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House Bill 5222 (Substitute H-1 as passed by the House)  
Sponsor: Representative Doug Bennett  
House Committee: Appropriations  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 9-21-09

## **CONTENT**

**The bill would repeal Part 317 (Aquifer Protection and Dispute Resolution) of the Natural Resources and Environmental Protection Act effective October 1, 2009.**

Part 317 is described below.

### Groundwater Complaint

Under Part 317, the owner of a small-quantity well may submit a complaint alleging a potential groundwater dispute if the well has failed to furnish its normal supply of water or has failed to furnish potable water and the owner has credible reason to believe the well's problems have been caused by a high-capacity well. A complaint must be submitted to the Director of the Department of Environmental Quality (DEQ) or, if it involves an agricultural well, the Michigan Department of Agriculture (MDA). The DEQ or MDA Director may refuse to accept an unreasonable complaint.

("Small-quantity well" means a one or more water wells of a person at the same location that, in the aggregate from all sources and by all methods, have the capability of withdrawing less than 100,000 gallons of groundwater in one day. "High-capacity well" means one or more 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 at least 100,000 gallons per day.)

The DEQ or MDA Director, as applicable, must contact the complainant, begin an investigation, and conduct an on-site evaluation. In conducting the investigation, the Director must consider whether the owner of the high-capacity well is using industry-recognized water conservation management practices. After conducting an investigation, the Director must make a diligent effort to resolve the complaint, and may propose a remedy. If the MDA Director is unable to resolve a complaint within 14 days after it was submitted, he or she must forward it to the DEQ Director.

The DEQ Director may order a complainant who submits more than two unverified complaints within one year to pay for the full costs of investigation of any third or subsequent unverified complaint (i.e., a complaint in response to which the DEQ Director determines that there is not reasonable evidence to declare a groundwater dispute).

### Declaration of Groundwater Dispute

Under Part 317, the DEQ Director must, by order, declare a groundwater dispute if he or she is unable to resolve a complaint within a reasonable amount of time and an investigation discloses certain information, including that a small-quantity well's failure was due to the lowering of the groundwater level caused by at least one high-capacity well. In addition, if the DEQ Director has clear and convincing scientifically based evidence that continued

groundwater withdrawals from a high-capacity well will exceed the recharge capability of the groundwater resource of the area, he or she may declare a groundwater dispute.

Upon declaration of a groundwater dispute, the DEQ Director must require the immediate temporary provision at the point of use of an adequate supply of potable water. Under certain circumstances, the DEQ Director may restrict the quantity of groundwater that may be extracted from a high-capacity well.

The owner of a high-capacity well subject to an order under Part 317 may appeal it directly to circuit court.

### Compensation

If a groundwater dispute has been declared, the owner of a high-capacity well, subject to an order of the DEQ Director, must provide timely and reasonable compensation as provided in Part 317 if there is a failure or substantial impairment of a small-quantity well and specified conditions exist. In addition, the high-capacity well owner must reimburse the DEQ Director for the actual and reasonable costs incurred in investigating and resolving the dispute, up to \$75,000. Money the Director receives under this provision must be forwarded to the State Treasurer for deposit into the Aquifer Protection Revolving Fund.

### Aquifer Protection Revolving Fund

Part 317 created the Fund in the State Treasury. The DEQ may spend Fund money to implement Part 317. If money in the Fund is used to conduct hydrogeological studies or other studies to gather data on the nature of aquifers or groundwater resources in Michigan, the DEQ must include this information in its groundwater inventory and map.

### Report

The DEQ must prepare and submit to the Legislature every two years a report that includes an analysis of the DEQ's costs of implementing Part 317 and whether the \$75,000 limitation on reimbursable costs should be modified, as well as recommendations on modifications that would improve the overall effectiveness of Part 317.

### Violations & Penalties

A person who violates an order issued under Part 317 is responsible for a civil fine of up to \$1,000 per day of violation, up to a total of \$50,000. All recovered civil fines must be forwarded to the State Treasurer for deposit in the General Fund. The DEQ Director may bring an action to enforce an order under Part 317, including injunctive or other equitable relief.

MCL 324.31701-324.31713

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would eliminate the need for the Aquifer Protection Revolving Fund. It is currently projected that by the end of the 2008-09 fiscal year, less than \$1,000 will be in the Fund, and the Fund will have received less than \$500 in revenue for the year. Because of the low Fund balance, very little money would lapse to the General Fund upon the enactment of this bill.

Fiscal Analyst: Bruce Baker  
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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.