

## MODEL PUBLIC WATER, PUBLIC JUSTICE ACT<sup>1</sup>

This Act consists of three Parts:<sup>2</sup>

1. **Part 1: Amends Part 327, 1994 PA 451, Natural Resources and Environmental Protection Act (NREPA), MCL 324.32701 et seq.;**
2. **Part 2: Amends Section 17, Safe Drinking Water Act (SDWA), MCL 325.1017;**
3. **Part 3: Amends Part 5, 1994 PA 451, Natural Resources and Environmental Protection Act (NREPA), MCL 324.501 et seq.**

### Preamble

A model bill to protect and sustain the reasonable use and public trust in the sovereign waters of the state; to protect the sovereign waters of the state from unauthorized sale or improper impairment; to protect the public access to and health in water and the public trust in public water infrastructure and services; to provide for licensing and a royalty fee for the authorization by the state as sovereign to grant the right to sell water lawfully withdrawn from the sovereign

---

<sup>1</sup> Copyright © 2018 FLOW. All rights reserved. FLOW's ("For Love of Water") *Public Water, Public Justice Report*, the accompanying summary of the model law, the full text of the model law and supporting legal primer may be used for educational or general purposes without obtaining consent from FLOW, provided the user gives appropriate credit to FLOW in conjunction with such use. Any commercial or other use or distribution of these materials for private gain or profit is prohibited. Any proposed law based on these materials should be tailored to the specific concerns, objectives, laws and policy of each state, province, or country, and should consult the law community with related legal expertise. FLOW and James Olson, principal author, emphasize that the model law and associated research, analysis, and materials are a "work in progress." FLOW believes the advancement of sovereign, common, public trust water, and the human and constitutional right to water and health and public justice are dynamic principles subject to improvement through the continuing, broad-based collaboration with government leaders, organizations and citizens to meet the challenges for water, quality of life, sustainable environment, communities, and economies in the 21<sup>st</sup> Century. Contact FLOW at [www.flowforwater.org](http://www.flowforwater.org), 153 ½ East Front Street, Traverse City, Michigan 49684, (231) 944-1568.

<sup>2</sup> Alternately, the three Parts that amend Michigan law can also be structured as a single draft bill or a series of stand-alone or "tie-barred" bills. In addition to the parts presented, amendments may be required to the organic law of public utilities or public service commissions. Some states, such as Ohio, have integrated public waterworks and systems into public utility laws. Michigan's organic law for the Michigan Public Service Commission authorizes regulatory authority over water utilities, but it has never been implemented. In any event, public notice, participation, claims, relief, and enforcement may need to be added. Moreover, rate, fees, pricing, financing, affordability, health, and access to adequate, safe water may need redefinition of what is meant by "costs" that can be covered by rate and pricing structures.

waters of the state in containers not more than 5.7 gallons, and to establish a Public Water Trust Fund dedicated for certain uses and purposes to persons and local governments, and recognized tribal governments, and other public facilities or communities consistent with the intent and purposes of this Act.

## **Part 1: Amendments to Part 327, 1994 PA 451, NREPA, MCL 324.32701 et seq.**

### **Section 1. Declarations and Findings (Amends Part 327, NREPA).**

- (1) The waters of the State of Michigan (“state”) are held by the state as sovereign and in public trust for the benefit of the people of Michigan.
- (2) As trustee, the State of Michigan shall protect and sustain the integrity of flows, levels, and quality of water, fish and aquatic habitat for the use and enjoyment by citizens now and in the future.
- (3) As trustee, and based on the paramount public interest in the waters of the state and public health of its citizens, the state shall provide for and protect the right of access to safe drinking water, water sources, public water supply, public waterworks and infrastructure, public health, and fishing, navigation, recreation, conservation, and the reasonable use of water in connection with the ownership or lawful occupancy of land, not limited to domestic, agricultural, commercial, industrial and public utility uses.

