

Legislative Analysis



REGULATION OF WATER WITHDRAWALS TO IMPLEMENT GREAT LAKES WATER COMPACT

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House Bill 5065 (Substitute H-3)
Sponsor: Rep. Gary McDowell

House Bill 5070 (Substitute H-5)
Sponsor: Rep. Michael Sak

House Bill 5066 (Substitute H-3)
Sponsor: Rep. Mark Meadows

House Bill 5071 (Substitute H-3)
Sponsor: Rep. Marc Corriveau

House Bill 5067 (Substitute H-2)*
Sponsor: Rep. Terry Brown

House Bill 5072 (Substitute H-6)*
Sponsor: Rep. Mary Valentine

House Bill 5068 (Substitute H-6)
Sponsor: Rep. Andy Coulouris

House Bill 5073 (Substitute H-2)
Sponsor: Rep. Kathleen Law

House Bill 5069 (Substitute H-6)
Sponsor: Rep. Rebekah Warren

Committee: Great Lakes and Environment
Complete to 5-21-08

**House Bills 5067 and 5072 were passed by the House on May 14, 2008 without any floor amendments.*

A SUMMARY OF HOUSE BILLS 5067 & 5072 AS PASSED BY THE HOUSE AND HOUSE BILLS 5065, 5066, 5068-5071, & 5703 AS REPORTED FROM COMMITTEE

House Bills 5065 through 5073 would regulate water withdrawal and use in Michigan and implement the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact).

House Bills 5065 through 5073 are summarized below. House Bill 4343 (Compact ratification) is summarized separately. Each bill in the package is tie-barred to the others and to House Bill 4343, meaning that unless the entire package of bills is enacted, none will take effect. House Bills 5067 and 5072 were passed by the House on May 14, 2008 without any floor amendments. House Bill 4343, summarized separately, was passed by the House on May 14, 2008 with floor amendments. The rest of the bills of this package (House Bills 5065-5066, 5068 -5071, & 5073) remain on the House calendar to be voted on.

BRIEF SUMMARY:

House Bill 5065 (H-3) would amend sections of Part 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act (NREPA) containing: (1) definitions;

(2) legislative findings; (3) the ban on diversions; and (4) exemptions from regulation for certain water withdrawals. Amended or new definitions include "adverse resource impact" (ARI), "baseline capacity," "consumptive use," and "Zones A through D." (MCL 324.32701-324.32703; 324.32727)

House Bill 5066 (H-3) would (1) amend Part 327's annual reporting requirements; (2) require the DEQ to adopt generic water conservation measures that would be superseded by sector-specific conservation measures proposed by individual sectors; (3) require the DEQ to report to the Legislature on water conservation measures; (4) require the DEQ to notify permit holders and registrants of Zone C withdrawals; (5) require the DEQ to provide electronic notice to specified entities if certain withdrawals occur (including those reducing the density of thriving fish in a cold- transitional stream by more than one percent); (6) allow notified entities to form "water resources assessment and education committee" with assistance from the DEQ. (MCL 324.32707-324.32710)

House Bill 5067 (H-2, as passed by the House, May 14, 2008) would increase the maximum civil fine for a "knowing violation" of specified sections of Part 327 from \$5,000 to \$10,000, leaving the maximum fine for other violations at the current level of \$1,000. Falsifying a record submitted under Part 327 would be included as grounds for a civil enforcement action. (MCL 324.32713)

House Bill 5068 (H-6) would (1) retain an exemption from the ban on withdrawals causing an "adverse resource impact" or "ARI" for baseline withdrawal capacity existing on February 28, 2006 and for water used for fire suppression; (2) retain the existing rebuttable presumption of no "ARI" for withdrawals that meet specified depth or location guidelines that were "developed" between February 28, 2006 and February 28, 2008; (3) create additional rebuttable presumptions of no "ARI" for certain withdrawals depending on their classification by the assessment tool or by the DEQ; (4) specify the duration of a rebuttable presumption and the standard for rebutting it; (5) specify which large quantity water withdrawals require a Part 327 permit (absent an exemption); (6) describe the application process and the standard for the issuance of a permit.

The following withdrawals would generally require a permit:

- Common distribution systems (such as center-pivot irrigation systems): a new or increased withdrawal of 2 million gallons per day or more to supply a common distribution system.
- Zone C withdrawals. A new or increased withdrawal classified by the DEQ as Zone C after site-specific review if either (1) more than 1 million gallons per day will be withdrawn or (2) more than 200,000 gallons per day will be withdrawn using more than 50 percent of the relevant river or stream's index flow
- Intra-basin transfer. A new or increased withdrawal resulting in an intra-basin transfer (as defined by House Bill 5065) of more than 100,000 gallons per day averaged over a 90-day period. (MCL 324.32721-324.32723)

House Bill 5069 (H-6) would (1) specify when a property owner could simply register and proceed with a proposed withdrawal or, on the other hand, when site specific review or a permit would be needed; (2) require property owners to notify the DEQ of conditions that appear during the development of withdrawal capacity that deviate from those previously reported; (3) require a training and certification program to allow persons outside of the DEQ to collect stream or river flow data; and (4) allow additional stream or river flow resulting from restorative measures authorized in a permit to be used in conjunction with a withdrawal. (MCL 324.32704-324.32706, 324.32706a, 324.32706b, 324.32706c, 324.32706d, & 324.32706e)

House Bill 5070 (H-5) would amend provisions concerning water user committees, petitions concerning water withdrawals, and local ordinances regulating withdrawals. (MCL 324.32724-324.32725 & 324.32728)

House Bill 5071 (H-3) would require an evaluation of the impact of water withdrawn by public waterworks systems.

House Bill 5072 (H-6, as passed the House, May 14, 2008) would require a bottled drinking water producer proposing a new or increased water withdrawal to apply to the DEQ for permission if the amount withdrawn would exceed 200,000 gallons per day (100,000 gallons per day for intra-basin transfers), instead of the current level of 250,000 gallons per day. The bill would apply Section 32703's decision-making standard (as amended by House Bill 5068) to proposed uses of water under this section of the Safe Water Drinking Act and would also specify that a DEQ approval under this section satisfies the minimum decision-making standard of Compact. (MCL 325.1017)

House Bill 5073 (H-2) would expand membership on the groundwater conservation advisory council within the Department of Natural Resources (DNR), rename it the "Water Resources Conservation Advisory Council," and require it to submit specified reports. As amended, the bill would no longer grant the DEQ rule-making authority under Part 327. (MCL 324.32801 & 324.32803)

FISCAL IMPACT:

This tie-barred package of bills would have an indeterminate fiscal impact on the state and on local governmental units. The maximum amount of an assessed civil fine for violation of regulatory provisions of this bill package would be increased for knowing violations of permits or for adverse resource impacts from \$1,000 to \$10,000 (HB 5067).

The department would be expected to ask for increased spending authority to carry out the provisions of these acts, utilizing revenue generated by this package. It is not clear if annual restricted revenue would be sufficient to enforce this legislation's regulatory provisions.

DETAILED SUMMARY:

House Bill 5065 (Substitute H-3, as reported from committee)

House Bill 5065 (H-3) would amend (1) definitions; (2) legislative findings; (3) the ban on diversions of water from the Great Lakes basin; and (4) the exemption from regulation for certain withdrawals.

