

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 860

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 32728 (MCL 324.32728), as added by 2006 PA 33,  
and by adding sections 32706a, 32706b, 32706e, and 32729.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 32706A. (1) ON OCTOBER 1, 2008, THE DEPARTMENT SHALL MAKE  
2        AVAILABLE FOR TESTING AND EVALUATION AN INTERNET-BASED WATER  
3        WITHDRAWAL ASSESSMENT TOOL BASED UPON THE RECOMMENDATIONS OF THE  
4        FORMER GROUNDWATER CONSERVATION ADVISORY COUNCIL AND THE  
5        REQUIREMENTS OF THIS PART. THE ASSESSMENT TOOL SHALL CONTAIN A  
6        FLOW-BASED SAFETY FACTOR. BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE  
7        OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL  
8        IMPLEMENT THE ASSESSMENT TOOL.

(2) THE ASSESSMENT TOOL SHALL DETERMINE WHETHER A PROPOSED WITHDRAWAL IS A ZONE A, ZONE B, ZONE C, OR ZONE D WITHDRAWAL AND WHETHER A PROPOSED WITHDRAWAL IS LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT BASED UPON WHETHER THE PROPOSED WITHDRAWAL IS FROM A COLD RIVER SYSTEM, A COLD-TRANSITIONAL RIVER SYSTEM, A COOL RIVER SYSTEM, OR A WARM RIVER SYSTEM. THE ASSESSMENT TOOL SHALL ACCOUNT FOR IMPACTS DUE TO CUMULATIVE WITHDRAWALS AS PROVIDED FOR IN SECTION 32706E. THE ASSESSMENT TOOL SHALL ALSO DISTINGUISH THE IMPACT OF A PROPOSED WITHDRAWAL BASED UPON WHETHER THE PROPOSED WITHDRAWAL IS FROM A STREAM, A SMALL RIVER, OR A LARGE RIVER, SUBJECT TO THE FOLLOWING:

(A) COOL STREAMS AND WARM STREAMS WITH LESS THAN 3 SQUARE MILES OF DRAINAGE AREA SHALL BE INTEGRATED INTO THE NEXT LARGEST DRAINAGE AREA FOR PURPOSES OF ASSESSMENT TOOL DETERMINATIONS.

(B) COOL STREAMS AND WARM STREAMS WITH LESS THAN 20 SQUARE MILES OF DRAINAGE AREA AND LESS THAN 1 CUBIC FOOT PER SECOND OF INDEX FLOW SHALL BE INTEGRATED INTO THE NEXT LARGEST DRAINAGE AREA FOR PURPOSES OF ASSESSMENT TOOL DETERMINATIONS.

(C) COOL STREAMS AND WARM STREAMS WITH A DRAINAGE AREA OF MORE THAN 3 SQUARE MILES BUT LESS THAN 6 SQUARE MILES SHALL BE INTEGRATED INTO THE NEXT LARGEST DRAINAGE AREA FOR PURPOSES OF ASSESSMENT TOOL DETERMINATIONS FOR GROUNDWATER WITHDRAWALS.

(3) THE ASSESSMENT TOOL SHALL ALLOW THE USER TO ENTER INTO FIELDS THE FOLLOWING DATA RELATED TO A PROPOSED WITHDRAWAL:

(A) THE CAPACITY OF THE EQUIPMENT USED FOR MAKING THE WITHDRAWAL.

(B) THE LOCATION OF THE WITHDRAWAL.

1 (C) THE WITHDRAWAL SOURCE, WHETHER SURFACE WATER OR  
2 GROUNDWATER.

3 (D) IF THE SOURCE OF THE WITHDRAWAL IS GROUNDWATER, WHETHER  
4 THE SOURCE OF THE WITHDRAWAL IS A GLACIAL STRATUM OR BEDROCK.

5 (E) THE DEPTH OF THE WITHDRAWAL IF FROM GROUNDWATER.

6 (F) THE AMOUNT AND RATE OF WATER TO BE WITHDRAWN.

7 (G) WHETHER THE WITHDRAWAL WILL BE INTERMITTENT.

8 (4) THE ASSESSMENT TOOL SHALL CONTAIN A PRINT FUNCTION THAT  
9 ALLOWS THE USER, UPON RECEIPT OF THE ASSESSMENT TOOL'S  
10 DETERMINATION, TO PRINT THE DATA SUBMITTED AND THE DETERMINATION  
11 RETURNED ALONG WITH A DATE AND TIME.

12 (5) THE ASSESSMENT TOOL SHALL WORK IN CONJUNCTION WITH THE  
13 ONLINE REGISTRATION PROCESS AND SHALL ALSO ALLOW OPERATION  
14 INDEPENDENT OF THE ONLINE REGISTRATION PROCESS.

