

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5069

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32702, 32703, 32705, 32706, and 32723 (MCL
324.32702, 324.32703, 324.32705, 324.32706, and 324.32723),
sections 32702 and 32703 as amended and section 32723 as added by 2006
PA 33, section 32705 as amended by 2006 PA 35, and section 32706 as
amended by 1996 PA 434.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32702. (1) The legislature finds and declares that:
2 (a) A diversion of water out of the basin of the Great Lakes
3 may impair or destroy the Great Lakes. The legislature further
4 finds that a limitation on such diversions is authorized by and is
5 consistent with the mandate of section 52 of article IV of the

1 state constitution of 1963 that the legislature provide for the
2 protection of the air, water, and other natural resources of the
3 state from pollution, impairment, and destruction.

4 (b) Water use registration and reporting are essential to
5 implementing the principles of the Great Lakes charter and
6 necessary to support the state's opposition to diversion of waters
7 of the Great Lakes basin and to provide a source of information on
8 water use to protect Michigan's rights when proposed water losses
9 affect the level, flow, use, or quality of waters of the Great
10 Lakes basin.

11 (c) The waters of the state are valuable public natural
12 resources held in trust by the state, and the state has a duty as
13 trustee to manage its waters effectively for the use and enjoyment
14 of present and future residents and for the protection of the
15 environment.

16 (d) The waters of the Great Lakes basin are a valuable public
17 natural resource, and the states and provinces of the Great Lakes
18 region and Michigan share a common interest in the preservation of
19 that resource.

20 (e) Any new diversion of waters of the Great Lakes basin for
21 use outside of the Great Lakes basin will have significant economic
22 and environmental impact adversely affecting the use of this
23 resource by the Great Lakes states and Canadian provinces.

24 (f) The continued availability of water for domestic,
25 municipal, industrial, and agricultural water supplies, navigation,
26 hydroelectric power and energy production, recreation, and the
27 maintenance of fish and wildlife habitat and a balanced ecosystem

1 are vital to the future economic health of the states and provinces
2 of the Great Lakes region.

3 (g) Future interbasin diversions and consumptive uses of
4 waters of the Great Lakes basin may have significant adverse
5 impacts upon the environment, economy, and welfare of the Great
6 Lakes region and of this state.

7 (h) The states and provinces of the Great Lakes region have a
8 duty to protect, conserve, and manage their shared water resources
9 for the use and enjoyment of present and future residents.

10 (i) The waters of the Great Lakes basin are capable of
11 concurrently serving multiple uses, and such multiple uses of water
12 resources for municipal, public, industrial, commercial,
13 agriculture, mining, navigation, energy development and production,
14 recreation, water quality maintenance, and the maintenance of fish
15 and wildlife habitat and a balanced ecosystem and other purposes
16 are encouraged, recognizing that such uses are interdependent and
17 must be balanced.

18 **(J) THE WATERS OF THE GREAT LAKES BASIN ARE INTERCONNECTED AND**
19 **PART OF A SINGLE HYDROLOGIC SYSTEM.**

20 (2) The legislature has the authority under sections 51 and 52
21 of article IV of the state constitution of 1963 to regulate the
22 withdrawal and uses of the waters of the state, including both
23 surface water and groundwater, to promote the public health,
24 safety, and welfare and to protect the natural resources of the
25 state from pollution, impairment, and destruction, subject to
26 constitutional protections against unreasonable or arbitrary
27 governmental action and the taking of property without just

1 compensation. This authority extends to all waters within the
2 territorial boundaries of the state.

3 Sec. 32703. Subject to section 32704, **A DIVERSION OF** the
4 waters of the ~~Great Lakes basin within the boundaries of this state~~
5 ~~shall not be diverted~~ **STATE** out of the Great Lakes basin **IS**
6 **PROHIBITED.**

7 Sec. 32705. (1) Except as otherwise provided in this section,
8 the owner of real property who ~~has the~~ **INTENDS TO DEVELOP** capacity
9 on that property to make a **NEW OR INCREASED** large quantity
10 withdrawal from the waters of this state shall register **THE**
11 **WITHDRAWAL** with the department **AFTER USING THE ASSESSMENT TOOL, IF**
12 **REQUIRED UNDER THIS PART, AND** prior to beginning that withdrawal. **A**
13 **REGISTRATION UNDER THIS SECTION MAY BE MADE USING THE ONLINE**
14 **REGISTRATION PROCESS.**

15 (2) The following persons are not required to register under
16 this section:

17 (a) ~~A-SUBJECT TO SUBDIVISION (C),~~ A person who has previously
18 registered for that property under this part **OR THE OWNER OF REAL**
19 **PROPERTY CONTAINING THE CAPACITY TO MAKE A WITHDRAWAL THAT WAS**
20 **PREVIOUSLY REQUESTED UNDER THIS PART,** unless ~~that registrant~~ **THE**
21 **PROPERTY OWNER** develops new or increased withdrawal capacity on the
22 property of an additional 100,000 gallons of water per day from the
23 waters of the state.

