



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4343 (Substitute H-5 as passed by the House)
House Bill 5065 (Substitute H-5 as passed by the House)
House Bill 5066 (Substitute H-3 as passed by the House)
House Bill 5067 (Substitute H-2 as passed by the House)
House Bill 5068 (Substitute H-8 as passed by the House)
House Bill 5069 (Substitute H-11 as passed by the House)
House Bill 5070 (Substitute H-5 as passed by the House)
House Bill 5071 (Substitute H-6 as passed by the House)
House Bill 5072 (Substitute H-6 as passed by the House)
House Bill 5073 (Substitute H-4 as passed by the House)

Sponsor: Representative Kate Ebli (H.B. 4343)
Representative Gary McDowell (H.B. 5065)
Representative Mark Meadows (H.B. 5066)
Representative Terry Brown (H.B. 5067)
Representative Andy Coulouris (H.B. 5068)
Representative Rebekah Warren (H.B. 5069)
Representative Michael Sak (H.B. 5070)
Representative Marc Corriveau (H.B. 5071)
Representative Mary Valentine (H.B. 5072)
Representative Kathleen Law (H.B. 5073)

House Committee: Great Lakes and Environment

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 6-18-08

CONTENT

House Bill 4343 (H-5) would amend Part 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act (NREPA) to provide for the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact. Additionally, the bill would add Part 342 (Great Lakes-St. Lawrence River Basin Water Resources Compact) to NREPA. The Compact does the following:

- Provides for intergovernmental cooperation and consultation through which the participating states intend to protect, conserve, restore, improve, and effectively manage the waters and water-dependent resources of the Basin.
- Creates the Great Lakes-St. Lawrence River Basin Water Resources Council.

- Establishes a standard of review and decision as the means for the Council to exercise its authority.
- Authorizes the Council to promulgate and enforce rules and regulations to implement and enforce the Compact.
- Requires each party, within five years, to develop and maintain a water resources inventory.
- Requires each party to submit to the Council and a regional review body a report detailing its water management and conservation and efficiency programs.
- Requires the Council, in cooperation with the Great Lakes Canadian provinces, to review its water management and conservation and efficiency programs and those of the parties and make findings on whether the program provisions are

being met and how to assist the parties in meeting them.

- Requires certain large-quantity water users, within five years of the Compact's effective date, to register the withdrawal or diversion.
- Requires each party, within two years after the Compact takes effect, to develop water conservation and efficiency goals and objectives and implement a conservation and efficiency program.
- Prohibits the approval of a withdrawal proposal that is inconsistent with the Compact or the standard of review and decision.
- Prohibits certain proposals from being undertaken without the approval of the party in which an application or registration is or must be made.
- Provides that certain proposals are subject to review by the regional body, and establishes the regional review process.
- Provides that certain proposals for consumptive use are subject to a 90-day prior notice requirement.
- Prohibits all new or increased diversions, subject to exceptions for straddling communities and some intra-Basin transfers.
- Requires each party, within five years of the Compact's effective date, to create a program for the management and regulation of new or increased withdrawals and consumptive uses, including threshold levels for their regulation.
- Establishes a threshold level for any party that fails to set its own levels within 10 years after the Compact takes effect.
- Requires the parties collectively to conduct periodic cumulative impact assessments of Basin water uses.
- Allows an aggrieved person to bring a civil action for an alleged violation of the Compact.

House Bill 5065 (H-5) would amend Part 327 to revise various definitions used in that part, including the definition of "adverse resource impact", and add several definitions.

House Bill 5066 (H-3) would amend Part 327 to do the following:

- Require the Department of Environmental Quality (DEQ) to notify certain local entities by e-mail if a proposed withdrawal fell into a particular category.
- Allow the notified entities to form a water resources assessment and education committee in order to assess trends in water use in the withdrawal's vicinity and educate water users.
- Eliminate a provision reducing a \$200 water use reporting fee upon legislative enactment of the assessment tool.
- Require the DEQ, by March 31, 2009, to prepare and post on its website a set of generic water conservation measures applicable to all people making large-quantity withdrawals.
- Require the DEQ to review water conservation measures submitted by a specific water user's sector and approve them as a replacement for the generic measures for that sector.
- Require a withdrawal registrant or permit holder to certify that he or she had reviewed environmentally sound and economically feasible water conservation measures.

House Bill 5067 (H-2) would amend Part 327 to revise the civil penalties for a violation of the part.

House Bill 5068 (H-8) would amend Part 327 to do the following:

- Revise water withdrawal permit requirements.
- Create a rebuttable presumption that a proposed withdrawal would not cause an adverse resource impact, under certain circumstances.

House Bill 5069 (H-11) would amend Part 327 to do the following:

- Revise requirements for a property owner to register with the DEQ before making a large-quantity withdrawal.
- Require the DEQ, within four months after the bill took effect, to develop and make available for testing and evaluation an internet-based water withdrawal assessment tool that could be used to determine if a

proposed withdrawal was likely to cause an adverse resource impact.

- Require the DEQ, within one year after the bill took effect, to implement the assessment tool.
- Require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool indicated that the proposed withdrawal would fall into a particular category or could cause an adverse resource impact.
- Require a property owner to obtain a water withdrawal permit and DEQ authorization in order to register and make a withdrawal, under certain circumstances.
- Require the DEQ to develop a protocol for the collection of stream or river flow data by people other than the Department, and allow the DEQ to establish a program to train and certify individuals in the collection of measurements.

House Bill 5070 (H-5) would amend Part 327 to do the following:

- Require the DEQ to notify all registrants, permit holders, and local government officials of the authority to establish a water users committee, if it authorized a certain type of withdrawal.
- Allow a participating local unit of government to create an ad hoc subcommittee of residents upon establishment of a water users committee.
- Repeal a section allowing a person who intends to make a withdrawal for which a permit is not required to petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact.

House Bills 5071 (H-6) and 5072 (H-6) would amend the Safe Drinking Water Act to revise the withdrawals for which a bottled water producer must demonstrate to the DEQ that certain conditions will be met, and revise the conditions.

House Bill 5073 (H-4) would amend Part 328 (Aquifer Protection) of NREPA to revise the membership and duties of the Groundwater Conservation Advisory Council and change its name to the

"Water Resources Conservation Advisory Council".

All of the bills, except House Bill 5065 (H-5), are tie-barred to all of the other bills, including House Bill 5065. A detailed description of each bill follows.

House Bill 4343 (H-5)

Part 327: Great Lakes Protection

The Compact would have to be implemented as prescribed in the bill. Except as specifically provided, water withdrawals originating within Michigan would be regulated exclusively under Part 327.

A proposed use for which a water withdrawal permit was issued under Section 32723 (which House Bill 5068 (H-8) would amend) would be considered to satisfy the requirements of Section 4.11 of the Compact (which prescribes a decision-making standard for the approval of certain proposed withdrawals).

The bill states that the proposed amendments to Part 327, 328, and the Safe Drinking Water Act "are intended to fully implement the compact in this state". For purposes of Section 9.1 of the Compact (which provides that all acts and parts of acts inconsistent with it are, to the extent of the inconsistency, repealed), all acts and parts of acts that were inconsistent with the Compact on the effective date of the bill would be modified as necessary to be consistent with the Compact. "[T]herefore, section 9.1 does not repeal any acts or parts of acts."

If the Great Lakes-St. Lawrence River Basin Water Resources Council proposed a revision to the standard of review and decision under the Compact (described below), the Governor would have to notify the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment. A regulation adopted pursuant to the Compact that amended the standard of review and decision could not be deemed duly adopted in accordance with the statutory authorities and applicable procedures of the State unless it were approved by the Legislature and enacted into law.

Part 342: Water Resources Compact

The bill states that the Great Lakes-St. Lawrence River Basin Water Resources Compact "is hereby ratified, enacted into law, and entered into by this state as a party as follows:

Agreement

...The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows..."

Article I: Short Title, Definitions, Purposes, & Duration

Findings. Article I contains the following findings:

- "The waters of the basin are precious public natural resources shared and held in trust by the states".
- "The waters of the basin are interconnected and part of a single hydrologic system".
- "The waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic, and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem."
- "Future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes-St. Lawrence River Region".
- "Continued sustainable, accessible, and adequate water supplies for the people and economy of the basin are of vital importance".
- "The parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite waters of the basin for the use, benefit and enjoyment of all their citizens, including generations yet to come."

The Compact states that other purposes of Basin waters are encouraged, recognizing that such uses are interdependent and must

be balanced. Additionally, the Compact states that the most effective means of protecting, conserving, restoring, improving, and managing the Basin waters is through the joint pursuit of unified and cooperative principles, policies, and programs mutually agreed upon, enacted, and adhered to by all parties.

Purposes. Article I specifies the following purposes of the Compact:

- To act together to protect, conserve, restore, improve, and effectively manage the waters and water-dependent natural resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation.
- To remove causes of present and future controversies.
- To provide for cooperative planning and action by the parties with respect to such water resources.
- To facilitate consistent approaches to water management across the Basin while retaining state management authority over water management decisions within the Basin.
- To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation on the potential effects of proposed withdrawals and losses on the waters and water-dependent natural resources of the Basin.
- To prevent significant adverse impacts of withdrawals and losses on the Basin's ecosystems and watersheds.
- To promote interstate and state-provincial comity.
- To promote an adaptive management approach to the conservation and management of Basin water resources that recognizes, considers, and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's waters and water-dependent natural resources.

Science. Article I indicates that the parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision-making under the Compact. The strategy must guide the collection and application of scientific information to support the following:

- An improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the Basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed.
- The periodic assessment of cumulative impacts of withdrawals, diversions, and consumptive uses on a Great Lakes and St. Lawrence River watershed basis.
- Improved scientific understanding of the waters of the Basin.
- Improved understanding of the role of groundwater in Basin water resources management.
- The development, transfer, and application of science and research related to water conservation and water use efficiency.

Article II: Organization

Council. Article II creates the Great Lakes-St. Lawrence River Basin Water Resources Council as a body politic and corporate, with succession for the duration of the Compact, as an agency and instrumentality of the governments of the respective parties. The Council consists of the governors of the parties, ex officio. Each member of the Council must appoint at least one alternate who may act in his or her place, with authority to attend all Council meetings and with power to vote in the member's absence. Unless otherwise provided by law of the party for which he or she is appointed, each alternate will serve during the term of the member appointing him or her, subject to removal at the pleasure of the member.

Each member is entitled to one vote on all matters that may come before the Council. Unless otherwise stated, the rule of decision will be by a simple majority. The Council annually must adopt a budget for each fiscal year and the amount required to balance the budget must be apportioned equitably among the parties by unanimous vote of the Council. The appropriation of this amount is subject to such review and approval as required by the budgetary processes of the respective parties. The participation of Council members from a majority of the parties constitutes a quorum for the transaction of business at any meeting of the Council.

