

SUBSTITUTE FOR  
SENATE BILL NO. 850

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 30103, 32701, 32702, 32707, and 32713 (MCL 324.30103, 324.32701, 324.32702, 324.32707, and 324.32713), sections 30103, 32702, and 32713 as added by 1995 PA 59 and sections 32701 and 32707 as amended by 2003 PA 148, and by adding sections 32704a, 32721, 32722, 32723, 32724, 32726, 32727, and 32728; and to repeal acts and parts of acts.

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

1           Sec. 30103. (1) A permit is not required **UNDER THIS PART** for  
2 any of the following:

3           (a) Any fill or structure existing before April 1, 1966, in  
4 waters covered by former ~~Act No. 291 of the Public Acts of 1965~~  
5 **1965 PA 291**, and any fill or structures existing before January 9,

1 1973, in waters covered for the first time by former ~~Act No. 346~~  
2 ~~of the Public Acts of 1972~~ **1972 PA 346**.

3 (b) A seasonal structure placed on bottomland to facilitate  
4 private noncommercial recreational use of the water if it does not  
5 unreasonably interfere with the use of the water by others entitled  
6 to use the water or interfere with water flow.

7 (c) Reasonable sanding of beaches to the existing water's edge  
8 by a riparian owner.

9 (d) Construction or maintenance of a private agricultural  
10 drain regardless of outlet.

11 (e) A waste collection or treatment facility that is **ORDERED**  
12 **TO BE CONSTRUCTED OR IS** approved for construction by the  
13 department. ~~of public health or ordered or approved by the~~  
14 ~~department.~~

15 (f) Construction and maintenance of minor drainage structures  
16 and facilities which are identified by rule promulgated by the  
17 department pursuant to section 30110(1). Before such a rule is  
18 promulgated, the rule shall be approved by the majority of a  
19 committee consisting of the director, the director of the  
20 department of agriculture, and the director of the state  
21 transportation department or their designated representatives. The  
22 ~~initial~~ rules shall be ~~issued before July 8, 1973, and shall be~~  
23 reviewed at least annually. ~~after that date.~~

24 (g) Maintenance and improvement of all drains legally  
25 established or constructed prior to January 1, 1973, pursuant to  
26 the drain code of 1956, ~~Act No. 40 of the Public Acts of 1956,~~  
27 ~~being sections 280.1 to 280.630 of the Michigan Compiled Laws~~ **1956**

1 PA 40, MCL 280.1 TO 280.630, except those legally established  
2 drains constituting mainstream portions of certain natural  
3 watercourses identified in rules promulgated by the department  
4 under section 30110.

5 (h) Projects constructed under the watershed protection and  
6 flood prevention act, chapter 656, 68 Stat. 666, 16 ~~U.S.C.~~ USC  
7 1001 to 1008 and 1010.

8 (i) Construction and maintenance of privately owned cooling or  
9 storage ponds used in connection with a public utility except at  
10 the interface with public waters.

11 (j) Maintenance of a structure constructed under a permit  
12 issued pursuant to this part and identified by rule promulgated  
13 under section 30110(1), if the maintenance is in place and in kind  
14 with no design or materials modification.

15 (K) A WATER WITHDRAWAL.

16 (2) AS USED IN THIS SECTION, "WATER WITHDRAWAL" MEANS THE  
17 REMOVAL OF WATER FROM ITS SOURCE FOR ANY PURPOSE.

18 Sec. 32701. As used in this part:

19 (A) "ADVERSE RESOURCE IMPACT" MEANS EITHER OF THE FOLLOWING:

20 (i) DECREASING THE FLOW OF A STREAM BY PART OF THE INDEX FLOW  
21 SUCH THAT THE STREAM'S ABILITY TO SUPPORT CHARACTERISTIC FISH  
22 POPULATIONS IS FUNCTIONALLY IMPAIRED.

23 (ii) DECREASING THE LEVEL OF A BODY OF SURFACE WATER SUCH THAT  
24 THE BODY OF SURFACE WATER'S ABILITY TO SUPPORT CHARACTERISTIC FISH  
25 POPULATIONS IS FUNCTIONALLY IMPAIRED.

26 (B) ~~(a)~~ "Agricultural purpose" means the agricultural  
27 production of ~~these~~ plants and animals useful to human beings

1 ~~produced by agriculture~~ and includes, but is not limited to,  
2 forages and sod crops, grains and feed crops, field crops, dairy  
3 **ANIMALS** and dairy products, poultry and poultry products, cervidae,  
4 livestock, including breeding and grazing, equine, fish and other  
5 aquacultural products, bees and bee products, berries, herbs,  
6 fruits, vegetables, flowers, seeds, grasses, nursery stock, trees  
7 and tree products, mushrooms, and other similar products, or any  
8 other product, as determined by the commission of agriculture, that  
9 incorporates the use of food, feed, fiber, or fur.

10 (C) "BASELINE CAPACITY" MEANS EITHER OF THE FOLLOWING:

11 (i) THE FOLLOWING APPLICABLE WITHDRAWAL CAPACITY AS REPORTED TO  
12 THE DEPARTMENT OR THE DEPARTMENT OF AGRICULTURE, AS APPROPRIATE, BY  
13 THE PERSON MAKING THE WITHDRAWAL:

14 (A) FOR A COMMUNITY SUPPLY, THE TOTAL DESIGNED WITHDRAWAL  
15 CAPACITY FOR THE COMMUNITY SUPPLY UNDER THE SAFE DRINKING WATER  
16 ACT, 1976 PA 399, MCL 325.1001 TO 325.1023, ON THE EFFECTIVE DATE  
17 OF THE AMENDATORY ACT THAT ADDED THIS SUBPARAGRAPH.

