

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4087

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by adding part 317.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           PART 317 AQUIFER PROTECTION AND DISPUTE RESOLUTION

2           Sec. 31701. As used in this part:

3           (a) "Agricultural well" means a high capacity well that is  
4 used for an agricultural purpose.

5           (b) "Complaint" means a complaint submitted under section  
6 31702 alleging a potential groundwater dispute.

7           (c) "Construction" means the process of building a building,  
8 road, utility, or another structure, including all of the  
9 following:

10          (i) Assembling materials.

11          (ii) Disassembling and removing a structure.

(iii) Preparing the construction site.

(iv) Work related to any of the items described in subparagraphs (i) to (iii).

(d) "Dewatering well" means a well or pump that is used for a limited time period as part of a construction project to remove or pump water from a surface or subsurface area and ceases to be used upon completion of the construction project or shortly after completion of the construction project.

(e) "Director" means the director of the department of environmental quality or his or her designee.

(f) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(g) "Fund" means the aquifer protection revolving fund created in section 31710.

(h) "Groundwater" means the water in the zone of saturation that fills all of the pore spaces of the subsurface geologic material.

(i) "Groundwater dispute" means a groundwater dispute declared by order of the director under section 31703.

(j) "High capacity well" means 1 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, have the capability of withdrawing 100,000 or more gallons of groundwater in 1 day.

(k) "Industrial or processing facility" means that term as it is defined in section 32701.

1       (l) "Irrigation facility" means that term as it is defined in  
2 section 32701.

3       (m) "Local health department" means that term as it is  
4 defined in section 1105 of the public health code, 1978 PA 368,  
5 MCL 333.1105.

6       (n) "Owner" means either of the following:

7       (i) The owner of an interest in property.

8       (ii) A person in possession of property.

9       (o) "Potable water" means water that at the point of use is  
10 acceptable for human consumption.

11       (p) "Public water supply system" means a water system that  
12 provides water for human consumption or other purposes to persons  
13 other than the supplier of water.

14       (q) "Small quantity well" means 1 or more water wells of a  
15 person at the same location that, in the aggregate from all  
16 sources and by all methods, have the capability of withdrawing  
17 less than 100,000 gallons of groundwater in 1 day.

18       (r) "Water well" means an opening in the surface of the  
19 earth, however constructed, that is used for the purpose of  
20 withdrawing groundwater. Water well does not include a drain as  
21 defined in section 3 of the drain code of 1956, 1956 PA 40, MCL  
22 280.3.

23       (s) "Well drilling contractor" means a well drilling  
24 contractor registered under part 127 of the public health code,  
25 1978 PA 368, MCL 333.12701 to 333.12771.

26       Sec. 31702. (1) Subject to section 31712, the owner of a  
27 small quantity well may submit a complaint alleging a potential

1 groundwater dispute if the small quantity well has failed to  
2 furnish the well's normal supply of water or the well has failed  
3 to furnish potable water and the owner has credible reason to  
4 believe the well's problems have been caused by a high capacity  
5 well. A complaint shall be submitted to the director or to the  
6 director of the department of agriculture if the complaint  
7 involves an agricultural well. The complaint shall be in writing  
8 and shall be submitted in person, via certified mail, via the  
9 toll-free facsimile telephone number provided in subsection (4),  
10 or via other means of electronic submittal as developed by the  
11 department. However, the director or the director of the  
12 department of agriculture may refuse to accept an unreasonable  
13 complaint. The complaint shall include all of the following  
14 information:

15       (a) The name, address, and telephone number of the owner of  
16 the small quantity well.

17       (b) The location of the small quantity well, including the  
18 county, township, township section, and address of the property  
19 on which the small quantity well is situated, and all other  
20 available information that defines the location of that well.

21       (c) An explanation of why the small quantity well owner  
22 believes that a high capacity well has interfered with the proper  
23 function of the small quantity well and any information available  
24 to the small quantity well owner about the location and operation  
25 of the high capacity well.

26       (d) The date or dates that the small quantity well owner  
27 alleges that the interference by a high capacity well occurred.

1       (e) Sufficient evidence to establish a reasonable belief that  
2 the interference was caused by a high capacity well.

3       (2) The owner of a small quantity well may call the toll-free  
4 telephone line provided for in subsection (5) to request a  
5 complaint form or other information regarding the dispute  
6 resolution process provided in this part.

7       (3) Within 2 working days after receipt of a complaint under  
8 subsection (1), the director or the director of the department of  
9 agriculture, as appropriate, shall contact the complainant and  
10 begin an investigation. Within 5 working days after receipt of a  
11 complaint under subsection (1), the director or the director of  
12 the department of agriculture, as appropriate, shall conduct an  
13 on-site evaluation. However, if the complaint is for a small  
14 quantity well that is in close proximity to other small quantity  
15 wells for which documented complaints have been received and  
16 investigated during the previous 60 days, the department need not  
17 conduct an on-site evaluation unless the department determines an  
18 on-site evaluation is necessary. If the director or the director  
19 of the department of agriculture, as appropriate, considers it  
20 necessary for an investigation under this subsection, he or she  
21 may request that the owner of the small quantity well provide a  
22 written assessment by a well drilling contractor that the small  
23 quantity well failure was not the result of well failure or  
24 equipment failure. The assessment shall include a determination  
25 of the static water level in the well at the time of the  
26 assessment and, if readily available, the type of pump and  
27 equipment. The director or the director of the department of

1 agriculture, as appropriate, shall give affected persons an  
2 opportunity to contribute to the investigation of a complaint.  
3 In conducting the investigation, the director or the director of  
4 the department of agriculture, as appropriate, shall consider  
5 whether the owner of the high capacity well is using  
6 industry-recognized water conservation management practices.

7       (4) After conducting an investigation, the director or the  
8 director of the department of agriculture, as appropriate, shall  
9 make a diligent effort to resolve the complaint. In attempting  
10 to resolve a complaint, the director or the director of the  
11 department of agriculture, as appropriate, may propose a remedy  
12 that he or she believes would equitably resolve the complaint.  
13 If, within 14 days following the submittal of a complaint, the  
14 director of the department of agriculture is unable to resolve a  
15 complaint, the director of the department of agriculture shall  
16 refer the complaint, and provide all relevant information, to the  
17 director.

18       (5) The director shall provide for the use of a toll-free  
19 facsimile telephone line to receive complaints and a toll-free  
20 telephone line for owners of small quantity wells to request  
21 complaint forms and to obtain other information regarding the  
22 dispute resolution process provided in this part.

23       (6) The director and the director of the department of  
24 agriculture shall do both of the following:

25       (a) Publicize the toll-free facsimile line and the toll-free  
26 telephone line provided for in subsection (5).

27       (b) Enter into a memorandum of understanding that describes

1 the process that will be followed by each director when a  
2 complaint involves an agricultural well.

3 (7) A complainant who submits more than 2 unverified  
4 complaints under this section within 1 year may be ordered by the  
5 director to pay for the full costs of investigation of any third  
6 or subsequent unverified complaint. As used in this subsection,  
7 "unverified complaint" means a complaint in response to which the  
8 director determines that there is not reasonable evidence to  
9 declare a groundwater dispute.

10 Sec. 31703. (1) The director shall, by order, declare a  
11 groundwater dispute if an investigation of a complaint discloses  
12 all of the following, based upon reasonable scientifically-based  
13 evidence, and within a reasonable amount of time the director is  
14 unable to resolve the complaint:

15 (a) That the small quantity well has failed to furnish the  
16 well's normal supply of water or failed to furnish potable  
17 water.

18 (b) That the small quantity well and the well's equipment  
19 were functioning properly at the time of the failure. The  
20 determination under this subdivision shall be made based upon an  
21 assessment from a well drilling contractor that is provided by  
22 the owner of the small quantity well.

23 (c) That the failure of the small quantity well was caused by  
24 the lowering of the groundwater level in the area.

25 (d) That the lowering of the groundwater level exceeds normal  
26 seasonal water level fluctuations and substantially impairs  
27 continued use of the groundwater resource in the area.

1       (e) That the lowering of the groundwater level was caused by  
2 at least 1 high capacity well.

3       (f) That the owner of the small quantity well did not  
4 unreasonably reject a remedy proposed by the director or the  
5 director of the department of agriculture under section  
6 31702(3).

7       (2) In addition to the authority under subsection (1) to  
8 declare a groundwater dispute, if the director has clear and  
9 convincing scientifically-based evidence that indicates that  
10 continued groundwater withdrawals from a high capacity well will  
11 exceed the recharge capability of the groundwater resource of the  
12 area, the director, by order, may declare a groundwater dispute.

13       (3) The director may amend or terminate an order declaring a  
14 groundwater dispute at any time.

15       Sec. 31704. (1) An order declaring a groundwater dispute is  
16 effective when a copy of the order is served upon the owner of a  
17 high capacity well that is reasonably believed to have caused the  
18 failure of the complainant's small quantity well.

19       (2) If a groundwater dispute requires action before service  
20 can be completed under subsection (1), oral notification in  
21 person by the director is sufficient until service can be  
22 completed. Oral notification is effective for not more than 96  
23 hours.

24       (3) As soon as possible after an order declaring a  
25 groundwater dispute has been issued, the director shall provide  
26 copies of the order to the local units of government in which the  
27 high capacity well and the small quantity well are located and to



1 the local health departments with jurisdiction over those wells.

2 Sec. 31705. (1) Upon declaration of a groundwater dispute,  
3 the director shall, by order, require the immediate temporary  
4 provision at the point of use of an adequate supply of potable  
5 water.

6 (2) Except as provided in subsections (3), (4), and (5), if  
7 the director issues an order declaring a groundwater dispute, the  
8 director may, by order, restrict the quantity of groundwater that  
9 may be extracted from a high capacity well under either of the  
10 following conditions:

11 (a) If the high capacity well is reasonably believed to have  
12 caused the failure of the complainant's small quantity well and  
13 an immediate temporary provision of an adequate supply of potable  
14 water has not been provided to the complainant by the owner of  
15 the high capacity well.

16 (b) If there is clear and convincing scientifically-based  
17 evidence that continued groundwater withdrawals from the high  
18 capacity well will exceed the recharge capability of the  
19 groundwater resource of the area.

20 (3) In issuing an order under subsection (2), the director  
21 shall consider the impact the order will have on the viability of  
22 a business associated with the high capacity well or other use of  
23 the high capacity well.

24 (4) If an operator of a high capacity well withdraws water by  
25 a means other than pumping, the director may, by order,  
26 temporarily restrict the quantity of groundwater that may be  
27 extracted only if the conditions of subsection (2)(a) or (b) have

1 not been met.

2 (5) The director shall not issue an order that diminishes the  
3 normal supply of drinking water or the capability for fire  
4 suppression of a public water supply system owned or operated by  
5 a local unit of government.

6 Sec. 31706. (1) If a groundwater dispute has been declared,  
7 the owner of a high capacity well shall, subject to an order of  
8 the director, provide timely and reasonable compensation as  
9 provided in section 31707 if there is a failure or substantial  
10 impairment of a small quantity well and the following conditions  
11 exist:

12 (a) The failure or substantial impairment was caused by the  
13 groundwater withdrawals of the high capacity well.

14 (b) The small quantity well was constructed prior to  
15 February 14, 1967 or, if the small quantity well was constructed  
16 on or after February 14, 1967, the well was constructed in  
17 compliance with part 127 of the public health code, 1978 PA 368,  
18 MCL 333.12701 to 333.12771.

19 (2) In addition to the timely and reasonable compensation  
20 required under subsection (1), if a groundwater dispute has been  
21 declared, the owner of a high capacity well shall reimburse the  
22 director an amount equal to the actual and reasonable costs  
23 incurred by the director in investigating and resolving the  
24 groundwater dispute, not to exceed \$75,000.00. Money received by  
25 the director under this subsection shall be forwarded to the  
26 state treasurer for deposit into the fund.

27 Sec. 31707. (1) Timely and reasonable compensation under

1 section 31706 consists of and is limited to either or both of the  
2 following:

3 (a) The reimbursement of expenses reasonably incurred by the  
4 complainant beginning 30 days prior to the date on which a  
5 complaint is made under section 31702 in doing the following:

6 (i) Paying for the cost of conducting a well assessment to  
7 determine that the small quantity well and the well's equipment  
8 were functioning properly at the time of the failure.

9 (ii) Paying for the cost of obtaining an immediate temporary  
10 provision at the prior point of use of an adequate supply of  
11 potable water.

12 (iii) Obtaining 1 of the following:

13 (A) The restoration of the affected small quantity well to  
14 the well's normal supply of water.

15 (B) The permanent provision at the point of use of an  
16 alternative potable supply of equal quantity.

17 (b) If an adequate remedy is not achievable under subdivision  
18 (a), the restriction or scheduling of the groundwater withdrawals  
19 of the high capacity well so that the affected small quantity  
20 well continues to produce either of the following:

21 (i) The well's normal supply of water.

22 (ii) The normal supply of potable water if the well normally  
23 furnishes potable water.

24 (2) The refusal of an owner of an affected small quantity  
25 well to accept timely and reasonable compensation described in  
26 subsection (1) is sufficient grounds for the director to  
27 terminate an order imposed on the owner of a high capacity well.

1       Sec. 31708. The owner of a high capacity well subject to an  
2 order under this part may appeal that order directly to circuit  
3 court pursuant to the revised judicature act of 1961, 1961 PA  
4 236, MCL 600.101 to 600.9948.

5       Sec. 31709. This part does not apply to a potential  
6 groundwater dispute involving any of the following:

7       (a) A high capacity well owned or operated by a local unit of  
8 government if the local unit of government agrees to make the  
9 aggrieved property owner whole by connecting the owner's property  
10 to the local unit of government's public water supply system or  
11 by drilling the owner a new well, with the installation costs  
12 paid by the local unit of government.

13       (b) A high capacity well associated with a public water  
14 supply system that is owned or operated by a local unit of  
15 government if the recharge area of the water well is protected by  
16 a wellhead protection program approved by the department under  
17 the state's wellhead protection program.

18       (c) A high capacity well that is a dewatering well.

19       (d) A high capacity well that is used solely for the purpose  
20 of fire suppression.

21       Sec. 31710. (1) The aquifer protection revolving fund is  
22 created in the state treasury.

23       (2) The fund may receive money or other assets from any  
24 source for deposit into the fund. The state treasurer shall  
25 direct the investment of the fund. The state treasurer shall  
26 credit to the fund interest and earnings from fund investments.

27       (3) Money in the fund at the close of the fiscal year shall

1 remain in the fund and shall not lapse to the general fund.

2 (4) Money in the fund shall be expended by the department  
3 only to implement this part.

4 (5) If money in the fund is used to conduct hydrogeological  
5 studies or other studies to gather data on the nature of aquifers  
6 or groundwater resources in the state, the department shall  
7 include this information in the groundwater inventory and map  
8 prepared under section 32802.

9 Sec. 31711. Not later than April 1, 2004, and every 2 years  
10 thereafter, the department shall prepare and submit to the  
11 standing committees of the senate and the house of  
12 representatives a report that includes both of the following:

13 (a) An analysis of the department's costs of implementing  
14 this part and whether the limitation on reimbursable costs under  
15 section 31706(2) should be modified.

16 (b) Recommendations on modifications to this part that would  
17 improve the overall effectiveness of this part.

18 Sec. 31712. (1) Within 30 days after the effective date of  
19 the amendatory act that added this section, the director shall  
20 identify 2 geographic areas in the state that are at greatest  
21 risk for potential groundwater disputes.

22 (2) Beginning 30 days after the effective date of the  
23 amendatory act that added this section, this part shall be  
24 administered in the 2 geographic areas identified by the director  
25 under subsection (1).

26 (3) Beginning July 1, 2004, this part shall be administered  
27 on a statewide basis.

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