

SENATE BILL NO. 849

March 17, 2020, Introduced by Senator HOLLIER and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 32723 (MCL 324.32723), as amended by 2008 PA
180, and by adding section 1708.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1708. (1) Notwithstanding any authorization or permit
2 granted under a zoning ordinance for the extraction of aggregates
3 by mining, the extraction of aggregates by mining shall not
4 pollute, impair, or destroy natural resources.

(2) Subsection (1) is subject to enforcement under this part.

(3) The excavation and removal of aggregates and of associated overburden does not, of itself, constitute pollution, impairment, or destruction of those natural resources.

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.

(e) A person who proposes to use the water withdrawal for the extraction of aggregates by mining.

(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)~~ **32706c(4) (a) to (e)** and an evaluation of existing hydrological and

1 hydrogeological conditions. If the applicant proposes to undertake
2 a preventative measure along with the withdrawal, the property
3 owner shall provide the department with a detailed description of
4 the preventative measure and relevant information as to how the
5 preventative measure will be implemented. In addition, the
6 applicant shall submit an application fee in the amount of
7 \$2,000.00. The department shall transmit application fees collected
8 under this section to the state treasurer to be credited to the
9 water use protection fund created in section 32714.

10 (3) An application submitted under subsection (2) is
11 considered to be administratively complete effective 30 days after
12 it is received by the department unless the department notifies the
13 applicant, in writing, during this 30-day period that the
14 application is not administratively complete or that the fee
15 required to ~~be accompanied with~~ **accompany** the application has not
16 been paid. If the department determines that the application is not
17 administratively complete, the notification shall specify the
18 information necessary to make the application administratively
19 complete. If the department notifies the applicant as provided in
20 this subsection, the 30-day period is tolled until the applicant
21 submits to the department the specified information or fee.

22 (4) The department shall provide public notification of its
23 receipt of ~~applications~~ **an application** under this section and shall
24 provide a public comment period of not less than 45 days before
25 ~~applications are~~ **an application is** acted upon under subsection (5).

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

29 (6) The department shall issue a water withdrawal permit under

1 subsection (1)(a), (b), ~~or (c)~~, **or (e)** if all of the following
2 conditions are met:

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

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

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

15 (d) The proposed use is reasonable under common law principles
16 of water law in ~~Michigan~~. **this state.**

17 ~~(e) For permit applications received on or after January 1,~~
18 ~~2009, the~~ **The** applicant has self-certified that he or she is in
19 compliance with environmentally sound and economically feasible
20 water conservation measures developed by the applicable water
21 user's sector under section 32708a or has self-certified that he or
22 she is in compliance with environmentally sound and economically
23 feasible water conservation measures developed for the water use
24 associated with that specific withdrawal.

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

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

1 compact.

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

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

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

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

25 (12) A person who is aggrieved by a determination of the
26 department under this section related to a water withdrawal permit
27 may file a sworn petition with the department setting forth the
28 grounds and reasons for the complaint and asking for a contested
29 case hearing on the matter pursuant to the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A
2 petition filed more than 60 days after action on the water
3 withdrawal permit may be rejected by the department as being
4 untimely. The department shall issue a final decision on a petition
5 for a contested case hearing within 6 months after receiving the
6 petition. A determination, action, or inaction by the department
7 following a contested case hearing is subject to judicial review as
8 provided in the administrative procedures act of 1969, 1969 PA 306,
9 MCL 24.201 to 24.328.

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

12 (a) A withdrawal by a community supply that holds a permit
13 under the safe drinking water act, 1976 PA 399, MCL 325.1001 to
14 325.1023.

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

19 (c) A withdrawal for the production of bottled drinking water
20 approved by the department under a water source review conducted
21 under section 17 of the safe drinking water act, 1976 PA 399, MCL
22 325.1017.

23 Enacting section 1. This amendatory act does not take effect
24 unless Senate Bill No. 431 of the 100th Legislature is enacted into
25 law.