

SENATE BILL No. 289

March 11, 2003, Introduced by Senators BIRKHOLZ, TOY, PATTERSON, CASSIS, SIKKEMA, GOSCHKA, VAN WOERKOM, JOHNSON, BARCIA, McMANUS, HAMMERSTROM and ALLEN 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,"
(MCL 324.101 to 324.90106) by adding part 328.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 328 CRITICAL AQUIFER PROTECTION

2 Sec. 32801. As used in this part:

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5 sufficient quantities that can be withdrawn.

6 (b) "Artesian aquifer" means an aquifer overlain by a layer
7 of material of less permeability than the aquifer and where the
8 aquifer is under sufficient pressure so that when it is
9 penetrated by a well, the groundwater will rise naturally above
10 the top of the aquifer.

11 (c) "Available drawdown" means the difference in depth

SENATE BILL No. 289

1 between the static water level and the bottom of the aquifer.

2 (d) "Certificate" or "groundwater withdrawal certificate"
3 means a groundwater withdrawal certificate issued under this
4 part.

5 (e) "Class 1 groundwater withdrawal facility" means a
6 groundwater withdrawal facility that is located in a critical
7 aquifer and in which the department has determined, based upon a
8 hydrogeologic study, that the proposed groundwater withdrawal
9 will not exceed the sustainable yield.

10 (f) "Class 2 groundwater withdrawal facility" means a
11 groundwater withdrawal facility that is located in a critical
12 aquifer and either of the following conditions exists:

13 (i) The department has determined, based upon a hydrogeologic
14 study, that the proposed groundwater withdrawal will exceed the
15 sustainable yield.

16 (ii) The department has reasonable evidence of an existing
17 groundwater withdrawal conflict.

18 (g) "Consolidated geologic materials" means geologic
19 formation materials, such as limestone, dolomite, sandstone,
20 shale, basalt, or granite, that are coherent due to the
21 interlocking or cementation of their mineral components.

22 (h) "Critical aquifer" means an aquifer in which the
23 department has determined that there is reasonable evidence of an
24 existing or potential groundwater withdrawal conflict.

25 (i) "Department" means either of the following:

26 (i) The department of agriculture if the responsibility
27 assigned to the department under this part involves a groundwater

1 withdrawal facility that is used for an agricultural purpose.

2 (ii) The department of environmental quality if the
3 responsibility assigned to the department under this part
4 involves a groundwater withdrawal facility that is used for a
5 purpose other than an agricultural purpose.

6 (j) "Ecosystem status of the water source" means the
7 indicators of the physical, chemical, and biological integrity of
8 that water source and the ecosystems that depend on it.

9 (k) "Fund" means the aquifer protection fund created in
10 section 32808.

11 (l) "Groundwater" means water below the land surface in a
12 zone of saturation.

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

20 (n) "Groundwater withdrawal facility" means a water well or
21 sump, or a combination of wells and sumps equipped with, or
22 intended to be equipped with, a pump or pumps capable of
23 extracting groundwater at a rate of more than 70 gallons per
24 minute. Two or more groundwater withdrawal facilities on
25 contiguous parcels under the same ownership and pumping from the
26 same aquifer shall be considered a single groundwater withdrawal
27 facility. Groundwater withdrawal facility does not include any

1 of the following:

2 (i) A water well used solely for fire protection.

3 (ii) A dewatering well, regulated under part 127 of the
4 public health code, 1978 PA 368, MCL 333.12701 to 333.12771, if
5 the provisions of R 325.1755 of the Michigan administrative code
6 have been met.

7 (iii) Groundwater contamination remediation wells installed
8 under this act.

9 (o) "Hydrogeologic study" means a hydrogeologic study
10 described in section 32804.

11 (p) "Potentially impacted well" means a water well that may
12 be subject to a groundwater withdrawal conflict.

13 (q) "Return flow" means the return of water to the waters of
14 the Great Lakes basin.

15 (r) "Static water level" means the distance between the
16 ground surface and the water level within a well that is not
17 being pumped or is not under the influence of a well that is
18 being pumped.

