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BILL ANALYSIS

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Senate Bill 850 (Substitute S-6 as reported)
Senate Bill 851 (Substitute S-4 as reported)
Senate Bill 852 (Substitute S-5 as reported by the Committee of the Whole)
Sponsor: Senator Patricia L. Birkholz (S.B. 850)
 Senator Bruce Patterson (S.B. 851)
 Senator Gerald Van Woerkom (S.B. 852)
Committee: Natural Resources and Environmental Affairs

CONTENT

Senate Bill 850 (S-6) would amend Parts 301 (Inland Lakes and Streams) and 327 (Great Lakes Preservation) of the Natural Resources and Environmental Protection Act 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.
- Add Section 32721 to prohibit a person from making a large quantity withdrawal that caused an adverse resource impact to a designated trout stream; or, beginning two years after the bill took effect, from making a large quantity withdrawal that caused any adverse resource impact.
- Establish a rebuttable presumption that a new or increased large quantity withdrawal meeting specified criteria would not cause an adverse resource impact, until the enactment of a water withdrawal assessment tool (as proposed by Senate Bill 851).
- Add Section 32723 to require certain users (described below) to obtain a water withdrawal permit, and prescribe a \$2,000 application fee for five years after the bill took effect.
- 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 became effective.
- Allow a person who intended to make a new or increased large quantity withdrawal for which a permit was not required to petition the Department of Environmental Quality (DEQ) for a determination that the withdrawal would not cause an adverse resource impact; and prescribe a \$5,000 petition fee.
- Require the DEQ to submit a biannual 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 regulated 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 exempts from Part 327 a public water supply system that is required to report water withdrawals under the Safe Drinking Water Act.

- Repeal Section 32712, which specifies that the DEQ is not authorized to mandate any permit or regulate water withdrawals covered under Part 327.

Under the bill, "large quantity withdrawal" would mean one or more cumulative total withdrawals of an average more than 100,000 gallons of water per day in any consecutive 30-day period that supplied a common distribution system. "Adverse resource impact" would mean decreasing the flow of a stream by part of the index flow, or decreasing the level of a body of surface water, so that the stream's or water body's ability to support characteristic fish populations was functionally impaired.

The bill would require the following people to obtain a water withdrawal permit under proposed Section 32721:

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

Senate Bill 851 (S-4) would amend Part 328 (Aquifer Protection) of the Act to do the following:

- Transfer the Groundwater Conservation Advisory Council from the DEQ to the Department of Natural Resources (DNR).
- Require the appointment of additional members to the Council to assist it in carrying out duties added under the bill.
- 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 Council to develop criteria and indicators to evaluate the sustainability of the State's groundwater use.
- Require the Legislature to provide for the adoption of the tool.

Senate Bill 852 (S-5) would amend Part 327 to do the following:

- Extend the requirements for registering with the DEQ to the owner of real property who had 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 the DEQ, in conjunction with the MDA, to encourage each sector of water withdrawal users to develop generally accepted water management practices, identify sectors that had developed those practices, and report that information to the Legislature.

The bills are tie-barred to each other and to Senate Bills 854 and 857.

FISCAL IMPACT

The bills would result in an indeterminate cost to the State. Senate Bill 850 (S-6) would establish 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, there are five facilities currently withdrawing an amount that would necessitate a permit under the bill, which would result in revenue of \$10,000. The permit fee would sunset five years after the bill's effective date.

Senate Bill 850 (S-6) would increase the water use reporting fee from \$100 to \$200. Doubling the fee would double the annual revenue. Currently, approximately 1,030 facilities pay this fee for annual revenue of \$103,000. The increased fee would result in annual revenue of \$206,000. This would last until a water withdrawal assessment tool was established in law, then the fee would return to \$100 and the annual revenue would decrease as well.

Senate Bill 850 (S-6) would allow a person to petition the DEQ for a determination that their large quantity withdrawal would not have an adverse resource impact. A fee of \$5,000 would have to be submitted with the petition to cover the DEQ's costs for investigating and issuing a determination. It is unknown how many petitions would be filed and revenue collected from this fee.

Senate Bill 850 (S-6) would add a civil penalty of up to \$5,000 per day of violation for large quantity withdrawals that caused 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 would depend on the number and length of the violations of the new provisions. Civil fines are deposited into the General Fund.

Senate Bill 851 (S-4) would result in expenses for development of a water withdrawal assessment tool. (Senate Bill 242 (S-1), as passed by the Senate, would appropriate \$500,000 from the Clean Michigan Initiative-Clean Water Fund for this purpose. The Clean Water Fund was funded with \$90.0 million from the Clean Michigan Initiative bond. At the close of FY 2004-05, the unencumbered balance of this fund was about \$970,000.)

Also, under Senate Bill 851 (S-4), the Department of Natural Resources would incur administrative expenses for assistance it would provide to the Groundwater Conservation Advisory Council. The support would come from existing resources.

Under Senate Bill 852 (S-5), the DEQ would incur slight administrative expenses related to the reporting of water use conservation plans developed by water withdrawal users.

Date Completed: 12-8-05

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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.