



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5875 (as reported without amendment)
 Sponsor: Representative Liz Brater
 House Committee: Conservation, Environment and Great Lakes
 Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 10-14-96

RATIONALE

Michigan is a member of the Great Lakes Charter, a cooperative agreement adopted in 1985 to protect and manage the water resources of the Great Lakes Basin among the eight Great Lakes states (Michigan, Indiana, Illinois, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) and two Canadian provinces (Ontario and Quebec) that have shorelines on the lakes. Reportedly, it is important that Michigan belong to the Great Lakes Charter since such membership ensures that the State receives formal notification, and is able to participate in the discussions, of proposals for new diversions or uses of Great Lakes waters that are submitted by other states. Apparently, to overcome a constitutional obstacle that would prevent the Great Lakes Charter members from vetoing out-of-basin diversions, all of the members established water use reporting programs. These programs enable the Charter members to demonstrate regional use and future needs. The demonstration of regional need insulates vetoes by the Charter members of out-of-basin diversions from challenge under the Interstate Commerce Clause of the U.S. Constitution, under which water evidently is considered an item in interstate commerce that should not be unduly restricted by state regulations. Under Part 327 of the Natural Resources and Environmental Protection Act, the Department of Environmental Quality currently is required to collect and maintain information on the locations, types, and quantities of Great Lakes water use, and collect, maintain and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region. This information collection and dissemination program has been funded for the last three years under a three-year grant from the Michigan Great Lakes Protection Fund. The grant expired on October 1, 1996, so another

funding source must be found if the water use reporting program, and Michigan's membership in the Great Lakes Charter, is to continue.

It also has been suggested that the reporting requirements for large agricultural uses be revised to provide the program with more specific information and that the report be made to the county soil conservation district to facilitate the aggregation of data.

CONTENT

The bill would amend Part 327 of the Natural Resources and Environmental Protection Act, which concerns Great Lakes Preservation and regulates the withdrawal of water from the Great Lakes basin, to establish a "Water Use Protection Fund", establish \$50 annual water use reporting fees, and require the Department of Environmental Quality (DEQ) and the Department of Agriculture to assess the reliability of annual irrigation water use data.

Water Use Protection Fund

The bill would create the Water Use Protection Fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse into the General Fund. The DEQ could spend money from the Fund, upon appropriation, only for the implementation and administration of Part 327.

By December 31, 1999, the DEQ would have to assess the Fund and report to the Legislature on the overall number of irrigation and industrial or processing facilities registered in the program, the annual amount of water use reporting fees received by the Fund, and the staff workload necessary to implement Part 327 to determine if the amount of the annual water use reporting fees could be lowered.

Water Use Reporting Fees

The Act currently requires the owner of an industrial or processing facility or an irrigation facility registered under the Act to file with the DEQ an annual report on the amount and rate of water withdrawn on an annual and monthly basis, the source or sources of the water supply, the use or uses of the water, and the amount of consumptive water use. A notification form may be submitted instead of an annual report if the annual amount of water withdrawn is within 4% of the amount last reported and the other information required in the report has not changed since the last year in which a report was filed. The bill would require, in addition, that an owner filing the annual report or notification remit an annual water use reporting fee of \$50 to the DEQ with the annual report. The DEQ would have to transmit the water use reporting fees to the State Treasurer to be credited to the Water Use Protection Fund.

Registration Statement

Currently, a registration for an industrial, processing, or irrigation facility whose withdrawal will result in a consumptive use averaging in excess of 2 million gallons per day in any consecutive 30-day period must provide a statement and supporting documentation that includes information on the operating capacity of the withdrawal system identified in the registration; the total new or increased operating capacity of the withdrawal system; the estimated average annual and monthly rates of discharge or return flow; and a list of all Federal, State, and local approvals, permits, licenses, and other authorizations required for the existing or proposed withdrawal of water from its source. The bill would delete this provision.

Annual Irrigation Water Use Data Report

Currently, the Act requires the DEQ and the Department of Agriculture, in consultation with the Cooperative Extension Service and the soil conservation districts, to develop a formula or

model to determine the amount of water withdrawn for agricultural purposes. The Act also specifies that, for a period of not more than five years after December 21, 1990, a person using water for an agricultural purpose who, on average, withdraws over 100,000 gallons per day in any consecutive 30-day period for irrigation must provide the location of the irrigation water source or sources, and other information as needed by the DEQ in the calculations of the formula or model. The bill provides instead that for a period of three years, beginning January 1, 1997, a person who used water for an agricultural purpose and who, on average, withdrew over 100,000 gallons per day in any consecutive 30-day period for irrigation would have to provide to the county soil conservation districts information on the location and source of the water, the type of crop irrigated, and the acreage of each irrigated crop. The districts and the Department of Agriculture would have to use the model or formula developed to aggregate the data and provide to the DEQ by April 1 of each year county and watershed totals by water source for irrigation water use that occurred in the previous year.

At the end of the three-year period, the DEQ and the Department of Agriculture would have to assess the reliability of annual irrigation water use data and determine if reliable data could be deduced from surveys conducted every two or three years.

MCL 324.32701 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under the Great Lakes Charter, all members must establish water use reporting programs to demonstrate their future needs, as well as regional water usage. Participation by the states and provinces that border the Great Lakes, especially Michigan, is vital if the region is to defend itself against attempts to divert waters from the lakes. Such attempts have been made in the past and are likely to be made again the future, since many areas of the central and western United States have indicated that they will be in critical need of additional water supplies in the future. Michigan's water usage reporting program was previously funded through a grant from the Michigan Great Lakes Protection Fund. The reporting fee and the

Water Use Protection Fund would ensure that the reporting program continued to be funded and that Michigan continued to have a voice on any diversions of Great Lakes waters.

The revised reporting requirements concerning agricultural use of Great Lakes waters would provide more specific information that would help facilitate the monitoring of water diversions.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

According to the Department of Environmental Quality, the bill is anticipated to generate approximately \$126,000 in fee revenue annually from a \$50 water use reporting fee.

The FY 1996-97 Department of Environmental Quality budget includes \$103,500 in water use reporting fees to fund 1.0 FTE in the Office of Groundwater Planning and Special Services. Boilerplate language in the budget bill specifies that either water use reporting fees or State General Fund/General Purpose dollars are to be used. The Department has historically funded the program with revenues intended for Great Lakes Protection Fund activities.

Fiscal Analyst: G. Cutler

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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.