

SUBSTITUTE FOR
HOUSE BILL NO. 5068

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32721, 32722, and 32723 (MCL 324.32721,
324.32722, and 324.32723), as added by 2006 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32721. (1) A person shall not make a new or increased
2 large quantity withdrawal from the waters of the state that causes
3 an adverse resource impact. ~~to a designated trout stream.~~

4 ~~—— (2) Beginning 2 years after the effective date of the~~
5 ~~amendatory act that added this section, a person shall not make a~~
6 ~~new or increased large quantity withdrawal from the waters of the~~
7 ~~state that causes an adverse resource impact.~~

8 (2) ~~(3)~~ This section does not apply to the baseline capacity

1 of a large quantity withdrawal or a well capable of making a large
2 quantity withdrawal that existed on ~~the effective date of the~~
3 ~~amendatory act that added this section~~ **FEBRUARY 28, 2006.**

4 (3) ~~(4)~~ This section does not apply to a withdrawal that is
5 utilized solely for fire suppression.

6 Sec. 32722. (1) ~~Until a water withdrawal assessment tool~~
7 ~~becomes effective upon legislative enactment pursuant to the~~
8 ~~recommendations of the groundwater conservation advisory council~~
9 ~~under section 32803~~ **FOR NEW OR INCREASED LARGE QUANTITY WITHDRAWALS**
10 **DEVELOPED ON OR AFTER FEBRUARY 28, 2006 AND PRIOR TO THE**
11 **IMPLEMENTATION DATE OF THE ASSESSMENT TOOL UNDER SECTION 32706A,**
12 there is a rebuttable presumption that ~~a new or increased large~~
13 ~~quantity~~ **THE** withdrawal will not cause an adverse resource impact
14 in violation of section 32721 under either of the following
15 circumstances:

16 (a) The location of the withdrawal is more than 1,320 feet
17 from the banks of ~~a designated trout~~ **AN AFFECTED** stream **REACH.**

18 (b) The withdrawal depth of the well is at least 150 feet.

19 (2) **IF THE ASSESSMENT TOOL DETERMINES THAT A WITHDRAWAL IS A**
20 **ZONE A OR A ZONE B WITHDRAWAL AND IS NOT LIKELY TO CAUSE AN ADVERSE**
21 **RESOURCE IMPACT, THERE IS A REBUTTABLE PRESUMPTION THAT THE**
22 **WITHDRAWAL UNDER THE CONDITIONS THAT WERE THE BASIS FOR THE**
23 **ASSESSMENT TOOL'S DETERMINATION WILL NOT CAUSE AN ADVERSE RESOURCE**
24 **IMPACT IN VIOLATION OF SECTION 32721.**

25 (3) **IF THE DEPARTMENT DETERMINES, BASED UPON A SITE-SPECIFIC**
26 **REVIEW, OR IN CONNECTION WITH A PERMIT OR APPROVAL ISSUED UNDER**
27 **SECTION 32723 OR THE SAFE DRINKING WATER ACT, 1976 PA 399, MCL**

1 325.1001 TO 325.1023, THAT A WITHDRAWAL IS NOT LIKELY TO CAUSE AN
2 ADVERSE RESOURCE IMPACT, THERE IS A REBUTTABLE PRESUMPTION THAT THE
3 WITHDRAWAL UNDER THE CONDITIONS THAT WERE THE BASIS OF THE
4 DEPARTMENT'S DETERMINATION WILL NOT CAUSE AN ADVERSE RESOURCE
5 IMPACT IN VIOLATION OF SECTION 32721.

6 (4) ~~(2)~~ A PRESUMPTION UNDER THIS SECTION IS NOT VALID IF THE
7 CAPACITY TO MAKE THE WITHDRAWAL IS NOT DEVELOPED WITHIN 18 MONTHS
8 AFTER THE WITHDRAWAL IS REGISTERED. A presumption under subsection
9 ~~(1)~~ THIS SECTION may be rebutted by a preponderance of evidence
10 that a new or increased large quantity withdrawal from the waters
11 of the state has caused or is likely to cause an adverse resource
12 impact.

