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BILL ANALYSIS



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Senate Bill 212 (as enacted)  
Senate Bill 723 (as enacted)  
Senate Bill 727 (as enacted)  
Senate Bill 858 (as enacted)  
Senate Bill 859 (as enacted)  
Senate Bill 860 (as enacted)  
House Bill 4343 (as enacted)  
House Bill 5065 (as enacted)  
House Bill 5066 (as enacted)  
House Bill 5067 (as enacted)  
House Bill 5069 (as enacted)  
House Bill 5073 (as enacted)

**PUBLIC ACT 190 of 2008**  
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**PUBLIC ACT 187 of 2008**  
**PUBLIC ACT 186 of 2008**  
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**PUBLIC ACT 183 of 2008**  
**PUBLIC ACT 182 of 2008**  
**PUBLIC ACT 181 of 2008**  
**PUBLIC ACT 180 of 2008**  
**PUBLIC ACT 179 of 2008**

Sponsor: Senator Patricia L. Birkholz (S.B. 212 & 860)  
Senator Liz Brater (S.B. 723)  
Senator Raymond E. Basham (S.B. 727)  
Senator Gerald Van Woerkom (S.B. 858)  
Senator Bruce Patterson (S.B. 859)  
Representative Kate Ebli (H.B. 4343)  
Representative Gary McDowell (H.B. 5065)  
Representative Mark Meadows (H.B. 5066)  
Representative Terry Brown (H.B. 5067)  
Representative Rebekah Warren (H.B. 5069)  
Representative Kathleen Law (H.B. 5073)

Senate Committee: Natural Resources and Environmental Affairs  
House Committee: Great Lakes and Environment

Date Completed: 7-31-08

## **RATIONALE**

Increased Great Lakes protection, including the regulation of water that feeds the Great Lakes, has been in the planning stages for a number of years. In 1985, the Great Lakes governors and Canadian premiers signed the Great Lakes Charter, a voluntary agreement through which the Great Lakes states and provinces cooperatively manage the waters of the Great Lakes. In June 2001, the governors and premiers signed the Great Lakes Charter Annex 2001 ("Annex 2001"), which focuses specifically on water withdrawals by outlining the basic principles that state and provincial governments should use when evaluating water withdrawal proposals. Annex 2001 also calls for coordinated standards that guide water use decisions toward the common goal of

protecting and enhancing the Great Lakes ecosystem. Both the original charter and the Annex are nonbinding, and require statutory authority to be implemented.

In December 2005, the Great Lakes governors signed two documents to implement the Annex 2001 agreement and establish the decision-making standard to be used in evaluating proposed water uses: the Great Lakes Basin Sustainable Water Resources Agreement (a good-faith agreement) and the Great Lakes Basin Water Resources Compact (a binding agreement). The Compact specifies that each party will manage and regulate new or increased withdrawals within its jurisdiction in accordance with the Compact. The

Compact will not take effect until it has been approved by the legislatures of all of the Great Lakes states and the U.S. Congress. Under Annex 2001, the affected Canadian provinces are to enact similar policies.

In addition, the Federal 1986 Water Resources Development Act (WRDA) included a requirement for the approval of each Great Lakes governor for diversions outside of the Great Lakes Basin. Amendments enacted in 2000 prohibit Great Lakes water exports without the approval of each Great Lakes governor, and also "encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin".

In Michigan, in August 2001, the Great Lakes Conservation Task Force, composed of eight State Senators, was created and asked to recommend to the Legislature policy changes that would improve the Great Lakes ecosystem. The Task Force issued its report in January 2002, recommending the enactment of comprehensive water withdrawal laws, as well as any implementation laws arising from the consummation of the Annex 2001 process.

As a result of Annex 2001, the Task Force report, and groundwater shortages in specific locations around the State, legislation was enacted several years ago. Public Act 148 of 2003 required the Department of Environmental Quality (DEQ) to prepare a statewide groundwater inventory and map; increased water use reporting fees for certain facilities with a capacity to pump over 100,000 gallons per day; extended the reporting requirement to farms with the same capacity; and created the Groundwater Conservation Advisory Council to study the sustainability of the State's groundwater use and monitor the implementation of and make recommendations on statutory conformance with Annex 2001. Public Act 177 of 2003 established a process to resolve groundwater withdrawal disputes between well owners.

Public Acts 33 through 36 of 2006 took the next step in protecting the State's water

resources and implementing the provisions of the Great Lakes Charter and amending documents. Specifically, these Acts did the following:

- Prohibited withdrawals causing adverse resource impacts to designated trout streams for two years, and, beginning February 28, 2008, prohibited all withdrawals resulting in adverse resource impacts.
- Established a requirement that certain large-quantity water users obtain a water withdrawal permit and pay a fee.
- Required the Groundwater Conservation Advisory Council, in consultation with the Departments of Environmental Quality, Natural Resources, and Agriculture, to develop an assessment tool to determine whether a proposed withdrawal will create an adverse resource impact.
- Required each water users' sector to begin designing generally accepted water management practices or environmentally sound and economically feasible water conservation measures by February 28, 2007.
- Authorized large-quantity users in a watershed to form a water users committee through which the Department of Environmental Quality (DEQ) can facilitate the resolution of a situation in which a withdrawal causes an adverse resource impact.
- Required a bottled water producer proposing a new or increased withdrawal of at least 250,000 gallons of water per day to demonstrate to the DEQ that specified criteria will be met.

In June 2007, the final report of the Groundwater Conservation Advisory Council was submitted to the Legislature. The report outlined a water withdrawal assessment process that included both an automated screening tool for determining a withdrawal's potential impact, and a site-specific analysis for withdrawals falling into certain categories. Executive Order 2007-8 then dissolved the Council and transferred its responsibilities to the DEQ.

In order to move toward implementation of the Compact, it was suggested that the Compact be approved by legislation and that the State's water withdrawal registration and permitting process be increased in scope and revised to reflect the Council's recommendations. Additionally, it was suggested that the Council be reconstituted

to facilitate the withdrawal assessment process and the implementation and future adaptation of the assessment tool.

## **CONTENT**

**Senate Bill 212** amended Part 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act (NREPA) to provide for the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact. Additionally, the bill added Part 342 (Great Lakes-St. Lawrence River Basin Water Resources Compact) to NREPA. The Compact does the following:

- Provides for intergovernmental cooperation and consultation through which the participating states intend to protect, conserve, restore, improve, and effectively manage the waters and water-dependent resources of the Basin.
- Creates the Great Lakes-St. Lawrence River Basin Water Resources Council.
- Establishes a standard of review and decision as the means for the Council to exercise its authority.
- Authorizes the Council to promulgate and enforce rules and regulations to implement and enforce the Compact.
- Within five years, requires each party to develop and maintain a water resources inventory.
- Requires each party to submit to the Council and a regional review body a report detailing its water management and conservation and efficiency programs.
- Requires the Council, in cooperation with the Great Lakes Canadian provinces, to review its water management and conservation and efficiency programs and those of the parties and make findings on whether the program provisions are being met and how to assist the parties in meeting them.
- Within five years of the Compact's effective date, requires certain large-quantity water users to register the withdrawal or diversion.
- Within two years after the Compact takes effect, requires each party to develop water conservation and efficiency goals and objectives and implement a conservation and efficiency program.

- Prohibits the approval of a withdrawal proposal that is inconsistent with the Compact or the standard of review and decision.
- Prohibits certain proposals from being undertaken without the approval of the party in which an application or registration is or must be made.
- Provides that certain proposals are subject to review by the regional body, and establishes the regional review process.
- Provides that certain proposals for consumptive use are subject to a 90-day prior notice requirement.
- Prohibits all new or increased diversions, subject to exceptions for straddling communities and some intra-Basin transfers.
- Within five years of the Compact's effective date, requires each party to create a program for the management and regulation of new or increased withdrawals and consumptive uses, including threshold levels for their regulation.
- Establishes a threshold level for any party that fails to set its own levels within 10 years after the Compact takes effect.
- Requires the parties collectively to conduct periodic cumulative impact assessments of Basin water uses.
- Allows an aggrieved person to bring a civil action for an alleged violation of the Compact.

**Senate Bill 723** amended Part 328 of NREPA to revise the membership and duties of the former Groundwater Conservation Advisory Council and change its name to the "Water Resources Conservation Advisory Council".

**Senate Bill 727** amended the Safe Drinking Water Act to revise the withdrawals for which a bottled water producer must demonstrate to the DEQ that certain conditions will be met, and revise the conditions.

**Senate Bill 858** amended the Safe Drinking Water Act to revise provisions requiring the DEQ to evaluate the impact of a proposed waterworks system for a community supply.

**Senate Bill 859** amended Part 327 of NREPA to revise the civil penalty for certain violations of Part 327 involving water withdrawals.

**Senate Bill 860** amended Part 327 to do the following:

- Require the DEQ, on October 1, 2008, to make available for testing and evaluation an internet-based water withdrawal assessment tool that can determine if a proposed withdrawal is likely to cause an adverse resource impact.
- Require the DEQ, beginning one year after the bill's effective date, to implement the assessment tool.

**House Bill 4343** amended Part 327 to do the following:

- Require the DEQ to notify certain local entities by e-mail if a proposed withdrawal falls into a particular category.
- Allow the notified entities to form a water resources assessment and education committee in order to assess trends in water use in the withdrawal's vicinity and educate water users.

**House Bill 5065** amended Part 327 to create a rebuttable presumption that a proposed withdrawal will not cause an adverse resource impact, under certain circumstances.

**House Bill 5066** amended Part 327 to do the following:

- Eliminate a provision reducing a \$200 water use reporting fee upon legislative enactment of the assessment tool.
- Require the DEQ, by March 31, 2009, to prepare and post on its website a set of generic water conservation measures applicable to all people making large-quantity withdrawals.
- Require the DEQ to review water conservation measures submitted by a specific water user's sector and approve them as a replacement for the generic measures for that sector.
- Require a withdrawal registrant or permit holder to certify that he or she had reviewed environmentally

sound and economically feasible water conservation measures.

- Require the DEQ, upon receiving a registration falling into a particular category, to notify all other registrants and permit holders using water from the same source, and require those registrants and permit holders to review and consider implementing water conservation measures.

**House Bill 5067** amended Part 327 to do the following:

- Require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool indicates that the proposed withdrawal falls into a particular category.
- Permit a property owner to request a site-specific review in some cases.
- Require a property owner to obtain a water withdrawal permit and DEQ authorization in order to register and make a withdrawal, under certain circumstances.
- Require the DEQ to develop a protocol for the collection of stream or river flow data by people other than the Department, and allow the DEQ to establish a program to train and certify individuals in the collection of measurements.
- Repeal a section that allowed a person intending to make a withdrawal for which a permit was not required to petition the DEQ for a determination that the withdrawal was not likely to cause an adverse resource impact.

**House Bill 5069** amended Part 327 to revise requirements for a property owner to register with the DEQ before making a large-quantity withdrawal, and revise water withdrawal permit requirements.

**House Bill 5073** amended Part 327 to add various definitions and revise several definitions used in the part, including the definition of "adverse resource impact".

Senate Bill 859 will take effect on October 7, 2008. The other bills took effect on July 9, 2008. The bills were tie-barred to each other.

The bills are described below in further detail. (The definitions added or amended by House Bill 5073 are described in the other bills.)

### **Senate Bill 212**

#### **Part 327: Implementation of Compact**

The Compact must be implemented as prescribed in the bill.

Except as specifically provided, water withdrawals originating within Michigan must be regulated exclusively under Part 327. A proposed use for which a water withdrawal permit is issued under Section 32723 (which House Bill 5069 amended) will be considered to satisfy the requirements of Section 4.11 of the Compact (which prescribes a decision-making standard for the approval of withdrawal proposals).

The bill states that the 2008 amendments to Parts 327 and 328 and to Sections 4 and 17 of the Safe Drinking Water Act (the sections amended by Senate Bills 727 and 858) "are intended to fully implement the compact in this state". For purposes of Section 9.1 of the Compact (which provides that all acts and parts of acts inconsistent with it are, to the extent of the inconsistency, repealed), all acts and parts of acts that are inconsistent with the Compact on the effective date of the bill are modified as necessary to be consistent with the Compact. "[T]herefore, section 9.1 does not repeal any acts or parts of acts."

