

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 857

A bill to amend 1976 PA 399, entitled
"Safe drinking water act,"
by amending sections 4 and 17 (MCL 325.1004 and 325.1017), section
4 as amended by 1998 PA 56 and section 17 as amended by 1993 PA
165.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) A supplier of water shall file with the department
2 the plans and specifications of the entire waterworks system owned
3 or operated by the supplier, unless the department determines that
4 its existing records are adequate. A general plan of the waterworks
5 system for each public water supply shall be provided to the
6 department by a supplier of water and shall be updated as
7 determined necessary by the department.

8 (2) Upon receipt of the plans and specifications for a

1 proposed waterworks system, the department shall evaluate the
2 adequacy of the proposed system to protect the public health by
3 supplying water meeting the state drinking water standards **AND, IF**
4 **APPLICABLE, SHALL EVALUATE THE IMPACT OF THE PROPOSED SYSTEM AS**
5 **PROVIDED IN SUBSECTIONS (3) AND (4).** The department shall also
6 conduct a capacity assessment for a proposed community supply or
7 nontransient noncommunity water supply and determine if the system
8 has the technical, financial, and managerial capacity to meet all
9 requirements of this act and the rules promulgated under this act,
10 on the date of commencement of operations. If upon evaluation the
11 department determines the plans and specifications to be inadequate
12 or the capacity assessment shows the system to be inadequate, the
13 department may return the plans and specifications to the applicant
14 and require additions or modifications as may be appropriate. The
15 department may reject plans and specifications for a waterworks
16 system ~~which it determines~~ **THAT** will not satisfactorily provide
17 for the protection of the public health **OR, IF APPLICABLE, WILL NOT**
18 **MEET THE STANDARDS PROVIDED IN SUBSECTIONS (3) AND (4).** The
19 department may deny a permit for construction of a proposed
20 community supply or a nontransient noncommunity water supply if the
21 capacity assessment shows that the proposed system does not have
22 adequate technical, financial, or managerial capacity to meet the
23 requirements of this act and the rules promulgated under this act.

24 **(3) THE DEPARTMENT MAY EVALUATE THE IMPACT OF A PROPOSED**
25 **WATERWORKS SYSTEM FOR A COMMUNITY SUPPLY OWNED BY A POLITICAL**
26 **SUBDIVISION THAT WILL DO ANY OF THE FOLLOWING:**

27 **(A) PROVIDE NEW TOTAL DESIGNED WITHDRAWAL CAPACITY OF MORE**

1 THAN 2,000,000 GALLONS OF WATER PER DAY FROM A SOURCE OF WATER
2 OTHER THAN THE GREAT LAKES AND THEIR CONNECTING WATERWAYS.

3 (B) PROVIDE AN INCREASED TOTAL DESIGNED WITHDRAWAL CAPACITY OF
4 MORE THAN 2,000,000 GALLONS OF WATER PER DAY FROM A SOURCE OF WATER
5 OTHER THAN THE GREAT LAKES AND THEIR CONNECTING WATERWAYS BEYOND
6 THE SYSTEM'S TOTAL DESIGNED WITHDRAWAL CAPACITY.

7 (C) PROVIDE NEW TOTAL DESIGNED WITHDRAWAL CAPACITY OF MORE
8 THAN 5,000,000 GALLONS OF WATER PER DAY FROM THE GREAT LAKES AND
9 THEIR CONNECTING WATERWAYS.

10 (D) PROVIDE AN INCREASED TOTAL DESIGNED WITHDRAWAL CAPACITY OF
11 MORE THAN 5,000,000 GALLONS OF WATER PER DAY FROM THE GREAT LAKES
12 AND THEIR CONNECTING WATERWAYS BEYOND THE SYSTEM'S TOTAL DESIGNED
13 WITHDRAWAL CAPACITY.