24 (b) A community supply ~~owned by a political subdivision that~~
25 ~~holds~~ **REQUIRED TO OBTAIN** a permit under the safe drinking water
26 act, 1976 PA 399, MCL 325.1001 to 325.1023.

27 (c) A person ~~holding~~ **REQUIRED TO OBTAIN** a permit under section

1 32723.

2 (d) The owner of a noncommercial well **LOCATED** on **THE FOLLOWING**
3 residential property: -

4 (i) **SINGLE-FAMILY RESIDENTIAL PROPERTY UNLESS THAT WELL IS A**
5 **LAKE AUGMENTATION WELL.**

6 (ii) **MULTIFAMILY RESIDENTIAL PROPERTY NOT EXCEEDING 4**
7 **RESIDENTIAL UNITS AND NOT MORE THAN 3 ACRES IN SIZE UNLESS THAT**
8 **WELL IS A LAKE AUGMENTATION WELL.**

9 ~~—— (3) The following persons shall register under this section~~
10 ~~but may register after beginning the withdrawal but before 90 days~~
11 ~~after the effective date of the amendatory act that added this~~
12 ~~section.~~

13 ~~—— (a) A person who was developing new or increased withdrawal~~
14 ~~capacity on the effective date of the amendatory act that added~~
15 ~~this section.~~

16 ~~—— (b) A person who was not required to register under this part~~
17 ~~prior to the effective date of the amendatory act that added this~~
18 ~~section.~~

19 (3) ~~(4)~~ Subsection (1) does not limit a property owner's
20 ability to withdraw water from a test well prior to registration if
21 the test well is constructed in association with the development of
22 new or increased withdrawal capacity and used only to evaluate the
23 development of new or increased withdrawal capacity.

24 (4) ~~(5)~~ A registration under this section by the owner of a
25 farm in which the withdrawal is intended for an agricultural
26 purpose, including irrigation for an agricultural purpose, ~~shall~~
27 **MAY** be submitted to the department of agriculture instead of the

1 department.

2 (5) ~~(6)~~—A registration submitted under this section **THAT IS**
 3 **NOT SUBMITTED VIA THE ONLINE REGISTRATION PROCESS** shall be on a
 4 form provided by the department or the department of agriculture,
 5 as appropriate.

6 (6) ~~(7)~~—In calculating the total amount of an existing or
 7 proposed withdrawal for the purpose of this section, a person shall
 8 combine all separate withdrawals that the person makes or proposes
 9 to make, whether or not these withdrawals are for a single purpose
 10 or are for related but separate purposes.

11 (7) ~~(8)~~—The department shall aggregate information received by
 12 the state related to large quantity withdrawal capacities within
 13 the state and reported large quantity withdrawals in the state.

14 (8) **UNLESS A PROPERTY OWNER DEVELOPS THE CAPACITY TO MAKE THE**
 15 **NEW OR INCREASED LARGE QUANTITY WITHDRAWAL WITHIN 18 MONTHS AFTER**
 16 **THE PROPERTY OWNER REGISTERS UNDER SUBSECTION (1), THE REGISTRATION**
 17 **IS NO LONGER VALID.**

18 Sec. 32706. (1) **NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE**
 19 **OF THE AMENDATORY ACT THAT AMENDED THIS SECTION, THE DEPARTMENT**
 20 **SHALL DEVELOP AND IMPLEMENT AN INTERNET-BASED ONLINE REGISTRATION**
 21 **PROCESS THAT MAY BE USED FOR REGISTRATIONS UNDER SECTION 32705. THE**
 22 **ONLINE REGISTRATION PROCESS SHALL BE DESIGNED TO WORK IN**
 23 **CONJUNCTION WITH THE ASSESSMENT TOOL.**

24 (2) Each registration under this part shall ~~consist of a~~
 25 **INCLUDE BOTH OF THE FOLLOWING:**

26 (A) A statement and supporting documentation that includes all
 27 of the following:

(i) ~~(a)~~ The place and source of the proposed ~~or existing~~ withdrawal.