18 (B) UNLESS REPORTED UNDER A DIFFERENT PROVISION OF THIS  
19 SUBPARAGRAPH, FOR A QUARRY OR MINE THAT HOLDS A DISCHARGE PERMIT  
20 UNDER PART 31 THAT INCLUDES A DISCHARGE VOLUME, THE DISCHARGE  
21 VOLUME STATED IN THAT PERMIT ON THE EFFECTIVE DATE OF THE  
22 AMENDATORY ACT THAT ADDED THIS SUBPARAGRAPH.

23 (C) THE SYSTEM CAPACITY USED TO MAKE A WITHDRAWAL ON THE  
24 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBPARAGRAPH,  
25 IF THE SYSTEM CAPACITY AND A DESCRIPTION OF THE SYSTEM CAPACITY ARE  
26 INCLUDED IN AN ANNUAL REPORT THAT IS SUBMITTED UNDER THIS PART.

27 (ii) THE HIGHEST ANNUAL AMOUNT OF WATER WITHDRAWN AS REPORTED

1 UNDER THIS PART FOR CALENDAR YEAR 2002, 2003, 2004, OR 2005.

2 (D) ~~—(b)—~~ "Consumptive use" means that portion of water  
3 withdrawn or withheld from the Great Lakes basin and assumed to be  
4 lost or otherwise not returned to the Great Lakes basin due to  
5 evaporation, incorporation into products, or other processes.

6 (E) ~~—(e)—~~ "Department" means the department of environmental  
7 quality.

8 (F) "DESIGNATED TROUT STREAM" MEANS A TROUT STREAM IDENTIFIED  
9 ON THE DOCUMENT ENTITLED "DESIGNATED TROUT STREAMS FOR THE STATE OF  
10 MICHIGAN", AS ISSUED UNDER ORDER OF THE DIRECTOR OF THE DEPARTMENT  
11 OF NATURAL RESOURCES, FO-210.04, ON OCTOBER 10, 2003.

12 (G) ~~—(d)—~~ "Farm" means that term as it is defined in section 2  
13 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

14 (H) "GENERALLY ACCEPTED WATER MANAGEMENT PRACTICES" MEANS  
15 STANDARDS OR GUIDELINES FOR WATER USE THAT ENSURE WATER IS USED  
16 EFFICIENTLY.

17 (I) ~~—(e)—~~ "Great Lakes basin" means the watershed of the Great  
18 Lakes and the St. Lawrence river.

19 (J) ~~—(f)—~~ "Great Lakes charter" means the document  
20 establishing the principles for the cooperative management of the  
21 Great Lakes water resources, signed by the governors and premiers  
22 of the Great Lakes region on February 11, 1985.

23 (K) ~~—(g)—~~ "Great Lakes region" means the geographic region  
24 composed of the states of Illinois, Indiana, Michigan, Minnesota,  
25 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,  
26 and the provinces of Ontario and Quebec, Canada.

27 ~~—(h)— "Industrial or processing facility" means an operating~~

1 ~~plant or other entity, including a thermoelectric power generation~~  
2 ~~plant, carrying on a common manufacturing activity, trade, or~~  
3 ~~business on a common site, including similar plants or entities~~  
4 ~~under common ownership or control located on contiguous properties.~~  
5 ~~Plants or entities under common ownership or control located on~~  
6 ~~separate sites shall be considered separate facilities. Industrial~~  
7 ~~or processing facility does not include an irrigation facility or a~~  
8 ~~farm.~~

9 ~~—— (i) "Irrigation facility" means all wells, pumps, intakes,~~  
10 ~~gates, tanks, pipes, or other equipment under common ownership or~~  
11 ~~control and located either on the same site or on separate sites,~~  
12 ~~which are used to withdraw, convey, or distribute water for the~~  
13 ~~purposes of irrigating golf courses, parks, recreational areas, or~~  
14 ~~other grounds. Irrigation facility does not include a farm.~~

15 ~~—— (j) "Public water supply system" means a water system that~~  
16 ~~provides water for human consumption or other purposes to persons~~  
17 ~~other than the supplier of water.~~

18 **(I) "INDEX FLOW" MEANS THE 50% EXCEEDANCE FLOW FOR THE LOWEST**  
19 **FLOW MONTH OF THE FLOW REGIME, FOR THE APPLICABLE STREAM REACH, AS**  
20 **DETERMINED OVER THE PERIOD OF RECORD OR EXTRAPOLATED FROM ANALYSES**  
21 **OF THE UNITED STATES GEOLOGICAL SURVEY STREAM FLOW GAUGES IN**  
22 **MICHIGAN.**

23 **(M) "LARGE QUANTITY WITHDRAWAL" MEANS 1 OR MORE CUMULATIVE**  
24 **TOTAL WITHDRAWALS OF OVER 100,000 GALLONS OF WATER PER DAY AVERAGE**  
25 **IN ANY CONSECUTIVE 30-DAY PERIOD THAT SUPPLY A COMMON DISTRIBUTION**  
26 **SYSTEM.**

27 **(N) "NEW OR INCREASED LARGE QUANTITY WITHDRAWAL" MEANS A NEW**

1 WATER WITHDRAWAL OF OVER 100,000 GALLONS OF WATER PER DAY AVERAGE  
2 IN ANY CONSECUTIVE 30-DAY PERIOD OR AN INCREASE OF OVER 100,000  
3 GALLONS OF WATER PER DAY AVERAGE IN ANY CONSECUTIVE 30-DAY PERIOD  
4 BEYOND THE BASELINE CAPACITY OF A WITHDRAWAL.

