

HOUSE BILL No. 5368

October 26, 2005, Introduced by Reps. Espinoza, Murphy, Anderson, Gillard, Alma Smith, Whitmer, Byrum, Kathleen Law, Meisner, Wojno, Bieda, Bennett, Sak, Angerer, Gleason, Kehrl, Polidori, Gonzales, Donigan, Farrah, Mayes, Clemente, Vagnozzi, Leland, Tobocman, Sheltroun, Cushingberry, Lemmons, Jr., Miller, Brandenburg, Byrnes, Hopgood, McDowell, Gaffney, Stewart, David Law, Kooiman, Nofs and Lemmons, III and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding section 32704a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 32704A. (1) THE GOVERNOR SHALL ESTABLISH A PUBLIC COMMENT**
2 **PERIOD WITH REGARD TO A PROPOSAL SUBJECT TO 42 USC 1962D-20 TO**
3 **DIVERT OR EXPORT WATER FROM THE GREAT LAKES OR FROM A TRIBUTARY OF**
4 **THE GREAT LAKES OUTSIDE OF THE GREAT LAKES BASIN IF ANY OF THE**
5 **FOLLOWING OCCUR:**

6 **(A) NOTICE OF A PROPOSAL IS RECEIVED FROM ANOTHER GOVERNOR**
7 **UNDER 42 USC 1962D-20.**

8 **(B) THE GOVERNOR HAS RECEIVED A REQUEST FROM ANOTHER STATE TO**

1 EXERCISE HIS OR HER AUTHORITY UNDER 42 USC 1962D-20 TO PROHIBIT THE
2 DIVERSION OR EXPORT.

3 (C) THE GOVERNOR HAS RECEIVED A PETITION FROM 25 OR MORE
4 RESIDENTS OF THE STATE ASKING THE GOVERNOR TO EXERCISE HIS OR HER
5 AUTHORITY UNDER 42 USC 1962D-20 TO PROHIBIT THE DIVERSION OR
6 EXPORT.

7 (2) IF THE GOVERNOR DETERMINES THAT A PUBLIC COMMENT PERIOD
8 MAY BE REQUIRED UNDER SUBSECTION (1), THE GOVERNOR SHALL NOTIFY THE
9 DEPARTMENT TO EVALUATE THE PROPOSAL. UPON RECEIPT OF NOTIFICATION
10 FROM THE GOVERNOR, THE DEPARTMENT SHALL IDENTIFY WHETHER SUFFICIENT
11 INFORMATION HAS ACCOMPANIED THE REQUEST OR IS OTHERWISE AVAILABLE
12 TO PERMIT AN EVALUATION BY THE DEPARTMENT. IF THE DEPARTMENT
13 DETERMINES THAT A PUBLIC COMMENT PERIOD IS REQUIRED, THE DEPARTMENT
14 SHALL PUBLISH A PUBLIC NOTICE CONTAINING ALL OF THE FOLLOWING
15 INFORMATION AND SHALL PROVIDE THIS INFORMATION TO ANY PERSON UPON
16 REQUEST:

17 (A) THE STATE REQUESTING APPROVAL FOR THE DIVERSION OR EXPORT,
18 THE NAME OF THE PERSON SUBMITTING THE REQUEST, AND THE PERSON'S
19 AFFILIATION WITH THE STATE.

20 (B) A DESCRIPTION OF THE PROPOSED DIVERSION OR EXPORT,
21 INCLUDING THE LOCATION AND SIZE OF THE DIVERSION OR EXPORT, AND THE
22 STATE TO WHICH THE WATER WILL BE DIVERTED OR EXPORTED.

23 (C) THE NAME AND ADDRESS WHERE MORE INFORMATION MAY BE
24 OBTAINED.

25 (3) THE PUBLIC COMMENT PERIOD UNDER SUBSECTION (2) SHALL BE
26 HELD OPEN FOR A PERIOD OF NOT LESS THAN 30 DAYS. UPON REQUEST FROM
27 1 OR MORE PERSONS, THE DEPARTMENT SHALL HOLD A PUBLIC HEARING.

