

# HOUSE BILL No. 5995

April 25, 2006, Introduced by Reps. McDowell, Accavitti, Donigan, Alma Smith, Espinoza, Leland, Kathleen Law, Hopgood, Spade, Miller, Polidori, Angerer, Byrnes, Zelenko, Vagnozzi, Kolb, Lipsey, Gonzales, Anderson, Lemmons, Jr., Cushingberry, Waters, Bieda, Gleason, Sak, Meisner and Byrum and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 32701, 32703, 32703a, and 32704 (MCL  
324.32701, 324.32703, 324.32703a, and 324.32704), sections 32701  
and 32703 as amended and section 32703a as added by 2006 PA 33 and  
section 32704 as added by 1995 PA 59.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 32701. As used in this part:

2       (a) "Adverse resource impact" means either of the following:

3       (i) Decreasing the flow of a stream by part of the index flow  
4 such that the stream's ability to support characteristic fish  
5 populations is functionally impaired.

6       (ii) Decreasing the level of a body of surface water such that

1 the body of surface water's ability to support characteristic fish  
2 populations is functionally impaired.

3 (b) "Agricultural purpose" means the agricultural production  
4 of plants and animals useful to human beings and includes, but is  
5 not limited to, forages and sod crops, grains and feed crops, field  
6 crops, dairy animals and dairy products, poultry and poultry  
7 products, cervidae, livestock, including breeding and grazing,  
8 equine **ANIMALS**, fish and other aquacultural products, bees and bee  
9 products, berries, herbs, fruits, vegetables, flowers, seeds,  
10 grasses, nursery stock, trees and tree products, mushrooms, and  
11 other similar products, or any other product, as determined by the  
12 commission of agriculture, that incorporates the use of food, feed,  
13 fiber, or fur.

14 (c) "Baseline capacity" means either of the following:

15 (i) The following applicable withdrawal capacity as reported to  
16 the department or the department of agriculture, as appropriate, by  
17 the person making the withdrawal in the April 1, 2007 annual report  
18 submitted under section 32707 or in the April 1, 2007 water use  
19 conservation plan submitted under section 32708:

20 (A) For a community supply, the total designed withdrawal  
21 capacity for the community supply under the safe drinking water  
22 act, 1976 PA 399, MCL 325.1001 to 325.1023, on ~~the effective date~~  
23 ~~of the amendatory act that added this subparagraph~~ **FEBRUARY 28,**  
24 **2006.**

25 (B) Unless reported under a different provision of this  
26 subparagraph, for a quarry or mine that holds an authorization to  
27 discharge under part 31 that includes a discharge volume, the

1 discharge volume stated in that authorization on ~~the effective~~  
2 ~~date of the amendatory act that added this subparagraph~~ **FEBRUARY**  
3 **28, 2006.**

4 (C) The system capacity used or developed to make a withdrawal  
5 on ~~the effective date of the amendatory act that added this~~  
6 ~~subparagraph~~ **FEBRUARY 28, 2006**, if the system capacity and a  
7 description of the system capacity are included in an annual report  
8 that is submitted under this part.

9 (ii) If the person making the withdrawal does not report under  
10 subparagraph (i), the highest annual amount of water withdrawn as  
11 reported under this part for calendar year 2002, 2003, 2004, or  
12 2005.

13 (d) "Community supply" means that term as it is defined in  
14 section 2 of the safe drinking water act, 1976 PA 399, MCL  
15 325.1002.

16 (e) "Consumptive use" means that portion of water withdrawn or  
17 withheld from the Great Lakes basin and assumed to be lost or  
18 otherwise not returned to the Great Lakes basin due to evaporation,  
19 incorporation into products or agricultural products, use as part  
20 of the packaging of products or agricultural products, or other  
21 processes. ~~Consumptive use includes a withdrawal of waters of the~~  
22 ~~Great Lakes basin that is packaged within the Great Lakes basin in~~  
23 ~~a container of 5.7 gallons (20 liters) or less.~~ **CONSUMPTIVE USE**  
24 **DOES NOT INCLUDE THE PACKAGING OF WATER IN BOTTLES OR OTHER**  
25 **CONTAINERS.**

26 (f) "Department" means the department of environmental  
27 quality.

(g) "Designated trout stream" means a trout stream identified on the document entitled "Designated Trout Streams for the State of Michigan", as issued under order of the director of the department of natural resources, FO-210.04, on October 10, 2003.

(h) ~~"Diverted"~~ **"DIVERSION"** means a transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Great Lakes basin into a watershed outside of the Great Lakes basin, ~~— Diverted includes a~~ **INCLUDING THE** transfer of water ~~— withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters). Diverted~~ **IN BOTTLES OR OTHER CONTAINERS. HOWEVER, DIVERSION** does not include any of the following:

(i) A consumptive use.

(ii) The supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of vehicles.

