

Legislative Analysis



WATER PACKAGE: ASSESSMENT TOOL; PART 327's EFFECT ON OTHER LAWS OR RIGHTS

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Senate Bill 860 (Substitute H-2)

Sponsor: Sen. Patricia Birkholz

House Committee: Great Lakes and the Environment

Senate Committee: Natural Resources and Environmental Affairs

Complete to 6-26-08

A SUMMARY OF SENATE BILL 860 AS PASSED BY THE HOUSE 6-24-08

BRIEF SUMMARY: The bill is part of a 12-bill package to ratify and implement the Great Lakes Water Compact. In brief, Senate Bill 860 (Substitute H-2) would:

- Require that the Department of Environmental Quality do the following:
 - Make the Internet-based water withdrawal assessment tool available for testing and evaluation by October 1, 2008.
 - Implement the assessment tool one year after the bill's effective date.
 - Add verified data from specified sources to the tool on an ongoing basis, and make technical modifications to the tool as specified by Natural Resources Commission order.
 - Make annual reports to the Legislature on specified topics relating to implementation of the tool.
 - Begin accounting for "cumulative impacts" affecting the same stream reach on October 1, 2008.
 - Reset the "cumulative impact" accounting benchmarks beginning February 1, 2009, if accounting shows that a sufficient amount of flow has been removed to affect Zone classifications in a stream reach. Zone B and C classifications would be rolled back to the beginning line for those Zones; Zone D classifications would be rolled back to Zone C or Zone B.
- Require the water withdrawal assessment tool to do the following:
 - Classify a proposed water withdrawal as Zone A, B, C, or D and determine whether it is likely to cause an "adverse resource impact" or "ARI" based on the type of river system that is the source of the proposed withdrawal: (1) cold river system, (2) cold-transitional river system, (3) cool river system, or (4) warm river system.
 - Contain a flow-based safety factor.
 - Account for "cumulative impacts."
 - Distinguish whether a withdrawal is from a stream, small river, or large river, subject to rules requiring some streams to be "integrated into" the next largest drainage area.

- Give all proposals classified as Zone A the "green light" and specify when others warrant "site-specific review" by the DEQ.
 - Specify data fields that could be entered into the assessment tool, require users to be able to print receipts when they run the tool, and allow the tool to be run without registering a withdrawal.
- Allow persons who disagree with the designation of a particular stream or river as part of particular type of river system (cold, cold-transitional, cool, or warm) to petition the Natural Resources Council for a change.
 - Require all persons who propose new or increased large quantity water withdrawals to use the tool, after it has been implemented, except for those who are "dewatering" mines.
 - Require the tool to be rerun, with possible different regulatory consequences, if a person developing capacity for a water withdrawal discovers actual conditions to be different from those reported previously.
 - Specify that Part 327 is not to be construed as affecting common law water rights, property rights, the applicability of other federal or state laws affecting natural resources or the environment, the sovereign rights or interests of the state, or the right of persons to institute court proceedings when their interests have been or will be adversely affected.
 - Specify that Part 327 does not authorize any fees or rulemaking authority unless expressly provided.

DETAILED SUMMARY:

Testing and evaluation of assessment tool. [§32706a(1), p.1] The DEQ would have to make an Internet-based water withdrawal assessment tool available for testing and evaluation by October 1, 2008. The assessment tool would be based on the recommendations of the former Groundwater Conservation Advisory Council and the requirements of Part 327.

Safety factor. [§32706a(1), p.1] The assessment tool would have to contain a flow-based safety factor.

Implementation. [§32706a(1), p.1] The DEQ would have to implement the assessment tool one year after the effective date of the bill.

Zone classifications, river systems. [§32706a(2), p.2] The assessment tool would classify a proposed withdrawal as Zone A, Zone B, Zone C, or Zone D and determine whether it is likely to cause an adverse resource impact depending on whether it is from a: (1) cold river system, (2) cold-transitional river system, (3) cool river system, or (4) warm river system.

Cumulative impacts. [§32706a(2), p.2] The assessment tool would have to account for impacts due to cumulative withdrawals as provided for in Section 32706e, described below.

