

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:

PART 317 AQUIFER PROTECTION AND CONFLICT RESOLUTION

Sec. 31701. As used in this part:

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

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

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

(i) Assembling materials.

(ii) Disassembling and removing a structure.

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

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

(h) "High capacity well" means [1 or more water wells associated with]an industrial or processing facility, an irrigation facility, 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. [High capacity well does not include a water well associated with a public water supply system that is owned or operated by a local unit of government if the recharge area of the water well is protected by a wellhead protection program approved by the department under the state's wellhead protection program.]

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

(j) "Irrigation facility" means all wells, pumps, intakes, gates, tanks, pipes, or other equipment under common ownership or control and located either on the same site or on separate sites, which are used to withdraw, convey, or distribute water for the purposes of irrigating farmland, golf courses, parks,

1 recreational areas, or other grounds.

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

5 (l) "Owner" means either of the following:

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

7 (ii) A person in possession of property.

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

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

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

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

23 Sec. 31702. (1) The owner of a small quantity well may
24 submit a complaint alleging a potential groundwater conflict if
25 the small quantity well has failed to furnish the well's normal
26 supply of water or the well has failed to furnish potable water
27 and the owner has credible reason to believe the well's problems

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1 have been caused by a high capacity well. A complaint under this
2 subsection shall be submitted by calling the toll-free telephone
3 number provided in subsection [(4)] or by submitting a complaint in
4 writing to the director or to the director of the department of
5 agriculture [if the complaint involves an agricultural well.]

6
7 However, the director or the director of the department of
8 agriculture may refuse to accept an unreasonable complaint.

9 (2) The director [or the director of the department of agriculture,
as appropriate,] shall conduct an on-site investigation

10 within 2 working days after receipt of a complaint. [An investigation by
the director of the department of agriculture shall be conducted under
the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.] The
director [or the director of the department of agriculture, as
appropriate,]

11 shall give affected persons an opportunity to contribute to the
12 investigation of a complaint. In conducting the investigation,
13 the director [or the director of the department of agriculture, as
appropriate,] shall consider whether the owner of the high
14 capacity well is using industry recognized water conservation
15 management practices.

16 [

26]

27 [(3)] After conducting an on-site investigation, the director

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1 or the director of the department of agriculture, as appropriate,
2 shall make a diligent effort to resolve the complaint. In
3 attempting to resolve a complaint, the director or the director
4 of the department of agriculture, as appropriate, may propose a
5 remedy that he or she believes would equitably resolve the
6 complaint. If, within a reasonable amount of time following an
7 on-site investigation, the director of the department of
8 agriculture is unable to resolve a complaint, director of the
9 department of agriculture shall refer the complaint, and provide
10 all relevant information, to the director.

11 [(4)] The director shall provide for the use of a toll-free
12 telephone number to receive complaints. The director shall
13 maintain a log of complaints received from calls to this number.

14 [(5)] The director and the director of the department of
15 agriculture shall do both of the following:

16 (a) Publicize the toll-free telephone number for receipt of
17 complaints as provided for in subsection [(4)].

18 (b) Enter into a memorandum of understanding that describes
19 the process that will be followed by each director when a
20 complaint involves an agricultural well.

21 [(6)] A complainant who submits more than 3 unverified
22 complaints under this section within 1 year may be ordered by the
23 director to pay for the full costs of investigation of any fourth
24 or subsequent unverified complaint. As used in this subsection,
25 "unverified complaint" means a complaint in response to which the
26 director determines that there is not reasonable evidence to
27 declare a groundwater conflict.

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1 Sec. 31703. (1) The director shall, by order, declare a
2 groundwater conflict if an investigation of a complaint discloses
3 all of the following, based upon reasonable [scientifically-based]
evidence, and within
4 a reasonable amount of time the director is unable to resolve the
5 complaint:

6 (a) That the small quantity well has failed to furnish the
7 well's normal supply of water or failed to furnish potable
8 water.

9 (b) That the small quantity well and the well's equipment
10 were functioning properly at the time of the failure. To make
11 the determination under this subdivision, the director shall
12 obtain an assessment from a well drilling contractor registered
13 under part 127 of the public health code, 1978 PA 368, MCL
14 333.12701 to 333.12771.

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

17 (d) That the lowering of the groundwater level exceeds normal
18 seasonal water level fluctuations and substantially impairs
19 continued use of the groundwater resource in the area.

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

22 (f) That the owner of the small quantity well did not
23 unreasonably reject a remedy proposed by the director or the
24 director of the department of agriculture under section
25 [31702(3)].

