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BILL ANALYSIS

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Senate Bill 860 (Substitute S-1)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

Date Completed: 2-27-08

CONTENT

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

-- Revise requirements for a property owner to register with the Department of Environmental Quality (DEQ) before making a large-quantity withdrawal.
-- Revise water withdrawal permit requirements.
-- Require the DEQ, by December 31, 2008, to develop and implement an internet-based water withdrawal assessment tool that could be used to determine if a proposed withdrawal was likely to cause an adverse resource impact.
-- Require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool indicated that the proposed withdrawal would fall into a particular category or could cause an adverse resource impact.
-- Revise the definition of "adverse resource impact".
-- Require a property owner to obtain a water withdrawal permit and DEQ authorization in order to register and make a withdrawal, under certain circumstances.
-- Create a rebuttable presumption that a proposed withdrawal would not cause an adverse resource impact, under certain circumstances.
-- Require the DEQ to notify certain local entities by e-mail if a proposed withdrawal fell into a particular category.
-- Require the DEQ to develop a protocol for the collection of stream or river flow data by people other than the Department, and allow the DEQ to establish a program to train and certify individuals in the collection of measurements.
-- Eliminate a provision reducing a $200 water use reporting fee upon legislative enactment of the assessment tool.
-- Require the DEQ, by March 31, 2009, to post on its website a set of generic water conservation measures applicable to all people making large-quantity withdrawals.
-- Require the DEQ to review water conservation measures submitted by a specific water user's sector and approve them as a replacement for the generic measures for that sector.
-- Require a withdrawal registrant or permit holder to certify that he or she had reviewed environmentally sound and economically feasible water conservation measures.
-- Upon receiving a registration falling into a particular category, require the DEQ to notify all other registrants and permit holders using water from the same source, and require those registrants and permit holders to review and consider implementing water conservation measures.
-- Repeal a section allowing a person who intends to make a withdrawal for which a permit is not required to petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact.

Adverse Resource Impact

Currently, "adverse resource impact" means either of the following:

-- Decreasing the flow of a stream by part of the index flow so that the stream's ability to support characteristic fish populations is functionally impaired.
-- Decreasing the level of a body of surface water so that its ability to support characteristic fish populations is functionally impaired.

Under the bill, the definition of "adverse resource impact" would depend on the type and size of river or stream involved, or the impact on the level of surface water, as described below.

The definition would include decreasing the flow of a cold river system by part of the index flow as follows: for a cold stream, the withdrawal would result in a reduction of at least 5% in the density of thriving fish populations as determined by the thriving fish curve; and for a cold small river, the withdrawal would result in a reduction of at least 3% in the density of thriving fish populations as determined by the thriving fish curve.

The term also would mean decreasing the flow of a cold-transitional river system by part of the index flow as follows: for a cold-transitional stream, cold-transitional small river, or cold-transitional large river, the withdrawal would result in a reduction of at least 5% in the density of thriving fish populations as determined by the thriving fish curve.

In addition, "adverse resource impact" would mean decreasing the flow of a cool river system by part of the index flow as follows:

-- For a cool stream, the withdrawal would result in a reduction of at least 10% in the abundance of characteristic fish populations as determined by the characteristic fish curve.
-- For a cool small river, the withdrawal would result in a reduction of at least 15% in the density of thriving fish populations as determined by the thriving fish curve.
-- For a cool large river, the withdrawal would result in a reduction of at least 12% in the density of thriving fish populations as determined by the thriving fish curve.

The definition also would include decreasing the flow of the warm river system by part of the index flow as follows: for a warm stream, the withdrawal would result in a reduction of at least 5% in the abundance of characteristic fish populations as determined by the characteristic fish curve; and for a warm small or large river, the withdrawal would result in a reduction of at least 10% in the abundance of characteristic fish populations as determined by the characteristic fish curve.

Further, the term would mean decreasing the flow of a stream, small river, or large river by more than 25% of its index flow. The preceding three provisions would be subject to this part of the definition.

