

# SENATE BILL No. 850

October 27, 2005, Introduced by Senators BIRKHOLZ, PATTERSON, SIKKEMA, VAN WOERKOM, GILBERT, BROWN, ALLEN, GEORGE and GARCIA and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 30103, 32701, 32702, and 32713 (MCL 324.30103, 324.32701, 324.32702, and 324.32713), sections 30103, 32702, and 32713 as added by 1995 PA 59, and section 32701 as amended by 2003 PA 148, and by adding sections 32721, 32722, 32723, 32724, and 32725; 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 approved  
12 for construction by the department of ~~public~~ **COMMUNITY** health or  
13 ordered or approved by the department.

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

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

1 drains constituting mainstream portions of certain natural  
2 watercourses identified in rules promulgated by the department  
3 under section 30110.

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

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

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

14 **(K) A WATER WITHDRAWAL.**

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

17 Sec. 32701. As used in this part:

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

19 **(i) DECREASING THE BASE FLOW OF A STREAM SUCH THAT THE STREAM**  
20 **WILL NO LONGER SUPPORT CHARACTERISTIC FISH POPULATIONS.**

21 **(ii) DECREASING THE LEVEL OF A BODY OF SURFACE WATER SUCH THAT**  
22 **THE BODY OF SURFACE WATER WILL NO LONGER SUPPORT CHARACTERISTIC**  
23 **FISH POPULATIONS.**

24 **(B) ~~(a)~~ "Agricultural purpose" means the agricultural**  
25 **production of ~~these~~ plants and animals useful to human beings**  
26 **~~produced by agriculture~~ and includes, but is not limited to,**  
27 **forages and sod crops, grains and feed crops, field crops, dairy**

1 **ANIMALS** and dairy products, poultry and poultry products, cervidae,  
2 livestock, including breeding and grazing, equine, fish and other  
3 aquacultural products, bees and bee products, berries, herbs,  
4 fruits, vegetables, flowers, seeds, grasses, nursery stock, trees  
5 and tree products, mushrooms, and other similar products, or any  
6 other product, as determined by the commission of agriculture, that  
7 incorporates the use of food, feed, fiber, or fur.

8 (C) "AQUIFER" MEANS ANY WATER-BEARING BED OR STRATUM OF EARTH  
9 OR ROCK CAPABLE OF YIELDING GROUNDWATER TO A WATER WELL IN  
10 SUFFICIENT QUANTITIES THAT IT CAN BE WITHDRAWN.

11 (D) "BASE FLOW" MEANS THE 50% EXCEEDANCE FLOW FOR THE LOWEST  
12 FLOW MONTH OF THE FLOW REGIME FOR THE APPLICABLE STREAM REACH AS  
13 AVERAGED OVER A 5-YEAR PERIOD OR EXTRAPOLATED BY THE FLOW ESTIMATES  
14 FOR MICHIGAN.

15 (E) "CONFINED AQUIFER" MEANS AN AQUIFER overlain BY GEOLOGIC  
16 MATERIAL THAT HAS A LOW HYDRAULIC CONDUCTIVITY AND IMPEDES OR  
17 PREVENTS VERTICAL GROUNDWATER MOVEMENT.

18 (F) ~~(b)~~ "Consumptive use" means that portion of water  
19 withdrawn or withheld from the Great Lakes basin and assumed to be  
20 lost or otherwise not returned to the Great Lakes basin due to  
21 evaporation, incorporation into products, or other processes.

22 (G) ~~(e)~~ "Department" means the department of environmental  
23 quality.

24 (H) "DESIGNATED TROUT STREAM" MEANS A TROUT STREAM IDENTIFIED  
25 ON THE DOCUMENT ENTITLED "DESIGNATED TROUT STREAMS FOR THE STATE OF  
26 MICHIGAN", AS ISSUED UNDER ORDER OF THE DIRECTOR OF THE DEPARTMENT  
27 OF NATURAL RESOURCES, FO-210.04, ON OCTOBER 10, 2003.

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

3           (J) ~~—(e)—~~ "Great Lakes basin" means the watershed of the Great  
4 Lakes and the St. Lawrence river.

5           (K) ~~—(f)—~~ "Great Lakes charter" means the document  
6 establishing the principles for the cooperative management of the  
7 Great Lakes water resources, signed by the governors and premiers  
8 of the Great Lakes region on February 11, 1985.