13 Sec. 32723. (1) Except as provided in subsection ~~(10)~~ (13),
14 the following persons shall obtain a water withdrawal permit prior
15 to making the withdrawal:

16 (a) A person who ~~develops~~ PROPOSES TO DEVELOP withdrawal
17 capacity to make a new withdrawal of ~~over~~ MORE THAN 2,000,000
18 gallons of water per day from the waters of the state, ~~other than~~
19 ~~the Great Lakes and their connecting waterways,~~ to supply a common
20 distribution system.

21 (b) A person who ~~develops~~ PROPOSES TO DEVELOP increased
22 withdrawal capacity beyond baseline capacity of more than 2,000,000
23 gallons of water per day from the waters of the state, ~~other than~~
24 ~~the Great Lakes and their connecting waterways,~~ to supply a common
25 distribution system.

26 ~~—— (c) A person who develops withdrawal capacity to make a new~~
27 ~~withdrawal of more than 5,000,000 gallons of water per day from the~~

1 ~~Great Lakes and their connecting waterways to supply a common~~
2 ~~distribution system.~~

3 ~~—— (d) A person who develops increased withdrawal capacity beyond~~
4 ~~baseline capacity of more than 5,000,000 gallons of water per day~~
5 ~~from the Great Lakes and their connecting waterways to supply a~~
6 ~~common distribution system.~~

7 (C) A PERSON WHO PROPOSES TO DEVELOP THE CAPACITY TO MAKE A
8 NEW OR INCREASED LARGE QUANTITY WITHDRAWAL THAT A SITE-SPECIFIC
9 REVIEW DETERMINES IS A ZONE C WITHDRAWAL IF EITHER OF THE FOLLOWING
10 CONDITIONS EXISTS:

11 (i) THE PROPOSED WITHDRAWAL WOULD REDUCE THE FLOW OF A COLD
12 SMALL RIVER BY 14% OR MORE OF ITS INDEX FLOW.

13 (ii) THE PROPOSED WITHDRAWAL WOULD REDUCE THE FLOW OF A COOL
14 RIVER SYSTEM OR A WARM RIVER SYSTEM BY 20% OR MORE OF ITS INDEX
15 FLOW.

16 (D) A PERSON WHO PROPOSES A NEW OR INCREASED WITHDRAWAL THAT
17 WILL RESULT IN AN INTRABASIN TRANSFER OF MORE THAN 100,000 GALLONS
18 PER DAY AVERAGE OVER ANY 90-DAY PERIOD.

19 (2) A person shall apply for a **WATER WITHDRAWAL** permit under
20 this section by submitting an application to the department
21 containing the information described in section 32706, **THE**
22 **INFORMATION DESCRIBED IN SECTION 32706C(1), IF NOT PREVIOUSLY**
23 **PROVIDED, OTHER INFORMATION NECESSARY FOR THE DEPARTMENT TO**
24 **DETERMINE IF THE CONDITIONS OF SUBSECTION (6) ARE MET, AND ANY**
25 **OTHER INFORMATION THE PROPERTY OWNER WOULD LIKE THE DEPARTMENT TO**
26 **CONSIDER IN MAKING ITS DETERMINATION. IF THE APPLICANT PROPOSES TO**
27 **UNDERTAKE RESTORATIVE MEASURES ALONG WITH THE WITHDRAWAL, THE**

1 PROPERTY OWNER SHALL PROVIDE THE DEPARTMENT WITH A DETAILED
2 DESCRIPTION OF THE RESTORATIVE MEASURES AND RELEVANT INFORMATION AS
3 TO HOW THEY WILL BE IMPLEMENTED. In addition, ~~until 5 years after~~
4 ~~the effective date of the amendatory act that added this section,~~
5 the applicant shall submit an application fee in the amount of
6 \$2,000.00. The department shall transmit ~~water use reporting~~
7 APPLICATION fees collected under this section to the state
8 treasurer to be credited to the water use protection fund created
9 in section 32714. ~~The department shall provide public notice of all~~
10 ~~applications received under this section.~~

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

23 (4) THE DEPARTMENT SHALL PROVIDE PUBLIC NOTIFICATION OF ITS
24 RECEIPT OF APPLICATIONS UNDER THIS SECTION AND SHALL PROVIDE A
25 PUBLIC COMMENT PERIOD OF NOT LESS THAN 45 DAYS BEFORE APPLICATIONS
26 ARE ACTED UPON UNDER SUBSECTION (5).