26 (2) In addition to the authority under subsection (1) to
27 declare a groundwater conflict, if the director has clear and

1 convincing scientifically based evidence that indicates that
2 continued groundwater withdrawals from a high capacity well will
3 exceed the recharge capability of the groundwater resource of the
4 area, the director, by order, may declare a groundwater
5 conflict.

6 (3) The director may amend or terminate an order declaring a
7 groundwater conflict at any time.

8 Sec. 31704. (1) An order declaring a groundwater conflict
9 is effective when a copy of the order is served upon the owner of
10 a high capacity well that is reasonably believed to have caused
11 the failure of the complainant's small quantity well.

12 (2) If a groundwater conflict requires action before service
13 can be completed under subsection (1), oral notification in
14 person by the director is sufficient until service can be
15 completed. Oral notification is effective for not more than 96
16 hours.

17 (3) As soon as possible after an order declaring a
18 groundwater conflict has been issued, the director shall provide
19 copies of the order to the local units of government in which the
20 high capacity well and the small quantity well are located and to
21 the local health departments with jurisdiction over those wells.

22 Sec. 31705. (1) Upon declaration of a groundwater conflict,
23 the director shall, by order, require the immediate temporary
24 provision at the point of use of an adequate supply of potable
25 water.

26 (2) Except as provided in subsections (3), (4), and (5), if
27 the director issues an order declaring a groundwater conflict,

1 the director may, by order, restrict the quantity of groundwater
2 that may be extracted from a high capacity well under either of
3 the following conditions:

4 (a) If the high capacity well is reasonably believed to have
5 caused the failure of the complainant's small quantity well and
6 an immediate temporary provision of an adequate supply of potable
7 water has not been provided to the complainant by the owner of
8 the high capacity well.

9 (b) If there is clear and convincing scientifically based
10 evidence that continued groundwater withdrawals from the high
11 capacity well will exceed the recharge capability of the
12 groundwater resource of the area.

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

17 (4) If an operator of a high capacity well withdraws water by
18 a means other than pumping, the director may, by order,
19 temporarily restrict the quantity of groundwater that may be
20 extracted only if the conditions of subsection (2)(a) or (b) have
21 not been met.

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

26 Sec. 31706. (1) If a groundwater conflict has been
27 declared, the owner of a high capacity well shall, subject to an

1 order of the director, provide timely and reasonable compensation
2 as provided in section 31707 if there is a failure or substantial
3 impairment of a small quantity well and the following conditions
4 exist:

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

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

12 (2) In addition to the timely and reasonable compensation
13 required under subsection (1), if a groundwater conflict has been
14 declared, the owner of a high capacity well shall reimburse the
15 director an amount equal to the actual and reasonable costs
16 incurred by the director in investigating and resolving the
17 groundwater conflict, not to exceed \$75,000.00. Money received
18 by the director under this subsection shall be forwarded to the
19 state treasurer for deposit into the water use protection fund
20 created in section 32714.

21 Sec. 31707. (1) Timely and reasonable compensation under
22 section 31706 consists of and is limited to either or both of the
23 following:

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

27 (i) Paying for the cost of obtaining an immediate temporary

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1 provision at the prior point of use of an adequate supply of
2 potable water.

3 (ii) Obtaining 1 of the following:

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

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

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

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

13 (ii) The normal supply of potable water if the well normally
14 furnishes potable water.

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

19 Sec. 31708. The owner of a high capacity well subject to an
20 order under this part may appeal that order directly to circuit
21 court pursuant to the revised judicature act of 1961, 1961 PA
22 236, MCL 600.101 to 600.9948.

23 Sec. 31709. The director may promulgate rules to implement
24 this part.

[Sec. 31710. This part does not apply to a potential groundwater
conflict involving a high capacity well owned or operated by a local unit
of government if the local unit of government agrees to make the
aggrieved property owner whole by connecting the owner's property to the
local unit of government's public water supply system or by drilling the
owner a new well, with the costs paid by the local unit of government.]

25 [Sec. 31711.] (1) A person who violates an order issued under
26 this part is responsible for a civil fine of not more than
27 \$1,000.00 for each day of violation, but not exceeding a total of

1 \$50,000.00.

2 (2) A default in the payment of a civil fine or costs ordered
3 under this section or an installment of the fine or costs may be
4 remedied by any means authorized under the revised judicature act
5 of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

6 (3) All civil fines recovered under this section shall be
7 forwarded to the state treasurer for deposit into the
8 general fund.

9 (4) The director may bring an action in a court of competent
10 jurisdiction to enforce an order under this part, including
11 injunctive or other equitable relief.

12 Enacting section 1. This amendatory act does not take
13 effect unless House Bill No. 4097 of the 92nd Legislature is
14 enacted into law.