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BILL ANALYSIS

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Senate Bill 723 (as introduced 9-5-07)

Sponsor: Senator Liz Brater

Committee: Natural Resources and Environmental Affairs

Date Completed: 3-5-08

CONTENT

The bill would amend Part 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act to do the following:

- Require the Department of Environmental Quality (DEQ) to assure that its decisions in implementing and applying Part 327 would not impair the waters or other natural resources of the State or the public trust in those natural resources.**
- Allow a prosecuting attorney or any person affected by a large-quantity water withdrawal to file a civil action for a violation of Part 327.**
- Increase the civil fine for a violation of Part 327.**

Specifically, a prosecuting attorney for any county of the State or any person affected or threatened with effects caused by a large-quantity withdrawal could file an action in circuit court, including an action for a permanent or temporary injunction, alleging that a violation of Part 327 or a rule promulgated under had occurred or was likely to occur due to the withdrawal.

(Part 327 defines "large-quantity withdrawal" as one or more cumulative total withdrawals of more than 100,000 gallons of water per day average in any consecutive 90-day period that supply a common distribution system.)

Under Part 327, the DEQ may request the Attorney General to commence a civil action in circuit court for appropriate relief, including a permanent or temporary injunction, for a violation of Part 327 or a rule promulgated under it. In addition to any other relief granted, the court may impose a civil fine of up to \$1,000. The bill would increase the maximum fine to \$10,000.

The bill would retain a provision establishing a maximum civil fine of \$5,000 per day for a person who knowingly violates Section 32721 or 32723 or the terms of a permit issued under Section 32723.

(Section 32721 prohibits a person from making a new or increased large-quantity withdrawal from the waters of the State that causes an adverse resource impact to a designated trout stream. Beginning February 28, 2008, a person may not make a new or increased large-quantity withdrawal that causes any adverse resource impact.

Section 32723 requires the following people to obtain a water withdrawal permit before making the withdrawal:

- A person who develops new or increased withdrawal capacity of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways.
- A person who develops new or increased withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways.)

The bill is tie-barred to Senate Bills 721, 722, and 724 through 729. Senate Bill 724 would amend Section 32723 to lower the threshold for withdrawals from sources other than the Great Lakes and their connecting waterways and for withdrawals from the Great Lakes and their connecting waterways, and would require a person to obtain a water withdrawal permit if the person proposed to develop any of the following:

- Withdrawal capacity to make a new or increased large-quantity withdrawal that would result in more than a 5% reduction in flow in a stream reach.
- Withdrawal capacity to make a new or increased large-quantity withdrawal from an area designated as a sensitive water resource as required by the DEQ.
- Capacity to make a new or increased large-quantity withdrawal that a proposed water withdrawal assessment tool indicated was likely to cause an adverse resource impact.

The remaining bills would amend Part 327 and the Safe Drinking Water Act do the following:

- Exclude from the definition of "consumptive use" a withdrawal of waters of the Great Lakes Basin that is packaged within the Basin in a container of 5.7 gallons (20 liters) or less.
- Exclude from the definition of "diverted" the use or transport of water by a person for his or her personal, noncommercial use and a use that is registered or authorized under the Safe Drinking Water Act.
- Provide that the proposed assessment tool and the program to monitor and regulate water use would require additional resources.
- Require water use registrants and withdrawal permit holders to certify that their water use and proposed plans for withdrawal incorporated environmentally sound and economically feasible water conservation measures.
- Eliminate a provision reducing a water use reporting fee from \$200 to \$100 upon legislative enactment of the assessment tool.
- Require the DEQ to review and approve or disapprove water conservation measures for each water user's sector by July 1, 2008, and promulgate rules providing such measures for each sector that failed to submit proposed measures.
- Require a person to undertake activities, if necessary, to address hydrologic impacts commensurate with the nature and extent of a withdrawal.
- Require a withdrawal to meet certain criteria in order for the DEQ to authorize it, and prohibit the DEQ from authorizing a withdrawal under certain circumstances.
- Require the DEQ to establish a streamlined permit renewal process.
- Require the DEQ to make available online a water withdrawal assessment tool to educate the public, indicate whether a proposed withdrawal was likely to cause an adverse resource impact, and facilitate registration of a proposed withdrawal.
- Allow the DEQ to designate an area as a sensitive water resource if the assessment tool consistently showed it to be at risk for adverse resource impacts.
- Expand the membership of local water users committees.
- Eliminate a provision allowing the DEQ Director to order a person who submits more than two unverified petitions alleging an adverse resource impact from a withdrawal in one year to pay for the full costs of investigating subsequent unverified petitions.
- Lower from 250,000 gallons per day to 200,000 gallons per day the threshold at which a bottled water producer must obtain approval from the DEQ to make a withdrawal.

- Require a bottled water producer to obtain approval from the DEQ for a withdrawal that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.
- Require a bottled water producer annually to register with the DEQ the total amount of water bottled during the preceding year from each water source.
- Authorize the DEQ to promulgate rules to implement Part 327.

MCL 324.32710 & 324.32713

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate effect on State government. The increased civil fine, and an increase in the number of people found responsible for violating Part 327, could increase fine revenue. Civil fine revenue is deposited in the State's General Fund.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.