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BILL ANALYSIS

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Senate Bill 212 (Substitute S-6 as reported)
Senate Bill 723 (Substitute S-1 as reported)
Senate Bill 727 (Substitute S-3 as reported)
Senate Bill 858 (Substitute S-2 as reported)
Senate Bill 859 (Substitute S-2 as reported)
Senate Bill 860 (Substitute S-3 as reported)
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)

Committee: Natural Resources and Environmental Protection

CONTENT

Senate Bill 212 (S-6) would amend Parts 327 (Great Lakes Preservation) and 328 (Aquifer Protection) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Provide for the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.
- Revise the prohibition against diverting water from the Great Lakes Basin, and define "diversion".
- Revise a requirement that certain large-quantity water users obtain a water withdrawal permit from the Department of Environmental Quality (DEQ), and redefine "withdrawal".
- Beginning January 1, 2009, require a water withdrawal permit applicant to certify that he or she was in compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures.
- Revise the duties and composition of the Groundwater Conservation Advisory Council.

Currently, except as otherwise provided, the following people must obtain a water withdrawal permit before making the withdrawal:

- A person who develops withdrawal capacity to make a new or increased withdrawal of over 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.
- A person who develops withdrawal capacity to make a new or increased withdrawal 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, except as otherwise provided, the following people would have to obtain a permit before making a withdrawal:

- A person who developed withdrawal capacity to make a new or increased withdrawal of over 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- A person who proposed a new or increased withdrawal that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

("Intrabasin transfer" would mean a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake or its connecting waterways.)

Additionally, the bill would add Part 342 (Great Lakes-St. Lawrence River Basin Water Resources Compact) to NREPA. The Compact does the following:

- 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.
- 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.
- 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.
- Requires the parties collectively to conduct periodic cumulative impact assessments of Basin water uses.

Senate Bill 723 (S-1) would amend Part 328 to establish the Water Resources Conservation Advisory Council in the Department of Natural Resources.

The Council would have to do all of the following:

- Within six months after the bill took effect, study and make recommendations to the Legislature and the DEQ on how the water withdrawal 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.
- Conduct testing and evaluate the tool's operation and accuracy, and, within nine months after the bill took effect, report to the Legislature and the DEQ on the results and any recommendations to improve the tool's operation.
- 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 on 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 measures designed to prevent adverse resource impacts.
- In consultation with academic institutions and nonprofit organizations, make recommendations regarding educational materials related to the use and availability of water resources.

By February 8, 2009, the Council would have to submit to the Legislature and the DEQ a progress report on its findings and recommendations as of that date. The Council would have to submit its final report by August 8, 2009.

Senate Bill 727 (S-3) would amend 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.

Currently, a person who proposes 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 must demonstrate to the DEQ's satisfaction that the following conditions will be met:

- The proposed use is not likely to have an adverse resource impact.
- The proposed use is reasonable under common law principles of water law in Michigan.
- The withdrawal will be conducted in a manner that protects riparian rights as defined by Michigan common law.
- The person will 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 who proposed 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 would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period would have to submit to the DEQ an application containing an evaluation of existing environmental, hydrological, and hydrogeological conditions and the predicted effects of the intended withdrawal that provided a reasonable basis for a determination to be made (as described below).

The DEQ could approve an application only if it determined that the proposed use would meet the applicable standard provided in Section 32723 of NREPA (which Senate Bill 860 (S-3) would amend), and the person would undertake necessary activities to address hydrologic impacts (as currently required). A proposed use for which the DEQ determined these conditions would be met would be considered to satisfy certain requirements of the Compact.

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

Senate Bill 858 (S-2) would amend the Safe Drinking Water Act to revise provisions requiring the DEQ to evaluate the impact of a proposed waterworks system for a community supply.

Under the Act, upon receiving the plans and specifications for a proposed waterworks system, the DEQ must evaluate its adequacy to protect the public health by supplying water meeting State drinking water standards. The Department may evaluate the impact of a proposed system 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 a source 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 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, would require the DEQ to evaluate the impact of a proposed system 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 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 total designed withdrawal capacity or an increased total designed withdrawal capacity that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

Under the Act, the DEQ must reject the plans and specifications if it determines that the system will not meet a prescribed standard unless certain conditions are met. The bill would require the DEQ to reject the plans and specifications if the system would not meet the applicable standard. The DEQ could, however, approve those plans and specifications if they did not result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period. The DEQ's approval of a proposed system would be considered to satisfy certain requirements of the Great Lakes-St. Lawrence River Basin Water Resources Compact.

Senate Bill 859 (S-2) would amend Part 327 of NREPA to revise the civil penalties for a violation of Part 327.

Part 327 allows the DEQ to request the Attorney General to commence a civil action for appropriate relief for a violation of the part or a rule promulgated under it. 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.

(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.)

The bill would increase the maximum fine for a violation of those sections to \$10,000 per day. For all other violations of Part 327, the maximum civil fine would remain \$1,000.

Senate Bill 860 (S-3) would amend Part 327 to do the following:

- Revise requirements for a property owner to register with the DEQ before making a large-quantity withdrawal.
- Revise water withdrawal permit requirements.
- Require the DEQ to develop and implement an internet-based water withdrawal assessment tool that could be used to determine if a proposed withdrawal was likely to cause an adverse resource impact.
- Require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool indicated that the proposed withdrawal would fall into a particular category or could cause an adverse resource impact.

- Revise the definition of "adverse resource impact".
- Require a property owner to obtain a water withdrawal permit and DEQ authorization in order to register and make a withdrawal, under certain circumstances.
- Create a rebuttable presumption that a proposed withdrawal would not cause an adverse resource impact, under certain circumstances.
- Require the DEQ to notify various local entities by e-mail if a proposed withdrawal fell into a particular category.
- 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.
- 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 them to review and consider implementing water conservation measures.
- Repeal a section allowing a person who intends to make a withdrawal for which a permit is not required to petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact.

Senate Bills 212 (S-6) and 858 (S-2) are tie-barred to each other and to Senate Bills 859 and 860. Senate Bill 723 (S-1) is tie-barred to all of the other bills. Senate Bills 727 (S-3), 859 (S-2), and 860 (S-3) are tie-barred to each other and to Senate Bills 212 and 859.

MCL 324.32701 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)
 324.32701 (S.B. 860)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would cost the State an indeterminate amount for information technology and staff expenses. In FY 2006-07, \$738,000 was appropriated for administrative costs of the water withdrawal program. In FY 2005-06, \$500,000 was appropriated for initial development of a water withdrawal assessment tool. An unknown amount of additional funding would be necessary for the increased responsibilities of the Department of Environmental Quality under these bills. Those duties would include operation of the 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. The bills do not identify a source of funding for the additional cost.

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

The bills would allow water withdrawals that would cause losses to the fish population. Limits would be imposed on the size of those potential losses, but there could be resulting declines in water quality and recreational opportunities.

The bills would make two changes in order to continue current levels of fee revenue. Presently, the water withdrawal reporting fee will decrease from \$200 to \$100 once the assessment tool is operational; however, the legislation would continue the fee at \$200. Annual revenue of about \$220,000 is collected from the fee and used to support the program in the Department. The second change would eliminate 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.

The Departments of Agriculture, Environmental Quality, and Natural Resources would incur incidental costs for staff time spent on participating in the Water Resources Conservation Advisory Council and assisting the Council in the development and publication of its recommendations. The expenses would be paid from existing resources and could divert support from other programs in the Departments.

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

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