### **Section 2A. Definitions.**

- (1) “Affordability” means [as a placeholder: measures or other assistance to assure equal access to adequate clean, safe water and sanitation, without discrimination, interference or inequitable or unjust termination of the right of access to water by any person or household of persons with insufficient income from hardship or disability to pay the full rate or price for access to a minimum water supply to protect health and sanitation for their dwelling].<sup>3</sup>
- (2) “Community public water supply” or “public community water supply” mean [reference SDWA definitions].
- (3) “Consumptive use” means the same as that term is defined in Section 32701(k), Part 327, NREPA, MCL 324.32701(k). “Consumptive use” does not include the withdrawal, diversion or transfer of water for the purpose of packaging water for the sale of bottled water in containers greater than 5.7 gallons.
- (4) “Department” or “department” means the Department of Environmental Quality for purposes of interpreting Section 32723, Part 327, NREPA, 1994 PA 451, and Section

---

<sup>3</sup> **NOTE:** There are several ways to achieve access to adequate clean, safe water, including assured minimum water quantities per month at fixed rates, tiered public pricing or rate structures, federal and state assistance, or redefining what constitutes a “cost” shared across the number of users of the system.

17 of the Safe Drinking Water Act, MCL 325.1017; the term “department” means the Department of Natural Resources for purposes of interpreting Part 5 of the NREPA, 1994 PA 451.

- (5) “Disadvantaged Community” shall have the same meaning as defined in Part 54, of the NREPA, MCL 324.5402 or 42 USC 300j-12(d) and accompanying regulations.<sup>4</sup>
- (6) “Diversion” means diversion as defined in Section 32701(p), Part 327, NREPA, MCL 324.32701(p), and also for the purpose of this Act, the term “diversion” means the transfer of water by any means, including in a container intended for immediate or end-use consumer from its source in one watershed to another watershed.
- (7) “License” as used in this Act means the authorization pursuant to Section 502 and 503, Part 5, NREPA, MCL 324.502 and 503 by the state as sovereign to allow the withdrawal, removal, diversion or transfer of waters of the state by any person for the purpose of the production and sale of bottled water.
- (8) “Person” means “person” as defined in Part 3, NREPA, MCL 324.301(h).
- (9) “Private water source” or “source watershed” means the location from which a withdrawal from waters of the state originates, including a non-community water supply as defined in the Safe Drinking Water Act, MCL 325.1001 et seq.
- (10) “Public domain” in Section 301(i), Part 3, NREPA, MCL 324.301(i) is amended to mean all land and waters of the state owned in its proprietary or sovereign capacity or land deeded or conveyed to the state under state law.
- (11) “Public water supply” means a community public water supply or waterworks as defined in the Safe Drinking Water Act, MCL 325.1001 et seq.
- (12) “Royalty fee” means the compensation to the state as sovereign for the authorization of a license to allow a withdrawal, diversion or transfer by any person from the sovereign waters of the state for the purpose of producing and packaging water for the sale of bottled water.
- (13) “Sale of water” means the production, packaging or delivery of water from a water source or public water supply in containers or by any other means in exchange for money or other consideration.
- (14) “Sale of bottled water” means water withdrawn from a water source or public water supply and transferred or diverted to a plant or other facility for the sale of water in a container or package of not more than 5.7 gallons.

---

<sup>4</sup>**NOTE:** There are various definitions of assuring affordability in disadvantaged communities. See *Protecting Drinking Water in the Great Lakes: A Primer on Existing State Policies and Using the Safe Drinking Water Act* American Rivers and Great Lakes Env. Law Center, 2018, pp. 36-37.

- (15) “Spring water” means “spring water” as defined in 21 C.F.R. 165.110 for bottled water.
- (16) “Watershed” means the watershed of primary rivers and the sub-watersheds of their tributary streams and creeks.
- (17) “Waters of the state” means the term “waters of the state” as defined in Section 32701(rr), NREPA, MCL 324.32701, and includes water withdrawn from the waters of the state and delivered through public waterworks or public water utility systems.
- (18) “Withdrawal” has the same meaning as defined in Section 32701(ss), NREPA, MCL 324.32701.

