

Legislative Analysis



WATER WITHDRAWALS BY BOTTLED WATER PRODUCERS

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Senate Bill 727 (Substitute S-4)

Sponsor: Sen. Raymond E. Basham

House Committee: Great Lakes and the Environment

Senate Committee: Natural Resources and Environmental Affairs

Complete to 6-18-08

A SUMMARY OF SENATE BILL 727 AS PASSED BY THE SENATE 5-14-08

Senate Bill 727 would amend provisions of the Safe Water Drinking Act applicable to bottled drinking water producers. In its current form, the bill is substantially similar, but not identical, to House Bill 5072 (Substitute H-6, Rep. Mary Valentine), passed by the House on May 14, 2008.

Department of Agriculture supervision. [§17(1), p.1] Water bottling and packaging facilities would remain under the supervision of the Department of Agriculture as provided for in the Food Law of 2000, but the bill would delete a reference to Regulation No. 549 of the Michigan Administrative Code and "other pertinent rules and laws."

Water withdrawals for bottled water requiring applications; application requirements. [§17(3), p.2] Currently, Section 17(3) of the Safe Drinking Water Act requires that a person who proposes to produce bottled drinking water from a new or increased withdrawal of more than 250,000 gallons of water per day to demonstrate to the DEQ that several conditions are met. The bill would require the applicant proposing a new or increased withdrawal of more than the following amounts to submit an application to the DEQ:

- 200,000 gallons of water per day, generally, for water withdrawals.
- 100,000 gallons of water per day (averaged over a 90-day period) for intra-basin transfers.

A bottled water producer's application would have to contain (1) an evaluation of existing environmental, hydrological, and hydrogeological conditions and (2) the predicted effects of the intended withdrawal. The evaluation would have to provide a reasonable basis for the department's determination.

Standard for approving application. [§17(4), pp.2-3] Currently, an applicant must show that a proposed use (1) is not likely to have an adverse resource impact, (2) is reasonable under common law principles of water law in Michigan, (3) will protect riparian rights as defined by Michigan common law, and (4) that the applicant would undertake appropriate activities to address hydrologic impacts, if needed, commensurate with the nature and extent of the withdrawal.

Under the bill, the DEQ could approve an application only if (1) the proposed use would meet the standard contained in Section 32723 of NREPA (MCL 324.32723) and (2) the applicant would undertake appropriate activities to address hydrologic impacts, if needed, commensurate with the nature and extent of the withdrawal.

Consultation required before proposing to address hydrologic impacts. [§17(5), p.3] The bill would retain the current requirement that bottled water producers must consult with local government officials and interested community members before proposing activities to address the hydrologic impacts of a withdrawal.

Public notice and opportunity for comment. [§17(6), p.3] Section 17(5) currently requires the DEQ to provide public notice and an opportunity for comment before it makes a decision on an application from a bottled water producer. The bill would require the notice and comment period to be least 45 days long.

DEQ determination would also satisfy Section 4.11 of the Compact. A DEQ determination that a proposed use meets the applicable standard of the Safe Drinking Water Act [which incorporates the standard from Section 32723 of NREPA] would also constitute a determination that the proposed use would satisfy the applicable decision-making standard of the Compact (Section 4.11).

Pending applications. Applications submitted before the bill's effective date would be decided under the law as it existed on February 28, 2006.

Tie-bars. The bill is tie-barred to the following other bills, meaning that it will not take effect unless all of the others are also enacted:

Senate Bill 212 (Compact ratification and effect on Michigan law)
Senate Bill 723 (Water Resources Conservation Advisory Council)
Senate Bill 858 (Waterworks systems)
Senate Bill 859 (Court enforcement and penalties)
Senate Bill 860 (Regulation of water withdrawals, adverse resource impact standard)

FISCAL IMPACT:

A fiscal analysis is in process.

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■ 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.