Definitions. [§32701(1), pp.1-16] The following definitions are new or revised:

"Adverse resource impact" or "ARI" would mean any of the following:

Streams and Rivers

- Decreasing part of the index flow of a river or stream by an amount predicted to cause a decline in the fish population of a specified percentage by the applicable fish curve. The percentages vary according to whether: (1) the withdrawal is from a stream, small river, or large river; and (2) whether the river system is cold, cold-transitional, cool, or warm. (summarized in the table below), or
- Decreasing the flow of a stream or river (large or small) by more than 25 percent of its index flow.

Bodies of Surface Water

- Decreasing the level of body of surface water larger than five acres in a manner that either (1) would not meet the requirements of Section 30106 (by adversely affecting the public trust or riparian rights) or (2) would functionally impair the body of water's ability to support characteristic fish populations.

Adverse Resource Impact (ARI) Rivers and Streams				
(1) A withdrawal that decreases the index flow of a river or stream enough to cause the fish population to decline in the following amount according to the applicable fish curve: :				
<u>River System</u>	<u>Cold</u>	<u>Cold-Transitional</u>	<u>Cool</u>	<u>Warm</u>
<u>Fish curve</u>	Thriving	Thriving	Characteristic	Characteristic
<u>Stream</u>	≥1%	≥5%	≥10%	≥5%
<u>Small river</u>	≥1%	≥5%	≥15%	≥10%
<u>Large river</u>	N/A	≥5%	≥12%	≥10%
(2) A withdrawal that decreases the flow of any stream or river by more than 25% of its index flow.				

"Baseline capacity" (or "existing withdrawal approval" under Section 4.12.2 of the Compact) would mean any of the following:

- Part 327 registrants and permit holders: Withdrawal capacity reported to the DEQ by Part 327 registrants or permit holders in a Section 32707 annual report by April 1, 2009.

- Farmers: Withdrawal capacity reported by farm owners to the Department of Agriculture in a Section 32708 annual report (water conservation plan) by April 1, 2009.
- Quarries or mines: Discharge volume stated in a quarry or mine's Part 31 (Water Resources Protection) authorization to discharge on February 28, 2006, unless reported under a different provision.
- Capacity existing on February 28, 2006 and reported by April 1, 2009: System capacity used or developed to make a withdrawal on February 28, 2006, if included in an annual report submitted under Part 327 by April 1, 2009.
- Other withdrawals: For withdrawals not reported under one of the previous provisions, baseline capacity would be the highest amount of water withdrawn under Part 327 during calendar year 2002, 2003, 2004, or 2005 except that baseline capacity for a person newly required to report under Section 32705(2)(d) as it would be amended by House Bill 5069, would be capacity reported by April 1, 2009. (Section 32705(2)(d) currently exempts wells on residential property of any kind from regulation under Part 327. House Bill 5069 proposed that only wells on *single-family residential property* would be exempt and that lake augmentation wells, even if located on single-family property, would be subject to regulation. In other words, persons newly required to report would appear to be the owners of multi-unit residential property or residential property that contains a lake augmentation well.)
- Community supply. For a "community supply" as defined in Section 2 of the Safe Drinking Water Act, baseline capacity would be the "total designed withdrawal capacity" under the Safe Drinking Water Act on February 28, 2006, as reported to the DEQ by April 1, 2009.
- Replacement rule: A person could replace surface water withdrawal capacity with equal groundwater withdrawal capacity from the drainage area of the same stream reach and retain the baseline capacity established under this section.

"Characteristic fish curve" would mean a fish functional curve describing how the abundance of a characteristic fish population would respond to a reduction in the index flow of a river or stream as published in the July 2007 legislative report of the former Ground Water Advisory Council. The bill would incorporate by reference the characteristic fish curve contained in that report.

"Characteristic fish population" would mean the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

"Cold river system" would mean a stream or small river with the appropriate summer water temperature to sustain thriving populations of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a methodology adopted by a Natural Resources Commission (NRC) order. [Note: There are no *large* cold rivers in Michigan, only cold streams and *small* cold rivers.]

"Compact" would mean the Great Lakes-St. Lawrence River Basin Water Resources Compact.

"Cold-transitional river system" would mean a stream, small river, or large river with the appropriate summer water temperature to sustain thriving fish populations of cold-water fish species where small increases in water temperature *would* cause these fish populations to decline as determined by a methodology adopted by an NRC order.

"Consumptive use" would mean that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the basin because of (1) evaporation, (2) incorporation into products or agricultural products, (3) use in packaging or products or agricultural products, or (4) "other processes." The term includes water packaged within the Great Lakes basin in containers of 5.7 gallons (20 liters) or less that is bottled drinking water as defined in the 2005 Food Code.

"Cool river system" would mean a stream, small river, or large river with the appropriate summer water temperature to sustain characteristic fish populations with a mix of cold-water, cool-water, and warm-water fish species, as determined by a methodology adopted by an NRC order.

"Council" would mean the Great Lakes-St. Lawrence River Basin Water Resources Council created in the Compact.

"Diversion" would mean a transfer of water (1) from the Great Lakes basin into another watershed, or (2) from one Great Lakes watershed into another Great Lakes watershed by any means of transfer including, but not limited to, a pipeline, canal, aqueduct, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, or rail tanker." Removal and transfer of Great Lakes water in containers greater than 5.7 gallons (20 liters) also counts as a diversion.

- Product exemption. The term "**diversion**" would *not* apply to water used in the Great Lakes Basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the Great Lakes basin or watershed.
- Other exemptions. "**Diversion**" would also *exclude* (1) consumptive uses; (2) water used to supply vehicles; (3) water used for short-term noncommercial firefighting, humanitarian, or emergency response projects; and (4) water transferred from the watershed of a Great Lake to the watershed of its connecting waterways.

The term "**generally accepted water management practices,**" as currently defined, would be deleted and not replaced. [House Bill 5066 would, instead, use the concept of "environmentally sound and economically feasible water conservation measures."]

"Flow-based safety factor" would mean "a protective measure of the assessment tool that reduces the portion of the index flow available for a withdrawal to 1/2 of the index

flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty."

"Great Lakes" would mean Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways including the St. Marys River, Lake St. Clair, the St. Clair River, and the Detroit River." Lakes Huron and Michigan are considered a single Great Lake.

"Index flow" would mean the 50 percent exceedance flow for the lowest summer flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the United States Geological Survey flow gauges in Michigan, on February 28, 2006."

"Intra-basin transfer" would mean "a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake."

"Lake augmentation well" would mean a water well used to withdraw groundwater for the purpose of maintaining or raising the water levels of an "inland lake or stream" as that term is defined in Section 30101.

"Large river" would mean "a flowing body of water with a drainage area of 300 or more square miles."

The current definition of **"political subdivision"**—which incorporates the definition found in Section 2 of the Safe Drinking Water Act (i.e., a city, village, township, charter township, county, district, authority or portion or combination thereof)—would be deleted and not replaced.

"Registrant" would mean "a person who has registered a water withdrawal under Section 32705." [Section 32705, MCL 324.32705, describes when an owner of real property with the capacity to make a large quantity water withdrawal is required to register.]

