

SENATE BILL NO. 988

March 24, 2022, Introduced by Senator IRWIN and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 32701 (MCL 324.32701), as amended by 2008 PA
179.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 32701. (1) As used in this part:
- 2 (a) "Adverse resource impact" means any of the following:
- 3 ~~(i) Until February 1, 2009, decreasing the flow of a river or~~
- 4 ~~stream by part of the index flow such that the river's or stream's~~

1 ~~ability to support characteristic fish populations is functionally~~
2 ~~impaired.~~

3 ~~(i) (ii) Beginning February 1, 2009, subject~~ **Subject** to
4 subparagraph ~~(vi), (v)~~, decreasing the flow of a cold river system
5 by part of the index flow as follows:

6 (A) For a cold stream, the withdrawal will result in a 3% or
7 more reduction in the density of thriving fish populations as
8 determined by the thriving fish curve.

9 (B) For a cold small river, the withdrawal will result in a 1%
10 or more reduction in the density of thriving fish populations as
11 determined by the thriving fish curve.

12 ~~(ii) (iii) Beginning February 1, 2009, subject~~ **Subject** to
13 subparagraph ~~(vi), (v)~~, decreasing the flow of a cold-transitional
14 river system by part of the index flow such that the withdrawal
15 will result in a 5% or more reduction in the density of thriving
16 fish populations as determined by the thriving fish curve.

17 ~~(iii) (iv) Beginning February 1, 2009, subject~~ **Subject** to
18 subparagraph ~~(vi), (v)~~, decreasing the flow of a cool river system
19 by part of the index flow as follows:

20 (A) For a cool stream, the withdrawal will result in a 10% or
21 more reduction in the abundance of characteristic fish populations
22 as determined by the characteristic fish curve.

23 (B) For a cool small river, the withdrawal will result in a
24 15% or more reduction in the density of thriving fish populations
25 as determined by the thriving fish curve.

26 (C) For a cool large river, the withdrawal will result in a
27 12% or more reduction in the density of thriving fish populations
28 as determined by the thriving fish curve.

29 ~~(iv) (v) Beginning February 1, 2009, subject~~ **Subject** to

subparagraph ~~(vi)~~, ~~(v)~~, decreasing the flow of a warm river system by part of the index flow as follows:

(A) For a warm stream, the withdrawal will result in a 5% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a warm small river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(C) For a warm large river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

~~(v)~~ ~~(vi)~~ Beginning February 1, 2009, decreasing **Decreasing** the flow of a stream or river by more than 25% of its index flow.

~~(vi)~~ ~~(vii)~~ Decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired. As used in this subparagraph, lake or pond does not include a retention pond or other artificially created surface water body.

(b) "Agricultural purpose" means the agricultural production of plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds,

1 grasses, nursery stock, trees and tree products, mushrooms, and
2 other similar products, or any other product, as determined by the
3 commission of agriculture **and rural development**, that incorporates
4 the use of food, feed, fiber, or fur.

5 (c) "Assessment tool" means the water withdrawal assessment
6 tool provided for in section 32706a.

7 (d) "Baseline capacity", subject to subsection (2), means any
8 of the following, ~~which shall be~~ **and is** considered **to be** the
9 existing withdrawal approval amount under section 4.12.2 of the
10 compact:

11 (i) The following applicable withdrawal capacity as reported to
12 the department or the department of agriculture **and rural**
13 **development**, as appropriate, by the person making the withdrawal in
14 the annual report submitted under section 32707 not later than
15 April 1, 2009 or in the water use conservation plan submitted under
16 section 32708 not later than April 1, 2009:

17 (A) Unless reported under a different provision of this
18 subparagraph, for a quarry or mine that holds an authorization to
19 discharge under part 31 that includes a discharge volume, the
20 discharge volume stated in that authorization on February 28, 2006.

21 (B) The system capacity used or developed to make a withdrawal
22 on February 28, 2006, if the system capacity and a description of
23 the system capacity are included in an annual report that is
24 submitted under this part not later than April 1, 2009.

25 (ii) If the person making the withdrawal does not report under
26 subparagraph (i), the highest annual amount of water withdrawn as
27 reported under this part for calendar year 2002, 2003, 2004, or
28 2005. However, for a person ~~who~~ **that** is required to report ~~by~~
29 ~~virtue of the~~ **under the** 2008 **PA 180** amendments to section

1 32705(2)(d), baseline capacity means the person's withdrawal
2 capacity as reported in the April 1, 2009 annual report submitted
3 under section 32707.

4 (iii) For a community supply, the total designed withdrawal
5 capacity for the community supply under the safe drinking water
6 act, 1976 PA 399, MCL 325.1001 to 325.1023, on February 28, 2006 as
7 reported to the department in a report submitted not later than
8 April 1, 2009.

