processing facilities registered under
24 section 32705 that withdraw groundwater.

25 (ii) Irrigation facilities registered under section 32705
26 that withdraw groundwater.

27 (iii) Public water supply systems that have the capacity to

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1 withdraw over 100,000 gallons of groundwater per day average in
2 any consecutive 30-day period.

3 (h) Aggregate agricultural water use and consumptive use, by
4 township.

5 (2) The department shall make the statewide groundwater
6 inventory and map available to the general public.

7 Sec. 32803. (1) The groundwater conservation advisory
8 council is created within the department. The council shall
9 consist of all of the following members:

10 (a) Three individuals appointed by the senate majority leader
11 representing business and manufacturing interests, utilities, and
12 conservation organizations.

13 (b) Three individuals appointed by the speaker of the house
14 of representatives representing well drilling contractors, local
15 units of government, and agricultural interests.

16 (c) Four individuals appointed by the director representing
17 nonagriculture irrigators, the aggregate industry, environmental
18 organizations, and the general public.

19 (d) Three individuals representing the department, the
20 department of agriculture, and the department of natural
21 resources, as nonvoting members [who shall serve as information resources
22 to the council].

22 (2) The council shall do all of the following:

23 (a) Study the sustainability of the state's groundwater use
24 and whether the state should provide additional oversight of
25 groundwater withdrawals.

26 (b) Monitor Annex 2001 implementation efforts and make
27 recommendations on Michigan's statutory conformance with Annex

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1 2001, including whether groundwater withdrawals should be subject
2 to best management practices or certification requirements and
3 whether groundwater withdrawals impact water-dependent natural
4 features.

5 (c) Study the implementation of and the results from the
6 groundwater dispute resolution program created in part 317.

7 (3) Within 2-1/2 years after the effective date of the
8 amendatory act that added this section, the council shall submit
9 a report[, approved by a majority of the voting members of the council,]
on its findings and recommendations under subsection (2)
10 to the senate majority leader, the speaker of the house of
11 representatives, and the standing committees of the legislature
12 with jurisdiction primarily related to natural resources and the
13 environment.

14 (4) Effective 6 months after the council submits its findings
15 and recommendations under subsection (3), the council is
16 disbanded.

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