Under the bill, if the Great Lakes-St. Lawrence River Basin Water Resources Council proposes a revision to the standard of review and decision under the Compact, the Governor must notify the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment. A regulation adopted pursuant to the Compact that amends the standard of review and decision may not be deemed duly adopted in accordance with the statutory authorities and applicable procedures of the State unless it is approved by the Legislature and enacted into law.

#### **Part 342: Water Resources Compact**

The bill states that the Great Lakes-St. Lawrence River Basin Water Resources Compact "is hereby ratified, enacted into

law, and entered into by this state as a party as follows:

#### **Agreement**

...The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows..."

#### **Article I: Short Title, Definitions, Purposes, & Duration**

**Findings.** Article I contains the following findings:

- "The waters of the basin are precious public natural resources shared and held in trust by the states".
- "The waters of the basin are interconnected and part of a single hydrologic system".
- "The waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem."
- "Future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes-St. Lawrence River region".
- "Continued sustainable, accessible and adequate water supplies for the people and economy of the basin are of vital importance".
- "The parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite waters of the basin for the use, benefit and enjoyment of all their citizens, including generations yet to come."

The Compact states that other purposes of Basin waters are encouraged, recognizing that such uses are interdependent and must be balanced. Additionally, the Compact states that the most effective means of protecting, conserving, restoring, improving, and managing the Basin waters is through the joint pursuit of unified and cooperative principles, policies, and programs mutually

agreed upon, enacted, and adhered to by all parties.

Purposes. Article I specifies the following purposes of the Compact:

- To act together to protect, conserve, restore, improve, and effectively manage the waters and water-dependent natural resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation.
- To remove causes of present and future controversies.
- To provide for cooperative planning and action by the parties with respect to such water resources.
- To facilitate consistent approaches to water management across the Basin while retaining state management authority over water management decisions within the Basin.
- To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation on the potential effects of proposed withdrawals and losses on the waters and water-dependent natural resources of the Basin.
- To prevent significant adverse impacts of withdrawals and losses on the Basin's ecosystems and watersheds.
- To promote interstate and state-provincial comity.
- To promote an adaptive management approach to the conservation and management of Basin water resources that recognizes, considers, and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's waters and water-dependent natural resources.

Science. Article I indicates that the parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision-making under the Compact. The strategy must guide the collection and application of scientific information to support the following:

- An improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the Basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed.

- The periodic assessment of cumulative impacts of withdrawals, diversions, and consumptive uses on a Great Lakes and St. Lawrence River watershed basis.
- Improved scientific understanding of the waters of the Basin.
- Improved understanding of the role of groundwater in Basin water resources management.
- The development, transfer, and application of science and research related to water conservation and water use efficiency.

#### Article II: Organization

Council. Article II creates the Great Lakes-St. Lawrence River Basin Water Resources Council as a body politic and corporate, with succession for the duration of the Compact, as an agency and instrumentality of the governments of the respective parties. The Council consists of the governors of the parties, ex officio. Each member of the Council must appoint at least one alternate who may act in his or her place, with authority to attend all Council meetings and with power to vote in the member's absence. Unless otherwise provided by law of the party for which he or she is appointed, each alternate will serve during the term of the member appointing him or her, subject to removal at the pleasure of the member.

Each member is entitled to one vote on all matters that may come before the Council. Unless otherwise stated, the rule of decision will be by a simple majority. The Council annually must adopt a budget for each fiscal year and the amount required to balance the budget must be apportioned equitably among the parties by unanimous vote of the Council. The appropriation of this amount is subject to such review and approval as required by the budgetary processes of the respective parties. The participation of Council members from a majority of the parties constitutes a quorum for the transaction of business at any meeting of the Council.

Organization & Procedure. The Council must provide for its own organization and procedures, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review, and consideration of proposals that come before it for its review and action. The Council

must organize, annually, by the election of a chair and vice chair from among its members. Each member may appoint an advisor who may attend all meetings of the Council and its committees, but does not have voting power. The Council may employ or appoint professional and administrative personnel, including an executive director, as it deems advisable, to carry out the Compact's purposes.

Use of Existing Offices & Agencies. Article II states that it is the policy of the parties to preserve and use the functions, powers, and duties of existing offices and agencies of government to the extent consistent with the Compact. The Council must promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the Basin. To this end, but without limitation, the Council may do all of the following:

- Advise, consult, contract, assist, or otherwise cooperate with any and all such agencies.
- Employ any other agency or instrumentality of any of the parties for any purpose.
- Develop and adopt plans consistent with the water resources plans of the parties.

Jurisdiction. The Council is to have, exercise, and discharge its functions, powers, and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent that action is necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction in which it proposes to act.

Status, Immunity, & Privileges. The Council, its members, and personnel in their official capacity and when engaged directly in the Council's affairs, its property and its assets, have the same immunity from suit and every form of judicial process as the parties have, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

The Council's property and assets are considered public property and are immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

The Council, its property and assets, income, and the operations it carries out under the Compact are immune from all taxation by or under the authority of any of the parties or any political subdivision of the parties. In lieu of property taxes, however, the Council may make reasonable payments to local taxing districts in annual amounts that approximate the taxes lawfully assessed upon similar property.

Advisory Committees. The Council may constitute and empower advisory committees, which may consist of representatives of the public and Federal, state, tribal, county, and local governments, water resources agencies, water-using industries and sectors, water-interest groups, and academic experts in related fields.

### Article III: General Powers & Duties

General Provisions. Article III states that the waters and water-dependent natural resources of the Basin are subject to the sovereign right and responsibilities of the parties, and it is the purpose of the Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in the Compact. The Council and the parties must use the standard of review and decision and procedures contained in or adopted pursuant to the Compact as the means to exercise their authority under it. The Council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all Council members, by regulation adopted in accordance the Compact and each party's respective statutory authorities and applicable procedures. The Council must identify priorities and develop plans and policies relating to Basin water resources. It must adopt and promote uniform and coordinated policies for water resources conservation and management in the Basin.

Council Powers. The Council may do all of the following:

- Plan.
- Conduct research and collect, compile, analyze, interpret, report, and disseminate data on water resources and uses.
- Forecast water levels.
- Conduct investigations.

- Institute court actions.
- Design, acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real and personal property and any interest in the property as it deems necessary, useful, or convenient to carry out the purposes of the Compact.
- Make contracts.
- Receive and accept payments, appropriations, grants, gifts, loans, advances, and other funds, property, and services as may be transferred or made available to it by any party or by any other public or private agency, corporation, or individual.
- Exercise other powers delegated to it by the Compact or otherwise pursuant to law.
- Exercise all powers necessary or convenient to carry out its express or reasonably implied powers.

Rules & Regulations. The Council may promulgate and enforce rules and regulations as necessary for the implementation and enforcement of the Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to those proposals for exceptions that are subject to Council review. ("Exception" means a transfer of water that is excepted under the Compact from its prohibition against diversions, as described below.) Any rule or regulation of the Council, other than one that deals solely with the internal management of the Council or its property, may be adopted only after public notice and hearing.

Each party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce the Compact and the programs adopted by the party to carry out the management programs contemplated by the Compact.

Program Review & Findings. Article III requires each party to submit to the Council and the regional body a report detailing its water management and conservation and efficiency programs that implement the Compact. The report must set forth the manner in which withdrawals are managed by sector, water source, quantity, or any other means, and how the provisions of the standard of review and decision and conservation and efficiency programs are implemented. The first report must be

provided one year from the Compact's effective date and every five years after that.

The Council, in cooperation with the provinces (Ontario and Quebec), must review its water management and conservation and efficiency programs and those of the parties that are established in the Compact and make findings on whether the water management program provisions are being met, and, if not, recommend options to assist the parties in meeting them. The review must take place as follows:

- Thirty days after the first report is submitted by all parties.
- Every five years after the Compact's effective date.
- Any other time at the request of one of the parties.

The Council may recommend a range of approaches to the parties with respect to the development, enhancement, and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the Basin, including groundwater, and the impacts of withdrawals on the Basin ecosystem.

#### Article IV: Water Management & Regulation

Inventory, Registration, & Reporting. Within five years after the Compact's effective date, each party must develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the water resources of the party, including information on the location, type, quantity, and use of those resources as well as withdrawals, diversions, and consumptive uses. To the extent feasible, the water resources inventory must be developed in cooperation with local, state, Federal, tribal, and other private agencies and entities, as well as the Council. Each party's agencies must cooperate with that party in the development and maintenance of the inventory.

The Council must assist each party in developing a common base of data regarding the management of the water resources of the Basin and in establishing systematic arrangements for the exchange



of those data with other states and provinces.

To develop and maintain a compatible base of water use information, within five years of the Compact's effective date, any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period (including consumptive uses) from all sources, or diverts water of any amount, must register the withdrawal or diversion by a date set by the Council unless the person has registered previously in accordance with an existing state program. The person must register the withdrawal or diversion with the originating party using a form prescribed by that party. The form must include, at a minimum, the following information:

- The name and address of the registrant and date of registration.
- The locations and sources of the withdrawal or diversion.
- The capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source.
- The uses made of the water.
- Places of use and places of discharge.
- Other information required by the originating party.

("Originating party" means that party within whose jurisdiction an application or registration is made or required.)

All registrations must include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period. All registrants annually must report the monthly volumes of the withdrawal, consumptive use, and diversion in gallons to the originating party and any other information requested by that party.

Each party annually must report the information gathered under these provisions to a Great Lakes-St. Lawrence River water use data base repository and aggregated information must be made publicly available, consistent with the confidentiality requirements in the Compact.

Information gathered by the parties must be used to improve the sources and applications of scientific information regarding the waters of the Basin and the impacts of the withdrawals and diversions from various locations and water sources on the Basin ecosystem, and to understand

better the role of groundwater in the Basin. The Council and the parties must coordinate the collection and application of scientific information to develop further a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses, and diversions will be assessed.

Conservation & Efficiency Programs. Article IV provides that the Council commits to identify, in cooperation with the provinces, Basin-wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency program. The objectives must be based on the following goals:

- Ensuring improvement of the waters and water-dependent natural resources.
- Protecting and restoring the hydrologic and ecosystem integrity of the Basin.
- Retaining the quantity of surface water and groundwater in the Basin.
- Ensuring sustainable use of waters of the Basin.
- Promoting the efficiency of use and reducing losses and waste of water.

Within two years of the Compact's effective date, each party must develop its own water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and develop and implement a voluntary or mandatory water conservation and efficiency program within its jurisdiction based on the party's goals and objectives. Each party annually must assess its programs in meeting the party's goals and objectives, report to the Council and the regional body, and make the annual assessment available to the public.

("Regional body" means the members of the Compact and the premiers of Ontario or Quebec or their designees.)

Beginning five years after the Compact takes effect, and every five years after that, the Council, in cooperation with the provinces, must review and modify as appropriate the Basin-wide objectives, and the parties must consider any such modifications in implementing their programs. The assessment must be based on examining new technologies, new patterns of water use, new resource demands and threats, and cumulative impact assessment as prescribed in the Compact.

Article IV provides that within two years after the Compact's effective date, the parties commit to promote environmentally sound and economically feasible water conservation measures, such as the following:

- Measures that promote efficient use of water.
- Identification and sharing of best management practices and state-of-the-art conservation and efficiency technologies.
- Application of sound planning principles.
- Demand-side and supply-side measures or incentives.
- Development, transfer, and application of science and research.

Each party must implement a voluntary or mandatory water conservation program for all Basin water users, including those already existing. Conservation programs must adjust to new demands and the potential impacts of cumulative effects and climate.

Party Powers & Duties. Each party, within its jurisdiction, must manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions, in accordance with the Compact.

Each party must require an applicant to submit an application in the manner and with the accompanying information prescribed by the party. ("Applicant" means a person who is required to submit a proposal that is subject to management and regulation under the Compact. "Proposal" means a withdrawal, diversion, or consumptive use of water that is subject to the Compact.)

No party may approve a proposal if it determines that the proposal is inconsistent with the Compact or the standard of review and decision or any implementing rules or regulations promulgated under it. The party may approve, approve with modifications, or disapprove any proposal depending on its consistency with the Compact and the standard of review and decision.

Each party must monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions.

No party may approve a proposal subject to Council and/or regional review pursuant to the Compact unless it is first submitted to and reviewed by either the Council or regional body, or both, and approved by the Council, as applicable. Sufficient opportunity must be provided for comment on the proposal's consistency with the Compact and the standard of review and decision. All comments must become part of the party's formal record of decision, and the party must take into consideration any comments received.

