

# HOUSE BILL No. 5638

February 22, 2018, Introduced by Reps. Miller, Leutheuser, Barrett, Cole, Victory, Pagel, Bizon, Whiteford, Kelly, Hernandez, LaFave, Frederick, Roberts, Rendon, Alexander, Griffin, VanderWall, Glenn, Bellino, Howell, Iden, LaSata, Kahle, Calley and Brann and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 32706c (MCL 324.32706c), as added by 2008 PA 181.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 32706c. (1) If the assessment tool determines that a  
2 proposed withdrawal is a zone B withdrawal in a cold-transitional  
3 river system, or a zone C or zone D withdrawal, **AND IF** the property  
4 owner ~~shall submit~~ **SUBMITS** to the department a ~~THE INFORMATION~~  
5 **DESCRIBED IN SECTION 32706A(3) AND EITHER OF THE FOLLOWING, THERE**  
6 **IS A REBUTTABLE PRESUMPTION THAT THE PROPOSED WITHDRAWAL WILL NOT**  
7 **CREATE AN ADVERSE RESOURCE IMPACT:**

8           **(A) AN ANALYSIS BY A PROFESSIONAL HYDROLOGIST OR**  
9 **HYDROGEOLOGIST OF THE PROPOSED WITHDRAWAL DEMONSTRATING THE**  
10 **PROPOSED WITHDRAWAL IS UNLIKELY TO CAUSE AN ADVERSE RESOURCE**

1 IMPACT. THE ANALYSIS SHALL BE BASED ON HYDROGEOLOGICAL STREAMFLOW  
2 DATA AND SHALL INCLUDE AT LEAST 1 OF THE FOLLOWING:

3 (i) EVIDENCE THE PROPOSED WITHDRAWAL IS IN THE WATER  
4 MANAGEMENT UNIT OR UNITS THAT WERE PART OF A REGIONAL OR WATERSHED  
5 BASED STUDY OF WATER USE IMPACTS ACCEPTED BY THE DEPARTMENT UNDER  
6 THIS SECTION OR SECTION 32706D. THE EVIDENCE SUBMITTED TO THE  
7 DEPARTMENT MUST INCLUDE AN AFFIDAVIT BY THE PROPERTY OWNER THAT THE  
8 PROPOSED WITHDRAWAL IS LOCATED IN A RIVER SYSTEM AND AQUIFER  
9 INCLUDED IN THE STUDY, AND RECORDS OF APPLICABLE DATA COLLECTED IN  
10 THE STUDY.

11 (ii) SURFICIAL MAPPING OF GLACIAL GEOLOGY AND DATA  
12 ACCUMULATION IN 3-DIMENSIONAL FORMAT THAT INCLUDES THE WATER  
13 MANAGEMENT UNIT OR UNITS FOR THE PROPOSED WITHDRAWAL, COMPLETED BY  
14 OR IN ACCORDANCE WITH THE STANDARDS OF THE UNITED STATES GEOLOGICAL  
15 SURVEY OR THE MICHIGAN GEOLOGICAL SURVEY.

16 (iii) A GEOLOGIC CROSS SECTION AND AN ANALYSIS OF THE WATER  
17 MANAGEMENT UNIT OR UNITS IN WHICH THE PROPOSED WITHDRAWAL WILL BE  
18 MADE, INCORPORATING DATA FROM WELL LOGS, GAMMA RAY LOGS, OR OTHER  
19 DATA AVAILABLE TO CONSTRUCT THE CROSS SECTION.

20 (B) REGISTRATION FOR A PROPOSED WITHDRAWAL THAT WILL DRAW  
21 WATER FROM AQUIFERS SEPARATED FROM GLACIAL AQUIFERS BY BEDROCK.

22 (2) THE DEPARTMENT SHALL PROVIDE TO THE PROPERTY OWNER AN  
23 ACKNOWLEDGMENT OF ITS RECEIPT OF THE SUBMITTAL UNDER SUBSECTION (1)  
24 WITHIN 10 DAYS AFTER THE ACTUAL RECEIPT OF DATA AND ANALYSES  
25 RELATED TO THE PROPOSED WITHDRAWAL. THE ACKNOWLEDGMENT OF RECEIPT  
26 SHALL SERVE AS FINAL APPROVAL OF THE PROPOSED WITHDRAWAL UNLESS,  
27 WITHIN 10 DAYS OF ITS ACKNOWLEDGEMENT OF RECEIPT, THE DEPARTMENT

1 PROVIDES A WRITTEN DEMONSTRATION TO THE PROPERTY OWNER THAT THE  
2 APPROVAL OF WITHDRAWAL UNDER THIS SECTION MUST BE GRANTED ON A  
3 PROVISIONAL BASIS. IF THE DEPARTMENT PROVISIONALLY APPROVES A  
4 PROPOSED WITHDRAWAL UNDER THIS SECTION, THE DEPARTMENT MAY REQUIRE  
5 IN WRITING THAT THE LANDOWNER PROVIDE 5 SETS OF WATER LEVEL  
6 RECOVERY MEASUREMENTS AS DESCRIBED IN THIS SECTION, TAKEN AFTER  
7 PUMPING BETWEEN JUNE AND OCTOBER WITHIN 2 YEARS AFTER THE  
8 PRODUCTION WELL IS PUT IN SERVICE. IF AN ADVERSE RESOURCE IMPACT IS  
9 NOT OBSERVED, THE DEPARTMENT SHALL ISSUE FINAL APPROVAL OF THE  
10 WITHDRAWAL AND SHALL NOT REQUIRE SUBMISSION OF ADDITIONAL  
11 INFORMATION OR DATA FROM THE LANDOWNER.

12 (3) IF A PROPOSED WITHDRAWAL IS A ZONE B WITHDRAWAL IN A COLD-  
13 TRANSITIONAL RIVER SYSTEM, OR A ZONE C OR ZONE D WITHDRAWAL, AND A  
14 PROPERTY OWNER DOES NOT SUBMIT ANY OF THE INFORMATION DESCRIBED IN  
15 SUBSECTION (1), THE PROPERTY OWNER MAY request ~~for a site-specific~~  
16 review. ~~Additionally, if~~ IF the assessment tool determines that a  
17 proposed withdrawal is a zone A withdrawal, or a zone B withdrawal  
18 in a cool river system or a warm river system, ~~and the property~~  
19 ~~owner wishes to have a site-specific review,~~ the property owner may  
20 submit to the department a request for a site-specific review. A  
21 request for a site-specific review shall be submitted to the  
22 department in a form required by the department and shall include  
23 all of the following:

24 (a) The information described in section 32706a(3).

25 (b) The intended maximum monthly and annual volumes and rates  
26 of the proposed withdrawal, if different from the capacity of the  
27 equipment used for making the proposed withdrawal.

1 (c) If the amount and rate of the proposed withdrawal will  
2 have seasonal fluctuations, the relevant information related to the  
3 seasonal use of the proposed withdrawal.

4 (d) A description of how the water will be used and the  
5 location, amount, and rate of any return flow.

6 (e) Any other information the property owner would like the  
7 department to consider in making its determination under this  
8 section.

9 (4) ~~(2)~~ Upon receipt of a request for a site-specific review  
10 **UNDER SUBSECTION (3)**, the department shall consider the information  
11 submitted ~~to the department under subsection (1)~~ and shall consider  
12 the actual stream or river flow data of any affected stream reach.  
13 The department shall also apply the drainage area ~~aggregation~~  
14 **INTEGRATION** standards provided in section 32706a(2)(a), (b), and  
15 (c), if applicable, and account for cumulative withdrawals as  
16 provided for in section 32706e. The department shall not rely on  
17 the assessment tool's determination in making its determination  
18 under a site-specific review. **THE DEPARTMENT MAY CALCULATE**  
19 **STREAMFLOW DEPLETION USING HUNT, 2003; WARD AND LOUGH, 2011; OR A**  
20 **PEER-REVIEWED FUNCTIONAL EQUIVALENT AS DETERMINED BY THE**  
21 **PROFESSIONAL JUDGMENT OF THE DEPARTMENT TO DETERMINE WHETHER THE**  
22 **PROPOSED WITHDRAWAL IS LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT.**  
23 **THE CALCULATION OF STREAMFLOW DEPLETION MAY ALSO BE CONDUCTED ON**  
24 **EXISTING WITHDRAWALS IN THE SAME WATER MANAGEMENT UNIT OR UNITS AS**  
25 **THE PROPOSED WITHDRAWAL IF APPLICABLE DATA IS AVAILABLE. THIS DATA**  
26 **MAY BE USED TO PROVIDE ADDITIONAL EVIDENCE AS NEEDED TO DEMONSTRATE**  
27 **WHETHER A PROPOSED WITHDRAWAL IS LIKELY TO CAUSE AN ADVERSE**

1 **RESOURCE IMPACT.**

2 (5) ~~(3)~~—The department shall complete ~~its~~**A** site-specific  
3 review within 10 working days of submittal of a request for a site-  
4 specific review. If the department determines, based upon a site-  
5 specific review, that the proposed withdrawal is a zone A or a zone  
6 B withdrawal, the department shall provide written notification to  
7 the property owner and the property owner may register the  
8 withdrawal and may proceed with the withdrawal.

9 (6) ~~(4)~~—Subject to subsection ~~(5)~~, ~~(7)~~, if the department  
10 determines in conducting a site-specific review that the proposed  
11 withdrawal is a zone C withdrawal, the property owner may register  
12 the withdrawal and proceed to make the withdrawal if the property  
13 owner self-certifies that he or she is implementing applicable  
14 environmentally sound and economically feasible water conservation  
15 measures prepared under section 32708a that the property owner  
16 considers to be reasonable or has self-certified that he or she is  
17 implementing applicable environmentally sound and economically  
18 feasible water conservation measures developed for the water use  
19 associated with that specific withdrawal that the property owner  
20 considers to be reasonable.

21 (7) ~~(5)~~—Except for withdrawals exempt from obtaining a water  
22 withdrawal permit under section 32723, if a site-specific review  
23 determines that a proposed withdrawal is a zone C withdrawal with  
24 capacity in excess of 1,000,000 gallons of water per day from the  
25 waters of the state to supply a common distribution system, the  
26 person proposing the withdrawal shall not register the withdrawal  
27 and shall not proceed with making the withdrawal unless the person

1 obtains a water withdrawal permit under section 32723.

2       **(8)** ~~(6)~~—If the department determines, based upon a site-  
3 specific review, that the proposed withdrawal is a zone D  
4 withdrawal, the property owner shall not register the withdrawal  
5 and shall not make the withdrawal unless he or she applies for a  
6 water withdrawal permit under section 32723 and the withdrawal is  
7 authorized under that section.

8       **(9)** ~~(7)~~—After a property owner registers a withdrawal  
9 following a site-specific review, if, in developing the capacity to  
10 make the withdrawal, the conditions of the withdrawal deviate from  
11 the specific data that were evaluated in the site-specific review,  
12 the property owner shall notify the department of the corrected  
13 data and the department shall confirm its determination under the  
14 site-specific review. If the corrected data do not change the  
15 determination under the site-specific review, the property owner  
16 may proceed with the withdrawal. If the corrected data change the  
17 determination under the site-specific review, the property owner  
18 shall proceed under the provisions of this part related to the  
19 corrected determination.

20       **(10)** ~~(8)~~—Subject to subsection ~~(9)~~, **(11)**, prior to the  
21 implementation date of the assessment tool under section 32706a, a  
22 property owner proposing to develop withdrawal capacity on his or  
23 her property to make a new or increased large quantity withdrawal  
24 may submit to the department a request for an interim site-specific  
25 review under this subsection to determine whether or not the  
26 proposed withdrawal is likely to cause an adverse resource impact.  
27 The department, upon request, shall conduct an interim site-

1 specific review under this subsection within a reasonable time  
2 period not to exceed 30 days based upon an evaluation of reasonably  
3 available information. For purposes of this part, a determination  
4 under an interim site-specific review under this subsection shall  
5 be afforded the same status as a site-specific review otherwise  
6 conducted under this section.

7       **(11)** ~~(9)~~—Except for withdrawals exempt from obtaining a permit  
8 under section 32723, a property owner who, prior to the  
9 implementation of the assessment tool under section 32706a, intends  
10 to develop withdrawal capacity on his or her property to make a new  
11 or increased large quantity withdrawal of more than 1,000,000  
12 gallons of water per day from the waters of the state to supply a  
13 common distribution system shall obtain an interim site-specific  
14 review under subsection ~~(8)~~—**(10)**. If the interim site-specific  
15 review determines that the proposed withdrawal is a zone C  
16 withdrawal, the property owner shall not proceed with making the  
17 withdrawal unless the person obtains a water withdrawal permit  
18 under section 32723.

19       **(12) FOR AGRICULTURAL WITHDRAWALS, DATA AND ANALYSES SUBMITTED**  
20 **TO THE DEPARTMENT UNDER THIS PART ARE EXEMPT FROM DISCLOSURE UNDER**  
21 **THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246,**  
22 **AND SHALL NOT BE DISCLOSED BY THE DEPARTMENT, THE DEPARTMENT OF**  
23 **AGRICULTURE AND RURAL DEVELOPMENT, OR THE DEPARTMENT OF NATURAL**  
24 **RESOURCES UNLESS THE DEPARTMENT DETERMINES THAT THE WITHDRAWAL IS**  
25 **CAUSING AN ADVERSE RESOURCE IMPACT.**

26       **(13) AS USED IN THIS PART:**

27       **(A) "AQUIFER PERFORMANCE TEST" MEANS A CONTROLLED FIELD TEST**

1 IN WHICH ALL OF THE FOLLOWING ARE DONE:

2 (i) PUMPING IS CONDUCTED AT A CONSTANT RATE AT OR ABOVE THE  
3 DESIRED PRODUCTION RATE FOR THE DURATION OF THE TEST AND METERED OR  
4 PERIODICALLY MEASURED TO ENSURE CONSISTENCY OF RATE.

5 (ii) THE TEST IS CONDUCTED FOR A PERIOD OF 24 HOURS, DURING  
6 WHICH DRAWDOWN MEASUREMENTS ARE TAKEN AT 1-MINUTE INTERVALS TO AN  
7 ACCURACY OF 0.05 FEET.

8 (iii) AFTER COMPLETION OF PUMPING, MEASUREMENTS OF WATER LEVEL  
9 RECOVERY ARE TAKEN AT 1-MINUTE INTERVALS FOR 24 HOURS. THE ANALYSIS  
10 SHALL CALCULATE STREAMFLOW DEPLETION USING SOLUTIONS FROM HUNT,  
11 2003; WARD AND LOUGH, 2011; OR A PEER-REVIEWED FUNCTIONAL  
12 EQUIVALENT AS DETERMINED BY THE PROFESSIONAL JUDGMENT OF THE  
13 HYDROLOGIST OR HYDROGEOLOGIST PERFORMING THE ANALYSIS. THE ANALYSIS  
14 MAY ALSO BE CONDUCTED ON EXISTING WITHDRAWALS IN THE SAME WATER  
15 MANAGEMENT UNIT OR UNITS AS THE PROPOSED WITHDRAWAL IF APPLICABLE  
16 DATA IS AVAILABLE. THIS MAY BE USED TO PROVIDE ADDITIONAL EVIDENCE  
17 AS NEEDED TO DEMONSTRATE A PROPOSED WITHDRAWAL IS UNLIKELY TO CAUSE  
18 AN ADVERSE RESOURCE IMPACT.

19 (B) "HUNT, 2003" MEANS HUNT 2003: "UNSTEADY STREAM DEPLETION  
20 WHEN PUMPING FROM SEMICONFINED AQUIFER".

21 (C) "HYDROGEOLOGICAL STREAMFLOW DATA" INCLUDES ALL OF THE  
22 FOLLOWING:

23 (i) RECORDS OF THE INSTALLATION OF A MINIMUM OF 1 MONITORING  
24 WELL. A NEARBY EXISTING MONITORING WELL MAY BE USED FOR THE TEST  
25 INSTEAD, IF IT IS IN SUFFICIENTLY CLOSE PROXIMITY AND IF THERE ARE  
26 SUFFICIENTLY SIMILAR GEOLOGIC CONDITIONS THAT IN THE PROFESSIONAL  
27 JUDGMENT OF THE HYDROLOGIST OR HYDROGEOLOGIST THE EXISTING WELL



1 WILL COLLECT DATA ACCURATE ENOUGH FOR THE ANALYSIS OF STREAMFLOW  
2 DEPLETION UNDER THIS PART. THE MONITORING WELL MUST BE INSTALLED IN  
3 THE SAME AQUIFER AND SCREENED AT OR NEAR THE SAME DEPTH AS THE  
4 PRODUCTION WELL, AND BE LOCATED AT A DISTANCE OF 1 TO 5 TIMES THE  
5 THICKNESS OF THE AQUIFER FROM THE PROPOSED PRODUCTION WELL.

6 (ii) MEASUREMENTS OF STATIC WATER LEVEL ELEVATIONS AT 1-MINUTE  
7 INTERVALS FOR A MINIMUM OF 24 HOURS BEFORE THE PUMPING PORTION OF  
8 THE TEST.

9 (iii) RECORDS FROM AN AQUIFER PERFORMANCE TEST FROM THE  
10 PROPOSED PRODUCTION WELL. A NEARBY EXISTING PRODUCTION WELL MAY BE  
11 USED FOR THE TEST INSTEAD, IF IT IS IN SUFFICIENTLY CLOSE PROXIMITY  
12 AND THERE ARE SUFFICIENTLY SIMILAR GEOLOGIC CONDITIONS THAT IN THE  
13 PROFESSIONAL JUDGMENT OF THE HYDROLOGIST OR HYDROGEOLOGIST THE  
14 EXISTING WELL WILL COLLECT DATA ACCURATE ENOUGH FOR THE ANALYSIS OF  
15 STREAMFLOW DEPLETION UNDER THIS PART.

16 (D) "WARD AND LOUGH, 2011" MEANS WARD AND LOUGH 2011: "STREAM  
17 DEPLETION FROM PUMPING A SEMICONFINED AQUIFER IN A TWO-LAYER LEAKY  
18 AQUIFER SYSTEM".