

HOUSE BILL No. 5072

July 25, 2007, Introduced by Reps. Valentine, Sak, Alma Smith, Byrnes, LeBlanc, Vagnozzi, Wojno, Accavitti, Bieda, Kathleen Law, Polidori, Constan, Robert Jones, Bauer, Simpson, Donigan, Warren, Meadows, McDowell, Miller, Young, Melton, Brown, Hammel, Espinoza, Lemmons, Meisner, Sheltroun, Hammon, Tobocman, Corriveau, Farrah, Cushingberry, Jackson, Johnson, Coulouris, Brandenburg and Dean and referred to the Committee on Great Lakes and Environment.

A bill to amend 1976 PA 399, entitled
"Safe drinking water act,"
by amending section 17 (MCL 325.1017), as amended by 2006 PA 37.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17. (1) A person engaged in producing bottled drinking
2 water shall utilize a water source meeting the requirements of this
3 section and the requirements otherwise provided in this act.
4 Bottling or packaging facilities and their operation shall remain
5 under the supervision of the Michigan department of agriculture as
6 provided for in the food law of 2000, 2000 PA 92, MCL 289.1101 to
7 289.8111, and regulation no. 549, R285.549.1 through R285.549.29 of
8 the Michigan administrative code, and other pertinent rules and
9 laws.

1 (2) A person producing bottled drinking water from an out-of-
2 state source shall submit proof to the director that the source and
3 bottling facilities were approved by the agency having
4 jurisdiction. The director may withhold approval of the bottled
5 water if the other agency's inspection, surveillance, and approval
6 procedures and techniques are determined to be inadequate.

7 (3) A PERSON PRODUCING BOTTLED DRINKING WATER SHALL REGISTER
8 WITH THE DEPARTMENT ON OR BEFORE JANUARY 31, 2008 IN A FORM AND
9 MANNER REQUIRED BY THE DEPARTMENT AND EACH YEAR THEREAFTER REPORT
10 BY JANUARY 31 IN A FORM AND MANNER REQUIRED BY THE DEPARTMENT THE
11 TOTAL AMOUNT OF WATER BOTTLED DURING THE PRECEDING YEAR FROM EACH
12 WATER SOURCE THE PERSON UTILIZES FOR PRODUCING BOTTLED DRINKING
13 WATER.

14 (4) ~~(3)~~ A person who proposes to engage in producing bottled
15 drinking water from a new or increased large quantity withdrawal of
16 more than ~~250,000~~ 100,000 gallons of water per day shall
17 ~~demonstrate to the satisfaction of the department that all of the~~
18 ~~following conditions will be met~~ SUBMIT AN APPLICATION TO THE
19 DEPARTMENT CONTAINING ALL OF THE FOLLOWING:

20 ~~—— (a) The proposed use is not likely to have an adverse resource~~
21 ~~impact.~~

22 ~~—— (b) The proposed use is reasonable under common law principles~~
23 ~~of water law in Michigan.~~

24 ~~—— (c) The withdrawal will be conducted in such a manner as to~~
25 ~~protect riparian rights as defined by Michigan common law.~~

26 (A) A COMPLETE HYDROGEOLOGICAL STUDY AND ASSESSMENT OF WATER
27 SOURCE, NATURAL FEATURES, AND SOILS AFFECTED BY THE WITHDRAWAL.

1 (B) AN ASSESSMENT OF THE WITHDRAWAL'S EFFECTS ON FLOWS AND
2 LEVELS OF GROUNDWATER, SPRINGS, LAKES AND STREAMS, AND WETLANDS, OR
3 NEARBY WELLS. THE ASSESSMENT SHALL INCORPORATE SUFFICIENT BASELINE
4 STAGE AND FLOW DATA, PUMP TESTS OF AT LEAST 7 DAYS IN DURATION,
5 PUMPING RATES, PRECIPITATION, AND RECHARGE INPUT AND OUTPUT DATA.
6 THE PUMP TESTS SHALL BE CONTINUED FOR A LONGER PERIOD IF THE DATA
7 ARE INSUFFICIENT TO CALCULATE OR PREDICT EFFECTS AT A NEW STEADY
8 STATE BASED ON PROJECTED PUMPING.