9           (L) ~~—(g)—~~ "Great Lakes region" means the geographic region  
10 composed of the states of Illinois, Indiana, Michigan, Minnesota,  
11 New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania,  
12 and the provinces of Ontario and Quebec, Canada.

13 ~~———(h) "Industrial or processing facility" means an operating~~  
14 ~~plant or other entity, including a thermoelectric power generation~~  
15 ~~plant, carrying on a common manufacturing activity, trade, or~~  
16 ~~business on a common site, including similar plants or entities~~  
17 ~~under common ownership or control located on contiguous properties.~~  
18 ~~Plants or entities under common ownership or control located on~~  
19 ~~separate sites shall be considered separate facilities. Industrial~~  
20 ~~or processing facility does not include an irrigation facility or a~~  
21 ~~farm.~~

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

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

5 (N) "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 WATER  
8 WITHDRAWAL CAPACITY THAT EXISTED ON THE EFFECTIVE DATE OF THE 2005  
9 AMENDMENTS TO THIS SECTION. NEW OR INCREASED CAPACITY DOES NOT  
10 INCLUDE MAINTENANCE OR REPLACEMENT OF EXISTING CAPACITY.

11 (O) ~~(j)~~ "Public water supply system" means a water system  
12 that provides water for human consumption or other purposes to  
13 persons other than the supplier of water.

14 ~~——(k) "Registrant" means any industrial or processing facility~~  
15 ~~or irrigation facility registered under this part.~~

16 (P) "UNCONFINED AQUIFER" MEANS AN AQUIFER THAT IS NOT A  
17 CONFINED AQUIFER, THAT HAS THE WATER TABLE AS ITS UPPER BOUNDARY,  
18 THAT IS HYDROLOGICALLY CONNECTED TO SURFACE WATER BODIES, AND THAT  
19 IS RECHARGED BY WATER FILTERING DOWN FROM THE LAND SURFACE.

20 (Q) ~~(l)~~ "Water" "WATERS of the Great Lakes basin" means the  
21 Great Lakes and all streams, rivers, lakes, connecting channels,  
22 and other bodies of water, including groundwater, within the Great  
23 Lakes basin.

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

27 (S) ~~(m)~~ "Withdrawal" means the removal of water from its

1 source for any purpose, other than for hydroelectric generation at  
2 sites certified, licensed, or permitted by the federal energy  
3 regulatory commission.

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

5 (a) A diversion of water out of the basin of the Great Lakes  
6 may impair or destroy the Great Lakes. The legislature further  
7 finds that a limitation on such diversions is authorized by and is  
8 consistent with the mandate of section 52 of article IV of the  
9 state constitution of 1963 that the legislature provide for the  
10 protection of the air, water, and other natural resources of the  
11 state from pollution, impairment, and destruction.

12 (b) Water use registration and reporting are essential to  
13 implementing the principles of the Great Lakes charter and  
14 necessary to support the state's opposition to diversion of waters  
15 of the Great Lakes basin and to provide a source of information on  
16 water use to protect Michigan's rights when proposed water losses  
17 affect the level, flow, use, or quality of waters of the Great  
18 Lakes basin.

19 (c) The waters of the state are valuable public natural  
20 resources held in trust by the state, and the state has a duty as  
21 trustee to manage its waters effectively for the use and enjoyment  
22 of present and future residents and for the protection of the  
23 environment.

24 (d) The waters of the Great Lakes basin are a valuable public  
25 natural resource, and the states and provinces of the Great Lakes  
26 region and Michigan share a common interest in the preservation of  
27 that resource.

1 (e) Any new diversion of waters of the Great Lakes basin for  
2 use outside of the Great Lakes basin will have significant economic  
3 and environmental impact adversely affecting the use of this  
4 resource by the Great Lakes states and Canadian provinces.

5 (f) The continued availability of water for domestic,  
6 municipal, industrial, and agricultural water supplies, navigation,  
7 hydroelectric power and energy production, recreation, and the  
8 maintenance of fish and wildlife habitat and a balanced ecosystem  
9 are vital to the future economic health of the states and provinces  
10 of the Great Lakes region.

11 (g) Future interbasin diversions and consumptive uses of  
12 waters of the Great Lakes basin may have significant adverse  
13 impacts upon the environment, economy, and welfare of the Great  
14 Lakes region and of this state.

