

# HOUSE BILL No. 5373

February 16, 2016, Introduced by Reps. Hovey-Wright, Sarah Roberts, Irwin, Cochran, Darany, Chang, Greig, Plawecki, Townsend, Moss, Schor, LaVoy, Faris, Pagan, Heise, Wittenberg, Hoadley, Geiss, Phelps and Zemke and referred to the Committee on Energy Policy.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 32706a and 32727 (MCL 324.32706a and 324.32727), section 32706a as added by 2008 PA 185 and section 32727 as amended by 2008 PA 183.

**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~~ **INTERNET-**  
3 **BASED** water withdrawal assessment tool based upon the  
4 recommendations of the former groundwater conservation advisory  
5 council and the requirements of this part. The assessment tool  
6 shall contain a flow-based safety factor. Beginning ~~1 year after~~

1 ~~the effective date of the amendatory act that added this section,~~  
2 ~~JULY 9, 2008,~~ the department shall implement the assessment tool.  
3 **FOLLOWING THE EFFECTIVE DATE OF THE 2016 AMENDATORY ACT THAT**  
4 **AMENDED THIS SECTION, THE DEPARTMENT SHALL UPDATE THE ASSESSMENT**  
5 **TOOL TO INCLUDE ALL OF THE FOLLOWING:**

6 (A) CONSIDERATION OF THE EFFECT OF CUMULATIVE WATER  
7 WITHDRAWALS ASSOCIATED WITH HYDRAULIC FRACTURING.

8 (B) AN ACCURATE ASSESSMENT OF THE EFFECT OF HIGH-VOLUME,  
9 SHORT-DURATION WATER WITHDRAWALS ASSOCIATED WITH HYDRAULIC  
10 FRACTURING.

11 (C) CONSIDERATION OF THE EFFECT ON LAKES, RIVERS, STREAMS,  
12 PONDS, AND WETLANDS FROM WATER WITHDRAWALS ASSOCIATED WITH  
13 HYDRAULIC FRACTURING.

14 (2) The assessment tool shall determine whether a proposed  
15 withdrawal is a zone A, zone B, zone C, or zone D withdrawal and  
16 whether a proposed withdrawal is likely to cause an adverse  
17 resource impact based upon whether the proposed withdrawal is from  
18 a cold river system, a cold-transitional river system, a cool river  
19 system, or a warm river system. The assessment tool shall account  
20 for impacts due to cumulative withdrawals as provided for in  
21 section 32706e. The assessment tool shall also distinguish the  
22 impact of a proposed withdrawal based upon whether the proposed  
23 withdrawal is from a stream, a small river, or a large river,  
24 subject to the following:

25 (a) Cool streams and warm streams with less than 3 square  
26 miles of drainage area shall be integrated into the next largest  
27 drainage area for purposes of assessment tool determinations.

1 (b) Cool streams and warm streams with less than 20 square  
2 miles of drainage area and less than 1 cubic foot per second of  
3 index flow shall be integrated into the next largest drainage area  
4 for purposes of assessment tool determinations.

5 (c) Cool streams and warm streams with a drainage area of more  
6 than 3 square miles but less than 6 square miles shall be  
7 integrated into the next largest drainage area for purposes of  
8 assessment tool determinations for groundwater withdrawals.

9 (3) The assessment tool shall allow the user to enter into  
10 fields the following data related to a proposed withdrawal:

11 (a) The capacity of the equipment used for making the  
12 withdrawal.

13 (b) The location of the withdrawal.

14 (c) The withdrawal source, whether surface water or  
15 groundwater.

16 (d) If the source of the withdrawal is groundwater, whether  
17 the source of the withdrawal is a glacial stratum or bedrock.

18 (e) The depth of the withdrawal if from groundwater.

19 (f) The amount and rate of water to be withdrawn.

20 (g) Whether the withdrawal will be intermittent.

21 (4) The assessment tool shall contain a print function that  
22 allows the user, upon receipt of the assessment tool's  
23 determination, to print the data submitted and the determination  
24 returned along with a date and time.

25 (5) The assessment tool shall work in conjunction with the  
26 online registration process and shall also allow operation  
27 independent of the online registration process.

1 (6) On an ongoing basis, the department shall add verified  
2 data to the assessment tool's database from reports submitted under  
3 ~~sections~~**SECTION** 32707; ~~—~~water use conservation plans submitted  
4 under section 32708; ~~—~~and permits issued under the safe drinking  
5 water act, 1976 PA 399, MCL 325.1001 to 325.1023; ~~—~~and other  
6 sources of data regarding the waters of the state. Additionally,  
7 the department shall make technical modifications to the assessment  
8 tool related to considerations of temperature, hydrology, and  
9 stream or river flow based upon a scientific methodology adopted by  
10 order of the commission.

