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**SFA****BILL ANALYSIS**

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House Bill 4087 (Substitute S-2)  
Sponsor: Representative John Moolenaar  
House Committee: Land Use and Environment  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-15-03

## **CONTENT**

**The bill would add Part 317 (Aquifer Protection and Dispute Resolution) to the Natural Resources and Environmental Protection Act to do the following:**

- Allow the owner of a small capacity well to file a complaint with the Michigan Department of Environmental Quality (DEQ) or the Michigan Department of Agriculture (MDA), if the well failed to furnish its normal water supply or failed to furnish potable water, and the owner believed that the failure was caused by a high capacity well.
- Require the Department Director to investigate a complaint and make a diligent effort to resolve it.
- Require the DEQ Director, if a complaint could not be resolved, to declare a groundwater dispute if an investigation disclosed certain factors (including a lowering of the groundwater beyond seasonable water levels and substantial impairment of continued use of the area's groundwater resource, caused by a high capacity well).
- Require the DEQ Director, upon declaring a dispute, to order immediate provision of potable water, and permit the Director to restrict the quantity of groundwater that could be extracted from a high capacity well.
- Require the owner of a high capacity well, after a dispute was declared, to provide reasonable and timely compensation, as well as reimbursement.
- Prescribe a civil fine for violations.

**The bill also would require the DEQ, within 30 days after the bill's effective**

**date, to identify two geographic areas in the State at the greatest risk for potential groundwater disputes. The DEQ would have to begin administering Part 317 within those areas at that time. Part 317 would have to be administered on a Statewide basis beginning on July 1, 2004.**

The bill is tie-barred to Senate Bill 289, which would require the DEQ to prepare a Statewide groundwater inventory and map; increase water use reporting fees for industrial, processing, and irrigation facilities; require farms with a capacity to pump over 100,000 gallons a day to register with the DEQ and pay the fees, or register with the MDA; and create the Groundwater Advisory Council.

(References below to the DEQ Director would include his or her designee.)

### Small & High Capacity Wells

"Small capacity well" would mean one or more water wells of a person at the same location that, in the aggregate from all sources and by all methods, had a capability of withdrawing less than 100,000 gallons of groundwater in one day.

"High capacity well" would mean one or more water wells associated with an industrial or processing facility, an irrigation facility, a farm, or a public water supply system that, in the aggregate from all sources and by all methods, had the capability to withdraw 100,000 or more gallons of groundwater in one day.

"Water well" would mean an opening in the surface of the earth, however constructed, used for the purpose of withdrawing

groundwater. It would not include a drain as defined in the Drain Code.

#### Complaint Submission

The owner of a small quantity well could submit a complaint alleging a potential groundwater dispute if the well had failed to furnish its normal water supply or had failed to furnish potable water and the owner had credible reason to believe the well's problems had been caused by a high capacity well. ("Owner" would mean either the owner of an interest in property or a person in possession of property. "Potable water" would mean water that was acceptable for human consumption at the point of use.)

The complaint would have to be submitted to the DEQ Director or the MDA Director if it involved an agricultural well. The complaint would have to be in writing and submitted in person, or via certified mail, a toll-free facsimile line provided by the DEQ Director, or other means of electronic submittal developed by the DEQ. Either the DEQ or the MDA Director could refuse to accept an unreasonable complaint.

A complaint would have to include all of the following:

- The name, address, and telephone number of the small quantity well owner.
- The location of the small quantity well, including the county, township, township section, and address where the well was situated, and all other available information defining its location.
- An explanation of why the small quantity well owner believed that a high capacity well had interfered with the proper function of the small capacity well, and any other information available to the well owner about the location and operation of the high capacity well.
- The date or dates that the interference allegedly occurred.
- Either a written assessment by a well drilling contractor that the small quantity well failure was not the result of well failure or equipment failure; or evidence of interference from a high capacity well.

The DEQ Director would have to provide for the use of a toll-free facsimile telephone line to receive complaints, as well as a toll-free telephone line for small capacity well owners to request complaint forms and to obtain other

information regarding the dispute resolution process. Both the DEQ and the MDA Directors would have to publicize the toll-free telephone numbers.

The Directors would have to enter into a memorandum of understanding that described the process that each would follow when a complaint involved an agricultural well.

#### Investigation; Effort to Resolve

The DEQ or MDA Director, as appropriate, would have to conduct an on-site investigation within one business day after receiving a complaint, if it included a well drilling contractor's assessment. Otherwise, the Director would have to conduct an on-site investigation within five business days after receiving a complaint. If the complaint were for a small quantity well in close proximity to other small quantity wells for which documented complaints had been received and investigated during the previous 60 days, the Director would not have to conduct an on-site investigation unless he or she believed that one was necessary.

