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BILL ANALYSIS



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Senate Bills 850, 851, and 852 (as enrolled)  
Senate Bills 854 and 857 (as enrolled)  
Sponsor: Senator Patricia L. Birkholz (S.B. 850)  
Senator Bruce Patterson (S.B. 851)  
Senator Gerald Van Woerkom (S.B. 852)  
Senator Raymond E. Basham (S.B. 854)  
Senator Liz Brater (S.B. 857)

**PUBLIC ACTS 33, 34, & 35 of 2006**  
**PUBLIC ACTS 36 & 37 of 2006**

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

Date Completed: 4-18-07

**RATIONALE**

Although water is plentiful on a regional basis within the Great Lakes Basin, shortages have occurred in specific areas around Michigan. Normally, water withdrawn from an aquifer is replenished through rainfall and snowmelt. In some cases, however, withdrawals by large-quantity users have contributed in part to the drying up of nearby residential and commercial wells and wetlands, which can create public health problems, harm wildlife habitat, and cause extensive property damage.

Increased Great Lakes protection, including the regulation of water that feeds the Great Lakes, has been in the planning stages for a number of years. In 1985, the Great Lakes governors and Canadian premiers signed the Great Lakes Charter, a voluntary agreement through which the Great Lakes states and provinces cooperatively manage the waters of the Great Lakes. In June 2001, the governors and premiers signed the Great Lakes Charter Annex 2001 ("Annex 2001"), which focuses specifically on water withdrawals by outlining the basic principles that state and provincial governments should use when evaluating water withdrawal proposals. Annex 2001 also calls for coordinated standards that guide water use decisions toward the common goal of protecting and enhancing the Great Lakes ecosystem. Both the original charter and the Annex are nonbinding, and require statutory authority to be implemented.

In December 2005, the Great Lakes governors signed two documents to implement the Annex 2001 agreement and establish the decision-making standard to be used in evaluating proposed water uses: the Great Lakes Basin Sustainable Water Resources Agreement (a good-faith agreement) and the Great Lakes Basin Water Resources Compact (a binding agreement). The Compact specifies that each party will manage and regulate new or increased withdrawals within its jurisdiction in accordance with the Compact. The Compact will not take effect until it has been approved by the legislatures of all of the Great Lakes states and the U.S. Congress. Under Annex 2001, the affected Canadian provinces are to enact similar policies. (The Compact is described below in further detail, under **BACKGROUND**.)

In August 2001, then-Senate Majority Leader Dan DeGrow created the Great Lakes Conservation Task Force, composed of five Republican and three Democratic State Senators. Senator DeGrow charged the Task Force with upholding Article IV, Section 52 of the Michigan Constitution, in which the Legislature is required to: "provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction". Specifically, the Task Force was asked to recommend to the Legislature policy changes that would improve the Great Lakes ecosystem. Chaired by Senator Ken Sikkema, the Task

Force conducted eight public hearing throughout the State, and issued its report in January 2002. The Task Force recommended the following two policy changes to address aquifer protection, diversion, and water withdrawals: "1. The Legislature should enact comprehensive water withdrawal laws. This process may require a step-by-step approach, beginning with the enactment of an aquifer protection statute. 2. The Legislature should also promptly enact any implementation laws arising from the consummation of the Annex 2001 process."

As a result of the Task Force report, Annex 2001, and groundwater shortages in specific locations around the State, legislation was enacted several years ago. Public Act 148 of 2003 required the Department of Environmental Quality (DEQ) to prepare a statewide groundwater inventory and map within two years of the Act's effective date; increased water use reporting fees for certain facilities with a capacity to pump over 100,000 gallons per day; extended the reporting requirement to farms with the same capacity; and created the Groundwater Advisory Council to study the sustainability of the State's groundwater use and monitor the implementation of and make recommendations on statutory conformance with Annex 2001. Public Act 177 of 2003 established a process to resolve groundwater withdrawal disputes between well owners.

Public Acts 148 and 177 of 2003 were considered preliminary steps to regulate withdrawals from Michigan aquifers. It was suggested that the next step in protecting the State's water resources and implementing the provisions of the Great Lakes Charter and amending documents should be the enactment of comprehensive water withdrawal laws, including permit and registration requirements.

## **CONTENT**

**Senate Bill 850 amended Parts 301 (Inland Lakes and Streams) and 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- **Exempt a water withdrawal from the requirement for a permit under Part 301.**
- **Require the Governor to establish a public comment period for any proposal to divert water outside of the Great Lakes Basin and notify the Legislature of receipt of the proposal.**
- **Require legislative approval for diversions outside the Basin, if an existing ban on such diversions is declared invalid.**
- **Add Section 32721 to prohibit a person from making a large quantity withdrawal that causes an adverse resource impact to a designated trout stream; or, beginning February 28, 2008, from making a large quantity withdrawal that causes any adverse resource impact.**
- **Establish a rebuttable presumption that a new or increased large quantity withdrawal meeting specified criteria is not likely to cause an adverse resource impact, until the enactment of a water withdrawal assessment tool (as required by Senate Bill 851).**
- **Add Section 32723 to require certain users to obtain a water withdrawal permit, and prescribe a \$2,000 application fee for five years after the bill's effective date.**
- **Prescribe a maximum civil fine of \$5,000 per day for a knowing violation of Section 32721 or 32723.**
- **Increase the annual water use reporting fee from \$100 to \$200 until the water withdrawal assessment tool becomes effective.**
- **Exempt a person who withdraws less than 1.5 million gallons of water annually from certain reporting requirements and the water use reporting fee.**
- **Allow 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; and prescribe a \$5,000 petition fee.**
- **Require the DEQ to submit a biennial report to the Legislature identifying the Department's costs in reviewing petitions and permit applications, as well as revenue generated from permit and reporting fees.**

- Prohibit a local unit of government from enacting or enforcing an ordinance that regulates an adverse resource impact caused by a large quantity withdrawal.
- Exempt withdrawals related to hazardous waste management, solid waste management, environmental remediation, and leaking underground storage tanks from the requirements of Part 327.
- Repeal Section 32711, which exempted from Part 327 a public water supply system required to report water withdrawals under the Safe Drinking Water Act.
- Repeal Section 32712, which specified that the DEQ was not authorized to mandate any permit or regulate water withdrawals covered under Part 327.