5 (O) "NEW OR INCREASED WITHDRAWAL CAPACITY" MEANS NEW OR  
6 ADDITIONAL WATER WITHDRAWAL CAPACITY TO SUPPLY A COMMON  
7 DISTRIBUTION SYSTEM THAT IS AN INCREASE FROM THE PERSON'S BASELINE  
8 CAPACITY. NEW OR INCREASED CAPACITY DOES NOT INCLUDE MAINTENANCE OR  
9 REPLACEMENT OF EXISTING WITHDRAWAL CAPACITY.

10 (P) ~~(k)~~ "Registrant" means ~~any industrial or processing~~  
11 ~~facility or irrigation facility registered~~ A PERSON WHO REGISTERS  
12 WATER WITHDRAWAL CAPACITY under this part.

13 (Q) ~~(l)~~ ~~Water~~ "WATERS of the Great Lakes basin" means the  
14 Great Lakes and all streams, rivers, lakes, connecting channels,  
15 and other bodies of water, including groundwater, within the Great  
16 Lakes basin.

17 (R) "WATERS OF THE STATE" MEANS GROUNDWATER, LAKES, RIVERS,  
18 AND STREAMS AND ALL OTHER WATERCOURSES AND WATERS, INCLUDING THE  
19 GREAT LAKES, WITHIN THE TERRITORIAL BOUNDARIES OF THE STATE.

20 (S) ~~(m)~~ "Withdrawal" means the removal of water from its  
21 source for any purpose, other than for hydroelectric generation at  
22 sites certified, licensed, or permitted by the federal energy  
23 regulatory commission.

24 Sec. 32702. (1) The legislature finds and declares that:

25 (a) A diversion of water out of the basin of the Great Lakes  
26 may impair or destroy the Great Lakes. The legislature further  
27 finds that a limitation on such diversions is authorized by and is

1 consistent with the mandate of section 52 of article IV of the  
2 state constitution of 1963 that the legislature provide for the  
3 protection of the air, water, and other natural resources of the  
4 state from pollution, impairment, and destruction.

5 (b) Water use registration and reporting are essential to  
6 implementing the principles of the Great Lakes charter and  
7 necessary to support the state's opposition to diversion of waters  
8 of the Great Lakes basin and to provide a source of information on  
9 water use to protect Michigan's rights when proposed water losses  
10 affect the level, flow, use, or quality of waters of the Great  
11 Lakes basin.

12 (c) The waters of the state are valuable public natural  
13 resources held in trust by the state, and the state has a duty as  
14 trustee to manage its waters effectively for the use and enjoyment  
15 of present and future residents and for the protection of the  
16 environment.

17 (d) The waters of the Great Lakes basin are a valuable public  
18 natural resource, and the states and provinces of the Great Lakes  
19 region and Michigan share a common interest in the preservation of  
20 that resource.

21 (e) Any new diversion of waters of the Great Lakes basin for  
22 use outside of the Great Lakes basin will have significant economic  
23 and environmental impact adversely affecting the use of this  
24 resource by the Great Lakes states and Canadian provinces.

25 (f) The continued availability of water for domestic,  
26 municipal, industrial, and agricultural water supplies, navigation,  
27 hydroelectric power and energy production, recreation, and the



1 maintenance of fish and wildlife habitat and a balanced ecosystem  
2 are vital to the future economic health of the states and provinces  
3 of the Great Lakes region.

4 (g) Future interbasin diversions and consumptive uses of  
5 waters of the Great Lakes basin may have significant adverse  
6 impacts upon the environment, economy, and welfare of the Great  
7 Lakes region and of this state.

8 (h) The states and provinces of the Great Lakes region have a  
9 duty to protect, conserve, and manage their shared water resources  
10 for the use and enjoyment of present and future residents.

11 (I) THE WATERS OF THE GREAT LAKES BASIN ARE CAPABLE OF  
12 CONCURRENTLY SERVING MULTIPLE USES, AND SUCH MULTIPLE USES OF WATER  
13 RESOURCES FOR MUNICIPAL, PUBLIC, INDUSTRIAL, COMMERCIAL,  
14 AGRICULTURE, MINING, NAVIGATION, ENERGY DEVELOPMENT AND PRODUCTION,  
15 RECREATION, WATER QUALITY MAINTENANCE, AND THE MAINTENANCE OF FISH  
16 AND WILDLIFE HABITAT AND A BALANCED ECOSYSTEM AND OTHER PURPOSES  
17 ARE ENCOURAGED, RECOGNIZING THAT SUCH USES ARE INTERDEPENDENT AND  
18 MUST BE BALANCED.