"Restorative measure" would mean "an action affecting a stream, small river, or large river that will provide additional stream or river flow beyond the index flow or will improve the temperature regime of the stream or river."

"Return flow" would mean water returned to the waters of the state as authorized by the DEQ in a Part 31 (Water Resources Protection) permit or otherwise.

"Site specific review" would mean the DEQ's independent review under Section 32706c to classify a withdrawal as a Zone A, B, C, or D withdrawal and to determine whether a withdrawal is likely to cause an adverse resource impact.

"Small river" would mean a flowing body of water with a drainage area of at least 80 but less than 300 square miles.

"Source watershed" would mean the watershed from which a withdrawal originates. If the withdrawal is directly from a Great Lake, the source watershed is the watershed of the Great Lake and its connecting waterways. If the withdrawal is from a direct tributary to a Great Lake, the source watershed is the watershed of the Great Lake and its connecting waterways, with a preference for returning water to the watershed of the direct tributary.

"Stream" would mean a flowing body of water with a drainage area of less than 80 square miles.

"Stream reach" would mean a segment of a stream, small river, or large river.

"Thriving fish curve" would mean a fish functional response curve describing the initial decline in density of thriving fish populations in response to reductions in the index flow of a river or stream as published in the July 2007 legislative report of the former Ground Water Advisory Council. The bill would incorporate by reference the thriving fish curve contained in that report.

"Thriving fish population" would mean fish species expected to flourish at very high densities in stream reaches with specific drainage area, index flow, and summer temperature characteristics.

"Warm river system" would mean a stream, small river, or large river with the appropriate summer water temperature to sustain thriving fish populations of warm-water fish species, as determined by a methodology adopted by the NRC.

"Withdrawal" would be mean "the removal of water from surface water or groundwater." (Currently, "withdrawal" means "the removal of water from its source for any purpose, other than for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.")

"Zones A through B." The bill classifies withdrawals as Zone A, B, C, or D based on the effect that the withdrawal would have on thriving or characteristic fish populations in a river or stream according to established fish curves (thriving or characteristic). The standard varies by type of river system (cold, cold-transitional, cool, or warm) and by whether the impact would be on a stream, small river, or large river. See the following tables summarizing the zones, on the next page.

Zone A Withdrawal

	River System			
	<u>Cold</u>	<u>Cold-transitional</u>	<u>Cool</u>	<u>Warm</u>
Applicable Fish Curve	Thriving	N/A	Thriving	Thriving
Stream	<50% of withdrawal that would cause an ARI	N/A	<10% fish decline	<10% fish decline
Small River	<50% of withdrawal that would cause an ARI	N/A	<5% fish decline	<10% fish decline
Large River	N/A	N/A	<8% fish decline	<10% fish decline

Zone B Withdrawal

	River System			
	<u>Cold</u>	<u>Cold-transitional</u>	<u>Cool</u>	<u>Warm</u>
Fish Curve	N/A	Thriving	Thriving	Thriving
Stream	N/A	<5% fish decline	≥10% but <20% decline thriving fish	≥10% but <15% decline thriving fish
Small River	N/A	<5% fish decline	≥5% but <10% decline thriving fish	≥10% but <20% decline thriving fish
Large River	N/A	<5% fish decline	≥8% but <10% decline thriving fish	≥10% but <20% decline thriving fish

Zone C Withdrawal

	River System			
	<u>Cold</u>	<u>Cold-transitional</u>	<u>Cool</u>	<u>Warm</u>
Stream	≥50% of withdrawal that would cause an ARI but <1% decline in <i>thriving</i> fish density	N/A	≥20% decline in <i>thriving</i> fish but <10% decline of <i>characteristic</i> fish	≥ 15% decline of <i>thriving</i> fish but <5% decline of <i>characteristic</i> fish
Small River	≥50% of withdrawal that would cause an ARI but <1% decline in <i>thriving</i> fish density	N/A	≥10% but <15% decline of <i>thriving</i> fish	≥20% decline of <i>thriving</i> fish density but <10% decline of <i>characteristic</i> fish
Large River	N/A	N/A	≥10% but <12% decline of <i>thriving</i> fish	≥20% decline of <i>thriving</i> fish but <10% decline of <i>characteristic</i> fish

Zone D Withdrawal

Any withdrawal likely to cause an ARI. (See definition of ARI.)

Legislative findings. [§32702(j), p.18] The bill would add a new finding that the "waters of the Great Lakes basin are interconnected and part of a single hydrologic system."

Diversion ban. [§32703, p.18] Currently, Section 32703 provides that subject to Section 32704—a provision that "grandfathers" diversions in effect on September 30, 1985—the waters of the Great Lakes basin that are within the boundaries of this state shall not be

diverted out of the Great Lakes basin. Under the bill, the diversion ban would read: "Subject to Section 32704, a diversion of the waters of the state out of the Great Lakes basin is prohibited."

Exempt withdrawals. [§32727, p.18-19] Under current Section 32727, withdrawals of water under Parts 111 (Hazardous Waste Management), 115 (Solid Waste Management), 201 (Environmental Remediation) or 213 (Leaking Underground Storage Tanks) are exempt from regulation under Part 327. The bill would expand the list of exempt withdrawals to include all of the following, *provided the withdrawals do not result in diversions*:

- Withdrawals undertaken as part of activities authorized by the DEQ under Parts 111, 115, 201, 213, or Part 615 (Supervisor of Wells). (The exemption for activities under Part 615 is new, as is the explicit requirement that withdrawals under all specified parts be undertaken as part of DEQ-authorized activities.)
- Withdrawals authorized by the federal Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Resource Conservation and Recovery Act of 1976 (RCRA).
- Withdrawals for hydroelectric generation sites regulated by the Federal Energy Regulatory Commission (FERC).
- Hydroelectric facilities authorized under: (1) Section 12 of the federal River and Harbor Act of 1909, (2) Section 1075(c) of the federal Intermodal Surface Transportation Efficiency Act of 1991; (3) federal Public Law 85, Chapter 1368, 34 Stat. 102.
- Removal of water from an artificially-created body of surface water whose source is either (1) a withdrawal that is not a new or increased large quantity withdrawal or (2) a registered new or increased large quantity withdrawal that has been determined (by the assessment tool, site-specific review, or a permit) as a withdrawal unlikely to cause an ARI.

The director of the DEQ would have to ensure that data in the state's possession concerning exempt water withdrawals would be compiled and shared with DEQ personnel who enforce Part 327.

House Bill 5066 (Substitute H-3, as reported from committee)

House Bill 5066 (H-3) would amend provisions in Part 327 concerning annual reporting requirements and water use sector conservation measures and would require the DEQ to submit a report to the legislature about water user sector conservation measures.

