

WATER WITHDRAWALS

House Bill 5065
Sponsor: Rep. Gary McDowell

House Bill 5070
Sponsor: Rep. Michael Sak

House Bill 5066
Sponsor: Rep. Mark Meadows

House Bill 5071
Sponsor: Rep. Marc Corriveau

House Bill 5067
Sponsor: Rep. Terry Brown

House Bill 5072
Sponsor: Rep. Mary Valentine

House Bill 5068
Sponsor: Rep. Andy Coulouris

House Bill 5073
Sponsor: Rep. Kathleen Law

House Bill 5069
Sponsor: Rebekah Warren

Committee: Great Lakes and Environment
Complete to 11-6-07

A SUMMARY OF HOUSE BILLS 5065-5073 AS INTRODUCED 7-25-07

This package of bills relating to water withdrawals would do the following:

- **House Bill 5065** would amend definitions contained in Part 327 of the Natural Resources and Environmental Protection Act (NREPA).
- **House Bill 5066** would establish registration and annual report requirements, amend provisions concerning water user sector guidelines, and require persons making large quantity withdrawals to adopt conservation measures, and, if needed, address impacts.
- **House Bill 5067** would adopt a guiding principle for the Department of Environmental Quality's Part 327 decisions, allow county prosecuting attorneys and affected persons to sue to enforce Part 327, and increase the maximum allowable civil fine.
- **House Bill 5068** would amend when a permit is needed for a large quantity water withdrawal and the standards for issuance of a permit.
- **House Bill 5069** would require implementation of a new online water withdrawal assessment tool.
- **House Bill 5070** would amend provisions concerning water users committees, petitions concerning water withdrawals, and local ordinances regulating withdrawals.
- **House Bill 5071** would require an evaluation of the impact of certain proposals relating to water to be withdrawn by public waterworks systems.
- **House Bill 5072** would specify registration and reporting requirements for bottled drinking water producers; amend when a permit is required and the standards for

issuance of a permit; and provide for greater public involvement and access to information.

- **House Bill 5073** would authorize the DEQ to promulgate rules to implement Part 374.

Each bill is tie-barred to all of the others, meaning that unless all are enacted, none will take effect. More details are provided below.

House Bill 5065

House Bill 5065 would amend certain definitions found in Part 327 and would add a legislative finding that additional resources are needed for the new water withdrawal assessment tool and for the program to monitor and regulate water use in Michigan generally.

Amended or deleted definitions. The definition of “**consumptive use**” would no longer specifically include water packaged in a container of 5.7 gallons or less [e.g., a typical water cooler bottle].

The definition of “**diverted**” water would no longer specifically include water removed in containers greater than 5.7 gallons. The following uses would *not* be considered diversions: (1) the use or transport of water by a person for his or her own personal, noncommercial use; or (2) a use that is registered or authorized under Section 17 of the Safe Drinking Water Act (MCL 325.1017) (applicable to bottled drinking water facilities).

The current definition of “**generally accepted water management practices**, as “standards or guidelines for water use that ensure water is used efficiently,” would be deleted and not replaced.

“**Index flow**,” a measurement of the amount of water flowing through a stream, would be amended to mean the “90 percent exceedance flow” (instead of the 50 percent exceedance flow as is currently the case) for the lowest flow month for a segment of a stream.

“**Large quantity withdrawal**” currently means one or more cumulative total withdrawals of over 100,000 gallons per day averaged in a consecutive 30-day period *that supply a common distribution system*. The requirement of supplying a common distribution system would be deleted.

Likewise, the definition of “**new or increased water withdrawal capacity**” would be amended to eliminate the requirement that new or additional water withdrawal capacity must supply “a common distribution system.”

MCL 324.32701 and 324.32702

House Bill 5066

House Bill 5066 would require property owners capable of making a large quantity withdrawal of water on their property to register with the DEQ using the new online water withdrawal assessment tool before making a withdrawal, unless they: (1) have previously registered and haven't developed new or increased capacity; (2) are a public water supply with a permit under the Safe Drinking Water Act; (3) hold a permit under Section 32723; or (4) are the owner of a noncommercial well on residential property. The bill eliminates existing language requiring certain persons to register but allowing them to do so after the withdrawal has begun. Each registrant would also have to describe and provide supporting documentation as to the capacity of the well or withdrawal infrastructure in addition to other existing registration requirements.

Annual reports to DEQ. With certain exceptions, registrants and permit holders must file an annual report with the DEQ with specified information. The bill would amend annual report provisions to do the following:

- Eliminate a provision exempting persons who withdraw less than 1.5 million gallons per year from having to provide certain information.
- Require a certification that the person's current water use and proposed plans for withdrawal incorporate "environmentally sound and economically feasible" water conservation measures.
- Require each registrant or permit holder to include information about the baseline capacity of the withdrawal and a description of the system capacity in the first report submitted after February 28, 2006. (Currently, providing this information is optional.)
- Eliminate a provision that would lower the \$200 annual report fee to \$100 when the water withdrawal assessment tool becomes effective.
- Eliminate a current exemption from the report fee for farms that report withdrawals under Section 32708 and persons who withdraw less than 1.5 million gallons per year.

Annual reports to Department of Agriculture. 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. The bill would require the first plan submitted after February 28, 2006 to include the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity. (Currently, providing this information is optional.)

Water user sector guidelines. By January 1, 2008, each water user sector would be required to prepare guidelines for environmentally sound and economically feasible water conservation within that sector. (Current language allowing the preparation of guidelines for "generally accepted water management practices" would be eliminated). By July 1, 2008 the DEQ would have to review and approve or disapprove each sector's proposed conservation measures. Approved guidelines could be adopted by statewide professional or trade associations representing that sector. If a sector fails to prepare guidelines by

January 1, 2008, the DEQ would promulgate the rules for that sector. The DEQ would review these rules at least every five years.

Requirements of person making large quantity withdrawals. Persons who make large quantity withdrawals of water would have to use required conservation measures and return unused water as close to the point of withdrawal as possible. In addition, the bill would add a new Section 327.08b to require persons who make large quantity withdrawals to undertake appropriate activities, if needed, to address hydrologic impacts of the withdrawal. Activities could include steps relating to stream flow, water quality, and aquifer protection.

MCL 324.32705 through 324.32708b

House Bill 5067

House Bill 5067 would require the Department of Environmental Quality to make decisions under Part 327 in a manner that would not "impair the waters of the state or other natural resources of the state or the public trust in those natural resources."

In addition, county prosecuting attorneys and persons affected by (or threatened with effects from) a large quantity water withdrawal would be authorized to sue in state circuit court alleging that a violation of Part 327 or its rules has occurred or is likely to occur and seeking a permanent or temporary injunction or other relief. (Currently, only the attorney general is authorized to sue, at the request of the DEQ.) The maximum civil fine a court could impose (in addition to injunctive or other relief) would increase from \$1,000 to \$10,000.

MCL 324.32710 and 324.3713

House Bill 5068

House Bill 5068 would:

- Amend the applicability of the requirements of Section 32721. Section 32721 prohibits a person from making a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact (before February 28, 2008, the withdrawal must impact a designated trout stream).

Currently, Section 32721 does not apply to the existing baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal. Under the bill, this section would not apply to the highest annual amount of water withdrawn as reported under Part 327 for calendar years 2002, 2003, 2004, 2005, or 2006.

- Require water withdrawal permits for projects involving fewer gallons of water than currently trigger the need for a permit, and require the permit from persons

"who propose to develop" specified withdrawal capacity, rather than from those "who develop" the specified projects, as follows:

- Inland waters
New withdrawal over one million gallons per day (instead of two).
Increased withdrawal over one million gallons per day (instead of two).
- Great Lakes (and connecting tributaries)
New withdrawal over two million gallons per day (instead of five).
Increased withdrawal over two million gallon per day (instead of five).
- Require permits from additional persons: those who propose to develop capacity to make a new or increased large quantity withdrawal (1) from an area designated as a sensitive water resource; (2) that would reduce flow in a stream reach by more than five percent; or (3) that the water withdrawal assessment tool indicates is likely to cause an adverse resource impact.
- Require a permit application to contain all of the following:
 - A complete hydrogeological study and assessment of water source, natural features, and soils affected by the withdrawal.
 - An assessment of the withdrawal's effects on flows and levels of groundwater, springs, lakes and streams, and wetlands, or nearby wells, containing specified data and testing methods.
 - A fee in the amount of \$2,500 (instead of \$2,000).
- Provide for public notice of applications received and a public comment period of at least 60 days.
- Extend the department's time period for deciding whether to grant or deny a permit from 120 days to 180 days.
- Adopt new standards for approving water withdrawal permits, as follows:
 - The DEQ *would* issue a permit if it determines that (1) authorizing the proposed withdrawal is consistent with the duty of the state as trustee for the waters of the state and that the proposed withdrawal is in the public interest; and (2) that the proposed withdrawal complies with the requirements of Part 327. A proposed use would have to include environmentally sound and economically feasible water conservation measures.
 - The DEQ *would not* issue a permit if it determines that the proposed withdrawal (1) would cause individual or cumulative adverse resource impacts or otherwise result in an impairment or unacceptable disruption to aquatic resources; (2) would interfere with riparian rights or the public trust in any groundwater or surface waters; (3) would interfere with the property rights of another person to lawful use of water; or (4) does not comply with other applicable law.
 - In determining whether a proposed withdrawal is in the public interest, the DEQ would have to consider, at a minimum, all of the following: (1)

whether the withdrawn water would be used within the watershed from which it is withdrawn; (2) the impact on other uses of the groundwater or surface waters; (3) the impact on water quality; (4) whether the waste of water is prevented or minimized; and (5) whether the withdrawal would impair the physical character of a stream.

- Provide that a decision on a permit does not limit the right of a person whose interests have been or will be adversely affected to bring a circuit court action against any person to protect such interests.
- Allow the department to impose conditions on permits.
- Limit the validity of a permit to no more than five years.
- Adopt a streamlined permit renewal process to allow a current permit holder to demonstrate that there has been no significant change in the conditions on which the previous permit approval was based.
- Amend the standard for revoking a permit from "clear and convincing scientific evidence" to "a preponderance of the evidence" that the withdrawal is causing an adverse resource impact.
- Delete a person who makes seasonal withdrawals averaging two million gallons of water per day or less in any consecutive 90-day period from the list of persons not required to obtain a permit.

MCL 324.32721 and 324.32723

House Bill 5069

House Bill 5069 would require the DEQ to make a water withdrawal assessment tool available online by February 28, 2008. The water withdrawal assessment tool would be used to educate the public on potential resource impacts of a water withdrawal, to indicate whether or not a water withdrawal is likely to cause an adverse resource impact, and for registrations required by Section 32705.

After the assessment tool becomes effective, a person could begin a new or increased large quantity withdrawal only if (1) the assessment tool indicates that the withdrawal is not likely to cause an adverse resource impact, and the withdrawal is registered; (2) the DEQ has determined (using site-specific flow and other readily available information) that the withdrawal is not likely to cause an adverse resource impact and the withdrawal is registered; and (3) the withdrawal receives a permit. There would be a rebuttable presumption that a withdrawal registered or permitted in accordance with this subsection is not likely to cause an adverse resource impact in violation of Section 32721.

Ways to evaluate the likely effects of a proposed withdrawal. A person considering a new or increased large quantity withdrawal could (1) use the assessment tool to evaluate whether the withdrawal is likely to cause an adverse resource impact; or (2) request that the DEQ use the assessment tool for that person and register that person for a fee of not more than \$150; or (3) seek a determination by the DEQ (using site specific-flow and

other readily available information) that a new or increased withdrawal is not likely to cause an adverse resource impact for a fee of not more than \$500.