## **Section 2B.**

The definitions in Section 2B of this Act and Section 32701, MCL 324.32701, shall have the same meaning for purposes of Parts 5 and 19A, NREPA, 1994 451, as amended, and Section 17 of the Safe Drinking Water Act, MCL 325.1017.

## **Section 3. Prohibition of Diversion or Transfer for the Sale of Water.**

Except as provided in Sections 3A, 4, 5 and 6 of this Act, no waters of the state shall be withdrawn, taken, diverted or transferred out of any watershed of the state for the purpose of the sale of water in any size container, package or in any other manner to another watershed within or outside of the territorial boundaries of the state.

## **Section 3A. Exceptions to Prohibitions of Section 3.**

Subject to the provisions and standards of this Act, the prohibition in Section 3 of this Act and Part 327, MCL 324.32704, does not apply to any one of the following:

- (1) the withdrawal, treatment, distribution and delivery of water services by a public or private water utility or community public water supply or waterworks system (this exception does not apply to the distribution or delivery of water to a person who receives water from a public waterworks or public water utility system for the purpose of the sale of water).
- (2) products into which water from a private well or public waterworks system or public water utility is incorporated or water incorporated into or used in a product other than water itself (Note: it is declared for purposes of this Act, that water cannot be incorporated into itself and therefore is not a product).
- (3) the sale of water on premises from a private well or public waterworks system in a glass, bottle or other container, incidental to a wholesale or retail restaurant, food service or other business or commercial operation.

- (4) the sale of water of the state in containers with a capacity of not more than 5.7 gallons, but only if all of the following standards are duly established and determined to be met by the Department of Environmental Quality:<sup>5</sup>
- a. determination of full compliance with the requirements, standards, and determinations of Section 17 of the Safe Drinking Water Act, MCL 325.1017, as amended, including the provisions in Part 2 of this Act.
  - b. determination that the water source that is transferred or diverted is not spring water as defined in 21 C.F.R. 165.110.<sup>6</sup>
  - c. determination of full compliance with the requirements of Section 32723, Part 327, MCL 324.32723; if the applicant submits a groundwater or other water model to predict the effects and adverse impacts, the determination under this subsection must include a finding that the model is consistent with an adequate characterization of flows, levels and water quality based on actual hydrological, hydrogeological, water quality and environmental conditions.
  - d. determination that the withdrawal and transfer for the sale of water will not impair or interfere with another water source, community public water supply or any other public or private water well, infrastructure, waterworks system or with the water services and the public health, safety and welfare.
  - e. determination that the withdrawal, removal, transfer and the sale of bottled water is in compliance with all other federal, state, local law and regulations.
  - f. issuance of license and payment of a royalty as authorized and determined by the Department of Natural Resources as the designated trustee of the sovereign waters of the state to sell bottled water in containers with a capacity of not more than 5.7 gallons, as provided in Part 3 of this Act.

**Section 3B. Prohibition of Section 3 does not apply to recognized reasonable use of waters of the state.**

The prohibition of Section 3 does not apply to a lawful and reasonable use of the waters of the state in connection with the use and enjoyment of land by an owner or occupant or their guests, including any lawfully recognized traditional and artificial reasonable uses of water such as agriculture, manufacturing, generation of electricity or an industrial use or process. Except as provided in Part 2, Section 3A of this Act and subject to Part 3 of this Act, the sale of water withdrawn from the waters of the state is not a reasonable use.

---

<sup>5</sup> **NOTE:** Subsection (4) is a placeholder. Alternative approaches include (a) no exception for bottled water with an amortization provision consistent with potential “takings” claims under U.S. Constitution or constitution and investor damage or anti-discrimination claims under GATT, NAFTA, or other applicable trade laws; (b) limited to existing bottled water sale production and sale facilities and operations, subject to compliance with all other provisions of this Act (this may require analysis of state sovereignty over water or public trust waters and the anti-discrimination provisions of applicable trade law).

<sup>6</sup> Alternatively, this provision could allow withdrawal and transfer of “spring water” but “only if it is in compliance with the requirements of Part 2, Section 2(5) of this Act.” (See Section 2(5)(a) and (b), below).