Senate Bill 851 amended Part 328 (Aquifer Protection) of NREPA to do the following:

- Transfer the Groundwater Conservation Advisory Council from the DEQ to the Department of Natural Resources (DNR).
- Eliminate a provision disbanding the Council.
- Expand the Council's duties.
- Require the appointment of additional members to the Council to assist it in carrying out the additional duties.
- Require the Council to appoint a technical advisory committee of individuals with specific technical and legal expertise relevant to the Council's responsibilities.
- Require the Council, in consultation with the DEQ, the DNR, the Michigan Department of Agriculture (MDA), and the technical advisory committee to design a water withdrawal assessment tool to be used by a person proposing a new or increased large quantity withdrawal, to assist in determining whether the withdrawal would cause an adverse resource impact.
- Require the Council, the specified departments, and the advisory committee to determine an appropriate timetable for periodic changes to the tool, and submit to the Legislature by July 1, 2007, a

report on its findings and recommendations.

- Require the Legislature to provide for the adoption of the tool.

Senate Bill 852 amended Part 327 to do the following:

- Extend the requirements for registering with the DEQ to the owner of real property who has the capacity on that property to make a large quantity withdrawal from the waters of this State.
- Require the DEQ to aggregate information received by the State related to large quantity withdrawal capacities within and large quantity withdrawals in the State.
- Require each sector of water users to begin designing generally accepted water management practices or environmentally sound and economically feasible water conservation measures by February 28, 2007.
- Require the DEQ, by February 28, 2008, to report to the Legislature on whether there are reasonably detailed criteria for assisting a facility in determining whether water is being used in an efficient manner.

Senate Bill 854 amended Part 327 to do the following:

- Encourage large quantity users in a watershed to form a water users committee through which the DEQ can facilitate the resolution of a situation in which a withdrawal causes an adverse resource impact.
- Allow the DEQ to order a permit holder immediately to restrict a withdrawal that presents the substantial and imminent threat of an adverse resource impact.
- Allow a registrant or permit holder to submit to the DEQ Director a petition alleging that adverse resource impacts are occurring or are likely to occur from a withdrawal.

Senate Bill 857 amended the Safe Drinking Water Act to do the following:

- Require the DEQ to evaluate the impact of a proposed waterworks system that meets certain criteria.

- **Require the DEQ to reject the plans and specifications for the system if it determines it would not meet specified standards, subject to certain exceptions.**
- **Require a person who proposes to produce bottled drinking water from a new or increased large quantity water withdrawal of more than 250,000 gallons per day to demonstrate to the DEQ that certain conditions will be met; and submit a \$5,000 application fee.**

The bills were tie-barred to each other and took effect on February 28, 2006. They are described below in further detail.

### Senate Bill 850

#### Part 301 Permit Exemption for Water Withdrawals

Part 301 prohibits a person from engaging in certain activities without a permit from the DEQ. The activities include creating, enlarging, or diminishing an inland lake or stream; dredging or filling bottomland; constructing, enlarging, removing, or placing a structure on bottomland; erecting, maintaining, or operating a marina; structurally interfering with the natural flow of an inland lake or stream; constructing, dredging, or enlarging a waterway for ultimate connection with an existing inland lake or stream; and connecting any waterway with an existing inland lake or stream for any purpose.

Section 30103 specifies that a permit is not required for the following:

- A seasonal structure placed on bottomland to facilitate private noncommercial recreational use of the water if it does not unreasonably interfere with the use of the water by others entitled to use it, or interfere with water flow.
- Reasonable sanding of beaches to the existing water's edge by a riparian owner.
- Construction or maintenance of a private agricultural drain regardless of outlet.
- A waste collection or treatment facility that is approved for construction by the Department of Community Health or ordered or approved by the DEQ.
- Construction and maintenance of minor drainage structures and facilities that are

identified by a rule promulgated by the DEQ.

- Maintenance and improvement of all drains legally established or constructed before January 1, 1973, pursuant to the Drain Code, except those legally established drains constituting mainstream portions of certain natural watercourses identified in DEQ rules.
- Projects constructed under the Federal Watershed Protection and Flood Prevention Act.
- Construction and maintenance of privately owned cooling or storage ponds used in connection with a public utility except at the interface with public waters.
- Maintenance of a structure constructed under a permit issued under Part 301 and identified by DEQ rules, if the maintenance is in place and in kind with no design or materials modification.

The bill includes a water withdrawal among items and activities not subject to the permit requirement under Part 301. Under the bill, "water withdrawal" means the removal of water from its source for any purpose.

#### Large Quantity Withdrawals

The bill added Section 32721 to NREPA to prohibit a person from making a large quantity withdrawal under Part 327 that causes an adverse resource impact to a designated trout stream, and, beginning two years after the bill's effective date, to prohibit a person from making a large quantity withdrawal from the waters of the State that causes any adverse resource impact.

The bill defines "large quantity withdrawal" as one or more cumulative total withdrawals averaging more than 100,000 gallons of water per day in any consecutive 30-day period that supply a common distribution system. The bill defines "adverse resource impact" as decreasing the flow of a stream by part of the index flow, or decreasing the level of a body of surface water, so that its ability to support characteristic fish populations is functionally impaired. "Index flow" means the 50% exceedance flow for the lowest flow month of the flow regime for the applicable stream reach as averaged over the period of record or extrapolated from analyses of the United States

Geological Survey stream flow gauges in Michigan.

The bill defines "designated trout stream" as a trout stream identified on the document entitled, "Designated Trout Streams for the State of Michigan", as issued under order of the DNR Director on October 10, 2003. The bill defines "waters of the state" as groundwater, lakes, rivers, streams, and all other watercourses and waters, including the Great Lakes, within the State's territorial boundaries. The term does not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

The bill specifies that Section 32721 does not apply to the baseline capacity of a large quantity withdrawal that existed on the bill's effective date, or to a withdrawal used solely for fire suppression.

