

The Nature Conservancy testimony  
regarding HB 5638  
as introduced 2/22/2018

The Nature Conservancy wishes to submit this written testimony to share with committee members some of our major concerns with HB 5638 as introduced. The Nature Conservancy worked with many stakeholders on the original statute HB 5638 amends and is committed to working with all interested parties to solve shortcomings to the statute that have been identified. The Nature Conservancy has been an active member of the various iterations of the Water Use Advisory Council since 2006 and remains committed to using that forum to find solutions to deficiencies in the Michigan Water Withdrawal Assessment Process.

The purpose of the existing statute (Part 327 of PA 451), which has been in place about ten years, is to protect the water resources of the state and to prevent out of basin diversions from the Great Lakes. It was drafted to assure the Michigan met its legal requirements under the Great Lakes St. Lawrence River Water Resources Compact. The process established in Part 327 was recognized as a technological and regulatory innovation by winning three national awards. The prescribed process was very carefully vetted, both scientifically and by interest groups, and earned the support of all the major water related interest groups, before it was passed (almost unanimously) by the legislature.

The proposed changes to Part 327 contained in HB 5638 have not been vetted scientifically or by multiple interest groups. The Nature Conservancy has the following major concerns with the HB 5638 as drafted:

1. A new process, replacing site specific reviews (SSR), determines when a withdrawal will not create an Adverse Resource Impact (ARI). It does not consider how much water is available in each Water Management Unit before an ARI is created. Without subtracting streamflow depletions associated with these withdrawals from the registration accounting system, many ARIs could be created.
2. No objective, scientifically based criteria are set for when this new process should or should not be used.
3. It defines all withdrawals from bedrock "do not cause an ARI." This is not scientifically valid; many bedrock aquifers are well connected to streams, and withdrawal will cause stream depletions.
4. The most environmentally sensitive streams are automatically placed in this new process. Cold-transitional streams are trout streams that could easily be warmed by a relatively small amount of depletions, to the point where they would no longer support trout. Part 327 automatically requires site specific reviews because of the sensitivity of these valuable streams. This requirement is bypassed in the new process, and depletions are not accounted for.
5. "Regional or watershed based" studies are not defined and not approved by DEQ. It is not known what information or the quality of the analysis will be in these studies. It is unclear how these studies are to be used, the applicant only needs to show their withdrawal is located in an area included in the study.
6. Surficial mapping of glacial geology and geologic cross sections are options to be included in the new process. However, these by themselves do not make any determination of groundwater flow.
7. The DEQ may require certain information prescribed in the bill. It is not clear what will actually be submitted, and it is not clear what the applicant must do to demonstrate an ARI is not "observed." No scientific basis is provided for this demonstration.