

Act No. 180  
Public Acts of 2008  
Approved by the Governor  
July 9, 2008  
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**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

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

# **ENROLLED HOUSE BILL No. 5069**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," 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:*

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

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

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

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

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

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

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

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

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

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

(j) The waters of the Great Lakes basin are interconnected and part of a single hydrologic system.

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

Sec. 32703. Subject to section 32704, a diversion of the waters of the state out of the Great Lakes basin is prohibited.

Sec. 32705. (1) Except as otherwise provided in this section, the owner of real property who intends to develop capacity on that property to make a new or increased large quantity withdrawal from the waters of this state shall register the withdrawal with the department after using the assessment tool, if required under this part, and prior to beginning that withdrawal. A registration under this section may be made using the online registration process.

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

(a) Subject to subdivision (c), a person who has previously registered for that property under this part or the owner of real property containing the capacity to make a withdrawal that was previously requested under this part, unless the property owner develops new or increased withdrawal capacity on the property of an additional 100,000 gallons of water per day from the waters of the state.

(b) A community supply required to obtain a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(c) A person required to obtain a permit under section 32723.

(d) The owner of a noncommercial well located on the following residential property:

(i) Single-family residential property unless that well is a lake augmentation well.

(ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

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

(4) A registration under this section by the owner of a farm in which the withdrawal is intended for an agricultural purpose, including irrigation for an agricultural purpose, may be submitted to the department of agriculture instead of the department.

(5) A registration submitted under this section that is not submitted via the online registration process shall be on a form provided by the department or the department of agriculture, as appropriate.

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

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

(8) Unless a property owner develops the capacity to make the new or increased large quantity withdrawal within 18 months after the property owner registers under subsection (1), the registration is no longer valid.

Sec. 32706. (1) Not later than 1 year after the effective date of the amendatory act that amended this section, the department shall develop and implement an internet-based online registration process that may be used for registrations under section 32705. The online registration process shall be designed to work in conjunction with the assessment tool.

(2) Each registration under this part shall include both of the following:

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

(i) The place and source of the proposed withdrawal.

(ii) The location of any discharge or return flow associated with the proposed withdrawal.

(iii) The location and nature of the proposed water use.

(iv) The capacity of the equipment used for making the proposed withdrawal.

(v) The estimated average annual and monthly volumes and rate of the proposed withdrawal.

(vi) The 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 (13), the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who proposes to develop withdrawal capacity to make a new withdrawal of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(b) A person who proposes to develop increased withdrawal capacity beyond baseline capacity of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(c) A person who proposes to develop withdrawal capacity to make a new or increased large quantity withdrawal of more than 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system that a site-specific review has determined is a zone C withdrawal.

(d) A person who proposes to develop a new or increased withdrawal capacity that will result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

(2) A person shall apply for a water withdrawal permit under this section by submitting an application to the department containing the information described in section 32706c(1)(a) to (e) and an evaluation of existing hydrological and hydrogeological conditions. If the applicant proposes to undertake a preventative measure along with the withdrawal, the property owner shall provide the department with a detailed description of the preventative measure and relevant information as to how the preventative measure will be implemented. In addition, the applicant shall submit an application fee in the amount of \$2,000.00. The department shall transmit application fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(3) 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) The department shall make a decision whether to grant or deny a water withdrawal permit under this section within 120 days of receipt of an administratively complete application.

(6) The department shall issue a water withdrawal permit under subsection (1)(a), (b), or (c) 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) For permit applications received on or after January 1, 2009, the applicant has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector under section 32708a or has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

(f) The department determines that the proposed withdrawal will not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

(7) The department shall issue a water withdrawal permit under subsection (1)(d) if the transfer complies with section 4.9 of the compact.

(8) In reviewing a proposed preventative measure, the department shall consider the effect of the preventative measure on preventing an adverse resource impact by diminishing the effect of the withdrawal on stream or river flow or the temperature regime of the stream or river. If the department approves a preventative measure in conjunction with a water withdrawal permit under this section, the department shall enter into a legally enforceable implementation schedule for completion of the preventative measure.

(9) A proposed use for which a water withdrawal permit is issued under this section shall be considered to satisfy the requirements of section 4.11 of the compact.

(10) A permit issued under part 31 pursuant to 33 USC 1326(b) shall be considered sufficient to demonstrate that there will not be an adverse resource impact under section 32721 and satisfies the conditions for a water withdrawal permit under this section. Upon receipt of an application under this section and evidence that the applicant holds a part 31 permit described in this subsection, the department shall grant the applicant a water withdrawal permit under this subsection.

(11) The department may revoke a water withdrawal permit issued under this section if the department determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

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

(13) The following withdrawals are not required to obtain a water withdrawal permit under this section:

(a) A withdrawal by a community supply that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

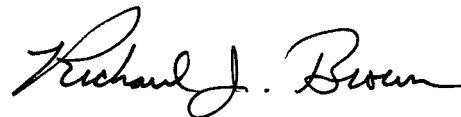
(b) Seasonal withdrawals of not more than 2,000,000 gallons of water per day average in any consecutive 90-day period to supply a common distribution system unless the withdrawals result in a diversion.

(c) A withdrawal for the production of bottled drinking water approved by the department under a water source review conducted under section 17 of the safe drinking water act, 1976 PA 399, MCL 325.1017.

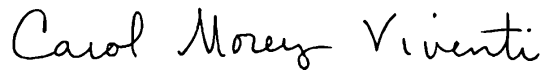
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 212.
- (b) Senate Bill No. 723.
- (c) Senate Bill No. 727.
- (d) Senate Bill No. 858.
- (e) Senate Bill No. 859.
- (f) Senate Bill No. 860.
- (g) House Bill No. 4343.
- (h) House Bill No. 5065.
- (i) House Bill No. 5066.
- (j) House Bill No. 5067.
- (k) House Bill No. 5073.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved .....

.....  
Governor