Until the water withdrawal assessment tool becomes effective upon legislative enactment pursuant to the recommendations of the Groundwater Conservation Advisory Council (under Senate Bill 851), the bill establishes a rebuttable presumption that a new large quantity withdrawal, or an increase to an existing large quantity withdrawal, will not cause an adverse resource impact in violation of Section 32721 if the withdrawal is located more than 1,320 feet from the banks of the stream, or the well is at least 150 feet deep.

Upon the legislative enactment of the water withdrawal assessment tool, the bill establishes a rebuttable presumption that a large quantity withdrawal will not cause an adverse resource impact if the tool determines that the withdrawal is not likely to do so.

A rebuttable presumption may be rebutted by a preponderance of the evidence that a new or increased large quantity withdrawal from the waters of the State has caused or is likely to cause an adverse resource impact.

#### Water Withdrawal Permit

The bill added Section 32723 to the Act to require the following people, except as provided in the bill, to 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 of water 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 of water 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 of water 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, "Great Lakes and their connecting waterways" means Lakes Superior, Michigan, Huron, Erie, and Ontario and their connecting waterways, including the St. Marys River, Lake St. Clair, the St. Clair River, and the Detroit River. The bill specifies that, for the purposes of Section 32723, Lakes Huron and Michigan are considered a single Great Lake.)

Under the bill, a person may apply for a permit by submitting to the DEQ an application containing the information described in Section 32706. Additionally, until five years after the bill's effective date, the applicant must submit a \$2,000 application fee. The DEQ must transmit the water use reporting fees collected under the bill to the State Treasurer to be credited to the Water Use Protection Fund (described below). The DEQ must provide public notice of all the applications it receives.

(Section 32706 requires each registration under Part 327 to consist of a statement and supporting documentation that includes the following:

- The place and source of the proposed or existing withdrawal.
- The location of any discharge or return flow.
- The location and nature of the proposed or existing water user.
- The actual or estimated average annual and monthly volumes and rate of withdrawal.
- The actual or estimated average annual and monthly volumes and rates of consumptive use from the withdrawal.)

Under Part 327, the State Treasurer may receive money or other assets from any source for deposit into the Water Use Protection Fund. Previously, the DEQ could spend the Fund money, upon appropriation, only for the implementation and administration of Part 327 and the preparation of the statewide groundwater inventory and map. Under the bill, the Department also may spend Fund money for the expenses of the Groundwater Conservation Advisory Council under Part 328 (Aquifer Protection).

The bill provides that an application is considered to be administratively complete effective 30 days after the DEQ receives it, unless the Department notifies the applicant in writing during the 30-day period that the application is not administratively complete or that the required application fee has not been paid. If the DEQ determines that the application is not administratively complete, the notice must specify the information necessary to make it complete. If the DEQ notifies the applicant, the 30-day period must be tolled until the applicant submits to the DEQ the specified information or fee.

The DEQ must decide whether to grant or deny a permit within 120 days after receiving an administratively complete application. The DEQ must issue a permit for new or increased withdrawal capacity from waters other than the Great Lakes and their connecting waterways if it determines that the withdrawal is not likely to cause an adverse resource impact. The DEQ must issue a permit for new or increased withdrawal capacity from the Great Lakes or their connecting waterways if all of the following conditions are met:

- All water withdrawn, less any consumptive use, is returned, either

naturally or after use, to the source watershed.

- The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts.
- The withdrawal will be implemented so as to ensure that it is 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 (described below, under **BACKGROUND**).
- The proposed use is reasonable under common law principles of water law in Michigan.
- The applicant has considered voluntary generally accepted water management practices or environmentally sound and economically feasible water conservation measures.

(Under Part 327, "consumptive use" meant that 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 other processes. The bill includes in the definition water withdrawn or withheld from the Basin due to incorporation into agricultural products, and use as part of the packaging of products or agricultural products. The bill specifies that consumptive use includes a withdrawal of waters of the Great Lakes Basin that is packaged within the Basin in a container of 5.7 gallons (20 liters) or less.

The bill defines "generally accepted water management practices" as standards or guidelines for water use that ensure water is used efficiently. "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

- Are environmentally sound.
- Reflect best practices applicable to the water use sector.
- Are technologically feasible and available.
- Are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

- Consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the process employed, and other appropriate factors.

The bill defines "source watershed" as the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake, the source watershed is considered to be the watershed of that Great Lake and its connecting waterways. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake, then the source watershed is considered to be the watershed of that Great Lake, with a preference for returning water to the direct tributary stream watershed from which it is withdrawn.)

The bill requires the DEQ to evaluate cumulative adverse resource impacts based upon available information it gathers.

The bill specifies that a permit issued under Part 31 (Water Resources Protection) pursuant to 33 USC 1326(b) is considered sufficient to demonstrate that there will not be an adverse resource impact, and satisfies the conditions for a permit under Section 32723. Upon receiving a permit application and evidence that the applicant holds such a Part 31 permit, the DEQ must grant the applicant a water withdrawal permit under these provisions.

(Under 33 USC 1326(b), any standard established under 33 USC 1311 and 1316 and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. Section 1311 pertains to effluent limitations, and Section 1316 pertains to national standards of performance for the control of the discharge of pollutants.)

The bill allows the DEQ to revoke a permit if it determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

A person who is aggrieved by the DEQ's determination related to a permit may file a sworn petition with the Department setting

forth the grounds and reasons for the complaint and requesting a contested case hearing under the Administrative Procedures Act (APA). The DEQ may reject as untimely a petition filed more than 60 days after action on the permit. The DEQ must issue a final decision on a petition within six months after receiving it. A determination, action, or inaction by the DEQ following a contested case hearing is subject to judicial review as provided in the APA.

The following are not required to obtain a permit under Section 32723:

- A community supply owned by a political subdivision that holds a permit under the Safe Drinking Water Act.
- A person who makes seasonal withdrawals of an average of up to 2.0 million gallons per day over a 90-day period.
- A person engaged in producing bottled drinking water who receives approval by the DEQ under a water source review conducted under the Safe Drinking Water Act.

