

Act No. 37
Public Acts of 2006
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

**Introduced by Senators Brater, Basham, Emerson, Schauer, Clarke, Switalski, Jacobs, Olshove, Cherry,
Scott, Prusi, Bernero, Leland and Clark-Coleman**

ENROLLED SENATE BILL No. 857

AN ACT to amend 1976 PA 399, entitled "An act to protect the public health; to provide for supervision and control over public water supplies; to prescribe the powers and duties of the department of environmental quality; to provide for the submission of plans and specifications for waterworks systems and the issuance of construction permits therefor; to provide for capacity assessments and source water assessments of public water supplies; to provide for the classification of public water supplies and the examination, certification and regulation of persons operating those systems; to provide for continuous, adequate operation of privately owned, public water supplies; to authorize the promulgation of rules to carry out the intent of the act; to create the water supply fund; to provide for the administration of the water supply fund; and to provide penalties," 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:

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

(2) Upon receipt of the plans and specifications for a proposed waterworks system, the department shall evaluate the adequacy of the proposed system to protect the public health by supplying water meeting the state drinking water standards and, if applicable, shall evaluate the impact of the proposed system as provided in subsections (3) and (4). The department shall also conduct a capacity assessment for a proposed community supply or nontransient noncommunity water supply and determine if the system has the technical, financial, and managerial capacity to meet all requirements of this act and the rules promulgated under this act, on the date of commencement of operations. If upon evaluation the department determines the plans and specifications to be inadequate or the capacity assessment shows the system to be inadequate, the department may return the plans and specifications to the applicant and require additions or modifications as may be appropriate. The department may reject plans and specifications for a waterworks system that will not satisfactorily provide for the protection of the public health or, if applicable, will not meet the standards provided in subsections (3) and (4). The department may deny a permit for construction of a proposed community supply or a nontransient noncommunity water supply if the capacity assessment shows that the proposed system does not have adequate technical, financial, or managerial capacity to meet the requirements of this act and the rules promulgated under this act.

(3) The department may evaluate the impact of a proposed waterworks system for a community supply owned by a political subdivision that will do any of the following:

(a) Provide new total designed withdrawal capacity of more than 2,000,000 gallons of water per day from a source of water other than the Great Lakes and their connecting waterways.

(b) Provide an increased total designed withdrawal capacity of more than 2,000,000 gallons of water per day from a source of water other than the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

(c) Provide new total designed withdrawal capacity of more than 5,000,000 gallons of water per day from the Great Lakes and their connecting waterways.

(d) Provide an increased total designed withdrawal capacity of more than 5,000,000 gallons of water per day from the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

(4) The department shall reject the plans and specifications for a proposed waterworks system evaluated under subsection (3) if it determines that the proposed system will not meet the applicable standard provided in section 32723(5) or (6) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.32723, unless both of the following conditions are met:

(a) The department determines that there is no feasible and prudent alternative location for the withdrawal.

(b) The department includes in the approval conditions related to depth, pumping capacity, rate of flow, and ultimate use that ensure that the environmental impact of the withdrawal is balanced by the public benefit of the withdrawal related to public health, safety, and welfare.

(5) Before commencing the construction of a waterworks system or an alteration, addition, or improvement to a system, a supplier of water shall submit the plans and specifications for the improvements to the department and secure from the department a permit for construction as provided by rule. Plans and specifications submitted to the department shall be prepared by a professional engineer licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014. A contractor, builder, or supplier of water shall not engage in or begin the construction of a waterworks system or an alteration, addition, or improvement to a waterworks system until a valid permit for the construction has been secured from the department. A contractor, builder, or supplier of water who permits or allows construction to proceed without a valid permit, or in a manner not in accordance with the plans and specifications approved by the department, violates this act. A supplier of water shall not issue a voucher or check or in any other way expend money or provide consideration for construction of a waterworks system unless a valid permit issued by the department is in effect.

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

Sec. 17. (1) A person engaged in producing bottled drinking water shall utilize a water source meeting the requirements of this section and the requirements otherwise provided in this act. Bottling or packaging facilities and their operation shall remain under the supervision of the Michigan department of agriculture as provided for in the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111, and regulation no. 549, R285.549.1 through R285.549.29 of the Michigan administrative code, and other pertinent rules and laws.

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

(3) A person who proposes to engage in producing bottled drinking water from a new or increased large quantity withdrawal of more than 250,000 gallons of water per day shall demonstrate to the satisfaction of the department that all of the following conditions will be met:

(a) The proposed use is not likely to have an adverse resource impact.

(b) The proposed use is reasonable under common law principles of water law in Michigan.

(c) The withdrawal will be conducted in such a manner as to protect riparian rights as defined by Michigan common law.

(d) The person will undertake activities, if needed, to address hydrologic impacts commensurate with the nature and extent of the withdrawal. These activities may include those related to the stream flow regime, water quality, and aquifer protection.

(4) Before proposing activities under subsection (3)(d), the person proposing to engage in producing bottled drinking water shall consult with local government officials and interested community members.

(5) Before making the determination under subsection (3), the department shall provide public notice and an opportunity for public comment.

(6) If the person proposing to engage in producing bottled drinking water under subsection (3) does not have a permit under section 4, the person shall request a determination under subsection (3) when that person applies for a

permit under section 4. If the person proposing to engage in producing bottled drinking water has previously received a permit under section 4, the person shall request a determination under subsection (3) prior to beginning the operations.

(7) A person seeking a departmental determination under subsection (3) shall submit an application fee of \$5,000.00 to the department. The department shall transmit application fees received under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(8) This section shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment.

(9) As used in this section, "adverse resource impact" and "new or increased large quantity withdrawal" mean those terms as they are defined in section 32701 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.32701.

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

- (a) Senate Bill No. 850.
- (b) Senate Bill No. 851.
- (c) Senate Bill No. 852.
- (d) Senate Bill No. 854.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor