

HOUSE BILL No. 5068

July 25, 2007, Introduced by Reps. Coulouris, Sak, LeBlanc, Vagnozzi, Wojno, Bieda, Alma Smith, Byrnes, Accavitti, Kathleen Law, Polidori, Constan, Robert Jones, Clack, Bauer, Simpson, Donigan, Valentine, Warren, Meadows, McDowell, Miller, Young, Melton, Brown, Hammel, Espinoza, Lemmons, Meisner, Sheltroun, Hammon, Tobocman, Corriveau, Farrah, Cushingberry, Jackson, Johnson, 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 32721 and 32723 (MCL 324.32721 and 324.32723),
as added by 2006 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32721. (1) A person shall not make a new or increased
2 large quantity withdrawal from the waters of the state that causes
3 an adverse resource impact to a designated trout stream.

4 (2) Beginning ~~2 years after the effective date of the~~
5 ~~amendatory act that added this section~~ **FEBRUARY 28, 2008**, a person
6 shall not make a new or increased large quantity withdrawal from
7 the waters of the state that causes an adverse resource impact.

8 (3) This section does not apply to the ~~baseline capacity of a~~

~~large quantity withdrawal or a well capable of making a large~~
~~quantity withdrawal that existed on the effective date of the~~
~~amendatory act that added this section~~ **HIGHEST ANNUAL AMOUNT OF**
WATER WITHDRAWN AS REPORTED UNDER THIS PART FOR CALENDAR YEAR 2002,
2003, 2004, 2005, OR 2006.

(4) This section does not apply to a withdrawal that is
utilized solely for fire suppression.

Sec. 32723. (1) Except as provided in subsection (10), 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 ~~2,000,000~~ **1,000,000**
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
withdrawal capacity beyond baseline capacity of more than ~~2,000,000~~
1,000,000 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.~~

(c) A person who ~~develops~~ **PROPOSES TO DEVELOP** withdrawal
capacity to make a new withdrawal of more than ~~5,000,000~~ **2,000,000**
gallons of water per day from the Great Lakes and their connecting
waterways. ~~to supply a common distribution system.~~

(d) A person who ~~develops~~ **PROPOSES TO DEVELOP** increased
withdrawal capacity beyond baseline capacity of more than ~~5,000,000~~
2,000,000 gallons of water per day from the Great Lakes and their

1 connecting waterways. ~~to supply a common distribution system.~~

2 (E) A PERSON WHO PROPOSES TO DEVELOP WITHDRAWAL CAPACITY TO
3 MAKE A NEW OR INCREASED LARGE QUANTITY WITHDRAWAL THAT WOULD RESULT
4 IN MORE THAN A 5% REDUCTION IN FLOW IN A STREAM REACH.

5 (F) A PERSON WHO PROPOSES TO DEVELOP WITHDRAWAL CAPACITY TO
6 MAKE A NEW OR INCREASED LARGE QUANTITY WITHDRAWAL FROM AN AREA
7 DESIGNATED AS A SENSITIVE WATER RESOURCE UNDER SECTION 32722(7) AS
8 REQUIRED BY THE DEPARTMENT.

9 (G) A PERSON WHO PROPOSES TO DEVELOP CAPACITY TO MAKE A NEW OR
10 INCREASED LARGE QUANTITY WITHDRAWAL THAT THE WATER WITHDRAWAL
11 ASSESSMENT TOOL INDICATES IS LIKELY TO CAUSE AN ADVERSE RESOURCE
12 IMPACT.

13 (2) A person shall apply for a permit under this section by
14 submitting an application to the department containing ~~the~~
15 ~~information described in section 32706. In addition, until 5 years~~
16 ~~after the effective date of the amendatory act that added this~~
17 ~~section, the applicant shall submit an~~ ALL OF THE FOLLOWING:

18 (A) A COMPLETE HYDROGEOLOGICAL STUDY AND ASSESSMENT OF WATER
19 SOURCE, NATURAL FEATURES, AND SOILS AFFECTED BY THE WITHDRAWAL.