#### **Section 4. Rule Making Authority.**

The department shall exercise its general powers and authority to promulgate rules and regulations to implement the provisions of this Part.

### **Part 2: Amendments to Section 17, Safe Drinking Water Act, MCL 325.1001 et seq.**

#### **Section 1.**

Section 4, Safe Drinking Water Act, 1976 PA 399, MCL 325.1004, is amended as follows:

\* \* \*

(12) A community or non-community public water supply or other water source or supply facility or operation shall not furnish water for the sale of bottled water unless permitted pursuant to the Safe Drinking Water Act, 1976 PA 399, and Parts 1, 2 and 3 of this Act, including obtaining a license pursuant to Sections 1, 2 and 3 of Part 3 of this Act, being amendments to MCL 502 and 503, Part 5, NREPA, MCL 324.501 et seq., and in compliance with any other requirements of federal, state and local laws or ordinances.

#### **Section 2.**

Section 1017, Safe Drinking Water Act, 1976 PA 399, MCL 325.1017, is amended as follows:

\* \* \*

(5) In addition to all other requirements of Parts 1 and 2 of this Act, a person shall not be permitted to withdraw and transfer more than 50,000 gallons a day for the sale of bottled water as spring water unless it is established by the applicant and determined by the department that:

- (a) there is sufficient existing actual data and information that characterizes to the fullest extent possible the hydrological and geological conditions required to accurately measure and calculate the effect on the flows, levels and other physical conditions of the groundwater, springs, wetlands, creeks, streams, lakes or ponds that have a direct hydrological connection to the spring water source; and
- (b) based on the actual data and information required by the preceding subsection (5)(a), the withdrawal and transfer of spring water will not measurably diminish and impair the flow, level and other physical parameters of the wetlands, creeks, streams, lakes or ponds, fish and other wildlife and plant habitat or the public trust in those features, wildlife and habitat.

(6) Any decision or determination required by Part 2 of this Act shall take into account and be conditioned on the potential for, or occurrences of, increased intensity and frequency of weather events due to changes in climate.

(7) An approval of a permit by the department under subsection (3) of Section 1017, 1976 PA 399, shall not take effect unless the person also has obtained a valid license from the state for the sale of water pursuant to Sections 1, 2, 3, 4 of Part 3 of this Act, being amendments to MCL 324.502 and 503.

### **Section 3. Rule Making Authority.**

The department shall exercise its general powers and authority to promulgate rules and regulations to implement the provisions of this Part.

## **Part 3: Amendment for Licensing by Department of Natural Resources of the Sovereign Public Waters of the State for the Sale of Bottled Water**

### **Section 1.**

Section 502, Part 5, NREPA, 1994 PA 451, MCL 324.502 is amended as follows:

The Department of Natural Resources [“department”] and Natural Resources Commission [“commission”] are authorized to issue a license to withdraw, take, remove, and transfer from the sovereign waters of the state for the sale of bottled water only if the sale of waters of the State is in full compliance with Parts 1, 2, and 3 of this Act.

### **Section 2.**

Part 5, NREPA, 1994 PA 451, MCL 324.503, is amended by adding a new Section 3 as follows:

The department and commission shall not issue or enter into any license or other agreement pursuant to Section 6 for withdrawal, taking, or transfer of the waters of the state to a person who proposes to engage in the sale of bottled water unless all of the following are met:

- (1) the applicant has submitted a finally approved permit or, in the event no permit is required because of a preexisting bottled water facility and operation, a certificate of compliance from the Department of Environmental Quality that the applicant has complied with all of the requirements and standards of Section 17 of the Safe Drinking Water Act, 1976 PA 339, MCL 325.1017 and Parts 1 and 2 of this Act.
- (2) for the licensing for the sale of bottled water from a water source or non-community water supply from the waters of the state, the applicant has

submitted a certified copy of the final permit or certificate of compliance with requirements and standards for the withdrawal pursuant to Part 327, NREPA, 1994 PA 451, including Section 32723, Part 327, MCL 324.32723, and the Safe Drinking Water Act, MCL 325.1001 et seq., as amended.