19 (2) THE LEGISLATURE HAS THE AUTHORITY UNDER SECTIONS 51 AND 52  
20 OF ARTICLE IV OF THE STATE CONSTITUTION OF 1963 TO REGULATE THE  
21 WITHDRAWAL AND USES OF THE WATERS OF THE STATE, INCLUDING BOTH  
22 SURFACE WATER AND GROUNDWATER, TO PROMOTE THE PUBLIC HEALTH,  
23 SAFETY, AND WELFARE AND TO PROTECT THE NATURAL RESOURCES OF THE  
24 STATE FROM POLLUTION, IMPAIRMENT, AND DESTRUCTION, SUBJECT TO  
25 CONSTITUTIONAL PROTECTIONS AGAINST UNREASONABLE OR ARBITRARY  
26 GOVERNMENTAL ACTION AND THE TAKING OF PROPERTY WITHOUT JUST  
27 COMPENSATION. THIS AUTHORITY EXTENDS TO ALL WATERS WITHIN THE

1 TERRITORIAL BOUNDARIES OF THE STATE.

2 SEC. 32704A. THE GOVERNOR SHALL ESTABLISH A PUBLIC COMMENT  
3 PERIOD WITH REGARD TO A PROPOSAL SUBJECT TO 42 USC 1962D-20 TO  
4 DIVERT WATERS OF THE GREAT LAKES BASIN OUTSIDE OF THE GREAT LAKES  
5 BASIN AND SHALL NOTIFY THE STANDING COMMITTEES OF THE LEGISLATURE  
6 WITH JURISDICTION OVER ISSUES PRIMARILY PERTAINING TO NATURAL  
7 RESOURCES AND THE ENVIRONMENT OF HIS OR HER RECEIPT OF THE  
8 PROPOSAL. THE GOVERNOR MAY WAIVE THE COMMENT PERIOD UNDER THIS  
9 SECTION IF HE OR SHE DETERMINES THAT IT IS NECESSARY TO TAKE  
10 IMMEDIATE ACTION TO PROVIDE HUMANITARIAN RELIEF OR FIREFIGHTING  
11 CAPABILITIES.

12 Sec. 32707. (1) Except as provided in subsections (2) and (3),  
13 a person who ~~owns an industrial or processing facility, an~~  
14 ~~irrigation facility, or a farm registered under this part~~ IS  
15 REQUIRED TO REGISTER UNDER SECTION 32705 OR HOLDS A PERMIT UNDER  
16 SECTION 32723 shall file a report annually with the department on a  
17 form provided by the department. Reports shall be submitted by  
18 April 1 of each year. Reports shall include the following  
19 information:

20 (a) The amount and rate of water withdrawn on an annual and  
21 monthly basis.

22 (b) The source or sources of the water supply.

23 (c) The use or uses of the water withdrawn.

24 (d) The amount of consumptive use of water withdrawn.

25 (e) If the source of the water withdrawn is groundwater, the  
26 location of the well or wells in latitude and longitude, with the  
27 accuracy of the reported location data to within ~~15~~ 25 feet.

1 (f) If the source of water withdrawn is groundwater, the  
2 static water level of the aquifer or aquifers, **IF PRACTICABLE.**

3 (g) Other information specified by rule of the department.

4 (H) **AT THE DISCRETION OF THE REGISTRANT OR PERMIT HOLDER, THE**  
5 **BASELINE CAPACITY OF THE WITHDRAWAL AND, IF APPLICABLE, A**  
6 **DESCRIPTION OF THE SYSTEM CAPACITY. IF THE REGISTRANT OR PERMIT**  
7 **HOLDER CHOOSES TO REPORT THE BASELINE CAPACITY UNDER THIS**  
8 **SUBDIVISION, THAT INFORMATION SHALL BE INCLUDED IN THE NEXT REPORT**  
9 **SUBMITTED BY THE REGISTRANT OR PERMIT HOLDER AFTER THE EFFECTIVE**  
10 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION. INFORMATION**  
11 **REPORTED UNDER THIS SUBDIVISION NEEDS ONLY TO BE REPORTED TO THE**  
12 **DEPARTMENT ON 1 OCCASION.**

13 (I) **AT THE DISCRETION OF THE REGISTRANT OR PERMIT HOLDER, THE**  
14 **AMOUNT OF WATER RETURNED TO THE SOURCE WATERSHED.**

15 (2) If a person reports the information required by this  
16 section to the department in conjunction with a permit or for any  
17 other purpose, that reporting, upon approval of the department,  
18 shall satisfy the reporting requirements of this section.

19 (3) The owner of a farm who reports water use under section  
20 32708 is not required to report under subsection (1).

21 (4) The department may, upon request from a person required to  
22 report under this section, accept a formula or model that provides  
23 to the department's satisfaction the information required in  
24 subsection (1).

25 (5) The department shall develop forms for reporting under  
26 this section that minimize paperwork and allow for a notification  
27 to the department instead of a report if the annual amount of water

1 withdrawn by a person required to report under this section is  
2 within 4% of the amount last reported and the other information  
3 required in subsection (1) has not changed since the last year in  
4 which a report was filed.

5 (6) INFORMATION DESCRIBED IN SECTION 32701(C) (i) (C) THAT IS  
6 PROVIDED TO THE DEPARTMENT UNDER SUBSECTION (1) (H) IS EXEMPT FROM  
7 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL  
8 15.231 TO 15.246, AND SHALL NOT BE DISCLOSED UNLESS THE DEPARTMENT  
9 DETERMINES THAT THE WITHDRAWAL IS CAUSING AN ADVERSE RESOURCE  
10 IMPACT.

