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FISCAL IMPACT STATEMENT

LS 6875

BILL NUMBER: SB 249

NOTE PREPARED: Jan 5, 2024

BILL AMENDED:

SUBJECT: Major Ground Water Withdrawal Facilities.

FIRST AUTHOR: Sen. Deery

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Major Ground Water Withdrawal Facility:* The bill defines a facility as a "major ground water withdrawal facility" if:

- (1) the facility includes one or more wells that have the capability of withdrawing at least 10 million gallons of ground water from one or more aquifers in one day; and
- (2) the facility is connected, or plans provide for the facility to be connected, to pipeline facilities through which at least 10 million gallons of ground water withdrawn by the facility's well or wells could be transported in one day to a destination located at least 20 miles from the facility.

The bill provides that, after June 30, 2024, a person may not establish a major ground water withdrawal facility if the ground water withdrawn by the facility will be used primarily for:

- (1) commercial purposes;
- (2) industrial purposes; or
- (3) a combination of commercial purposes and industrial purposes; unless the person has obtained a permit from the Natural Resources Commission (NRC).

Facility Permitting: The bill establishes the following prerequisites to the NRC's issuance of a permit:

- (1) Public notice of the permit application must be provided through publication on the website of the Department of Natural Resources (DNR).
- (2) Public notice of the permit application must be provided by first class mail to the executive of the county and to the executives of certain cities or towns.
- (3) At least two public hearings concerning the proposed major ground water withdrawal facility must be held.
- (4) A written feasibility study concerning the proposed major ground water withdrawal facility must

be prepared.

(5) The written feasibility study must be peer reviewed.

(6) The feasibility study and the written results of the peer review must be published on the website of the DNR.

The bill provides that the NRC shall issue the permit if:

(1) all of the prerequisites are satisfied; and

(2) the NRC determines that the establishment of the major ground water withdrawal facility, if permitted, will fulfill the health, economic, environmental, and other needs of present and future generations of Indiana citizens.

The bill provides that, depending on the determinations of the feasibility study and the peer review, the permit may limit the maximum amount that the major ground water withdrawal facility may withdraw and transfer per year. It provides that a permit, if issued, must require the permit holder to regularly monitor the aquifer or aquifers from which the major ground water withdrawal facility withdraws ground water and must report the monitoring data to the DNR.

Timely and Reasonable Compensation: The bill provides that the owner of a major ground water withdrawal facility may be ordered to provide timely and reasonable compensation to the owner of a nonsignificant ground water withdrawal facility or significant ground water withdrawal facility if water withdrawals by the major ground water withdrawal facility cause the nonsignificant ground water withdrawal facility or significant ground water withdrawal facility to fail to furnish the supply of water it normally furnishes or to fail to furnish potable water.

Effective Date: July 1, 2024.

Explanation of State Expenditures: *Limitless Exploration/Advanced Pace (LEAP) District Supply Wells:* Expenses could increase for the Indiana Economic Development Corporation or the Indiana Finance Authority if they have not completed the prerequisites required by the bill for the current ground water withdrawal contract to supply water to the LEAP District in Boone county.

Timely and Reasonable Compensation for Ground Water Emergency: Under current law, the DNR is to declare a ground water emergency if an investigation (in response to a written complaint) reveals that a significant ground water withdrawal facility has lowered the level of ground water causing a nonsignificant ground water withdrawal facility to fail to furnish its normal supply of water or fail to furnish potable water. The DNR must also order the significant ground water withdrawal facility to provide timely and reasonable compensation to the complainant. The bill extends this provision to require a major ground water withdrawal facility, if it is the cause of a reduced supply or reduced potability of water, to provide timely and reasonable compensation to the owner of a significant or nonsignificant ground water withdrawal facility.

Therefore, if future water withdrawals by the IEDC's major ground water withdrawal facility (or another major ground water withdrawal facility later established) is determined to be the cause of a reduced supply or reduced potability of water, and a ground water emergency is declared, the IEDC's facility would have increased expenses to provide timely and reasonable compensation to the owner of a significant or nonsignificant ground water withdrawal facility.

Workload Increase: Workload could increase for the NRC to publish notices regarding major ground water withdrawal facilities seeking the issuance of a permit; publish notices of public hearings; mail notices to

executives of counties, cities, and towns; review feasibility studies; and hold at least two public hearings regarding the issuance of a permit. (The bill specifies that the permit applicant is required to pay the expenses of holding a meeting.)