Organization & Procedure. The Council must provide for its own organization and procedures, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review, and consideration of proposals that come before it for its review and action. The Council must organize, annually, by the election of a chair and vice chair from among its members. Each member may appoint an advisor who may attend all meetings of the Council and its committees, but does not have voting power. The Council may employ or appoint professional and administrative personnel, including an executive director, as it deems advisable, to carry out the Compact's purposes.

Use of Existing Offices & Agencies. Article II states that it is the policy of the parties to preserve and use the functions, powers, and duties of existing offices and agencies of government to the extent consistent with the Compact. The Council must promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the Basin. To this end, but without limitation, the Council may do all of the following:

- Advise, consult, contract, assist, or otherwise cooperate with any and all such agencies.
- Employ any other agency or instrumentality of any of the parties for any purpose.
- Develop and adopt plans consistent with the water resources plans of the parties.

Jurisdiction. Under Article II, the Council is to have, exercise, and discharge its functions, powers, and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent that such action is necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction in which it proposes to act.

Status, Immunity, & Privileges. The Council, its members, and personnel in their official capacity and when engaged directly in the Council's affairs, its property and its assets, have the same immunity from suit and every form of judicial process as the parties have, except to the extent that the Council may expressly waive its immunity for the

purposes of any proceedings or by the terms of any contract.

The Council's property and assets are considered public property and are immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

The Council, its property and assets, income, and the operations it carries out pursuant to the Compact are immune from all taxation by or under the authority of any of the parties or any political subdivision of the parties. In lieu of property taxes, however, the Council may make reasonable payments to local taxing districts in annual amounts that approximate the taxes lawfully assessed upon similar property.

Advisory Committees. The Council may constitute and empower advisory committees, which may consist of representatives of the public and Federal, state, tribal, county, and local governments, water resources agencies, water-using industries and sectors, water-interest groups, and academic experts in related fields.

Article III: General Powers & Duties

General Provisions. Article III states that the waters and water-dependent natural resources of the Basin are subject to the sovereign right and responsibilities of the parties, and it is the purpose of the Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in the Compact. The Council and the parties must use the standard of review and decision and procedures contained in or adopted pursuant to the Compact as the means to exercise their authority under it. The Council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all Council members, by regulation adopted in accordance with the Compact and each party's respective statutory authorities and applicable procedures. The Council must identify priorities and develop plans and policies relating to Basin water resources. It must adopt and promote uniform and coordinated policies for water resources conservation and management in the Basin.

Council Powers. The Council may do all of the following:

- Plan.
- Conduct research and collect, compile, analyze, interpret, report, and disseminate data on water resources and uses.
- Forecast water levels.
- Conduct investigations.
- Institute court actions.
- Design, acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real and personal property and any interest in the property as it deems necessary, useful, or convenient to carry out the purposes of the Compact.
- Make contracts.
- Receive and accept payments, appropriations, grants, gifts, loans, advances, and other funds, property, and services as may be transferred or made available to it by any party or by any other public or private agency, corporation, or individual.
- Exercise such other and different powers as may be delegated to it by the Compact or otherwise pursuant to law.
- Have and exercise all powers necessary or convenient to carry out its express or reasonably implied powers.

Rules & Regulations. Under Article III, the Council may promulgate and enforce rules and regulations as necessary for the implementation and enforcement of the Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to those proposals for exceptions that are subject to Council review. ("Exception" means a transfer of water that is excepted under the Compact from its prohibition against diversions, as described below.) Any rule or regulation of the Council, other than one that deals solely with the internal management of the Council or its property, may be adopted only after public notice and hearing.

Each party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce the Compact and the programs adopted by the party to carry out the management programs contemplated by the Compact.

Program Review & Findings. Article III requires each party to submit to the Council and the regional body a report detailing its water management and conservation and efficiency programs that implement the Compact. The report must set forth the manner in which withdrawals are managed by sector, water source, quantity, or any other means, and how the provisions of the standard of review and decision and conservation and efficiency programs are implemented. The first report must be provided one year from the Compact's effective date and every five years after that.

The Council, in cooperation with the provinces (Ontario and Quebec), must review its water management and conservation and efficiency programs and those of the parties that are established in the Compact and make findings on whether the water management program provisions are being met, and, if not, recommend options to assist the parties in meeting them. The review must take place as follows:

- Thirty days after the first report is submitted by all parties.
- Every five years after the Compact's effective date.
- Any other time at the request of one of the parties.

As one of its duties and responsibilities, the Council may recommend a range of approaches to the parties with respect to the development, enhancement, and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the Basin, including groundwater, and the impacts of withdrawals on the Basin ecosystem.

Article IV: Water Management & Regulation

Inventory, Registration, & Reporting. Within five years after the Compact's effective date, each party must develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the water resources of the party, including information on the location, type, quantity, and use of those resources as well as withdrawals, diversions, and consumptive

uses. To the extent feasible, the water resources inventory must be developed in cooperation with local, state, Federal, tribal, and other private agencies and entities, as well as the Council. Each party's agencies must cooperate with that party in the development and maintenance of the inventory.

The Council must assist each party in developing a common base of data regarding the management of the water resources of the Basin and in establishing systematic arrangements for the exchange of those data with other states and provinces.

To develop and maintain a compatible base of water use information, within five years of the Compact's effective date, any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period (including consumptive uses) from all sources, or diverts water of any amount, must register the withdrawal or diversion by a date set by the Council unless the person has registered previously in accordance with an existing state program. The person must register the withdrawal or diversion with the originating party using a form prescribed by that party. The form must include, at a minimum, the following information:

- The name and address of the registrant and date of registration.
- The locations and sources of the withdrawal or diversion.
- The capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source.
- The uses made of the water.
- Places of use and places of discharge.
- Other information required by the originating party.

("Originating party" means that party within whose jurisdiction an application or registration is made or required.)

All registrations must include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period. All registrants annually must report the monthly volumes of the withdrawal, consumptive use, and diversion in gallons to the originating party and any other information requested by that party.

Each party annually must report the information gathered under these provisions to a Great Lakes-St. Lawrence River water use data base repository and aggregated information must be made publicly available, consistent with the confidentiality requirements in the Compact.

Information gathered by the parties must be used to improve the sources and applications of scientific information regarding the waters of the Basin and the impacts of the withdrawals and diversions from various locations and water sources on the Basin ecosystem, and to understand better the role of groundwater in the Basin. The Council and the parties must coordinate the collection and application of scientific information to develop further a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses, and diversions will be assessed.

Conservation & Efficiency Programs. Article IV provides that the Council commits to identify, in cooperation with the provinces, Basin-wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency program. The objectives must be based on the following goals:

- Ensuring improvement of the waters and water-dependent natural resources.
- Protecting and restoring the hydrologic and ecosystem integrity of the Basin.
- Retaining the quantity of surface water and groundwater in the Basin.
- Ensuring sustainable use of waters of the Basin.
- Promoting the efficiency of use and reducing losses and waste of water.

Within two years of the Compact's effective date, each party must develop its own water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party annually must assess its programs in meeting the party's goals and objectives, report to the Council and the regional body, and make the annual assessment available to the public.

Beginning five years after the Compact takes effect, and every five years after that, the Council, in cooperation with the provinces, must review and modify as appropriate the Basin-wide objectives, and the parties must consider any such modifications in implementing their programs. The assessment must be based on examining new technologies, new patterns of water use, new resource demands and threats, and cumulative impact assessment as prescribed in the Compact.

Article IV provides that within two years after the Compact's effective date, the parties commit to promote environmentally sound and economically feasible water conservation measures, such as the following:

- Measures that promote efficient use of water.
- Identification and sharing of best management practices and state-of-the-art conservation and efficiency technologies.
- Application of sound planning principles.
- Demand-side and supply-side measures or incentives.
- Development, transfer, and application of science and research.

Each party must implement a voluntary or mandatory water conservation program for all Basin water users, including those already existing. Conservation programs must adjust to new demands and the potential impacts of cumulative effects and climate.

Party Powers & Duties. Each party, within its jurisdiction, must manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions, in accordance with the Compact.

Each party must require an applicant to submit an application in the manner and with the accompanying information prescribed by the party. ("Applicant" means a person who is required to submit a proposal that is subject to management and regulation under the Compact. "Proposal" means a withdrawal, diversion, or consumptive use of water that is subject to the Compact.)

No party may approve a proposal if it determines that the proposal is inconsistent with the Compact or the standard of review and decision or any implementing rules or regulations promulgated under it. The party may approve, approve with modifications, or disapprove any proposal depending on its consistency with the Compact and the standard of review and decision.

Each party must monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions.

No party may approve a proposal subject to Council and/or regional review pursuant to the Compact unless it is first submitted to and reviewed by either the Council or regional body, or both, and approved by the Council, as applicable. Sufficient opportunity must be provided for comment on the proposal's consistency with the Compact and the standard of review and decision. All comments must become part of the party's formal record of decision, and the party must take into consideration any comments received.

("Regional body" means the members of the Compact and the premiers of Ontario or Quebec or their designees.)

Originating Party Approval. No proposal subject to management and regulation under the Compact may be undertaken by any person unless it has been approved by the originating party.

Regional Review. Article IV states that it is the intention of the parties to participate in regional review of proposals with the provinces, as described in the Compact and the agreement. Unless the applicant or the originating party otherwise requests, it must be the regional body's goal to conclude its review within 90 days after notice of the proposal is received from the originating party.

Proposals for exceptions subject to regional review must be submitted by the originating party to the regional body for regional review, and, where applicable, to the Council for concurrent review.

Article IV states that the parties agree that the protection of the integrity of the Great Lakes-St. Lawrence River Basin ecosystem

will be the overarching principle for reviewing proposals subject to regional review, recognizing uncertainties with respect to demands that might be placed on Basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data, and the extent to which diversions might harm the integrity of the Basin system.

The originating party must have lead responsibility for coordinating information for resolution of issues related to evaluation of a proposal, and must consult with the applicant throughout the regional review process.

A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent-setting proposal. This review must be conducted, to the extent possible, within the time frames set forth in the Compact. The review must be undertaken only after the applicant has been consulted.

The originating party must determine if a proposal is subject to regional review. If so, the originating party must provide timely notice to the regional body and the public. The notice may not be given unless and until all information, documents, and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

An originating party may give the regional body notice of an application, even if notification is not required, or request regional review of an application, even if regional review is not required. Any such regional review may be undertaken only after the applicant has been consulted.

An originating party may provide preliminary notice of a potential proposal.

