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BILL ANALYSIS

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Senate Bill 727 (as introduced 9-5-07)

Sponsor: Senator Raymond E. Basham

Committee: Natural Resources and Environmental Affairs

Date Completed: 12-4-07

CONTENT

The bill would amend the Safe Drinking Water Act to require, rather than permit, the Department of Environmental Quality (DEQ) to evaluate the proposed impact of certain waterworks systems for community supplies; and reduce the capacity of water withdrawals subject to evaluation.

The Act requires a water supplier to file with the DEQ the plans and specifications of the supplier's entire waterworks system, unless the DEQ determines that its existing records are adequate. Upon receiving the plans and specifications, the DEQ must evaluate the adequacy of the proposed system to protect the public health by supplying water meeting the State drinking water standards and, if applicable, must evaluate the impact of the proposed system as described below. The Department also must conduct a capacity assessment for a proposed community supply and determine if the system has the technical, financial, and managerial capacity to meet all requirements of the Act and rules promulgated under it. If the DEQ determines that plans and specifications are inadequate or the capacity assessment shows the system is inadequate, the DEQ may return the plans and specifications to the applicant and require additions or modifications. The Department may reject plans and specifications for a system that will not satisfactorily provide for the protection of public health or, if applicable, will not meet the standards prescribed below. The DEQ may deny a permit for construction of a proposed community supply if the capacity assessment shows that the proposed system does not have adequate technical, financial, or managerial capacity to meet the requirements of the Act and the rules promulgated under it.

The Act allows the DEQ to evaluate the impact of a proposed waterworks system for a community supply owned by a political subdivision that will do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.
- Provide new total designed withdrawal capacity of more than 5.0 million gallons of water per day from the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 5.0 million gallons of water per day from the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

The bill would refer to 1.0 million gallons, rather than 2.0 million, with regard to new or increased withdrawals from a water source other than the Great Lakes and their connecting waterways. The bill would refer to 2.0 million gallons, rather than 5.0 million, with regard to new or increased withdrawals from the Great Lakes and their connecting waterways. Additionally, the bill would require, rather than permit, the DEQ to evaluate the impact of such proposed systems.

The bill is tie-barred to Senate Bill 728, which would amend the Act to do the following:

- Require a bottled water producer to register annually with the DEQ the amount of water bottled during the preceding year from each water source, beginning January 31, 2008.
- Eliminate a requirement that a person proposing to engage in producing bottled drinking water from a new or increased large-quantity withdrawal of more than 250,000 gallons of water per day demonstrate to the DEQ's satisfaction that the proposed use is not likely to have an adverse resource impact; that the proposed use is reasonable; and that the withdrawal will be conducted so as to protect riparian rights.
- Require a person proposing to engage in producing bottled drinking water from a new or increased large-quantity withdrawal of more than 100,000 gallons per day to submit to the DEQ an application containing a complete hydrogeological study and assessment of affected water source, natural features, and soils, and an assessment of the withdrawal's effects on flows and levels of groundwater, springs, lakes, streams, wetlands, and nearby wells.
- Authorize the DEQ to approve an application only if certain conditions were met.

In addition, Senate Bill 727 is tie-barred to Senate Bills 721 through 726 and 729, which would amend Part 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act to do the following:

- Revise the definition of "diversion".
- Require an annual report filed with the DEQ by a water use registrant or permit holder to include a certification that the person's current water use or proposed plans for withdrawal incorporated environmentally sound and economically feasible water conservation measures.
- Eliminate a provision reducing the annual water use reporting fee from \$200 to \$100 upon legislative enactment of the assessment tool.
- Eliminate an exemption from the annual water use reporting fee for a person who withdraws less than 1.5 million gallons of water annually.
- Require each water user's sector to prepare guidelines for environmentally sound and economically feasible water conservation measures by January 1, 2008.
- Require the DEQ to review each sector's measures and approve or disapprove them by July 1, 2008; and to promulgate rules providing measures for a sector that did not prepare guidelines by that date.
- Require a person who made a large-quantity withdrawal to undertake activities, if necessary, to address hydrologic impacts commensurate with the nature and extent of the withdrawal.
- Require the DEQ to assure that its decisions in implementing Part 327 would not impair the State's waters or other natural resources.
- Allow a prosecuting attorney for any county or any person affected or threatened with effects caused by a large-quantity withdrawal to file an action in circuit court alleging a violation of Part 327 or a rule promulgated under it.
- Increase from \$1,000 to \$10,000 the maximum civil fine for a violation.
- Require a person to obtain a permit for a new or increased withdrawal of over 1.0 million gallons per day, rather than 2.0 million gallons per day, from the waters of the State, other than the Great Lakes and their connecting waterways.
- Require a person to obtain a permit for a new or increased withdrawal of more than 2.0 million gallons per day, rather than 5.0 million gallons per day, from the Great Lakes and their connecting waterways.

- Require a person to obtain a permit for a new or increased large-quantity withdrawal that would result in more than a 5% reduction in flow in a stream reach, a withdrawal from an area designated as a sensitive water resource, or a withdrawal that the assessment tool indicated was likely to cause an adverse resource impact.
- Increase the permit application fee from \$2,000 to \$2,500.
- Require the DEQ to provide a public comment period of at least 60 days on administratively complete permit applications.
- Revise the conditions under which the DEQ must issue a permit.
- Prohibit the DEQ from authorizing a proposed withdrawal unless it determined that the proposed use would include environmentally sound and economically feasible water conservation measures.
- Prohibit the DEQ from authorizing a proposed withdrawal if it determined that it would cause an adverse resource impact or result in an impairment or unacceptable disruption of aquatic species; would adversely affect or interfere with riparian rights or the public trust; would interfere with another person's property rights; or would not comply with other applicable law.
- Provide that a permit would not be valid for more than five years.
- Eliminate an exemption from the requirement to obtain a permit for a person who makes seasonal withdrawals of not more than 2.0 million gallons per day average in any consecutive 90-day period to supply a common distribution system.
- Allow a person considering a new or increased large-quantity withdrawal to use the assessment tool or request the DEQ to use the tool to indicate whether a withdrawal was likely to cause an adverse resource impact and to register the person under Part 327.
- Allow a person to seek a determination from the DEQ that a withdrawal was not likely to cause an adverse resource impact.
- Authorize the DEQ to designate an area as a sensitive water resource if the assessment tool showed consistently that a portion of the State was at risk for adverse resource impacts.
- Allow a watershed's water users committee to include riparian owners and other interested parties.
- Eliminate a provision allowing the DEQ Director to order a person who submits more than two unverified petitions within one year alleging an adverse resource impact from a water withdrawal to pay the full cost of any subsequent petition investigation.
- Authorize a local unit of government to enact or enforce an ordinance regulating a large-quantity withdrawal if it were consistent with a long-term plan designed to assure water availability.
- Repeal Section 32803, which establishes the Groundwater Conservation Advisory Council.

MCL 324.1004

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would cost the State a small and indeterminate amount as a result of requiring additional activities for the Department of Environmental Quality when reviewing applications for waterworks systems. The bill is tie-barred to a number of other bills that would have additional fiscal impacts, including maintaining the water withdrawal registration fee at \$200 instead of allowing it to decrease to \$100 at a later time, increasing permit application fees and civil fines, and expanding the types of withdrawals that would require a permit.

Fiscal Analyst: Jessica Runnels

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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.