19 (s) "Sump" means an excavation, pit, infiltration gallery, or
20 other structure that is installed for the purpose of lowering the
21 groundwater level at a groundwater withdrawal facility.

22 (t) "Sustainable yield" means the amount of groundwater,
23 giving due consideration to existing groundwater withdrawals,
24 that can be withdrawn from an aquifer based on 100 days of
25 continual pumping at the rated pump capacity without recharge and
26 without causing any of the following conditions:

27 (i) A progressive decline of the water level of at least 5

1 feet below the static water level within a potentially impacted
2 well that is completed in unconsolidated geologic materials, or
3 at least 25 feet below the static water level within an existing
4 water well that is completed in consolidated geologic materials.

5 (ii) A progressive decline of water level that reduces the
6 available drawdown of the aquifer on the property of adjacent
7 groundwater users by at least 25%.

8 (u) "Unconsolidated geologic materials" means geologic
9 formation materials that are loose and noncemented, such as sand
10 or gravel.

11 (v) "Water table aquifer" means an aquifer where groundwater
12 is under atmospheric pressure.

13 (w) "Water well" means an opening in the surface of the earth
14 that is intended for the removal of groundwater for any purpose.
15 A water well includes, but is not limited to, a vertical
16 borehole.

17 (x) "Water-dependent natural resources" means those systems
18 of plants, animals, and microorganisms, together with the
19 nonliving component of their environment, and related ecological
20 processes that are dependent on water for their survival and
21 well-being.

22 (y) "Waters of the Great Lakes basin" means the surface
23 waters and groundwaters within or under the Great Lakes surface
24 watershed and the groundwater outside the Great Lakes surface
25 watershed determined to contribute to those waters of the Great
26 Lakes surface watershed. Waters of the Great Lakes basin include
27 all groundwater in the state.

1 (z) "Withdrawal" or "withdraw" means the taking of
2 groundwater from where it naturally occurs.

3 Sec. 32802. (1) Subject to subsection (2), beginning 2
4 years after the effective date of the amendatory act that added
5 this section, a groundwater withdrawal facility within a critical
6 aquifer as identified on the map of critical aquifers prepared
7 under section 32809 shall not extract groundwater at a rate of
8 more than 70 gallons per minute unless a groundwater withdrawal
9 certificate has been obtained from the department.

10 (2) Until 10 years after the effective date of the amendatory
11 act that added this section, a facility withdrawing groundwater
12 on the effective date of the amendatory act that added this
13 section is not required to obtain a groundwater withdrawal
14 certificate unless additional water wells are proposed to be
15 added or the pumping capacity is proposed to be increased and the
16 total groundwater withdrawal would be increased by at least 70
17 gallons per minute. Beginning 10 years after the effective date
18 of the amendatory act that added this section, all groundwater
19 withdrawal facilities meeting the requirements of subsection (1)
20 shall obtain a groundwater withdrawal certificate.

21 Sec. 32803. (1) The owner of a groundwater withdrawal
22 facility or a proposed groundwater withdrawal facility or the
23 owner's authorized representative may apply for a groundwater
24 withdrawal certificate by submitting an application to the
25 department on a form provided by the department. The applicant
26 shall provide the department with all of the following
27 information:

1 (a) The purpose of and need for the withdrawal, including
2 measures investigated to reduce or eliminate the amount of the
3 withdrawal needed.

4 (b) The location of the proposed groundwater withdrawal
5 facility and the course of the proposed withdrawal and the
6 ownership of all lands upon and through which the proposed
7 withdrawal will occur, and documentation of any pertinent
8 agreements, easements, and rights-of-way obtained from landowners
9 regarding the withdrawal.

10 (c) The proposed well or sump locations at the groundwater
11 withdrawal facility, including the township name, township
12 number, range number, section number, and fractional description
13 of the location within the section, and the county.

14 (d) Proof of ownership of the property from which the
15 groundwater withdrawal will occur.

16 (e) The rated pumping capacity of pumping equipment to be
17 installed in the water wells or sumps.

18 (f) The infrastructure through which the water is to be
19 withdrawn.