9 (e) "Characteristic fish curve" means a fish functional
10 response curve that describes the abundance of characteristic fish
11 populations in response to reductions in index flow as published in
12 the ~~document entitled~~ "Report to the Michigan Legislature in
13 response to 2006 Public Act 34" by the former groundwater
14 conservation advisory council dated July 2007, **and** which is
15 incorporated by reference.

16 (f) "Characteristic fish population" means the fish species,
17 including thriving fish, typically found at relatively high
18 densities in stream reaches having specific drainage area, index
19 flow, and summer temperature characteristics.

20 (g) "Cold river system" means a stream or small river that has
21 the appropriate summer water temperature that, based on statewide
22 averages, sustains a fish community composed predominantly of cold-
23 water fish species, and where small increases in water temperature
24 will not cause a decline in these populations, as determined by a
25 scientific methodology adopted by order of the commission.

26 (h) "Cold-transitional river system" means a stream or river
27 that has the appropriate summer water temperature that, based on
28 statewide averages, sustains a fish community composed
29 predominantly of cold-water fish species, and where small increases

1 in water temperature will cause a decline in the proportion of
2 cold-water species, as determined by a scientific methodology
3 adopted by order of the commission.

4 (i) "Community supply" means that term as ~~it is~~ defined in
5 section 2 of the safe drinking water act, 1976 PA 399, MCL
6 325.1002.

7 (j) "Compact" means the Great Lakes-St. Lawrence ~~river~~ **River**
8 basin water resources compact provided for in part 342.

9 (k) "Consumptive use" means that portion of water withdrawn or
10 withheld from the Great Lakes basin and assumed to be lost or
11 otherwise not returned to the Great Lakes basin due to evaporation,
12 incorporation into products or agricultural products, use as part
13 of the packaging of products or agricultural products, or other
14 processes. ~~Consumptive use includes a withdrawal of waters of the~~
15 ~~Great Lakes basin that is packaged within the Great Lakes basin in~~
16 ~~a container of 5.7 gallons (20 liters) or less and is bottled~~
17 ~~drinking water as defined in the food code, 2005 recommendations of~~
18 ~~the food and drug administration of the United States public health~~
19 ~~service.~~

20 (l) "Cool river system" means a stream or river that has the
21 appropriate summer water temperature that, based on statewide
22 averages, sustains a fish community composed mostly of warm-water
23 fish species, but also contains some cool-water species or cold-
24 water species, or both, as determined by a scientific methodology
25 adopted by order of the commission.

26 (m) "Council" means the Great Lakes-St. Lawrence ~~river~~ **River**
27 basin water resources council created in the compact.

28 (n) "Department" means the department of ~~environmental~~
29 ~~quality~~ **environment, Great Lakes, and energy.**

1 (o) "Designated trout stream" means a trout stream identified
2 ~~on the document entitled in the~~ "Designated Trout Streams for the
3 State of Michigan", as issued under order of the director of the
4 department of natural resources, FO-210.04, on October 10, 2003.

5 (p) "Diversion" means a transfer of water from the Great Lakes
6 basin into another watershed, or from the watershed of 1 of the
7 Great Lakes into that of another by any means of transfer,
8 including, but not limited to, a pipeline, canal, tunnel, aqueduct,
9 channel, modification of the direction of a water course, tanker
10 ship, tanker truck, or rail tanker but does not apply to water that
11 is used in the Great Lakes basin or a Great Lake watershed to
12 manufacture or produce a product that is then transferred out of
13 the Great Lakes basin or watershed. Diverted has a corresponding
14 meaning. Diversion includes a transfer of water withdrawn from the
15 waters of the Great Lakes basin that is removed from the Great
16 Lakes basin in a container. ~~greater than 5.7 gallons (20 liters).~~
17 Diversion does not include any of the following:

18 (i) A consumptive use.

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

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

25 (iv) A transfer of water from a Great Lake watershed to the
26 watershed of its connecting waterways.

27 (q) "Environmentally sound and economically feasible water
28 conservation measures" means those measures, methods, technologies,
29 or practices for efficient water use and for reduction of water

1 loss and waste or for reducing a withdrawal, consumptive use, or
 2 diversion that meet all of the following:

3 (i) Are environmentally sound.

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

5 (iii) Are technically feasible and available.

6 (iv) Are economically feasible and cost-effective based on an
 7 analysis that considers direct and avoided economic and
 8 environmental costs.

9 (v) Consider the particular facilities and processes involved,
 10 taking into account the environmental impact, the age of equipment
 11 and facilities involved, the process employed, energy impacts, and
 12 other appropriate factors.