(The bill defines "community supply" as a public water supply that provides year-round service to at least 15 living units or that regularly provides year-round service to at least 25 residents. "Political subdivision" means that term as defined in the Safe Drinking Water Act, i.e., a city, village, township, charter township, county, district, authority, or portion or combination of any of those entities.)

#### Civil Fine

Under Part 327, the DEQ may request the Attorney General to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of Part 327 or a rule promulgated under it. In addition to any other relief granted, the court may impose a maximum civil fine of \$1,000. Under the bill, a person who knowingly violates Section 32721 or 32723 or the terms of a permit issued under Section 32723 is responsible for the payment of a maximum civil fine of \$5,000 per day of violation.

## Large Quantity Withdrawal not Subject to Permit

Under the bill, a person who intends to make a new or increased large quantity withdrawal for which a permit is not required under Section 32723 may petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact. The petition must be submitted on a form provided by the DEQ. The person must submit with the petition a report containing the information described in Section 32706 and an evaluation of existing environmental, hydrological, and hydrogeological conditions and the predicted effects of the intended withdrawal that provides a reasonable basis for the determination to be made. Additionally, the petitioner must include a \$5,000 fee. The DEQ must submit water use reporting fees collected under these provisions to the State Treasurer to be credited to the Water Use Protection Fund.

The bill specifies that a petition is considered administratively complete effective 30 days after the DEQ receives it, unless the DEQ notifies the petitioner in writing during the 30-day period that the petition is not administratively complete or that the required fee has not been paid. If the DEQ notifies the petitioner, the 30-day period must be tolled until the petitioner submits to the DEQ the appropriate information or fee.

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 petitioner can meet the criteria to obtain an affirmative determination. In making a determination with regard to a community supply owned by a political subdivision, the DEQ must consider factors specified in the Safe Drinking Water Act for a proposed waterworks system (under Senate Bill 857), i.e., whether there is a feasible and prudent alternative location for the withdrawal, as well as approval conditions related to depth, pumping capacity, rate of flow, and ultimate use to ensure that the environmental impact of the withdrawal is balanced by its public benefit related to public health, safety, and welfare.

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 or is likely to cause an adverse resource impact.

## Annual Report

Under the bill, a person who is required to register new or increased water withdrawal capacity (as Senate Bill 852 requires) or who holds a water withdrawal permit under Section 32723 must file an annual report with the DEQ.

Previously, this requirement applied to a person who owned a registered industrial or processing facility, irrigation facility, or farm.

Under the bill, if the source of the water withdrawn is groundwater, the report must include the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet. This distance previously was 15 feet.

The report also previously had to include the static water level of the aquifer or aquifers if the source of the water withdrawn was groundwater. Under the bill, this information must be included if practicable.

Additionally, under the bill, at the discretion of the registrant or permit holder, the report may include the withdrawal's baseline capacity (defined below) and, if applicable, a description of the system capacity. If the registrant or permit holder chooses to report the baseline capacity, that information must be included in the next report the registrant or permit holder submits after the bill's effective date. Information reported under this provision must be reported to the DEQ on only one occasion.

Information provided to the DEQ related to the system capacity is exempt from disclosure under the Freedom of Information Act (FOIA), and may not be disclosed unless the DEQ determines that the withdrawal is causing an adverse resource impact.

At the registrant's or permit holder's discretion, the report also may include the amount of water returned to the source watershed.



Under the bill, a person who withdraws less than 1.5 million gallons of water in any year must indicate this fact on the reporting form and is not required to provide the amount and rate of water withdrawn on an annual and monthly basis, or the amount of consumptive use. In addition, the person does not have to pay the annual water use reporting fee.

The bill increased the water use reporting fee from \$100 to \$200 until a water withdrawal tool (as required by Senate Bill 851) becomes effective upon legislative enactment. The \$100 fee will be restored when the assessment tool takes effect. Part 327 requires the DEQ to transmit the reporting fees to the State Treasurer to be credited to the Water Use Protection Fund.

Under Part 327, a farm owner who reports by submitting a water conservation plan is exempt from the reporting requirement, as well as the reporting fee. The bill similarly exempts a person who withdraws less than 1.5 million gallons in any year, and requires the person to indicate this fact on the reporting form. Additionally, the person is not required to provide the amount and rate of water withdrawn on an annual and monthly basis, or the amount of consumptive use of the water withdrawn, as other registrants and permit holders are required to report.

(The bill defines "baseline capacity" as the following applicable withdrawal capacity as reported to the DEQ or the MDA, as appropriate, by the person making the withdrawal in the person's April 1, 2007, annual report, or water use conservation plan (described below):

- For a community supply, the total designed withdrawal capacity for the supply under the Safe Drinking Water Act on the bill's effective date.
- Unless otherwise reported under this provision, for a quarry or mine that holds an authorization to discharge under Part 31 that includes a discharge volume, the discharge volume stated in the authorization on the bill's effective date.
- The system capacity used or developed to make a withdrawal on the bill's effective date, if the annual report includes the system capacity and a description of it.

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

#### DEQ Report

The bill requires the DEQ to submit to the Senate and House Appropriations Committees, as well as the standing committees with jurisdiction primarily related to natural resources and the environment, a biennial report that identifies the Department's costs in reviewing petitions and permit applications. The report also must detail the revenue generated from petitions, permit applications, and reporting fees.

#### Exemption from Part 327 Requirements

The bill exempts withdrawals under Parts 111 (Hazardous Waste Management), 115 (Solid Waste Management), 201 (Environmental Remediation), and 213 (Leaking Underground Storage Tanks) from the requirements of Part 327.

#### Common Law Water Rights

The bill specifies that Part 327 may not be construed as affecting or intending to affect or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment.

#### Diversions Out of Great Lakes Basin

Under the bill, the waters of the Great Lakes Basin within the State's boundaries may not be diverted out of the drainage basin of the Great Lakes Basin. (Part 327 previously referred to the Great Lakes, rather than the Great Lakes Basin.) The bill specifies that if this prohibition is determined to be invalid, the waters of the State may not be diverted unless authorized by law. (As previously provided, this prohibition does not apply to a diversion existing on September 30, 1985.)

(The bill defines "diverted" as 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 Great Lakes 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 short-term basis for firefighting, humanitarian, or emergency response purposes.)