In addition, "adverse resource impact" would mean decreasing the level of a body of surface water through a direct withdrawal in a manner that would not meet the terms of Section 30106, or so that the body of surface water's ability to support characteristic fish populations was functionally impaired.

(Section 30106 requires the DEQ to issue a permit for a proposed project or structure if it will not adversely affect the public trust or riparian rights. The Department may not issue a permit if the project or structure will unlawfully impair or destroy any of the waters or other natural resources of the State.)

The bill would define "characteristic fish curve" as a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled, "Report to the Michigan Legislature in Response to 2006 Public Act 34", by the former Groundwater Conservation Advisory Council, dated July 2007.

"Characteristic fish population" would mean the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics, as determined by a

methodology adopted by order of the Natural Resources Commission (NRC).

"Cold river system" would mean a stream or small river that has the appropriate summer water temperature to sustain thriving populations of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a methodology adopted by order of the NRC.

"Cold-transitional river system" would mean a stream, small river, or large river that has the appropriate summer water temperature to sustain thriving fish populations of cold-water fish species, and where small increases in water temperature will cause a decline in these populations, as determined by a methodology adopted by order of the NRC.

"Cool river system" would mean a stream, small river, or large river that has the appropriate summer water temperature to sustain characteristic fish populations of a mix of cold-water, cool-water, and warm-water fish species, as determined by a methodology adopted by order of the NRC.

"Large river" would mean a flowing body of water with a drainage area of at least 300 square miles. "Small river" would mean a flowing body of water with a drainage area of at least 80 square miles but less than 300 square miles. "Stream" would mean a flowing body of water with a drainage area of less than 80 square miles.

"Thriving fish curve" would mean a fish functional response curve that describes the initial decline in density of thriving fish populations in response to reductions in index flow as published in the Groundwater Conservation Advisory Council's July 2007 report to the Michigan Legislature.

"Thriving fish population" would mean the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics, as determined by a methodology adopted by order of the NRC. "Stream reach" would mean a segment of a stream, small river, or large river.

"Warm river system" would mean a stream, small river, or large river that has the appropriate summer water temperature to sustain thriving fish populations of warm-water fish species, as determined by a methodology adopted by order of the NRC.

Legislative Finding & Declaration

The bill states that the Legislature finds and declares that, "The waters of the Great Lakes Basin are interconnected and part of a single hydrologic system."

Withdrawal Registration

Under Part 327, except as otherwise provided, the owner of real property who has the capacity on that property to make a large-quantity withdrawal from the waters of the State must register with the DEQ before beginning the withdrawal. The bill would require the owner of real property who intended to develop capacity to make a new or increased large-quantity withdrawal to register after using the assessment tool, if required under Part 327, and before beginning the withdrawal. A registration could be made using the online registration process (described below).

Currently, the owner of a noncommercial well on residential property is exempt from the registration requirement. Under the bill, such a person would be exempt if the well were located on single-family residential property, unless the well were a lake augmentation well (a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream).

Under Part 327, the registration must be on a form provided by the DEQ or the Michigan Department of Agriculture (MDA), as appropriate. Under the bill, this provision would apply to a registration that was not submitted via the online registration process.

The bill would require the DEQ, by December 31, 2008, to develop and implement an internet-based online process that could be used for registrations. The process would have to be designed to work in conjunction with the assessment tool.

Part 327 requires each registration to consist of a statement and supporting documentation that includes certain information regarding a withdrawal. Under

the bill, the registration also would have to include a statement and supporting documentation of the capacity of the equipment used for making the withdrawal. Additionally, for a new or increased large-quantity withdrawal from a stream, small river, large river, or groundwater, the registration would have to include the determination from the use of the assessment tool or the determination from a site-specific review, as appropriate.