15 (6) ON AN ONGOING BASIS, THE DEPARTMENT SHALL ADD VERIFIED  
16 DATA TO THE ASSESSMENT TOOL'S DATABASE FROM REPORTS SUBMITTED UNDER  
17 SECTIONS 32707, WATER USE CONSERVATION PLANS SUBMITTED UNDER  
18 SECTION 32708, AND PERMITS ISSUED UNDER THE SAFE DRINKING WATER  
19 ACT, 1976 PA 399, MCL 325.1001 TO 325.1023, AND OTHER SOURCES OF  
20 DATA REGARDING THE WATERS OF THE STATE. ADDITIONALLY, THE  
21 DEPARTMENT SHALL MAKE TECHNICAL MODIFICATIONS TO THE ASSESSMENT  
22 TOOL RELATED TO CONSIDERATIONS OF TEMPERATURE, HYDROLOGY, AND  
23 STREAM OR RIVER FLOW BASED UPON A SCIENTIFIC METHODOLOGY ADOPTED BY  
24 ORDER OF THE COMMISSION.

25 (7) IF A PERSON DISAGREES WITH THE DESIGNATION OF A PARTICULAR  
26 STREAM OR RIVER AS A COLD RIVER SYSTEM, A COLD-TRANSITIONAL RIVER  
27 SYSTEM, A COOL RIVER SYSTEM, OR A WARM RIVER SYSTEM FOR USE IN THE

1 ASSESSMENT TOOL OR OTHERWISE UNDER THIS PART, THE PERSON MAY  
2 PETITION FOR A REDESIGNATION OF THAT STREAM OR RIVER. THE PETITION  
3 SHALL BE SUBMITTED TO THE COMMISSION FOR ITS REVIEW AND  
4 DETERMINATION.

5 (8) THE DEPARTMENT SHALL REPORT ANNUALLY TO THE STANDING  
6 COMMITTEES OF THE LEGISLATURE WITH JURISDICTION PRIMARILY  
7 PERTAINING TO NATURAL RESOURCES AND THE ENVIRONMENT ON THE  
8 IMPLEMENTATION OF THE ASSESSMENT TOOL AND THIS PART. THIS REPORT  
9 SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING:

10 (A) THE NUMBER OF ZONE C WITHDRAWAL SITE-SPECIFIC REVIEWS  
11 REQUESTED BY APPLICANTS EACH 12 MONTHS AFTER THE EFFECTIVE DATE OF  
12 THE IMPLEMENTATION OF THE ASSESSMENT TOOL UNDER SECTION 32706A.

13 (B) THE NUMBER OF ZONE C WITHDRAWAL SITE-SPECIFIC REVIEW  
14 DETERMINATIONS THAT RESULTED IN CHANGES FROM ZONE C TO ZONE B AND  
15 THE NUMBER OF CHANGES FROM ZONE C TO ZONE A.

16 (C) THE NUMBER OF ZONE C WITHDRAWAL SITE-SPECIFIC REVIEW  
17 DETERMINATIONS THAT RESULT IN A ZONE D WITHDRAWAL DETERMINATION.

18 (D) THE NUMBER OF SITE-SPECIFIC REVIEW DETERMINATIONS WHERE  
19 THE DEPARTMENT FAILED TO MEET STATUTORY TIMELINES.

20 (E) THE NUMBER OF REGISTERED ASSESSMENT TOOL DETERMINATIONS  
21 FOR EACH ZONE.

22 (F) THE NUMBER OF VOLUNTARY REQUESTS FOR SITE-SPECIFIC REVIEWS  
23 THAT WERE SUBMITTED TO THE DEPARTMENT AND WHETHER THE DEPARTMENT  
24 FAILED TO MEET STATUTORY TIMELINES ON THESE SITE-SPECIFIC REVIEWS.

25 (G) THE NUMBER OF REGISTRATIONS SUBMITTED TO THE DEPARTMENT  
26 UNDER THIS PART.