When considering whether to grant legislative approval for a diversion, the bill requires the Legislature to consider Sections 51 and 52 of Article IV of the State Constitution and whether the project serves a public purpose, whether the project will result in no material harm to the waters of the State, the public trust, or related purposes, and whether the project would result in any improvement to the waters of the State or the water-dependent natural resources of the State.

(Article IV, Section 51 provides that the public health and general welfare of the people of the State are matters of primary public concern, and directs the Legislature to pass suitable laws for the protection and promotion of the public health. Section 52 provides that the conservation and development of the State's natural resources are of paramount public concern in the interest of the health, safety, and general welfare of the people, and requires the Legislature to provide for the protection of the air, water, and other natural resources from pollution, impairment, and destruction.)

Additionally, the bill requires the Governor to establish a public comment period with regard to a proposal subject to 42 USC 1962d-20 to divert water from the Great Lakes or from a tributary of the Great Lakes outside of the Great Lakes Basin; and to notify the standing committees of the Legislature with jurisdiction over issues primarily pertaining to natural resources and the environment of his or her receipt of the proposal. The Governor may waive the comment period if he or she determines that it is necessary to take immediate action to provide humanitarian relief or firefighting capabilities.

(Section 1962d-20 of Title 42 of the U.S. Code prohibits any water from being diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes Basin unless the diversion or export is approved by the governor of each of the Great Lakes states (i.e., Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin). Additionally, that section prohibits a Federal agency from undertaking any study, or spending any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes or a tributary within the United States, unless the study or expenditure is approved by the governor of each Great Lakes state.)

#### Legislative Finding

The bill states a legislative finding that, "The waters of the Great Lakes basin are capable of concurrently serving multiple uses, and such multiple uses of water resources for municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem and other purposes are encouraged, recognizing that such uses are interdependent and must be balanced."

(Under Part 327, "waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes Basin. "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River.)

#### Constitutional Authority

The bill provides, "The legislature has the authority under sections 51 and 52 of article IV of the state constitution of 1963 to regulate the withdrawal and uses of the waters of the state, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the state from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. This authority extends

to all waters within the territorial boundaries of the state."

### **Senate Bill 851**

Public Act 148 of 2003 added Part 328 (Aquifer Protection) to NREPA, creating the Groundwater Conservation Advisory Council within the DEQ. The bill transferred the Council to the DNR.

The bill eliminated a requirement that the Council study whether the State should provide additional oversight of groundwater withdrawals. Under the bill, the Council still is required to study the sustainability of the State's groundwater use; monitor Annex 2001 implementation efforts and make recommendations on Michigan's statutory conformance with it; and study the implementation of and the results from the groundwater dispute resolution program. The bill also requires the Council to do the following:

- Develop criteria and indicators to evaluate the sustainability of the State's groundwater use.
- Design and make recommendations regarding a water withdrawal assessment tool.
- Study and make recommendations as to whether the State should consider as part of its groundwater conservation programs proposals to mitigate adverse impacts on the State's waters or water-dependent natural resources that could result from groundwater withdrawals.

Under the bill, the Council must appoint a technical advisory committee of individuals with specific technical and legal expertise relevant to the Council's responsibilities.

The bill requires the Council, in consultation with the DEQ, the DNR, the MDA, and the technical advisory committee, to design a water withdrawal assessment tool that can be used to protect and conserve the State's waters and water-dependent natural resources. The assessment tool must be designed to be used by a person proposing a new or increased large quantity withdrawal to assist in determining whether the proposed withdrawal may cause an adverse impact on the State's waters or water-dependent natural resources. Additionally, in consultation with the specified departments and the technical advisory

committee, the Council must make factually based recommendations for the policy-based parameters and variables of the assessment tool, and recommend an appropriate timetable for periodic updates or changes to the tool or its parameters or variables.

The bill requires the Legislature to provide for the adoption of the tool, including its conceptual framework, the policy-based parameters or variables of the tool, and the timetable for updating the tool and its data, and details for the tool's use.

Public Act 148 required the Council, by February 8, 2006, to submit to the Legislature a report, approved by a majority of the voting members, on the Council's findings and recommendations related to its duties. The bill requires the Council, by July 1, 2007, to report its findings and recommendations not previously reported, as well as its findings and recommendations related to duties added by the bill.

As previously required, the Council must include the following members:

- Three individuals appointed by the Senate Majority Leader representing business and manufacturing interests, utilities, and conservation organizations.
- Three individuals appointed by the Speaker of the House of Representatives representing well drilling contractors, local units of government, and agricultural interests.
- Four individuals appointed by the DEQ Director representing nonagriculture irrigators, the aggregate industry, environmental organizations, and the general public.
- Three individuals representing the DEQ, the MDA, and the DNR.

The bill deleted a provision under which the individuals representing the DEQ, MDA, and DNR were nonvoting members who served as information resources to the Council.

To assist the Council in carrying out its additional responsibilities under the bill, in addition to the members serving on the bill's effective date, the bill required the following members to be appointed within 30 days after that date:

- One individual appointed by the Senate Majority Leader representing a statewide agricultural organization.
- One individual appointed by the Speaker of the House who is a registered well driller with knowledge and expertise in hydrogeology.
- Two individuals appointed by the Governor representing municipal water suppliers and a statewide conservation organization.

### **Senate Bill 852**

#### Registration

Previously, a person who made a withdrawal under Part 327 had to register with the DEQ if, during the calendar year in which the withdrawal occurred, the person owned an industrial or processing facility, an irrigation facility, or a farm, with the capacity to withdraw an average of more than 100,000 gallons of water per day in any consecutive 30-day period from the waters of the Great Lakes Basin.

The bill deleted this language. Instead, 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 that withdrawal.

A person who was developing new or increased withdrawal capacity on the bill's effective date, or a person who was not required to register under Part 327 before that date, had to register within 90 days after the bill took effect, but could do so after beginning the withdrawal.

The following people are not required to register:

- A person who has previously registered for that property under Part 327, unless that registrant develops new or increased withdrawal capacity on the property of an additional 100,000 gallons per day from the waters of the State.
- A community supply owned by a political subdivision that holds a permit under the Safe Drinking Water Act.
- A person holding a water withdrawal permit under Section 32723 (added by Senate Bill 850).