(ii) ~~(b)~~ The location of any discharge or return flow

ASSOCIATED WITH THE PROPOSED WITHDRAWAL.

(iii) ~~(c)~~ The location and nature of the proposed ~~or existing~~ water user ~~USE~~.

(iv) **THE CAPACITY OF THE EQUIPMENT USED FOR MAKING THE PROPOSED WITHDRAWAL.**

(v) ~~(d)~~ The actual ~~or~~ estimated average annual and monthly volumes and rate of **THE PROPOSED** withdrawal.

(vi) ~~(e)~~ The actual ~~or~~ estimated average annual and monthly volumes and rates of consumptive use from the **PROPOSED** withdrawal.

(B) BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION, FOR A NEW OR INCREASED LARGE QUANTITY WITHDRAWAL FROM A STREAM OR RIVER OR GROUNDWATER, THE DETERMINATION FROM THE USE OF THE ASSESSMENT TOOL UNDER SECTION 32706B OR THE DETERMINATION FROM A SITE-SPECIFIC REVIEW, AS APPROPRIATE.

Sec. 32723. (1) Except as provided in subsection ~~(10)~~ **(13)**, the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who ~~develops~~ **PROPOSES TO DEVELOP** withdrawal capacity to make a new withdrawal of ~~over~~ **MORE THAN** 2,000,000 gallons of water per day from the waters of the state ~~, other than the Great Lakes and their connecting waterways,~~ to supply a common distribution system.

(b) A person who ~~develops~~ **PROPOSES TO DEVELOP** increased

1 withdrawal capacity beyond baseline capacity of more than 2,000,000
2 gallons of water per day from the waters of the state ~~, other than~~
3 ~~the Great Lakes and their connecting waterways,~~ to supply a common
4 distribution system.

5 ~~—— (c) A person who develops withdrawal capacity to make a new~~
6 ~~withdrawal of more than 5,000,000 gallons of water per day from the~~
7 ~~Great Lakes and their connecting waterways to supply a common~~
8 ~~distribution system.~~

9 ~~—— (d) A person who develops increased withdrawal capacity beyond~~
10 ~~baseline capacity of more than 5,000,000 gallons of water per day~~
11 ~~from the Great Lakes and their connecting waterways to supply a~~
12 ~~common distribution system.~~

13 (C) A PERSON WHO PROPOSES TO DEVELOP WITHDRAWAL CAPACITY TO
14 MAKE A NEW OR INCREASED LARGE QUANTITY WITHDRAWAL OF MORE THAN
15 1,000,000 GALLONS OF WATER PER DAY FROM THE WATERS OF THE STATE TO
16 SUPPLY A COMMON DISTRIBUTION SYSTEM THAT A SITE-SPECIFIC REVIEW HAS
17 DETERMINED IS A ZONE C WITHDRAWAL.

18 (D) A PERSON WHO PROPOSES TO DEVELOP A NEW OR INCREASED
19 WITHDRAWAL CAPACITY THAT WILL RESULT IN AN INTRABASIN TRANSFER OF
20 MORE THAN 100,000 GALLONS PER DAY AVERAGE OVER ANY 90-DAY PERIOD.

21 (2) A person shall apply for a **WATER WITHDRAWAL** permit under
22 this section by submitting an application to the department
23 containing the information described in section ~~32706~~**32706C(1) (A)**
24 **TO (E) AND AN EVALUATION OF EXISTING HYDROLOGICAL AND**
25 **HYDROGEOLOGICAL CONDITIONS. IF THE APPLICANT PROPOSES TO UNDERTAKE**
26 **A PREVENTATIVE MEASURE ALONG WITH THE WITHDRAWAL, THE PROPERTY**
27 **OWNER SHALL PROVIDE THE DEPARTMENT WITH A DETAILED DESCRIPTION OF**

**1 THE PREVENTATIVE MEASURE AND RELEVANT INFORMATION AS TO HOW THE
2 PREVENTATIVE MEASURE WILL BE IMPLEMENTED.**

In addition, ~~until 5~~
~~years after the effective date of the amendatory act that added~~
~~this section,~~ the applicant shall submit an application fee in the
amount of \$2,000.00. The department shall transmit ~~water use~~
~~reporting~~ **APPLICATION** fees collected under this section to the
state treasurer to be credited to the water use protection fund
created in section 32714. ~~The department shall provide public~~
~~notice of all applications received under this section.~~

(3) ~~A permit~~ **AN** application **SUBMITTED UNDER SUBSECTION (2)** is
considered to be administratively complete effective 30 days after
it is received by the department unless the department notifies the
applicant, in writing, during this 30-day period that the
application is not administratively complete or that the fee
required to be accompanied with the application has not been paid.
If the department determines that the application is not
administratively complete, the notification shall specify the
information necessary to make the application administratively
complete. If the department notifies the applicant as provided in
this subsection, the 30-day period is tolled until the applicant
submits to the department the specified information or fee.