The DEQ or MDA Director would have to give affected people an opportunity to contribute to the investigation. In conducting the investigation, the Director would have to consider whether the owner of the high capacity well was using industry-recognized water conservation management practices.

After investigating, the DEQ or MDA Director would have to make a diligent effort to resolve the complaint. In doing so, the Director could propose a remedy that he or she believed would equitably resolve the complaint. If the MDA Director could not resolve a complaint within 14 days after the complaint was submitted, he or she would have to refer the complaint and provide all relevant information to the DEQ Director.

If a person submitted more than three unverified complaints within one year, the DEQ Director could order the person to pay for the full costs of investigating any fourth or subsequent unverified complaint. (A complaint would be "unverified" if the Director, in response to it, determined that there was not reasonable evidence to declare a groundwater dispute.)

### Declaration of Dispute

If the DEQ Director were unable to resolve a complaint within a reasonable amount of time, he or she would be required to declare a groundwater dispute, by order, if an investigation of the complaint disclosed all of the following, based upon reasonable scientifically based evidence:

- The small quantity well had failed to furnish its normal water supply or to furnish potable water.
- The small quantity well and its equipment were functioning properly at the time of the failure. (This determination would have to be based upon an assessment from a registered well drilling contractor provided by the small quantity well owner.)
- The failure was caused by the lowering of the groundwater level in the area.
- The lowering of the groundwater level exceeded normal seasonable water level fluctuations and substantially impaired continued use of the groundwater resource in the area.
- The lowering of the groundwater level was caused by at least one high capacity well.
- The small quantity well owner did not unreasonably reject a remedy proposed by the DEQ or MDA Director.

In addition, the DEQ Director would be permitted to declare a groundwater dispute, by order, if he or she had clear and convincing scientifically based evidence that continued groundwater withdrawals from a high capacity well would exceed the recharge capability of the groundwater resource of the area.

An order declaring a groundwater dispute would be effective when a copy of the order was served upon the owner of a high capacity well that was reasonably believed to have caused the failure of the complainant's small capacity well. If the dispute required action before the copy could be served, oral notification in person by the Director would be sufficient until service could be completed, but not for more than 96 hours.

As soon as possible after issuing an order declaring a groundwater dispute, the Director would have to give copies of the order to the local units of government in which the high capacity well and the small capacity well were located, and to the local health departments with jurisdiction over those wells.

The Director could amend or terminate an order declaring a groundwater dispute at any time.

### Provision of Potable Water; Restricted Extraction

Upon declaring a groundwater dispute, the DEQ Director would have to require, by order, the immediate temporary provision at the point of use of an adequate supply of potable water.

The Director also, by order, could restrict the quantity of groundwater that could be extracted from a high capacity well under either of the following conditions:

- The high capacity well was reasonably believed to have caused the failure of the small capacity well and the owner of the high capacity well had not immediately provided a temporary adequate supply of potable water.
- There was clear and convincing scientifically based evidence that continued groundwater withdrawals from the high capacity well would exceed the recharge capability of the groundwater resource of the area.

If an operator of a high capacity well withdrew water by a means other than pumping, the Director could, by order, temporarily restrict the quantity of groundwater that could be extracted only if the conditions described above had not been met.

In issuing an order to restrict extraction, the Director would have to consider the impact that the order would have on the viability of a business associated with the high capacity well or other use of that well.

The Director could not issue an order that diminished the normal supply of drinking water or the capability for fire suppression of a public water supply system owned or operated by a local unit of government.

### Compensation & Reimbursement

If a groundwater dispute had been declared, the owner of a high capacity well would be required, subject to an order of the DEQ Director, to provide timely and reasonable compensation if there were a failure or substantial impairment of a small quantity well and the following conditions existed:

- The failure or substantial impairment was caused by the groundwater withdrawals of the high capacity well.
- The small capacity well either had been constructed before February 14, 1967, or was in compliance with Part 127 (Water Supply and Sewer Systems) of the Public Health Code.

In addition, the high capacity well owner would have to reimburse the DEQ Director an amount equal to the actual and reasonable costs incurred by the Director in investigating and resolving the groundwater dispute, not to exceed \$75,000. This money would have to be forwarded to the State Treasurer for deposit into the Water Use Protection Fund.

Timely and reasonable compensation would include the reimbursement of expenses reasonably incurred by the complainant beginning 30 days before the complaint was made, in doing the following:

- Paying for the cost of determining that the small capacity well and its equipment were functioning properly at the time of the failure.
- Paying for the cost of obtaining an immediate temporary provision at the prior point of use of an adequate supply of potable water.
- Obtaining the restoration of the small quantity well to its normal water supply, or the permanent provision at the point of use of an alternative potable water supply of equal quantity.