20 (g) The frequency, duration, and amount of water to be
21 withdrawn per day, month, and year.

22 (h) A hydrogeologic study.

23 (2) An applicant for a groundwater withdrawal certificate
24 shall submit a fee in an amount established by the department.
25 The department shall establish this fee based upon the
26 administrative costs of the department in reviewing certificate
27 applications under this part. The department shall forward fees

1 collected under this subsection to the state treasurer for
2 deposit into the fund.

3 (3) An incomplete application or an application submitted to
4 the department without payment of the fee under subsection (2)
5 shall not be processed.

6 Sec. 32804. A hydrogeologic study submitted under this part
7 shall include at least the following information as required by
8 the department based upon gaps in the department's hydrogeologic
9 data related to the proposed groundwater withdrawal facility:

10 (a) The location of the wells or sumps at the groundwater
11 withdrawal facility, and the latitude and longitude of the wells
12 or sumps using a global positioning system.

13 (b) A summary of regional and local hydrogeology, including
14 an estimate of the areal and vertical extent of the aquifer,
15 whether the aquifer is a water table aquifer or an artesian
16 aquifer, flow direction of the aquifer, and whether the aquifer
17 consists of consolidated or unconsolidated geologic materials.

18 (c) An estimate of hydraulic characteristics including
19 aquifer storage coefficient and transmissivity based on an
20 aquifer test of sufficient design and duration.

21 (d) The proposed rate of groundwater withdrawal.

22 (e) The location of potentially impacted wells within a
23 radius of 1 mile of the groundwater withdrawal facility. If no
24 potentially impacted wells exist within a 1-mile radius of the
25 groundwater withdrawal facility, the nearest 4 potentially
26 impacted wells surrounding the groundwater withdrawal facility
27 shall be identified.

1 (f) A current record of static water levels from wells in the
2 vicinity as follows:

3 (i) If there are wells located within 1 mile of the
4 groundwater withdrawal facility, the static water levels shall be
5 obtained in accordance with all of the following:

6 (A) At a minimum, from wells located north, south, east, and
7 west of the groundwater withdrawal facility.

8 (B) Collected from the well or wells at the groundwater
9 withdrawal facility.

10 (C) Collected from 10% or not less than 4 of the potentially
11 impacted wells identified under subdivision (e), whichever is
12 greater.

13 (ii) If no wells are located within 1 mile of the groundwater
14 withdrawal facility, static water levels shall be collected from
15 not less than the nearest 4 potentially impacted wells or from
16 not less than 4 wells installed by the applicant, which are
17 completed in the same aquifer as the well or wells serving the
18 groundwater withdrawal facility and which are located in
19 accordance with subparagraph (i)(A).

20 (g) Projections of drawdown within the aquifer as a function
21 of distance from the groundwater withdrawal facility, including a
22 determination of the sustainable yield.

23 (h) Identification of potentially impacted wells identified
24 under subdivision (e), which withdraw more than 70 gallons per
25 minute.

26 Sec. 32805. (1) The department shall process all
27 administratively complete groundwater withdrawal certificate

1 applications in the order in which they are received.

2 (2) Within 45 days of receipt of an administratively complete
3 groundwater withdrawal certificate application under section
4 32803, the department shall evaluate the application and shall
5 determine whether the application is for a class 1 groundwater
6 withdrawal facility or a class 2 groundwater withdrawal
7 facility.

8 (3) If an aggrieved person requests the department to
9 schedule a public hearing on a groundwater withdrawal certificate
10 application, the request shall be made in writing and any hearing
11 shall be conducted pursuant to R 325.10201 and R 325.10202 of the
12 Michigan administrative code. A public hearing under this
13 subsection shall be held within 45 days of the department's
14 receipt of an administratively complete application.

15 Sec. 32806. (1) If the department has determined under
16 section 32805 that the application is for a class 1 groundwater
17 withdrawal facility, the department shall issue to the applicant
18 a groundwater withdrawal certificate.