(iii) Use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

**(iv) WATER TRANSPORTED FROM THE GREAT LAKES BASIN BY A PERSON FOR HIS OR HER PERSONAL, NONCOMMERCIAL USE.**

(i) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

1 (i) Are environmentally sound.

2 (ii) Reflect best practices applicable to the water use sector.

3 (iii) Are technically feasible and available.

4 (iv) Are economically feasible and cost-effective based on an  
5 analysis that considers direct and avoided economic and  
6 environmental costs.

7 (v) Consider the particular facilities and processes involved,  
8 taking into account the environmental impact, age of equipment and  
9 facilities involved, the process employed, energy impacts, and  
10 other appropriate factors.

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

13 (k) "Generally accepted water management practices" means  
14 standards or guidelines for water use that ensure water is used  
15 efficiently.

16 (l) "Great Lakes basin" means the watershed of the Great Lakes  
17 and the St. Lawrence river.

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

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

26 (o) "Index flow" means the 50% exceedance flow for the lowest  
27 flow month of the flow regime, for the applicable stream reach, as

determined over the period of record or extrapolated from analyses of the United States geological survey stream flow gauges in Michigan.

(p) "Large quantity withdrawal" means 1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.

(q) "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.

(r) "New or increased withdrawal capacity" means new or additional water withdrawal capacity to supply a common distribution system that is an increase from the person's baseline capacity. New or increased capacity does not include maintenance or replacement of existing withdrawal capacity.

(s) "Political subdivision" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

(t) "Registrant" means a person who registers water withdrawal capacity under this part.

(u) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.

(v) "Waters of the state" means ~~groundwater, lakes, rivers,~~

1 ~~and streams and all other watercourses and waters, including~~  
2 **WATERS OF** the Great Lakes ~~—~~ **BASIN** within the territorial  
3 boundaries of the state. Waters of the state do not include  
4 drainage ways and ponds designed and constructed solely for  
5 wastewater conveyance, treatment, or control.

6 (w) "Withdrawal" means the removal of water from its source  
7 for any purpose, other than for hydroelectric generation at sites  
8 certified, licensed, or permitted by the federal energy regulatory  
9 commission.

10 Sec. 32703. Subject to section 32704, the **DIVERSION OF THE**  
11 waters of the ~~Great Lakes basin within the boundaries of this~~  
12 ~~state shall not be diverted~~ **STATE** out of the Great Lakes basin **IS**  
13 **PROHIBITED.**

14 Sec. 32703a. (1) If the prohibition in section 32703 is  
15 determined to be invalid, the **DIVERSION OF THE** waters of the state  
16 ~~shall not be diverted~~ **OUT OF THE GREAT LAKES BASIN IS PROHIBITED**  
17 unless authorized by law.

18 (2) When considering whether to grant legislative approval for  
19 a diversion, the legislature shall consider sections 51 and 52 of  
20 article IV of the state constitution of 1963 and whether the  
21 project ~~serves~~ **WILL SERVE** a public purpose, whether the project  
22 will result in no material harm to the waters of the state, the  
23 public trust, or related purposes, and whether the project ~~would~~  
24 **WILL** result in any improvement to the waters of the state or the  
25 water dependent natural resources of the state.

26 Sec. 32704. Section 32703 does not apply to ~~a~~ **EITHER OF THE**  
27 **FOLLOWING:**

1        (A) A diversion of the waters of the Great Lakes BASIN out of  
2 the drainage basin of the Great Lakes existing on September 30,  
3 1985.

4        (B) A DIVERSION BY A PERSON IN BOTTLES OR OTHER CONTAINERS IN  
5 AN AMOUNT EQUAL TO OR LESS THAN THE AMOUNT OF WATER DIVERTED BY  
6 THAT PERSON DURING CALENDAR YEAR 2006 IF THE WITHDRAWAL FROM WHICH  
7 THE DIVERSION OCCURS MEETS ALL OF THE FOLLOWING CONDITIONS:

8            (i) AN ADVERSE RESOURCE IMPACT DOES NOT OCCUR.

9            (ii) THE USE OF THE WATER IS REASONABLE UNDER COMMON LAW  
10 PRINCIPLES OF WATER LAW IN MICHIGAN.

11           (iii) RIPARIAN RIGHTS AS DEFINED BY MICHIGAN COMMON LAW ARE  
12 PROTECTED.

13           (iv) HYDROLOGIC IMPACTS COMMENSURATE WITH THE NATURE AND  
14 EXTENT OF THE WITHDRAWAL ARE ADDRESSED, IF NEEDED, BY THE PERSON  
15 MAKING THE WITHDRAWAL THROUGH ACTIVITIES RELATED TO STREAM FLOW  
16 REGIME, WATER QUALITY, AQUIFER PROTECTION, OR OTHER CONSIDERATIONS.