11 (7) ~~(6) A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A  
12 person who files an annual report or notification under this  
13 section shall annually remit a water use reporting fee of ~~-\$100.00~~  
14 \$200.00 to the department. BEGINNING WHEN A WATER WITHDRAWAL  
15 ASSESSMENT TOOL BECOMES EFFECTIVE UPON LEGISLATIVE ENACTMENT  
16 PURSUANT TO THE RECOMMENDATIONS OF THE GROUNDWATER CONSERVATION  
17 ADVISORY COUNCIL UNDER SECTION 32803, A PERSON WHO FILES AN ANNUAL  
18 REPORT OR NOTIFICATION UNDER THIS SECTION SHALL ANNUALLY REMIT A  
19 WATER USE REPORTING FEE OF \$100.00 TO THE DEPARTMENT. Water use  
20 reporting fees shall be remitted to the department in conjunction  
21 with the annual report or notification submitted under this  
22 section. The department shall transmit water use reporting fees  
23 collected under this section to the state treasurer to be credited  
24 to the water use protection fund created in section 32714. A water  
25 use reporting fee is not required for a report or notification  
26 related to a farm that reports ~~water use~~ WITHDRAWALS under  
27 section 32708.

1           Sec. 32713. The department may request the attorney general to  
2 commence a civil action for appropriate relief, including a  
3 permanent or temporary injunction, for a violation of this part or  
4 a rule promulgated under this part. An action under this section  
5 shall be brought in the circuit court for the county of Ingham or  
6 for the county in which the defendant is located, resides, or is  
7 doing business. The court has jurisdiction to restrain the  
8 violation and to require compliance. In addition to any other  
9 relief granted, the court may impose a civil fine of not more than  
10 \$1,000.00. **HOWEVER, A PERSON WHO KNOWINGLY VIOLATES SECTION 32721**  
11 **OR 32723 OR THE TERMS OF A PERMIT ISSUED UNDER SECTION 32723 IS**  
12 **RESPONSIBLE FOR THE PAYMENT OF A CIVIL FINE OF NOT MORE THAN**  
13 **\$5,000.00 PER DAY OF VIOLATION.** In addition to a fine, the attorney  
14 general may file a suit in a court of competent jurisdiction to  
15 recover the full value of the costs of surveillance and enforcement  
16 by the state resulting from the violation.

17           **SEC. 32721. (1) A PERSON SHALL NOT MAKE A NEW OR INCREASED**  
18 **LARGE QUANTITY WITHDRAWAL FROM THE WATERS OF THE STATE THAT CAUSES**  
19 **AN ADVERSE RESOURCE IMPACT TO A DESIGNATED TROUT STREAM.**

20           **(2) BEGINNING 2 YEARS AFTER THE EFFECTIVE DATE OF THE**  
21 **AMENDATORY ACT THAT ADDED THIS SECTION, A PERSON SHALL NOT MAKE A**  
22 **NEW OR INCREASED LARGE QUANTITY WITHDRAWAL FROM THE WATERS OF THE**  
23 **STATE THAT CAUSES AN ADVERSE RESOURCE IMPACT.**

24           **(3) THIS SECTION DOES NOT APPLY TO THE BASELINE CAPACITY OF A**  
25 **LARGE QUANTITY WITHDRAWAL THAT EXISTED ON THE EFFECTIVE DATE OF THE**  
26 **AMENDATORY ACT THAT ADDED THIS SECTION.**

27           **SEC. 32722. (1) UNTIL A WATER WITHDRAWAL ASSESSMENT TOOL**

1 BECOMES EFFECTIVE UPON LEGISLATIVE ENACTMENT PURSUANT TO THE  
2 RECOMMENDATIONS OF THE GROUNDWATER CONSERVATION ADVISORY COUNCIL  
3 UNDER SECTION 32803, THERE IS A REBUTTABLE PRESUMPTION THAT A NEW  
4 OR INCREASED LARGE QUANTITY WITHDRAWAL WILL NOT CAUSE AN ADVERSE  
5 RESOURCE IMPACT IN VIOLATION OF SECTION 32721 UNDER EITHER OF THE  
6 FOLLOWING CIRCUMSTANCES:

7 (A) THE LOCATION OF THE WITHDRAWAL IS MORE THAN 1,320 FEET  
8 FROM THE BANKS OF A DESIGNATED TROUT STREAM.

9 (B) THE WITHDRAWAL DEPTH OF THE WELL IS AT LEAST 150 FEET.

10 (2) A PRESUMPTION UNDER SUBSECTION (1) MAY BE REBUTTED BY A  
11 PREPONDERANCE OF EVIDENCE THAT A NEW OR INCREASED LARGE QUANTITY  
12 WITHDRAWAL FROM THE WATERS OF THE STATE HAS CAUSED OR IS LIKELY TO  
13 CAUSE AN ADVERSE RESOURCE IMPACT.

14 SEC. 32723. (1) EXCEPT AS PROVIDED IN SUBSECTION (10), THE  
15 FOLLOWING PERSONS SHALL OBTAIN A WATER WITHDRAWAL PERMIT PRIOR TO  
16 MAKING THE WITHDRAWAL:

17 (A) A PERSON WHO DEVELOPS WITHDRAWAL CAPACITY TO MAKE A NEW  
18 WITHDRAWAL OF OVER 2,000,000 GALLONS OF WATER PER DAY FROM THE  
19 WATERS OF THE STATE, OTHER THAN THE GREAT LAKES AND THEIR  
20 CONNECTING WATERWAYS, TO SUPPLY A COMMON DISTRIBUTION SYSTEM.