- (3) for the licensing for the sale of bottled water from a municipal or community public waterworks or public water utility supply, the applicant has submitted a certified permit or approval of the water source and proof that it is in compliance with all other legal requirements from the local department, board or local government that owns and operates the community public waterworks or public water system, including the Safe Drinking Water Act, MCL 325.1001.
- (4) Before approval of the license, the department and commission shall provide written notice of the draft license with conditions and proposed royalty fee as provided in Section 8 of this Act, and in addition such notice shall be provided at least 60 days to any local unit of government, any community or public waterworks or water supply district, authority or department, any recognized tribal sovereign government and the applicant; published in a prominent newspaper with general circulation in the locale of the water source or supply; and the notice, application and supporting documents shall also be posted on the department website in a conspicuous manner. The commission may on its own or upon request of an interested person provide for a public hearing, which shall be given the same public notice as provided in this section; the public notice shall provide at least a 45-day comment period before approval of the license. On request of a local unit of government or recognized tribal sovereign government in which the water source or supply is located, the department and a representative of the commission shall meet and consult with the local unit of government or tribe not less than 15 days before approval of the license.
- (5) Before approval and issuance of the license, the commission and department shall evaluate, assure and duly establish that all of the following are met:
  - (a) applicant has complied with Section 17 of the Safe Drinking Water Act, MCL 325.1017, as amended by Part 2 of this Act;
  - (b) applicant has shown, based on subsection (a) above and all other available information, including public notice, hearing, participation and comments or consultation with local government, sovereign tribes recognized by treaty with the federal government or other interested persons, that the withdrawal and transfer of the waters of the state for the sale of bottled water is substantially in the public interest and will not impair the public trust and public health, safety and welfare;
  - (c) applicant has complied with the application and royalty fees required by Section 3 of this Part;
  - (d) the department and commission may impose conditions in the license or other agreement as required for the protection and promotion of the



waters of the state, public trust in those waters and the public health, safety and welfare of citizens and local community.

### Section 3.

Section 503, Part 5, NREPA, is amended by adding Section 503.B, as follows:

- (1) Before processing the application for a license, the applicant shall pay an application fee of \$500 and a fee of \$5,000 or more as determined by the department for reimbursement of the department's expenses for processing and evaluating the application.
- (2) The applicant shall pay a royalty fee for the right to withdraw, remove and transfer the sovereign waters of the state or community public water supply for purposes of the sale of bottled water as follows:
  - (a) The licensee shall pay a sovereign water royalty fee of not less than 25 cents per gallon for the right to withdraw, take and transfer the waters of the state for the sale of bottled water. Subject to public notice, hearing and comment as provided for in Part 5, NREPA or the rules promulgated pursuant to Section 11 Part 5, NREPA, the commission may hereafter promulgate a higher fee per gallon based on a reasonable evaluation and determination of fair and adequate economic value for the right of sale of bottled water from the waters of the state.
  - (b) The licensee or the community or municipal public water supply department or local government, as the case may be, shall file on the first day of each month, beginning 30 days after the date of the license, a written summary and report, with supporting data and information, the total volume of water withdrawn. The licensee shall pay the royalty fee on a quarterly basis, beginning with the first day of the quarter of the year after the date of the license. The department and commission may impose a late fee according to a schedule of fees, payment, or interest established by the commission pursuant to notice and hearing as provided in Part 5, NREPA or rules promulgated by the commission.<sup>7</sup>
- (3) The department shall deposit the royalty fee collected from each licensee into the "Michigan Public Water, Health and Justice Trust Fund" ("trust fund")

---

<sup>7</sup> The following optional provision could be added to coordinate the licensure and royalty requirements of this Part with the need to address the ubiquitous waste from plastic bottles and other containers and packages: [*This provision is optional*] If the state legislature subsequent to the effective date of this act enacts a container deposit return program for bottled water containers or packages, the licensee may request from the commission and department a 5 cents per gallon credit toward the royalty fees due under its license; and the commission and department shall cooperate with the licensee to implement the royalty credit effective within one year of the effective date of the enactment of such a deposit return program.

established pursuant to Section 4 of this Act in accordance with all applicable laws and regulations.