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

15 (s) "Flow-based safety factor" means a protective measure of
 16 the assessment tool that reduces the portion of index flow
 17 available for a withdrawal to 1/2 of the index flow for the purpose
 18 of minimizing the risk of adverse resource impacts caused by
 19 statistical uncertainty.

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

25 (u) "Great Lakes basin" means the watershed of the Great Lakes
 26 and ~~the~~ St. Lawrence ~~river.~~ **River**.

27 (v) "Great Lakes charter" means the document establishing the
 28 principles for the cooperative management of the Great Lakes water
 29 resources, signed by the governors and premiers of the Great Lakes

1 region on February 11, 1985.

2 (w) "Great Lakes region" means the geographic region composed
3 of the states of Illinois, Indiana, Michigan, Minnesota, New York,
4 Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the
5 provinces of Ontario and Quebec, Canada.

6 (x) "Index flow" means the 50% exceedance flow for the lowest
7 summer flow month of the flow regime, for the applicable stream
8 reach, as determined over the period of record or extrapolated from
9 analyses of the United States ~~geological survey~~ **Geological Survey**
10 flow gauges in ~~Michigan~~ **this state**. Beginning on October 1, 2008,
11 index flow ~~shall~~ **must** be calculated as of that date.

12 (y) "Intrabasin transfer" means a diversion of water from the
13 source watershed of a Great Lake prior to its use to the watershed
14 of another Great Lake.

15 (z) "Lake augmentation well" means a water well used to
16 withdraw groundwater for the purpose of maintaining or raising
17 water levels of an inland lake or stream as **that term is** defined in
18 section 30101.

19 (aa) "Large quantity withdrawal" means 1 or more cumulative
20 total withdrawals of over 100,000 gallons of water per day average
21 in any consecutive 30-day period that supply a common distribution
22 system.

23 (bb) "Large river" means a river with a drainage area of 300
24 or more square miles.

25 (cc) "New or increased large quantity withdrawal" means a new
26 water withdrawal of over 100,000 gallons of water per day average
27 in any consecutive 30-day period or an increase of over 100,000
28 gallons of water per day average in any consecutive 30-day period
29 beyond the baseline capacity of a withdrawal.

1 (dd) "New or increased withdrawal capacity" means new or
2 additional water withdrawal capacity to supply a common
3 distribution system that is an increase from the person's baseline
4 capacity. New or increased capacity does not include maintenance or
5 replacement of existing withdrawal capacity.

6 (ee) "Online registration process" means the online
7 registration process provided for in section 32706.

8 (ff) "Preventative measure" means an action affecting a stream
9 or river that prevents an adverse resource impact by diminishing
10 the effect of a withdrawal on stream or river flow or the
11 temperature regime of the stream or river.

12 (gg) "Registrant" means a person ~~who~~**that** has registered a
13 water withdrawal under section 32705.

14 (hh) "River" means a flowing body of water with a drainage
15 area of 80 or more square miles.

16 (ii) "Site-specific review" means the department's independent
17 review under section 32706c to determine whether the withdrawal is
18 a zone A, zone B, zone C, or zone D withdrawal and whether a
19 withdrawal is likely to cause an adverse resource impact.

20 (jj) "Small river" means a river with a drainage area of less
21 than 300 square miles.

22 (kk) "Source watershed" means the watershed from which a
23 withdrawal originates. If water is withdrawn directly from a Great
24 Lake, then the source watershed ~~shall be~~**is** considered to be the
25 watershed of that Great Lake and its connecting waterways. If water
26 is withdrawn from the watershed of a direct tributary to a Great
27 Lake, then the source watershed ~~shall be~~**is** considered to be the
28 watershed of that Great Lake and its connecting waterways, with a
29 preference for returning water to the watershed of the direct

1 tributary from which it was withdrawn.

2 (ll) "Stream" means a flowing body of water with a drainage
3 area of less than 80 square miles.

4 (mm) "Stream reach" means a segment of a stream or river.

5 (nn) "Thriving fish curve" means a fish functional response
6 curve that describes the initial decline in density of thriving
7 fish populations in response to reductions in index flow as
8 published in the ~~document entitled~~ "Report to the Michigan
9 Legislature in response to 2006 Public Act 34" by the former
10 groundwater conservation advisory council dated July 2007, which is
11 incorporated by reference.

12 (oo) "Thriving fish population" means the fish species that
13 are expected to flourish at very high densities in stream reaches
14 having specific drainage area, index flow, and summer temperature
15 characteristics.

16 (pp) "Warm river system" means a stream or river that has the
17 appropriate summer water temperature that, based on statewide
18 averages, sustains a fish community composed predominantly of warm-
19 water fish species, as determined by a scientific methodology
20 adopted by order of the commission.