21 (B) A PERSON WHO DEVELOPS INCREASED WITHDRAWAL CAPACITY BEYOND  
22 BASELINE CAPACITY OF MORE THAN 2,000,000 GALLONS OF WATER PER DAY  
23 FROM THE WATERS OF THE STATE, OTHER THAN THE GREAT LAKES AND THEIR  
24 CONNECTING WATERWAYS, TO SUPPLY A COMMON DISTRIBUTION SYSTEM.

25 (C) A PERSON WHO DEVELOPS WITHDRAWAL CAPACITY TO MAKE A NEW  
26 WITHDRAWAL OF MORE THAN 5,000,000 GALLONS OF WATER PER DAY FROM THE  
27 GREAT LAKES AND THEIR CONNECTING WATERWAYS TO SUPPLY A COMMON

1 DISTRIBUTION SYSTEM.

2 (D) A PERSON WHO DEVELOPS INCREASED WITHDRAWAL CAPACITY BEYOND  
3 BASELINE CAPACITY OF MORE THAN 5,000,000 GALLONS OF WATER PER DAY  
4 FROM THE GREAT LAKES AND THEIR CONNECTING WATERWAYS TO SUPPLY A  
5 COMMON DISTRIBUTION SYSTEM.

6 (2) A PERSON SHALL APPLY FOR A PERMIT UNDER THIS SECTION BY  
7 SUBMITTING AN APPLICATION TO THE DEPARTMENT CONTAINING THE  
8 INFORMATION DESCRIBED IN SECTION 32706. IN ADDITION, UNTIL 5 YEARS  
9 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
10 SECTION, THE APPLICANT SHALL SUBMIT AN APPLICATION FEE IN THE  
11 AMOUNT OF \$2,000.00. THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF  
12 ALL APPLICATIONS RECEIVED UNDER THIS SECTION.

13 (3) A PERMIT APPLICATION IS CONSIDERED TO BE ADMINISTRATIVELY  
14 COMPLETE EFFECTIVE 30 DAYS AFTER IT IS RECEIVED BY THE DEPARTMENT  
15 UNLESS THE DEPARTMENT NOTIFIES THE APPLICANT, IN WRITING, DURING  
16 THIS 30-DAY PERIOD THAT THE APPLICATION IS NOT ADMINISTRATIVELY  
17 COMPLETE OR THAT THE FEE REQUIRED TO BE ACCOMPANIED WITH THE  
18 APPLICATION HAS NOT BEEN PAID. IF THE DEPARTMENT DETERMINES THAT  
19 THE APPLICATION IS NOT ADMINISTRATIVELY COMPLETE, THE NOTIFICATION  
20 SHALL SPECIFY THE INFORMATION NECESSARY TO MAKE THE APPLICATION  
21 ADMINISTRATIVELY COMPLETE. IF THE DEPARTMENT NOTIFIES THE APPLICANT  
22 AS PROVIDED IN THIS SUBSECTION, THE 30-DAY PERIOD IS TOLLED UNTIL  
23 THE APPLICANT SUBMITS TO THE DEPARTMENT THE SPECIFIED INFORMATION  
24 OR FEE.

25 (4) THE DEPARTMENT SHALL MAKE A DECISION WHETHER TO GRANT OR  
26 DENY A PERMIT UNDER THIS SECTION WITHIN 120 DAYS OF RECEIPT OF AN  
27 ADMINISTRATIVELY COMPLETE APPLICATION.

1 (5) THE DEPARTMENT SHALL ISSUE A PERMIT UNDER SUBSECTION  
2 (1) (A) OR (B) IF THE DEPARTMENT DETERMINES THE WITHDRAWAL WILL NOT  
3 CAUSE AN ADVERSE RESOURCE IMPACT.

4 (6) THE DEPARTMENT SHALL ISSUE A PERMIT UNDER SUBSECTION  
5 (1) (C) OR (D) IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

6 (A) ALL WATER WITHDRAWN, LESS ANY CONSUMPTIVE USE, IS  
7 RETURNED, EITHER NATURALLY OR AFTER USE, TO THE SOURCE WATERSHED.

8 (B) THE WITHDRAWAL WILL BE IMPLEMENTED SO AS TO ENSURE THAT  
9 THE PROPOSAL WILL RESULT IN NO INDIVIDUAL OR CUMULATIVE ADVERSE  
10 RESOURCE IMPACTS. CUMULATIVE ADVERSE RESOURCE IMPACTS UNDER THIS  
11 SUBDIVISION SHALL BE EVALUATED BY THE DEPARTMENT BASED UPON  
12 AVAILABLE INFORMATION GATHERED BY THE DEPARTMENT.

13 (C) SUBJECT TO SECTION 32726, THE WITHDRAWAL WILL BE  
14 IMPLEMENTED SO AS TO ENSURE THAT IT IS IN COMPLIANCE WITH ALL  
15 APPLICABLE LOCAL, STATE, AND FEDERAL LAWS AS WELL AS ALL LEGALLY  
16 BINDING REGIONAL INTERSTATE AND INTERNATIONAL AGREEMENTS, INCLUDING  
17 THE BOUNDARY WATERS TREATY OF 1909.

18 (D) THE PROPOSED USE IS REASONABLE UNDER COMMON LAW PRINCIPLES  
19 OF WATER LAW IN MICHIGAN.

20 (E) THE APPLICANT HAS CONSIDERED VOLUNTARY GENERALLY ACCEPTED  
21 WATER MANAGEMENT PRACTICES.

