House
Legislative
Analysis
Section

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DRINKING WATER ACT: FEES, ETC.

House Bill 4906 as introduced
First Analysis (7-22-93)

Sponsor: Rep. Lyn Bankes
Committee: Appropriations

THE APPARENT PROBLEM:

Through the program established under the state's Safe Drinking Water Act, the Michigan Department of Public Health (DPH) has been able to assume primacy for implementation of the federal safe drinking water act, meaning that the state (rather than the U.S. Environmental Protection Agency) regulates drinking water supplies. Major revisions in federal law in 1986 have created the need to revise state statute in order to maintain the state program and avoid federal preemption. One notable change has been the imposition of a requirement to test for 83 new contaminants at both source and tap. The DPH is seeking the authority to charge fees to defray the costs of meeting the requirements, and has suggested other changes to the state Safe Drinking Water Act.

THE CONTENT OF THE BILL:

The bill would amend the Safe Drinking Water Act to exempt waterworks systems consisting solely of "customer site piping," revise provisions on regulation of water treatment, establish civil fines for a supplier's failure to properly monitor drinking water, institute annual fees for providers of community and noncommunity water supplies, and require DPH certification (with accompanying fees) of water testing laboratories. Fee revenues would go into a newly-created fund, the Water Supply Fund, which would be used by the DPH to implement the act and its rules. Language providing for DPH-initiated testing and related fees for failure to monitor water supplies would be deleted (such fees are designated for the general fund). A more detailed explanation follows.

Monitoring, fines. At present, if a water supplier fails to meet monitoring requirements, the department collects water samples routinely, analyzes them, and charges the supplier for these services, with the fees going into the general fund. The bill would replace these provisions with authority for the department to impose civil fines against suppliers who fail to monitor water as required. Failure to collect a sample and have it analyzed as required would be a violation subject to a $200 fine. Each repeat violation within a twelve-month period would be subject to a $400 fine. A civil fine could be appealed under the Administrative Procedures Act.

In addition to imposing fines, the department could obtain a sample or analysis or both at the supplier's cost, and it could proceed under existing provisions authorizing the state to seek injunctive relief and authorizing judicially-imposed civil fines of up to $5,000 per day of violation.

Privately-owned systems. The bill would exempt waterworks systems consisting solely of customer site piping. "Customer site piping" would be customer-owned or -controlled underground piping that carried water from a water main to building plumbing systems and other points of use on land owned or controlled by the customer. (Examples include apartment complexes, mobile home parks, malls, industrial complexes, college campuses, and correctional facilities.) A system that incorporated treatment to protect public health would be disqualified from the exemption.

A water supplier could not use customer site piping to carry water to other portions of a supplier's system. A supplier would be forbidden from providing service to customer site piping if an impact of the quality of the public water supply had occurred or could reasonably be expected to occur. To protect the health of public water supply customers, service to customer site piping could be discontinued as considered necessary by the water supplier or the department.

Water treatment. An existing requirement for water treatment chemicals and water supply materials to be approved by the department would be replaced with provisions requiring the department to promulgate rules setting standards

for all products that come into contact with drinking water, and requiring compliance with national standards pending rules promulgation. The department would make a list of products meeting standards available at no charge.

Water suppliers would have to maintain lists of all products used. Prior to using a product not previously listed, a supplier would have to either determine that it was listed as an allowed product or notify the department, providing certain details on the product. Upon the department's request, a supplier would provide additional details, including samples, to enable the department to determine whether the product met standards. If the department reviewed a product and found it not to comply with standards, it would notify the water supplier and give the supplier the opportunity for a hearing. At the hearing, the supplier would have to demonstrate that the product met standards before it could be used.

A person could not wilfully introduce or allow the introduction of a product into a public water supply unless the department had first determined that the product met standards.

Annual fees. Community supply providers would have to pay annual fees of $250 to $90,000, depending on the number of residents served. A community supplier's fee could be annually adjusted for inflation, and also could be adjusted as the result of increased federal funding or a reduction in actual costs, as determined by the department. Late fees would be subject to interest charges of nine percent annually.

Noncommunity supply providers would have to pay annual fees of $85 for a transient noncommunity supply (for example, a campground or restaurant) or $160 for a nontransient noncommunity supply (for example, a school or day care center). Fees would be annually adjusted for inflation. For five or more noncommunity supplies under the same ownership on contiguous properties, the annual fee would be 75 percent of that otherwise required. Late fees would be subject to a $25 monthly penalty. A new well completed in compliance with a local construction permit and which received final approval would be exempt from the first year's fee. The department would not have to provide compliance services to noncommunity suppliers who were delinquent in their fees or appropriate penalties.

Laboratory certifications. The department would review and certify laboratories used or intended to be used for safety testing of public water supplies. Certification fees would vary according to the type of laboratory certification service, and would range from $260 for an annually required laboratory water suitability test to $4,285 for combined bacteriology, inorganic and organic chemistry. Fees would be annually adjusted for inflation. Certifications and accompanying fees would be valid for three years.