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

25 (rr) "Waters of the state" means groundwater, lakes, rivers,
26 and streams and all other watercourses and waters, including the
27 Great Lakes, within the territorial boundaries of ~~the~~ **this** state.
28 Waters of the state do not include drainage ways and ponds designed
29 and constructed solely for wastewater conveyance, treatment, or

1 control.

2 (ss) "Withdrawal" means the removal of water from surface
3 water or groundwater.

4 (tt) "Zone A withdrawal" means the following:

5 (i) For a cold river system, as follows:

6 (A) For a cold stream, less than a 1% reduction in the density
7 of thriving fish populations as determined by the thriving fish
8 curve.

9 (B) For a cold small river, less than 50% of the withdrawal
10 that would result in an adverse resource impact.

11 (ii) For a cold-transitional river system, there is not a zone
12 A withdrawal.

13 (iii) For a cool river system, as follows:

14 (A) For a cool stream, less than a 10% reduction in the
15 density of thriving fish populations as determined by the thriving
16 fish curve.

17 (B) For a cool small river, less than a 5% reduction in the
18 density of thriving fish populations as determined by the thriving
19 fish curve.

20 (C) For a cool large river, less than an 8% reduction in the
21 density of thriving fish populations as determined by the thriving
22 fish curve.

23 (iv) For a warm river system, less than a 10% reduction in the
24 density of thriving fish populations as determined by the thriving
25 fish curve.

26 (uu) "Zone B withdrawal" means the following:

27 (i) There is not a zone B withdrawal for a cold stream or small
28 river.

29 (ii) For a cold-transitional river system, less than a 5%

1 reduction in the density of thriving fish populations as determined
2 by the thriving fish curve.

3 (iii) For a cool river system, as follows:

4 (A) For a cool stream, a 10% or more but less than a 20%
5 reduction in the density of thriving fish populations as determined
6 by the thriving fish curve.

7 (B) For a cool small river, a 5% or more but less than a 10%
8 reduction in the density of thriving fish populations as determined
9 by the thriving fish curve.

10 (C) For a cool large river, an 8% or more but less than a 10%
11 reduction in the density of thriving fish populations as determined
12 by the thriving fish curve.

13 (iv) For a warm river system, as follows:

14 (A) For a warm stream, a 10% or more but less than a 15%
15 reduction in the density of thriving fish populations as determined
16 by the thriving fish curve.

17 (B) For a warm small river or a warm large river, a 10% or
18 more but less than a 20% reduction in the density of thriving fish
19 populations as determined by the thriving fish curve.

20 (vv) "Zone C withdrawal" means the following as long as the
21 withdrawal will not decrease the flow of a stream or river by more
22 than 25% of its index flow:

23 (i) For a cold river system, as follows:

24 (A) For a cold stream, a 1% or more but less than a 3%
25 reduction in the density of thriving fish populations as determined
26 by the thriving fish curve.

27 (B) For a cold small river, 50% or more of the withdrawal that
28 would result in an adverse resource impact but less than a 1%
29 reduction in the density of thriving fish populations as determined

1 by the thriving fish curve.

2 (ii) There is not a zone C withdrawal for a cold-transitional
3 river system.

4 (iii) For a cool river system, as follows:

5 (A) For a cool stream, a 20% or more reduction in the density
6 of thriving fish populations as determined by the thriving fish
7 curve but less than a 10% reduction in the abundance of
8 characteristic fish populations as determined by the characteristic
9 fish curve.

10 (B) For cool small rivers, a 10% or more but less than a 15%
11 reduction in the density of thriving fish populations as determined
12 by the thriving fish curve.

13 (C) For cool large rivers, a 10% or more but less than a 12%
14 reduction in the density of thriving fish populations as determined
15 by the thriving fish curve.

16 (iv) For warm river systems, as follows:

17 (A) For warm streams, a 15% or more reduction in the density
18 of thriving fish populations as determined by the thriving fish
19 curve but less than a 5% reduction in the abundance of
20 characteristic fish populations as determined by the characteristic
21 fish curve.

22 (B) For warm small rivers and warm large rivers, a 20% or more
23 reduction in the density of thriving fish populations as determined
24 by the thriving fish curve but less than a 10% reduction in the
25 abundance of characteristic fish populations as determined by the
26 characteristic fish curve.

27 (ww) "Zone D withdrawal" means ~~beginning February 1, 2009,~~ a
28 withdrawal that is likely to cause an adverse resource impact.

29 (2) For purposes of determining baseline capacity, a person

1 ~~who~~**that** replaces ~~his or her~~ surface water withdrawal capacity with
2 the same amount of groundwater withdrawal capacity from the
3 drainage area of the same stream reach may retain the baseline
4 capacity established under this section.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.