- (4) The department's expenses, including all reasonable expenses related to collecting and managing the fees, shall be paid and net royalty fee payment made to the trust fund on a quarterly basis, beginning with the third quarter after the effective date of this Act or the issuance of the first license under this Act, whichever occurs first.
- (5) Where the water is from a water source or non-community supply that is from the waters of the state, the net royalty proceeds, less costs and expenses ("net proceeds"), from each licensee shall be deposited in the Michigan Public Water, Health and Justice Trust Fund ("trust fund") as provided in Section 4. The net proceeds derived from the licensing of the sovereign waters of the state for the sale of bottled water shall be held in trust for the express purposes and dedicated uses of this Act, and none other.
- (6) Where the water is from a community public water supply or waterworks, which withdraws and distributes the waters of the state as a public service within its lawful territory, the net proceeds from each license or other agreement shall be deposited in the trust fund as provided in Section 4. The net proceeds derived from the licensing of the sovereign waters of the state for the sale of bottled water shall be held in trust for the purposes and dedicated uses of this Act. Further, the trust fund board shall allocate an amount up to 25 percent of the net proceeds in any calendar year to the community public water supply department, district or authority from which the water is withdrawn, taken, diverted or transferred.

**Section 4. Amend Part 19, NREPA, to add Part 19a, to establish the Michigan Public Water, Health and Justice Trust Fund.**

- (1) There is established a Michigan Public Water, Health and Justice Trust Fund ("trust fund") by amendment of Part 19 of the NREPA, through the addition of Part 19a to the NREPA, 1994 PA 451, which shall consist of all bonuses, rentals, delayed rentals, royalties, penalties or fines for non-compliance collected by, or reserved by, the state under the licenses for sale of bottled water established by this Part 19a.
- (2) The trust fund, including but not limited to, all net proceeds from license royalties, earnings, principal and interest, are subject to a public trust for the dedicated purposes set forth in subsection 5 of this Part.
- (3) The trust fund may receive appropriations, money or other things of value.
- (4) The trust fund may not be appropriated or allocated for any purpose other than the dedicated purposes set forth in subsection 5 of this Part. The fund shall establish a reserve fund from 10 percent of the revenues of each year for future contingencies

based on successive 10-year plans to cover unexpected events or emergencies for one or more of those dedicated purposes.

- (5) The State Treasurer shall direct the investment of the trust fund. The State Treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314.
- (6) The department shall annually prepare a report containing an accounting of revenues and expenditures from the trust fund in the same manner as provided in Section 1902 (4), Part 19, MCL 324.1902(4).

### **Section 5. Dedicated Purposes and Allocations of Trust Fund.**

- (1) Subject to the limitations of this Part, the interest and earnings of the trust fund in any one state fiscal year may be expended in subsequent state fiscal years only in the order of, and for, the following purposes and limitations:
  - (a) assistance for water affordability plans or other measures, including income affordability, assured low-cost minimum water use and conservation, innovative pricing, rates, tiers of water use and conservation, to assure equitable and affordable access to clean, safe water and sanitation;
  - (b) protection, conservation, efficiency, sustainability and cleanup to assure safe, clean and adequate groundwater and surface water sources for drinking water and water supplies within the state, including but not limited to, new technologies, green infrastructure and enhanced resiliency and adaptability to predict extreme weather events or climatic changes;
  - (c) protection of public health and individual health needs directly related to investigation, medical examination and water quality and medical monitoring;
  - (d) location, protection, repair, maintenance or improvement to the municipal or community public water supply or waterworks system;
  - (e) repair, improvement or replacement of any line that is determined to be a health risk to those who occupy any single or multi-family residential dwelling unit that connects to the public water main or pipeline system;
  - (f) establishment of local or statewide returnable or recycling programs for plastic bottles or packages used for the sale of bottled water;
  - (g) emergency assistance for specific disadvantaged communities or neighborhoods for, and in advance of, any of the above dedicated purposes set forth in this Section 5(1).
- (2) Any interested municipal public water supply department, district, authority, or local government, or any person who lives within the territory or is served by a community public water works or public water utility may apply for a grant for one or more of the dedicated purposes of the trust fund. The application, process, public notice, meetings, and decisions will be processed by the trust fund board. The trust fund board shall apportion and allocate the grants of available funds in any given hearing in a fair and proportionate manner among applicants that in the discretion of the trust