Originating Party Approval. No proposal subject to management and regulation under the Compact may be undertaken by any person unless it has been approved by the originating party.

Regional Review. Article IV states that it is the intention of the parties to participate in regional review of proposals with the provinces, as described in the Compact and the agreement. Unless the applicant or the originating party otherwise requests, it must be the regional body's goal to conclude its review within 90 days after notice of the proposal is received from the originating party.

Proposals for exceptions subject to regional review must be submitted by the originating party to the regional body for regional review, and, where applicable, to the Council for concurrent review.

Article IV states that the parties agree that the protection of the integrity of the Great Lakes-St. Lawrence River Basin ecosystem will be the overarching principle for reviewing proposals subject to regional review, recognizing uncertainties with respect to demands that might be placed on Basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data, and the extent to which diversions might harm the integrity of the Basin system.

The originating party must have lead responsibility for coordinating information for resolution of issues related to evaluation of a proposal, and must consult with the applicant throughout the regional review process.

A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent-setting proposal. This review must be conducted, to the extent possible, within the time frames set forth in the Compact. The review must be undertaken only after the applicant has been consulted.

The originating party must determine if a proposal is subject to regional review. If so, the originating party must provide timely notice to the regional body and the public. The notice may not be given unless and until all information, documents, and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

An originating party may give the regional body notice of an application, even if notification is not required, or request regional review of an application, even if regional review is not required. Any such regional review may be undertaken only after the applicant has been consulted.

An originating party may provide preliminary notice of a potential proposal.

To ensure adequate public participation, the regional body must adopt procedures for the review of proposals that are subject to regional review in accordance with Article IV. The regional body must give notice to the public of a proposal undergoing regional review. The notice must indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision.

The regional body must hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision. The regional body must consider the comments received before issuing a declaration of finding, and must forward the comments it receives to the originating party.

The originating party must give the regional body its technical review of the proposal under consideration. The technical review must analyze the proposal thoroughly and provide an evaluation of it sufficient for a determination of whether it meets the

standard of review and decision. Any member of the regional body may conduct its own technical review of any proposal subject to regional review. At the request of the majority of its members, the regional body must make arrangements as it considers appropriate for an independent technical review of a proposal.

All parties must exercise their best efforts to ensure that a technical review by an individual party or an independent technical review does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews must be completed within 60 days after the notice of the proposal was given to the regional body.

The regional body must meet to consider a proposal. The applicant must be given an opportunity to present the proposal to the regional body at that time. Having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections, including the analysis of comments made by the public, First Nations, and federally recognized Tribes, and any other information provided under the Compact, the regional body must issue a declaration of finding that the proposal under consideration meets the standard of review and decision; does not meet the standard of review and decision; or would meet the standard if certain conditions were met.

An originating party may decline to participate in a declaration of finding made by the regional body.

Article IV states that the parties recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision. If the members who participate in the declaration of finding all agree, they must issue a written declaration of finding with consensus. If they cannot agree, the regional body must make every reasonable effort to achieve consensus within 25 days. If consensus is not achieved, the regional body may issue a declaration of finding that presents different points of view and indicates each party's conclusions.

The regional body must release the declarations of finding to the public. The originating party and the Council must consider the declaration of finding before making a decision on the proposal.

Proposals Subject to Prior Notice. Beginning within five years after the Compact's effective date, an originating party must give all parties and the provinces detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of 5.0 million gallons per day or greater average in any 90-day period. Comments must address whether the proposal is consistent with the standard of review and decision. The originating party must provide a response to any comment received from another party.

A party may provide notice, an opportunity to comment, and a response to comments even if it is not required. The notice may be provided and opportunity to comment may be given only after the applicant has been consulted.

Council Actions. Proposals for exceptions subject to Council review must be submitted by the originating party to the Council and, where applicable, to the regional body for concurrent review.

The Council must review and take action on proposals in accordance with the Compact and the standard of review and decision. The Council may not take action on a proposal subject to regional review unless it has been first submitted to and reviewed by the regional body. The Council must consider any findings resulting from the review.

Prohibition on New or Increased Diversions. All new or increased diversions are prohibited, except as provided for in Article IV.

Exception for Straddling Community. A proposal to transfer water to an area within a straddling community but outside the Basin or outside the source Great Lake watershed must be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume transferred, all the transferred water will be used solely for public water supply

purposes within the straddling community, and the following conditions are met:

- If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal meets the exception standard.
- If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal also will undergo regional review.
- All water withdrawn from the Basin will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of water to the Basin unless it:

- Is part of a water supply or wastewater treatment system that combines water from inside and outside the Basin.
- Is treated to meet applicable water quality discharge standards and prevent the introduction of invasive species into the Basin.
- Maximizes the portion returned to the source watershed as Basin water and minimizes the surface water or groundwater from outside the Basin.

(The Compact defines "straddling community" as any incorporated city, town, or the equivalent of a city or town, wholly within any county that lies partly or completely within the Basin, whose corporate boundary existing as of the Compact's effective date is partly within the Basin or partly within two Great Lakes watersheds.)

Exception for Intra-Basin Transfer. A proposal for an intra-Basin transfer that would be considered a diversion under the Compact and not otherwise excepted must be excepted from the prohibition against diversions, if the following provisions apply.

If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period, the proposal is subject to management and regulation at the discretion of the originating party.

If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than 5.0 million gallons per day average over any 90-day period, the proposal must meet the exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed; the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and the originating party must provide notice to the other parties before making any decision with respect to the proposal.

If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal is subject to management and regulation by the originating party and must meet the exception standard, ensuring that water withdrawn will be returned to the source watershed; the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; the proposal must undergo regional review; and the proposal must be approved by the Council. Council approval must be given unless one or more Council members vote to disapprove.

Exception for Straddling Counties. A proposal to transfer water to a community within a straddling county that would be considered a diversion under the Compact must be excepted from the prohibition, if it satisfies all of the following conditions:

- The water will be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water.
- The proposal meets the exception standard, maximizing the portion of water returned to the source watershed as Basin water and minimizing the

surface water or groundwater from outside the Basin.

- The proposal is subject to management and regulation by the originating party, regardless of its size.
- There is no reasonable water supply alternative within the Basin in which the community is located, including conservation of existing water supplies.
- Caution will be used in determining whether the proposal meets the conditions for this exception (which should not be authorized unless it can be shown that it will not endanger the integrity of the Basin ecosystem).
- The proposal undergoes regional review.
- The proposal is approved by the Council.

Council approval must be given unless one or more Council members vote to disapprove.

Additionally, substantive consideration also will be given to whether the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Basin.

Exception Standard. Proposals subject to management and regulation must be declared to meet the exception standard and may be approved as appropriate only when the following criteria are met:

- The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies.
- The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed.
- The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources of the Basin with consideration given to the potential cumulative impacts of any precedent-setting consequences associated with the proposal.
- The exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use.
- The exception will be implemented so as to ensure that it is in compliance with all

applicable municipal, state, and Federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909.

- All other applicable criteria also have been met.
- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of the water, unless it is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin; and is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin.

New or Increased Withdrawals & Consumptive Uses. Within five years of the Compact's effective date, each party must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party, through a considered process, must set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water-dependent natural resources of the Basin, determined on the basis of significant impacts on the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the Compact are achieved. Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

Any party that fails to set threshold levels that comply with the Compact within 10 years of its effective date must apply a threshold level for management and regulation of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90-day period.

Article IV states that the parties intend programs for new or increased withdrawals and consumptive uses to evolve as

necessary to protect Basin waters. As prescribed in the Compact, the Council, in cooperation with the provinces, periodically must assess the water management programs of the parties. The assessments may produce recommendations for the strengthening of the programs, including establishing lower thresholds for management and regulation in accordance with the decision-making standard.

Decision-Making Standard. Proposals subject to management and regulation must be declared to meet the decision-making standard and may be approved as appropriate only when the following criteria are met:

- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.
- The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources and the applicable source watershed.
- The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures.
- The withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and Federal laws, as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909.

Additionally, the proposed use must be reasonable, based upon a consideration of the following factors:

- Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of water.
- If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies.
- The balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source.

- The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources.
- The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water-dependent natural resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts.

If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

Applicability. Article IV provides that this standard of review and decision must be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision, it may not be approved under the laws of the originating party that has implemented more restrictive measures.

To establish a baseline for determining a new or increased diversion, consumptive use, or withdrawal, each party must develop either or both of the following lists for its jurisdiction:

- A list of existing withdrawal approvals as of the Compact's effective date.
- A list of the capacity of existing systems as of the Compact's effective date.

The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity-limiting factors.

The capacity of the existing systems must represent the state of the systems. Existing capacity determinations must be based upon approval limits or the most restrictive capacity information.

For all purposes of the Compact, volumes of diversions, consumptive uses, or withdrawals set forth in the lists prepared by each party will constitute the baseline volume.

Applications for new or increased withdrawals, consumptive uses, or exceptions must be considered cumulatively within 10 years of any application.

Unless a new owner proposes a project that will result in a proposal for a new or increased diversion or consumptive use subject to regional review or Council approval, the change of ownership in and of itself will not require regional review or Council approval.

The Basin surface water divide must be used for the purpose of managing and regulating new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

The total volume of surface water and groundwater resources that supply a common distribution system must determine the volume of a withdrawal, consumptive use, or diversion.

The watershed of each Great Lake includes its upstream and downstream connecting channels.

Transmission of water within a line that extends outside the Basin as it conveys water from one point to another within the Basin may not be considered a diversion if none of the water is used outside the Basin.

The Lake Michigan and Lake Huron watersheds must be considered to be a single hydrologic unit and watershed.

A proposal to withdraw water and to remove it from the Basin in any container greater than 5.7 gallons must be treated in the same manner as a proposal for a diversion. Each party has the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the Basin in any container of 5.7 gallons or less.

Exemptions. Withdrawals from the Basin for the following purposes are exempt from the requirements of Article IV:

- To supply vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of the vehicles.
- To use in a noncommercial project on a short-term basis for firefighting,

humanitarian, or emergency response purposes.

U.S. Supreme Court Decree: Wisconsin v. Illinois. Article IV specifies that, notwithstanding any terms of the Compact to the contrary, except as otherwise provided, current, new, or increased withdrawals, consumptive uses, and diversions of Basin water by the State of Illinois are governed by the terms of the U.S. Supreme Court decree in Wisconsin v. Illinois, 388 U.S. 426 (1967), and are not subject to the terms of the Compact or any rules or regulations promulgated under it.

Article IV indicates that the parties acknowledge that the decree will continue in full force and effect, that the Compact does not modify any of its terms, and that the Compact grants the parties no additional rights, obligations, remedies, or defenses to it. The parties specifically acknowledge that the Compact does not prohibit or limit the State of Illinois in any manner from seeking additional Basin water as allowed under the terms of the decree, any other party from objecting to any request by Illinois for additional Basin water under the terms of the decree, or any party from seeking any other type of modification to it. If any party applies to the U.S. Supreme Court to modify the decree, the parties to the Compact who also are parties to the decree must seek formal input from the provinces of Ontario and Quebec, with respect to the proposed modification; must use best efforts to facilitate the appropriate participation of the provinces in the proceedings; and may not unreasonably impede or restrict such participation.

Except as otherwise provided, the provisions related to current, new, or increased withdrawals, consumptive uses, and diversions of Basin waters do not apply to the State of Illinois. All other provisions of the Compact not listed, including the water conservation programs provisions, apply to Illinois.

Assessment of Cumulative Impacts. The parties, in cooperation with the provinces, must conduct collectively within the Basin, on a lake watershed and St. Lawrence River Basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the Basin, every five years or each time the incremental Basin water losses

reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever occurs first, or at the request of one or more of the parties. The assessment will form the basis for a review of the standard of review and decision, Council and party regulations, and their application.

The assessment must use the most current and appropriate guidelines for such a review, which may include guidelines of the Council on Environmental Quality and Environment Canada. The assessment also must give substantive consideration to climate change or other significant threats to Basin waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate measures to exercise caution in cases of uncertainty if serious damage might result.

In addition, the assessment must consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds, and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

The parties have the responsibility of conducting this cumulative impact assessment, and applicants are not required to participate in it.

Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application, but must submit information about the potential impacts on the quantity or quality of the waters and water-dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how its proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

#### Article V: Tribal Consultation

In addition to all other opportunities to comment pursuant to the Compact, appropriate consultations must occur with federally recognized tribes in the originating party for all proposals subject to Council or regional review pursuant to the Compact. The consultations must be organized in the manner suitable to the individual proposal



and the laws and policies of the originating party.

All federally recognized tribes within the Basin must receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the regional body, or both, and other relevant organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or Council approval. Any notice from the Council must inform the tribes of any meeting or hearing that is to be held and invite them to attend. The parties and the Council must consider the comments received under these provisions before approving, approving with modifications, or disapproving any proposal subject to Council or regional review.

In addition to the specific consultation mechanisms described in the Compact, the Council must seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with and input from federally recognized tribes on matters to be dealt with by the Council. Also, the Council must seek to establish mechanisms and processes with federally recognized tribes designed to facilitate ongoing scientific and technical interaction and data exchange regarding matters falling within the scope of the Compact. This may include participation of tribal representatives on advisory committees established under the Compact or such other processes that are mutually agreed upon with tribes individually or through duly authorized intertribal agencies or bodies.

#### Article VI: Public Participation

Meetings, Public Hearings, & Records. Article VI indicates that the parties recognize the importance and necessity of public participation in promoting management of the water resources of the Basin. Consequently, all meetings of the Council must be open to the public, except with respect to personnel issues.

The minutes of the Council must be a public record open to inspection at its offices during regular business hours.

Public Participation. Article VI states that it is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the

parties and through regional review. To ensure adequate public participation, each party or the Council must ensure procedures for the review of proposals subject to the standard of review and decision consistent with the following requirements:

- The provision of public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon.
- The assurance of public accessibility to all documents relevant to an application, including public comment received.
- The provision of guidance on standards for determining whether to conduct a public meeting or hearing for an application, time and place of such meetings or hearings, and procedures for conducting them.
- The provision of the record of decision for public inspection, including comments, objections, responses and approvals, approvals with conditions, and disapprovals.

#### Article VII: Dispute Resolution & Enforcement

Good Faith Implementation. Article VII states that each of the parties pledges to support implementation of all provisions of the Compact, and covenants that its officers and agencies will not hinder, impair, or prevent any other party carrying out any provision of the Compact.

Alternative Dispute Resolution. The parties agree that disputes between them regarding interpretation, application, and implementation will be settled by alternative dispute resolution. The Council, in consultation with the provinces, must provide by rule procedures for the resolution of disputes.

Enforcement. Any person aggrieved by any action taken by the Council under the authority contained in the Compact is entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, any aggrieved person has the right to judicial review of a Council action in the U.S. District Courts for the District of Columbia or the district court in which the Council maintains offices, provided such action is commenced within 90 days. Additionally, any aggrieved person

has the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for the review is commenced within the time frames provided for by the party's law. For the purposes of these provisions, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to the Compact.

Any party or the Council may initiate actions to compel compliance with the Compact's provisions, as well as the rules and regulations promulgated by the Council. Jurisdiction over these actions is granted to the court of the relevant party, as well as the U.S. District Courts for the District of Columbia and the district court in which the Council maintains offices. The remedies available to any such court include equitable relief and civil penalties.

Each party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authority contemplated by the Compact in accordance with the provisions of the laws adopted in each party's jurisdiction.

Any aggrieved person, party, or the Council may commence a civil action in the relevant party's courts and administrative systems to compel any person to comply with the Compact should any person, without approval, undertake a new or increased withdrawal, consumptive use, or diversion that is prohibited or subject to approval pursuant to the Compact.

No action may be commenced if the originating party or Council has granted approval for the new or increased withdrawal, consumptive use, or diversion, or has found that it is not subject to approval under the Compact.

No action may be commenced unless the person commencing it has first given 60 days prior notice to the originating party, the Council, and the person alleged to be in noncompliance; and neither the originating party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance.

The available remedies include equitable relief, and the prevailing or substantially

prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of the Compact.

#### Article VIII: Additional Provisions

Effect on Existing Rights. Nothing in the Compact may be construed to affect, limit, diminish, or impair any rights validly established and existing as of its effective date under state or Federal law governing the withdrawal of the waters of the Basin.

Nothing in the Compact may be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

Nothing in the Compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the Federal government of the U.S. based upon its status as a recognized tribe.

An approval by a party or the Council under the Compact does not give any property rights, or any exclusive privileges, and it may not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to or held in trust by a party. Approval also does not authorize any injury to private property or invasion of private rights, or infringement of Federal, state, or local laws or regulations; or obviate the necessity of obtaining Federal assent when necessary.

Relationship to Agreements Concluded by the United States. Nothing in the Compact is intended to provide or may be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement, and nothing is intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

Nothing in the Compact is intended to infringe or may be construed to infringe upon the treaty power of the U.S., and no

term may be construed to alter or amend any treaty or term of a treaty that has been or may be executed by the U.S.

Nothing in the Compact is intended to affect or may be construed to affect the application of the Boundary Waters Treaty.

Confidentiality. Nothing in the Compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information. A party may take measures, including deletion and redaction, deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to other parties. The party must summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authority.

Additional Laws. Nothing in the Compact may be construed to repeal, modify, or qualify the authority of any party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction.

Amendments & Supplements. The provisions of the Compact will remain in full force and effect until amended by action of the governing bodies of the parties and consented to and approved by any other necessary authority in the same manner as the Compact must be ratified to become effective.

Severability. If a court of competent jurisdiction holds any part of the Compact to be void or unenforceable, it will be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation will continue in full force and effect.

Duration of Compact & Termination. Once effective, the Compact will continue in force and remain binding upon each and every party unless terminated. The Compact may be terminated at any time by a majority vote of the parties. In the event of termination, all rights established under it will continue unimpaired.

## Article IX: Effectuation

Repealer. All acts and parts of acts inconsistent with the Compact are to the extent of the inconsistency repealed. (As provided in Senate Bill 212, however, inconsistent acts of this State are modified, rather than repealed.)

Effectuation by Chief Executive. The Governor is authorized to take action as necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation under it.

Entire Agreement. Article IX states that the parties consider the Compact to be complete and an integral whole. Each provision is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted, any change or amendment made by any party in its implementing legislation or by the U.S. Congress when giving its consent to the Compact is not considered effective unless concurred in by all parties.

Effective Date & Execution. The Compact will become binding and effective when ratified through concurring legislation by the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin and the Commonwealth of Pennsylvania and consented to by the U.S. Congress. The Compact must be signed and sealed in nine identical original copies by the respective chief executives of the signatory parties. One copy must be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy must be filed and retained in the archives of the Council upon its organization. The signatures must be affixed and attested under the form specified in the Compact.

### **Senate Bill 723**

#### Water Resources Conservation Advisory Council Membership

Part 328 creates the Groundwater Conservation Advisory Council within the Department of Natural Resources (DNR). Previously, the Council consisted of the following members:

-- Three individuals appointed by the Senate Majority Leader as follows: one

representing business and manufacturing interests, one representing utilities, and one representing conservation organizations.

- Three individuals appointed by the Speaker of the House of Representatives as follows: one representing well drilling contractors, one representing local units of government, and one representing agricultural interests.
- Four individuals appointed by the DEQ Director, including one representing each of the following: nonagriculture irrigators, the aggregate industry, environmental organizations, and the general public.
- Three representing the DEQ, the DNR, and the Michigan Department of Agriculture (MDA).

To assist the Council in carrying out its responsibilities, Part 328 also required the following people to be appointed:

- One individual appointed by the Senate Majority Leader representing a statewide agricultural organization.
- One registered well driller with knowledge and expertise in hydrogeology, appointed by the Speaker of the House.
- Two individuals appointed by the Governor representing municipal water suppliers and a statewide conservation organization.

Under the bill, the Council consists of the following members:

- Four individuals appointed by the Senate Majority Leader, including one representing each of the following: business and manufacturing interests, public utilities, a statewide angler association, and a statewide agricultural organization.
- Four individuals appointed by the Speaker of the House as follows: one representing registered well drilling contractors with hydrology experience, one representing local units of government, one representing agricultural interests, and one with knowledge and expertise in limnology.
- Five individuals appointed by the Governor, including one representing each of the following: municipal water suppliers, a statewide conservation organization, a statewide riparian landowners association, a statewide tourism organization, and Indian tribes.

- Four individuals appointed by the DEQ Director, including one representing each of the following: nonagriculture irrigators, the aggregate industry, environmental organizations, and the general public.
- Four individuals representing the DEQ, the MDA, the DNR, and the Attorney General.

The bill also refers to the "Water Resources Conservation Advisory Council", rather than the "Groundwater Conservation Advisory Council".

The appointments to the Council must be made within 30 days after the bill's effective date. The person making the appointment must give consideration and deference to individuals who served on the former Groundwater Conservation Advisory Council.

#### Council Responsibilities

Part 328 previously required the Council to do all of the following:

- Study the sustainability of the State's groundwater use.
- Develop criteria and indicators to evaluate the sustainability of the State's groundwater use.
- 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 have an impact on water-dependent natural resources.
- Study the implementation of and the results from the groundwater dispute resolution program created in Part 317 (Aquifer Protection and Dispute Resolution).
- Design and make recommendations regarding the water withdrawal assessment tool.
- Study and make recommendations as to whether the State should consider as part of its groundwater conservation programs proposals to mitigate adverse impacts to the waters of the State or to the water-dependent natural resources of the State that might result from groundwater withdrawals.

The bill deleted all of those duties. Instead, within six months after the bill's effective

date, the Council must study and make recommendations to the Senate Majority Leader, the Speaker of the House, the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment, and the DEQ on how the assessment tool could be updated to reconcile differences between baseline capacity and actual withdrawal amounts to assure the accuracy of the assessment tool's determinations.

When the DEQ makes the assessment tool available for testing and determination, the Council must conduct testing and evaluate its operation and accuracy, including the implications of Section 32706e. (Senate Bill 860 added that section, as described below, to require the Department to classify a withdrawal and determine whether it has caused an adverse resource impact based upon cumulative withdrawals affecting the same stream reach.) Within nine months after the bill's effective date, the Council must submit to the Senate Majority Leader, the Speaker of the House, the appropriate standing committees of the Legislature, and the DEQ a report containing the results of the testing and evaluation, as well as any recommendations the Council has to improve the assessment tool's operation.

Additionally, the bill requires the Council to do all of the following:

- Study and make recommendations regarding the development and refinement of the assessment tool.
- Study and make recommendations on whether and how the definition of "adverse resource impact" should be modified to address more specifically potential impacts to the Great Lakes, inland lakes, and other aquatic systems due to large-quantity withdrawals.
- Make recommendations on reconciling conflicts in State laws related to the use of the waters of the State.
- Make recommendations on the development and implementation of the State's water conservation and efficiency program under the Compact.
- Develop a framework for evaluating preventative measures designed to prevent adverse resource impacts.
- In consultation with academic institutions and other nonprofit organizations, make recommendations regarding educational materials related to the use and availability of water resources.

Also, at least three years after the bill's effective date, the Council must submit to the Senate Majority Leader, the Speaker of the House, and the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment a report that makes recommendations regarding how the withdrawal assessment process under Part 327 could be improved in order to assess more accurately adverse resource impacts. The report must contain specific recommendations on the use of the assessment tool, the site-specific review process, the permitting process, and any other measure that the Council determines will improve the water withdrawal assessment process.

The bill deleted a requirement that the Council, in consultation with the DEQ, the DNR, the MDA, and a technical advisory committee, do all of the following:

- Design a water withdrawal assessment tool that could be used to protect and conserve the waters and water-dependent natural resources of the State.
- Make factually based recommendations for the policy-based parameters and variables of the tool.
- Recommend an appropriate timetable for periodic updates or changes to the tool or to its parameters or variables.

#### Council Reports

The bill requires the Council to submit the following reports, approved by a majority of its voting members, to the Senate Majority Leader, the Speaker of the House, the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment, and the DEQ:

- By February 8, 2009, a progress report on the Council's findings and recommendations as of that date.
- By August 8, 2009, the Council's final report on its findings and recommendations.