1 (4) FOLLOWING THE PUBLIC COMMENT PERIOD AND PUBLIC HEARING, IF
2 HELD, THE DEPARTMENT SHALL EVALUATE THE PROPOSAL AND PROVIDE
3 RECOMMENDATIONS TO THE GOVERNOR. THE EVALUATION SHALL FOLLOW THE
4 PROCEDURE PROVIDED IN GUIDELINES ADOPTED UNDER SUBSECTION (5).

5 (5) THE DEPARTMENT SHALL ADOPT GUIDELINES PURSUANT TO THE
6 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
7 24.328, TO ESTABLISH PROCEDURES FOR CONDUCTING A REVIEW OF EXPORTS
8 OR DIVERSIONS UNDER THIS SECTION. IN ESTABLISHING A PROCEDURE, THE
9 DEPARTMENT SHALL CONSIDER ALL OF THE FOLLOWING FACTORS:

10 (A) WHETHER A REASONABLE WATER SUPPLY ALTERNATIVE EXISTS
11 WITHIN THE WATERSHED IN WHICH THE WATER IS PROPOSED FOR USE,
12 INCLUDING THE EFFICIENT USE AND CONSERVATION OF EXISTING WATER
13 SUPPLIES.

14 (B) WHETHER THE APPLICANT HAS SUCCESSFULLY IMPLEMENTED ALL
15 APPLICABLE CONSERVATION MEASURES.

16 (C) WHETHER THE PROPOSAL WILL RESULT IN ANY ADVERSE IMPACTS
17 EITHER INDIVIDUALLY OR CUMULATIVELY TO THE QUANTITY OR QUALITY OF
18 WATERS AND WATER-DEPENDENT NATURAL RESOURCES OF THE GREAT LAKES
19 BASIN WITH CONSIDERATION OF ANY PRECEDENT-SETTING CONSEQUENCES
20 ASSOCIATED WITH THE PROPOSAL.

21 (D) WHETHER THE PROPOSAL WILL RESULT IN AN IMPROVEMENT TO THE
22 WATERS AND WATER-DEPENDENT NATURAL RESOURCES OF THE GREAT LAKES
23 BASIN AND WHETHER THE PROPOSAL DEMONSTRATES HOW MEASURES WILL BE
24 IMPLEMENTED TO IMPROVE THE PHYSICAL, CHEMICAL, AND BIOLOGICAL
25 INTEGRITY OF THE WATERS AND WATER-DEPENDENT NATURAL RESOURCES OF
26 THE GREAT LAKES BASIN.

27 (E) WHETHER THE PROPOSAL IS FOR A PUBLIC WATER SUPPLY ONLY.

1 (F) WHETHER THERE IS A MAXIMUM RETURN FLOW OF WATER FROM THE
2 PROPOSED DIVERSION.

3 (G) WHETHER THE WATER RETURNED IS THE EXACT WATER WITHDRAWN
4 AND IS IN A CONDITION THAT, USING BEST AVAILABLE TECHNOLOGY,
5 PROTECTS THE QUALITY OF THE WATER AND PREVENTS THE INTRODUCTION OF
6 AQUATIC NUISANCE SPECIES INTO THE WATER.

7 (H) WHETHER THE POINT OF RETURN FOR RETURNED FLOW IS IN THE
8 SAME WATERSHED AS THE POINT OF WITHDRAWAL USING THE SMALLEST SCALE
9 OF WATERSHED AS DEFINED BY THE UNITED STATES GEOLOGICAL SURVEY AT
10 THE POINT OF WITHDRAWAL.

11 (I) WHETHER THE POINT OF RETURN FOR RETURNED FLOW IS AS CLOSE
12 AS POSSIBLE TO THE POINT OF WITHDRAWAL, UNLESS SUCH A RETURN WOULD
13 FOR SOME REASON BE ECOLOGICALLY HARMFUL.