20 (B) AN ASSESSMENT OF THE WITHDRAWAL'S EFFECTS ON FLOWS AND
21 LEVELS OF GROUNDWATER, SPRINGS, LAKES AND STREAMS, AND WETLANDS, OR
22 NEARBY WELLS. THE ASSESSMENT SHALL INCORPORATE SUFFICIENT BASELINE
23 STAGE AND FLOW DATA, PUMP TESTS OF AT LEAST 7 DAYS IN DURATION,
24 PUMPING RATES, PRECIPITATION, AND RECHARGE INPUT AND OUTPUT DATA.
25 HOWEVER, THE PUMP TESTS SHALL BE CONTINUED FOR A LONGER PERIOD OF
26 TIME IF THE DATA ARE INSUFFICIENT TO CALCULATE OR PREDICT EFFECTS
27 AT THE NEW STEADY STATE BASED ON PROJECTED PUMPING.

1 (C) AN application fee in the amount of ~~\$2,000.00~~ **\$2,500.00**.

2 (3) The department shall transmit water use reporting fees
3 collected under this section to the state treasurer to be credited
4 to the water use protection fund created in section 32714. ~~The~~
5 ~~department shall provide public notice of all applications received~~
6 ~~under this section.~~

7 (4) ~~(3)~~ A permit application is considered to be
8 administratively complete effective 30 days after it is received by
9 the department unless the department notifies the applicant, in
10 writing, during this 30-day period that the application is not
11 administratively complete or that the fee required to be
12 accompanied with the application has not been paid. If the
13 department determines that the application is not administratively
14 complete, the notification shall specify the information necessary
15 to make the application administratively complete. If the
16 department notifies the applicant as provided in this subsection,
17 the 30-day period is tolled until the applicant submits to the
18 department the specified information or fee.

19 (5) ~~(4)~~ **WITHIN 14 DAYS AFTER THE DEPARTMENT DETERMINES THAT AN**
20 **APPLICATION RECEIVED UNDER THIS SECTION IS ADMINISTRATIVELY**
21 **COMPLETE, THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF THE**
22 **APPLICATION. BEFORE MAKING THE DETERMINATION WHETHER OR NOT TO**
23 **ISSUE A PERMIT UNDER THIS SECTION, THE DEPARTMENT SHALL PROVIDE A**
24 **PUBLIC COMMENT PERIOD OF AT LEAST 60 DAYS.** The department shall
25 make a decision whether to grant or deny a permit under this
26 section within ~~120~~ **180** days of receipt of an administratively
27 complete application.

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

~~———— (6) The department shall issue a permit under subsection
(1)(c) or (d) if all of the following conditions are met:~~

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

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

~~———— (c) Subject to section 32726, the withdrawal will be
implemented so as to ensure that it is 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.~~

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

~~———— (e) The applicant has considered voluntary generally accepted
water management practices or environmentally sound and
economically feasible water conservation measures.~~

**(6) IF THE DEPARTMENT DETERMINES THAT AUTHORIZING THE PROPOSED
WITHDRAWAL FOR A LAWFUL USE IS CONSISTENT WITH THE DUTY OF THE
STATE AS TRUSTEE FOR THE WATERS OF THE STATE AND THAT THE PROPOSED
WITHDRAWAL IS IN THE PUBLIC INTEREST, AND THAT THE PROPOSED
WITHDRAWAL IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS PART, THE**

1 DEPARTMENT SHALL ISSUE A PERMIT UNDER THIS SECTION.

2 (7) THE DEPARTMENT SHALL NOT AUTHORIZE A PROPOSED WITHDRAWAL
3 AS CONSISTENT WITH THE DUTY OF THE STATE AS TRUSTEE FOR THE WATERS
4 OF THE STATE AND IN THE PUBLIC INTEREST UNDER SUBSECTION (6) UNLESS
5 IT DETERMINES, AT A MINIMUM, THAT THE PROPOSED USE OF THE
6 WITHDRAWAL WILL INCLUDE ENVIRONMENTALLY SOUND AND ECONOMICALLY
7 FEASIBLE WATER CONSERVATION MEASURES.

