

REGULATE LARGE WATER WITHDRAWALS

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Senate Bill 850 as passed by the Senate
Sponsor: Sen. Patricia L. Birkholz

Senate Bill 851 as passed by the Senate
Sponsor: Sen. Bruce Patterson

Senate Bill 854 as passed by the Senate
Sponsor: Sen. Raymond E. Basham

Senate Bill 852 as passed by the Senate
Sponsor: Sen. Gerald Van Woerkom

Senate Bill 857 as passed by the Senate
Sponsor: Sen. Liz Brater

House Committee: Natural Resources, Great Lakes, Land Use, and the Environment
Senate Committee: Natural Resources and Environmental Affairs

Complete to 1-24-06

A SUMMARY OF SENATE BILLS 850-852, 854, AND 857 AS PASSED BY THE SENATE 12-8-05

Generally speaking, the bills would regulate the withdrawal of large quantities (over 100,000 gallons per day) of water from the waters of the state. The bills are tie-barred to each other.

Senate Bill 850

The bill would amend Part 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act (NREPA) to regulate the withdrawal of large quantities of water from the waters of the state. The bill also provides that such withdrawals are not regulated under Part 301 (Inland Lakes and Streams) of the NREPA. A section-by-section summary follows.

Section 32701: Definitions

The bill adds numerous definitions to Part 327. Of note, an “adverse resource impact” would be a decrease in the flow of a stream by part of the index flow or a decrease in the level of a body of water so that the ability of the stream or body of surface water to support characteristic fish populations is functionally impaired.

A “large quantity withdrawal” would be one or more cumulative total withdrawals of an average of over 100,000 gallons of water per day in any consecutive 30-day period.

Section 32702: Legislative Findings

The bill would add that the legislature finds that the waters of the Great Lakes basin are capable of concurrently serving multiple, varied uses.

Section 32707: Annual Report Submitted to the DEQ

The act requires certain registrants to annually submit a report to the DEQ on water usage. The report would be required of all registrants and permit holders, with certain exceptions, and would also include, at their discretion, information on the baseline capacity of the withdrawal, a description of the system capacity, and the amount of water returned to the watershed. Information provided on the system capacity would not be subject to the disclosure under the Freedom of Information Act, and would not be disclosed unless the DEQ determines the withdrawal is causing an adverse resource impact.

The act currently provides that a \$100 fee must accompany the report. The bill would increase the fee to \$200, although it would be reduced to \$100 when the water withdrawal assessment tool (See SB 851) becomes effective.

Section 32713: Penalties

The bill provides that a person who knowingly makes a large quantity withdrawal causing an adverse resource impact (under Section 32721) or fails to obtain a permit for certain large quantity withdrawals (under Section 32723) would be responsible for a civil fine of not more than \$5,000 per day of violation.

Section 32721: Prohibited Withdrawals

The bill would add a new section that provides that a person would be prohibited from making a new or increased large quantity withdrawal from the waters of the state causing an adverse resource impact to a designated trout stream. Beginning two years after the bill's effective date, a person would be prohibited from making a new or increased large quantity withdrawal causing an adverse resource impact.

Section 32722: Rebuttable Presumption

The bill would add a new section that establishes a rebuttable presumption, effective upon the enactment of the withdrawal assessment tool, that any new or increased large quantity withdrawal occurring more than 1,320 feet from the banks of a designated trout stream or occurring from a well depth of at least 150 feet, will not cause an adverse resource impact. The presumption could be rebutted by a preponderance of the evidence that the withdrawal has caused, or is likely to cause, an adverse resource impact.

Section 32723: Permit Required

The bill would add a new section that would require a permit prior to making any withdrawal for the following:

- A new or increased withdrawal of more than 2 million gallons per day from the waters of the state, other than the Great Lakes and connecting waterways, to supply a common distribution system.
- A new or increased withdrawal of more than 5 million gallons per day from the Great Lakes and connecting waterways to supply a common distribution center.

The permit application would have to include the information required under Section 32706 and, until five years after the bill's effective date, an application fee of \$2,000.