#### Senate Bill 727

Previously, under the Safe Drinking Water Act, a person who proposed to engage in producing bottled drinking water from a new or increased large-quantity withdrawal of more than 250,000 gallons of water per day

## **Senate Bill 858**

had to demonstrate to the DEQ's satisfaction that the following conditions would be met:

- The proposed use was not likely to have an adverse resource impact.
- The proposed use was reasonable under common law principles of water law in Michigan.
- The withdrawal would be conducted in a manner that protected riparian rights as defined by Michigan common law.
- The person would undertake activities, if needed, to address hydrologic impacts commensurate with the nature and extent of the withdrawal, including those related to stream flow regime, water quality, and aquifer protection.

Under the bill, instead, a person must submit an application to the DEQ if the person proposes to engage in producing bottled drinking water from a new or increased large-quantity withdrawal of more than 200,000 gallons of water per day from the waters of the State or that will result in an intra-Basin transfer of more than 100,000 gallons per day average over any 90-day period. The application must contain an evaluation of existing environmental, hydrological, and hydrogeological conditions and the predicted effects of the intended withdrawal that provides a reasonable basis for a determination to be made (as described below).

The DEQ may approve an application only if it determines that the proposed use would meet the applicable standard provided in Section 32723 of NREPA (which House Bill 5069 amended), and the person will undertake necessary activities to address hydrologic impacts (as previously required). If the DEQ determines that these conditions will be met for a proposed use, it will be considered to satisfy the requirements of Section 4.11 of the Compact (the decision-making standard).

The Act requires the DEQ to provide public notice and an opportunity for public comment before making a determination. The bill requires the public comment period to be at least 45 days.

Under the bill, a person who proposes to engage in producing bottled drinking water and who applied for a permit before the bill took effect is subject to the provisions that existed on February 28, 2006.

The Safe Drinking Water Act requires the DEQ, upon receiving the plans and specifications for a proposed waterworks system, to evaluate its adequacy to protect the public health by supplying water meeting State drinking water standards. In addition, for a proposed waterworks system by a community supply that will provide capacity for a new or increased large-quantity withdrawal, the bill requires the DEQ to use the assessment tool to evaluate the proposed withdrawal associated with the proposed system and confirm the tool's determination. Before the tool's implementation, the DEQ must evaluate the proposed withdrawal based upon reasonably available information. If the Department determines that the proposed withdrawal for a community supply is a zone C withdrawal, the community supply must certify that it is implementing applicable environmentally sound and economically feasible water conservation measures prepared under Section 32708a that the community supply considers to be reasonable, or environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the community supply considers reasonable. (Section 32708a of NREPA, under House Bill 5066, provides for the preparation of water conservation measures.)

Previously, the Act permitted the Department to evaluate the impact of a proposed system for a community supply owned by a political subdivision that would do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.
- Provide new total designed withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 5.0

million gallons per day from the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

The bill, instead, requires the DEQ to evaluate the impact of a proposed waterworks system for a community supply that will do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from the waters of the State.
- Provide an increased total designed withdrawal capacity of more than 2.0 million gallons per day from the waters of the State beyond the system's total designed withdrawal capacity.
- Provide new or increased total designed withdrawal capacity for a new or increased large-quantity withdrawal of more than 100,000 gallons of water per day from the waters of the State to supply a common distribution system that the DEQ confirms is a zone C withdrawal (as defined under House Bill 5073).
- Provide new total designed withdrawal capacity or an increased total designed withdrawal capacity that will result in an intra-Basin transfer of more than 100,000 gallons per day average over any 90-day period.

Under the bill, the DEQ must provide public notice that it is conducting an evaluation and provide a public comment period of at least 45 days before making its determination.

Previously, the DEQ had to reject the plans and specifications if it determined that the system would not meet the applicable standard provided in Section 32723(5) or (6) of NREPA unless both of the following conditions were met:

- The DEQ determined that there was no feasible and prudent alternative location for the withdrawal.
- The DEQ included in the approval conditions related to depth, pumping capacity, rate of flow, and ultimate use that ensured that the environmental impact of the withdrawal would be balanced by its public benefit related to public health, safety, and welfare.

(Section 32723(5) required the DEQ to issue a permit to a person who developed new or

increased capacity to withdraw more than 2.0 million gallons per day from waters other than the Great Lakes and their connecting waterways to supply a common distribution system if it determined that the withdrawal would not cause an adverse resource impact. Subsection (6) required the DEQ to issue a permit to a person who developed new or increased capacity to withdraw 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system if specified conditions were met. House Bill 5069 amended these requirements.)

The bill requires the DEQ to reject the plans and specifications if the system will not meet the applicable standard in Section 32723. The DEQ may, however, approve the plans and specifications for a community supply owned by a political subdivision that will not meet the applicable standard if the plans and specification do not result in an intra-Basin transfer of more than 100,000 gallons per day average over any 90-day period, and the DEQ determines that there is no feasible and prudent alternative location and includes conditions related to depth, pumping capacity, rate of flow, and ultimate use in the approval (as previously required). The bill specifies that this provision does not confer upon the DEQ any authority to require a person to connect or remain connected to an existing drinking water supply system owned by a political subdivision.

Under the bill, the DEQ's approval of a proposed waterworks system must be considered to satisfy the requirements of Section 4.11 of the Compact (the decision-making standard).

The bill requires the DEQ, as a condition of a permit issued to a community supply, to require the permit holder to submit to the Department by April 1 an annual report that contains the information described in Section 32707 of NREPA (a section amended by House Bill 5066).

Under the bill, "assessment tool", "compact", "intrabasin transfer", "new or increased large-quantity withdrawal", "waters of the state", and "zone C withdrawal" have the same definitions as in Part 327 of NREPA.

## **Senate Bill 859**

Part 327 of NREPA allows the DEQ to request the Attorney General to commence a civil action for appropriate relief for a violation of Part 327 or a rule promulgated under it. The bill refers to a violation of Part 327 or a rule promulgated under it, "including falsifying a record submitted under this part". Under Part 327, in addition to any other relief, the court may impose a maximum civil fine of \$1,000. A person who knowingly violates Section 32721 or 32723 or the terms of a permit issued under Section 32723 is subject to a civil fine of up to \$5,000 per day of violation. The bill increases the maximum fine for a violation of those sections to \$10,000 per day.

(Section 32721 prohibits a person from making a new or increased large-quantity withdrawal that causes an adverse resource impact. Section 32723 requires certain users to obtain a water withdrawal permit.)

## **Senate Bill 860**

### **Assessment Tool**

The bill requires the DEQ, on October 1, 2008, to make available for testing and evaluation an internet-based water withdrawal assessment tool based upon the recommendations of the former Groundwater Conservation Advisory Council and the requirements of Part 327. The assessment tool must contain a flow-based safety factor. The Department must implement the assessment tool one year after the bill's effective date.

(Under House Bill 5073, "flow-based safety factor" means a protective measure of the assessment tool that reduces the portion of the index flow available for the withdrawal to one-half of the index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.)

The assessment tool must determine whether a proposed withdrawal is a zone A, B, C, or D withdrawal and whether a proposed withdrawal is likely to cause an adverse resource impact based upon whether it is from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The assessment tool must account for impacts due to cumulative withdrawals (as described below). The tool also must distinguish the

impact of a proposed withdrawal based upon whether it is from a stream, a small river, or a large river, subject to the following:

- Cool streams and warm streams with less than three square miles of drainage area must be integrated into the next largest drainage area for purposes of assessment tool determinations.
- Cool streams and warm streams with less than 20 square miles of drainage area and less than one cubic foot per second of index flow must be integrated into the next largest drainage area for purposes of assessment tool determinations.
- Cool streams and warm streams with a drainage area of more than three square miles but less than six square miles must be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

The assessment tool must allow the user to enter into fields the following data related to a proposed withdrawal:

- The capacity of the equipment used for making the withdrawal.
- The location of the withdrawal.
- The withdrawal source, whether surface water or groundwater.
- If the source of the withdrawal is groundwater, whether the source is a glacial stratum or bedrock.
- The depth of the withdrawal, if from groundwater.
- The amount and rate of water to be withdrawn.
- Whether the withdrawal will be intermittent.

The assessment tool must contain a print function that allows the user, upon receiving the tool's determination, to print the data submitted and the determination returned along with a date and time.

The tool must be designed to work in conjunction with the online registration process, and also must allow operation independent of that process.

On an ongoing basis, the DEQ must add verified data to the assessment tool's database from annual reports submitted to the Department by registrants, annual water use conservation plans submitted to the MDA by farm owners, permits issued under the Safe Drinking Water Act, and other



sources of data regarding the State's water. Additionally, the DEQ must make technical modifications to the tool related to considerations of temperature, hydrology, and stream or river flow based upon a scientific methodology adopted by order of the Natural Resources Commission (NRC).

If a person disagrees with the designation of a particular stream or river as a cold river system, a cold-transitional river system, a cool river system, or a warm river system for use in the assessment tool or otherwise under Part 327, the person may petition for a redesignation of that stream or river. The petition must be submitted to the NRC for its review and determination.

Annually, the DEQ must report on the implementation of the assessment tool and Part 327 to the standing committees of the Legislature with jurisdiction primarily pertaining to natural resources and the environment. The report must include all of the following:

- The number of zone C withdrawal site-specific reviews requested by applicants each 12 months after the implementation of the assessment tool.
- The number of those determinations that result in a zone D withdrawal determination.
- The number of site-specific review determinations for which the DEQ fails to meet statutory timelines.
- The number of registered assessment tool determinations for each zone.
- The number of voluntary requests for site-specific reviews that are submitted to the DEQ and whether the Department fails to meet statutory timelines on these reviews.
- The number of registrations submitted to the DEQ under Part 327.

Beginning on the effective date of the assessment tool's implementation, before registering a new or increased large-quantity withdrawal for a proposed withdrawal from a stream or river, or from groundwater, a property owner must use the assessment tool by entering the data related to the proposed withdrawal. A person who intends to make a new or increased large-quantity withdrawal for the purpose of dewatering a mine that has a permit under Part 31 (Water Resources Protection) and is not regulated under Part 631 (Reclamation of Mining Lands), 632 (Surface and Underground Coal

Mine Reclamation), or 637 (Sand Dune Mining), however, may choose to submit a request for a site-specific review rather than use the assessment tool.

Upon entry of the relevant data, the tool must indicate to the user whether the proposed withdrawal is likely to cause an adverse resource impact and whether it falls into the category of zone A, B, C, or D (defined below).

If the assessment tool designates a withdrawal as a zone A withdrawal or a zone B withdrawal in a cool river system or a warm river system, the property owner may register and proceed to make it.

If the assessment tool designates a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or D withdrawal, the property owner may not register or make it unless the DEQ conducts a site-specific review, and authorizes the withdrawal.

After a property owner registers a withdrawal, if, in developing the capacity to make it, the conditions of the withdrawal deviate from the specific data that are entered into the assessment tool, the property owner must rerun the tool and enter the corrected data. The property owner must notify the DEQ of the corrected data and the corrected results from the tool. If the corrected data do not change the determination from the tool, the property owner may proceed with the withdrawal. If the corrected data change the determination, the property owner must proceed under the provisions of Part 327 related to the corrected determination.

Under Part 327, "large-quantity withdrawal" means one or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 90-day period that supply a common distribution system. "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.

Under House Bill 5073, "zone A withdrawal" means the following:

- For a cold river system as follows: for a cold stream, less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve; and for a cold small river, less than 50% of the withdrawal that will result in an adverse resource impact.
- For a cool river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a cool stream, less than a 10% reduction; for a cool small river, less than a 5% reduction; and for a cool large river, less than an 8% reduction.
- For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

For a cold-transitional river system, there is no zone A withdrawal.

"Zone B withdrawal" means the following:

- For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.
- For a cool river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a cool stream, a reduction of 10% or more but less than 20%; for a cool small river, a reduction of 5% or more but less than 10%; and for a cool large river, a reduction of 8% or more but less than 10%.
- For a warm river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a warm stream, a reduction of 10% or more but less than 15%; and for a warm small river or warm large river, a reduction of 10% or more but less than 20%.

There is no zone B withdrawal for a cold stream or small river.

"Zone C withdrawal" means the following, as long as the withdrawal will not decrease the flow of a stream or river by more than 25% of its index flow:

- For a cold stream, a reduction of 1% or more but less than 3% in the density of thriving fish populations as determined by the thriving fish curve.
- For a cold small river, 50% or more of the withdrawal that would result in an

adverse resource impact but less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

- For a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.
- For a cool small river, a reduction of 10% or more but less than 15% in the density of thriving fish populations as determined by the thriving fish curve.
- For a cool large river, a reduction of 10% or more but less than 12% in the density of thriving fish populations as determined by the thriving fish curve.
- For a warm stream, a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.
- For a warm small river and a warm large river, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

There is no zone C withdrawal for a cold-transitional stream.