**(4) THE DEPARTMENT SHALL PROVIDE PUBLIC NOTIFICATION OF ITS
RECEIPT OF APPLICATIONS UNDER THIS SECTION AND SHALL PROVIDE A
PUBLIC COMMENT PERIOD OF NOT LESS THAN 45 DAYS BEFORE APPLICATIONS
ARE ACTED UPON UNDER SUBSECTION (5).**

(5) ~~(4)~~ The department shall make a decision whether to grant
or deny a **WATER WITHDRAWAL** permit under this section within 120

1 days of receipt of an administratively complete application.

2 ~~— (5) The department shall issue a permit under subsection~~
3 ~~(1)(a) or (b) if the department determines that the withdrawal is~~
4 ~~not likely to cause an adverse resource impact.~~

5 (6) The department shall issue a **WATER WITHDRAWAL** permit under
6 subsection ~~(1)(c) or (d)~~ **(1) (A), (B), OR (C)** if all of the
7 following conditions are met:

8 (a) All water withdrawn, less any consumptive use, is
9 returned, either naturally or after use, to the source watershed.

10 (b) The withdrawal will be implemented so as to ensure that
11 the proposal will result in no individual or cumulative adverse
12 resource impacts. Cumulative adverse resource impacts under this
13 subdivision shall be evaluated by the department based upon
14 available information gathered by the department.

15 (c) Subject to section 32726, the withdrawal will be
16 implemented so as to ensure that it is in compliance with all
17 applicable local, state, and federal laws as well as all legally
18 binding regional interstate and international agreements, including
19 the boundary waters treaty of 1909.

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

22 (e) ~~The~~ **FOR PERMIT APPLICATIONS RECEIVED ON OR AFTER JANUARY**
23 **1, 2009, THE** applicant has ~~considered voluntary generally accepted~~
24 ~~water management practices or~~ **SELF-CERTIFIED THAT HE OR SHE IS IN**
25 **COMPLIANCE WITH** environmentally sound and economically feasible
26 water conservation measures **DEVELOPED BY THE APPLICABLE WATER**
27 **USER'S SECTOR UNDER SECTION 32708A OR HAS SELF-CERTIFIED THAT HE OR**

1 SHE IS IN COMPLIANCE WITH ENVIRONMENTALLY SOUND AND ECONOMICALLY
2 FEASIBLE WATER CONSERVATION MEASURES DEVELOPED FOR THE WATER USE
3 ASSOCIATED WITH THAT SPECIFIC WITHDRAWAL.

4 (F) THE DEPARTMENT DETERMINES THAT THE PROPOSED WITHDRAWAL
5 WILL NOT VIOLATE PUBLIC OR PRIVATE RIGHTS AND LIMITATIONS IMPOSED
6 BY MICHIGAN WATER LAW OR OTHER MICHIGAN COMMON LAW DUTIES.

7 (7) THE DEPARTMENT SHALL ISSUE A WATER WITHDRAWAL PERMIT UNDER
8 SUBSECTION (1) (D) IF THE TRANSFER COMPLIES WITH SECTION 4.9 OF THE
9 COMPACT.

10 (8) IN REVIEWING A PROPOSED PREVENTATIVE MEASURE, THE
11 DEPARTMENT SHALL CONSIDER THE EFFECT OF THE PREVENTATIVE MEASURE ON
12 PREVENTING AN ADVERSE RESOURCE IMPACT BY DIMINISHING THE EFFECT OF
13 THE WITHDRAWAL ON STREAM OR RIVER FLOW OR THE TEMPERATURE REGIME OF
14 THE STREAM OR RIVER. IF THE DEPARTMENT APPROVES A PREVENTATIVE
15 MEASURE IN CONJUNCTION WITH A WATER WITHDRAWAL PERMIT UNDER THIS
16 SECTION, THE DEPARTMENT SHALL ENTER INTO A LEGALLY ENFORCEABLE
17 IMPLEMENTATION SCHEDULE FOR COMPLETION OF THE PREVENTATIVE MEASURE.