A permit for a withdrawal of water from other than the Great Lakes and connecting waterways would be approved by the DEQ if it determines that the withdrawal would not cause an adverse resource impact. A permit for a withdrawal of water from the Great Lakes and connecting waterways would be approved by the DEQ if the following conditions are met: (1) all water withdrawn, less any consumptive use, will be returned to the watershed; (2) the withdrawal will not result in an adverse resource impact; (3) the withdrawal complies with applicable local, state, and federal law, including legally binding interstate and international agreements; (4) the proposed use is reasonable under common law principles of water use; and (5) the applicant has considered voluntary generally accepted water management practices.

A permit could be revoked by the DEQ if, based on clear and convincing scientific evidence, the withdrawal is causing an adverse resource impact. A permit would not be required for a community supply that holds a permit issued under the Safe Drinking Water Act or a person who makes seasonal withdrawals of, on average, not more than 2 million gallons per day in any consecutive 90-day period to supply a common distribution system.

Section 32724: Voluntary Determination

The bill would add a new section that permits a person who is not required to obtain a permit under Section 32723 for a new or increased large quantity withdrawal to petition the DEQ for a determination that the withdrawal will not cause and is not likely to cause an adverse resource impact. The petition would include the same information as a permit under Section 32723, as well as other scientific evaluations, and would have to be accompanied by a petition fee of \$5,000.

Section 32726: Preempt Local Ordinances

The bill would add a new section that would prohibit a local governmental unit from enacting or enforcing an ordinance that regulates an adverse resource impact caused by a large quantity withdrawal.

Section 32728: Applicability of Other Statutes

The bill would add a new section that specifies that Part 327 would not affect or alter common law water rights or the applicability of other laws protecting the natural resources or environment.

Enacting Section 1

The bill would repeal Sections 32711 and 32712 of the NREPA. Section 32711 provides that a public water supply system that is required to report water withdrawals under the Safe Drinking Water Act is exempt from the requirements of Part 327. Section 32712 provides that Part 327 does not authorize the DEQ to mandate any permit or to regulate the withdrawal of water covered under this part.

Senate Bill 851

The bill would amend Part 328 (Aquifer Protection) of the Natural Resources and Environmental Protection Act to do the following:

- Transfer the Groundwater Conservation Advisory Council from the DEQ to the Department of Natural Resources (DNR).
- Add four members representing a statewide agricultural organization, a registered well driller, a municipal water supplier, and a statewide conservation organization to the council.
- Require the council to appoint a technical advisory committee.
- Require the council to develop criteria and indicators to evaluate the sustainability of the state's groundwater use.
- Require the council to design and make recommendations regarding a water withdrawal assessment tool.
- Require the council to study and make recommendations regarding proposals to mitigate adverse resource impacts.
- Require the council to report any initial findings and recommendations to the legislature by February 8, 2006.
- Require the council to report any further findings, including an appropriate timetable for periodic changes to the withdrawal assessment tool, to the legislature by July 1, 2007.

The water withdrawal assessment tool would have to be developed by the council in consultation with the DEQ, DNR, Department of Agriculture, and the technical advisory committee. It would have to be designed to assist a person proposing a new or increased large quantity withdrawal in determining whether the withdrawal could cause an adverse impact to the waters of the state or the water-dependent natural resources of the state. The legislature would have to adopt the assessment tool before it could take effect.

Senate Bill 852

The bill would amend Part 327 of the Natural Resources and Environmental Protection Act to require all owners of real property with the capacity to make a large quantity withdrawal from the waters of the state to register with the DEQ prior to making a withdrawal. Currently, registration is required for an industrial or processing facility, irrigation facility, or farm with the capacity to withdraw at least 100,000 gallons per day. Registration would not be required for the following: (1) a person who previously registered, unless the person develops new or increased withdrawal capacity of an additional 100,000 gallons per day; (2) a community supply that holds a permit under the Safe Water Drinking Act; (3) a person holding a permit under Section 32723; and (4) the owner of a noncommercial well on residential property. A registration by a farm owner for a withdrawal concerning an agricultural purpose would be submitted to the Department of Agriculture rather than the DEQ. A person who was developing a new or increased withdrawal capacity as of the bill's effective date or who is not currently required to register could voluntarily register.

The act currently permits the owner of a farm that is registered (under current requirements) to annually submit a water use conservation plan to the MDA. The bill would require the report to include the location of the well, if the water source is groundwater, reported in longitude and latitude with an accuracy of 25 feet. The report could, at the discretion of the registrant, also include the baseline capacity and a description of the system capacity. The information required by the bill, as well as information on the amount and rate of water withdrawn, would not be subject to disclosure under the Freedom of Information Act, but could be disclosed if the DEQ determined the withdrawal is causing an adverse resource impact.

