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SFA



BILL ANALYSIS

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House Bill 5136 (as passed by the House)
Sponsor: Representative Jon Jellema
House Committee: Conservation, Environment and Recreation
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 3-19-98

CONTENT

The bill would amend the Safe Drinking Water Act to provide for capacity assessments and source water assessments of public water supplies; provide for capacity assessments of nontransient noncommunity water supplies and public water supplies applying for assistance; impose increased fines for noncomplying water suppliers that served a population over 10,000; require consumer confidence reports to water supplier customers; and allow the use of funds for loan or grant assistance to public water supplies. The bill also would redefine "department" as the Department of Environmental Quality (DEQ), instead of the Department of Public Health.

("Capacity assessment" would mean an evaluation of the technical, financial, and managerial capability of a community supply or nontransient noncommunity water supply to comply and maintain compliance with all the Act's requirements and rules. "Source water assessment" would mean a State program to delineate the boundaries of areas in the State from which one or more public water supplies receive supplies of drinking water, to identify contaminants regulated under the Act for which monitoring was required because the State had determined they could present a threat to public health, and to determine the susceptibility of the public water supply in the delineated area to these contaminants.)

Capacity Assessments and Source Water Assessments

Under the bill, the DEQ could do one or more of the following:

- Conduct a capacity assessment of a community supply, a nontransient noncommunity water supply, or a public

water supply that had applied to the DEQ for assistance under Part 54 of the Natural Resources and Environmental Protection Act (NREPA).

- Conduct a source water assessment at a public water supply.
- Enter the facilities and business offices used in the operation of a public water supply.

The bill would require public water supplies to make records needed to conduct a capacity assessment or source water assessment available to the DEQ. The DEQ also could request information in writing or during on-site visits to conduct capacity assessments or source water assessments. Currently, DEQ has power and control over public water supplies and suppliers of water.

Proposed Waterworks System

Currently, a supplier of water must file with the DEQ the plans and specifications of the entire waterworks system owned or operated by the supplier, unless the DEQ determines that its existing records are adequate. A general plan of the waterworks system for each public water supply must be provided to the DEQ. The DEQ must evaluate the adequacy of the proposed system to protect the public health by supplying water meeting the State drinking water standards. The bill also would require the DEQ to conduct a capacity assessment for a proposed community supply or nontransient noncommunity water supply and determine if the system had the technical, financial, and managerial capacity to meet all the Act's requirements and rules promulgated under it, on the date of commencement of operations.

If upon evaluation, the DEQ determines the plans and specifications to be inadequate, the DEQ may

return the plans and specifications to the applicant and require additions or modifications as appropriate. The DEQ may reject plans and specifications that it determines will not satisfactorily provide for the protection of the public health. The bill also would apply this provision to inadequate capacity assessments.

Under the bill, the DEQ could deny a permit for construction of a proposed community supply or a nontransient noncommunity watersupply if the capacity assessment showed that the proposed system did not have adequate technical, financial, or managerial capacity to meet the Act's requirements and rules promulgated under it.

The Act also requires a water supplier, before beginning the construction of a waterworks system or alteration, addition, or improvement to a system, to submit plans and specifications to the DEQ and obtain a permit. The bill provides that the DEQ could deny a permit for construction of a waterworks system or an alteration, addition, or improvement to a system if the most recent capacity assessment showed that the system did not have adequate technical financial, or managerial capacity to meet the Act's requirement and rules promulgated under it, and the deficiencies identified in that capacity assessment remained uncorrected, unless the proposed construction would remedy the deficiencies.

Department Rules

The Act requires the DEQ to promulgate and enforce rules to carry out the Act. The bill would require the rules to include criteria for capacity assessments performed by the DEQ at community supplies, nontransient noncommunity water supplies, or a public water supply applying to the DEQ for assistance under Part 54 of the NREPA; and requirements for provision of facilities by public water supplies that would assure an adequate and reliable supply of drinking water on a continuous basis.

Currently, the rules consist of the following:

- Requirements for the submission of reports, plans, and specifications for the design and construction of a waterworks system, and a plan for operating and maintaining all or a part of the waterworks system, including the protection of water quality within the distribution system to protect the public health.

- Attainment and maintenance of State drinking water standards and associated monitoring requirements that are necessary to protect the public health.
- The classification of waterworks systems or portions thereof, the examination for certification of the operators of those systems including shift operators of water treatment systems, and for the issuance, suspension, and revocation of certificates.

The Act also specifies that no rule promulgated may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

Water Supplier Penalties and Fines

Currently, the monitoring provision of the Act requires the supplier of water to collect water samples or have them collected on a schedule at least equal to that outlined in the rules, have the samples analyzed in the State laboratory or a laboratory certified by the DEQ or the Environmental Protection Agency for contaminants listed in the State drinking water standards, and report the results of the analyses to the DEQ in a timely manner as specified.

If a supplier of water fails to comply with the monitoring provision of the Act, the DEQ may impose a civil fine of \$200 for each failure to collect and have analyzed a water sample; impose a civil fine of \$400 for each failure to collect and have analyzed a water sample within the 12-month period following a failure to comply with the monitoring provision; obtain a sampling or analysis at the supplier's cost, in addition to imposing a fine; or proceed under Section 22 of the Act, which authorizes the Attorney General to bring an injunctive action and allows a court to impose a civil fine of up to \$5,000 per day of violation. Under the bill, the provisions would apply to a water supplier that served a population of 10,000 or fewer individuals. The bill also would refer to an "administrative", rather than a "civil", fine.