27 SEC. 32706B. (1) BEGINNING ON THE EFFECTIVE DATE OF THE

1 IMPLEMENTATION OF THE ASSESSMENT TOOL UNDER SECTION 32706A, PRIOR  
2 TO REGISTERING A NEW OR INCREASED LARGE QUANTITY WITHDRAWAL UNDER  
3 SECTION 32705 FOR A PROPOSED WITHDRAWAL FROM A STREAM OR RIVER, OR  
4 FROM GROUNDWATER, THE PROPERTY OWNER PROPOSING TO MAKE THE  
5 WITHDRAWAL SHALL UTILIZE THE ASSESSMENT TOOL BY ENTERING THE DATA  
6 RELATED TO THE PROPOSED WITHDRAWAL INTO THE ASSESSMENT TOOL.  
7 HOWEVER, A PERSON WHO INTENDS TO MAKE A NEW OR INCREASED LARGE  
8 QUANTITY WITHDRAWAL FOR THE PURPOSE OF DEWATERING A MINE THAT HAS A  
9 PERMIT UNDER PART 31 AND IS NOT REGULATED UNDER PART 631, 632, OR  
10 637 MAY CHOOSE TO SUBMIT A REQUEST FOR A SITE-SPECIFIC REVIEW  
11 RATHER THAN UTILIZE THE ASSESSMENT TOOL.

12 (2) UPON ENTRY OF THE RELEVANT DATA UNDER SUBSECTION (1), THE  
13 ASSESSMENT TOOL SHALL INDICATE TO THE USER WHETHER OR NOT THE  
14 PROPOSED WITHDRAWAL IS LIKELY TO CAUSE AN ADVERSE RESOURCE IMPACT  
15 AND WHETHER THE PROPOSED WITHDRAWAL FALLS INTO THE CATEGORY OF ZONE  
16 A, ZONE B, ZONE C, OR ZONE D.

17 (3) IF THE ASSESSMENT TOOL DESIGNATES A PROPOSED WITHDRAWAL AS  
18 A ZONE A WITHDRAWAL, OR A ZONE B WITHDRAWAL IN A COOL RIVER SYSTEM  
19 OR A WARM RIVER SYSTEM, THE PROPERTY OWNER MAY REGISTER THE  
20 WITHDRAWAL AND PROCEED TO MAKE THE WITHDRAWAL.

21 (4) IF THE ASSESSMENT TOOL DESIGNATES A PROPOSED WITHDRAWAL AS  
22 A ZONE B WITHDRAWAL IN A COLD-TRANSITIONAL RIVER SYSTEM, OR A ZONE  
23 C OR ZONE D WITHDRAWAL, THE PROPERTY OWNER SHALL NOT REGISTER THE  
24 WITHDRAWAL OR MAKE THE WITHDRAWAL EXCEPT IN ACCORDANCE WITH SECTION  
25 32706C.

26 (5) AFTER A PROPERTY OWNER REGISTERS A WITHDRAWAL, IF, IN  
27 DEVELOPING THE CAPACITY TO MAKE THE WITHDRAWAL, THE CONDITIONS OF

1 THE WITHDRAWAL DEVIATE FROM THE SPECIFIC DATA THAT WERE ENTERED  
2 INTO THE ASSESSMENT TOOL, THE PROPERTY OWNER SHALL RERUN THE  
3 ASSESSMENT TOOL AND SHALL ENTER THE CORRECTED DATA INTO THE  
4 ASSESSMENT TOOL. THE PROPERTY OWNER SHALL NOTIFY THE DEPARTMENT OF  
5 THE CORRECTED DATA AND THE CORRECTED RESULTS FROM THE ASSESSMENT  
6 TOOL. IF THE CORRECTED DATA DO NOT CHANGE THE DETERMINATION OF THE  
7 ASSESSMENT TOOL, THE PROPERTY OWNER MAY PROCEED WITH THE  
8 WITHDRAWAL. IF THE CORRECTED DATA CHANGE THE DETERMINATION FROM THE  
9 ASSESSMENT TOOL, THE PROPERTY OWNER SHALL PROCEED UNDER THE  
10 PROVISIONS OF THIS PART RELATED TO THE CORRECTED ASSESSMENT TOOL  
11 DETERMINATION.

12 SEC. 32706E. THE DEPARTMENT SHALL DETERMINE WHETHER AN ADVERSE  
13 RESOURCE IMPACT HAS OCCURRED UNDER THIS PART AND WHETHER A  
14 WITHDRAWAL IS A ZONE A, A ZONE B, A ZONE C, OR A ZONE D WITHDRAWAL  
15 UNDER THIS PART BASED UPON CUMULATIVE WITHDRAWALS AFFECTING THE  
16 SAME STREAM REACH. IN ACCOUNTING FOR THESE CUMULATIVE WITHDRAWALS,  
17 THE DEPARTMENT SHALL APPLY BOTH OF THE FOLLOWING:

18 (A) BEGINNING ON OCTOBER 1, 2008, THE DEPARTMENT SHALL BEGIN  
19 WATER WITHDRAWAL ACCOUNTING FOR CUMULATIVE WITHDRAWALS AFFECTING  
20 THE SAME STREAM REACH.