To ensure adequate public participation, the regional body must adopt procedures for the review of proposals that are subject to regional review in accordance with Article IV. The regional body must give notice to the public of a proposal undergoing regional review. The notice must indicate that the public has an opportunity to comment in writing to the regional body on whether the

proposal meets the standard of review and decision.

The regional body must hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision. The regional body must consider the comments received before issuing a declaration of finding, and must forward the comments it receives to the originating party.

The originating party must give the regional body its technical review of the proposal under consideration. The technical review must analyze thoroughly the proposal and provide an evaluation of it sufficient for a determination of whether it meets the standard of review and decision. Any member of the regional body may conduct its own technical review of any proposal subject to regional review. At the request of the majority of its members, the regional body must make arrangements as it considers appropriate for an independent technical review of a proposal.

All parties must exercise their best efforts to ensure that a technical review by an individual party or an independent technical review does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews must be completed within 60 days after the notice of the proposal was given to the regional body.

The regional body must meet to consider a proposal. The applicant must be given an opportunity to present the proposal to the regional body at that time. Having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections, including the analysis of comments made by the public, First Nations, and federally recognized Tribes, and any other information provided under the Compact, the regional body must issue a declaration of finding that the proposal under consideration meets the standard of review and decision; does not meet the standard of review and decision; or would meet the standard if certain conditions were met.

An originating party may decline to participate in a declaration of finding made by the regional body.

Article IV states that the parties recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision. If the members who participate in the declaration of finding all agree, they must issue a written declaration of finding with consensus. If they cannot agree, the regional body must make every reasonable effort to achieve consensus within 25 days. If consensus is not achieved, the regional body may issue a declaration of finding that presents different points of view and indicates each party's conclusions.

The regional body must release the declarations of finding to the public. The originating party and the Council must consider the declaration of finding before making a decision on the proposal.

Proposals Subject to Prior Notice. Beginning within five years after the Compact's effective date, an originating party must give all parties and the provinces detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of 5.0 million gallons per day or greater average in any 90-day period. Comments must address whether the proposal is consistent with the standard of review and decision. The originating party must provide a response to any comment received from another party.

A party may provide notice, an opportunity to comment, and a response to comments even if it is not required. Any provision of the notice and opportunity to comment may be undertaken only after the applicant has been consulted.

Council Actions. Proposals for exceptions subject to Council review must be submitted by the originating party to the Council and, where applicable, to the regional body for concurrent review.

The Council must review and take action on proposals in accordance with the Compact and the standard of review and decision. The Council may not take action on a proposal subject to regional review unless it

has been first submitted to and reviewed by the regional body. The Council must consider any findings resulting from the review.

Prohibition on New or Increased Diversions.

All new or increased diversions are prohibited, except as provided for in Article IV.

Exception for Straddling Community. A proposal to transfer water to an area within a straddling community but outside the Basin or outside the source Great Lake watershed must be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume transferred, all the transferred water will be used solely for public water supply purposes within the straddling community, and the following conditions are met:

- If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal meets the exception standard.
- If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal also will undergo regional review.
- All water withdrawn from the Basin will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of water to the Basin unless it:

- Is part of a water supply or wastewater treatment system that combines water from inside and outside the Basin.
- Is treated to meet applicable water quality discharge standards and prevent the introduction of invasive species into the Basin.
- Maximizes the portion returned to the source watershed as Basin water and minimizes the surface water or groundwater from outside the Basin.

(The Compact defines "straddling community" as any incorporated city, town, or the equivalent of a city or town, wholly within any county that lies partly or

completely within the Basin, whose corporate boundary existing as of the Compact's effective date is partly within the Basin or partly within two Great Lakes watersheds.)

Exception for Intra-Basin Transfer. A proposal for an intra-Basin transfer that would be considered a diversion under the Compact and not otherwise excepted must be excepted from the prohibition against diversions, provided that the following provisions apply.

If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period, the proposal is subject to management and regulation at the discretion of the originating party.

If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than 5.0 million gallons per day average over any 90-day period, the proposal must meet the exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed; the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and the originating party must provide notice to the other parties before making any decision with respect to the proposal.

If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal is subject to management and regulation by the originating party and must meet the exception standard, ensuring that water withdrawn will be returned to the source watershed; the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; the proposal must undergo

regional review; and the proposal must be approved by the Council. Council approval must be given unless one or more Council members vote to disapprove.

Exception for Straddling Counties. A proposal to transfer water to a community within a straddling county that would be considered a diversion under the Compact must be excepted from the prohibition, provided that it satisfies all of the following conditions:

- The water will be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water.
- The proposal meets the exception standard, maximizing the portion of water returned to the source watershed as Basin water and minimizing the surface water or groundwater from outside the Basin.
- The proposal is subject to management and regulation by the originating party, regardless of its size.
- There is no reasonable water supply alternative within the Basin in which the community is located, including conservation of existing water supplies.
- Caution will be used in determining whether the proposal meets the conditions for this exception (which should not be authorized unless it can be shown that it will not endanger the integrity of the Basin ecosystem).
- The proposal undergoes regional review.
- The proposal is approved by the Council.

Council approval must be given unless one or more Council members vote to disapprove.

Additionally, substantive consideration also will be given to whether the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Basin.

Exception Standard. Proposals subject to management and regulation must be declared to meet the exception standard and may be approved as appropriate only when the following criteria are met:

- The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies.
- The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed.
- The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources of the Basin with consideration given to the potential cumulative impacts of any precedent-setting consequences associated with the proposal.
- The exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use.
- The exception will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and Federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
- All other applicable criteria also have been met.
- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of the water, unless it is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin; and is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin.

New or Increased Withdrawals & Consumptive Uses. Within five years of the Compact's effective date, each party must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party, through a considered process, must set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure

that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water-dependent natural resources of the Basin, determined on the basis of significant impacts on the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the Compact are achieved. Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

Any party that fails to set threshold levels that comply with the Compact within 10 years of its effective date must apply a threshold level for management and regulation of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90-day period.

Article IV states that the parties intend programs for new or increased withdrawals and consumptive uses to evolve as necessary to protect Basin waters. As prescribed in the Compact, the Council, in cooperation with the provinces, periodically must assess the water management programs of the parties. The assessments may produce recommendations for the strengthening of the programs, including establishing lower thresholds for management and regulation in accordance with the decision-making standard.

Decision-Making Standard. Proposals subject to management and regulation must be declared to meet the decision-making standard and may be approved as appropriate only when the following criteria are met:

- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.
- The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources and the applicable source watershed.
- The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures.

- The withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and Federal laws, as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909.

Additionally, the proposed use must be reasonable, based upon a consideration of the following factors:

- Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of water.
- If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies.
- The balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source.
- The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources.
- The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water-dependent natural resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts.

If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

Applicability. Article IV provides that this standard of review and decision must be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision, it may not be approved under the laws of the originating party that has implemented more restrictive measures.

To establish a baseline for determining a new or increased diversion, consumptive use, or withdrawal, each party must develop either or both of the following lists for its jurisdiction:

- A list of existing withdrawal approvals as of the Compact's effective date.
- A list of the capacity of existing systems as of the Compact's effective date.

The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity-limiting factors.

The capacity of the existing systems must represent the state of the systems. Existing capacity determinations must be based upon approval limits or the most restrictive capacity information.

For all purposes of the Compact, volumes of diversions, consumptive uses, or withdrawals set forth in the lists prepared by each party will constitute the baseline volume.

Applications for new or increased withdrawals, consumptive uses, or exceptions must be considered cumulatively within 10 years of any application.

Unless a new owner proposes a project that will result in a proposal for a new or increased diversion or consumptive use subject to regional review or Council approval, the change of ownership in and of itself will not require regional review or Council approval.

The Basin surface water divide must be used for the purpose of managing and regulating new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

The total volume of surface water and groundwater resources that supply a common distribution system must determine the volume of a withdrawal, consumptive use, or diversion.

The watershed of each Great Lake includes its upstream and downstream connecting channels.

Transmission of water within a line that extends outside the Basin as it conveys

water from one point to another within the Basin may not be considered a diversion if none of the water is used outside the Basin.

The Lake Michigan and Lake Huron watersheds must be considered to be a single hydrologic unit and watershed.

A proposal to withdraw water and to remove it from the Basin in any container greater than 5.7 gallons must be treated in the same manner as a proposal for a diversion. Each party has the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the Basin in any container of 5.7 gallons or less.

Exemptions. Withdrawals from the Basin for the following purposes are exempt from the requirements of Article IV:

- To supply vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of the vehicles.
- To use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

U.S. Supreme Court Decree: *Wisconsin v. Illinois*. Article IV specifies that, notwithstanding any terms of the Compact to the contrary, except as otherwise provided, current, new, or increased withdrawals, consumptive uses, and diversions of Basin water by the State of Illinois are governed by the terms of the U.S. Supreme Court decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), and are not subject to the terms of the Compact or any rules or regulations promulgated under it.

Article IV indicates that the parties acknowledge that the decree will continue in full force and effect, that the Compact does not modify any of its terms, and that the Compact grants the parties no additional rights, obligations, remedies, or defenses to it. The parties specifically acknowledge that the Compact does not prohibit or limit the State of Illinois in any manner from seeking additional Basin water as allowed under the terms of the decree, any other party from objecting to any request by Illinois for additional Basin water under the terms of the decree, or any party from seeking any

other type of modification to it. If any party applies to the U.S. Supreme Court to modify the decree, the parties to the Compact who also are parties to the decree must seek formal input from the provinces of Ontario and Quebec, with respect to the proposed modification; must use best efforts to facilitate the appropriate participation of the provinces in the proceedings; and may not unreasonably impede or restrict such participation.

Except as otherwise provided, the provisions related to current, new, or increased withdrawals, consumptive uses, and diversions of Basin waters do not apply to the State of Illinois. All other provisions of the Compact not listed, including the water conservation programs provisions, apply to Illinois.

Assessment of Cumulative Impacts. The parties, in cooperation with the provinces, must conduct collectively within the Basin, on a lake watershed and St. Lawrence River Basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the Basin, every five years or each time the incremental Basin water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever occurs first, or at the request of one or more of the parties. The assessment will form the basis for a review of the standard of review and decision, Council and party regulations, and their application.

The assessment must use the most current and appropriate guidelines for such a review, which may include guidelines of the Council on Environmental Quality and Environment Canada. The assessment also must give substantive consideration to climate change or other significant threats to Basin waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate measures to exercise caution in cases of uncertainty if serious damage might result.

In addition, the assessment must consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds, and ecosystems, including potential changes to

Basin-wide processes, such as lake level cycles and climate.

The parties have the responsibility of conducting this cumulative impact assessment, and applicants are not required to participate in it.

Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application, but must submit information about the potential impacts on the quantity or quality of the waters and water-dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how its proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

Article V: Tribal Consultation

In addition to all other opportunities to comment pursuant to the Compact, appropriate consultations must occur with federally recognized tribes in the originating party for all proposals subject to Council or regional review pursuant to the Compact. The consultations must be organized in the manner suitable to the individual proposal and the laws and policies of the originating party.

All federally recognized tribes within the Basin must receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the regional body, or both, and other relevant organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or Council approval. Any notice from the Council must inform the tribes of any meeting or hearing that is to be held and invite them to attend. The parties and the Council must consider the comments received under these provisions before approving, approving with modifications, or disapproving any proposal subject to Council or regional review.

In addition to the specific consultation mechanisms described in the Compact, the Council must seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with and input from federally recognized tribes on matters to be dealt with by the Council. Also, the Council

must seek to establish mechanisms and processes with federally recognized tribes designed to facilitate ongoing scientific and technical interaction and data exchange regarding matters falling within the scope of the Compact. This may include participation of tribal representatives on advisory committees established under the Compact or such other processes that are mutually agreed upon with tribes individually or through duly authorized intertribal agencies or bodies.

Article VI: Public Participation

Meetings, Public Hearings, & Records. Article VI indicates that the parties recognize the importance and necessity of public participation in promoting management of the water resources of the Basin. Consequently, all meetings of the Council must be open to the public, except with respect to personnel issues.

The minutes of the Council must be a public record open to inspection at its offices during regular business hours.

Public Participation. Article VI states that it is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the parties and through regional review. To ensure adequate public participation, each party or the Council must ensure procedures for the review of proposals subject to the standard of review and decision consistent with the following requirements:

- The provision of public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon.
- The assurance of public accessibility to all documents relevant to an application, including public comment received.
- The provision of guidance on standards for determining whether to conduct a public meeting or hearing for an application, time and place of such meetings or hearings, and procedures for conducting them.
- The provision of the record of decision for public inspection, including comments, objections, responses and approvals, approvals with conditions, and disapprovals.

Article VII: Dispute Resolution & Enforcement

Good Faith Implementation. Article VII states that each of the parties pledges to support implementation of all provisions of the Compact, and covenants that its officers and agencies will not hinder, impair, or prevent any other party carrying out any provision of the Compact.

Alternative Dispute Resolution. Article VII states that the parties agree that disputes between them regarding interpretation, application, and implementation will be settled by alternative dispute resolution. The Council, in consultation with the provinces, must provide by rule procedures for the resolution of disputes.

Enforcement. Any person aggrieved by any action taken by the Council pursuant to the authority contained in the Compact is entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, any aggrieved person has the right to judicial review of a Council action in the U.S. District Courts for the District of Columbia or the district court in which the Council maintains offices, provided such action is commenced within 90 days. Additionally, any aggrieved person has the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for the review is commenced within the time frames provided for by the party's law. For the purposes of these provisions, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to the Compact.

Any party or the Council may initiate actions to compel compliance with the Compact's provisions, as well as the rules and regulations promulgated by the Council. Jurisdiction over these actions is granted to the court of the relevant party, as well as the U.S. District Courts for the District of Columbia and the district court in which the Council maintains offices. The remedies available to any such court include equitable relief and civil penalties.

Each party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the

provisions of its respective statutes and regulations adopted to implement the authority contemplated by the Compact in accordance with the provisions of the laws adopted in each party's jurisdiction.

Any aggrieved person, party, or the Council may commence a civil action in the relevant party's courts and administrative systems to compel any person to comply with the Compact should any person, without approval having been given, undertake a new or increased withdrawal, consumptive use, or diversion that is prohibited or subject to approval pursuant to the Compact.

No action may be commenced if the originating party or Council approval for the new or increased withdrawal, consumptive use, or diversion has been granted; or the originating party or Council has found that the new or increased withdrawal, consumptive use, or diversion is not subject to approval pursuant to the Compact.

No action may be commenced unless the person commencing it has first given 60 days prior notice to the originating party, the Council, and the person alleged to be in noncompliance; and neither the originating party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance.

The available remedies include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of the Compact.

Article VIII: Additional Provisions

Effect on Existing Rights. Nothing in the Compact may be construed to affect, limit, diminish, or impair any rights validly established and existing as of its effective date under state or Federal law governing the withdrawal of the waters of the Basin.

Nothing in the Compact may be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

Nothing in the Compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the Federal government of the U.S. based upon its status as a recognized tribe.

An approval by a party or the Council under the Compact does not give any property rights, or any exclusive privileges, and it may not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to or held in trust by a party. Approval also does not authorize any injury to private property or invasion of private rights, or infringement of Federal, state, or local laws or regulations; or obviate the necessity of obtaining Federal assent when necessary.

Relationship to Agreements Concluded by the United States. Nothing in the Compact is intended to provide or may be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement, and nothing is intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

Nothing in the Compact is intended to infringe or may be construed to infringe upon the treaty power of the U.S., and no term may be construed to alter or amend any treaty or term of a treaty that has been or may be executed by the U.S.

Nothing in the Compact is intended to affect or may be construed to affect the application of the Boundary Waters Treaty.

Confidentiality. Nothing in the Compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information. A party may take measures, including deletion and redaction, deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to other parties. The party must summarize or paraphrase any such information in a

manner sufficient for the Council to exercise its authority.

Additional Laws. Nothing in the Compact may be construed to repeal, modify, or qualify the authority of any party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction.

Amendments & Supplements. The provisions of the Compact will remain in full force and effect until amended by action of the governing bodies of the parties and consented to and approved by any other necessary authority in the same manner as the Compact is required to be ratified to become effective.

Severability. If a court of competent jurisdiction holds any part of the Compact to be void or unenforceable, it will be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation will continue in full force and effect.

Duration of Compact & Termination. Once effective, the Compact will continue in force and remain binding upon each and every party unless terminated. The Compact may be terminated at any time by a majority vote of the parties. In the event of termination, all rights established under it will continue unimpaired.

Article IX: Effectuation

Repealer. All acts and parts of acts inconsistent with the Compact are to the extent of the inconsistency repealed. (As provided in House Bill 4343 (H-5), however, inconsistent acts of this State would be modified, rather than repealed.)

Effectuation by Chief Executive. The Governor is authorized to take action as necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation under it.

Entire Agreement. Article IX states that the parties consider the Compact to be complete and an integral whole. Each provision is considered material to the entire Compact, and failure to implement or adhere to any

provision may be considered a material breach. Unless otherwise noted, any change or amendment made by any party in its implementing legislation or by the U.S. Congress when giving its consent to the Compact is not considered effective unless concurred in by all parties.

Effective Date & Execution. The Compact will become binding and effective when ratified through concurring legislation by the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin and the Commonwealth of Pennsylvania and consented to by the U.S. Congress. The Compact must be signed and sealed in nine identical original copies by the respective chief executives of the signatory parties. One copy must be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy must be filed and retained in the archives of the Council upon its organization. The signatures must be affixed and attested under the form specified in the Compact.

House Bill 5065 (H-5)

Adverse Resource Impact

Currently, "adverse resource impact" means either of the following:

- Decreasing the flow of a stream by part of the index flow so that the stream's ability to support characteristic fish populations is functionally impaired.
- Decreasing the level of a body of surface water so that its ability to support characteristic fish populations is functionally impaired.

Under the bill, the definition of "adverse resource impact" would depend on the type and size of river or stream involved, or the impact on the level of surface water, as described below.

The definition would include decreasing the flow of a cold river system by part of the index flow as follows: for a cold stream or a cold small river, the withdrawal would result in a reduction of at least 1% in the density of thriving fish populations as determined by the thriving fish curve.

The term also would mean decreasing the flow of a cold-transitional river system by

part of the index flow as follows: for a cold-transitional stream, a cold-transitional small river, or a cold-transitional large river, the withdrawal would result in a reduction of at least 5% in the density of thriving fish populations as determined by the thriving fish curve.

In addition, "adverse resource impact" would mean decreasing the flow of a cool river system by part of the index flow as follows:

- For a cool stream, the withdrawal would result in a reduction of at least 10% in the abundance of characteristic fish populations as determined by the characteristic fish curve.
- For a cool small river, the withdrawal would result in a reduction of at least 15% in the density of thriving fish populations as determined by the thriving fish curve.
- For a cool large river, the withdrawal would result in a reduction of at least 12% in the density of thriving fish populations as determined by the thriving fish curve.

The definition also would include decreasing the flow of the warm river system by part of the index flow as follows: for a warm stream, the withdrawal would result in a reduction of at least 5% in the abundance of characteristic fish populations as determined by the characteristic fish curve; and for a warm small or large river, the withdrawal would result in a reduction of at least 10% in the abundance of characteristic fish populations as determined by the characteristic fish curve.

Further, the term would mean decreasing the flow of a stream or river by more than 25% of its index flow. The preceding four provisions would be subject to this part of the definition.

In addition, "adverse resource impact" would mean decreasing the level of a natural lake or pond with a surface area of at least five acres through a direct withdrawal from the lake or pond in a manner that would not meet the requirements of Section 30106, or so that the ability of the lake or pond to support characteristic fish populations was functionally impaired.

(Section 30106 requires the DEQ to issue a permit for a proposed project or structure if it will not adversely affect the public trust or riparian rights. The Department may not issue a permit if the project or structure will unlawfully impair or destroy any of the waters or other natural resources of the State.)

Currently, "index flow" means the 50% exceedance flow for the lowest flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the U.S. Geological Survey (USGS) stream flow gauges in Michigan. Under the bill, the term would mean the 50% exceedance flow to the lowest summer flow month of the flow regime as determined over the period of record or extrapolated from analysis of USGS flow gauges in Michigan, on December 31, 2007.

The bill would define "characteristic fish curve" as a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled, "Report to the Michigan Legislature in Response to 2006 Public Act 34", by the former Groundwater Conservation Advisory Council, dated July 2007, which would be incorporated by reference.

"Characteristic fish population" would mean the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

"Cold river system" would mean a stream or small river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by the Department of Natural Resources (DNR) using a scientific methodology adopted by order of the Natural Resources Commission (NRC).

"Cold-transitional river system" would mean a stream, small river, or large river that has the appropriate summer water temperature that, based on statewide averages, sustains

a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will cause a decline in the proportion of cold-water species, as determined by the DNR using a scientific methodology adopted by order of the NRC.

"Cool river system" would mean a stream, small river, or large river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed mostly of warm-water fish species, but also contains some cool- and/or cold-water species, as determined by the DNR using a scientific methodology adopted by order of the NRC.

"Large river" would mean a flowing body of water with a drainage area of at least 300 square miles. "Small river" would mean a flowing body of water with a drainage area of at least 80 square miles but less than 300 square miles. "Stream" would mean a flowing body of water with a drainage area of less than 80 square miles.

