House
Legislative
Analysis
Section

Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SAFE DRINKING WATER ACT

House Bill 5136 as enrolled
Public Act 56 of 1998
Second Analysis (4-3-98)

Sponsor: Rep. Jon Jellema
House Committee: Conservation, Environment and Recreation
Senate Committee: Natural Resources And Environmental Affairs

THE APPARENT PROBLEM:

The state must modify the provisions of its Safe Drinking Water Act to comply with certain provisions of the federal Safe Drinking Water Act (SDWA) if it wants to continue administering its own safe drinking water program. Otherwise, the state would have to defer that responsibility to the U. S. Environmental Protection Agency. The Michigan legislature has begun deliberations to assure regulatory primacy. For example, legislation has been considered to establish a Drinking Water State Revolving Fund program, and to replace the state's after-the-fact regulatory program with one that places strong emphasis on preventing contamination and enhancing water systems management. Central to this emphasis is the development of state prevention programs, including source water protection, capacity development and assessment, and operator certification.

THE CONTENT OF THE BILL:

House Bill 5136 would amend the Safe Drinking Water Act (MCL 325.1002 et al.) to replace obsolete references to the Department of Public Health (DPH), which formerly administered the provisions of the act, with the Department of Environmental Quality (DEQ), and allow the DEQ to conduct capacity assessments and source water assessments of public water supplies. "Capacity assessment" would be defined under the act to mean an evaluation of the technical, financial, and managerial capability of a community supply or nontransient noncommunity water supply to comply and maintain compliance with the requirements and rules of this act; "source water assessment" would mean a state program to delineate the boundaries of areas in the state from which one or more public water supplies receive supplies of drinking water, to identify contaminants regulated under the act for which monitoring is required because the state has determined they may present a threat to public health, and, to the extent practical, to determine the susceptibility of the public water supply in the delineated area to these contaminants.

Legislative Intent. The bill specifies that it is the intent of the legislature to provide adequate water resources research institutes and other activities within the state of Michigan so that the state may assure the long-term health of its public water supplies and other vital natural resources.

Capacity Assessments and Source Water Assessments. Under the bill, the DEQ could do one or more of the following: conduct a capacity assessment at a community supply, a nontransient noncommunity water supply, or a public water supply that has applied to the DEQ for assistance under the provisions of Part 54 of the Natural Resources and Environmental Protection Act (added by Public Act 26 of 1997); conduct a source water assessment at a public water supply; or enter the facilities and business offices used to operate a public water supply. The bill would also specify that public water supplies would have to make the records needed to conduct a capacity or source water assessment available to the DEQ; and that the DEQ could request information in writing or during on-site visits to conduct capacity or source water assessments.

The DEQ could also, under the bill, deny a permit for the construction of a proposed community supply, or nontransient noncommunity water supply, if the capacity assessment showed that the proposed system did not have adequate technical, financial, or managerial capacity to meet the act's requirements or rules. This provision would also apply to a waterworks system, or an alteration, addition, or

improvement to the waterworks system, if the deficiencies identified in the capacity assessment remained uncorrected, unless the proposed construction would remedy the deficiencies.

Currently, the DEQ must give due consideration to conditions at public water supplies in order to specify design and operation standards. House Bill 5136 would add that the DEQ would also be required to give due consideration to these conditions for the purpose of establishing criteria for capacity assessments.

Classification of Systems. The DEQ may, at present, classify water treatment and distribution systems with regard to physical conditions to establish the experience needed to maintain and operate the systems effectively. The bill would specify, instead, that the DEQ would be required to classify public water supplies, including water treatment and distribution systems, at community supplies.

Rules. The DEQ would be required to promulgate and enforce rules that included, in addition to current requirements, the criteria for capacity assessments performed by the DEQ at community supplies, nontransient noncommunity water supplies, or a public water supply applying to the DEQ for assistance under proposed Part 54 of the NREPA; as well as requirements to provide facilities by public water supplies that would assure an adequate and reliable supply of drinking water on a continuous basis.