9 (5) THE DEPARTMENT SHALL ONLY APPROVE AN APPLICATION UNDER
10 SUBSECTION (4) IF THE DEPARTMENT DETERMINES BOTH OF THE FOLLOWING:

11 (A) THE STANDARDS ESTABLISHED IN SECTION 32723 OF THE NATURAL
12 RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL
13 324.32723, WILL BE MET.

14 (B) ~~(d)~~—The person will undertake activities, if needed, to
15 address hydrologic impacts commensurate with the nature and extent
16 of the withdrawal. These activities may include those related to
17 the stream flow regime, water quality, and aquifer protection.

18 (6) ~~(4)~~—Before proposing activities under subsection ~~(3)~~~~(d)~~
19 (5) (B), the person proposing to engage in producing bottled
20 drinking water shall consult with local government officials and
21 interested community members.

22 (7) ~~(5)~~—Before making the determination under subsection ~~(3)~~
23 (5), the department shall provide public notice and an opportunity
24 for public comment **AND PUBLIC HEARING**.

25 (8) ~~(6)~~—If the person proposing to engage in producing bottled
26 drinking water under ~~subsection (3)~~—**THIS SECTION** does not have a
27 permit under section 4, the person shall request a determination

1 under ~~subsection (3)~~ **THIS SECTION** when that person applies for a
 2 permit under section 4. If the person proposing to engage in
 3 producing bottled drinking water has previously received a permit
 4 under section 4, the person shall request a determination under
 5 ~~subsection (3)~~ **THIS SECTION** prior to beginning the operations.

6 (9) ~~(7)~~ A person seeking a departmental determination under
 7 ~~subsection (3)~~ **THIS SECTION** shall submit an application fee of
 8 \$5,000.00 to the department. The department shall transmit
 9 application fees received under this section to the state treasurer
 10 to be credited to the water use protection fund created in section
 11 32714.

12 (10) **THE INFORMATION PROVIDED IN SUBSECTION (4) SHALL BE**
 13 **SUBJECT TO DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT,**
 14 **1976 PA 442, MCL 15.231 TO 15.246.**

15 (11) ~~(8)~~ This section 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.

20 (12) **THE DECISION REGARDING APPLICATION OF THIS SECTION IS**
 21 **SUBJECT TO DE NOVO REVIEW BY THE COURTS.**

22 (13) ~~(9)~~ As used in this section, "adverse resource impact"
 23 and "new or increased large quantity withdrawal" mean those terms
 24 as they are defined in section 32701 of the natural resources and
 25 environmental protection act, 1994 PA 451, MCL 324.32701.

26 **Enacting section 1. This amendatory act does not take effect**
 27 **unless all of the following bills of the 94th Legislature are**

1 enacted into law:

2 (a) Senate Bill No. _____ or House Bill No. 5073 (request no.
3 00453'07 *).

4 (b) Senate Bill No. _____ or House Bill No. 5065 (request no.
5 02361'07).

6 (c) Senate Bill No. _____ or House Bill No. 5066 (request no.
7 02362'07).

8 (d) Senate Bill No. _____ or House Bill No. 5067 (request no.
9 02363'07).

10 (e) Senate Bill No. _____ or House Bill No. 5068 (request no.
11 02364'07).

12 (f) Senate Bill No. _____ or House Bill No. 5069 (request no.
13 02365'07).

14 (g) Senate Bill No. _____ or House Bill No. 5070 (request no.
15 02366'07).

16 (h) Senate Bill No. _____ or House Bill No. 5071 (request no.
17 02367'07).