"Thriving fish curve" would mean a fish functional response curve that describes the initial decline in density of thriving fish populations in response to reductions in index flow as published in the Groundwater Conservation Advisory Council's July 2007 report to the Michigan Legislature.

"Thriving fish population" would mean the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics. "Stream reach" would mean a segment of a stream, small river, or large river.

"Warm river system" would mean a stream, small river, or large river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of warm-water fish species, as determined by the DNR using a scientific methodology adopted by order of the NRC.

Withdrawals

Currently, "withdrawal" means the removal of water from its source for any purpose, other than for hydroelectric generation at sites certified, licensed, or permitted by the Federal Energy Regulatory Commission

(FERC). Under the bill, the term would mean the taking of water from surface water or groundwater.

The bill would define the withdrawal categories associated with the assessment tool (which House Bill 5069 (H-11) would create).

"Zone A withdrawal" would mean the following:

- For a cold stream or small river, less than 50% of the withdrawal that would result in an adverse resource impact.
- For a cool river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a cool stream, less than a 10% reduction; for a cool small river, less than a 5% reduction; and for a cool large river, less than an 8% reduction.
- For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

For a cold-transitional river system, there would be no zone A withdrawal.

"Zone B withdrawal" would mean the following:

- For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.
- For a cool river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a cool stream, a reduction of 10% or more but less than 20%; for a cool small river, a reduction of 5% or more but less than 10%; and for a cool large river, a reduction of 8% or more but less than 10%.
- For a warm river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a warm stream, a reduction of 10% or more but less than 15%; and for a warm small river or warm large river, a reduction of 10% or more but less than 20%.

There would be no zone B withdrawal for a cold stream or small river.

"Zone C withdrawal" would mean the following, as long as the withdrawal would not decrease the flow of a stream or river by more than 25% of its index flow:

- For a cold stream or river, 50% or more of the withdrawal that would result in an adverse resource impact but less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.
- For a cool river system, as follows: for a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve; for a cool small river, a reduction of 10% or more but less than 15% in the density of thriving fish populations as determined by the thriving fish curve; and for a cool large river, a reduction of 10% or more but less than 12% in the density of thriving fish populations as determined by the thriving fish curve.
- For a warm river system, as follows: for a warm stream, a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve; and for a warm small river and a warm large river, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

There would be no zone C withdrawal for a cold-transitional river system.

"Zone D withdrawal" would mean a withdrawal that was likely to cause an adverse resource impact.

Legislative Finding

The bill states that the Legislature finds and declares that, "The waters of the Great Lakes Basin are interconnected and part of a single hydrologic system."

Diversion

Currently, except for a diversion existing on September 30, 1985, "the waters of the Great Lakes basin within the boundaries of this state" may not be diverted. The bill instead would prohibit a diversion of "the waters of the state out of the Great Lakes basin", subject to the same exception.

("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 Basin. "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River.)

Under the bill, "Great Lakes" would mean Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways, including the St. Marys River, Lake St. Clair, the St. Clair River, and the Detroit River. For purposes of this definition, Lakes Huron and Michigan would be considered a single Great Lake.

("Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of Michigan. The term does not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.)

Currently, "diverted" 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 Basin into a watershed outside of the Basin. The term includes a transfer of water withdrawn from the waters of the Basin that is removed from the Basin in a container greater than 5.7 gallons (20 liters). The term does not include a consumptive use; the supply of vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of vehicles; or use in a noncommercial project or on a short-term basis for firefighting, humanitarian, or emergency response purposes.

The bill would delete the definition of "diverted", and instead define "diversion" as a transfer of water from the Basin into

another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck, or rail tanker. The term would not apply to water that was used in the Basin or a Great Lake watershed to manufacture or produce a product that was then transferred out of the Basin or watershed. The bill specifies that "diverted" would have a corresponding meaning. The bill also would retain the exclusion of certain uses from the definition, as well as the inclusion of a transfer in a container greater than 5.7 gallons (20 liters). The bill also would exclude from the definition a transfer of water from a Great Lake watershed to the watershed of its connecting waterways. (Except for the exclusions and inclusions, this definition of "diversion" is the same as that used in the Compact.)

Exemption from Part 327

A withdrawal pursuant to Part 111 (Hazardous Waste Management), 115 (Solid Waste Management), 201 (Environmental Remediation), or 213 (Leaking Underground Storage Tanks) is exempt from the requirements of Part 327. The bill also would exempt a withdrawal under Part 615 (Supervisor of Wells). Under the bill, these withdrawals would be exempt if they were undertaken as part of an activity authorized by the DEQ as long as they did not result in a diversion.

The bill also would exempt the following withdrawals, as long as they did not result in a diversion:

- A withdrawal undertaken as part of an activity authorized by the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act.
- A withdrawal that was undertaken for hydroelectric generation at sites certified, licensed, or permitted by the FERC.
- A hydroelectric facility authorized under Section 12 of Chapter 264 of the Act of March 3, 1909, commonly known as the River and Harbor Act of 1909, 35 Stat. 821.

- A hydroelectric facility authorized under Section 1075(c) of the Intermodal Surface Transportation Efficiency Act (Public Law 102-240).
- A hydroelectric facility authorized under Public Law 85, Chapter 1368, 34 Stat. 102.
- Removal of water from an artificially created surface water body that has as its primary source of water either of the following: a withdrawal that was not a new or increased large-quantity withdrawal; or a registered new or increased large-quantity withdrawal that had been determined by the assessment tool, a site-specific review, or a water withdrawal permit to be unlikely to cause an adverse resource impact.
- A withdrawal from a noncommercial well located on single-family residential property not exceeding four units and three acres in size (excluding lake augmentation wells).

The DEQ Director would have to assure that data in the State's possession related to withdrawals that were not regulated under Part 327 were compiled and shared with departmental personnel responsible for implementing Part 327.

House Bill 5066 (H-3)

Water Use Reporting & Fee

Part 327 requires certain large-quantity users to register with the DEQ and file an annual report including specified information. Under the bill, beginning in 2010, the report also would have to include an acknowledgement that the registrant had reviewed applicable environmentally sound and economically feasible water conservation measures prepared under the bill (as described below).

Part 327 requires a person who submits a report or notification to remit to the DEQ a water use reporting fee of \$200. The bill would delete a provision lowering the fee to \$100 upon legislative enactment of the water withdrawal assessment tool.

Water Use Conservation Plan

Under Part 327, the owner of a registered farm who makes a withdrawal for an agricultural purpose may report the water use by submitting to the Michigan

Department of Agriculture (MDA) an annual water use conservation plan, which must include specified information. Under the bill, beginning in 2010, the plan would have to include an acknowledgement that the farm owner had reviewed applicable environmentally sound and economically feasible water conservation measures prepared under the bill. (House Bill 5069 (H-11) would revise provisions regarding the assessment tool.)

Water Conservation Measures

By February 27, 2007, each water user's sector had to begin designing guidelines for generally accepted water management practices or environmentally sound and economically feasible water conservation measures within that sector. By February 27, 2008, the DEQ had to review and report to the appropriate standing committees of the Legislature on whether there were reasonably detailed criteria for assisting a facility in determining whether water was being used in an efficient manner. The guidelines could be adopted by an established statewide or professional trade association representing that sector. The bill would delete these provisions.

By March 31, 2009, the DEQ would have to prepare and post on its website a set of generic water conservation measures applicable to all people making large-quantity withdrawals. In preparing the measures, the DEQ could consider generic measures submitted by representative trade associations.

Each water user's sector could prepare and submit to the DEQ water conservation measures that were applicable for water users within its sector. Upon receiving the measures, the DEQ would have to review them and, if the Department determined that they were appropriate for that sector, accept them. Upon acceptance, the DEQ would have to post the measures on its website and they would supersede the generic measures for water users within that sector. If the DEQ determined that the water conservation measures were not appropriate for users within that sector, it would have to provide comments and suggestions that would result in the Department's acceptance of the measures. A sector could resubmit measures in

response to the Department's comments and suggestions.

By April 1, 2010, the DEQ would have to report to the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment on the status of the preparation and acceptance of water use conservation measures.

If the DEQ received a registration for a zone C withdrawal, it would have to notify all other registrants and permit holders whose withdrawals were from the same source of the status of the water source. Upon receiving a notification, each of the registrants and permit holders would have to review and consider implementing the applicable water conservation measures. The notification would have to inform water users that, in order to minimize impacts on aquatic health, each user was required to review and consider implementing the applicable measures.

Informational Materials

Currently, the DEQ may contract for the preparation, and distribution to people who withdraw water for irrigation or industrial purposes, of informational materials regarding the purposes, benefits, and requirements of Part 327, and also may provide information on complying with the registration requirements and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

Under the bill, instead, the DEQ could contract to members of the public for the preparation and distribution of materials related to the purposes, benefits, and requirements of Part 327 and information on compliance and methods for calculating and estimating withdrawals and consumptive uses.

Water Resources Assessment & Education Committee

If the DEQ received a registration for a zone B or zone C withdrawal or issued a water withdrawal permit or a permit under the Safe Drinking Water Act for a zone B or zone C withdrawal, or if the DEQ received a registration that it determined would reduce the density of thriving fish populations as determined by the thriving fish curve in a

cold-transitional stream by more than 1%, the Department would have to place a notice on its website and notify by electronic mail all of the following that had requested such notification:

- Conservation districts.
- Regional planning agencies.
- Watershed management planning committees.
- Storm water committees established under Part 31 (Water Resources Protection).
- The chief elected officials of the local units of government.
- Community supplies owned by political subdivisions.
- A water users committee established under Section 32725 (which House Bill 5070 (H-5) would amend).

An organization that wished to receive an electronic mail notification would have to give the DEQ an electronic mail address.

Upon receiving notification from the DEQ, the notified entities could form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The DEQ would have to assist in the formation of these committees and could give them technical information regarding water use and capacity within their vicinity, aggregated at the stream reach level. Committee meetings would have to be open to the general public. A committee could provide educational materials and recommendations regarding any of the following:

- Long-term water resources planning.
- Use of conservation measures.
- Drought management activities.
- Other topics related to water use as identified by the committee.

House Bill 5067 (H-2)

Part 327 of NREPA allows the DEQ to request the Attorney General to commence a civil action for appropriate relief for a violation of Part 327 or a rule promulgated under it. In addition to any other relief, the court may impose a maximum civil fine of \$1,000. A person who knowingly violates Section 32721 or 32723 or the terms of a permit issued under Section 32723 is

subject to a civil fine of up to \$5,000 per day of violation.

(Section 32721 prohibits a person from making a new or increased large-quantity withdrawal that causes an adverse resource impact. Section 32723 requires certain users to obtain a water withdrawal permit.)