Water supply fund. A water supply fund would be created to receive laboratory certification fees and annual supplier fees. Money in the fund would be dedicated to the department for implementation of the act and would not lapse to the general fund at the end of a fiscal year. The department would spend 75 percent of the money in the fund at the close of a fiscal year to offset on a pro rata basis each fee required for the following year.

Escrow accounts. An owner of a privately-owned public water supply must maintain an escrow account of up to $50,000 as required by the department. An account may be used to pay for action to correct deficiencies in water system operation or maintenance. The bill would allow the department to reduce or eliminate an escrow account after five years of satisfactory operation and maintenance.

System expansions. The department may at present limit water use from a public water supply until satisfactory improvements are made to provide safe drinking water. The bill would additionally specify that the department may limit system expansion.

Bottled water. Provisions on bottled water, which now apply to someone providing bottled drinking water, instead would apply to someone producing it.

Continuing education. Water treatment system and water distribution system operators certified under the act would be required to renew their certificates in accordance with promulgated rules, including mandatory continuing education or competency demonstration.

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FISCAL IMPLICATIONS:

According to the House Fiscal Agency, annual fees for community supplies are expected to generate $2.09 million, while those for noncommunity supplies are expected to generate $1.3 million. Fees generated by laboratory certification, expected to be $150,000, are already incorporated into the budget. It is expected that the new fee revenue combined with anticipated federal funding will be sufficient to cover the costs of the state program. (7-20-93)

ARGUMENTS:

For:

The bill would make a number of changes to the Safe Drinking Water Act. Most importantly, it would authorize the DPH to charge and collect fees from water suppliers, thus enabling the department to meet the costs of fulfilling its responsibilities under state and federal law. If the state fails to meet federal mandates, which have recently been expanded to include testing for 83 different contaminants, the U.S. EPA could rescind authority for the state to regulate drinking water supplies. It would be ill-advised to allow this to occur: Michigan regulation, by virtue of its focus on preventing problems, is both more effective and less expensive for suppliers and customers than would be federal regulation, which relies more on punishing violators.

The bill also would do away with a cumbersome system whereby the DPH takes on sampling and testing for water supplies where the supplier has been deficient in monitoring; the bill would replace that expensive process with authority to impose civil fines for monitoring deficiencies. Such an approach is at least as effective in dealing with minor violators and has been recommended by the EPA and adopted by well over a dozen other states. Various other changes would eliminate dual regulation, allow the use of national standards, and generally improve the department's ability to efficiently and effectively regulate drinking water supplies.

Against:

Proposed fees vary considerably, and many seem quite high. Fees and fines could work a hardship on local suppliers and communities, including various entities that most people would not ordinarily consider to be water suppliers. The question arises regarding whether the assurance of safe drinking water is something that the government should provide as part of its general functions, not something that "users" should have to support through fees.

Response:

Without the proposed fees, which are linked to actual costs, the state likely would have to yield primacy for drinking water regulation to the federal government, something that most people would like to avoid. Moreover, the bill contains provisions to minimize financial impact on fee payers; for example, if there was money left in the fee fund at the end of a fiscal year, it would be used to reduce fees for the following year. Fees also would be reduced if, as is expected, increased federal funding is obtained.

Against:

While the department makes a good case for the bill, at least one proposed regulatory change is troubling. By exempting "customer site piping" from the definition of "public water supply," the bill would in effect exempt such systems from regulation under the act. Those systems, which would include university campuses and industrial complexes, can be quite extensive, yet the bill seems to presume that regulation past the point of connection with the city water main is unnecessary. A lot can happen to the water after it leaves the main, and if those who drink it are to be protected from contaminants, there should be clear authority for testing and monitoring of the water at the tap.

Response:

The exemption for customer site piping would eliminate dual regulation with the Department of Labor and code enforcement, but more importantly, there would be no loss of protection for members of the public who rely on the safety of water obtained through customer site piping. For one thing, if a private system added treatment, it would be disqualified from the exemption. For another, the situation would be analogous to other private property situations, where if necessary to check water and protect the public health, the department can obtain a warrant against an uncooperative property owner and sample and test water that is not part of a public piping system. The water inside the pipes is still part of the public water supply, even if the pipes are within a private structure. And, the bill specifically would allow a water supplier to discontinue service to customer site piping if considered necessary (by either the supplier or the department) to protect the public health; this would provide a strong weapon to compel cooperation. Finally, the department's

ability to regulate private "customer site piping" systems is questionable anyway. The court of appeals ruled in 1982 that a water distribution system from a water main to individual dwelling units of a housing development was not subject to the jurisdiction of the department under the Safe Drinking Water Act (Lake States Associates, Inc. v Michigan; 115 Mich. App. 752, 321 N.W. 2d 801).

Against:

Many may perceive the bill to represent another in a long succession of bills to enable the state to comply with expensive federal mandates. At some point the state, or perhaps the states in general, should reject unreasonable federal demands and work to see them overturned.

POSITIONS:

There are no position at present. (7-22-93)