Annual reports by persons making water withdrawals; fees. [§32707, pp.1-4] Current Section 32707 specifies information that must be included in annual reports submitted to the DEQ by registrants and holders of permits. The bill would make the following changes:

- The inclusion of information about baseline capacity and, if applicable, system capacity in an annual report under this section is currently optional and would remain so under the bill. The bill, however, would eliminate the current deadline for submitting capacity information for persons who choose to do so and also eliminate a statement that this information need only be provided to the DEQ once.
- Beginning in 2010, registrants would have to acknowledge in their annual report that they have reviewed applicable water conservation measures prepared under Section 32708a.
- The bill would retain (but slightly revise) language that allows a person to satisfy annual reporting requirements with information reported to the DEQ in conjunction with a permit or another purpose, with the DEQ's approval.
- The bill would retain an exemption from the Freedom of Information Act for baseline capacity information currently described in Section 32701(c)(i)(c) (capacity used or developed to make a withdrawal on the effective date of the 2006 amendments, if included in an annual report submitted under Part 327). That DEQ could not disclose that information unless it determined that the withdrawal is causing an adverse resource impact or ARI.
- The bill would retain the current \$200 annual report fee (but eliminate the scheduled reduction of this fee to \$100 at the point the assessment tool starts being used). The current exemptions from this fee to the DEQ for farms that report withdrawals under Section 32708 and persons who withdraw less than 1.5 million gallons in any given year would be retained.

Annual reports to Department of Agriculture by farm owners. [§32708, pp. 5-6] Current Section 32708 allows farm owners registered under Part 327 to report their water use in an annual water use conservation plan submitted to the Department of Agriculture. That section specifies both mandatory and optional information. As introduced, the bill would have made the inclusion of baseline capacity and system capacity mandatory rather than optional. The reporting of baseline capacity and system capacity information remains optional in the H-3 Substitute version of the bill. However, the bill would make the following changes:

- Beginning in 2010, registrants would have to acknowledge in their annual report that they have reviewed applicable water conservation measures prepared under Section 32708a.
- A farm owner who includes optional baseline and system capacity information would no longer have to do so in the first report submitted after February 28, 2006.
- The bill would eliminate the current statement that baseline and system capacity information only needs to be provided to the Department of Agriculture once.

Water user sector guidelines. [§32708a, pp. 7-8] Currently, Section 32708a requires each water user sector to design guidelines for "generally accepted water management practices" or "environmentally sound and economically feasible water conservation measures" for review by the DEQ and possible adoption by an established statewide trade

association representing that sector. The bill would revise procedures for adoption of "environmentally sound and economically feasible water conservation measures" and discontinue use of the term "generally accepted water management practices."

Generic water conservation measures. The DEQ would prepare and post on its website a set of generic water conservation measures applicable to all persons making large quantity withdrawals by March 31, 2009. In preparing these measures, the DEQ could consider proposed generic measures submitted by representative trade associations.

Sector-specific water conservation measures. A water user sector could prepare and submit to the DEQ measures that are applicable to water users within that sector. Upon receipt of proposed sector-specific measures, the DEQ would review them, and if the DEQ found that they were appropriate for that sector, the Department would have to accept them. Upon acceptance, the DEQ would post the new sector-specific water conservation measures on its website and those measures would supersede the generic water conservation measures for that sector's water users.

If the DEQ determined that the proposed measures were inappropriate for that sector, it would have to provide comments and suggestions that would result in the DEQ's acceptance of the proposed conservation measures. A sector's proposed water conservation measures could be resubmitted in response to the DEQ's comments and suggestions.

[Major water user sectors include (1) thermoelectric power generation; (2) public water supply; (3) self-supplied industrial; (4) agricultural irrigation; and (5) golf course irrigation. The bill, however, does not define water user sector nor does it specify who would be entitled to submit proposed measures on behalf of any given sector.]

Legislative report. The DEQ would have to report to relevant standing committees of the Legislature on water sector conservation measures by April 1, 2010.

Notification to registrants and permit holders of Zone C registrations. If the DEQ receives a registration for a Zone C withdrawal, it would have to notify all registrants and permit holders who withdraw from the same water source that to minimize impacts on aquatic health, they must each review and "consider implementing" applicable water conservation measures.

Informational materials. [§32709, pp.8-9] Currently the DEQ may contract for the preparation and distribution of informational materials about Part 327 and its requirements to irrigators and industrial water users. Under the bill, informational materials could be distributed to the general public, not just irrigators and industrial water users.

Electronic notice of certain withdrawals. [§32710, pp. 10-11] In the event of certain types of withdrawals, the DEQ would have to place a notice on its website and notify

certain entities by e-mail, if they have provided the DEQ an e-mail address for this purpose.

Withdrawals that would trigger this notification requirement are:

- Registration of a Zone B or Zone C withdrawal.
- Issuance of a permit for a Zone B or Zone C withdrawal under Section 32723 or the Safe Water Drinking Act.
- Registration of a withdrawal that would reduce the density of thriving fish populations in a cold-transitional stream by more than one percent.

Entities allowed to request e-mail notice are (1) conservation districts; (2) regional planning agencies; (3) watershed management planning committees; (4) storm water committees; (5) chief elected officials of local units of government; (6) community supplies owned by a political subdivision; (7) a water users committee.

Formation of a water resources assessment and education committee. Upon receiving an electronic notice from the DEQ, notified entities could form a water resources assessment and education committee to assess water use trends in the vicinity of the withdrawal and to educate water users. The DEQ would be required to assist in the formation of these committees and could provide them with technical information regarding use and capacity within their vicinity, aggregated at the stream reach level. Committee meetings would have to be open to the general public. The committee could provide educational materials and recommendations regarding (1) long-term water resources planning; (2) use of conservation measures; (3) drought management activities; (4) other water use topics. (MCL 324.32707-324.32710)

House Bill 5067 (Substitute H-2, as passed by the House, May 14, 2008)

House Bill 5067 (H-2). Public trust language. As introduced, the bill would have specified that the DEQ decisions under Part 327 could not "impair the waters of the state or other natural resources of the state or the public trust in those natural resources." This language is not contained in the H-2 Substitute.

Enforcement actions. As introduced, the bill would have authorized (1) county prosecutors and (2) persons affected by large water withdrawals to bring civil enforcement actions, in addition to the Attorney General. In contrast, the Substitute H-2 bill retains the current provision allowing only the Attorney General to bring civil enforcement actions, at the request of the DEQ. Falsifying a record submitted under Part 327 would be specifically included as grounds for a civil enforcement action.

Fines. The bill would increase the maximum civil fine a court could impose on a person who commits a knowing violation of Sections 32721 or 32723 (or a permit issued under Section 32723) from \$5,000 to \$10,000. The fine for other violations would remain at the current level of \$1,000.

House Bill 5068 (Substitute H-6, as reported from committee)

House Bill 5068 (H-6). Since February 28, 2008, new or increased large quantity withdrawals from the waters of the state that cause an adverse resource impact have been prohibited by Section 32721. The bill would retain this standard. (Before February 28, 2008, large quantity withdrawals that caused an adverse resource impact to a *designated trout stream* were prohibited.)

Exemptions for baseline capacity on February 28, 2006 and for fire suppression. [§32721(2)-(3), p.2] Currently, the ban on new or increased large quantity withdrawals causing an ARI does not apply to (1) the baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal existing on February 28, 2006 and (2) water used exclusively for fire suppression. The bill would retain both of these exemptions. (Note: As described above, House Bill 5065 would amend the definition of "baseline capacity.")