Under the bill, a violation of Part 327 or a rule promulgated under it would include falsifying a record submitted under the part. Additionally, the bill would increase the maximum fine for a violation of those sections to \$10,000 per day. For all other violations of Part 327, the maximum civil fine would remain \$1,000.

House Bill 5068 (H-8)

Rebuttable Presumption

Under Part 327, a person may not make a new or increased large-quantity withdrawal that causes an adverse resource impact. Part 327 provides that, until a water withdrawal assessment tool becomes effective upon legislative enactment, there is a rebuttable presumption that a new or increased large-quantity withdrawal will not cause an adverse resource impact if the location of the withdrawal is more than 1,320 feet from the banks of a designated trout stream, or the well is at least 150 feet deep. Under the bill, the rebuttable presumption would apply under either of those circumstances for new or increased large-quantity withdrawals developed on or after February 28, 2006, and prior to the assessment tool's implementation date. Additionally, the withdrawal would have to be more than 1,320 feet from the banks of an affected stream reach, rather than a designated trout stream.

Also, under the bill, if the assessment tool determined that a withdrawal was a zone A or B withdrawal, or if the DEQ determined, based upon a site-specific review or in connection with a permit or approval issued under Section 32723 (described below) or the Safe Drinking Water Act, that a withdrawal was not likely to cause an adverse resource impact, there would be a rebuttable presumption that the withdrawal under the conditions that were the basis of the determination would not cause an adverse resource impact.

A presumption would not be valid if the capacity to make the withdrawal were not developed within 18 months after the withdrawal was registered.

Water Withdrawal Permit

Under Section 32723, except as otherwise provided, the following people must obtain a water withdrawal permit before making the withdrawal:

- A person who develops withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.
- A person who develops increased withdrawal capacity beyond baseline capacity of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.
- A person who develops withdrawal capacity to make a new withdrawal of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.
- A person who develops increased withdrawal capacity beyond baseline capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.

Under the bill, instead, except as otherwise provided, the permit requirement would apply to the following:

- A person who proposed to develop withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- A person who proposed to develop increased withdrawal capacity beyond baseline capacity of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- A person who proposed a new or increased withdrawal that would result in an intrabasin transfer of more than

100,000 gallons per day average over any 90-day period.

- A person who proposed to develop the capacity to make a new or increased large-quantity withdrawal that a site-specific review determined was a zone C withdrawal if it would reduce the flow of a cold small river by at least 14% of its index flow, or if it would reduce the flow of a cool river system or a warm river system by at least 20% of its index flow.

Currently, a person must apply for a permit by submitting to the DEQ an application containing specified information, and pay a \$2,000 application fee. Under the bill, the applicant also would have to submit the information required for a site-specific review request (under House Bill 5069 (H-11)) if not provided previously, and any other information the property owner would like the DEQ to consider in making its determination. If an applicant proposed to undertake restorative measures along with the withdrawal, the property owner would have to give the DEQ a detailed description of the measures and relevant information as to how they would be implemented.

The bill would eliminate the February 28, 2011, sunset on the \$2,000 application fee. In addition to the requirement that the DEQ provide public notification of all the water withdrawal permit applications it receives, the bill would require the Department to provide a public comment period of at least 45 days before acting upon applications.

The bill would delete a requirement that the DEQ issue a permit for a new or increased withdrawal of more than 2.0 million gallons per day from a source other than the Great Lakes and their connecting waterways if it determines that the withdrawal is not likely to cause an adverse resource impact. Instead, the Department would have to issue a permit for new or increased withdrawals of more than 2.0 million gallons per day from the waters of the State if all of the following conditions (which apply currently to withdrawals of more than 5.0 million gallons per day) were met:

- All water withdrawn, less any consumptive use, was returned, either naturally or after use, to the source watershed.
- The withdrawal would be implemented so as to ensure that the proposal would

result in no individual or cumulative adverse resource impacts.

- Subject to certain provisions, the withdrawal would be implemented so as to ensure that it was in compliance with all applicable local, State, and Federal laws as well as all legally binding regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
- The proposed use was reasonable under common law principles of water law in Michigan.

Additionally, in order to issue a permit for a new or increased withdrawal of more than 2.0 million gallons per day, the DEQ would have to determine that the proposed withdrawal would not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

Currently, for withdrawals of more than 5.0 million gallons per day, the applicant must consider voluntary generally accepted water management practices. The bill would delete this requirement. For permit applications received on or after January 1, 2009, the applicant would have to self-certify that he or she was in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector or for the water use associated with that specific withdrawal.

The Department would have to issue a permit for a new or increased withdrawal that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period if it complied with Section 4.9 of the Great Lakes-St. Lawrence River Basin Water Resources Compact. (Section 4.9 of the Compact creates exceptions to its prohibitions against diversions.)

In making its determination, the DEQ would have to act in a manner that conformed to its duties regarding a site-specific review (as prescribed by House Bill 5069 (H-11)). If the DEQ approved restoratives measures in conjunction with a water withdrawal permit, it would have to enter into a legally enforceable implementation schedule for their completion.

A proposed use for which a permit was issued would be considered to satisfy the requirements of Section 4.11 of the Compact (which establishes a decision-making standard for the approval of certain proposed water uses).

Under Part 327, a permit is not required for the following withdrawals:

- A withdrawal by a community supply owned by a political subdivision that holds a permit under the Safe Drinking Water Act.
- Seasonal withdrawals of up to 2.0 million gallons per day average in any consecutive 90-day period to supply a common distribution system.
- A withdrawal for the production of bottled water approved by the DEQ under a water source review conducted under the Safe Drinking Water Act.

In the first provision, the bill would refer to a withdrawal by a community supply that holds a permit under the Safe Drinking Water Act, deleting the reference to ownership by a political subdivision. Additionally, seasonal withdrawals of up to an average of 2.0 million gallons per day over a 90-day period would be exempt unless as they resulted in a diversion.

House Bill 5069 (H-11)

Withdrawal Registration

Under Part 327, except as otherwise provided, the owner of real property who has the capacity to make a large-quantity withdrawal from the waters of the State must register with the DEQ before beginning the withdrawal. Under the bill, except as otherwise provided, a property owner who intended to develop capacity to make a new or increased large-quantity withdrawal from the waters of the State would have to register it with the DEQ after using the assessment tool, if required, and before beginning the withdrawal. A registration could be made using the online registration process.

Currently, the following people are not required to register a withdrawal:

- A person who has registered that property previously under Part 327, unless the registrant develops new or

increased withdrawal capacity of an additional 100,000 gallons of water per day from the waters of the State.

- A community supply owned by a political subdivision required to obtain a permit under the Safe Drinking Water Act.
- A person required to obtain a water withdrawal permit.
- The owner of a noncommercial well located on residential property.

The bill would delete the reference to ownership of a community supply by a political subdivision. With regard to a noncommercial well, the bill specifies that the well could not be a lake augmentation well, and would have to be on single-family residential property not exceeding 14 units and three acres in size.

Part 327 requires a registration to be on a form provided by the DEQ or the MDA, as appropriate. Under the bill, this provision would apply to registrations not submitted via the online registration process.

Unless a property owner developed the capacity to make the new or increased large-quantity withdrawal within 18 months after registering, the registration would no longer be valid.

The bill would require the DEQ, within one year after the bill took effect, to develop and implement an internet-based online process that could be used for registrations. The process would have to be designed to work in conjunction with the assessment tool.

Part 327 requires each registration to consist of a statement and supporting documentation that includes certain information regarding a withdrawal. Under the bill, the registration also would have to include a statement and supporting documentation of the capacity of the equipment used for making the withdrawal. Additionally, for a new or increased large-quantity withdrawal from a stream, small or large river, or groundwater, the registration would have to include the determination from the use of the assessment tool or the determination from a site-specific review, as appropriate.

Assessment Tool

Within four months after the bill took effect, the DEQ would have to develop and make

available for testing and evaluation an internet-based water withdrawal assessment tool based upon the recommendations of the former Groundwater Conservation Advisory Council and the requirements of Part 327. The Department would have to implement the assessment tool one year after the bill took effect.

The assessment tool would have to determine whether a proposed withdrawal was a zone A, B, C, or D withdrawal and whether a proposed withdrawal was likely to cause an adverse resource impact based upon whether it was from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The tool also would have to distinguish the impact of a proposed withdrawal based upon whether it was from a stream, a small river, or a large river, subject to the following:

- Cool streams and warm streams with less than three square miles of drainage area would have to be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater and surface water withdrawals.
- Cool streams and warm streams with less than 20 square miles of drainage area and less than one cubic foot per second of index flow would have to be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater and surface water withdrawals.
- Cool streams and warm streams with a drainage area of more than three square miles but less than six square miles would have to be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

The assessment tool would have to allow the user to enter into fields the following data related to a proposed withdrawal:

- The capacity of the equipment used for making the withdrawal.
- The location of the withdrawal.
- The withdrawal source, whether surface water or groundwater.
- If the source of the withdrawal were groundwater, whether the source was a glacial stratum or bedrock.
- The depth of the withdrawal, if from groundwater.

- The amount and rate of water to be withdrawn.
- Whether the withdrawal would be intermittent.

The assessment tool would have to contain a print function that allowed the user, upon receiving the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

The tool would have to be designed to work in conjunction with the online registration process, and also would have to allow operation independent of that process.

On an ongoing basis, the DEQ would have to add verified data to the assessment tool's database from annual reports submitted to the DEQ by registrants, annual water use conservation plans submitted to the MDA by farm owners, permits issued under the Safe Drinking Water Act, and other sources of data regarding the State's water. Additionally, the DEQ would have to make technical modifications to the tool related to considerations of temperature, hydrology, and stream or river flow based upon a scientific methodology adopted by order of the NRC.

In consultation with the Water Resources Advisory Council and with the approval of the NRC, the DEQ would have to develop a protocol for documenting the difference between the baseline capacity and actual use by large-quantity water users that existed as of February 28, 2006. Once the protocol was established, the DEQ would have to take into consideration the difference when making site-specific determinations or permit decisions under Part 327. The DEQ would have to adjust the assessment tool to take into consideration the difference if it determined it was necessary to protect current water users or to avoid adverse resource impacts.

The DEQ would have to report annually to the standing committees of the Legislature with jurisdiction pertaining primarily to natural resources and the environment on the implementation of the assessment tool.

Beginning on the effective date of the assessment tool's implementation, before registering a new or increased large-quantity withdrawal for a proposed withdrawal from a

stream or river, or from groundwater, a property owner would have to use the assessment tool by entering the data related to the proposed withdrawal. A person who intended to make a new or increased large-quantity withdrawal for the purpose of dewatering a mine that had a permit under Part 31 (Water Resources Protection) and was not regulated under Part 631 (Reclamation of Mining Lands), 632, or 637 (Sand Dune Mining) could submit a request for a site-specific review rather than use the assessment tool.