Stream, small river, or large river. [§32706a(2), p.2] The assessment tool would also take into account whether a proposed withdrawal is from a (1) stream, (2) small river, or (3) large river, subject to the following drainage area/flow rules.

Drainage area/flow rules. [§32706a(2)(a)-(c), p.2] Cool streams and warm streams with the following characteristics would be "integrated into" the next largest drainage area for assessment tool determinations:

- Less than 3 square miles of drainage area.
- Less than 20 miles of drainage and less than 1 cubic foot/second of index flow.
- More than 3 but less than 6 square miles of drainage (groundwater withdrawal).

Assessment tool's data fields. [§32706a(3), pp.2-3] A user would have to be able to enter the following data into the assessment tool:

- The capacity of the equipment used for making the withdrawal.
- The location of the withdrawal.
- The withdrawal source (surface water or groundwater).
- If groundwater, whether glacial stratum or bedrock.
- The amount and rate of water to be withdrawn.
- Whether intermittent.

Printed receipt. [§32706a(4), p.3] The assessment tool would have to contain a print function allowing users to print receipts showing (1) the data submitted, (2) the date and time of the submission, and (3) the determination.

Use of tool with or without registering a withdrawal. [§32706a(5), p.3] A user would have to be able to use the assessment tool with or without registering a proposed withdrawal.

Addition of verified data and technical modifications. [§32706a(6), p.3] The DEQ would have to add verified data from the following sources to the assessment tool's database on an ongoing basis:

- Reports submitted under Section 32707.
- Water use conservation plans submitted under Section 32708.
- Permits issued under the Safe Drinking Water Act.
- Other sources of data regarding the waters of the state.

The DEQ would have to make technical modifications to the tool relating to (1) temperature, (2) hydrology, or (3) stream or river flow based on a scientific methodology adopted by order of the Natural Resources Commission.

Petitions for review of a stream or river's designated "river system." [§32706a(7), pp.3-4] Any person who disagrees with the designation of a particular stream or river as part of (1) a cold river system, (2) cold-transitional river system, (3) cool river system, or (4)

warm river system could petition the Commission to change that stream or river's designation.

Annual reports to Legislature. [§32706a(8), p.4] The DEQ would be required to report annually to the appropriate standing committees of the Legislature on the implementation of the assessment tool and Part 327. At a minimum, this report would have to include all of the following:

- The number of Zone C site-specific reviews requested during each 12 month period following the implementation of the assessment tool. [The assessment tool would be implemented one year after the effective date of the bill.]
- The number of Zone C site-specific reviews that reclassified a Zone C withdrawal as some other Zone, and the number for each Zone.
- The number of times that the DEQ missed statutory timelines for making a site-specific review determination.
- The number of registrations under each Zone classification.
- The number of voluntary requests for site-specific review, and whether the DEQ missed statutory timelines on any of these.
- The number of registrations submitted under Part 327.

Use of the assessment tool required for most new or increased large quantity withdrawals. [§32706b(1), pp.4-5] Once the assessment tool has been implemented [one year after the bill's effective date], a property owner who seeks to register a new or increased large quantity withdrawal under Section 32705 from a stream, river, or groundwater would be required to first enter data about the proposed withdrawal into the assessment tool before registering the withdrawal, except for proposals relating to mine "dewatering."

Allow withdrawals to "dewater" mines to bypass tool. [§32706b(1), p.5] A person who intends to make a new or increased large quantity withdrawal for the purpose of "dewatering" a mine that (1) has a permit under Part 31 and (2) is not regulated under Part 631, 632, or 637 may choose to bypass use of the assessment tool and opt directly for site-specific review.

Likelihood of ARI and Zone determinations by the assessment tool. [§32706b(2), p.5] After the user has entered the relevant data into the assessment tool, the tool would indicate both (1) whether the proposed withdrawal is likely to cause an adverse resource impact and (2) the proposed withdrawal's designation as Zone A, Zone B, Zone C, or Zone D.

All Zone A withdrawals and some Zone B withdrawals get "green light." [§32706b(3), p.5] A property owner who receives any of the following determinations from the assessment tool could simply register the withdrawal and proceed with it:

- Any Zone A withdrawal
- Zone B from a *cool river system*.
- Zone B from a *warm river system*.