Assessment Tool

The bill would require the DEQ, by December 31, 2008, to implement an internet-based water withdrawal assessment tool based upon the recommendations of the former Groundwater Conservation Advisory Council and the requirements of Part 327. The assessment tool would have to contain a flow-based safety factor.

("Flow-based safety factor" would mean a protective measure of the assessment tool that reduced the portion of the index flow available for the withdrawal to one-half of the index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.)

The assessment tool would have to determine whether a proposed withdrawal was a zone A, B, C, or D withdrawal (described below) and whether a proposed withdrawal was likely to cause an adverse resource impact based upon whether it was from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The tool also would have to distinguish the impact of a proposed withdrawal based upon whether it was from a stream, a small river, or a large river, subject to the following:

-- Cool streams and warm streams with less than three square miles of drainage area would have to be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater and surface water withdrawals.
-- Cool streams and warm streams with less than 20 square miles of drainage area and less than one cubic foot per second of flow would have to be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater and surface water withdrawals.
-- Cool streams and warm streams with a drainage area of more than three square miles but less than six square miles would have to be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

The assessment tool would have to allow the user to enter into fields the following data related to a proposed withdrawal:

-- The capacity of the equipment used for making the withdrawal.
-- The location of the withdrawal.
-- The withdrawal source, whether surface water or groundwater.
-- If the source of the withdrawal were groundwater, whether the source was a glacial stratum or bedrock.
-- The depth of the withdrawal, if from groundwater.
-- The amount and rate of water to be withdrawn.
-- Whether the withdrawal would be intermittent.

The assessment tool would have to contain a print function that allowed the user, upon receiving the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

The tool would have to be designed to work in conjunction with the online registration process, and also would have to allow operation independent of that process.

On an ongoing basis, the DEQ would have to add verified data to the assessment tool's database from annual reports submitted to the DEQ by registrants, annual water use conservation plans submitted to the MDA by farm owners, permits issued under the Safe Drinking Water Act, and other sources of data regarding the State's water.

The DEQ annually would have to report on the implementation of the assessment tool to the standing committees of the Legislature with jurisdiction primarily pertaining to natural resources and the environment.

Before registering a new or increased large-quantity withdrawal for a proposed

withdrawal from a stream, small river, or large river, or from groundwater, a property owner would have to use the assessment tool by entering the data related to the proposed withdrawal. Upon entry of the relevant data, the tool would have to indicate to the user whether the proposed withdrawal was likely to cause an adverse resource impact and whether it fell into the category of zone A, B, C, or D.

("Zone A withdrawal" would mean the following:

-- For a cold stream or small river, less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.
-- For a cool river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a cool stream, less than a 10% reduction; for a cool small river, less than a 5% reduction; and for a cool large river, less than an 8% reduction.
-- For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

For a cold-transitional river system, there would be no zone A withdrawal.

"Zone B withdrawal" would mean the following:

-- For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.
-- For a cool river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a cool stream, a reduction of 10% or more but less than 20%; for a cool small river, a reduction of 5% or more but less than 10%; and for a cool large river, a reduction of 8% or more but less than 10%.
-- For a warm river system, the following reduction in the density of thriving fish populations as determined by the thriving fish curve: for a warm stream, a reduction of 10% or more but less than 15%; and for a warm small river or warm large river, a reduction of 10% or more but less than 20%.

There would be no zone B withdrawal for a cold stream or small river.

"Zone C withdrawal" would mean the following:

-- For a cold river system, as follows: for a cold stream, a reduction of 1% or more but less than 5% in the density of thriving fish populations as determined by the thriving fish curve.
-- For a cold small river, a reduction of 1% or more but less than 3% in the density of thriving fish populations as determined by the thriving fish curve.
-- For a cool river system, as follows: for a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve; for a cool small river, a reduction of 10% or more but less than 15% in the density of thriving fish populations as determined by the thriving fish curve; for a cool large river, a reduction of 10% or more but less than 12% in the density of thriving fish populations as determined by the thriving fish curve.
-- For a warm river system, as follows: for a warm stream, a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve; and for a warm small river and a warm large river, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

There would be no zone C withdrawal for a cold transitional stream.