Upon entry of the relevant data, the tool would have to indicate to the user whether the proposed withdrawal was likely to cause an adverse resource impact and whether it fell into the category of zone A, B, C, or D.

If the assessment tool designated a withdrawal as a zone A withdrawal or a zone B withdrawal in a cool river system or a warm river system, the property owner could register and proceed to make it.

If the assessment tool designated a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or D withdrawal, the property owner could not register or make it unless the DEQ conducted a site-specific review, and authorized the withdrawal (as described below).

After a property owner registered a withdrawal, if, in developing the capacity to make it, the conditions of the withdrawal deviated from the specific data that were entered into the assessment tool, the property owner would have to rerun the tool and enter the corrected data. The property owner would have to notify the DEQ of the corrected data and the corrected results from the tool. If the corrected data did not change the determination from the tool, the property owner could proceed with the withdrawal. If the corrected data changed the determination, the property owner would have to proceed under the provisions of Part 327 related to the corrected determination.

Site-Specific Review

The bill would require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool determined that a proposed withdrawal was a zone B withdrawal in a cold-transitional

river system, or a zone C or D withdrawal. Additionally, if the tool determined that a proposed withdrawal was a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system and the property owner wished to have a site-specific review, he or she could submit a request. A request would have to be submitted in a form required by the Department and include all of the following:

- The information required to be entered into the assessment tool.
- The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the withdrawal.
- If the amount and rate of the intended withdrawal would have seasonal fluctuations, the relevant information related to the seasonal use.
- A description of how the water would be used and the location, amount, and rate of any return flow.
- Any other information the property owner wanted the DEQ to consider in making its determination.

Upon receiving a request, the DEQ would have to consider the information submitted with it and consider the actual stream or river flow data of any affected stream reach. The Department also would have to apply the drainage area aggregation standards provided in the bill, if applicable. The DEQ could not rely on the assessment tool's determination in making its determination under a site-specific review.

The DEQ would have to complete its site-specific review within 10 working days after a request was submitted. If the DEQ determined, based upon the review, that the proposed withdrawal was a zone A or zone B withdrawal, it would have to provide written notification to the property owner, who could register and proceed with the withdrawal.

If the DEQ determined that the proposed withdrawal was a zone C withdrawal, the owner could register and proceed with the withdrawal if he or she self-certified that he or she was implementing environmentally sound and economically feasible water conservation measures prepared as prescribed in the bill, or that he or she was implementing applicable environmentally

sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

If a site-specific review determined that the withdrawal was a zone C withdrawal, the person could not register and make the withdrawal unless he or she obtained a water withdrawal permit if either of the following conditions existed:

- The proposed withdrawal would reduce the flow of a cold small river by at least 14% of its index flow.
- The proposed withdrawal would reduce the flow of a cool river system or a warm river system by at least 20% of its index flow.

If the DEQ determined that the withdrawal was a zone D withdrawal, the property owner could not register and make the withdrawal unless he or she applied for a water withdrawal permit under Section 32723 and the withdrawal was authorized under that section.

After a property owner registered a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviated from the specific data that were evaluated in the review, the property owner would have to notify the DEQ of the corrected data, and the DEQ would have to confirm its determination under the site-specific review. If the corrected data did not change the determination under a site-specific review, the property owner could proceed with the withdrawal. If the corrected data changed the determination, the property owner would have to proceed under the provisions of Part 327 related to the corrected determination.

Notwithstanding other provisions, before the assessment tool was implemented, a property owner proposing to develop capacity on his or her property to make a new or increased large-quantity withdrawal could submit to the DEQ a request for an interim site-specific review to determine whether the proposed withdrawal was likely to cause an adverse resource impact. A property owner proposing to develop capacity to make a new or increased large-quantity withdrawal of at least 1.0 million gallons per day would have to obtain an

interim site-specific review. During the interim period before the assessment tool's implementation date, the DEQ, upon request, would have to conduct a site-specific review within a reasonable time period of up to 30 days based upon an evaluation of reasonably available information. For purposes of Part 327, a determination under an interim site-specific review would have to be afforded the same status as a site-specific review otherwise conducted.

Collection of Measurements

The DEQ would have to develop a protocol for the collection of stream or river flow measurements by people other than the Department for its use in the administration of Part 327. The protocol would have to ensure that stream or river flow measurements collected for this purpose met the same data quality standards as measurements collected by the United States Geological Survey. The DEQ would have to consult with USGS and other recognized scientific experts in developing this protocol, including an appropriate length of record.

The DEQ could use stream or river flow data collected using the protocol in conducting site-specific reviews, making water withdrawal permit decisions, issuing permits under the Safe Drinking Water Act, updating the assessment tool as appropriate, or taking other actions requiring an evaluation of stream or river flow.

The DEQ could establish a program to train and certify individuals in the collection of stream or river flow measurements. The DEQ would have to charge a fee sufficient to reimburse it for the cost of the program. The Department could enter into a cooperative agreement with USGS to provide training and certification.

Restorative Measures

Notwithstanding any other provision of Part 327, the DEQ could not authorize, through use of the assessment tool, a site-specific review, or a water withdrawal permit or a permit under the Safe Drinking Water Act, a withdrawal that used additional stream or river flow made available by restorative measures unless they were conducted in

conjunction with a withdrawal and were authorized specifically in a permit.

If a person conducted restorative measures that were not related to a large-quantity withdrawal, the person would have to give the DEQ detailed information documenting the increased stream or river flow or temperature improvements achieved through the restorative measures.

House Bill 5070 (H-5)

Permit Holders

Under Part 327, all people making large-quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A water users committee may be composed of all registrants, water withdrawal permit holders, and local government officials within the watershed.

The bill would refer to "permit holders", rather than "water withdrawal permit holders", in this and other provisions. The bill would define "permit holders" as people holding a water withdrawal permit and people holding a permit under the Safe Drinking Water Act.

Ad Hoc Subcommittee

Under the bill, upon establishment of a water users committee, a participating local government official could create an ad hoc subcommittee of residents of that local unit to give him or her information and advice on water resources, water use, and trends in water use within the local unit.

DEQ Notification

If the DEQ authorized a zone C withdrawal, it would have to notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority under Part 327 to establish a water users committee, and could give them technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

Under the bill, by a majority vote of its governing body, a local unit could recommend that the DEQ review a proposed withdrawal that it believed had a significant risk of causing a conflict with other water users within its jurisdiction. The DEQ would have to review the proposal and attempt to resolve any potential conflicts through negotiations.

Court Proceedings

The bill provides that Part 327 would not limit the right of a person whose interests had been or would be affected adversely to institute proceedings in circuit court against any person to protect those interests.

Petition

The bill would repeal Section 32724, which allows a person who intends to make a new or increased large-quantity withdrawal for which a permit is not required to petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact.

This section requires the petitioner to submit to the Department the petition, a \$5,000 fee, and a report containing specified information and an evaluation of the environmental, hydrological, and hydrogeological conditions that exist and the predicted effects of the intended withdrawal that provides a reasonable basis for the determination to be made.

Within 120 days after receiving an administratively complete petition, the DEQ must issue to the petitioner a written determination that either affirms that the proposed withdrawal is not likely to cause an adverse resource impact or specifies the reasons that an affirmative determination cannot be made and states how the petition may meet the criteria to obtain an affirmative determination.

A withdrawal with regard to which an affirmative determination is issued is presumed not to create an adverse resource impact. The presumption may be rebutted by a preponderance of evidence that the withdrawal has caused is or likely to cause an adverse resource impact.

Under the Safe Drinking Water Act, upon receiving the plans and specifications for a proposed waterworks system, the DEQ must evaluate its adequacy to protect the public health by supplying water meeting State drinking water standards. In addition, for a proposed waterworks system by a community supply that would provide capacity for a new or increased large-quantity withdrawal, the bill would require the DEQ to use the assessment tool to evaluate the proposed withdrawal associated with the proposed system and confirm the tool's determination. Before the tool's implementation, the DEQ would have to evaluate the proposed withdrawal based upon reasonably available information. If the Department determined that the proposed withdrawal for a community supply was a zone C withdrawal, the community supply would have to certify that it was implementing applicable environmentally sound and economically feasible water conservation measures (prepared under House Bill 5066 (H-3)), or certify that it was implementing the water conservation measures developed for the water use associated with that specific withdrawal.

The Act permits the Department to evaluate the impact of a proposed system for a community supply owned by a political subdivision that will do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 2.0 million 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.
- Provide new total designed withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

The bill, instead, would require the DEQ to evaluate the impact of a proposed system for a community supply that would do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from the waters of the State.
- Provide an increased total designed withdrawal capacity of more than 2.0 million gallons per day from the waters of the State beyond the system's total designed withdrawal capacity.
- Provide new total designed withdrawal capacity or an increased total designed withdrawal capacity that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.
- Provide new or increased total designed withdrawal capacity for a new or increased large-quantity withdrawal that the DEQ confirmed was a zone C withdrawal if it would reduce the flow of a cold small river by at least 14% of its index flow, or would reduce the flow of a cool river system or a warm river system by at least 20% of its index flow.

Under the bill, the DEQ would have to provide public notice that it was conducting an evaluation and provide a public comment period of at least 45 days before making its determination.

Under the Act, the DEQ must reject the plans and specifications if it determines that the system will not meet the applicable standard provided in Section 32723(5) or (6) of NREPA unless both of the following conditions are met:

- The DEQ determines that there is no feasible and prudent alternative location for the withdrawal.
- The DEQ 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 will be balanced by its public benefit related to public health, safety, and welfare.

(Section 32723(5) requires the DEQ to issue a permit to a person who develops new or increased capacity to withdraw more than 2.0 million gallons per day from waters other than the Great Lakes and their

connecting waterways to supply a common distribution system if it determines that the withdrawal will not cause an adverse resource impact. Subsection (6) requires the DEQ to issue a permit to a person who develops new or increased capacity to withdraw 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system if specified conditions are met. House Bill 5068 (H-8) would amend these requirements.)

The bill would require the DEQ to reject the plans and specifications if the system would not meet the applicable standard in Section 32723. The DEQ could, however, approve the plans and specifications for a community supply owned by a political subdivision that would not meet the applicable standard if they did not result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period and the specified conditions were met.

The bill specifies that the provision regarding the DEQ's determination that there is no feasible and prudent alternative location for the withdrawal would not confer upon the Department any authority to require a person to connect to or remain connected to another existing community supply owned by a political subdivision.

Under the bill, the DEQ's approval of a proposed waterworks system would have to be considered to satisfy the requirements of Section 4.11 of the Compact (which pertains to the decision-making standard).

As a condition of a permit issued to a community supply, the DEQ would have to require the permit holder to submit to the Department by April 1 an annual report that contained the information described in Section 32707 of NREPA.