The bill provides that the NRC must determine that the establishment of the major ground water withdrawal facility will fulfill the health, economic, environmental, and other needs of present and future generations of Indiana citizens in order for them to issue the permit. If the NRC does not make a determination to either issue or deny a permit within 90 days of submission, they must submit a report to the General Assembly with the reason(s) why they are unable to make a determination. These requirements are within the NRC's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary staffing and resource levels. The bill provides that an action by the NRC to issue or deny a permit application is subject to judicial review by the courts.

If a major ground water withdrawal facility is established, the DNR would determine the frequency and format that a permit holder must report data to the DNR regarding the ground water level and changes to surface features. This is within the routine administrative functions of the DNR.

Additional Information: "Timely and reasonable compensation" is defined in IC 14-25-4-18. It requires providing or reimbursing the affected facility the immediate and temporary provision of an adequate supply of potable water at the prior point of use, repairs to affected wells, and ways to ensure an affected well regains its normal supply and potability of water.

Explanation of State Revenues: *Timely and Reasonable Compensation for Ground Water Emergency:* If future water withdrawals by the IEDC's major ground water withdrawal facility (or another major ground water withdrawal facility later established) is determined to be the cause of a reduced supply or reduced potability of water, and a ground water emergency is declared, state agencies that own significant and nonsignificant ground water withdrawal facilities would receive "timely and reasonable compensation." However, the revenue received would be used to recover costs already incurred.

Additional Information: A significant ground water withdrawal facility is defined as the facilities of a person (or group acting in concert) that, in aggregate from all sources and by all methods, has the capability to withdraw more than 100,000 gallons of ground water and/or surface water in day. [Nonsignificant ground water withdrawal facilities have the capability to withdraw less than 100,000 gallons per day.] Current law requires owners of significant ground water withdrawal facilities to register with the DNR and report water use on an annual basis. The state owns significant ground water withdrawal facilities registered under the ownership of the DNR, the Indiana Department of Administration, the Indiana Department of Transportation, Logansport State Hospital, Westville Correctional Facility, Ball State University, Purdue University, and multiple state parks.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Timely and Reasonable Compensation for Ground Water Emergency:* If future water withdrawals by the IEDC's major ground water withdrawal facility (or another major ground water withdrawal facility later established) is determined to be the cause of a reduced supply or reduced potability of water, and a ground water emergency is declared, local units that own significant and nonsignificant ground water withdrawal facilities would receive "timely and reasonable compensation." However, the revenue received would be used to recover costs already incurred. Local units own significant ground water withdrawal facilities registered under the ownership of cities, towns, schools, water utilities,

airport authorities, and parks and recreation departments.

State Agencies Affected: Department of Natural Resources; Indiana Economic Development Corporation; Natural Resources Commission; and potentially any state agency with a significant or nonsignificant ground water withdrawal facility.

Local Agencies Affected: Local units and utilities with a significant or nonsignificant ground water withdrawal facility, courts.

Information Sources:

IEDC, IFA: LEAP Project:

<https://www.iedc.in.gov/leap-lebanon>;

<https://www.iedc.in.gov/MapFiles/site01/LEAP-Lebanon-FAQs.pdf>;

<https://www.in.gov/sba/files/3.-June-2022-Agenda.pdf>;

<https://www.in.gov/sba/files/2.-June-2023-Budget-Committee-Agenda-Final.pdf>;

<https://www.in.gov/ifa/regional-water-studies/north-central-indiana-water-study/>;

<https://secure.in.gov/apps/iedc/transparencyportal/viewtaxgrantloancontract/5ac468f49792ed11aad1001dd806af48>;

https://www.purdueexponent.org/city_state/article_bd81324a-832b-11ee-8f50-cfeb3e4e4b2f.html.

DNR, Significant Water Withdrawal Facilities, Ground Water Emergencies:

<https://www.in.gov/dnr/water/water-availability-use-rights/significant-water-withdrawal-facility-data/>;

<https://www.in.gov/dnr/water/water-availability-use-rights/water-rights-emergency-regulation/>.

DNR, administrative and judicial review:

<https://www.in.gov/nrc/administrative-review/administrative-guide/>.

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