19 (2) If the department determines that the application is for
20 a class 2 groundwater withdrawal facility, the department shall
21 do all of the following:

22 (a) Require the applicant to submit an additional fee in an
23 amount established by the department. The department shall
24 establish this additional fee based upon the additional
25 administrative costs of the department in reviewing applications
26 for class 2 groundwater withdrawal facilities. The department
27 shall forward this fee to the state treasurer for deposit into

1 the fund.

2 (b) Require the applicant to submit to the department all of
3 the following additional information:

4 (i) The estimated condition, amount of water, times of the
5 year, and places that withdrawn water will be returned to the
6 local ecosystem as return flow.

7 (ii) The requirements imposed on the proposed water
8 withdrawals by other statutes, including, but not limited to, the
9 federal water pollution control act, chapter 758, 86 Stat. 816,
10 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263,
11 1265 to 1270, 1273 to 1274, 1281, 1282, to 1293, 1294 to 1301,
12 1311 to 1313, 1314 to 1330, 1341 to 1346, 1361 to 1375, 1376 to
13 1377, and 1381 to 1387.

14 (iii) The means for monitoring and documenting return flow.

15 (iv) Measures that will be taken by the applicant to do both
16 of the following:

17 (A) Implement environmentally sound and economically feasible
18 water conservation measures.

19 (B) Improve the waters of the Great Lakes basin and the
20 water-dependent natural resources of the Great Lakes basin.

21 (v) Other information required by the department.

22 (c) Provide the applicant all of the following information:

23 (i) The current ecosystem status of the water source that
24 will be affected by the withdrawal.

25 (ii) The ecosystem status of the waters that will receive the
26 return flow, and the expected impact of return flow on that
27 status.

1 (iii) The expected recharge rate and estimated area and depth
2 of the cone of depression of any affected aquifer, in cases where
3 necessary to avoid impacts to other aquifer users.

4 (3) The department shall not issue a groundwater withdrawal
5 certificate for a class 2 groundwater withdrawal facility unless
6 the applicant can demonstrate that the withdrawal will meet all
7 of the following standards and the department makes these
8 standards a condition of the certificate:

9 (a) There is a demonstrated need for the proposed
10 withdrawal.

11 (b) The withdrawal and its associated use or transport of
12 water will prevent or minimize water loss from the watershed
13 through return flow and implementation of environmentally sound
14 and economically feasible water conservation measures.

15 (c) The withdrawal will result in no significant adverse
16 individual or cumulative impacts to the quantity and quality of
17 the waters of the Great Lakes basin and water-dependent natural
18 resources of the Great Lakes basin.

19 (d) Subject to subdivision (g), the withdrawal will not
20 adversely affect other users of the same aquifer.

21 (e) The withdrawal is consistent with the future water use
22 needs identified in any master land use or zoning plan adopted by
23 the local unit of government in which the withdrawal is
24 proposed.

25 (f) The applicant will improve the waters of the Great Lakes
26 basin and the water-dependent natural resources of the Great
27 Lakes basin. When assessing whether a proposed improvement is

1 sufficient to meet this condition, the department shall place a
2 higher priority on proposals that improve the affected waters or
3 water-dependent natural resources.

4 (g) The applicant has submitted 1 or more of the following:

5 (i) Signed affidavits from all potentially impacted well
6 owners acknowledging and accepting the potential impact.

7 (ii) A legally binding agreement between the applicant and
8 the owners of potentially impacted wells that provides for well
9 alteration, well replacement, provisions for an alternate water
10 supply, financial compensation, or other remedies as agreed upon
11 between the parties.

12 (iii) A proposal to limit the groundwater withdrawal to the
13 sustainable yield of the aquifer.

14 (4) If the department denies an application for a groundwater
15 withdrawal certificate, the department shall provide notice of
16 the denial to the applicant and the reason or reasons for the
17 denial. An applicant who is denied a groundwater withdrawal
18 certificate may demand a contested case hearing on the denial
19 pursuant to the administrative procedures act of 1969, 1969 PA
20 306, MCL 24.201 to 24.328.