fund board best meets the intent and dedicated purposes of this Act and the standards or criteria established by rules promulgated pursuant to Section 7 of this Part and Section 11 of Part 5, NREPA; except (i) that there shall be a preference for up to 30 percent of the fund distributed in any year for assistance for affordability, disadvantaged communities and public health, and (ii) not more than 30 percent in any year shall be distributed for repair, replacement or improvement of community public water supply and public water infrastructure waterworks, including but not limited to copper, lead or other hazardous or pollution health risks of residents, neighborhoods, public schools or other local entities from contaminated public water supply or public waterworks systems and including pipes that link dwellings to the public waterworks, with a preference for disadvantaged public water works systems based on criteria promulgated pursuant to Section 7 of this Part.

**Section 6. The Michigan Public Water, Health and Justice Trust Fund Board; establishment; powers and duties; administration; members, terms, removal, vacancies, compensation.**

- (1) The Michigan Public Water, Health and Justice Trust Fund board is established within the department. The board shall be administered under the supervision of the department, and the department and commission shall offer their cooperation and aid to the board and shall provide suitable offices and equipment for the board.
- (2) The trust fund board shall consist of nine members appointed by the Michigan Natural Resources Commission. The members shall include the director of the Department of Environmental Quality or a person in the department designated by the director, the director of the Department of Natural Resources or a person in the department designated by the director, the director of the Department of Public Health or a person in the department designated by the director, and six residents, provided that there is at least one resident from a city of not less than 100,000 persons, one resident from a city of not less than 50,000 persons, one resident from a village or town of not less than 1,000 persons, and one resident who is a representative of a community public waterworks department or district; and in addition, one member representative of the protection of public health, one member representative of the protection of the environment, and one member representative of social justice interests. The terms of members shall be four years, except that of those first appointed, one shall be appointed for one year, two shall be appointed for two years, and one shall be appointed for three years, and one appointed for four years.
- (3) The appointed members may be removed for inefficiency, neglect of duty or malfeasance in office.
- (4) Vacancies shall be filled for the unexpired term in the manner and categories as the original appointments.
- (5) The board may incur expenses necessary to carry out its powers and duties under this Part and shall compensate its members a sum in the discretion of the commission for not more than \$100.00 per day and for actual expenses incurred in carrying out their official duties.

- (6) All general and special meetings shall be pursuant to public notice, comment and meetings as provided by law.

**Section 7. Rule Making Authority.**

The department and commission may exercise their general powers and authority to promulgate rules and regulations to implement the provisions of this Part.

**Section 8. Judicial Review.**

A person who is aggrieved or whose interest is adversely affected by a final decision by a department or commission under this Act shall have a right to petition or appeal as provided in the Michigan administrative procedures act or as otherwise provided by law.

**Section 9. Enforcement, Fines, Penalties, Civil Action, Costs, and Fees.**

- (1) [Insert language for enforcement by attorney general, prosecuting attorney, with criminal penalties and fines, and civil fines, temporary and permanent injunction and other equitable relief.]
- (2) [Insert definition of fines for violation of this Act, a license, permit, or any condition of license or permit, with rights of enforcement.]
- (3) A citizen whose person or property interest is affected by an impairment or interference with a right protected by this Act or a violation of this Act or a term or condition of a permit or license authorized and approved by this Act, shall have the right to maintain a civil action in the circuit court where the person resides, the withdrawal and transfer of water occurs, or where the defendant is doing business, or in Ingham County, Michigan. The circuit court is authorized to award or apportion attorney fees and costs if the interests of justice so require.

###