- The owner of a noncommercial well on residential property.

The bill specifies that the registration requirement does not limit a property owner's ability to withdraw water from a test well before registration if the well is constructed in association with the development of new or increased capacity and used only to evaluate the development of that capacity.

A registration by a farm owner for a withdrawal intended for an agricultural purpose, including irrigation for an agricultural purpose, must be submitted to the MDA, rather than the DEQ.

A registration must be submitted on a form provided by the DEQ or the MDA, as appropriate.

The DEQ must aggregate information the State receives related to large quantity withdrawal capacities within the State and reported large quantity withdrawals in the State.

#### Water Conservation Plan

Under Part 327, a farm owner who makes a withdrawal for an agricultural purpose may register the farm address and report the water use by submitting to the MDA an annual water use conservation plan, instead of registering as described above. The bill requires conservation plans to be submitted by April 1 of each year.

The water use conservation plan must include all of the following information:

- The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.
- The type of crop irrigated, if applicable.
- The acreage of each irrigated crop, if applicable.
- The source or sources of the water supply.
- If the water withdrawn is not used entirely for irrigation, the use or uses of the withdrawn water.
- Applicable water conservation practices and an implementation plan for them.
- If the source of the withdrawn water is groundwater, the static water level of the aquifer or aquifers (if practicable, under the bill).

Also, under the bill, if the source of the water withdrawn is groundwater, the conservation plan must include the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

Under the bill, at the registrant's discretion, the plan may include the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity. If the registrant chooses to report this information, it must be included in the next report the registrant submits after the bill's effective date. This information must be reported to the MDA only on one occasion.

The bill deleted a requirement that a farm owner register the farm address.

The bill also deleted a requirement that the MDA use the water use conservation plan information to determine an estimate of water use and consumptive use data for each township in the State and forward the data to the DEQ for inclusion in the statewide groundwater inventory and map prepared under Section 32802. (That section requires the DEQ to collect and compile groundwater data into a statewide inventory and map, and update it as new information becomes available.) Instead, the following information received by the MDA in the water use conservation plan must be forwarded for inclusion in the inventory and map:

- The amount and rate of water withdrawn on an annual and monthly basis.
- The source or sources of the water supply.
- The location of the well or wells in latitude and longitude, if the sources of the water are groundwater.

The bill specifies that information regarding the amount and rate of water withdrawn, the location of the wells, and the baseline capacity is exempt from disclosure under FOIA. The DEQ, the MDA, and the DNR may not disclose that information unless the DEQ determines that the withdrawal is causing an adverse resource impact.

#### Water Use Conservation Practices

The bill required each water user's sector, by February 28, 2007, 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, 2008, the DEQ must report to the standing committees of the Legislature on whether there are reasonably detailed criteria for assisting a facility in determining whether water is being used in an efficient manner. Such guidelines may be adopted by an established statewide professional or trade association representing that sector.

The bill specifies 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.

#### **Senate Bill 854**

The bill encourages all people making large quantity withdrawals within a watershed 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 reasonably scientifically based evidence that adverse resource impacts are occurring or are likely to occur from a large quantity withdrawal, it must notify the 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. The DEQ may propose a solution that it believes would resolve the situation equitably and prevent adverse resource impacts if the registrants and permit holders cannot voluntarily agree to preventative measures within 30 days. The recommended solution will not be binding on any of the parties.

The DEQ Director, without a prior hearing, may order a permit holder immediately to restrict a withdrawal if he or she determines that there is a substantial and imminent

threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order must specify the date on which the withdrawal must be restricted and the date on which it may be resumed. An order may remain in force and effect for up to 30 days, and may be renewed for an additional 30 days if the Director determines by clear and convincing scientific evidence that conditions continue to pose a substantial and imminent threat of an adverse resource impact. The order must notify the permit holder that the person may request a contested case hearing under the APA within 10 business days, unless the permit holder requests a later date. As an alternative to requesting a contested case hearing, a person subject to an order may seek judicial review as provided in the Revised Judicature Act.

A registrant or permit holder may submit to the DEQ Director a petition alleging that adverse resource impacts are occurring or are likely to occur from one or more water withdrawals. The DEQ Director must either investigate the petition or, if the withdrawals are from an agricultural well, forward it to the MDA Director. The petition must be in writing and include all of the information the DEQ or MDA Director requests.

The DEQ Director may order a person who submits more than two unverified petitions within one year to pay for the full costs of investigating any subsequent unverified petition. "Unverified petition" means a petition in response to which the Director determines that there is not reasonable evidence to suspect adverse resource impacts.

### **Senate Bill 857**

#### **Waterworks System**

Under the Safe Drinking Water Act, upon receiving the plans and specifications for a proposed waterworks system, the DEQ must evaluate its adequacy to protect the public health by supplying water meeting State drinking water standards. The bill also requires the DEQ to evaluate the impact of the proposed system as described below, if applicable. As previously provided, the DEQ may reject plans and specifications for a system that will not satisfactorily provide for the protection of public health. Under the bill, the DEQ also may reject plans and

specifications if they do not meet the standards described below, if applicable.

The bill permits 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 per day from the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

The DEQ must reject the plans and specifications if it determines that the system will not meet the applicable standard provided in Section 32723(5) or (6) of NREPA unless both of the following conditions are met:

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

(Section 32723(5) requires the DEQ to issue a permit to a person who develops new or increased capacity to withdraw more than 2.0 million gallons per day from waters other than the Great Lakes and their connecting waterways to supply a common distribution system if it determines that the withdrawal will not cause an adverse resource impact. Subsection (6) requires the DEQ to issue a permit to a person who

develops new or increased capacity to withdraw 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system if specified conditions are met, as listed in the description of Senate Bill 850, above.)

### Bottled Water

Under Section 17 of the Safe Drinking Water Act, a person engaged in producing bottled drinking water must use a water source meeting the Act's requirements.