"Zone D withdrawal" would mean a withdrawal that was likely to cause an adverse resource impact.)

Except as otherwise provided, if the assessment tool designated a withdrawal as a zone A withdrawal or a zone B withdrawal in a cool river system or a warm river

system, the property owner could register and proceed to make it.

If the assessment tool designated a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or D withdrawal, the property owner could not register or make it unless the DEQ conducted a site-specific review, and authorized the withdrawal (as described below).

After a property owner registered a withdrawal, if, in developing the capacity to make it, the conditions of the withdrawal deviated from the specific data that were entered into the assessment tool, the property owner would have to rerun the tool and enter the corrected data. The property owner would have to notify the DEQ of the corrected data and the corrected results from the tool. If the corrected data changed the determination from the tool, the property owner would have to proceed under the provisions of Part 327 related to the corrected determination.

If the Governor declared under the Emergency Management Act a state of disaster due to drought conditions in all or a portion of the State in which it was necessary to restrict water use, a property owner could not register a proposed withdrawal in an area covered by the declaration unless the DEQ had conducted a site-specific review and authorized the withdrawal.

Site-Specific Review

The bill would require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool determined that a proposed withdrawal was a zone B withdrawal in a cold-transitional river system, or a zone C or D withdrawal. Additionally, if the tool determined that a proposed withdrawal was a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system and the property owner wished to have a site-specific review, he or she could submit a request. A request would have to be submitted in a form required by the Department and include all of the following:

-- The required information that was entered into the assessment tool.
-- The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the withdrawal.
-- If the amount and rate of the intended withdrawal would have seasonal fluctuations, the relevant information related to the seasonal use.
-- A description of how the water would be used and the location, amount, and rate of any return flow.
-- Any other information the property owner wanted the DEQ to consider in making its determination.

Upon receiving a request, the DEQ would have to consider the information submitted with it and consider the actual stream or river flow data of any affected stream reach.

The DEQ would have to complete its site-specific review within 10 working days after a request was submitted. If the DEQ determined, based upon the review, that the proposed withdrawal was a zone A or zone B withdrawal, it would have to provide written notification to the property owner, who could register and proceed with the withdrawal.

If the DEQ determined that the proposed withdrawal was a zone C withdrawal, the owner could register and proceed with the withdrawal if he or she self-certified that he or she was implementing environmentally sound and economically feasible water conservation measures prepared as prescribed in the bill, or that he or she was implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

If the DEQ determined that the withdrawal was a zone D withdrawal, the property owner could not register and make the withdrawal unless he or she applied for a water withdrawal permit under Section 32723 (described below) and the withdrawal was authorized under that section.

After a property owner registered a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviated from the specific data that were evaluated in the review, the property owner

would have to notify the DEQ of the corrected data, and the DEQ would have to confirm its determination under the site-specific review. If the corrected data changed the determination, the property owner would have to proceed under the provisions of Part 327 related to the corrected determination.

Collection of Measurements

The DEQ would have to develop a protocol for the collection of stream or river flow measurements by people other than the Department for its use in the administration of Part 327. The protocol would have to ensure that stream or river flow measurements collected for this purpose met the same data quality standards as measurements collected by the United States Geological Survey (USGS). The DEQ would have to consult with USGS and other recognized scientific experts in developing this protocol.

The DEQ could use stream or river flow data collected using the protocol in conducting site-specific reviews, making water withdrawal permit decisions, issuing permits under the Safe Drinking Water Act, updating the assessment tool as appropriate, or taking other actions requiring an evaluation of stream or river flow.

The DEQ could establish a program to train and certify individuals in the collection of stream or river flow measurements. The DEQ would have to charge a fee sufficient to reimburse it for the cost of the program. The Department could enter into a cooperative agreement with USGS to provide training and certification.