Retain rebuttable presumption of no ARI for withdrawals "developed" by February 28, 2008 meeting depth or location requirements. [§32722(1), p.2] For a new or increased large quantity withdrawal "developed" on or after February 28, 2006 but before February 28, 2008, the bill would retain the current rebuttable presumption that a withdrawal would not cause an ARI if the well (1) is located more than 1,320 feet from the banks of a designated trout stream, or (2) has a withdrawal depth of at least 150 feet. (Note: The term "developed" is not defined.)

Rebuttable presumption of no ARI for withdrawals classified as Zone A or Zone B and not likely to cause an ARI by the assessment tool. [§32722(2), p.2] If the assessment tool classifies a withdrawal as Zone A or B and not likely to cause an ARI, a rebuttable presumption would exist that a withdrawal under the conditions that formed the basis for the tool's determination would not cause an ARI.

Rebuttable presumption based on DEQ determination. [§32722(3), pp.2-3] If the DEQ classifies a withdrawal as Zone A, B, or C and not likely to cause an ARI based on (1) a site-specific review or a permit issued under Part 327 or the Safe Water Drinking Act, a rebuttable presumption would exist that a withdrawal under the conditions upon which the department's determination was based would not cause an ARI in violation of Section 32721.

Duration of presumption; standard for rebuttal. [§32722(4), p.3] A rebuttable presumption under this section would be invalid if the capacity to make the withdrawal is not "developed" within one year after the withdrawal is registered. A presumption could be rebutted by a preponderance of evidence that a withdrawal has caused or is likely to cause an adverse resource impact.

Withdrawals requiring permits. [§32723(1), pp. 3-4] Unless one of the exemptions described below applies, a person *proposing to develop* any of the following would need to obtain a permit before making a new or increased withdrawal:

- Common distribution systems. A new or increased withdrawal of more than **2 million gallons per day** to supply a common distribution system. (Although the term "common distribution system" is not defined, we understand it to refer primarily to irrigation systems such as center-pivot irrigation systems used in agriculture.)
- Zone C withdrawals. Capacity to make a new or increased withdrawal classified by the DEQ as Zone C after site-specific review if either (1) the proposal is for a new or increased large quantity withdrawal of more than 1 million gallons per day, or (2) the proposal is for a withdrawal of more than 200,000 gallons per day using more than 50 percent of the index flow of a Zone C withdrawal.
- Intra-basin transfers. A proposal for a new or increased withdrawal resulting in an intra-basin transfer of more than 100,000 gallons per day averaged over any 90-day period. (Note: Under House Bill 5065, an "intra-basin transfer" would mean "a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake.")

Permit applications; fees. [§32623(2)] An application for a water withdrawal permit would have to contain:

- Information described in Section 32706 (registration information).
- Information described in Section 32706c(1), if not previously provided (site-specific review information).
- Any other hydrological information that the applicant has developed, such as a pump test.
- Additional information requested by the DEQ, if required.
- Detailed information about restorative measures, if an applicant proposed to undertake restorative measures along with the withdrawal.
- The fee. (The bill would retain the current application fee of \$2,000, to be credited to the Water Use Protection Fund, but eliminate an expiration date for collection of the fee.)

Public notice and comment. [§32623(4), pp.5-6] The DEQ would have to notify the public when its receives applications for water withdrawal permits and provide a public comment period of at least 45 days (as opposed to 60 days in the bill as introduced).

Time period for DEQ's permit decision. [§32623(5), p.6] The bill as reported would retain the current requirement that the DEQ make its permit determination within 120 days of receipt of an administratively complete application (as opposed to 180 days in the original version of the bill).

Standard for issuing a permit for Zone C withdrawal or new or increased withdrawals to supply a common distribution system. Under current law, the DEQ must issue a water withdrawal permit under Section 32623(1)(c) or (d) if specified conditions are met. Under the bill, The DEQ would be required to issue a water withdrawal permit under Section 32623(1)(a) (new capacity to supply a common distribution system) (b)

(increased capacity to supply a common distribution system) or (c) (Zone C withdrawals) if specified conditions are met:

- All water withdrawn, less any consumptive use, is returned, naturally or after use, to the source watershed.
- The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative ARI evaluations will be based on information gathered by the department.
- Subject to Section 32726, the withdrawal will be implemented to comply 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.
- The proposed use is reasonable under common law principles of water law in Michigan.
- For permit applications received on or after January 1, 2009, the applicant has to "self-certify" that he or she is in compliance with water conservation measures developed under Section 32708a or measures developed for water use associated with that specific withdrawal. (Currently, an applicant need only "consider" implementing conservation measures.)
- The DEQ 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. (This requirement is new.)
- The department's determination is made in a manner consistent with Section 32702(1)(c), an existing section that states that the waters of the state are valuable natural resources held in public trust by the state that must be managed accordingly. (This provision referencing Section 32702(1)(c) is new.)

Standard for issuing a permit resulting in an intra-basin transfer. For a withdrawal resulting in an intra-basin transfer, the bill would adopt the standard contained in Section 4.9 of the Compact, which sets forth exceptions to the ban on diversions. (See House Bill 4343)

Enforceable schedule to implement restorative measures. If the DEQ approves restorative measures in conjunction with a permit, it would have to enter into a legally enforceable implementation schedule for completion of the restorative measures.

Reasonableness of proposed uses. A proposed use for which a permit is issued under this section would be considered to satisfy the requirements of Section 4.11 of the Compact, which establishes a minimum decision-making standard for the parties. Among other things, that section requires all proposed uses to be reasonable, based on a consideration of enumerated factors including whether water is being used efficiently with waste avoided or minimized, and whether an appropriate balance is struck between economic development, social development, environmental protection, and other planned or existing uses of the same water source.

Certain Part 31 permit holders entitled to Part 327 permits. The bill would retain an existing provision that says, in effect, that the issuance of a permit under Part 31 (Water Resources Protection) of NREPA, pursuant to 33 U.S.C. 1326(b) of the federal Clean Water Act, entitles a holder to receive a permit under Part 327.

Revocation of a permit. The bill would retain the department's current ability to revoke a water withdrawal permit if it determines under a "clear and convincing scientific evidence" standard that the withdrawal is causing an adverse resource impact.

Withdrawals exempt from Part 327 permit requirements. The bill would revise the language of existing exemptions from Part 327's permit requirements for certain withdrawals for (1) community supplies, (2) seasonal withdrawals to supply a common distribution system, and (3) bottled drinking water:

- Community supply. A community supply that holds a permit under the Safe Drinking Water Act.
- Seasonal withdrawals/common distribution system. A seasonal withdrawal of not more than 2 million gallons per day averaged over any consecutive 90-day period to supply a common distribution system (1) unless a permit is required under Subsection (1)(c), and (2) as long as the withdrawal does not result in a diversion.
- Bottled drinking water production. A withdrawal for the production of bottled drinking water approved under Section 17 of the Safe Drinking Water Act.

House Bill 5069 (Substitute H-6, as reported from committee)

House Bill 5069 (H-6) would do the following:

Registration of proposed capacity for a new or increased large quantity water withdrawal. [§32705(1), pp.1-2] In general, the owner of real property who intends to develop capacity on that property to make a new or increased large quantity water withdrawal would have to register the withdrawal with the DEQ, after the using the assessment tool, if required, under Part 327, and before beginning the withdrawal. An online registration process could be used.