22 (7) A PERMIT ISSUED UNDER PART 31 PURSUANT TO 33 USC 1326(B)  
23 SHALL BE CONSIDERED SUFFICIENT TO DEMONSTRATE THAT THERE WILL NOT  
24 BE AN ADVERSE RESOURCE IMPACT UNDER SECTION 32721 AND SATISFIES THE  
25 CONDITIONS FOR A PERMIT UNDER THIS SECTION. UPON RECEIPT OF A  
26 PERMIT APPLICATION AND EVIDENCE THAT THE APPLICANT HOLDS A PART 31  
27 PERMIT DESCRIBED IN THIS SUBSECTION, THE DEPARTMENT SHALL GRANT THE



1 APPLICANT A PERMIT UNDER THIS SUBSECTION.

2 (8) THE DEPARTMENT MAY REVOKE A PERMIT ISSUED UNDER THIS  
3 SECTION IF THE DEPARTMENT DETERMINES FOLLOWING A HEARING, BASED  
4 UPON CLEAR AND CONVINCING SCIENTIFIC EVIDENCE, THAT THE WITHDRAWAL  
5 IS CAUSING AN ADVERSE RESOURCE IMPACT.

6 (9) A PERSON WHO IS AGGRIEVED BY A DETERMINATION OF THE  
7 DEPARTMENT UNDER THIS SECTION RELATED TO A PERMIT MAY FILE A SWORN  
8 PETITION WITH THE DEPARTMENT SETTING FORTH THE GROUNDS AND REASONS  
9 FOR THE COMPLAINT AND ASKING FOR A CONTESTED CASE HEARING ON THE  
10 MATTER PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969  
11 PA 306, MCL 24.201 TO 24.328. A PETITION FILED MORE THAN 60 DAYS  
12 AFTER ACTION ON THE PERMIT MAY BE REJECTED BY THE DEPARTMENT AS  
13 BEING UNTIMELY. THE DEPARTMENT SHALL ISSUE A FINAL DECISION ON A  
14 PETITION FOR A CONTESTED CASE HEARING WITHIN 6 MONTHS AFTER  
15 RECEIVING THE PETITION. A DETERMINATION, ACTION, OR INACTION BY THE  
16 DEPARTMENT FOLLOWING A CONTESTED CASE HEARING IS SUBJECT TO  
17 JUDICIAL REVIEW AS PROVIDED IN THE ADMINISTRATIVE PROCEDURES ACT OF  
18 1969, 1969 PA 306, MCL 24.201 TO 24.328.

19 (10) THE FOLLOWING ARE NOT REQUIRED TO OBTAIN A PERMIT UNDER  
20 THIS SECTION:

21 (A) A COMMUNITY SUPPLY THAT HOLDS A PERMIT UNDER THE SAFE  
22 DRINKING WATER ACT, 1976 PA 399, MCL 325.1001 TO 325.1023.

23 (B) A PERSON WHO MAKES SEASONAL WITHDRAWALS OF NOT MORE THAN  
24 2,000,000 GALLONS OF WATER PER DAY AVERAGE IN ANY CONSECUTIVE 90-  
25 DAY PERIOD TO SUPPLY A COMMON DISTRIBUTION SYSTEM.

26 (11) AS USED IN THIS SECTION:

27 (A) "GREAT LAKES AND THEIR CONNECTING WATERWAYS" MEANS LAKES

1 SUPERIOR, MICHIGAN, HURON, ERIE, AND ONTARIO AND THEIR CONNECTING  
2 WATERWAYS INCLUDING THE ST. MARYS RIVER, LAKE ST. CLAIR, THE ST.  
3 CLAIR RIVER, AND THE DETROIT RIVER. FOR PURPOSES OF THIS SECTION,  
4 LAKES HURON AND MICHIGAN SHALL BE CONSIDERED A SINGLE GREAT LAKE.

5 (B) "SOURCE WATERSHED" MEANS THE WATERSHED FROM WHICH A  
6 WITHDRAWAL ORIGINATES. IF WATER IS WITHDRAWN DIRECTLY FROM A GREAT  
7 LAKE, THEN THE SOURCE WATERSHED SHALL BE CONSIDERED TO BE THE  
8 WATERSHED OF THAT GREAT LAKE AND ITS CONNECTING WATERWAYS. IF WATER  
9 IS WITHDRAWN FROM THE WATERSHED OF A STREAM THAT IS A DIRECT  
10 TRIBUTARY TO A GREAT LAKE, THEN THE SOURCE WATERSHED SHALL BE  
11 CONSIDERED TO BE THE WATERSHED OF THAT GREAT LAKE, WITH A  
12 PREFERENCE FOR RETURNING WATER TO THE DIRECT TRIBUTARY STREAM  
13 WATERSHED FROM WHICH IT WAS WITHDRAWN.

14 SEC. 32724. (1) A PERSON WHO INTENDS TO MAKE A NEW OR  
15 INCREASED LARGE QUANTITY WITHDRAWAL FOR WHICH A PERMIT IS NOT  
16 REQUIRED UNDER SECTION 32723 MAY PETITION THE DEPARTMENT FOR A  
17 DETERMINATION THAT THE NEW OR INCREASED WITHDRAWAL WILL NOT CAUSE  
18 AND IS NOT LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT.

