

Act No. 148

Public Acts of 2003

Approved by the Governor

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STATE OF MICHIGAN

92ND LEGISLATURE

REGULAR SESSION OF 2003

Introduced by Senators Birkholz, Toy, Patterson, Cassis, Sikkema, Goschka, Van Woerkom, Johnson, Barcia, McManus, Hammerstrom and Allen

## ENROLLED SENATE BILL No. 289

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 32701, 32705, 32707, 32708, and 32714 (MCL 324.32701, 324.32705, 324.32707, 324.32708, and 324.32714), sections 32701, 32707, and 32708 as amended and section 32714 as added by 1996 PA 434 and section 32705 as added by 1995 PA 59, and by adding part 328.

The People of the State of Michigan enact:

Sec. 32701. As used in this part:

- (a) "Agricultural purpose" means the agricultural production of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur.
- (b) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products, or other processes.
- (c) "Department" means the department of environmental quality.
- (d) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

- (e) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.
- (f) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.
- (g) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.
- (h) "Industrial or processing facility" means an operating plant or other entity, including a thermoelectric power generation plant, carrying on a common manufacturing activity, trade, or business on a common site, including similar plants or entities under common ownership or control located on contiguous properties. Plants or entities under common ownership or control located on separate sites shall be considered separate facilities. Industrial or processing facility does not include an irrigation facility or a farm.
- (i) "Irrigation facility" means all wells, pumps, intakes, gates, tanks, pipes, or other equipment under common ownership or control and located either on the same site or on separate sites, which are used to withdraw, convey, or distribute water for the purposes of irrigating golf courses, parks, recreational areas, or other grounds. Irrigation facility does not include a farm.
- (j) "Public water supply system" means a water system that provides water for human consumption or other purposes to persons other than the supplier of water.
- (k) "Registrant" means any industrial or processing facility or irrigation facility registered under this part.
- (l) "Water of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.
- (m) "Withdrawal" means the removal of water from its source for any purpose, other than for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

Sec. 32705. (1) Subject to subsection (2), a person who makes a withdrawal shall register with the department on a form provided by the department if, during the calendar year in which the withdrawal occurs, any of the following apply:

- (a) The person owns an industrial or processing facility that has the capacity to withdraw over 100,000 gallons of water per day average in any consecutive 30-day period from the waters of the Great Lakes basin.
- (b) The person owns an irrigation facility that has the capacity to withdraw over 100,000 gallons of water per day average in any consecutive 30-day period from the waters of the Great Lakes basin.
- (c) Beginning 1 year after the effective date of the amendatory act that added this subdivision, the person owns a farm that has the capacity to withdraw over 100,000 gallons of water per day average in any consecutive 30-day period from the waters of the Great Lakes basin.

(2) The owner of a farm who registers under section 32708 is not required to register under subsection (1).

(3) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.

Sec. 32707. (1) Except as provided in subsections (2) and (3), a person who owns an industrial or processing facility, an irrigation facility, or a farm registered under this part shall file a report annually with the department on a form provided by the department. Reports shall be submitted by April 1 of each year. Reports shall include the following information:

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

- (b) The source or sources of the water supply.
  - (c) The use or uses of the water withdrawn.
  - (d) The amount of consumptive use of water withdrawn.
  - (e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 15 feet.
  - (f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers.
  - (g) Other information specified by rule of the department.
- (2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, shall satisfy the reporting requirements of this section.
- (3) The owner of a farm who reports water use under section 32708 is not required to report under subsection (1).
- (4) The department may, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).
- (5) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.
- (6) A person who files an annual report or notification under this section shall annually remit a water use reporting fee of \$100.00 to the department. Water use reporting fees shall be remitted to the department in conjunction with the annual report or notification submitted under this section. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. A water use reporting fee is not required for a report or notification related to a farm that reports water use under section 32708.

Sec. 32708. (1) Beginning 1 year after the effective date of the 2003 amendatory act that amended this section, the owner of a farm described in section 32705(1)(c) who makes a withdrawal for an agricultural purpose, including irrigation for an agricultural purpose, may register the farm address and report the water use on the farm by annually submitting to the department of agriculture a water use conservation plan. The water use conservation plan shall include, but need not be limited to, all of the following information:

- (a) The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.
- (b) The type of crop irrigated, if applicable.
- (c) The acreage of each irrigated crop, if applicable.
- (d) The source or sources of the water supply.
- (e) If the water withdrawn is not used entirely for irrigation, the use or uses of the water withdrawn.
- (f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers.
- (g) Applicable water conservation practices and an implementation plan for those practices.

(2) The department and the department of agriculture in consultation with Michigan state university shall validate and use a formula or model to estimate the consumptive use of withdrawals made for agricultural purposes consistent with the objectives of section 32707.