Persons not required to register. [§32705(2), p.2] The following persons would not have to register:

- Previous registrants under Part 327, unless they develop new or increased withdrawal capacity on the property of an additional 100,000 gallons per day and are not required to obtain a permit under Section 32723.
- A community supply required to obtain a Safe Drinking Water Act permit.
- Persons who are required to obtain a permit under Section 32723.
- The owner of a noncommercial well located on a single-family residential property unless that well is a lake augmentation well.

Registration by farm owners [§32705(4), p.3] Under current law, a farm owner is required to submit a registration relating to water withdrawals intended for an agricultural purpose such as irrigation to the Department of Agriculture, instead of the DEQ. Under the bill, a farm owner would have the option of submitting the registration to either department.

Approved forms. [§32705(5), p.3] Registrations that are not submitted online must be on a form provided by either the DEQ or the Department of Agriculture.

18-month period to develop capacity after registration. [§32705(8), p.3-4] After a property owner registers proposed new or increased capacity, the owner would have to "develop the capacity" to make the new or increased large quantity withdrawal within 18 months or the registration would no longer be valid.

Implementation of online registration. [§32706(1), p.4] The DEQ would have to implement an online registration process designed to work in conjunction with the assessment tool within one year of the bill's effective date.

Registration requirements. [§32706(2), p.4] Each registration would have to include a statement and supporting documentation about the following:

- The place and source of the proposed withdrawal.
- The location of any associated discharge or return flow.
- The location and nature of the proposed water user.
- The capacity of the equipment used for making the proposed withdrawal.
- The estimated average annual and monthly volumes and rate of proposed withdrawal.

In addition, for a new or increased large quantity withdrawal from a stream, small river, large river, or groundwater, the registrant would have to include the determination from the use of the assessment tool or the DEQ's determination from a site-specific review, as appropriate.

Development, testing, and implementation of assessment tool. [§32706a(1), p. 5] Within four months after the bill's effective date, the DEQ would have to develop and make available an internet-based water withdrawal assessment tool for testing and evaluation. The assessment tool would be based on the recommendations of the former groundwater conservation advisory council and the requirements of Part 327 and would have to include a flow-based safety factor, as defined in House Bill 5065. The DEQ would have to implement the assessment tool within one year of the bill's effective date.

Zone classifications; drainage area aggregation rules. [§32706a(2), pp. 5-6] The assessment tool would classify a proposed withdrawal as Zone A, B, C, or D withdrawal and assess whether it is likely to cause an ARI. In determining a proposed withdrawal's zone classification and its likelihood of causing an ARI, the tool would distinguish among proposed withdrawals based on the type of river system (cold, cold-transitional,

cool, or warm) from which the withdrawal would be made, and the size of the stream or river (stream, small river, or large river), subject to the following drainage area aggregation rules:

- Cool and warm streams with drainage areas of less than three square miles would be integrated into the next largest drainage area for assessment tool determinations for groundwater and surface water withdrawals.
- Cool and warm streams with drainage areas of less than 20 square miles and less than one cubic foot per second of index flow would be integrated into the next largest drainage area.

Assessment tool operation. [§32706a(3)-(5), p.6] A person using the tool would enter data about the following:

- The capacity of the equipment to be used.
- The location of the withdrawal.
- Whether the source is surface water or groundwater.
- If groundwater, the depth of the withdrawal and whether from glacial stratum or bedrock.
- The amount and rate of water to be withdrawn.
- Whether intermittent.

The user could print out a copy of the data submitted to and the determination received from the assessment tool, showing the date and time of the assessment. The tool would work in conjunction with online registration process but could also be used without making a registration.

Addition of new data and technical modifications. [§32706a(6), pp.6-7] The DEQ would have to add verified data from water withdrawal reports, water conservation reports, and other sources to the assessment tool's database on an ongoing basis. In addition, the DEQ would have to make technical modifications related to temperature, hydrology, and flows based on a scientific methodology adopted by order of the Natural Resources Commission.

Adoption of protocol documenting difference between unused portion of baseline capacity and actual use as of February 28, 2006. [§32706a(7), p.7] In consultation with the advisory council, the DEQ would develop a protocol for documenting the difference between the unused portion of baseline withdrawal capacity and actual use by large quantity water users as of February 28, 2006. This difference would have to be taken into account when making site-specific and permit determinations. In addition, the department would have to adjust the assessment tool to take into account this difference if necessary to protect current water users or to prevent ARIs.

Annual legislative report. [§32706a(8), p.7] The DEQ would have to report annually to appropriate standing committees of the legislature on implementation of the tool.

Use of the assessment tool. [§32706b, p.7-8] After the assessment tool is implemented, a property owner proposing to make a new or increased large quantity withdrawal from a stream, small river, large river, or groundwater, would have to use the assessment tool before registering the proposed withdrawal. After the user enters relevant data, the tool would indicate if the proposed withdrawal is likely to cause an ARI and classify the proposed withdrawal as Zone A, B, C, or D.

Zone A or B withdrawals from cool or warm river systems get "green light." [§32706b, p.8] A proposed withdrawal classified by the tool as Zone A or B from a cool or warm river system may be registered and the property owner may proceed with the withdrawal.

Proposals warranting site-specific review. [§32706b(4), p.8] A proposed withdrawal classified by the tool as Zone B (from a cool-transitional river system), or any Zone C or Zone D withdrawal may not be registered and the owner may not make the withdrawal except in accordance with Section 32706c (site-specific review).

Obligation to rerun tool and notify DEQ of changes. [§32706b(5), p.8] After a withdrawal is registered, a property owner would have an obligation to rerun the tool with corrected data if, as the withdrawal capacity is developed, conditions deviate from the data previously entered into the assessment tool. The owner would also have to notify the DEQ of the corrected data and the result of the rerun of the tool. If the corrected data do not change the tool's determination, the property owner could proceed with the withdrawal. If the corrected data change the determination, the property owner would have to proceed under provisions that apply to the new determination.

Site-specific review. [§32706(c)(1), pp.8-9] Site-specific review is *required* for (1) Zone B withdrawals from cold-transitional river systems and (2) any Zone C or Zone D withdrawal. Site-specific review is *optional* and may be requested by a property owner for proposed Zone A or Zone B withdrawals from a cool or warm river system.

Request for site-specific review. [§32706(c)(1)(a)-(e), p.9] The property owner would submit a request for site specific review to the DEQ in an approved form which includes all of the following:

- Information described in Section 32706a(3) (capacity; location; source; if source is groundwater, whether from glacial stratum or bedrock, and depth; amount and rate of withdrawal; whether withdrawal would be intermittent).
- The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used.
- Information relevant to seasonal fluctuations in the amount and rate of the proposed withdrawal, if expected.
- A description of the intended use of the water and the location, amount, and rate of any return flow.
- Other information the property owner would like the DEQ to consider.

DEQ's evaluation of requests for site-specific review. [§32706(c)(2), pp.9-10] In reviewing a request for site-specific review, the DEQ would consider both (1) the

information submitted and (2) the actual stream or river flow data of any affected stream reach. The DEQ would also apply the drainage area aggregation standards, if applicable. The department would not rely on the assessment tool's determination.

10-day time limit for completion of site-specific review. [§32706(c)(3), p.10] The DEQ would have to complete its review of a request for site-specific review within 10 working days from date of its submission to the DEQ (not the date it was received).