"Zone D withdrawal" means a withdrawal that is likely to cause an adverse resource impact.

#### Cumulative Withdrawals

The bill added Section 32706e to require the DEQ to determine whether an adverse resource impact has occurred and whether a withdrawal is a zone A, B, C, or D withdrawal based upon cumulative withdrawals affecting the same stream reach. The Department must begin water withdrawal accounting for cumulative withdrawals affecting the same stream reach beginning on October 1, 2008. Beginning on February 1, 2009, the Department must adjust the accounting so that if cumulative withdrawals beginning on October 1, 2008, have removed a sufficient flow of water from a stream reach to change its zone classification, the Department must reset

the accounting benchmark for that stream reach as follows:

- If the cumulative impact of withdrawals on February 1, 2009, results in a classification as a zone B withdrawal, the benchmark must be reset at the beginning point for zone B withdrawals.
- If the cumulative impact of withdrawals on February 1, 2009, results in a classification as a zone C withdrawal, the benchmark must be reset at the beginning point for zone C withdrawals.
- If the cumulative impact on that date results in a classification as a zone D withdrawal, the benchmark must be reset at the beginning point for zone C withdrawals.

With regard to the zone D classification, if there is not a zone C for the classification of the stream reach, the accounting benchmark must be reset at the beginning point for zone B withdrawals.

#### Common Law Water & Property Rights

Previously, Part 327 stated that it could not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment. The bill, instead, specifies that Part 327 may not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or property rights or the applicability of other laws providing for the protection of natural resources or the environment, or limit, waive, cede, or grant any rights or interests that the State possesses as sovereign for the people of Michigan in its waters or natural resources.

The bill also provides that Part 327 does not limit the right of a person whose interests have been or will be affected adversely to institute proceedings in circuit court against any person to protect those interests.

#### Rule-Making & Fees

The bill provides that, except as authorized specifically, Part 327 does not authorize the promulgation of rules or the assessment of fees.

## **House Bill 4343**

### Notification by DEQ; Water Resources Assessment & Education Committee

The bill requires the DEQ, upon receiving a registration for a zone B or C withdrawal or issuing a permit under Section 32723 or the Safe Drinking Water Act for a zone B or C withdrawal, to place a notice on the DEQ's website and notify by electronic mail all of the following who have requested an e-mail notification:

- Conservation districts.
- Regional planning agencies.
- Watershed management planning committees.
- Storm water committees established under Part 31 (Water Resources Protection).
- The chief elected officials of the local units of government.
- Community supplies owned by political subdivisions.
- A water users committee (described below).

A listed organization that wishes to receive an e-mail notification of withdrawals located in its vicinity must give the DEQ an e-mail address.

Upon receiving notification from the Department, the notified entities may form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The DEQ must assist in the formation of the committees and may give them technical information regarding water use and capacity within their vicinity, aggregated at the stream reach level. Committee meetings must be open to the general public. A committee may provide educational materials and recommendations regarding any of the following:

- Long-term water resource planning.
- Use of conservation measures.
- Drought management activities.
- Other topics related to water use as identified by the committee.

### Water Users Committee

Under Part 327, all users making large-quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current

water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A committee may be composed of all registrants, water withdrawal permit holders, and local government officials within the watershed.

If the DEQ determines by reasonable scientifically based evidence that adverse resource impacts are occurring or are likely to occur from one or more large-quantity withdrawals, it must notify the water users committee in the watershed or convene a meeting of all registrants and water withdrawal permit holders within the watershed, and attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

Under the bill, upon the establishment of a water users committee, a participating local government official may create an ad hoc subcommittee of residents of that local unit to give him or her information and advice on water resources, water use, and trends in water use within that local unit.

The bill requires the DEQ, if it authorizes a zone B withdrawal in a cold-transitional river system or a zone C withdrawal, to notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority to establish a water users committee. The Department may give them technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

### **House Bill 5065**

#### **Withdrawal Causing Adverse Resource Impact**

Part 327 prohibits a person from making a new or increased large-quantity withdrawal from the waters of the State that causes an adverse resource impact. The prohibition does not apply to the baseline capacity of a large-quantity withdrawal or a well capable of making a large-quantity withdrawal that existed on February 28, 2006.

Under the bill, a person who developed or develops the capacity to make a new or increased large-quantity withdrawal on or after February 28, 2006, and before February 1, 2009, or who received a determination upon petitioning the

Department under Section 32724 during that period, is subject to the definition of "adverse resource impact" that existed on February 28, 2006. (Former Section 32724, which House Bill 5067 repealed, allowed a person to petition the DEQ for a determination that a withdrawal was not likely to cause an adverse resource impact.)

Under the definition that existed on the 2006 date, "adverse resource impact" meant either of the following:

- Decreasing the flow of a stream by part of the index flow so that the stream's ability to support characteristic fish populations is functionally impaired.
- Decreasing the level of a body of surface water so that its ability to support characteristic fish populations is functionally impaired.

Under House Bill 5073, until February 1, 2009, "adverse resource impact" means decreasing the flow of a river or stream by part of the index flow so that its ability to support characteristic fish populations is functionally impaired.

Beginning on February 1, 2009, the definition of "adverse resource impact" will depend on the type and size of river or stream involved, or the impact on the level of surface water, as described below.

The new definition includes decreasing the flow of a cold river system by part of the index flow as follows: for a cold stream, the withdrawal will result in a reduction of at least 3% in the density of thriving fish populations as determined by the thriving fish curve; and for a cold small river, the withdrawal will result in a reduction of at least 1% in the density of thriving fish populations as determined by the thriving fish curve.

Also, beginning on February 1, 2009, the term means decreasing the flow of a cold-transitional river system by part of the index flow so that the withdrawal will result in a reduction of at least 5% in the density of thriving fish populations as determined by the thriving fish curve.

In addition, beginning on February 1, 2009, "adverse resource impact" means decreasing the flow of a cool river system by part of the index flow as follows:

- For a cool stream, the withdrawal will result in a reduction of at least 10% in the abundance of characteristic fish populations as determined by the characteristic fish curve.
- For a cool small river, the withdrawal will result in a reduction of at least 15% in the density of thriving fish populations as determined by the thriving fish curve.
- For a cool large river, the withdrawal will result in a reduction of at least 12% in the density of thriving fish populations as determined by the thriving fish curve.

The new definition also includes decreasing the flow of the warm river system by part of the index flow as follows: for a warm stream, the withdrawal will result in a reduction of at least 5% in the abundance of characteristic fish populations as determined by the characteristic fish curve; and for a warm small or large river, the withdrawal will result in a reduction of at least 10% in the abundance of characteristic fish populations as determined by the characteristic fish curve.

Further, beginning on February 1, 2009, the term means decreasing the flow of a stream or river by more than 25% of its index flow. The preceding four provisions are subject to this part of the definition.

In addition, House Bill 5073 defines "adverse resource impact" as decreasing the level of a lake or pond with a surface area of at least five acres through a direct withdrawal from the lake or pond in a manner that would impair or destroy it or the uses made of the lake or pond, including its ability to support characteristic fish populations, or so its ability to support characteristic fish populations is functionally impaired. "Lake or pond" does not include a retention pond or other artificially created surface water body.

"Index flow" means the 50% exceedance flow for the lowest summer flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the U.S. Geological Survey stream flow gauges in Michigan. (House Bill 5073 added the reference to the lowest "summer" flow month.) Beginning on October 1, 2008, index flow must be calculated as of that date.

House Bill 5073 defines "characteristic fish curve" as a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled, "Report to the Michigan Legislature in Response to 2006 Public Act 34", by the former Groundwater Conservation Advisory Council, dated July 2007, which is incorporated by reference.

Under House Bill 5073, "characteristic fish population" means the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

"Cold river system" means a stream or small river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a scientific methodology adopted by order of the NRC.

"Cold-transitional river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will cause a decline in the proportion of coldwater species, as determined by a scientific methodology adopted by order of the NRC.

"Cool river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed mostly of warm-water fish species, but also contains some cool-water and/or cold-water species, as determined by a scientific methodology adopted by order of the NRC.

"Large river" means a river with a drainage area of at least 300 square miles. "Small river" means a river with a drainage area of less than 300 square miles. "River" means a flowing body of water with a drainage area of 80 or more square miles. "Stream" means a flowing body of water with a drainage area of less than 80 square miles.

"Thriving fish curve" means a fish functional response curve that describes the initial

decline in density of thriving fish populations in response to reductions in index flow as published in the Groundwater Conservation Advisory Council's July 2007 report to the Michigan Legislature.

"Thriving fish population" means the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics. "Stream reach" means a segment of a stream or river.

"Warm river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of warm-water fish species, as determined by a scientific methodology adopted by order of the NRC.

Previously, "withdrawal" meant 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 (FERC). Under House Bill 5073, the term means the taking of water from surface water or groundwater.

House Bill 5073 revised the definition of "baseline capacity". Previously, the term meant the following applicable withdrawal capacity as reported to the DEQ or the MDA, as appropriate, by the person making the withdrawal in the April 1, 2007, annual water use report or conservation plan submitted under Part 327:

- For a community supply, the total designed withdrawal capacity for the supply under the Safe Drinking Water Act on February 28, 2006.
- Unless reported under a different provision, for a quarry or mine that holds an authorization to discharge under Part 31 (Water Resources Protection) that included a discharge volume, the discharge volume stated on the authorization on February 28, 2006.
- The system capacity used or developed to make a withdrawal on February 28, 2006, if the system capacity and a description of it were included in an annual report submitted under Part 327.

If the person making the withdrawal did not report under the other provisions, "baseline capacity" meant the highest annual amount

of water withdrawn as reported under Part 327 for calendar year 2002, 2003, 2004, or 2005.

Under the bill, "baseline capacity" means the following applicable withdrawal capacity as reported to the DEQ or MDA, as appropriate, by the person making the withdrawal in the annual water use report submitted by April 1, 2009, or in the water use conservation plan submitted by that date:

- Unless reported under a different provision, for a quarry or mine that holds an authorization to discharge under Part 31 that includes a discharge volume, the discharge volume stated in that authorization on February 28, 2006.
- The system capacity used or developed to make a withdrawal on February 28, 2006, if that capacity and a description of it are included in an annual report submitted by April 1, 2009.

If the person making the withdrawal does not report under those provisions, "baseline capacity" means the highest annual amount of water withdrawn as reported under Part 327 for calendar year 2002, 2003, 2004, or 2005. For a person who is required to report due to the amendments to Section 32705(2)(d), however, "baseline capacity" means the person's withdrawal capacity as reported in the April 1, 2009, annual water use report. (Under House Bill 5069, Section 32705(2)(d) exempts from large-quantity withdrawal registration requirements the owner of a noncommercial well on single-family residential property or multifamily residential property not exceeding four units and four acres, unless the well is a lake augmentation well.)

For a community supply, "baseline capacity" means the total designed withdrawal capacity for the supply under the Safe Drinking Water Act on February 28, 2006, as reported to the DEQ by April 1, 2009.

The withdrawal capacity or amount withdrawn under this definition must be considered the existing withdrawal approval amount under Section 4.12.2 of the Compact (which provides for the establishment of a baseline for determining a new or increased diversion).

For purposes of determining baseline capacity, a person who replaces his or her surface water withdrawal capacity with the

same amount of groundwater withdrawal capacity from the same watershed may retain the established baseline capacity.

#### Rebuttable Presumption

Part 327 provided that, until a water withdrawal assessment tool became effective upon legislative enactment, there was a rebuttable presumption that a new or increased large-quantity withdrawal would not cause an adverse resource impact if the location of the withdrawal were more than 1,320 feet from the banks of a designated trout stream, or the well were at least 150 feet deep. Under House Bill 5065, the rebuttable presumption applies under either of those circumstances for new or increased large-quantity withdrawals developed on or after February 28, 2006, and before the assessment tool's implementation date. Additionally, the withdrawal must be more than 1,320 feet from the banks of an affected stream reach, rather than a designated trout stream.

