

HOUSE BILL No. 5065

July 25, 2007, Introduced by Reps. McDowell, Sak, LeBlanc, Alma Smith, Byrnes, Vagnozzi, Wojno, Accavitti, Kathleen Law, Bieda, Polidori, Constan, Robert Jones, Clack, Bauer, Young, Simpson, Donigan, Valentine, Warren, Meadows, Miller, Melton, Hammel, Espinoza, Brown, Lemmons, Meisner, Sheltroun, Hammon, Tobocman, Corriveau, Farrah, Cushingberry, Jackson, Johnson, Coulouris, Brandenburg and Dean and referred to the Committee on Great Lakes and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32701 and 32702 (MCL 324.32701 and 324.32702),
as amended by 2006 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32701. As used in this part:

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

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

6 (ii) Decreasing the level of a body of surface water such that
7 the body of surface water's ability to support characteristic fish
8 populations is functionally impaired.

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

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

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

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

23 (B) Unless reported under a different provision of this
24 subparagraph, for a quarry or mine that holds an authorization to
25 discharge under part 31 that includes a discharge volume, the
26 discharge volume stated in that authorization on ~~the effective date~~
27 ~~of the amendatory act that added this subparagraph~~ **FEBRUARY 28,**

1 2006.

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

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

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

14 (e) "Consumptive use" means that portion of water withdrawn or
15 withheld from the Great Lakes basin and assumed to be lost or
16 otherwise not returned to the Great Lakes basin due to evaporation,
17 incorporation into products or agricultural products, use as part
18 of the packaging of products or agricultural products, or other
19 processes. ~~Consumptive use includes a withdrawal of waters of the~~
20 ~~Great Lakes basin that is packaged within the Great Lakes basin in~~
21 ~~a container of 5.7 gallons (20 liters) or less.~~

22 (f) "Department" means the department of environmental
23 quality.

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

(h) "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 Great Lakes basin into a watershed outside of the Great Lakes basin. ~~Diverted includes a transfer of water withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters).~~ Diverted does not include any of the following:

(i) A consumptive use.

(ii) THE USE OR TRANSPORT OF WATER BY A PERSON FOR HIS OR HER PERSONAL, NONCOMMERCIAL USE.

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

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

(v) A USE THAT IS REGISTERED OR AUTHORIZED UNDER SECTION 17 OF THE SAFE DRINKING WATER ACT, 1976 PA 399, MCL 325.1017.

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

(i) Are environmentally sound.

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

(iii) Are technically feasible and available.

1 (iv) Are economically feasible and cost-effective based on an
2 analysis that considers direct and avoided economic and
3 environmental costs.

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

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

10 ~~(k) "Generally accepted water management practices" means~~
11 ~~standards or guidelines for water use that ensure water is used~~
12 ~~efficiently.~~

13 **(K)** ~~(l)~~ "Great Lakes basin" means the watershed of the Great
14 Lakes and the St. Lawrence river.

15 **(l)** ~~(m)~~ "Great Lakes charter" means the document establishing
16 the principles for the cooperative management of the Great Lakes
17 water resources, signed by the governors and premiers of the Great
18 Lakes region on February 11, 1985.

19 **(M)** ~~(n)~~ "Great Lakes region" means the geographic region
20 composed of the states of Illinois, Indiana, Michigan, Minnesota,
21 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,
22 and the provinces of Ontario and Quebec, Canada.

23 **(N)** ~~(o)~~ "Index flow" means the ~~50%~~ **90%** exceedance flow for the
24 lowest flow month of the flow regime, for the applicable stream
25 reach, as determined over the period of record or extrapolated from
26 analyses of the United States geological survey stream flow gauges
27 in Michigan.

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

5 (P) ~~(q)~~ "New or increased large quantity withdrawal" means ~~a~~ **1**
 6 **OR MORE** new water withdrawal of **WITHDRAWALS BY A PERSON**
 7 **CUMULATIVELY TOTALING** over 100,000 gallons of water per day average
 8 in any consecutive 30-day period or an increase **IN WITHDRAWALS** of
 9 over 100,000 gallons of water per day average in any consecutive
 10 30-day period beyond the baseline capacity of a withdrawal **ON A**
 11 **CONTIGUOUS PARCEL OF PROPERTY.**

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

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

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

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

26 (U) ~~(v)~~ "Waters of the state" means groundwater, lakes,
 27 rivers, and streams and all other watercourses and waters,

1 including the Great Lakes, within the territorial boundaries of the
2 state. Waters of the state do not include drainage ways and ponds
3 designed and constructed solely for wastewater conveyance,
4 treatment, or control.