Water Use Reporting & Fee

Part 327 requires a registrant or permit holder to file with the DEQ an annual report including specified information regarding the withdrawal. Under the bill, beginning in 2010, the report would have to include an acknowledgment that the registrant had reviewed applicable environmentally sound and economically feasible water conservation measures prepared as provided in the bill.

Except as otherwise provided, a person who files an annual report or notification also must remit an annual water use reporting fee of $200 or, upon legislative enactment of the assessment tool, $100.

Under the bill, the fee would remain $200.

Water Use Conservation Plan

Part 327 allows the owner of a registered farm who makes a withdrawal for an agricultural purpose, including irrigation, to report the farm's water use by submitting to the MDA an annual water use conservation plan. The plan must contain specified information, including applicable water conservation practices and an implementation plan for them. Under the bill, beginning in 2010, the plan also would have to include an acknowledgment that the farm owner had reviewed applicable environmentally sound and economically feasible water conservation measures prepared under Section 32708a.

Water Management Practices & Conservation Measures

Under Section 32708a, each water user's sector was required to begin designing guidelines for generally accepted water management practices or environmentally sound and economically feasible water conservation measures within that sector by February 28, 2007. By February 28, 2008, the DEQ was required to review and report to the appropriate standing committees of the Legislature on whether there were reasonably detailed criteria for assisting a facility in determining whether water was being used in an efficient manner. The guidelines could be adopted by an established statewide professional or trade association representing that sector. The bill would delete these provisions.

Under the bill, by March 31, 2009, the DEQ would have to post on its website a set of generic water conservation measures applicable to all people making large-quantity withdrawals as prepared by representative trade associations. Each water user's sector could prepare and submit to the DEQ water conservation measures applicable for water users within its sector. Upon receiving the measures from a water user's sector, the DEQ would have to review them, and, if the Department determined that they were appropriate for that sector, it would have to accept them. Upon acceptance, the DEQ would have to

post the measures on its website. Those measures would supersede the generic conservation measures for water users within that sector. If the DEQ determined that the conservation measures were not appropriate for the user's sector, it would have to provide comments to that sector and suggestions that would result in the Department's acceptance of the measures. A water user's sector could resubmit water conservation measures in response to the DEQ's comments and suggestions.

By April 1, 2010, the DEQ would have to report to the standing committees of the Legislature with jurisdiction primarily related to natural resources and the environment on the status of the preparation and acceptance of water user sector conservation measures.

If the DEQ received a registration for a zone C withdrawal, it would have to give notice of the status of the water source to all other registrants and permit holders whose withdrawals were from the same water source as the withdrawal. Upon receiving notification, each of these registrants and permit holders would have to review and consider implementing the applicable water conservation measures prepared under these provisions.

("Permit holders" would mean people holding a permit under Section 32723 or the Safe Drinking Water Act. "Water conservation measures" would mean environmentally sound and economically feasible water conservation measures.)

Part 327 provides that compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law. The bill would refer only to water conservation measures in this provision.

Informational Materials

Part 327 allows the DEQ to contract for the preparation and distribution of informational materials to people who withdraw water for irrigation or industrial purposes regarding the purposes, benefits, and requirements of Part 327. Additionally, the DEQ may provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

Under the bill, the DEQ could contract for the preparation and distribution of informational materials to members of the public, rather than people who withdraw water for irrigation or industrial purposes.

Notification by DEQ; Water Resources Assessment & Education Committee

The bill would require the DEQ, upon receiving a registration for a zone B or C withdrawal or issuing a permit under Section 32723 or the Safe Drinking Water Act for a zone B or C withdrawal, or upon receiving a registration that the Department determined would reduce the density of thriving fish populations as determined by the thriving fish curve in a cold-transitional stream by more than 1%, to place a notice on the DEQ's website and notify by electronic mail all of the following who had requested an e-mail notification:

-- Conservation districts.
-- Regional planning agencies.
-- Watershed management planning committees.
-- Storm water committees established under Part 31 (Water Resources Protection).
-- The chief elected officials of the local units of government.
-- Community supplies owned by political subdivisions.
-- A water users committee (described below).