Also, under the bill, if the assessment tool determines that a withdrawal is a zone A or B withdrawal and is not likely to cause an adverse resource impact, or if the DEQ determines, based upon a site-specific review or in connection with a permit or approval issued under Section 32723 (described below) or the Safe Drinking Water Act, that a withdrawal is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis of the determination will not cause an adverse resource impact.

A presumption is not valid if the capacity to make the withdrawal is not developed within 18 months after the withdrawal is registered.

#### Exemption from Part 327

Under NREPA, a withdrawal pursuant to Part 111 (Hazardous Waste Management), 115 (Solid Waste Management), 201 (Environmental Remediation), or 213 (Leaking Underground Storage Tanks) is exempt from the requirements of Part 327. The bill also exempts a withdrawal under Part 615 (Supervisor of Wells). Under the bill, these withdrawals are exempt if they are undertaken as part of an activity authorized by the DEQ and unless they result in a diversion.

The bill also exempts the following withdrawals, unless they result in a diversion:

- A withdrawal undertaken as part of an activity authorized by the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act.
- A withdrawal undertaken for hydroelectric generation at sites certified, licensed, or permitted by FERC.
- A hydroelectric facility authorized under the Federal Act, commonly known as the River and Harbor Act of 1909.
- A hydroelectric facility authorized under the Intermodal Surface Transportation Efficiency Act.
- A hydroelectric facility authorized under Public Law 85, Chapter 1368, 34 Stat. 102.
- Removal of water from an artificially created surface water body that has as its primary source of water either of the following: a withdrawal that is not a new or increased large-quantity withdrawal; or a registered new or increased large-quantity withdrawal that has been determined by the assessment tool, a site-specific review, or a water withdrawal permit to be unlikely to cause an adverse resource impact.
- A withdrawal from a noncommercial well located on single-family residential property, or multifamily residential property not exceeding four residential units and not more than three acres in size (excluding lake augmentation wells).

The bill requires the DEQ Director to assure that data in the State's possession related to withdrawals that are not regulated under Part 327 are compiled and shared with departmental personnel responsible for implementing Part 327.

### **House Bill 5066**

#### Water Use Reporting & Fee

Under Section 32707 of NREPA, a person who is required to register a withdrawal or who holds a water withdrawal permit must file with the DEQ an annual report that includes the following information:

- The amount and rate of water withdrawn on an annual and monthly basis.
- The source or sources of the water supply.
- The use or uses of the water withdrawn.
- The amount of consumptive use of the water withdrawn.
- If the source is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.
- If the source is groundwater, the static water level of the aquifer or aquifers, if practicable.
- Other information specified by DEQ rule.
- At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if applicable, a description of the system capacity.

Under the bill, beginning in 2010, the report also must include an acknowledgment that the registrant has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under Section 32708a (below).

Previously, except as otherwise provided, a person who filed an annual report or notification also had to remit an annual water use reporting fee of \$200 or, upon legislative enactment of the assessment tool, \$100.

Under the bill, the fee remains \$200.

#### Water Use Conservation Plan

Part 327 allows the owner of a registered farm who makes a withdrawal for an agricultural purpose, including irrigation, to report the farm's water use by submitting to the MDA an annual water use conservation plan. The plan must contain specified information, including applicable water conservation practices and an implementation plan for them. Under the bill, beginning in 2010, the plan also must include an acknowledgment that the farm owner has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under Section 32708a.

#### Water Management Practices & Conservation Measures

Previously, under Section 32708a, each water user's sector was required to begin designing guidelines for generally accepted

water management practices or environmentally sound and economically feasible water conservation measures within that sector by February 28, 2007. By February 28, 2008, the DEQ was required to review and report to the appropriate standing committees of the Legislature on whether there were reasonably detailed criteria for assisting a facility in determining whether water was being used in an efficient manner. The guidelines could be adopted by an established statewide professional or trade association representing that sector. The bill deleted these provisions.

Under the bill, by March 31, 2009, the DEQ must prepare, based upon recommendations from representative trade associations, a set of generic water conservation measures applicable to all people making large-quantity withdrawals, and post the measures on its website. Except as provided for agricultural purposes, each water user's sector may prepare and submit to the DEQ water conservation measures applicable for water users within its sector. Upon receiving the measures from a water user's sector, the DEQ must review them, and, if the Department determines that they are appropriate for that sector, it must accept them. Upon acceptance, the DEQ must post the measures on its website. Those measures will supersede the generic conservation measures for water users within that sector. If the DEQ determines that the conservation measures are not appropriate for the user's sector, it must provide comments to that sector and suggestions that will result in the Department's acceptance of the measures. A water user's sector may resubmit water conservation measures in response to the DEQ's comments and suggestions.

Water conservation measures for agricultural purposes must be developed and approved by the Agriculture Commission. They must be updated annually as part of the process for review and update of generally accepted agricultural and management practices under the Michigan Right to Farm Act. Water conservation measures approved by the Commission must be posted on the MDA's website and forwarded to the DEQ for posting on its website.

By April 1, 2010, the DEQ must report to the standing committees of the Legislature with jurisdiction primarily related to natural



resources and the environment on the status of the preparation and acceptance of water user sector conservation measures.

If the DEQ receives a registration for a zone C withdrawal, it must give notice of the status of the water source to all other registrants and permit holders whose withdrawals are from the same water source as the withdrawal. Upon receiving notification, each of these registrants and permit holders must review and consider implementing the applicable water conservation measures prepared under these provisions.

(Under the bill, "permit holders" means people holding a permit under Section 32723 or the Safe Drinking Water Act. "Water conservation measures" means environmentally sound and economically feasible water conservation measures.)

The bill provides that compliance with water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law. Previously, Part 327 referred to compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures.

#### Informational Materials

Part 327 allows the DEQ to contract for the preparation of informational materials regarding the purposes, benefits, and requirements of Part 327, to provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

Previously, the DEQ could contract for the distribution of the informational materials to people withdrawing water for irrigation or industrial purposes. The bill refers to members of the public, instead.

### **House Bill 5067**

#### Site-Specific Review; Water Withdrawals

The bill requires a property owner to submit to the DEQ a request for a site-specific review if the assessment tool determines that a proposed withdrawal is a zone B withdrawal in a cold-transitional river system, or a zone C or D withdrawal.

Additionally, if the tool determines that a proposed withdrawal is a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system and the property owner wishes to have a site-specific review, he or she may request a site-specific review.

A request must be submitted in a form required by the Department and include all of the following:

- The information required to be entered into the assessment tool.
- The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the withdrawal.
- If the amount and rate of the intended withdrawal will have seasonal fluctuations, the relevant information related to the seasonal use.
- A description of how the water will be used and the location, amount, and rate of any return flow.
- Any other information the property owner wants the DEQ to consider in making its determination.

Upon receiving a request, the DEQ must consider the information submitted with it and consider the actual stream or river flow data of any affected stream reach. The Department also must apply the drainage area aggregation standards provided for assessment tool determinations, if applicable, and account for cumulative withdrawals. The DEQ may not rely on the assessment tool's determination in making its determination under a site-specific review.

The DEQ must complete its site-specific review within 10 working days after a request is submitted. If the DEQ determines, based upon the review, that the proposed withdrawal is a zone A or zone B withdrawal, it must provide written notification to the property owner, who may register it and proceed with the withdrawal.

If the DEQ determines that the proposed withdrawal is a zone C withdrawal, the owner may register it and proceed with the withdrawal if he or she self-certifies that he or she is implementing environmentally sound and economically feasible water conservation measures prepared under Section 32708a (amended by House Bill 5066) that he or she considers to be

reasonable, or is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that he or she considers to be reasonable.

Except for withdrawals exempt from obtaining a water withdrawal permit, if a site-specific review determines that a proposed withdrawal is a zone C withdrawal with capacity of more than 1.0 million gallons per day from the waters of the State to supply a common distribution system, the person proposing the withdrawal may not register or proceed with making it unless the person obtains a water withdrawal permit under Section 32723 (amended by House Bill 5069).

If the DEQ determines that the withdrawal is a zone D withdrawal, the property owner may not register it or make the withdrawal unless he or she applies for a water withdrawal permit under Section 32723 and the withdrawal is authorized under that section.

After a property owner registers a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated in the review, the property owner must notify the DEQ of the corrected data, and the DEQ must confirm its determination under the site-specific review. If the corrected data do not change the determination under the site-specific review, the property owner may proceed with the withdrawal. If the corrected data change the determination, the property owner must proceed under the provisions of Part 327 related to the corrected determination.

Before the assessment tool is implemented, a property owner proposing to develop capacity on his or her property to make a new or increased large-quantity withdrawal may submit to the DEQ a request for an interim site-specific review to determine whether the proposed withdrawal is likely to cause an adverse resource impact. The DEQ, upon request, must conduct an interim site-specific review within a reasonable time period of up to 30 days based upon an evaluation of reasonably available information. For purposes of Part 327, a determination under an interim site-specific

review must be afforded the same status as a site-specific review otherwise conducted.

Before the assessment tool's implementation, except for withdrawals exempt from obtaining a permit, a property owner must obtain an interim site-specific review if he or she intends to develop withdrawal capacity on his or her property to make a new or increased large-quantity withdrawal of more than 1.0 million gallons per day from the waters of the State to supply a common distribution system. If the review determines that the proposed withdrawal is a zone C withdrawal, the property owner may not proceed with making it unless he or she obtains a water withdrawal permit.

#### Collection of Measurements

The bill requires the DEQ to develop a protocol for the collection of stream or river flow measurements by people other than the Department for its use in the administration of Part 327. The protocol may specify a minimum number of measurements, stream or river flow and weather conditions when the measurements are to be made, and any other conditions necessary to ensure their adequacy and quality. The protocol must ensure that stream or river flow measurements collected for this purpose meet the same data quality standards as measurements collected by the United States Geological Survey (USGS). The DEQ must consult with the USGS and other recognized scientific experts in developing this protocol.

The DEQ may use stream or river flow data collected using the protocol in conducting site-specific reviews, making water withdrawal permit decisions, issuing permits under the Safe Drinking Water Act, updating the assessment tool as appropriate, or taking other actions requiring an evaluation of stream or river flow.

Also, the DEQ may establish a program to train and certify individuals in the collection of stream or river flow measurements. The DEQ must charge a fee sufficient to reimburse it for the cost of the program. The Department may enter into a cooperative agreement with the USGS to provide training and certification.

## Petition

The bill repealed Section 32724, which allowed a person who intended to make a new or increased large-quantity withdrawal for which a permit was not required to petition the DEQ for a determination that the withdrawal was not likely to cause an adverse resource impact.

This section required the petitioner to submit to the Department the petition, a \$5,000 fee, and a report containing specified information and an evaluation of the environmental, hydrological, and hydrogeological conditions that existed and the predicted effects of the intended withdrawal that provided a reasonable basis for the determination to be made.

Within 120 days after receiving an administratively complete petition, the DEQ had to issue to the petitioner a written determination that either affirmed that the proposed withdrawal was not likely to cause an adverse resource impact or specified the reasons that an affirmative determination could not be made and stated how the petition could meet the criteria to obtain an affirmative determination.

A withdrawal with regard to which an affirmative determination was issued was presumed not to create an adverse resource impact. The presumption could be rebutted by a preponderance of evidence that the withdrawal had caused or was likely to cause an adverse resource impact.

## **House Bill 5069**

### Legislative Finding & Declaration

Part 327 contains a number of legislative findings regarding the Waters of the Great Lakes Basin. The bill also states that the Legislature finds and declares that, "The waters of the Great Lakes basin are interconnected and part of a single hydrologic system."

("Waters 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 Basin. "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River.)

## Diversion

Previously, except for a diversion existing on September 30, 1985, Part 327 prohibited the diversion of "the waters of the Great Lakes basin within the boundaries of this state". The bill instead prohibits a diversion of "the waters of the state out of the Great Lakes basin", subject to the same exception.

Previously, "diverted" meant a transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Basin into a watershed outside of the Basin. The term included a transfer of water withdrawn from the waters of the Basin that was removed from the Basin in a container greater than 5.7 gallons (20 liters). The term did not include a consumptive use; the supply of vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of vehicles; or use in a noncommercial project or on a short-term basis for firefighting, humanitarian, or emergency response purposes.