14 (4) THE DEPARTMENT SHALL REJECT THE PLANS AND SPECIFICATIONS
15 FOR A PROPOSED WATERWORKS SYSTEM EVALUATED UNDER SUBSECTION (3) IF
16 IT DETERMINES THAT THE PROPOSED SYSTEM WILL NOT MEET THE APPLICABLE
17 STANDARD PROVIDED IN SECTION 32723(5) OR (6) OF THE NATURAL
18 RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL
19 324.32723, UNLESS BOTH OF THE FOLLOWING CONDITIONS ARE MET:

20 (A) THE DEPARTMENT DETERMINES THAT THERE IS NO FEASIBLE AND
21 PRUDENT ALTERNATIVE LOCATION FOR THE WITHDRAWAL.

22 (B) THE DEPARTMENT INCLUDES IN THE APPROVAL CONDITIONS RELATED
23 TO DEPTH, PUMPING CAPACITY, RATE OF FLOW, AND ULTIMATE USE THAT
24 ENSURE THAT THE ENVIRONMENTAL IMPACT OF THE WITHDRAWAL IS BALANCED
25 BY THE PUBLIC BENEFIT OF THE WITHDRAWAL RELATED TO PUBLIC HEALTH,
26 SAFETY, AND WELFARE.

27 (5) ~~-(3)-~~ Before commencing the construction of a waterworks

1 system or an alteration, addition, or improvement to a system, a
2 supplier of water shall submit the plans and specifications for the
3 improvements to the department and secure from the department a
4 permit for construction ~~of the same~~ as provided by rule. Plans
5 and specifications submitted to the department shall be prepared by
6 a professional engineer licensed under article 20 of the
7 occupational code, 1980 PA 299, MCL 339.2001 to 339.2014. A
8 contractor, builder, or supplier of water shall not engage in or
9 begin the construction of a waterworks system or an alteration,
10 addition, or improvement ~~thereto~~ **TO A WATERWORKS SYSTEM** until a
11 valid permit for the construction has been secured from the
12 department. A contractor, builder, or supplier of water who permits
13 or allows construction to proceed without a valid permit, or in a
14 manner not in accordance with the plans and specifications approved
15 by the department, violates this act. A supplier of water shall not
16 issue a voucher or check or in any other way expend money or
17 provide consideration for construction of a waterworks system
18 unless a valid permit issued by the department is in effect.

19 (6) ~~(4)~~ The department may deny a permit for construction of
20 a waterworks system or an alteration, addition, or improvement to a
21 waterworks system if the most recent capacity assessment shows that
22 the waterworks system does not have adequate technical, financial,
23 or managerial capacity to meet the requirements of this act and the
24 rules promulgated under this act, and the deficiencies identified
25 in that capacity assessment remain uncorrected, unless the proposed
26 construction will remedy the deficiencies.

27 Sec. 17. (1) A person engaged in producing bottled drinking

1 water shall utilize a water source meeting the requirements of this
2 **SECTION AND THE REQUIREMENTS OTHERWISE PROVIDED IN THIS** act.

3 Bottling or packaging facilities and their operation shall remain
4 under the supervision of the Michigan department of agriculture as
5 provided for in the ~~Michigan food law of 1968, Act No. 39 of the~~
6 ~~Public Acts of 1968, as amended, being sections 289.701 to 289.727~~
7 ~~of the Michigan Compiled Laws~~ **FOOD LAW OF 2000, 2000 PA 92, MCL**
8 **289.1101 TO 289.8111**, and regulation no. 549, ~~being sections~~
9 R285.549.1 through R285.549.29 of the Michigan administrative code,
10 and other pertinent rules and laws.

11 (2) A person producing bottled drinking water from an out-of-
12 state source shall submit proof to the director that the source and
13 bottling facilities were approved by the agency having
14 jurisdiction. The director may withhold approval of the bottled
15 water if the other agency's inspection, surveillance, and approval
16 procedures and techniques are determined to be inadequate.