11 (7) If a person disagrees with the designation of a particular  
12 stream or river as a cold river system, a cold-transitional river  
13 system, a cool river system, or a warm river system for use in the  
14 assessment tool or otherwise under this part, the person may  
15 petition for a redesignation of that stream or river. The petition  
16 shall be submitted to the commission for its review and  
17 determination.

18 (8) The department shall report annually to the standing  
19 committees of the legislature with jurisdiction primarily  
20 pertaining to natural resources and the environment on the  
21 implementation of the assessment tool and this part. This report  
22 shall include, but is not limited to, all of the following:

23 (a) The number of zone C withdrawal site-specific reviews  
24 requested by applicants each ~~12 months after the effective date of~~  
25 ~~the implementation of the assessment tool under section~~  
26 ~~32706a~~**-YEAR.**

27 (b) The number of zone C withdrawal site-specific review

1 determinations that resulted in changes from zone C to zone B and  
2 the number of changes from zone C to zone A.

3 (c) The number of zone C withdrawal site-specific review  
4 determinations that result in a zone D withdrawal determination.

5 (d) The number of site-specific review determinations where  
6 the department failed to meet statutory timelines.

7 (e) The number of registered assessment tool determinations  
8 for each zone.

9 (f) The number of voluntary requests for site-specific reviews  
10 that were submitted to the department and whether the department  
11 failed to meet statutory timelines on these site-specific reviews.

12 (g) The number of registrations submitted to the department  
13 under this part.

14 **(9) AS USED IN THIS SECTION, "HYDRAULIC FRACTURING" MEANS THE**  
15 **PROCESS OF INJECTING FOAM OR FLUID INTO A WELL UNDER PRESSURE TO**  
16 **CREATE FRACTURES IN A FORMATION AND THEREBY ENHANCE PRODUCTION OF**  
17 **HYDROCARBONS.**

18 Sec. 32727. (1) The following withdrawals are exempt from the  
19 requirements of this part unless they result in a diversion:

20 (a) A withdrawal undertaken as part of an activity authorized  
21 by the department under part 111, 115, 201, **OR** 213. ~~, or 615.~~

22 (b) A withdrawal undertaken as part of an activity authorized  
23 by the United States ~~environmental protection agency~~ **ENVIRONMENTAL**  
24 **PROTECTION AGENCY** under either of the following:

25 (i) The comprehensive environmental response, compensation,  
26 and liability act of 1980, Public Law 96-510.

27 (ii) The resource conservation and recovery act of 1976,

1 Public Law 94-580.

2 (c) A withdrawal that is undertaken for hydroelectric  
3 generation at sites certified, licensed, or permitted by the  
4 ~~federal energy regulatory commission.~~**FEDERAL ENERGY REGULATORY**  
5 **COMMISSION.**

6 (d) A hydroelectric facility authorized under section 12 of  
7 chapter 264 of the act of March 3, 1909, commonly known as the  
8 river and harbor act of 1909, 35 ~~Stat.~~**STAT** 821.

9 (e) A hydroelectric facility authorized under section 1075(c)  
10 of the intermodal surface transportation efficiency act of 1991,  
11 Public Law 102-240.

12 (f) A hydroelectric facility authorized under Public Law 85,  
13 chapter 1368, 34 ~~Stat.~~**STAT** 102.

14 (g) Removal of water from an artificially created surface  
15 water body that has as its primary source of water either of the  
16 following:

17 (i) A withdrawal that is not a new or increased large quantity  
18 withdrawal.

19 (ii) A registered new or increased large quantity withdrawal  
20 that has been determined by the assessment tool, a site-specific  
21 review, or a permit issued under section 32723 to be a withdrawal  
22 that is not likely to cause an adverse resource impact.

23 (h) A withdrawal from a noncommercial well located on the  
24 following residential property:

25 (i) Single-family residential property unless that well is a  
26 lake augmentation well.

27 (ii) Multifamily residential property not exceeding 4

1 residential units and not more than 3 acres in size unless that  
2 well is a lake augmentation well.

3 (2) The director of the department shall ensure that data in  
4 the possession of the state related to withdrawals that are not  
5 regulated under this part are compiled and shared with departmental  
6 personnel responsible for implementing this part.

7 Enacting section 1. This amendatory act takes effect 90 days  
8 after the date it is enacted into law.