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

18 **(I) THE WATERS OF THE GREAT LAKES BASIN ARE CAPABLE OF**  
19 **CONCURRENTLY SERVING MULTIPLE USES, AND SUCH MULTIPLE USES OF WATER**  
20 **RESOURCES FOR MUNICIPAL, PUBLIC, INDUSTRIAL, COMMERCIAL,**  
21 **AGRICULTURE, MINING, NAVIGATION, ENERGY DEVELOPMENT AND PRODUCTION,**  
22 **RECREATION, WATER QUALITY MAINTENANCE, AND THE MAINTENANCE OF FISH**  
23 **AND WILDLIFE HABITAT AND A BALANCED ECOSYSTEM AND OTHER PURPOSES**  
24 **ARE ENCOURAGED, RECOGNIZING THAT SUCH USES ARE INTERDEPENDENT AND**  
25 **MUST BE BALANCED.**

26 **(2) THE LEGISLATURE HAS THE AUTHORITY UNDER SECTIONS 51 AND 52**  
27 **OF ARTICLE IV OF THE STATE CONSTITUTION OF 1963 TO REGULATE THE**



1 WITHDRAWAL AND USES OF THE WATERS OF THE STATE, INCLUDING BOTH  
2 SURFACE WATER AND GROUNDWATER, TO PROMOTE THE PUBLIC HEALTH,  
3 SAFETY, AND WELFARE AND TO PROTECT THE NATURAL RESOURCES OF THE  
4 STATE FROM POLLUTION, IMPAIRMENT, AND DESTRUCTION, SUBJECT TO  
5 CONSTITUTIONAL PROTECTIONS AGAINST UNREASONABLE OR ARBITRARY  
6 GOVERNMENTAL ACTION AND THE TAKING OF PROPERTY WITHOUT JUST  
7 COMPENSATION. THIS AUTHORITY EXTENDS TO ALL WATERS WITHIN THE  
8 TERRITORIAL BOUNDARIES OF THE STATE.

9       Sec. 32713. The department may request the attorney general to  
10 commence a civil action for appropriate relief, including a  
11 permanent or temporary injunction, for a violation of this part or  
12 a rule promulgated under this part. An action under this section  
13 shall be brought in the circuit court for the county of Ingham or  
14 for the county in which the defendant is located, resides, or is  
15 doing business. The court has jurisdiction to restrain the  
16 violation and to require compliance. In addition to any other  
17 relief granted, the court may impose a civil fine of not more than  
18 \$1,000.00. **HOWEVER, A PERSON WHO KNOWINGLY VIOLATES SECTION 32721**  
19 **OR 32723 OR THE TERMS OF A PERMIT ISSUED UNDER SECTION 32723 IS**  
20 **RESPONSIBLE FOR THE PAYMENT OF A CIVIL FINE OF NOT MORE THAN**  
21 **\$5,000.00 PER DAY OF VIOLATION.** In addition to a fine, the attorney  
22 general may file a suit in a court of competent jurisdiction to  
23 recover the full value of the costs of surveillance and enforcement  
24 by the state resulting from the violation.

25       **SEC. 32721. (1) A PERSON SHALL NOT MAKE A LARGE QUANTITY**  
26 **WITHDRAWAL THAT CAUSES AN ADVERSE RESOURCE IMPACT TO A DESIGNATED**  
27 **TROUT STREAM.**

1           (2) SUBSECTION (1) DOES NOT APPLY TO A LARGE QUANTITY  
2 WITHDRAWAL FROM A CONFINED AQUIFER.

3           SEC. 32722. (1) A LARGE QUANTITY WITHDRAWAL THAT EXISTS ON THE  
4 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IS  
5 PRESUMED NOT TO CREATE AN ADVERSE RESOURCE IMPACT TO A DESIGNATED  
6 TROUT STREAM.

7           (2) A NEW LARGE QUANTITY WITHDRAWAL OR AN INCREASE TO AN  
8 EXISTING LARGE QUANTITY WITHDRAWAL IS PRESUMED NOT TO CREATE AN  
9 ADVERSE RESOURCE IMPACT TO A DESIGNATED TROUT STREAM UNDER EITHER  
10 OF THE FOLLOWING CIRCUMSTANCES:

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

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

14           (3) UPON THE DEVELOPMENT OF A WATER WITHDRAWAL ASSESSMENT TOOL  
15 AS PROVIDED FOR IN SECTION 32803, A LARGE QUANTITY WITHDRAWAL IS  
16 PRESUMED NOT TO CREATE AN ADVERSE RESOURCE IMPACT IF THE WATER  
17 WITHDRAWAL ASSESSMENT TOOL DETERMINES THAT THE LARGE QUANTITY  
18 WITHDRAWAL IS NOT LIKELY TO CREATE AN ADVERSE RESOURCE IMPACT.