17 (3) **A PERSON WHO PROPOSES TO ENGAGE IN PRODUCING BOTTLED**
18 **DRINKING WATER FROM A NEW OR INCREASED LARGE QUANTITY WITHDRAWAL OF**
19 **MORE THAN 250,000 GALLONS OF WATER PER DAY SHALL DEMONSTRATE TO THE**
20 **SATISFACTION OF THE DEPARTMENT THAT ALL OF THE FOLLOWING CONDITIONS**
21 **WILL BE MET:**

22 (A) **THE PROPOSED USE IS NOT LIKELY TO HAVE AN ADVERSE RESOURCE**
23 **IMPACT.**

24 (B) **THE PROPOSED USE IS REASONABLE UNDER COMMON LAW PRINCIPLES**
25 **OF WATER LAW IN MICHIGAN.**

26 (C) **THE WITHDRAWAL WILL BE CONDUCTED IN SUCH A MANNER AS TO**
27 **PROTECT RIPARIAN RIGHTS AS DEFINED BY MICHIGAN COMMON LAW.**

1 (D) THE PERSON WILL UNDERTAKE ACTIVITIES, IF NEEDED, TO
2 ADDRESS HYDROLOGIC IMPACTS COMMENSURATE WITH THE NATURE AND EXTENT
3 OF THE WITHDRAWAL. THESE ACTIVITIES MAY INCLUDE THOSE RELATED TO
4 THE STREAM FLOW REGIME, WATER QUALITY, AND AQUIFER PROTECTION.

5 (4) BEFORE PROPOSING ACTIVITIES UNDER SUBSECTION (3)(D), THE
6 PERSON PROPOSING TO ENGAGE IN PRODUCING BOTTLED DRINKING WATER
7 SHALL CONSULT WITH LOCAL GOVERNMENT OFFICIALS AND INTERESTED
8 COMMUNITY MEMBERS.

9 (5) BEFORE MAKING THE DETERMINATION UNDER SUBSECTION (3), THE
10 DEPARTMENT SHALL PROVIDE PUBLIC NOTICE AND AN OPPORTUNITY FOR
11 PUBLIC COMMENT.

12 (6) IF THE PERSON PROPOSING TO ENGAGE IN PRODUCING BOTTLED
13 DRINKING WATER UNDER SUBSECTION (3) DOES NOT HAVE A PERMIT UNDER
14 SECTION 4, THE PERSON SHALL REQUEST A DETERMINATION UNDER
15 SUBSECTION (3) WHEN THAT PERSON APPLIES FOR A PERMIT UNDER SECTION
16 4. IF THE PERSON PROPOSING TO ENGAGE IN PRODUCING BOTTLED DRINKING
17 WATER HAS PREVIOUSLY RECEIVED A PERMIT UNDER SECTION 4, THE PERSON
18 SHALL REQUEST A DETERMINATION UNDER SUBSECTION (3) PRIOR TO
19 BEGINNING THE OPERATIONS.

20 (7) A PERSON SEEKING A DEPARTMENTAL DETERMINATION UNDER
21 SUBSECTION (3) SHALL SUBMIT AN APPLICATION FEE OF \$5,000.00 TO THE
22 DEPARTMENT. THE DEPARTMENT SHALL TRANSMIT APPLICATION FEES RECEIVED
23 UNDER THIS SECTION TO THE STATE TREASURER TO BE CREDITED TO THE
24 WATER USE PROTECTION FUND CREATED IN SECTION 32714.

25 (8) THIS SECTION SHALL NOT BE CONSTRUED AS AFFECTING,
26 INTENDING TO AFFECT, OR IN ANY WAY ALTERING OR INTERFERING WITH
27 COMMON LAW WATER RIGHTS OR THE APPLICABILITY OF OTHER LAWS

1 PROVIDING FOR THE PROTECTION OF NATURAL RESOURCES OR THE
2 ENVIRONMENT.

3 (9) AS USED IN THIS SECTION, "ADVERSE RESOURCE IMPACT" AND
4 "NEW OR INCREASED LARGE QUANTITY WITHDRAWAL" MEAN THOSE TERMS AS
5 THEY ARE DEFINED IN SECTION 32701 OF THE NATURAL RESOURCES AND
6 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.32701.

7 Enacting section 1. This amendatory act does not take effect
8 unless all of the following bills of the 93rd Legislature are
9 enacted into law:

- 10 (a) Senate Bill No. 850.
- 11 (b) Senate Bill No. 851.
- 12 (c) Senate Bill No. 852.
- 13 (d) Senate Bill No. 854.