Water Samples. At present, if a water supplier fails to meet monitoring requirements, the DEQ may impose civil fines. House Bill 5136 would specify that this provision would apply to a water supplier who served a population of 10,000 or fewer individuals, and the fines imposed would be administrative fines, rather than civil fines. In addition, under the bill, if a water supplier serving a population of 10,000 or less failed to meet state drinking water standards, the DEQ could impose an administrative fine of no less than $400 and no more than $1,000 per day of violation, up to a cumulative total of $2,000. In addition to imposing fines, the DEQ 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. If the water supplier served a population of more than 10,000, the penalty would be no less than $1,000 and no more than $2,000 per day of violation, up to a cumulative total of $10,000. In addition, the DEQ could obtain water samples and secure analyses of them at a certified laboratory, at the supplier's cost, if monitoring had not met the minimum requirements specified under the act, or proceed under the existing provisions regarding injunctive relief and judicially-imposed civil fines. Administrative fines collected under these provisions would be deposited into the State Drinking Water Revolving Fund.

Reports. At present, a water supplier must file reports and maintain records that the DEQ may require by rule. Under the bill the rules would be required to specify the content of the reports and notice and the frequency and manner of delivery. Further, the bill would require that a supplier of water provide its customers with consumer confidence reports. Rules relating to consumer confidence reports would include but not be limited to report content, the manner of delivery, and standardized formats that may be used by suppliers; and, notice of the availability of any source water assessment, as well as information that enables a supplier to obtain a copy. If regulated contaminants are detected in a public water supply, and certain subpopulations are particularly vulnerable to the adverse effects because of age, gender, pregnancy, or preexisting medical conditions, the consumer confidence reports would be required to include the name of the contaminant detected; the level of the contaminant that was detected; the vulnerable population that may be susceptible; and the potential adverse health effects. This requirement only would apply when the department had provided a water supplier with an EPA statement, in a form easily inserted into the consumer confidence reports. The bill also would allow the department to make consumer confidence reports available at a single website on the internet, if the cost of the website is feasible.

Contracts with Other Agencies. Under the bill, the DEQ could use appropriated funds to provide loan or grant assistance to public water supplies to further the objectives of the act, and could, in addition, require matching funds from the water supplier. In addition, the DEQ could receive funds from another agency and pass through funds to persons eligible for funding assistance where applicable and consistent with the act and Title XIV of the federal Public Health Service Act (Chapter 373, 88 STAT. 1660).

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that according to the Department of Environmental Quality, passage of this bill would prevent an indeterminate loss of federal

revenues to the state, and in turn to local governments that participate in the program. These funds, and the state match, have been included in the Department of Environmental Quality appropriations.

Specifically, DEQ notes that failure to incorporate the Federal Safe Drinking Water Act amendments into the state act would eliminate consideration of Michigan in the Drinking Water Revolving Funds, and Michigan is expected to receive over $100 million in federal funds for this program over a three-year period. Further, failure to expand the scope of the existing operator certification program and provide authority for conducting system capacity assessments would preclude the state from receiving up to 40 percent of the capitalization grants, or approximately $40 million. Approximately $4 million of the total federal funds is designated for staff support.

The majority of the federal funds will be used for low interest loans to local units of government. The bill also would authorize funds for a new grant program, and the DEQ estimates that $1 million will be made available to local units of government for wellhead protection purposes. (3-25-98)

ARGUMENTS:

For:

This is the third bill the legislature has considered in its deliberations to bring the Michigan Safe Drinking Water Act into conformity with the 1996 amendments to the federal Safe Drinking Water Act. These amendments will allow the state to maintain primary enforcement responsibility (primacy) under the U. S. Environmental Protection Agency (U. S. EPA) delegation, which has existed since 1976. Although the state already had administrative enforcement authority under the Michigan Safe Drinking Water Act, the federal act requires additional enforcement authority, specifically, higher civil penalties for public water systems serving populations of more than 10,000, and assessing penalties on a "per day, per violation" basis. This legislation gives Michigan the enhanced regulatory authority it needs in order to stay in compliance with the federal amendments.

For:

This legislation is needed to avoid a penalty of 40 percent of the state capitalization grant from the U.S. EPA for the Drinking Water Revolving Fund. In order to avoid those penalties, the state must: have the regulatory authority to conduct capacity assessments for new public water supplies and for fund applicants; develop a strategy for improving system capacity when existing public water supplies need it; and conduct an operator certification program for community public water supplies that is expanded to reach nontransient noncommunity public water supplies. Further, in order to maintain primacy and to assure continued use of the state's waiver authority, the state must conduct source water assessments at all public water supplies.

For:

According to the Department of Environmental Quality, the public water suppliers in the state have asked for more definition and detail on the requirements for facilities that are needed in order to make public water systems reliable. House Bill 5136 would give the department the ability better to meet that request.

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.