A listed organization that wished to receive an e-mail notification of withdrawals located in its vicinity would have to give the DEQ an e-mail address.

Upon receiving notification from the Department, the notified entities could form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The DEQ would have to assist in the formation of the committees. Committee meetings would have to be open to the general public. A committee could provide educational materials and recommendations regarding any of the following:

-- Long-term water resource planning.

-- Use of conservation measures.
-- Drought management activities.
-- Other topics related to water use as identified by the committee.

Withdrawal Causing Adverse Resource Impact

Part 327 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 from the waters of the State that causes an adverse resource impact. Under the bill, the prohibition would apply beginning December 31, 2008.

Currently, the prohibitions do not apply to the baseline capacity of a large-quantity withdrawal or a well capable of making a large-quantity withdrawal that existed on February 28, 2006. The bill would eliminate the reference to the date.

"Baseline capacity" means the following applicable withdrawal capacity as reported to the DEQ or the MDA, as appropriate, by the person making the withdrawal in the April 1, 2007, annual water use report or conservation plan:

-- For a community supply, the total designed withdrawal capacity for the supply under the Safe Drinking Water Act on February 28, 2006.
-- Unless reported under a different provision, for a quarry or mine that holds an authorization to discharge under Part 31 (Water Resources Protection) that includes a discharge volume, the discharge volume stated on the authorization on February 28, 2006.
-- The system capacity used or developed to make a withdrawal on February 28, 2006, if the system capacity and a description of it are included in an annual report submitted under Part 327.

If the person making the withdrawal does not report under the other provisions, "baseline capacity" means the highest annual amount of water withdrawn as reported under Part 327 for calendar year 2002, 2003, 2004, or 2005.

In the first part of the definition, the bill would refer to the annual water use report or conservation plan submitted by April 1, 2009, rather than April 1, 2007. Additionally, regarding system capacity, the bill would refer to an annual report submitted by April 1, 2009.

With regard to the highest annual amount of water withdrawn for the specified calendar years, for a lake augmentation well owner who was required to report under the bill, "baseline capacity" would mean the person's withdrawal capacity as reported in the April 1, 2009, annual report to the DEQ.

Under the bill, for purposes of determining baseline capacity, a person who replaced his or her surface water withdrawal capacity with the same amount of groundwater withdrawal capacity from the same watershed could retain the established baseline capacity.

Rebuttable Presumption

Part 327 provides that, until a water withdrawal assessment tool becomes effective upon legislative enactment, there is a rebuttable presumption that a new or increased large-quantity withdrawal will not cause an adverse resource impact if the location of the withdrawal is more than 1,320 feet from the banks of a designated trout stream, or the well is at least 150 feet deep. The bill would delete this provision.

Under the bill, if the assessment tool determined that a withdrawal was a zone A or B withdrawal, or if the DEQ determined, based upon a site-specific review, that a withdrawal was a zone A, B, or C withdrawal, and was not likely to cause an adverse resource impact, there would be a rebuttable presumption that the withdrawal under the conditions that were the basis of the determination would not cause an adverse resource impact.

A presumption would not be valid if the capacity to make the withdrawal were not developed within one year after the withdrawal was registered.

Water Withdrawal Permit

Under Section 32723, except as otherwise provided, the following people must obtain a

water withdrawal permit before making the withdrawal:

-- A person who develops withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.
-- A person who develops increased withdrawal capacity beyond baseline 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, to supply a common distribution system.
-- A person who develops withdrawal capacity to make a new withdrawal of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.
-- A person who develops increased withdrawal capacity beyond baseline capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.