21 Sec. 32807. A groundwater withdrawal certificate issued
22 under this part is valid for a 5-year period at the pumping rate
23 as specified in the certificate. Upon expiration of a
24 certificate, the certificate may be renewed. The owner of a
25 groundwater withdrawal facility or his or her authorized
26 representative who wishes to renew a certificate shall submit an
27 application for a certificate renewal and a certificate renewal

1 application fee to the department. The application shall contain
2 the information required by the department. The department shall
3 renew the certificate unless there has been a significant and
4 substantial change in conditions affecting the aquifer. If the
5 department determines that there has been a significant and
6 substantial change in conditions affecting the aquifer, the
7 department shall evaluate the renewal application based upon the
8 standards provided in this section. The department shall
9 establish a fee for certificate renewals based on the
10 administrative costs of the department in reviewing certificate
11 renewal applications. The department shall forward fees
12 collected under this section to the state treasurer for deposit
13 into the fund.

14 Sec. 32808. (1) The aquifer protection fund is created
15 within the state treasury.

16 (2) The state treasurer may receive money or other assets
17 from any source for deposit into the fund. The state treasurer
18 shall direct the investment of the fund and shall credit to the
19 fund interest and earnings from fund investments.

20 (3) Money in the fund at the close of the fiscal year shall
21 remain in the fund and shall not lapse into the general fund.

22 (4) The department of environmental quality and the
23 department of agriculture may expend money from the fund, upon
24 appropriation, only for the implementation and administration of
25 this part.

26 (5) Beginning 4 years after the effective date of the
27 amendatory act that added this section and at least every 4 years

1 thereafter, the department and the department of agriculture
2 shall jointly prepare and submit to the legislature a report that
3 evaluates the adequacy of the fees established under this part in
4 providing the resources necessary to implement this part.

5 Sec. 32809. (1) Not later than 2 years after the effective
6 date of the amendatory act that added this section, the
7 department shall collect and compile groundwater data into a
8 statewide groundwater inventory. The department shall use
9 existing sources of groundwater data where that data is
10 available, but may supplement that data through additional
11 studies if that data is incomplete. From the information in the
12 statewide groundwater inventory, the department shall identify
13 critical aquifers. The department shall prepare a map that
14 delineates critical aquifers in the state.

15 (2) The department shall make the statewide groundwater
16 inventory and the map of critical aquifers prepared under
17 subsection (1) available to the general public.

18 Sec. 32810. The director of the department may issue a
19 cease and desist order to a person who is in violation of this
20 part.

21 Sec. 32811. (1) An owner of a groundwater withdrawal
22 facility who fails to obtain a groundwater withdrawal certificate
23 as required by this part, or who violates the conditions of the
24 certificate and causes environmental harm or impairs the rights
25 of other property owners to withdraw groundwater for their
26 reasonable and beneficial use, is guilty of a misdemeanor
27 punishable by a fine of not more than \$5,000.00 for each day of

1 violation or by imprisonment for not more than 1 year, or both.

2 (2) At the request of the department, the attorney general
3 may bring a civil action to enforce a cease and desist order
4 under section 32810 or for injunctive or other appropriate relief
5 to enforce this part.

6 Sec. 32812. If a small quantity well fails to furnish the
7 well's normal supply of water or fails to furnish potable water,
8 and the owner of the small quantity well has credible evidence to
9 believe the well's problems are being caused by a high capacity
10 well, the owner of the small quantity well may pursue a remedy
11 under part 317.

12 Sec. 32813. In addition to a groundwater withdrawal
13 facility certificate required by this part, the owner of a
14 groundwater withdrawal facility or his or her authorized
15 representative shall obtain any well construction permits as
16 otherwise required by state law or local ordinances.

17 Sec. 32814. Before a person who is registered as a water
18 well drilling contractor or pump installation contractor under
19 part 127 of the public health code, 1978 PA 368, MCL 333.12701 to
20 333.12771, constructs and equips a well serving a groundwater
21 withdrawal facility that is located within a critical aquifer as
22 identified on the map of critical aquifers prepared under section
23 32809, the contractor shall notify the owner or operator of the
24 groundwater withdrawal facility of the provisions of this part.