The bill also requires a person who proposes 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 to demonstrate to the DEQ's satisfaction that all of the following conditions will be met:

- The proposed use is not likely to have an adverse resource impact.
- The proposed use is reasonable under common law principles of water law in Michigan.
- The withdrawal will be conducted in a manner that protects riparian rights as defined by Michigan common law.
- The person will undertake activities, if needed, to address hydrologic impacts commensurate with the nature and extent of the withdrawal, including activities related to the stream flow regime, water quality, and aquifer protection.

Before proposing such activities, the person must consult with local government officials and interested community members.

Before making its determination, the DEQ must provide public notice and an opportunity for public comment.

If the person proposing to engage in producing bottled drinking water in the quantity described above does not have a waterworks system permit, the person must request a determination from the DEQ upon application for the permit. If the person previously has received a permit, the person must request the determination before beginning the operations.

A person seeking a departmental determination must submit to the DEQ a

\$5,000 application fee. The DEQ must transmit application fees to the State Treasurer to be credited to the Water Use Protection Fund.

The bill specifies that Section 17 may not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment.

MCL 324.30103 et al. (S.B. 850)  
324.32803 (S.B. 851)  
324.32705 et al. (S.B. 852)  
324.32725 (S.B. 854)  
325.1004 & 325.1017 (S.B. 857)

### **BACKGROUND**

#### Great Lakes Basin Water Resources Compact

The following is a brief overview of the Great Lakes-St. Lawrence River Basin Water Resources Compact. As noted above, the Compact must be approved by the legislatures of all of the Great Lakes states and the U.S. Congress to take effect. If approved, the binding Compact will implement Annex 2001.

The Compact creates the Great Lakes-St. Lawrence River Basin Water Resources Council, and requires it to promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the Great Lakes-St. Lawrence River Basin. The Council may conduct research and investigations, institute court actions, own property, and enter into contracts.

Within five years after its effective date, the Compact requires any person who withdraws an average of at least 100,000 gallons of water per day over a 30-day period, or diverts any amount of water from the Basin, to register the withdrawal or diversion by a date set by the Council, unless the person previously has registered in accordance with an existing state program.

Also, within five years of the Compact's effective date, each party must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard (described below).

Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to it. A party that fails to set threshold levels that comply with the Compact within 10 years after it takes effect must apply a threshold level for management and regulation of all new or increased withdrawals of an average of at least 100,000 gallons per day over a 90-day period.

Beginning five years after the Compact takes effect, an originating party (the party in whose jurisdiction an application is made) must give the other parties detailed and timely notice, as well as an opportunity for comment, on any proposal for a new or increased consumptive use of an average of at least 5.0 million gallons per day over a 90-day period.

Proposals subject to management and regulation of new or increased withdrawals and consumptive uses will be considered to meet the decision-making standard and may be approved as appropriate only if the following criteria are met:

- All water withdrawn will be returned to the source watershed, less an allowance for consumptive use.
- The withdrawal or consumptive use will be implemented to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters, the water-dependent natural resources, or the applicable watershed.
- The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures.
- The withdrawal or consumptive use will be implemented so as to ensure its compliance with all applicable municipal, state, and Federal laws and regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
- The proposed use is reasonable, based upon specified factors.

Additionally, within two years after the Compact's effective date, each party must develop its own water conservation and efficiency goals and objectives, and develop and implement a conservation and efficiency

program, either voluntary or mandatory, within its jurisdiction.

### Boundary Waters Treaty of 1909

The Boundary Waters Treaty is an agreement into which the United States and the United Kingdom entered to enumerate the rights, obligations, and interests of the United States and Canada regarding the use of boundary waters, and to establish a mechanism to resolve and prevent disputes. The Treaty established the International Joint Commission (IJC) and prescribes its powers and duties. Additionally, the document states that the parties agree to the following:

- The navigation of all navigable boundary waters must remain free and open for the purposes of commerce.
- Each party reserves to itself or to the affected state or provincial governments the exclusive jurisdiction and control over the use and diversion of all waters on its respective side of the boundary that naturally would flow over the boundary or into boundary waters.
- A party may not make a use, obstruction, or diversion of boundary waters on its side that would affect the natural level or flow of boundary waters on the other side without approval from the IJC.
- A party may not permit on its side of the boundary the construction or maintenance of any remedial or protective works or any dams or other obstructions in boundary waters that would raise the natural level of waters on the other side of the boundary without IJC approval.
- Boundary waters may not be polluted on either side to the injury of health or property on the other.

### **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**

Water is a defining characteristic of Michigan, the only state located entirely within the Great Lakes Basin. Lakes, rivers, and streams are fundamental to the State's economic vitality. Water-based recreation and tourism are the lifeblood of many communities, and many of the State's



industries, including manufacturing and agriculture, rely on an abundant supply of water. Although water is plentiful within the Great Lakes Basin as a whole, groundwater shortages at least partly attributable to large-scale withdrawals have occurred in specific areas. In order to preserve one of the State's most valuable resources for future generations, it is critical that sustainable use policies are enacted. This package of legislation implements reasonable, science-based regulations that apply fairly to all large-quantity water users, and creates certainty for businesses making decisions about location, expansion, and equipment investment.

Senate Bills 850 and 852 enacted withdrawal permit and registration requirements, provisions necessary for the implementation of the Great Lakes Charter.

Senate Bill 851 ensures that the Groundwater Advisory Council enacted under Public Act 148 of 2003 remains in existence. Under Public Act 148, the Council had to submit a report to the Legislature on its findings and recommendations within two and a half years after the Act's effective date (August 8, 2003), and disband six months after that. Under Senate Bill 851, in addition to retaining most of its previous responsibilities, the Council will be involved with the development of the assessment tool and provide further examination of and make recommendations regarding the State's water use policies.

The assessment tool under Senate Bill 851 will provide independent standards by which large users easily can determine the impact of their withdrawals and voluntarily adjust practices. According to Senate Natural Resources and Environmental Affairs Committee testimony, the assessment tool ultimately will consist of an on-line map of the State on which a user simply can click to establish whether a withdrawal would cause an adverse resource impact.

Senate Bill 854 establishes a process through which the DEQ, large-quantity users, and local government officials can address disputes regarding water withdrawals, and provide for the temporary restriction of a withdrawal if necessary. The community-based process should result in timely and equitable resolution based on voluntary measures, and might reduce the

need for stronger enforcement action by the DEQ or costly, time-consuming litigation.