Under the bill, instead, except as otherwise provided, the permit requirement would apply to the following:

-- A person who proposed to develop withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
-- A person who proposed to develop increased withdrawal capacity beyond baseline capacity of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
-- A person who proposed a new or increased withdrawal that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

(Under the bill, "intrabasin transfer" would mean a diversion of water from the source watershed of a Great Lake before its use to the watershed of another Great Lake.)

Currently, a person must apply for a permit by submitting to the DEQ an application containing specified information, and pay a $2,000 application fee. The bill also provides that, if an applicant proposed to take preventative measures along with the withdrawal, the property owner would have to give the DEQ a detailed description of those measures and relevant information as to how they would be implemented.

("Preventative measure" would mean an action affecting a stream, small river, or large river that would increase the index flow of a river system or improve the river system's temperature regime.)

The bill would eliminate the February 28, 2011, sunset on the $2,000 application fee. In addition to the requirement that the DEQ provide public notification of all the water withdrawal permit applications it receives, the bill would require the Department to provide a public comment period of at least 45 days before acting upon applications.

The bill would delete a requirement that the DEQ issue a permit for a new or increased withdrawal of more than 2.0 million gallons per day from a source other than the Great Lakes and their connecting waterways if it determines that the withdrawal is not likely to cause an adverse resource impact. Instead, the Department would have to issue a permit for new or increased withdrawals of more than 2.0 million gallons per day from the waters of the State if all of the following conditions (which apply currently to withdrawals of more than 5.0 million gallons per day) were met:

-- All water withdrawn, less any consumptive use, was returned, either naturally or after use, to the source watershed.
-- The withdrawal would be implemented so as to ensure that the proposal would result in no individual or cumulative adverse resource impacts.
-- Subject to certain provisions, the withdrawal would be implemented so as to ensure that it was in compliance with all applicable local, State, and Federal laws as well as all legally binding regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
-- The proposed use was reasonable under common law principles of water law in Michigan.

Additionally, in order to issue a permit for a new or increased withdrawal of more than 2.0 million gallons per day, the DEQ would have to determine that the proposed withdrawal would not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties. For permit applications received on or after January 1, 2009, the applicant would have to self-certify that he or she was in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector or for the water use associated with that specific withdrawal.

The Department would have to issue a permit for a new or increased withdrawal that would result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period if it complied with Section 4.9 of the Great Lakes-St. Lawrence River Basin Water Resources Compact. (Senate Bill 212 would add the Compact to the Natural Resources and Environmental Protection Act as Part 342. Section 4.9 of the Compact creates exceptions to its prohibitions against diversions.)

If the DEQ approved preventative measures in conjunction with a water withdrawal permit, it would have to enter into a legally enforceable implementation schedule for completion of the preventative measures.

A proposed use for which a permit was issued would be considered to satisfy the requirements of Section 4.11 of the Compact (which establishes a decision-making standard for the approval of certain proposed water uses).

Under Part 327, a permit is not required for the following withdrawals:

-- A withdrawal by a community supply owned by a political subdivision that holds a permit under the Safe Drinking Water Act.
-- Seasonal withdrawals of up to 2.0 million gallons per day average in any consecutive 90-day period to supply a common distribution system.
-- A withdrawal for the production of bottled water approved by the DEQ under a water source review conducted under the Safe Drinking Water Act.

In the first provision, the bill would refer to a withdrawal by a community supply that holds a permit under the Safe Drinking Water Act, deleting the reference to ownership by a political subdivision. Additionally, seasonal withdrawals of up to an average of 2.0 million gallons per day over a 90-day period would be exempt only as long as they did not result in a diversion.

Currently, "diverted" means a transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Basin into a watershed outside of the Basin. The term includes a transfer of water withdrawn from the waters of the Basin that is removed from the Basin in a container greater than 5.7 gallons (20 liters). The term does not include a consumptive use; the supply of vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of vehicles; or use in a noncommercial project or on a short-term basis for firefighting, humanitarian, or emergency response purposes.

