



**House  
Legislative  
Analysis  
Section**

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**AG: PROTECT GROUNDWATER**

**House Bill 5162**

**Sponsor: Rep. Tom Alley**

**Committee: Conservation, Environment  
& Great Lakes**

**Complete to 11-29-93**

**A SUMMARY OF HOUSE BILL 5162 AS INTRODUCED 10-26-93**

The bill would amend the Fertilizer Act to provide for the protection of groundwater (defined under the bill to mean underground water within the zone of saturation) from fertilizer contamination. Under the bill, the director of the Department of Agriculture could, with reasonable notice, require a person to furnish information regarding the fertilizers and production practices that might have affected groundwater quality at a particular site. Such information would be regarded as confidential business information and would not be subject to the Freedom of Information Act.

**Department Responsibilities.** The director of the department would be required to conduct the following activities when groundwater contamination by a nitrogen fertilizer occurred in concentrations exceeding the groundwater resource response level in 20 percent of the wells associated with an aquifer sensitivity region or fertilizer use activity:

**\*\*Assist in the coordination of local activities designed to prevent further groundwater contamination.**

**\*\*Conduct envelope monitoring (defined under the bill to mean monitoring of groundwater in areas adjacent to properties where groundwater was contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.)**

**\*\*Perform an evaluation of activities in the envelope monitoring region that might have contributed to the contamination.**

**\*\*Make a determination as to the degree to which groundwater stewardship practices were being utilized in the envelope monitoring region.**

**\*\*Make a determination as to the potential source or sources of the contamination.**

Under the bill, the director could also, upon written request, authorize persons to land-apply materials containing fertilizers at agronomic rates. This operation would prescribe appropriate operational control activities to protect the application location and would identify both the location of remediation and the location or locations where such a land application would take place.

House Bill 5162 (11-29-93)

**Administrative Rules.** Currently, the act requires that the director of the department enforce the act under rules promulgated under the provisions of the Administrative Procedures Act. House Bill 5162 would, in addition, establish the following:

**\*\*Rules established under the act could include, but would not be limited to, the use of a fertilizer, when that use had adversely affected groundwater. Before promulgating such a rule, the director would conduct sufficient study to determine potential contributing sources of the fertilizer component being confirmed in groundwater.**

**\*\*The director could promulgate a groundwater protection rule that defined the scope and region of implementation of the rule when he or she determined that any of the following had occurred:**

**--That voluntary adoption of groundwater stewardship practices (defined under the bill to mean any of a set of voluntary practices adopted by the Commission of Agriculture, according to the Groundwater and Freshwater Protection Act, designed to protect groundwater from contamination by fertilizers) had not been effective in preventing contaminant concentrations from exceeding the groundwater resource protection level, which would be defined to mean a maximum contaminant level, which, if not established by the United States Environmental Protection Agency (EPA), would be established by the director of the Department of Public Health (DPH) using the protocol defined by the EPA.**

**--That nitrogen had been confirmed in the state's groundwater at levels exceeding the maximum contaminant level (as defined under Title XIV of the federal Public Health Service Act and regulations) in 20 percent of the wells associated with an aquifer sensitivity region or a fertilizer use activity as a result of similar activities.**

**\*\*In determining the need for, and scope of, a groundwater protection rule, the director would consider the type of contaminant or contaminants, and the extent to which any of the following applied:**

**--The source or sources of the contaminant or contaminants can be identified.**

**--An identified source or sources are associated with a specific activity or activities.**

**--The local response to the contamination is adequate to protect groundwater.**

**--The use, value, and vulnerability of the resource and whether the groundwater is currently, or is reasonably expected be, a source of drinking water.**

**--Technical and economic feasibility of any mandated practices on persons in the region.**

**--The overall productivity and economic viability of the state's agriculture.**

**\*\*In determining the region of implementation for a groundwater protection rule, the director would consider both of the following:**

**--The reliability and geographical distribution of groundwater sample test data.**

**--The extent to which local aquifer sensitivity conditions could be considered characteristics of a larger region.**

**\*\*The director could approve alternative operations to those defined in a groundwater protection rule if they could be shown to be protective of groundwater.**

**MCL 286.772a**