Zone A or B withdrawals get "green light." [§32706(c)(3), p.10] If the DEQ classifies a proposed withdrawal as Zone A or B after site-specific review, it would notify the property owner in writing allowing the owner to register and proceed with the withdrawal.

Zone C withdrawals that get "green light" with conservation "self-certification." [§32706(c)(4), p.10] Unless a permit is required, a property owner could register and proceed with a withdrawal classified as Zone C after site-specific review so long as the owner "self-certifies" that he or she is implementing applicable water conservation measures (either the generic ones adopted by the DEQ or sector-specific ones proposed by a water user sector that have superseded the generic measures).

Zone C withdrawals that would need a permit. [§32706(c)(5), p.10-11] If a proposal is classified by the DEQ as Zone C after site-specific review, and if either of the following conditions exist, a permit under Section 32723 would be required:

- Proposed withdrawal of more than one million gallons per day.
- Proposed withdrawal of more than 200,000 gallons per day that will use more than 50 percent of the index flow of a Zone C withdrawal.

Zone D withdrawals. [§32706(c)(6), p. 11] A property owner could not register and proceed with a proposed withdrawal classified by the DEQ as Zone D after site-specific review without a permit under Section 32723.

Obligation to notify DEQ of changes. [§32706c(7), p.11] After a withdrawal is registered following site-specific review, a property owner would have to notify the DEQ and the DEQ would have to confirm its determination if, as the withdrawal capacity is developed, conditions deviate from the specific data that were evaluated in the site-specific review. If the corrected data do not change the site-specific review determination, the property owner could proceed with the withdrawal. If the corrected data change the determination, the property owner would have to proceed under provisions that apply to the new determination.

Site-specific review before assessment tool is implemented. [§32706c(8), p.11] In the interim period before the assessment tool is implemented, a property owner proposing to develop capacity to make a new or increased large quantity withdrawal could submit a request for a site-specific review. The DEQ would conduct the site-specific review based on an evaluation of "reasonably available" information.

Collection of flow measurements by persons outside the DEQ. [§32706d(1)-(2), p.12] The DEQ would have to develop a protocol for the collection of stream or river flow measurements by persons outside of the DEQ that would be used by the DEQ in administering Part 327. Such measurements would have to meet the quality standards of measurements collected by the U.S. Geological Survey. The DEQ would consult with the U.S. Geological Survey and other recognized scientific experts in developing the protocol. The DEQ could use data collected under this protocol by persons outside of the DEQ for site-specific reviews, permit decisions (under Part 327 or the Safe Drinking Water Act), in updating the assessment tool, or other actions requiring flow data.

Training and certification program. [§32706d(3), p.12] The DEQ could establish a training and certification program (possibly in cooperation with the U.S. Geologic Survey) in the collection of flow and river flow measurements and charge a fee to cover the program costs.

Use of flow made available through restorative measures. [§32706e(1)-(2), p.12-13] Notwithstanding any other provision in Part 327, the DEQ could not authorize (through the assessment tool, site-specific review, or a permit) a withdrawal using additional stream or river flow made available through restorative measures unless (1) the measures are conducted in conjunction with a withdrawal and (2) are specifically authorized in a permit. Put another way, so long as a permit authorizes restorative measures conducted in conjunction with a withdrawal, the DEQ could authorize the use of flow made available through such measures. "Permit" in this section means a permit under Section 32723 or the Safe Drinking Water Act.

House Bill 5070 (Substitute H-5, as reported from committee)

Among other things, House Bill 5070 (H-5) deals with the composition of water users committees, and the persons the DEQ must notify when it authorizes a Zone C withdrawal or determines that an ARI is occurring or is likely to occur.

Water users committees. As introduced, the bill would have allowed riparian owners and other interested parties to serve on water users committees in addition to registrants, permit holders, and local government officials. As reported (H-5 Substitute), committees would remain composed solely of registrants, permit holders (under Section 32723 or the Safe Drinking Water Act), and local government officials. However, a participating local government official could create an "ad hoc subcommittee" of residents from that official's area to provide information and advice.

Notification of Zone C withdrawal authorizations. Under the H-5 Substitute, if the DEQ authorizes a Zone C withdrawal, it would have to notify all registrants, permit holders, and local government officials within the watershed (1) of the Zone C withdrawal authorization and (2) that a water users committee could be established. In this situation, the DEQ could, but would not be required to, provide the committee with technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

Meetings convened by DEQ if ARIs are occurring or are likely to occur. As introduced, the bill would have required the DEQ to either notify a water users committee or convene a meeting of all interested persons (not just registrants and permit holders) if it determines that adverse resource impacts are occurring or are likely to occur from one or more large quantity withdrawals. This provision has been removed. The H-5 Substitute retains the current provision requiring the DEQ to either notify a water users committee or convene a meeting of registrants and permit holders, if it determines that an ARI is occurring or is likely to occur. (Local government officials would apparently not be included in such a meeting unless the local governmental unit was itself a registrant or permit holder.)

Costs of investigating third unverified petition. As introduced, the bill would have eliminated a provision that allows the DEQ director to order a person who submits more than two unverified petitions in one year to pay for the full costs of investigating any third or subsequent unverified petition. The H-5 Substitute retains this provision.

Open Meetings Act. As introduced, the bill would have applied the Open Meetings Act to water users committee meetings. This provision has been removed.

Petition from interested persons alleging that an ARI is occurring or is likely to occur. As introduced, the bill would have allowed interested persons (not just registrants and permit holders) to submit a petition to the director of the DEQ alleging that an ARI is occurring or is likely to occur to occur from one or more water withdrawals. In the H-5 Substitute, this provision has been removed.

Recommendation by local governmental unit that DEQ review a proposed water withdrawal at risk of causing a water use conflict. The H-5 Substitute would allow a local governmental unit (by a majority vote of its governing body) to recommend that the DEQ review a proposed water withdrawal that it believes presents a significant risk of causing a conflict with other water users within its jurisdiction. The DEQ would review the proposal and "attempt to resolve any potential conflicts through negotiation."

Local ordinances. As introduced, the bill would have authorized local ordinances that regulate large quantity withdrawals if consistent with a long-term plan designed to assure water availability (in addition to authorization provided by the Public Health Code). This provision has been removed.

Rule of construction. Current Section 32728 states that Part 327 "shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment." The bill would add that Part 327 should also not be construed to "limit the right of a person whose interests have been or will be adversely affected to institute proceedings in circuit court against any person to protect such interests."

House Bill 5071 (Substitute H-3, as reported from committee)

House Bill 5071 (H-3) would amend Section 4 of the Safe Water Drinking Act (MCL 325.1004) to require the DEQ to use the assessment tool and its zone classification system to evaluate a proposed water withdrawal by public waterworks systems that would provide capacity for a new or increased large quantity withdrawal. The DEQ would also be required to confirm the assessment tool's determination. Before the assessment tool is implemented, the DEQ would have to evaluate a proposed withdrawal based on "reasonably available information."

Zone C; water conservation measures. If the DEQ classifies a proposed withdrawal for a community supply as "Zone C," the community supply would have to either certify that it is implementing either the generic water conservation measures prepared by the DEQ or sector-specific conservation measures.