If an adequate remedy could not be achieved in this way, timely and reasonable compensation would include the restriction or scheduling of the groundwater withdrawals of the high capacity well so that the affected small capacity well continued to produce either its normal water supply or its normal supply of potable water. Timely and reasonable compensation would be limited to these remedies.

If a small capacity well owner refused to accept timely and reasonable compensation, as described above, the refusal would be sufficient grounds for the Director to terminate an order imposed on a responsible high capacity well.

#### Violations

A person who violated an order issued under

Part 317 would be responsible for a civil fine of up to \$1,000 for each day of violation, but not more than a total of \$50,000. A default in the payment of a civil fine or costs or an installment of the fine or costs could be remedied by any means authorized under the Revised Judicature Act.

The State Treasurer would have to forward all civil fines recovered for deposit into the General Fund.

#### Exclusions

Part 317 would not apply to a potential groundwater dispute involving any of the following:

- A high capacity well owned or operated by a local unit of government if the local unit agreed to make the aggrieved property owner whole by connecting the owner's property to the local unit's public water supply system or by drilling a new well for the owner, with the costs paid by the local unit.
- A high capacity well that was used solely for the purpose of fire suppression.
- A high capacity well that was a dewatering well.

(A "dewatering well" would be a well or pump that was used for a limited time as part of a construction project to remove water from a surface or subsurface area, and that ceased to be used when or shortly after the project was completed.)

#### Enforcement & Appeal

The DEQ Director could bring an action in a court of competent jurisdiction to enforce an order under Part 317, including an action for injunctive or other equitable relief.

The owner of a high capacity well subject to an order under Part 317 could appeal the order directly to circuit court pursuant to the Revised Judicature Act.

#### Biennial Report

By April 1, 2004, and every two years thereafter, the DEQ would have to prepare a report and submit it to the Senate and House of Representatives standing committees. The report would have to include an analysis of the DEQ's costs of implementing Part 317 and whether the \$75,000 limitation on

reimbursable costs should be modified. The report also would have to recommend modifications to Part 317 that would improve its overall effectiveness.

Proposed MCL 324.31701-324.31711

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### State

This bill would increase the costs to the Department of Environmental Quality and the Department of Agriculture by indeterminate amounts. The proposed dispute resolution process would require staff and resources from the DEQ and the MDA for the establishment of toll-free telephone lines to receive complaints, the investigation of complaints, and complaint resolution. The MDA would be responsible for all complaints dealing with agricultural wells. The DEQ would be responsible for complaints involving all other wells. It is not known how many complaints would be made and the cost of each investigation could vary greatly. Following an on-site investigation, if the MDA were unable to resolve a complaint, it would be referred to the DEQ for further action.

If the investigation of a complaint resulted in the declaration of a groundwater dispute by the DEQ, the owner of a high capacity well would be required to reimburse the DEQ for actual and reasonable costs incurred up to \$75,000, in addition to making restitution to the affected property owner. The reimbursement would be deposited into the Water Use Protection Fund and would reduce the costs of the dispute resolution program of the DEQ. Expenses incurred by the DEQ in the investigation of complaints that did not result in a groundwater dispute declaration would not be reimbursed. The MDA would not be eligible to receive reimbursement from the Water Use Protection Fund for any of its additional costs associated with complaint investigation and resolution.

The bill would set a Statewide implementation date of July 1, 2004. The DEQ Director would have to identify the two geographic areas in the State at greatest risk for potential groundwater disputes and implement the dispute resolution process in those two areas within 30 days of the bill's effective date. This would cost the Departments of Environmental Quality and Agriculture an indeterminate

amount dependent upon the number of conflicts reported and investigation costs.

The bill also would provide for civil fines for violation of an order issued under the bill. A fine of up to \$1,000 per day of violation, but not more than \$50,000 total, could be assessed. All civil fines collected would be deposited into the General Fund.

The bill is tie-barred to Senate Bill 289, which would increase the water use reporting fee from \$50 to \$100 annually, generating an additional \$50,000. Senate Bill 289 also would require the DEQ to establish a Statewide groundwater inventory and map, for which the additional revenue could be used. Currently, the Water Use Protection Fund receives and spends approximately \$50,000 annually for administration of the groundwater withdrawal reporting program created in Part 327.

### Local

A local unit of government that operates high capacity wells would not be subject to the groundwater dispute resolution process if it paid for an affected property owner to be connected to the public water supply system or if it drilled a new well for the property owner.

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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.