Imposing excessive regulations on large-scale water users could have a negative impact on jobs and communities. The bills strike the appropriate balance between conservation and concern for the environment, protection of riparian rights, and the ability of commercial interests to continue using water to support the State's economic well-being.

**Response:** Although the bills make progress in the law, it still could be improved. For example, the criteria by which adverse resource impacts are measured under Senate Bill 850 should be expanded beyond the health of characteristic fish populations. Large withdrawals can cause environmental damage that might affect other biological communities before the body of water's ability to support the fish population is "functionally impaired".

Senate Bill 850 also falls short in that, until two years after its effective date, it prohibits adverse resource impacts to trout streams only. The bill's protections should be applied immediately to all lakes and streams without discrimination. Even though trout streams and trout populations provide an effective barometer to measure the health of the environment, all bodies of water should have been included from the time the bill took effect.

Further, although the bills require the Council to study water management and conservation practices and require each sector to begin developing industry-specific practices, businesses should be required to certify that they are complying with those measures. The demonstration of stewardship by businesses in the State would help strengthen Michigan's opposition to diversions by other states.

### **Supporting Argument**

The Federal Water Resources Development Act requires the approval of each governor of each Great Lakes state for diversions outside the Great Lakes Basin, but there is no guarantee that this requirement will remain in place in the future. Additionally, although NREPA prohibits diversions out of the Basin, the prohibition potentially could be found invalid. Thus, it was necessary to implement additional State-level protections against diversions outside of the Basin, such

as the public comment and legislative approval requirements of Senate Bill 850.

### **Supporting Argument**

By classifying bottled water as a consumptive use, rather than a diversion, Senate Bill 850 protects private property rights and economic activity. Water sold on its own should not be regulated differently from water consumed in various manufacturing and food processing operations. This provision, together with the permit program for bottled water producers established by Senate Bill 857, enables bottled water companies to continue operations while upholding the doctrine that the State's water belongs to the public.

**Response:** While the permit system for bottled water producers is an improvement over the previous law, water sold in other states in small bottles should not be excluded from the definition of "diverted". Whether water is sent out of the Basin in large quantities via tanker, or packaged in smaller containers and sold in grocery stores, the source and impact on the environment are the same. Allowing private companies to continue shipping such large quantities of water out of the Basin undermines the public trust.

### **Opposing Argument**

The bills' permit and registration requirements could increase costs for businesses and make Michigan a less attractive place to locate and create jobs. Additionally, the bills open the door for more extensive regulation in the future and the erosion of private property rights.

### **Opposing Argument**

Under Senate Bill 852, information received by the DEQ about wells, including their location, is exempt from FOIA. That Act requires such information to be made available.

**Response:** This information should be kept confidential due to concerns about vandalism and contamination. In the interest of public safety, it is important that those seeking to do harm do not have access to information that would enable them to dump poisonous chemicals down farmers' wells and threaten food supplies.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

### **Senate Bills 850, 851, and 852**

The bills will result in an indeterminate cost to the State. Senate Bill 850 establishes a \$2,000 application fee for a permit to withdraw more than an average of 2.0 million gallons per day. According to the DEQ, in 2006 there were five facilities withdrawing an amount that would necessitate a permit under the bill, which would result in revenue of \$10,000. The permit fee will sunset five years after the bill's effective date of March 1, 2006.

Senate Bill 850 also increased the water use reporting fee from \$100 to \$200. Doubling the fee will double the annual revenue. Approximately 1,030 facilities have paid this fee for annual revenue of \$103,000. The increased fee will result in annual revenue of \$206,000. This will last until a water withdrawal assessment tool is established in law; then, the fee will return to \$100 and the annual revenue will decrease as well.

Senate Bill 850 allows a person to petition the DEQ for a determination that the person's large quantity withdrawal will not have an adverse resource impact. A fee of \$5,000 must be submitted with the petition to cover the DEQ's costs for investigating and issuing a determination. It is unknown how many petitions will be filed or how much revenue will be collected from this fee.

All of the fees will be deposited into the Water Use Protection Fund. This fund is used for implementation and administration of this program. The bill also expanded the use of the Fund to include expenses of the Groundwater Conservation Advisory Council.

In addition, Senate Bill 850 added a civil penalty of up to \$5,000 per day of violation for large quantity withdrawals that cause an adverse resource impact to a designated trout stream or for failure to have a permit or for violation of the terms of a permit for water withdrawals over 2.0 million gallons per day. Fine revenue will depend on the number and length of the violations of the new provisions. Civil fines are deposited into the General Fund.

Senate Bill 851 will result in expenses for development of a water withdrawal assessment tool. An appropriation of

\$500,000 from the Clean Michigan Initiative-Clean Water Fund was enacted in Public Act 153 of 2006 for this purpose. The Clean Water Fund was funded with \$90.0 million from the Clean Michigan Initiative bond.

Also, under Senate Bill 851, the Department of Natural Resources will incur administrative expenses for assistance it provides to the Groundwater Conservation Advisory Council. The support will come from existing resources.

Under Senate Bill 852, the DEQ will incur slight administrative expenses related to the reporting of water use conservation plans developed by water withdrawal users and reporting on the development of water management plans by each water user sector.

#### **Senate Bill 854**

The bill will increase administrative expenses by an indeterminate amount for DEQ activities, including the convening of meetings of the water users committees, enforcement of orders issued by the Director, and investigation of petitions alleging adverse resource impacts.

#### **Senate Bill 857**

The bill will have an indeterminate fiscal impact on the State. The bill established a fee of \$5,000 for a determination from the DEQ that all conditions have been met for a new or increased large quantity withdrawal for bottled drinking water. This fee applies only if the person does not already have a permit, as required under Senate Bill 850. It is unknown how many determinations will be requested. The revenue will be deposited into the Water Use Protection Fund. The DEQ also will incur some expenses when evaluating the impact of a waterworks system proposed by a community supplier.

Fiscal Analyst: Jessica Runnels

#### **A0506\s850ea**

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.