19           SEC. 32723. (1) THE FOLLOWING PERSONS SHALL OBTAIN A WATER  
20 WITHDRAWAL PERMIT PRIOR TO MAKING THE WITHDRAWAL:

21           (A) A PERSON WHO INTENDS TO MAKE A NEW WITHDRAWAL TO SUPPLY A  
22 COMMON DISTRIBUTION SYSTEM OF OVER 2,000,000 GALLONS OF WATER PER  
23 DAY AVERAGE IN ANY CONSECUTIVE 90-DAY PERIOD FROM THE WATERS OF THE  
24 STATE.

25           (B) A PERSON WHO INTENDS TO INCREASE A WITHDRAWAL THAT EXISTED  
26 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION  
27 TO SUPPLY A COMMON DISTRIBUTION SYSTEM BY MORE THAN 2,000,000

1 GALLONS OF WATER PER DAY AVERAGE IN ANY CONSECUTIVE 90-DAY PERIOD  
2 FROM THE WATERS OF THE STATE.

3 (2) A PERSON MAY APPLY FOR A PERMIT UNDER THIS SECTION BY  
4 SUBMITTING AN ADMINISTRATIVELY COMPLETE APPLICATION TO THE  
5 DEPARTMENT CONTAINING THE INFORMATION DESCRIBED IN SECTION 32706.  
6 IN ADDITION, THE APPLICANT SHALL SUBMIT AN APPLICATION FEE IN THE  
7 AMOUNT OF \$1,000.00. THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF  
8 ALL APPLICATIONS RECEIVED UNDER THIS SECTION.

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

21 (4) THE DEPARTMENT SHALL MAKE A DECISION WHETHER TO GRANT OR  
22 DENY A PERMIT UNDER THIS SECTION WITHIN 60 DAYS OF RECEIPT OF AN  
23 ADMINISTRATIVELY COMPLETE APPLICATION.

24 (5) THE DEPARTMENT SHALL ISSUE A PERMIT UNDER THIS SECTION IF  
25 THE DEPARTMENT DETERMINES EITHER OF THE FOLLOWING:

26 (A) THE WITHDRAWAL IS FROM A CONFINED AQUIFER.

27 (B) THE WITHDRAWAL WILL NOT CAUSE AN ADVERSE RESOURCE IMPACT.

1           (6) THE DEPARTMENT MAY MODIFY THE TERMS OF A PERMIT ISSUED  
2 UNDER THIS SECTION OR REVOKE THE PERMIT IF THE DEPARTMENT  
3 DETERMINES BASED UPON CLEAR AND CONVINCING SCIENTIFIC EVIDENCE THAT  
4 THE WITHDRAWAL IS CAUSING AN ADVERSE RESOURCE IMPACT.

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

18           SEC. 32724. A WITHDRAWAL PURSUANT TO PART 111, 115, 201, OR  
19 213 IS EXEMPT FROM THE REQUIREMENTS OF THIS PART.

20           SEC. 32725. THIS PART SHALL NOT BE CONSTRUED AS AFFECTING OR  
21 INTENDING TO AFFECT OR IN ANY WAY ALTER OR INTERFERE WITH COMMON  
22 LAW WATER RIGHTS.

23           Enacting section 1. Sections 32711 and 32712 of the natural  
24 resources and environmental protection act, 1994 PA 451, MCL  
25 324.32711 and 324.32712, are repealed.

26           Enacting section 2. Sections 30103, 32721, and 32722 of the  
27 natural resources and environmental protection act, 1994 PA 451,

1 MCL 324.30103, 324.32721, and 324.32722, are repealed December 31,  
2 2007.

3 Enacting section 3. This amendatory act does not take effect  
4 unless all of the following bills of the 93rd Legislature are  
5 enacted into law:

6 (a) Senate Bill No. 852.

7

8 (b) Senate Bill No. 851.

9