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

9 Sec. 32702. (1) The legislature finds and declares that:

10 (a) A diversion of water out of the basin of the Great Lakes
11 may impair or destroy the Great Lakes. The legislature further
12 finds that a limitation on such diversions is authorized by and is
13 consistent with the mandate of section 52 of article IV of the
14 state constitution of 1963 that the legislature provide for the
15 protection of the air, water, and other natural resources of the
16 state from pollution, impairment, and destruction.

17 (b) Water use registration and reporting are essential to
18 implementing the principles of the Great Lakes charter and
19 necessary to support the state's opposition to diversion of waters
20 of the Great Lakes basin and to provide a source of information on
21 water use to protect Michigan's rights when proposed water losses
22 affect the level, flow, use, or quality of waters of the Great
23 Lakes basin.

24 (c) The waters of the state are valuable public natural
25 resources held in trust by the state, and the state has a duty as
26 trustee to manage its waters effectively for the use and enjoyment
27 of present and future residents and for the protection of the

1 environment.

2 (d) The waters of the Great Lakes basin are a valuable public
3 natural resource, and the states and provinces of the Great Lakes
4 region and Michigan share a common interest in the preservation of
5 that resource.

6 (e) Any new diversion of waters of the Great Lakes basin for
7 use outside of the Great Lakes basin will have significant economic
8 and environmental impact adversely affecting the use of this
9 resource by the Great Lakes states and Canadian provinces.

10 (f) The continued availability of water for domestic,
11 municipal, industrial, and agricultural water supplies, navigation,
12 hydroelectric power and energy production, recreation, and the
13 maintenance of fish and wildlife habitat and a balanced ecosystem
14 are vital to the future economic health of the states and provinces
15 of the Great Lakes region.

16 (g) Future interbasin diversions and consumptive uses of
17 waters of the Great Lakes basin may have significant adverse
18 impacts upon the environment, economy, and welfare of the Great
19 Lakes region and of this state.

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

23 (i) The waters of the Great Lakes basin are capable of
24 concurrently serving multiple uses, and such multiple uses of water
25 resources for municipal, public, industrial, commercial,
26 agriculture, mining, navigation, energy development and production,
27 recreation, water quality maintenance, and the maintenance of fish

1 and wildlife habitat and a balanced ecosystem and other purposes
2 are encouraged, recognizing that such uses are interdependent and
3 must be balanced.

4 (2) The legislature has the authority under sections 51 and 52
5 of article IV of the state constitution of 1963 to regulate the
6 withdrawal and uses of the waters of the state, including both
7 surface water and groundwater, to promote the public health,
8 safety, and welfare and to protect the natural resources of the
9 state from pollution, impairment, and destruction, subject to
10 constitutional protections against unreasonable or arbitrary
11 governmental action and the taking of property without just
12 compensation. This authority extends to all waters within the
13 territorial boundaries of the state.

14 (3) THE WATER WITHDRAWAL ASSESSMENT TOOL PROVIDED FOR IN
15 SECTION 32722 AND THE PROGRAM TO MONITOR AND REGULATE WATER USE
16 WITHIN THE STATE WILL REQUIRE ADDITIONAL RESOURCES TO ASSURE
17 ACCURACY OF THE ASSESSMENT TOOL AND PROTECTION OF THE WATERS OF THE
18 STATE.

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

22 (a) Senate Bill No. ____ or House Bill No. 5073(request no.
23 00453'07 *).

24 (b) Senate Bill No. ____ or House Bill No. 5066(request no.
25 02362'07).

26 (c) Senate Bill No. ____ or House Bill No. 5067(request no.
27 02363'07).

1 (d) Senate Bill No.____ or House Bill No. 5068(request no.
2 02364'07).

3 (e) Senate Bill No.____ or House Bill No. 5069(request no.
4 02365'07).

5 (f) Senate Bill No.____ or House Bill No. 5070(request no.
6 02366'07).

7 (g) Senate Bill No.____ or House Bill No. 5071(request no.
8 02367'07).

9 (h) Senate Bill No.____ or House Bill No. 5072(request no.
10 02368'07).