Require evaluation of impact of certain proposed waterworks systems. Under current Section 4(3), the DEQ *may* evaluate the impact of specified proposed waterworks systems for a community supply, including those that provide new withdrawal capacity of more than 2 million gallons per day from inland sources or more than 5 million gallons per day from the Great Lakes or their connecting waterways. Under the bill, the DEQ would be required to evaluate proposed waterworks systems that would:

- Have the capacity to withdraw more than 2 million gallons per day from "the waters of the state," no longer distinguishing between inland and Great Lakes sources.
- Have the capacity to make a withdrawal that the DEQ confirms is "Zone C" if the withdrawal would either (1) exceed one million gallons per day or (2) exceed 200,000 gallons per day and use more than 50 percent of the index flow of a Zone C withdrawal.
- Result in an intra-basin transfer of more than 100,000 gallons per day averaged over any 90-day period.

Public notice and comment period. The bill as reported would require the DEQ to provide public notice that it is evaluating a proposed waterworks system as described above and provide a public comment period of at least 45 days.

Standard. The Safe Water Drinking Act currently requires the DEQ to reject plans for a public waterworks project that does not meet the standard contained in Section 32723(5) or (6) of NREPA unless both of the following conditions are met: (1) the department determines that there is no feasible and prudent alternative location for the withdrawal; and (2) the department attaches approval conditions (related to depth, plumbing capacity, rate of flow, and ultimate use). In contrast, the H-3 Substitute bill would require the DEQ to reject plans that do not meet the standard contained in Section 32723 but allow the DEQ to approve plans submitted by a proposed waterworks system for a community supply owned by a political subdivision that do not meet the Section 32723 standard if all of the following are met:

- The plans would not result in an interbasin transfer of more than 100,000 gallons per day averaged over any 90-day period.
- The department determines that there is no feasible and prudent alternative location for the withdrawal. (This bill states that this provision would *not* authorize the DEQ to require a person to connect to or remain connected to another existing community supply owned by a political subdivision.)
- The department attaches approval conditions, as in current law.

Effect of approval. DEQ approval under Section 4 of the Safe Drinking Water Act would also satisfy Section 4.11 of the Compact.

Annual report. The holders of permits issued under Section 4 to a community supply would have to submit an annual report to the DEQ by April 1 of each year containing the information described in Section 32707 of NREPA.

House Bill 5072 (Substitute H-6, as passed the House on May 14, 2008)

House Bill 5072 (Substitute H-6) would amend provisions of the Safe Water Drinking Act applicable to bottled drinking water producers.

Department of Agriculture supervision. [§17(1), p.1-2] Water bottling and packaging facilities would remain under the supervision of the Department of Agriculture as described in the Food Law of 2000, but the bill would delete a reference to Regulation No. 549 of the Michigan Administrative Code and "other pertinent rules and laws."

Registration and annual reports. As introduced, the bill would have required producers of bottled drinking water to register with the DEQ by January 31, 2008, and to report each year the amount of water it bottled from each source used. This requirement has been eliminated in the substitute version that passed the House.

Water withdrawals requiring applications; application requirements. [§17(3), p.2] Currently, Section 17(3) of the Safe Drinking Water Act requires that a person who proposes to produce bottled drinking water from a new or increased withdrawal of more than 250,000 gallons of water per day to submit an application to the DEQ. The bill would lower this threshold to:

- 200,000 gallons of water per day, generally, for water withdrawals.
- 100,000 gallons of water per day (averaged over a 90-day period) for intra-basin transfers.

A bottled water producer's application would have to contain (1) an evaluation of existing environmental, hydrological, and hydrogeological conditions and (2) the predicted effects of the intended withdrawal. The evaluation would have to provide a reasonable basis for the department's determination.

Standard for approving application. [§17(4), pp.2-3] Currently, an applicant must show that the proposed use (1) is not likely to have an adverse resource impact, (2) is reasonable under common law principles of water law in Michigan, (3) will protect

riparian rights as defined by Michigan common law. Under the bill, the DEQ could approve an application only if (1) the proposed use would meet the standard contained Section 32723 of NREPA (MCL 324.32723) [as it would be amended by House Bill 5068] and (2) the applicant would undertake appropriate activities address hydrologic impacts, if needed, commensurate with the nature and extent of the withdrawal.

Consultation required before proposing to address hydrologic impacts. [§17(5), p.3] The bill would retain the current requirement that bottled water producers consult with local government officials and interested community members before proposing activities to address hydrologic impacts of a withdrawal.

Public notice and opportunity for comment. [§17(6), p.3] Section 17(5) currently requires the DEQ to provide public notice and an opportunity for comment before it makes a decision on an application from a bottled water producer. The bill would require the notice and comment period to be least 45 days long.

DEQ determination would also satisfy Section 4.11 of the Compact. A DEQ determination that a proposed use meets the applicable standard of the Safe Drinking Water Act [which incorporates the standard from Section 32723 of NREPA] would also constitute a determination that the proposed use would satisfy the applicable decision-making standard of the Compact (Section 4.11).

House Bill 5073 (Substitute H-2, as reported from committee)

House Bill 5073 (H-2). As introduced, the bill would have authorized the DEQ to promulgate rules to enforce Part 327 of NREPA. The provision giving DEQ rulemaking authority has been removed. As reported from Committee, the bill would reestablish the Groundwater Conservation Advisory Council within the DNR, rename it the "Water Resources Conservation Advisory Council," expand its membership, and specify its duties.

Membership. The bill would expand the membership of the advisory council and authorize the Governor, Speaker of the House, Senate Majority Leader, and the DEQ to appoint members representing specified interests to serve on the council along with representatives of the DEQ, the DNR, and the Department of Agriculture. Persons making appointments would have to give consideration to individuals previously serving on the council and make appointments within 90 days of the bill's effective date. The council would appoint a technical advisory committee.

Senate Majority Leader (4 appointees representing):

1. Business and manufacturing interests
2. Public utilities
3. Conservation organizations
4. Statewide agricultural organization

Speaker of the House (4 appointees representing):

1. Registered well drilling contractors with hydrology experience
2. Local units of government
3. Agricultural interests
4. Limnology (the division of hydrology that studies inland waters)

Governor (4 appointees representing):

1. Municipal water suppliers
2. A statewide conservation organization
3. A statewide riparian landowners association
4. A statewide tourism organization

DEQ (6 appointees representing):

1. Nonagricultural irrigators
2. Aggregate industry (e.g., sand, stone, and gravel)
3. Environmental organizations
4. Tribes
5. Statewide anglers' association
6. General public

Duties. The advisory council would have to submit a number of reports (to the Governor, Speaker, Senate Majority Leader, and the DEQ) by specified deadlines, including:

Initial report on the water withdrawal assessment tool's operation and accuracy and possible recommendations for improvement *nine months* after the bill's effective date.

Interim progress reports by February 8, 2009 as to:

- Refinement of the tool, including whether drainage areas should be larger.
- The definition of "adverse resource impact," including modifications to more specifically address the impacts of large quantity water withdrawals.
- Reconciliation of state law conflicts relating to water use.
- Development of a water conservation and efficiency program under the Compact.
- Evaluation of restorative measures
- Educational materials.

Final report and recommendations by August 8, 2009.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.