19 (2) A PETITION UNDER SUBSECTION (1) SHALL BE SUBMITTED ON A  
20 FORM PROVIDED BY THE DEPARTMENT. A REPORT SHALL BE SUBMITTED WITH  
21 THE PETITION CONTAINING THE INFORMATION DESCRIBED IN SECTION 32706  
22 AND AN EVALUATION OF ENVIRONMENTAL, HYDROLOGICAL, AND  
23 HYDROGEOLOGICAL CONDITIONS THAT EXIST AND THE PREDICTED EFFECTS OF  
24 THE INTENDED WITHDRAWAL THAT PROVIDES A REASONABLE BASIS FOR THE  
25 DETERMINATION TO BE MADE. THE PETITIONER SHALL ALSO INCLUDE WITH  
26 THE PETITION A FEE OF \$5,000.00.

27 (3) A PETITION IS CONSIDERED TO BE ADMINISTRATIVELY COMPLETE

1 EFFECTIVE 30 DAYS AFTER IT IS RECEIVED BY THE DEPARTMENT UNLESS THE  
2 DEPARTMENT NOTIFIES THE PETITIONER, IN WRITING, DURING THIS 30-DAY  
3 PERIOD THAT THE PETITION IS NOT ADMINISTRATIVELY COMPLETE OR THAT  
4 THE FEE REQUIRED TO BE ACCOMPANIED WITH THE PETITION HAS NOT BEEN  
5 PAID. IF THE DEPARTMENT DETERMINES THAT THE PETITION IS NOT  
6 ADMINISTRATIVELY COMPLETE, THE NOTIFICATION SHALL SPECIFY THE  
7 INFORMATION NECESSARY TO MAKE THE PETITION ADMINISTRATIVELY  
8 COMPLETE. IF THE DEPARTMENT NOTIFIES THE PETITIONER AS PROVIDED IN  
9 THIS SUBSECTION, THE 30-DAY PERIOD IS TOLLED UNTIL THE PETITIONER  
10 SUBMITS TO THE DEPARTMENT THE APPROPRIATE INFORMATION OR FEE.

11 (4) WITHIN 120 DAYS AFTER RECEIPT OF AN ADMINISTRATIVELY  
12 COMPLETE PETITION, THE DEPARTMENT SHALL ISSUE A WRITTEN  
13 DETERMINATION TO THE PETITIONER THAT DOES EITHER OF THE FOLLOWING:

14 (A) AFFIRMS THAT THE PROPOSED WITHDRAWAL WILL NOT CAUSE AND IS  
15 NOT LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT.

16 (B) SPECIFIES THE REASONS THAT AN AFFIRMATIVE DETERMINATION  
17 UNDER SUBDIVISION (A) CANNOT BE MADE AND STATES HOW THE PETITIONER  
18 CAN MEET THE CRITERIA TO OBTAIN AN AFFIRMATIVE DETERMINATION.

19 (5) A WATER WITHDRAWAL WITH REGARD TO WHICH AN AFFIRMATIVE  
20 DETERMINATION IS ISSUED UNDER THIS SECTION SHALL BE PRESUMED NOT TO  
21 CREATE AN ADVERSE RESOURCE IMPACT. A PRESUMPTION UNDER THIS  
22 SUBSECTION MAY BE REBUTTED BY A PREPONDERANCE OF EVIDENCE THAT THE  
23 WITHDRAWAL HAS CAUSED OR IS LIKELY TO CAUSE AN ADVERSE RESOURCE  
24 IMPACT.

25 (6) THE DEPARTMENT SHALL SUBMIT A REPORT EVERY 2 YEARS TO THE  
26 SENATE AND HOUSE APPROPRIATIONS COMMITTEES AND TO THE STANDING  
27 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH

1 JURISDICTION PRIMARILY RELATED TO NATURAL RESOURCES AND THE  
2 ENVIRONMENT THAT IDENTIFIES THE COSTS TO THE DEPARTMENT IN  
3 REVIEWING PETITIONS UNDER THIS SECTION AND IN REVIEWING  
4 APPLICATIONS FOR PERMITS UNDER SECTION 32723. ADDITIONALLY, THE  
5 REPORT SHALL DETAIL THE REVENUES GENERATED FROM PETITIONS UNDER  
6 THIS SECTION, PERMIT APPLICANTS UNDER SECTION 32723, AND REPORTING  
7 FEES UNDER SECTION 32707.

8 SEC. 32726. A LOCAL UNIT OF GOVERNMENT SHALL NOT ENACT OR  
9 ENFORCE AN ORDINANCE THAT REGULATES AN ADVERSE RESOURCE IMPACT  
10 CAUSED BY A LARGE QUANTITY WITHDRAWAL.

11 SEC. 32727. A WITHDRAWAL PURSUANT TO PART 111, 115, 201, OR  
12 213 IS EXEMPT FROM THE REQUIREMENTS OF THIS PART.

13 SEC. 32728. THIS PART SHALL NOT BE CONSTRUED AS AFFECTING OR  
14 INTENDING TO AFFECT OR IN ANY WAY ALTER OR INTERFERE WITH COMMON  
15 LAW WATER RIGHTS OR THE APPLICABILITY OF OTHER LAWS PROVIDING FOR  
16 THE PROTECTION OF NATURAL RESOURCES OR THE ENVIRONMENT.

17 Enacting section 1. Sections 32711 and 32712 of the natural  
18 resources and environmental protection act, 1994 PA 451, MCL  
19 324.32711 and 324.32712, are repealed.

20 Enacting section 2. This amendatory act does not take effect  
21 unless all of the following bills of the 93rd Legislature are  
22 enacted into law:

- 23 (a) Senate Bill No. 851.
- 24 (b) Senate Bill No. 852.
- 25 (c) Senate Bill No. 854.
- 26 (d) Senate Bill No. 857.