18 (9) A PROPOSED USE FOR WHICH A WATER WITHDRAWAL PERMIT IS
19 ISSUED UNDER THIS SECTION SHALL BE CONSIDERED TO SATISFY THE
20 REQUIREMENTS OF SECTION 4.11 OF THE COMPACT.

21 (10) ~~(7)~~—A permit issued under part 31 pursuant to 33 USC
22 1326(b) shall be considered sufficient to demonstrate that there
23 will not be an adverse resource impact under section 32721 and
24 satisfies the conditions for a **WATER WITHDRAWAL** permit under this
25 section. Upon receipt of a ~~permit~~ **AN** application **UNDER THIS SECTION**
26 and evidence that the applicant holds a part 31 permit described in
27 this subsection, the department shall grant the applicant a **WATER**

1 **WITHDRAWAL** permit under this subsection.

2 (11) ~~(8)~~—The department may revoke a **WATER WITHDRAWAL** permit
3 issued under this section if the department determines following a
4 hearing, based upon clear and convincing scientific evidence, that
5 the withdrawal is causing an adverse resource impact.

6 (12) ~~(9)~~—A person who is aggrieved by a determination of the
7 department under this section related to a **WATER WITHDRAWAL** permit
8 may file a sworn petition with the department setting forth the
9 grounds and reasons for the complaint and asking for a contested
10 case hearing on the matter pursuant to the administrative
11 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A
12 petition filed more than 60 days after action on the **WATER**
13 **WITHDRAWAL** permit may be rejected by the department as being
14 untimely. The department shall issue a final decision on a petition
15 for a contested case hearing within 6 months after receiving the
16 petition. A determination, action, or inaction by the department
17 following a contested case hearing is subject to judicial review as
18 provided in the administrative procedures act of 1969, 1969 PA 306,
19 MCL 24.201 to 24.328.

20 (13) ~~(10)~~—The following **WITHDRAWALS** are not required to obtain
21 a **WATER WITHDRAWAL** permit under this section:

22 (a) A **WITHDRAWAL BY A** community supply ~~owned by a political~~
23 ~~subdivision~~ that holds a permit under the safe drinking water act,
24 1976 PA 399, MCL 325.1001 to 325.1023.

25 (b) ~~A person who makes seasonal~~ **SEASONAL** withdrawals of not
26 more than 2,000,000 gallons of water per day average in any
27 consecutive 90-day period to supply a common distribution system

1 UNLESS THE WITHDRAWALS RESULT IN A DIVERSION.

2 (c) A ~~person engaged in producing~~ **WITHDRAWAL FOR THE**
3 **PRODUCTION OF** bottled drinking water ~~who receives approval~~ **APPROVED**
4 by the department under a water source review conducted under
5 section 17 of the safe drinking water act, 1976 PA 399, MCL
6 325.1017.

7 ~~—— (11) As used in this section:~~

8 ~~—— (a) "Great Lakes and their connecting waterways" means Lakes~~
9 ~~Superior, Michigan, Huron, Erie, and Ontario and their connecting~~
10 ~~waterways including the St. Marys river, Lake St. Clair, the St.~~
11 ~~Clair river, and the Detroit river. For purposes of this section,~~
12 ~~Lakes Huron and Michigan shall be considered a single Great Lake.~~

13 ~~—— (b) "Source watershed" means the watershed from which a~~
14 ~~withdrawal originates. If water is withdrawn directly from a Great~~
15 ~~Lake, then the source watershed shall be considered to be the~~
16 ~~watershed of that Great Lake and its connecting waterways. If water~~
17 ~~is withdrawn from the watershed of a stream that is a direct~~
18 ~~tributary to a Great Lake, then the source watershed shall be~~
19 ~~considered to be the watershed of that Great Lake, with a~~
20 ~~preference for returning water to the direct tributary stream~~
21 ~~watershed from which it was withdrawn.~~

22 Enacting section 1. This amendatory act does not take effect
23 unless all of the following bills of the 94th Legislature are
24 enacted into law:

25 (a) Senate Bill No. 212.

26 (b) Senate Bill No. 723.

27 (c) Senate Bill No. 727.

- 1 (d) Senate Bill No. 858.
- 2 (e) Senate Bill No. 859.
- 3 (f) Senate Bill No. 860.
- 4 (g) House Bill No. 4343.
- 5 (h) House Bill No. 5065.
- 6 (i) House Bill No. 5066.
- 7 (j) House Bill No. 5067.
- 8 (k) House Bill No. 5073.