8 (8) THE DEPARTMENT SHALL NOT AUTHORIZE A PROPOSED WITHDRAWAL
9 AS CONSISTENT WITH THE STATE'S DUTY AS TRUSTEE FOR THE WATERS OF
10 THE STATE AND IN THE PUBLIC INTEREST IF IT DETERMINES ANY OF THE
11 FOLLOWING:

12 (A) THE PROPOSED WITHDRAWAL WILL CAUSE INDIVIDUAL OR
13 CUMULATIVE ADVERSE RESOURCE IMPACTS OR OTHERWISE RESULT IN AN
14 IMPAIRMENT OR UNACCEPTABLE DISRUPTION TO AQUATIC RESOURCES.
15 CUMULATIVE ADVERSE RESOURCE IMPACTS UNDER THIS SUBDIVISION SHALL BE
16 EVALUATED BY THE DEPARTMENT BASED UPON AVAILABLE INFORMATION
17 GATHERED BY THE DEPARTMENT.

18 (B) THE PROPOSED WITHDRAWAL WILL ADVERSELY AFFECT OR INTERFERE
19 WITH RIPARIAN RIGHTS OR THE PUBLIC TRUST IN ANY GROUNDWATER OR
20 SURFACE WATERS FROM WHICH OR INTO WHICH THE WATER TO BE WITHDRAWN
21 WOULD OTHERWISE FLOW.

22 (C) THE PROPOSED WITHDRAWAL WILL INTERFERE WITH THE PROPERTY
23 RIGHTS OF ANOTHER PERSON TO LAWFUL USE OF WATER.

24 (D) THE PROPOSED WITHDRAWAL DOES NOT COMPLY WITH OTHER
25 APPLICABLE LAW.

26 (9) IN OTHERWISE DETERMINING WHETHER THE PROPOSED WITHDRAWAL
27 IS IN THE PUBLIC INTEREST, THE DEPARTMENT SHALL CONSIDER, AT A

1 MINIMUM, ALL OF THE FOLLOWING:

2 (A) WHETHER OR NOT THE WATER WITHDRAWN WILL BE USED WITHIN THE
3 WATERSHED FROM WHICH IT IS WITHDRAWN.

4 (B) THE IMPACT OF THE WITHDRAWAL ON OTHER USES OF THE
5 GROUNDWATER OR SURFACE WATERS FROM WHICH OR INTO WHICH THE WATER TO
6 BE WITHDRAWN WOULD OTHERWISE FLOW, INCLUDING USES FOR RECREATION,
7 FISH AND WILDLIFE, AESTHETICS, LOCAL GOVERNMENT, AGRICULTURE,
8 COMMERCE, AND INDUSTRY.

9 (C) THE IMPACT OF THE WITHDRAWAL ON WATER QUALITY.

10 (D) WHETHER THE PROPOSED WITHDRAWAL OR USE WILL PREVENT OR
11 MINIMIZE WASTE OF WATER.

12 (E) WHETHER THE PROPOSED WITHDRAWAL WILL IMPAIR THE PHYSICAL
13 CHARACTER OF A STREAM, INCLUDING MATERIALLY DIMINISHING THE FLOW,
14 LEVEL, OR WIDTH OF A LAKE OR STREAM.

15 (10) A DETERMINATION UNDER SUBSECTION (6) DOES NOT LIMIT THE
16 RIGHT OF A PERSON WHOSE INTERESTS HAVE BEEN OR WILL BE ADVERSELY
17 AFFECTED TO INSTITUTE PROCEEDINGS IN ANY CIRCUIT COURT AGAINST ANY
18 PERSON TO PROTECT SUCH INTERESTS.

19 (11) THE DEPARTMENT MAY IMPOSE CONDITIONS ON A PERMIT ISSUED
20 UNDER THIS SECTION AS NECESSARY TO ENSURE THAT THE REQUIREMENTS OF
21 THIS PART ARE MET. THESE CONDITIONS MAY INCLUDE, BUT ARE NOT
22 LIMITED TO, REQUIRING A PERMITTEE TO GAUGE AND REPORT THE FLOW OF A
23 STREAM REACH AND REQUIRING A REDUCTION OF A WITHDRAWAL IF STREAM
24 FLOW FALLS BELOW LEVELS SPECIFIED IN THE PERMIT.