Finally, the bill would also require the DEQ, in conjunction with the MDA, to "encourage" each sector of water withdrawal users to develop generally accepted water management practices, such as those employed under the Michigan Agriculture Environmental Assurance Program (MAEAP).

Senate Bill 854

The bill would amend Part 327 of the Natural Resources and Environmental Protection Act (MCL 324.32725) to "encourage" all persons within a watershed to establish a committee to evaluate the status of water resources and uses, and to assist in long-term planning of water resources within the watershed. If the DEQ determines that an adverse resource impact is occurring, or is likely to occur, the department would notify the committee or convene a meeting with registrants and permit holders within the watershed to prevent future adverse resource impacts from occurring.

The DEQ could issue an order restricting water withdrawal if it determines by clear and convincing scientific evidence that there is a substantial and imminent threat causing an adverse resource impact. The order could last up to 30 days, but could be extended for an additional 30 days. The person subject to the order could request a contested case

hearing under the Administrative Procedures Act. The hearing would have to be held within 10 business days following the request, unless the person requests a later date.

In addition, the bill would permit a registrant or permit holder to petition the DEQ alleging that an adverse resource impact is occurring or is likely to occur because of a water withdrawal. The DEQ would investigate the allegation, although the MDA would investigate allegations concerning water withdrawals from an agricultural well. If a person submits more than two unsubstantiated petitions within one year, the person could then be responsible for the costs of any subsequent investigation.

Senate Bill 857

The bill would amend the Safe Drinking Water Act (MCL 324.1004) to require the Department of Environmental Quality (DEQ) to evaluate the impact of a proposed waterworks system for a community supply that would do any of the following:

- Provide new total designed withdrawal capacity of more than 2 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways, or more than 5 million gallons per day from the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 2 million gallons per day from a source other than the Great Lakes and their connecting waterways, or more than 5 million gallons per day from the Great Lakes and their connecting waterways, beyond the system's total designed withdrawal capacity.

The DEQ would have to reject the plans and specifications for the proposed system if it determined that the system would not meet certain standards under the Natural Resources and Environmental Protection Act (proposed by Senate Bill 850), unless both of the following conditions were met:

- The DEQ determined that there was no feasible and prudent alternative location for the withdrawal.
- The DEQ included in the approval conditions related to depth, pumping capacity, rate of flow, and ultimate use that ensured that the environmental impact of the withdrawal would be balanced by its public benefit related to public health, safety, and welfare.

FISCAL IMPACT:

Senate Bill 850

The Department of Environmental Quality estimates that the various fees established or increased in this bill would generate approximately \$500,000 each year.

This bill would establish an application fee for permits to withdraw more than 2,000,000 gallons a day. This \$2,000 fee would generate about \$10,000 if the existing 5 facilities continue to utilize Michigan groundwater. This fee would be in effect for 5 years.

The water use reporting fee would be increased from \$100 to \$200, until the water use reporting tool (required by SB 851) is developed. This fee increase would be paid by 1,030 facilities and would generate an additional \$103,000 each year.

Operators who wish to demonstrate that their facilities will not have an adverse impact on groundwater resources could pay a \$5,000 fee to offset the DEQ cost of investigation and preparing the "determination." Annual fee revenue would depend on the number of these requests.

Facilities which withdraw more than 2,000,000 gallons a day would be subject to a \$5,000 fine for each day that they violate the terms of their permit. Fine revenue would be deposited into the General Fund.

Senate Bill 851

A Water Assessment Tool is to be created to assist the department's determination that a water withdrawal might create an "adverse resource impact." The cost of developing this tool (\$500,000) would be supported by water use reporting fee revenue, and other appropriated funds. Administrative costs related to this package would be absorbed within funds already appropriated to the Department of Environmental Quality.

Senate Bill 852

Administrative costs related to responsibilities provided in this bill would be absorbed within funds already appropriated to the Department of Environmental Quality.

Senate Bill 854

Administrative costs related to water user committee meetings, enforcement actions, and investigations of alleged adverse resource impacts would be paid from existing appropriations.

Senate Bill 857

This bill would not have a fiscal impact on the state or on local governmental units.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.