(3) The department of agriculture shall use water use conservation plan information received under subsection (1) to determine an estimate of water use and consumptive use data for each township in the state. The department of agriculture shall forward the township water use and consumptive use data to the department for inclusion in the statewide groundwater inventory and map prepared under section 32802.

Sec. 32714. (1) The water use protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund, and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse into the general fund.

(4) The department may expend money from the fund, upon appropriation, only for 1 or more of the following:

(a) The implementation and administration of this part.

(b) The preparation of the statewide groundwater inventory and map under section 32802.

(c) The implementation and administration of part 317.

#### PART 328 AQUIFER PROTECTION

Sec. 32801. As used in this part:

(a) "Annex 2001" means the Great Lakes charter annex signed by the governors and premiers of the Great Lakes region on June 18, 2001.

(b) "Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding groundwater to a water well in sufficient quantities that can be withdrawn.

(c) "Base flow" means groundwater discharge to rivers and streams.

(d) "Conflict areas" means an aquifer or a portion of an aquifer in which the department has determined that there is reasonable, scientifically based evidence of a pattern of groundwater withdrawal conflicts or a single extended groundwater withdrawal conflict.

(e) "Council" means the groundwater conservation advisory council created under section 32803.

(f) "Department" means the department of environmental quality.

(g) "Director" means the director of the department.

(h) "Groundwater" means water below the land surface in a zone of saturation.

(i) "Groundwater withdrawal conflict" means the failure of an existing water well that was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, to furnish its normal supply of groundwater because of a progressive decline of the static water level within the aquifer due to the withdrawal of groundwater from the aquifer by a high-capacity well or sump, as determined based on reasonable, scientifically based evidence.

(j) "Static water level" means the distance between the ground surface and the water level within a well that is not being pumped.

Sec. 32802. (1) Not later than 2 years after the effective date of the amendatory act that added this section, the department shall collect and compile groundwater data into a statewide groundwater inventory and map. The department shall use existing sources of groundwater data where those data are available, including information reported under part 327, information reported under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and information collected under the groundwater dispute resolution program created in part 317, but may supplement those data through additional studies if those data are incomplete. Following completion of the initial statewide groundwater inventory and map, the department shall update the statewide groundwater inventory and map as new information becomes available. The department shall include data on all of the following in the statewide groundwater inventory and map:

(a) Location and water yielding capabilities of aquifers in the state.

(b) Aquifer recharge rates in the state, if available to the department.

(c) Static water levels of groundwater in the state.

(d) Base flow of rivers and streams in the state.

(e) Conflict areas in the state.

(f) Surface waters, including designated trout lakes and streams, and groundwater dependent natural resources, that are identified on the natural features inventory.

(g) The location and pumping capacity of all of the following:

(i) Industrial or processing facilities registered under section 32705 that withdraw groundwater.

(ii) Irrigation facilities registered under section 32705 that withdraw groundwater.

(iii) Public water supply systems that have the capacity to withdraw over 100,000 gallons of groundwater per day average in any consecutive 30-day period.

(h) Aggregate agricultural water use and consumptive use, by township.

(2) The department shall make the statewide groundwater inventory and map available to the general public.

Sec. 32803. (1) The groundwater conservation advisory council is created within the department. The council shall consist of all of the following members:

(a) Three individuals appointed by the senate majority leader representing business and manufacturing interests, utilities, and conservation organizations.

(b) Three individuals appointed by the speaker of the house of representatives representing well drilling contractors, local units of government, and agricultural interests.

(c) Four individuals appointed by the director representing nonagriculture irrigators, the aggregate industry, environmental organizations, and the general public.

(d) Three individuals representing the department, the department of agriculture, and the department of natural resources, as nonvoting members who shall serve as information resources to the council.

(2) The council shall do all of the following:

(a) Study the sustainability of the state's groundwater use and whether the state should provide additional oversight of groundwater withdrawals.

(b) Monitor Annex 2001 implementation efforts and make recommendations on Michigan's statutory conformance with Annex 2001, including whether groundwater withdrawals should be subject to best management practices or certification requirements and whether groundwater withdrawals impact water-dependent natural features.

(c) Study the implementation of and the results from the groundwater dispute resolution program created in part 317.

(3) Within 2-1/2 years after the effective date of the amendatory act that added this section, the council shall submit a report, approved by a majority of the voting members of the council, on its findings and recommendations under subsection (2) to the senate majority leader, the speaker of the house of representatives, and the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment.

(4) Effective 6 months after the council submits its findings and recommendations under subsection (3), the council is disbanded.

This act is ordered to take immediate effect.

Secretary of the Senate

Clerk of the House of Representatives

Approved

Governor