21 (B) BEGINNING ON FEBRUARY 1, 2009, THE DEPARTMENT SHALL ADJUST  
22 THE WATER WITHDRAWAL ACCOUNTING UNDER SUBDIVISION (A) SUCH THAT IF  
23 CUMULATIVE WITHDRAWALS BEGINNING ON OCTOBER 1, 2008 HAVE REMOVED A  
24 SUFFICIENT FLOW OF WATER FROM A STREAM REACH TO CHANGE THE ZONE  
25 CLASSIFICATION OF THAT STREAM REACH, THE DEPARTMENT SHALL RESET THE  
26 WATER WITHDRAWAL ACCOUNTING BENCHMARK FOR THAT STREAM REACH AS  
27 FOLLOWS:

1           (i) IF THE CUMULATIVE IMPACT OF WITHDRAWALS ON FEBRUARY 1, 2009  
2 RESULTS IN A CLASSIFICATION AS A ZONE B WITHDRAWAL, THE ACCOUNTING  
3 BENCHMARK SHALL BE RESET AT THE BEGINNING POINT FOR ZONE B  
4 WITHDRAWALS.

5           (ii) IF THE CUMULATIVE IMPACT OF WITHDRAWALS ON FEBRUARY 1,  
6 2009 RESULTS IN A CLASSIFICATION AS A ZONE C WITHDRAWAL, THE  
7 ACCOUNTING BENCHMARK SHALL BE RESET AT THE BEGINNING POINT FOR ZONE  
8 C WITHDRAWALS.

9           (iii) IF THE CUMULATIVE IMPACT OF WITHDRAWALS ON FEBRUARY 1,  
10 2009 RESULTS IN A CLASSIFICATION AS A ZONE D WITHDRAWAL, THE  
11 ACCOUNTING BENCHMARK SHALL BE RESET AT THE BEGINNING POINT FOR ZONE  
12 C WITHDRAWALS. IF THERE IS NOT A ZONE C FOR THE CLASSIFICATION OF  
13 THE STREAM REACH, THE WATER WITHDRAWAL ACCOUNTING BENCHMARK SHALL  
14 BE RESET AT THE BEGINNING POINT FOR ZONE B WITHDRAWALS.

15           Sec. 32728. (1) ~~This part shall not be construed as affecting,~~  
16 ~~intending to affect, or in any way altering or interfering with~~  
17 ~~common law water rights or the applicability of other laws~~  
18 ~~providing for the protection of natural resources or the~~  
19 ~~environment. THIS PART SHALL NOT BE CONSTRUED AS AFFECTING,~~  
20 ~~INTENDING TO AFFECT, OR IN ANY WAY ALTERING OR INTERFERING WITH~~  
21 ~~COMMON LAW WATER RIGHTS OR PROPERTY RIGHTS OR THE APPLICABILITY OF~~  
22 ~~OTHER LAWS PROVIDING FOR THE PROTECTION OF NATURAL RESOURCES OR THE~~  
23 ~~ENVIRONMENT OR LIMIT, WAIVE, CEDE, OR GRANT ANY RIGHTS OR INTEREST~~  
24 ~~THAT THE STATE POSSESSES AS SOVEREIGN FOR THE PEOPLE OF THE STATE~~  
25 ~~IN THE WATERS OR NATURAL RESOURCES OF THE STATE.~~

26           (2) THIS PART DOES NOT LIMIT THE RIGHT OF A PERSON WHOSE  
27 INTERESTS HAVE BEEN OR WILL BE ADVERSELY AFFECTED TO INSTITUTE

1 PROCEEDINGS IN CIRCUIT COURT AGAINST ANY PERSON TO PROTECT SUCH  
2 INTERESTS.

3 (3) EXCEPT AS SPECIFICALLY AUTHORIZED UNDER THIS PART, THIS  
4 PART DOES NOT AUTHORIZE THE PROMULGATION OF RULES.

5 SEC. 32729. EXCEPT AS SPECIFICALLY AUTHORIZED UNDER THIS PART,  
6 THIS PART DOES NOT AUTHORIZE THE ASSESSMENT OF FEES.

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

- 10 (a) Senate Bill No. 212.
- 11 (b) Senate Bill No. 723.
- 12 (c) Senate Bill No. 727.
- 13 (d) Senate Bill No. 858.
- 14 (e) Senate Bill No. 859.
- 15 (f) House Bill No. 4343.
- 16 (g) House Bill No. 5065.
- 17 (h) House Bill No. 5066.
- 18 (i) House Bill No. 5067.
- 19 (j) House Bill No. 5069.
- 20 (k) House Bill No. 5073.