Proposals warranting site-specific review. [§32706b(4), p.5] A property owner who receives any of the following determinations could not register or make the proposed withdrawal except in accordance with Section 32706c (site-specific review):

- Zone B from a *cold-transitional* river system.
- Any Zone C withdrawal
- Any Zone D withdrawal

Obligation to rerun tool and notify DEQ of changes. [§32706b(5), pp.5-6] After registering a withdrawal, a property owner would have an obligation to rerun the tool with corrected data if, as the withdrawal capacity is developed, conditions deviate from the data previously entered into the tool. The owner would also have to notify the DEQ of the corrected data and the results of the rerun of the tool. If the corrected data do not change the tool's determination, the property owner could proceed with the withdrawal. If the corrected data change the determination, the property would have to proceed under provisions of Part 327 that apply to the corrected determination.

Cumulative impacts; begin accounting; resets of accounting benchmarks. [§32706e, pp.6-7] The DEQ would be required to make adverse resource impact determinations and Zone classifications under Part 327 based on "cumulative withdrawals affecting the same stream reach," and to:

- Begin accounting for cumulative withdrawals affecting the same stream reach on October 1, 2008.
- Begin making adjustments on February 1, 2009 if cumulative withdrawals beginning on October 1, 2008 have removed a sufficient flow of water from a stream reach to change the zone classification of that stream reach.

If an adjustment were necessary, the DEQ would reset the water withdrawal accounting benchmark for the stream reaches as follows:

- If the cumulative impact of withdrawals on February 1, 2009 results in a Zone B classification, the accounting benchmark would be reset "at the beginning point for Zone B withdrawals."
- If the cumulative impact of withdrawals on February 1, 2009 results in a Zone C classification, the accounting benchmark would be reset "at the beginning point for Zone C withdrawals."
- If the cumulative impact of withdrawals on February 1, 2009 results in a Zone D classification, the accounting benchmark would be reset "at the beginning point for Zone C withdrawals." If there is "not a Zone C for the classification of the stream reach," the accounting benchmark would be reset "at the beginning point for Zone B withdrawals."

Common law water rights, property rights, other laws. [§32728(1), p.7] Part 327 is not to be construed as "affecting, intending to affect, or in any way altering or

interfering with" (1) common law water rights, (2) property rights, (3) the applicability of other laws for the protection of natural resources or *the environment*.

Sovereign rights. [§32728(1), p.7] Part 327 is also not to be construed as "limit[ing], waiv[ing], ced[ing], or grant[ing]" any sovereign rights or interests that the state has in the waters or natural resources of the state.

Court proceedings. [§32728(2), pp.7-8] Part 327 also does not limit the right of a person whose interests have been or will be adversely affected to institute proceedings in circuit court against any person to protect such interests.

No rulemaking authority except as expressed. [§32728(3), p.8] Except as specifically authorized, Part 327 does not authorize the promulgation of rules.

Fees must be specifically authorized. [§32729, p.8] Except as specifically authorized, Part 327 does not authorize the assessment of fees.

Tie-bars. Senate Bill 860 (H-1) is tie-barred to Senate Bills 212, 723, 727, 858, 859 and House Bills 4343, 5065, 5066, 5067, 5069, and 5073.

MCL 324.32706a, 324.32706b, 324.327063, 324.32728, 32729 [NREPA]

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS: The following indicated support for the entire tie-barred package on June 24, 2008 at a joint meeting of the House and Senate committees:

The Department of Environmental Quality. (6-24-08)
Clean Water Action (with public trust amendments). (6-24-08)
Michigan Chamber of Commerce. (6-24-08)
Michigan Environmental Council. (6-24-08)
Michigan Farm Bureau. (6-24-08)
Michigan Manufacturers Association. (6-24-08)
Michigan Municipal League. (6-24-08)
Michigan Soft Drink Association. (6-24-08)
Michigan United Conservation Clubs. (6-24-08)
National Wildlife Federation. (6-24-08)
The Northwest Michigan Regional Chamber Alliance. (6-24-08)
The Traverse City Area Chamber of Commerce. (6-24-08)

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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.