House Bill 5073 instead defines "diversion" as a transfer of water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck, or rail tanker. The term does not apply to water that is used in the Basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the Basin or watershed. House Bill 5073 specifies that "diverted" has a corresponding meaning. The bill includes a transfer in a container greater than 5.7 gallons, and makes an exception for certain uses, as the previous definition did. The bill also excludes from the definition a transfer of water from a Great Lake watershed to the watershed of its connecting waterways. (Except for the exclusions and inclusions, this definition of "diversion" is the same as that used in the Compact.)

Part 327 defines "consumptive use" as the portion of water withdrawn or withheld from the Great Lakes Basin and assumed to be lost or otherwise not returned to the Basin due to evaporation, incorporation into

products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. The term included a withdrawal of waters of the Basin that was packaged within the Basin in a container of 5.7 gallons or less. Under House Bill 5073, a withdrawal packaged in this way must be bottled drinking water as defined in the Food Code, 2005 recommendations of the Food and Drug Administration of the U.S. Public Health Service (i.e., water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water).

#### Withdrawal Registration

Previously, under Part 327, except as otherwise provided, the owner of real property who had the capacity on that property to make a large-quantity withdrawal from the waters of the State had to register with the DEQ before beginning the withdrawal. The bill requires the owner of real property who intends to develop capacity to make a new or increased large-quantity withdrawal to register after using the assessment tool, if required under Part 327, and before beginning the withdrawal. A registration may be made using the online registration process (described below).

A person who has previously registered specific property is exempt from the registration requirement, unless the property owner develops new or increased withdrawal capacity of an additional 100,000 gallons of water per day from the waters of the State. Under the bill, this exemption also applies to the owner of real property containing the capacity to make a withdrawal that was requested previously under Part 327, unless the property owner develops new or increased capacity of an additional 100,000 gallons per day.

Previously, the owner of a noncommercial well on residential property was exempt from the registration requirement. Under the bill, such a person is exempt if the well is located on single-family residential property, or multifamily residential property not exceeding four units and three acres in size, unless the well is a lake augmentation well (a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream).

Under the bill, unless a property owner develops the capacity to make the new or increased large-quantity withdrawal within 18 months after registering, the registration is no longer valid.

Previously, a registration had to be on a form provided by the DEQ or the MDA, as appropriate. Under the bill, this applies to a registration that is not submitted via the online registration process.

Within one year after the bill's effective date, the DEQ must develop and implement an internet-based online process that may be used for registrations. The process must be designed to work in conjunction with the assessment tool.

Part 327 requires each registration to consist of a statement and supporting documentation that includes certain information regarding a withdrawal. Under the bill, the registration also must include a statement and supporting documentation of the capacity of the equipment used for making the withdrawal. Additionally, beginning one year after the bill's effective date, for a new or increased large-quantity withdrawal from a stream, river, or groundwater, the registration must include the determination from the use of the assessment tool or the determination from a site-specific review, as appropriate.

#### Water Withdrawal Permit

Previously, under Section 32723, except as otherwise provided, a person who developed the following had to obtain a water withdrawal permit before making the withdrawal:

- Withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.
- Increased withdrawal capacity beyond baseline capacity of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.
- Withdrawal capacity to make a new withdrawal of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.

- Increased withdrawal capacity beyond baseline capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.

Under the bill, instead, except as otherwise provided, the permit requirement applies to a person who proposes to develop the following:

- Withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- Increased withdrawal capacity beyond baseline capacity of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- Withdrawal capacity to make a new or increased withdrawal of more than 1.0 million gallons of water per day from the waters of the State to supply a common distribution system that a site-specific review has determined is a zone C withdrawal.
- A new or increased withdrawal capacity that will result in an intra-Basin transfer of more than 100,000 gallons per day average over any 90-day period.

(Under House Bill 5073, "intrabasin transfer" means a diversion of water from the source watershed of a Great Lake before its use to the watershed of another Great Lake. "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake, then the source watershed is considered to be the watershed of that Great Lake and its connecting waterways. If water is withdrawn from the watershed of a direct tributary to a Great Lake, then the source watershed is considered to be the watershed of that Great Lake and its connecting waterways, with a preference for returning water to the watershed of the direct tributary from which it is withdrawn.)

Under Part 327, a person must apply for a permit by submitting to the DEQ an application containing specified information, and must pay a \$2,000 application fee. Under House Bill 5069, the applicant also must submit an evaluation of existing hydrological and hydrogeological conditions. In addition, if an applicant proposes to take a preventative measure along with the

withdrawal, the property owner must give the DEQ a detailed description of that measure and relevant information as to how it will be implemented.

(Under House Bill 5073, "preventative measure" means an action affecting a stream or river that will increase the index flow of a river system or improve its temperature regime.)

The \$2,000 application fee previously was scheduled to sunset on February 28, 2011; the bill eliminated that sunset date.

In addition to the requirement that the DEQ provide public notification of all the water withdrawal permit applications it receives, the bill requires the Department to provide a public comment period of at least 45 days before acting upon applications.

The bill deleted a requirement that the DEQ issue a permit for a new or increased withdrawal of more than 2.0 million gallons per day from a source other than the Great Lakes and their connecting waterways if it determined that the withdrawal was not likely to cause an adverse resource impact. The bill requires the Department to issue a permit for new or increased withdrawals of more than 2.0 million gallons per day from the waters of the State if all of the following conditions (which applied previously to withdrawals of more than 5.0 million gallons per day) are met:

- All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.
- The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts.
- Subject to Section 32726 (which preempts local ordinances), the withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, State, and Federal laws as well as all legally binding regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
- The proposed use is reasonable under common law principles of water law in Michigan.

Additionally, the DEQ must determine that the proposed withdrawal will not violate

public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

Previously, for withdrawals of more than 5.0 million gallons per day, the applicant had to consider voluntary generally accepted water management practices or environmentally sound and economically feasible water conservation measures. The bill deleted this requirement. For permit applications received on or after January 1, 2009, the applicant must self-certify that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector or developed for the water use associated with that specific withdrawal.

The bill requires the Department to issue a permit for a new or increased withdrawal that will result in an intra-Basin transfer of more than 100,000 gallons per day average over any 90-day period if the transfer complies with Section 4.9 of the Great Lakes-St. Lawrence River Basin Water Resources Compact. (Section 4.9 of the Compact creates exceptions to its prohibition against diversions.)

In reviewing a proposed preventative measure, the DEQ must consider the effect of the measure on preventing an adverse resource impact by diminishing the effect of the withdrawal on stream or river flow or the temperature regime of the stream or river. If the DEQ approves a preventative measure in conjunction with a water withdrawal permit, it must enter into a legally enforceable implementation schedule for completion of the preventative measure.

A proposed use for which a permit is issued will be considered to satisfy the requirements of Section 4.11 of the Compact (the decision-making standard).

Under the bill, a permit is not required for the following withdrawals:

- A withdrawal by a community supply that holds a permit under the Safe Drinking Water Act.
- Seasonal withdrawals of up to 2.0 million gallons per day average in any consecutive 90-day period to supply a common distribution system unless the withdrawals result in a diversion.

- A withdrawal for the production of bottled water approved by the DEQ under a water source review conducted under the Safe Drinking Water Act.

(Previously, in the first provision, Part 327 referred to a withdrawal by a community supply owned by a political subdivision. Additionally, seasonal withdrawals of up to an average of 2.0 million gallons per day over a 90-day period were exempt regardless of whether they resulted in a diversion.)

MCL 324.32730 et al. (S.B. 212)  
324.32801 & 324.32803 (S.B. 723)  
325.1017 (S.B. 727)  
325.1004 (S.B. 858)  
324.32713 (S.B. 859)  
324.32706a et al. (S.B. 860)  
324.32710 & 324.32725 (H.B. 4343)  
324.32721 et al. (H.B. 5065)  
324.32707 et al. (H.B. 5066)  
324.32706c et al. (H.B. 5067)  
324.32702 et al. (H.B. 5069)  
324.32701 (H.B. 5073)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Unmanaged diversions of Great Lakes water, as well as large-quantity in-Basin uses, could result in groundwater shortages, reduce the flow of rivers and streams, lower lake levels, and harm natural resources. The State's economy is reliant upon an abundance of water, especially with regard to its three largest industries: manufacturing, agriculture, and tourism. While the Great Lakes states have individual state laws in place and agreed under the nonbinding Great Lakes Charter to regulate large withdrawals, monitor water use, and consult with one another before approving large diversions, a cooperative, binding agreement is necessary to ensure that sustainable water use practices are implemented on a Basin-wide basis.

Each Great Lakes state must ratify the Great Lakes-St. Lawrence River Basin Water Resources Compact by enacting it in statute. With the enactment of this legislation, Michigan becomes the eighth, and final, Great Lakes state to ratify the Compact.

This means that Congressional approval now can be sought. If approved, the Compact will provide a framework for management of the waters of the Basin by all of the affected states and provinces and facilitate environmentally responsible economic development in the Great Lakes region. The establishment of the Compact's decision-making standard will ensure consistency in water use determinations throughout the Basin. These provisions will safeguard the future of a resource that contains approximately 84% of North America's fresh surface water, and about 21% of the world's supply.

### **Supporting Argument**

The bills' provisions regarding the assessment tool, the withdrawal review process, and water conservation measures will satisfy the Compact's requirement for each state to implement a water conservation program. The assessment tool is unique in that it constitutes the only science-based mechanism for evaluating withdrawals to be adopted by any party to the Compact. By reestablishing the Advisory Council and requiring it to examine new scientific data and recommend changes to the assessment process and statutory definitions in the future, the bills will result in the continued responsiveness and accuracy of the State's system for evaluating withdrawals. The user-friendly assessment tool will provide certainty for water users, and the site-specific review process for specified withdrawals and the provisions regarding local committees will ensure that proposed withdrawals undergo multiple levels of review involving all stakeholders.

### **Opposing Argument**

Under the Federal Water Resources Development Act (WRDA), the Governor of any Great Lakes state may veto a proposed diversion out of the Basin. Under the Compact, Michigan could lose some of its sovereignty with regard to intra-Basin water use decisions. Michigan's Governor has used the veto power granted under the WRDA to prevent diversions successfully in the past, demonstrating that the Act is sufficient to protect the State's water resources.

**Response:** The gubernatorial veto power under the WRDA is not guaranteed, as Congress could amend the Act in the future. If Michigan loses congressional seats due to a declining population, the influence

it could exercise with regard to this issue is questionable. Furthermore, the power to veto diversions under the WRDA applies only to the transfer of water out of the Basin. The Compact establishes a framework for decision-making with regard to water use within the Basin. Additionally, many people believe that the Compact would be more likely to withstand a legal challenge than the WRDA. For these reasons, the effectiveness of the Act in protecting the Basin's water resources is uncertain and potentially insufficient.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bills will increase expenses for the State due to additional responsibilities of the Departments of Environmental Quality, Agriculture, and Natural Resources under NREPA, including operation of an internet-based water withdrawal assessment tool, continuing maintenance of the data in the assessment tool and monitoring system, and increased staff oversight of allowable withdrawals. These three departments also will incur costs for staff time spent participating in the Water Resources Conservation Advisory Council and assisting the Council in the development and publication of its recommendations.

Recently enacted appropriations for these three departments provide funding for the program beginning in fiscal year 2008-09. Enacted appropriations total \$1,100,000 and include \$895,000 and 7.0 full-time equated (FTE) positions for the Department of Environmental Quality, \$130,000 and 1.0 FTE for the Department of Agriculture, and \$75,000 for the Department of Natural Resources. The Office of the State Budget also has requested \$250,000 for fiscal year 2007-08 for the DEQ to begin implementation of the assessment tool.

The bills allow the DEQ to establish a program to certify individuals in the collection of stream or river flow measurements. The DEQ will have to charge a fee to cover the costs of the program, making it self-funded.

The bills allow water withdrawals that could cause losses to the fish population. Limits are imposed on the size of those potential losses, but there may be resulting declines

in water quality and recreational opportunities.

The legislation made two changes in order to continue current levels of fee revenue. Previously, the water withdrawal reporting fee would have decreased from \$200 to \$100 once the assessment tool was operational; however, the legislation continues the fee at \$200. Annual revenue of about \$220,000 is collected from the fee and used to support the program in the DEQ. The second change eliminated a sunset on the \$2,000 application fee for large-quantity water withdrawals. Fee revenue is deposited into the Water Use Reporting Fund for administrative costs of the program.

An indeterminate amount of additional revenue will be received from the increased civil penalty for violations of two sections of Part 327, depending on the number of violations. Revenue from civil penalties is deposited into the General Fund.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.