27 (5) ~~(4)~~ The department shall make a decision whether to grant

1 or deny a **WATER WITHDRAWAL** permit under this section within 120
2 days of receipt of an administratively complete application.

3 ~~— (5) The department shall issue a permit under subsection~~
4 ~~(1)(a) or (b) if the department determines that the withdrawal is~~
5 ~~not likely to cause an adverse resource impact.~~

6 (6) The department shall issue a **WATER WITHDRAWAL** permit under
7 subsection ~~(1)(c) or (d)~~ **(1) (A), (B), OR (C)** if all of the
8 following conditions are met:

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

11 (b) The withdrawal will be implemented so as to ensure that
12 the proposal will result in no individual or cumulative adverse
13 resource impacts. Cumulative adverse resource impacts under this
14 subdivision shall be evaluated by the department based upon
15 available information gathered by the department.

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

21 (d) The proposed use is reasonable under common law principles
22 of water law in Michigan.

23 (e) ~~The~~ **FOR PERMIT APPLICATIONS RECEIVED ON OR AFTER JANUARY**
24 **1, 2009, THE** applicant has ~~considered voluntary generally accepted~~
25 ~~water management practices or~~ **SELF-CERTIFIED THAT HE OR SHE IS IN**
26 **COMPLIANCE WITH** environmentally sound and economically feasible
27 water conservation measures **DEVELOPED BY THE APPLICABLE WATER**

1 USER'S SECTOR UNDER SECTION 32708A OR HAS SELF-CERTIFIED THAT HE OR
2 SHE IS IN COMPLIANCE WITH ENVIRONMENTALLY SOUND AND ECONOMICALLY
3 FEASIBLE WATER CONSERVATION MEASURES DEVELOPED FOR THE WATER USE
4 ASSOCIATED WITH THAT SPECIFIC WITHDRAWAL.

5 (F) THE DEPARTMENT DETERMINES THAT THE PROPOSED WITHDRAWAL
6 WILL NOT VIOLATE PUBLIC OR PRIVATE RIGHTS AND LIMITATIONS IMPOSED
7 BY MICHIGAN WATER LAW OR OTHER MICHIGAN COMMON LAW DUTIES.

8 (G) THE DEPARTMENT IN MAKING ITS DETERMINATION UNDER THIS
9 SECTION SHALL ACT IN A MANNER THAT CONFORMS WITH ITS DUTIES AS SET
10 FORTH IN SECTION 32702(1)(C).

11 (7) THE DEPARTMENT SHALL ISSUE A WATER WITHDRAWAL PERMIT UNDER
12 SUBSECTION (1)(D) IF THE TRANSFER COMPLIES WITH SECTION 4.9 OF THE
13 COMPACT.

14 (8) IF THE DEPARTMENT APPROVES RESTORATIVE MEASURES IN
15 CONJUNCTION WITH A WATER WITHDRAWAL PERMIT UNDER THIS SECTION, THE
16 DEPARTMENT SHALL ENTER INTO A LEGALLY ENFORCEABLE IMPLEMENTATION
17 SCHEDULE FOR COMPLETION OF THE RESTORATIVE MEASURES.

18 (9) A PROPOSED USE FOR WHICH A WATER WITHDRAWAL PERMIT IS
19 ISSUED UNDER THIS SECTION SHALL BE CONSIDERED TO SATISFY THE
20 REQUIREMENTS OF SECTION 4.11 OF THE COMPACT.