The bill would delete the definition of "diverted", and instead define "diversion" as a transfer of water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck, or rail tanker. The term would not apply to water that was used in the Basin or a Great Lake watershed to manufacture or produce a product that was then transferred out of the Basin or watershed. The bill specifies that "diverted" would have a corresponding meaning. The bill also would retain the exclusion of certain uses from the definition, as well as the inclusion of a transfer in a container greater than 5.7 gallons (20 liters). The bill also would exclude from the definition a transfer of water from a Great Lake watershed to the watershed of its connecting waterways.

Part 327 defines "consumptive use" as the portion of water withdrawn or withheld from the Great Lakes Basin and assumed to be lost or otherwise not returned to the Basin due to evaporation, incorporation into

products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. The term includes a withdrawal of waters of the Basin that is packaged within the Basin in a container of 5.7 gallons or less. Under the bill, a withdrawal packaged in this way would have to be bottled drinking water as defined in the Food Code as defined in Section 1107 of the Food Law (i.e., water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water).

Water Users Committee

Under Part 327, all users making large-quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A committee may be composed of all registrants, water withdrawal permit holders, and local government officials within the watershed.

If the DEQ determines by reasonable scientifically based evidence that adverse resource impacts are occurring or are likely to occur from one or more large-quantity withdrawals, it must notify the water users committee in the watershed or convene a meeting of all registrants and water withdrawal permit holders within the watershed, and attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

Under the bill, upon the establishment of a water users committee, a participating local government official could create an ad hoc subcommittee of residents of that local unit to give him or her information and advice on water resources, water use, and trends in water use within that local unit.

If the DEQ authorized a zone C withdrawal, it would have to notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority to establish a water users committee.

Petition

The bill would repeal Section 32724, which allows a person who intends to make a new or increased large-quantity withdrawal for which a permit is not required to petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact.

This section requires the petitioner to submit to the Department the petition, a $5,000 fee, and a report containing specified information and an evaluation of the environmental, hydrological, and hydrogeological conditions that exist and the predicted effects of the intended withdrawal that provides a reasonable basis for the determination to be made.

Within 120 days after receiving an administratively complete petition, the DEQ must issue to the petitioner a written determination that either affirms that the proposed withdrawal is not likely to cause an adverse resource impact or specifies the reasons that an affirmative determination cannot be made and states how the petition may meet the criteria to obtain an affirmative determination.

A withdrawal with regard to which an affirmative determination is issued is presumed not to create an adverse resource impact. The presumption may be rebutted by a preponderance of evidence that the withdrawal has caused is or likely to cause an adverse resource impact.

MCL 324.32701 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would cost the State an indeterminate amount for information technology and staff expenses. In FY 2006-07, $738,000 was appropriated for administrative costs of the water withdrawal program. In FY 2005-06, $500,000 was appropriated for initial development of a water withdrawal assessment tool. An unknown amount of additional funding would be necessary for the increased responsibilities of the Department of Environmental Quality under these bills. Those duties would include operation of the internet-based water withdrawal assessment

tool, continuing maintenance of the data in the assessment tool and monitoring system, and increased staff oversight of allowable withdrawals. The bill does not identify a source of funding for the additional cost.

The bill would allow the Department to establish a program to certify individuals in the collection of stream or river flow measurements. The Department would have to charge a fee to cover the costs of the program, making it self-funded.

The bill would allow water withdrawals that would cause losses to the fish population. Limits would be imposed on the size of those potential losses, but there could be resulting declines in water quality and recreation opportunities.

The bill would make two changes in order to continue current levels of fee revenue. Presently, the water withdrawal reporting fee will decrease from $200 to $100 once the assessment tool is operational; however, the bill would continue the fee at $200. Annual revenue of about $220,000 is collected from the fee and used to support the program in the Department. The second change would eliminate a sunset on the $2,000 application fee for large quantity water withdrawals. Fee revenue is deposited into the Water Use Reporting Fund for administrative costs of the program.

Fiscal Analyst: Jessica Runnels