Maintenance and improvement of the assessment tool. The DEQ, in conjunction with the Department of Natural Resources, would be required to update the water withdrawal assessment tool at least once a year to maintain and improve it.

Designation of sensitive water resources. The bill would allow the DEQ to designate an area of the state consistently shown by the water withdrawal assessment tool to be at risk for adverse resource impacts as a "sensitive water resource." If an area is so designated, the DEQ could modify water withdrawal permits that affect the water resources within the area and could require a permit for a new or increased large quantity withdrawal within the area.

MCL 324.32722

House Bill 5070

House Bill 5070 would:

- Add riparian owners and other interested parties to the suggested composition of a water users committee.
- Allow the DEQ to convene a meeting of interested persons (not just registrants or permit holders) when it has determined that adverse impacts are occurring or are likely to occur from one or more large quantity withdrawals.
- Apply the Open Meetings Act to meetings of a water users committee.
- Allow interested persons (not just registrants and permit holders) to submit a petition to the director of the DEQ alleging that adverse resource impacts are occurring or are likely to occur from one or more water withdrawals.
- Eliminate 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.
- Allow 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).

MCL 324.32725 and 324.32726

House Bill 5071

House Bill 5071 would amend Section 4 of the Safe Water Drinking Act (MCL 325.1004) to require the DEQ to evaluate the impact of certain proposals relating to water withdrawn by public waterworks systems from specified water sources, as follows:

Water withdrawn from an inland source

- New total designed capacity to withdraw more than one million gallons of water per day (instead of 2 million).
- An increase in the previous designed capacity of more than one million gallons of water per day (instead of 2 million).

Water withdrawn from the Great Lakes and connecting waterways

- New total designed capacity to withdraw more than 2 million gallons of water per day (instead of 5 million).
- An increase in a system's designed capacity of more than 2 million gallons of water per day (instead of 5 million) above its previous designed capacity.

In addition, 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 of the 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 use) to minimize the adverse environmental impact of the withdrawal.

The bill would require a determination that there is no feasible "alternative" rather than no feasible "alternative location." In other words, instead of simply considering alternative *locations* for a withdrawal, the DEQ could consider whether there are alternatives, such as conservation measures, that would eliminate the need for the withdrawal.

MCL 325.1004

House Bill 5072

House Bill 5072 would amend provisions of the Safe Water Drinking Act applicable to persons producing bottled drinking water.

Registration and annual reports. The bill would require producers of bottled drinking water to register with the DEQ by January 31, 2008, and submit an annual report by January 31 in subsequent years listing the total amount of water bottled during the preceding year from each water source used.

When permit required. The bill would require a permit when a person proposes a new or increased withdrawal of more than 100,000 gallons of water per day (instead of 250,000) to use for bottled drinking water.

Application requirements. A person seeking a water withdrawal permit for bottled drinking water would have to submit an application that contains (1) a complete hydrogeological study and assessment of water source, natural features, and soils affected

by the withdrawal; and (2) an assessment of the withdrawal's effects on flows and levels of groundwater, springs, lakes and streams, and wetlands or nearby wells, containing specified data and testing methods.

Standard for approving permit. The DEQ could approve an application only if it determined that the standards established in Section 32723 would be met and that the applicant would undertake appropriate activities, if needed, to address hydrologic impacts.

Public involvement. Before deciding whether to issue a permit under this section, the DEQ would provide public notice and an opportunity for public comment and public hearing. The information provided in connection with an application would be subject to disclosure under the Freedom of Information Act.

De novo review. A decision regarding the application of this section would be subject to de novo review in court.

MCL 324.1017

FISCAL IMPACT:

This tie-barred package of bills would have an indeterminate fiscal impact on the state and on local governmental units. The water use permit application fee would be increased from \$2,000 to \$2,500 (HB 5068). A new registration fee of \$150 would be established for those water users considering large volume water withdrawals, and the department would be allowed to charge as much as \$500 to determine the impact of a proposed withdrawal (HB 5069). The maximum amount of an assessed civil fine for violation of regulatory provisions of this bill package would be increased 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.

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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.