25 (12) ~~(7)~~ A permit issued under part 31 pursuant to 33 USC
26 1326(b) shall be considered sufficient to demonstrate that there
27 will not be an adverse resource impact under section 32721. and

1 ~~satisfies the conditions for a permit under this section. Upon~~
2 ~~receipt of a permit application and evidence that the applicant~~
3 ~~holds a part 31 permit described in this subsection, the department~~
4 ~~shall grant the applicant a permit under this subsection. HOWEVER,~~
5 **THE DEPARTMENT SHALL DETERMINE WHETHER ALL OTHER REQUIREMENTS OF**
6 **THIS SECTION HAVE BEEN MET PRIOR TO ISSUING A PERMIT TO SUCH A**
7 **FACILITY.**

8 **(13) A PERMIT ISSUED UNDER THIS SECTION SHALL BE VALID FOR NOT**
9 **MORE THAN 5 YEARS. FOR PERMIT REISSUANCE, THE DEPARTMENT SHALL**
10 **ESTABLISH A STREAMLINED PERMIT RENEWAL PROCESS THAT ALLOWS A PERMIT**
11 **HOLDER TO DEMONSTRATE THAT THERE HAS BEEN NO SIGNIFICANT CHANGE IN**
12 **THE CONDITIONS ON WHICH THE PREVIOUS PERMIT APPROVAL WAS BASED.**

13 **(14) ~~(8)~~** The department may revoke a permit issued under this
14 section if the department determines following a hearing, based
15 upon ~~clear and convincing scientific~~ **A PREPONDERANCE OF THE**
16 evidence, that the withdrawal is causing an adverse resource
17 impact.

18 **(15) ~~(9)~~ A AN INTERESTED** person who is aggrieved by a
19 ~~determination of the department under this section related to a~~
20 ~~permit~~ may file a sworn petition with the department setting forth
21 the grounds and reasons for the complaint and asking for a
22 contested case hearing on the matter pursuant to the administrative
23 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A
24 petition filed more than 60 days after action on the permit may be
25 rejected by the department as being untimely. The department shall
26 issue a final decision on a petition for a contested case hearing
27 within 6 months after receiving the petition. A determination,

1 action, or inaction by the department following a contested case
2 hearing is subject to judicial review as provided in the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328.

5 (16) ~~(10)~~—The following are not required to obtain a permit
6 under this section:

7 (a) A community supply owned by a political subdivision that
8 holds a permit under the safe drinking water act, 1976 PA 399, MCL
9 325.1001 to 325.1023, **IS NOT REQUIRED TO OBTAIN A PERMIT UNDER THIS**
10 **SECTION.**

11 ~~—— (b) A person who makes seasonal withdrawals of not more than~~
12 ~~2,000,000 gallons of water per day average in any consecutive 90-~~
13 ~~day period to supply a common distribution system.~~

14 (B) ~~(c)~~—A person engaged in producing bottled drinking water
15 who receives approval by the department ~~under a water source review~~
16 ~~conducted~~ under section 17 of the safe drinking water act, 1976 PA
17 399, MCL 325.1017.

18 (17) ~~(11)~~—As used in this section:

19 (a) "Great Lakes and their connecting waterways" means Lakes
20 Superior, Michigan, Huron, Erie, and Ontario and their connecting
21 waterways including the St. Marys river, Lake St. Clair, the St.
22 Clair river, and the Detroit river. For purposes of this section,
23 Lakes Huron and Michigan shall be considered a single Great Lake.

24 (b) "Source watershed" means the watershed from which a
25 withdrawal originates. If water is withdrawn directly from a Great
26 Lake, then the source watershed shall be considered to be the
27 watershed of that Great Lake and its connecting waterways. If water

1 is withdrawn from the watershed of a stream that is a direct
2 tributary to a Great Lake, then the source watershed shall be
3 considered to be the watershed of that Great Lake, with a
4 preference for returning water to the direct tributary stream
5 watershed from which it was withdrawn.

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

9 (a) Senate Bill No.____ or House Bill No. 5073(request no.
10 00453'07 *).

11 (b) Senate Bill No.____ or House Bill No. 5065(request no.
12 02361'07).

13 (c) Senate Bill No.____ or House Bill No. 5066(request no.
14 02362'07).

15 (d) Senate Bill No.____ or House Bill No. 5067(request no.
16 02363'07).

17 (e) Senate Bill No.____ or House Bill No. 5069(request no.
18 02365'07).

19 (f) Senate Bill No.____ or House Bill No. 5070(request no.
20 02366'07).

21 (g) Senate Bill No.____ or House Bill No. 5071(request no.
22 02367'07).

23 (h) Senate Bill No.____ or House Bill No. 5072(request no.
24 02368'07).