(Under Section 32707, a person who is required to register a withdrawal or who holds a water withdrawal permit must file with the DEQ an annual report that includes the following information:

- The amount and rate of water withdrawn on an annual and monthly basis.
- The source or sources of the water supply.
- The use or uses of the water withdrawn.

- The amount of consumptive use of the water withdrawn.
- If the source is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.
- If the source is groundwater, the static water level of the aquifer or aquifers, if practicable.
- Other information specified by DEQ rule.
- At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if applicable, a description of the system capacity.

House Bill 5066 (H-3) also would require the report to include an acknowledgement that a registrant had reviewed applicable water conservation measures.)

"Assessment tool", "Compact", "intrabasin transfer", "new or increased large-quantity withdrawal", "waters of the state", and "zone C withdrawal" would have the same definitions as in NREPA.

House Bill 5072 (H-6)

The Safe Drinking Water Act provides that facilities for the bottling or packaging of bottled drinking water and their operation remain under the supervision of the MDA as provided for in the Food Law and Regulation No. 549 of the Michigan Administrative Code, and other pertinent rules and laws. The bill would delete the reference to the Michigan Administrative Code and other pertinent rules and laws.

Currently, 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 must demonstrate to the DEQ's satisfaction that the following conditions will be met:

- The proposed use is not likely to have an adverse resource impact.
- The proposed use is reasonable under common law principles of water law in Michigan.
- The withdrawal will be conducted in a manner that protects riparian rights as defined by Michigan common law.
- The person will undertake activities, if needed, to address hydrologic impacts commensurate with the nature and extent of the withdrawal, including those

related to stream flow regime, water quality, and aquifer protection.

Under the bill, instead, a person who proposed to engage in producing bottled drinking water from a new or increased large-quantity withdrawal of more than 200,000 gallons of water per day from the waters of the State or that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period would have to submit to the DEQ an application containing an evaluation of existing environmental, hydrological, and hydrogeological conditions and the predicted effects of the intended withdrawal that provided a reasonable basis for a determination to be made.

The DEQ could approve an application only if it determined that the proposed use would meet the applicable standard provided in Section 32723 of NREPA (which House Bill 5068 (H-8) would amend), and the person would undertake necessary activities to address hydrologic impacts (as currently required). A proposed use for which the DEQ determined these conditions would be met would be considered to satisfy certain requirements of the Compact.

The Act requires the DEQ to provide public notice and an opportunity for public comment before making a determination. The bill would require the public comment period to be at least 45 days.

House Bill 5073 (H-4)

Council Membership

Part 328 of NREPA creates the Groundwater Conservation Advisory Council within the Department of Natural Resources (DNR). The Council consists of the following members:

- Three individuals appointed by the Senate Majority Leader as follows: one representing business and manufacturing interests, one representing utilities, and one representing conservation organizations.
- Three individuals appointed by the Speaker of the House of Representatives as follows: one representing well drilling contractors, one representing local units of government, and one representing agricultural interests.

- Four individuals appointed by the DEQ Director as follows: one representing nonagriculture irrigators, one representing the aggregate industry, one representing environmental organizations, and one representing the general public.
- Three representing the DEQ, the DNR, and the MDA.

To assist the Groundwater Conservation Advisory Council in carrying out its responsibilities, Part 328 also requires the following people to be appointed as additional Council members:

- One individual appointed by the Senate Majority Leader representing a statewide agricultural organization.
- One individual who is a registered well driller with knowledge and expertise in hydrogeology, appointed by the Speaker of the House.
- Two individuals appointed by the Governor representing municipal water suppliers and a statewide conservation organization.

Under the bill, the Council would consist of the following members:

- Four individuals appointed by the Senate Majority Leader as follows: one representing business and manufacturing interests, one representing public utilities, one representing conservation organizations, and one representing a statewide agricultural organization.
- Four individuals appointed by the Speaker of the House as follows: one representing registered well drilling contractors with hydrology experience, one representing local units of government, one representing agricultural interests, and one with knowledge and expertise in limnology.
- Four individuals appointed by the Governor as follows: one representing municipal water suppliers, one representing a statewide conservation organization, one representing a statewide riparian landowners association, and one representing a statewide tourism organization.
- Six individuals appointed by the DEQ Director as follows: one representing nonagriculture irrigators, one representing the aggregate industry, one representing environmental

organizations, one representing tribes, one representing a statewide anglers association, and one representing the general public.

- Three individuals representing the DEQ, the MDA, and the DNR.

The bill also would refer to the "Water Resources Conservation Advisory Council", rather than the "Groundwater Conservation Advisory Council".

The appointments to the Council would have to be made within 90 days after the bill took effect. The person making the appointment would have to give consideration and deference to individuals who served on the former Groundwater Conservation Advisory Council.

Council Responsibilities

Part 328 requires the Council to do all of the following:

- Study the sustainability of the State's groundwater use.
- Develop criteria and indicators to evaluate the sustainability of the State's groundwater use.
- Monitor Annex 2001 implementation efforts and make recommendations on Michigan's statutory conformance with Annex 2001, including whether groundwater withdrawals should be subject to best management practices or certification requirements and whether groundwater withdrawals have an impact on water-dependent natural resources.
- Study the implementation of and the results from the groundwater dispute resolution program created in Part 317 (Aquifer Protection and Dispute Resolution).
- Design and make recommendations regarding the water withdrawal assessment tool.
- Study and make recommendations as to whether the State should consider as part of its groundwater conservation programs proposals to mitigate adverse impacts to the waters of the State or to the water-dependent natural resources of the State that might result from groundwater withdrawals.

The bill would delete all of the Council's currently prescribed duties. Instead, when the DEQ made the assessment tool available

for testing and determination, the Council would have to conduct testing and evaluate its operation and accuracy. Within nine months after the bill took effect, the Council would have to submit to the Senate Majority Leader, the Speaker of the House, the appropriate standing committees of the Legislature, and the DEQ a report containing the results of the testing and evaluation, as well as any recommendations the Council had to improve the assessment tool's operation.

Additionally, the bill would require the Council to do all of the following:

- Study and make recommendations regarding the development and refinement of the assessment tool.
- Study and make recommendations on whether and how the definition of "adverse resource impact" should be modified to address more specifically potential impacts to the Great Lakes, inland lakes, and other aquatic systems due to large-quantity withdrawals.
- Study and make recommendations on reconciling conflicts in State laws related to the use of the waters of the State.
- Study and make recommendations on the development and implementation of the State's water conservation and efficiency program under the Compact.
- Develop a framework for evaluating restorative measures designed to prevent adverse resource impacts.
- In consultation with academic institutions and other nonprofit organizations, make recommendations regarding educational materials related to the use and availability of water resources.

Also, at least three years after the bill took effect, the Council would have to submit to the Senate Majority Leader, the Speaker of the House, and the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment a report that made recommendations regarding how the withdrawal assessment process under Part 327 could be improved in order to be more practical for people making large-quantity withdrawals while protecting the waters and water-dependent natural resources of the State. The report would have to contain specific recommendations on the use of the assessment tool, the site-specific review process, the permitting process, and any

other measure that the Council determined would improve the water withdrawal assessment process. Additionally, the report would have to include the Council's review of data from the DEQ on the number of withdrawals that were subject to the seasonal withdrawal permit exemption and whether this exemption should be continued, modified, or eliminated.

The bill would delete a requirement that the Council, in consultation with the DEQ, the DNR, the MDA, and a technical advisory committee, do all of the following:

- Design a water withdrawal assessment tool that can be used to protect and conserve the waters and water-dependent natural resources of the State.
- Make factually based recommendations for the policy-based parameters and variables of the tool.
- Recommend an appropriate timetable for periodic updates or changes to the tool or to its parameters or variables.

Council Reports

Part 328 required the Council to submit the following reports, approved by a majority of the voting members, to the Senate Majority Leader, the Speaker of the House, and the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment:

- By February 8, 2006, a report on the Council's findings and recommendations as of that date.
- By July 1, 2007, the Council's findings and recommendations that had not been reported previously.

Under the bill, a progress report on the Council's findings and recommendations would be required by February 8, 2009. The Council's final report would be due by August 8, 2009. The Council also would have to submit the reports to the DEQ.

Adoption of Assessment Tool

The bill would delete a requirement that the Legislature provide for the adoption of a water withdrawal assessment tool, including its conceptual framework, its policy-based parameters or variables, the timetable for updating it and its data, and the details for its use.

Proposed MCL 324.32730 et al. (H.B. 4343)
MCL 324.32701 et al. (H.B. 5065)
324.32707 et al. (H.B. 5066)
324.32713 et al. (H.B. 5067)
324.32721-324.32723 (H.B. 5068)
324.32705 et al. (H.B. 5069)
324.32725 et al. (H.B. 5070)
325.1004 (H.B. 5071)
325.1017 (H.B. 5072)
324.32801 & 324.32803 (H.B. 5073)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would cost the State an indeterminate amount for program administration and information technology expenses. In FY 2006-07, \$738,000 was appropriated for administrative costs of the water withdrawal program. In FY 2005-06, \$500,000 was appropriated for initial development of a water withdrawal assessment tool. An unknown amount of additional funding would be necessary for the increased responsibilities of the Department of Environmental Quality under these bills. Those duties would include operation of the internet-based water withdrawal assessment tool, continuing maintenance of the data in the assessment tool and monitoring system, and increased staff oversight of allowable withdrawals. The bills do not identify a source of funding for the additional cost.

The bills would make two changes in order to continue current levels of fee revenue. Presently, the water withdrawal reporting fee will decrease from \$200 to \$100 once the assessment tool is operational; however, the legislation would continue the fee at \$200. Annual revenue of about \$220,000 is collected from the fee and used to support the program in the Department. The second change would eliminate a sunset on the \$2,000 application fee for large quantity water withdrawals. Fee revenue is deposited into the Water Use Reporting Fund for administrative costs of the program.

The bills would allow the Department to establish a program to certify individuals in the collection of stream or river flow measurements. The Department would have to charge a fee to cover the costs of the program, making it self-funded.

The bills would allow water withdrawals that would cause losses to the fish population. Limits would be imposed on the size of those potential losses, but there could be resulting declines in water quality and recreational opportunities.

The Departments of Agriculture, Environmental Quality, and Natural Resources would incur incidental costs for staff time spent on participating in the Water Resources Conservation Advisory Council and assisting the Council in the development and publication of its recommendations. The expenses would be paid from existing resources and could divert support from other programs in the Departments.

House Bill 5067 (H-2) could have a positive fiscal impact on State government. The bill would increase the maximum amount of civil fines for violations under certain sections. Any increase in civil fine revenue would go to the General Fund.

Fiscal Analyst: Jessica Runnels
Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.