In addition, if a supplier of water serving a population of 10,000 or less failed to meet the State drinking water standards, the DEQ could impose against the supplier an administrative fine of at least \$400 but not more than \$1,000 per day per violation (not exceeding a cumulative total of \$2,000 for a single violation), or proceed under Section 22 of the Act.

The bill further provides that if a supplier of water serving a population of more than 10,000 failed to comply with State drinking water standards or any monitoring or reporting requirement, the DEQ could do any of the following:

- Impose an administrative fine of at least \$1,000 per day per violation and up to \$2,000 per day per violation against the supplier. An administrative fine for a single violation, however, could not exceed a cumulative total of \$10,000 for a single violation.
- Obtain water samples and secure analyses of the water samples at a certified laboratory at the supplier's expense, if monitoring had not met minimum requirements under the Act, in addition to an administrative fine.
- Proceed under Section 22 of the Act.

Administrative fines collected under the bill would have to be forwarded to the State Treasurer for deposit into the State Drinking Water Revolving Fund established under the Shared Credit Rating Act.

Consumer Confidence Reports

Currently, the Act requires that a supplier of water file reports with the DEQ and maintain such records as required by DEQ rules. Under the bill, the DEQ also could by rule require a supplier of water to provide additional reports to its customers. These rules would have to include the required content of the reports, and the frequency and manner of their delivery.

The bill specifies that a supplier of water would have to provide its customers with consumer confidence reports as required under the Federal Safe Drinking Water Act. The DEQ would have to promulgate rules relating to consumer confidence reports, including, but not limited to the following topics:

- Content of the reports.
- Manner of delivery of the reports.
- Standardized formats that could be used by suppliers of water for providing information in the reports.
- A requirement that the reports contain a notification of the availability of the source water assessment and the means to obtain a copy, if a source water assessment had been completed.

If regulated contaminants were detected in a public water supply, and certain subpopulations were particularly vulnerable to the adverse effects because of age, gender, pregnancy, or preexisting medical condition, the rules also would have to include a requirement that the report contain information related to the contaminant and level of contaminant that was detected, the vulnerable population that could be susceptible, and the potential adverse health effects associated with exposure of the vulnerable population to the level of contaminant in the water supply. This requirement, however, would apply only if the DEQ provided suppliers of water with statements derived from readily available information concerning the adverse effects of regulated contaminants on vulnerable subpopulations. The statements would have to be made in a form that could easily be inserted into the consumer confidence reports.

The bill also provides that, if it were feasible from a cost perspective, the DEQ could make consumer confidence reports available at a single website on the Internet.

Other Funding Sources

Currently, the DEQ may enter into agreements, contracts, or cooperative arrangements under terms and conditions appropriate with other State, Federal, or interstate agencies, political subdivisions, educational institutions, local health departments, or other organizations or individuals, for the purpose of administering the Act. The DEQ may solicit and receive grants of money or other aid from Federal and other public or private agencies to conduct research and training activities, to construct waterworks systems, or for other program purposes.

Under the bill, the DEQ also could use appropriated funds to provide loan or grant assistance to public water supplies for an activity that would further the objectives of the Act. The DEQ could require matching funds from a public water supply when the Department provided loan or grant assistance. Further, the DEQ could receive funds from another agency and pass through funds to persons eligible for funding assistance where applicable and consistent with the Act and the Federal Act.

Other Provisions

The Act specifies that the DEQ must give due consideration to the size, type, location, and other conditions at public water supplies for the purpose

of specifying design and operation standards. The bill also would require the DEQ to give due consideration to these factors for the purpose of establishing criteria for capacity assessments.

Under the Act, the DEQ must classify water treatment and distribution systems with regard to size, type, location, and other physical conditions for the purpose of establishing the skill, knowledge, and experience that individuals need to maintain and operate the systems effectively. The bill, instead, specifies that the DEQ would be required to classify public water supplies, including water treatment and distribution systems at community supplies with regard to size, type, location, and other physical conditions to establish the experience needed to maintain and operate the systems effectively.

MCL 325.1002 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

According to the Department of Environmental Quality, passage of this bill would prevent an indeterminate loss of Federal revenues to the State, and in turn to local governments that participate in the program. These funds, and the State match, have been included in Department of Environmental Quality appropriations.

According to the DEQ, failure to incorporate the Federal Safe Drinking Water Act amendments into the State Act would eliminate consideration of Michigan in the Drinking Water Revolving Fund, and Michigan is slated to receive over \$100 million in Federal funds for this program over a three-year period. Specifically, failure to expand the scope of the existing operator certification program and provide authority for conducting system capacity assessments would preclude the State from receiving up to 40% of the capitalization grant, or approximately \$40 million. Approximately \$4 million of the total Federal funds is designated for staff support.

The bulk of the Federal funds will be used for low interest loans to local units of government. The bill also would authorize funds for a new grant program, and the DEQ estimates that \$1 million will be made available to local units of government for wellhead protection purposes.

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.