

REGULATE WATER WELL USAGE

House Bill 4172

Sponsor: Rep. Rose Bogardus

Committee: Agriculture and Resource Management

Complete to 4-9-99

A SUMMARY OF HOUSE BILL 4172 AS INTRODUCED 2-9-99

The bill would add a new part (Part 302: Water rights) to the Natural Resources and Environmental Protection Act to authorize the director of the Department of Environmental Quality to declare groundwater emergencies under certain circumstances, to order owners of large wells responsible for causing the failure of small wells to pay "timely and reasonable compensation" to the small well owners, and to impose civil fines for violations of orders issued under the bill.

Definitions. The bill would define various kinds of wells.

** A "water well" would mean an excavation, however constructed, that was used for the purpose of withdrawing groundwater, and would not include agricultural and urban drainage systems. ("Groundwater" would mean "all water occurring beneath the surface of the ground regardless of location and form.")

** A "dewatering well" would mean a temporary well that was used as part of a construction project to remove surface or subsurface water and that was no longer used when (or shortly after) the project was completed. ("Construction" would mean "the process of building a building, highway, utility, or another structure," and would include the process of assembling materials, disassembling and removing a structure, the preparation of the construction site, and related work.)

** A "nonsignificant groundwater well" would mean one or more water wells that ("in the aggregate from all sources and by all methods") had the capability of withdrawing less than 100,000 gallons of groundwater in one day.

** A "significant groundwater well" would mean one or more water wells at a location that ("in the aggregate from all sources and by all methods") had the capability of withdrawing at least 100,000 gallons of ground water in one day.

Groundwater emergency. The bill would allow the director of the Department of Environmental Quality to declare, by temporary order, a "groundwater emergency" under one of two circumstances:

(1) If the director had reasonable evidence that indicated that continued withdrawals of groundwater by a large well ("significant groundwater well") would exceed the recharge capability of the groundwater resource of the area; or

(2) If an investigation by the director, in response to a written complaint by the owner of a small well ("nonsignificant groundwater well") that a water well on the owner's property had either failed to furnish its normal supply of water or failed to furnish potable (that is, drinking water quality) water, disclosed all of the following:

(a) The small well had either failed to supply its normal supply of water or, based on reasonable evidence of prior drinkability ("potability") supplied by the owner, failed to furnish potable water;

(b) The small well and its equipment were functioning properly at the time of the failure;

(c) The failure of the small well was caused by the lowering of the groundwater level in the area;

(d) The lowering of the groundwater level both exceeded normal seasonal water level fluctuations and substantially impaired continued use of the groundwater resource in the area; and

(e) The lowering of the ground water level was caused by at least one big well ("significant groundwater well").

When the director of the DEQ received such a written complaint by a small well owner, the director would be required to do an on-site investigation. And if the director declared a groundwater emergency after the investigation, he or she would have to require, by temporary order, the immediate temporary provision, at the prior point of use, of an adequate supply of drinkable water.

Duration. A temporary order would remain in effect for 90 days unless the director terminated it before that time or extended it pending a proceeding held under the bill's provisions.

Hearing. A temporary order also would have to include a notice of hearing to be held under the Administrative Procedures Act as soon as practicable after the declaration of the groundwater emergency. Following the hearing, the director could continue, amend, or terminate the order declaring the groundwater emergency. In any case, the emergency order would have to be terminated as soon as justified by changed conditions.

Restrictions on large wells. An order declaring a groundwater emergency could restrict the quantity of groundwater that could be taken from a large well ("significant groundwater well") if either of two conditions were met: (1) The director reasonably believed that a large well caused the failure of the small well and an adequate temporary supply of drinkable water had not been immediately supplied; or (2) there was a reasonable belief that continued groundwater withdrawals from the large well would exceed the recharge capability of the area's groundwater resource.

If an owner or operator of a large well withdrew water by a means other than pumping, an order declaring a groundwater emergency could temporarily restrict the quantity of groundwater that could be extracted only if the director reasonably believed that the large well caused the failure of the small well and an adequate supply of drinkable water hadn't been immediately supplied.

Effectiveness. A declaration of a groundwater emergency would be effective when a copy of the declaration was served on the owner of the large well that was believed to have caused the failure of the complainant's small well. However, if the groundwater emergency required action before service of the copy of the notice could be completed upon the owner of the large well, oral notification (in person, by a representative of the DEQ and authorized by the director) would be sufficient until the written copy of the declaration could be served. Oral notification would be effective for not more than 96 hours. In addition, as soon as possible after a declaration of a groundwater emergency had been made, copies of the declaration would have to be given to newspapers of general circulation located in the affected county.

Compensation. Under an order issued under the bill's provisions, the owner of a large well ("significant groundwater well") would be required to provide "timely and reasonable compensation" to persons who owned small wells ("nonsignificant groundwater wells") if the withdrawal of groundwater from the large well caused failure or significant impairment of small wells. "Timely and reasonable compensation" would consist of (and be limited to) both the (immediate and temporary) provision ("at the prior point of use") of an adequate supply of drinkable water and reimbursement of expenses reasonably incurred by a complainant (a) to restore the affected small well to its former relative capability; (b) to permanently provide, at the point of use, an alternative drinkable water supply of equal quantity; or (c) to permanently restrict or schedule the large well's groundwater withdrawals so that the affected small well continued to produce the small well's normal supply of water or its normal supply of drinkable water if it normally furnished drinkable water.

The DEQ would implement the provision of compensation by order, but before the department entered an initial determination of the order, it would have to conduct an investigation and provide affected persons with an informal opportunity to contribute to the investigation.

The refusal of an owner of a small affected well to accept timely and reasonable compensation would be sufficient grounds for the department to terminate an order imposed on the owner of a large well. If the owner of a large well didn't believe compensation was timely or reasonable, he or she could request a hearing under the Administrative Procedures Act.

New wells. If an owner of a small well that had been drilled after the bill took effect wanted to receive protection under the bill, he or she would be required to construct the well to conform with the administrative rules (R 325.1601 to R 325.1781).

Groundwater emergency fund. The bill would create the groundwater emergency fund in the state treasury to be used by the DEQ, upon appropriation, to implement the bill's provisions. The state treasurer could receive money or other assets from any source for deposit into the fund,

would direct the investment of the fund, and would credit to the fund interest and earnings from the fund investments. Money in the fund at the end of a fiscal year would remain in the fund and not lapse to the state general fund.

Rules. The Department of Environmental Quality could promulgate administrative rules to implement the bill's provisions.

Penalties. A person who violated an order issued under the bill would be responsible for the payment of a civil fine of up to \$1,000 for each day of violation, and a default in the payment of a civil fine or costs ordered under the bill could be remedied by any means authorized under the Revised Judicature Act. In addition to the remedies provided in the bill, the attorney general, on behalf of the DEQ, could maintain an action to enjoin a violation of the bill's provisions.

MCL 324.30201 - 324.30215

Analyst: S. Ekstrom

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