21 (10) ~~(7)~~—A permit issued under part 31 pursuant to 33 USC
22 1326(b) shall be considered sufficient to demonstrate that there
23 will not be an adverse resource impact under section 32721 and
24 satisfies the conditions for a **WATER WITHDRAWAL** permit under this
25 section. Upon receipt of a ~~permit~~ **AN** application **UNDER THIS SECTION**
26 and evidence that the applicant holds a part 31 permit described in
27 this subsection, the department shall grant the applicant a **WATER**

1 **WITHDRAWAL** permit under this subsection.

2 (11) ~~(8)~~—The department may revoke a **WATER WITHDRAWAL** permit
3 issued under this section if the department determines following a
4 hearing, based upon clear and convincing scientific evidence, that
5 the withdrawal is causing an adverse resource impact.

6 (12) ~~(9)~~—A person who is aggrieved by a determination of the
7 department under this section related to a **WATER WITHDRAWAL** permit
8 may file a sworn petition with the department setting forth the
9 grounds and reasons for the complaint and asking for a contested
10 case hearing on the matter pursuant to the administrative
11 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A
12 petition filed more than 60 days after action on the **WATER**
13 **WITHDRAWAL** permit may be rejected by the department as being
14 untimely. The department shall issue a final decision on a petition
15 for a contested case hearing within 6 months after receiving the
16 petition. A determination, action, or inaction by the department
17 following a contested case hearing is subject to judicial review as
18 provided in the administrative procedures act of 1969, 1969 PA 306,
19 MCL 24.201 to 24.328.

20 (13) ~~(10)~~—The following **WITHDRAWALS** are not required to obtain
21 a **WATER WITHDRAWAL** permit under this section:

22 (a) A **WITHDRAWAL BY A** community supply ~~owned by a political~~
23 ~~subdivision~~ that holds a permit under the safe drinking water act,
24 1976 PA 399, MCL 325.1001 to 325.1023.

25 (b) A person who makes seasonal withdrawals of not more than
26 2,000,000 gallons of water per day average in any consecutive 90-
27 day period to supply a common distribution system **AS LONG AS THE**

1 **WITHDRAWALS DO NOT RESULT IN A DIVERSION.**

2 (c) A ~~person engaged in producing~~ **WITHDRAWAL FOR THE**
3 **PRODUCTION OF** bottled drinking water ~~who receives approval~~ **APPROVED**
4 by the department under a water source review conducted under
5 section 17 of the safe drinking water act, 1976 PA 399, MCL
6 325.1017.

7 ~~—— (11) As used in this section:~~

8 ~~—— (a) "Great Lakes and their connecting waterways" means Lakes~~
9 ~~Superior, Michigan, Huron, Erie, and Ontario and their connecting~~
10 ~~waterways including the St. Marys river, Lake St. Clair, the St.~~
11 ~~Clair river, and the Detroit river. For purposes of this section,~~
12 ~~Lakes Huron and Michigan shall be considered a single Great Lake.~~

13 ~~—— (b) "Source watershed" means the watershed from which a~~
14 ~~withdrawal originates. If water is withdrawn directly from a Great~~
15 ~~Lake, then the source watershed shall be considered to be the~~
16 ~~watershed of that Great Lake and its connecting waterways. If water~~
17 ~~is withdrawn from the watershed of a stream that is a direct~~
18 ~~tributary to a Great Lake, then the source watershed shall be~~
19 ~~considered to be the watershed of that Great Lake, with a~~
20 ~~preference for returning water to the direct tributary stream~~
21 ~~watershed from which it was withdrawn.~~

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

25 (a) House Bill No. 4343.

26 (b) House Bill No. 5065.

27 (c) House Bill No. 5066.

- 1 (d) House Bill No. 5067.
- 2 (e) House Bill No. 5069.
- 3 (f) House Bill No. 5070.
- 4 (g) House Bill No. 5071.
- 5 (h) House Bill No. 5072.
- 6 (i) House Bill No. 5073.