



**House
Legislative
Analysis
Section**

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**REGULATION OF GROUNDWATER
WITHDRAWAL CONFLICTS**

House Bill 4087

Sponsor: Rep. John Moolenaar

House Bill 4097

Sponsor: Rep. Ruth Johnson

**Committee: Land Use and Environment
Complete to 2-7-03**

A SUMMARY OF HOUSE BILLS 4087 AND 4097 AS INTRODUCED 1-29-03

The bills would allow the director of the Department of Environmental Quality (DEQ) to regulate conflicts about groundwater withdrawals. The bills are tie-barred to each other so that neither could become law unless the other also were enacted.

House Bill 4987 would add Part 317 to the Natural Resources and Environmental Protection Act (MCL 324.31701 et al.) to establish a process that would be followed by the director of the DEQ to receive groundwater withdrawal complaints, as well as to investigate and resolve those complaints. Under the bill, the conflict resolution orders that would be issued by the director would allow for the temporary provision of potable water, quantity restrictions on high capacity wells, and compensation for small quantity well owners. In addition, the bill would allow high capacity well owners to have a contested case hearing to challenge the terms of an order, set penalties for violation of an order, and enable the director to promulgate rules that might be necessary to implement the complaint resolution process. A more detailed explanation of the bill follows.

Definitions. The bill provides definitions for twelve terms, including the following. “High capacity well” is defined to mean 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 100,000 or more gallons of groundwater in one day. “Small quantity well” is defined to mean 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.

Groundwater withdrawal complaints and investigations. The bill would allow the owner of a small quantity well to submit a complaint alleging a potential groundwater conflict if his or her well had failed to furnish the normal supply of water, or had failed to furnish potable water, and the owner believed the well’s problems had been caused by a high capacity well. A complaint would be submitted to the DEQ by calling a toll-free telephone number, or by writing to the DEQ or to the Department of Agriculture, if the withdrawal would be governed under provisions of the Michigan Right to Farm Act. In either instance, the department would be required to conduct an on-site investigation within 48-hours after the complaint was taken. After conducting an on-site investigation, the director of the DEQ or the Department of Agriculture, as appropriate, would be required to make a diligent effort to resolve the complaint, and could

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propose an equitable remedy. However, the bill specifies that if the Department of Agriculture was unable to resolve a complaint within a reasonable amount of time, then the complaint and all relevant information would be referred to the director of the DEQ for resolution. The bill would require the two departments to enter into a memorandum of understanding that describes their complaint resolution process.

Groundwater conflict declarations. Under the bill, the director of the DEQ would be required to declare a groundwater conflict if an investigation of a complaint disclosed all of the following: a) a small quantity well had failed to furnish the well's normal supply of water or, based upon reasonable evidence, failed to furnish potable water; b) the small quantity well and the well's equipment were functioning properly at the time of the failure; c) the failure of the small quantity well was caused by the lowering of the groundwater level in the area; the lowering of the groundwater level exceeded normal seasonal water level fluctuations, and substantially impaired continued use of the groundwater resources in the area; e) the lowering of the groundwater level was caused by at least one high capacity well; and, f) the owner of the small quantity well did not unreasonably reject a remedy proposed by the director of the DEQ or the director of the Department of Agriculture.

In addition, the bill would grant the director authority to declare a groundwater conflict, if he or she had clear and convincing scientifically-based evidence that indicated that continued groundwater withdrawals from a high capacity well would exceed the recharge capability of the groundwater resource of the area.

Groundwater conflict orders. An order declaring a groundwater conflict would include a notice of contested case hearing, and would remain in effect for 90 days unless either of the following occurred: the order was terminated by the director of the DEQ because of changed conditions; or, the order was extended by the director during a pending proceeding. An order would be effective when a copy was served upon the owner of a high capacity well that was reasonably believed to have caused the failure of the complainant's small quantity well. The bill specifies that if a groundwater conflict required action before the order had been served, oral notification (for not more than 96 hours) in person by the director of the DEQ would be sufficient until service could be completed. As soon as possible after an order had been issued, the director would be required to provide copies to the local units of government in which the high capacity well and the small quantity well were located, and also to the newspapers of general circulation located in the county or counties where the wells were located.

Temporary supply of potable water. Under the bill, upon the declaration of a groundwater conflict, the director of the DEQ would be required, by order, to arrange for the immediate temporary provision, at the point of use, of an adequate supply of potable water.

Quantity restrictions. If the director issued an order declaring a groundwater conflict, he or she could, by order, restrict the quantity of groundwater that could be extracted from a high capacity well, under either of the following conditions: a) if the high capacity well was reasonably believed to have caused the failure of the complainant's small quantity well, and an immediate temporary provision of an adequate supply of potable water had not been provided;

or, b) there was a reasonable belief that continued groundwater withdrawals from the high capacity well would exceed the recharge capability of the groundwater resource of the area.

The bill would require that, when issuing an order, the director consider the impact the order would have on the viability of a business associated with the high capacity well, or other use of the high capacity well.

Compensation for small quantity well owners; DEQ reimbursement. Under the bill, if a groundwater conflict had been declared by order, then the owner of a high capacity well would be required to provide timely and reasonable compensation to those who owned small quantity wells, if there were a failure or substantial impairment of those wells, and the following conditions existed: a) the failure or impairment had been caused by the groundwater withdrawals of the high capacity well; and, if the small quantity well had been constructed on or after April 21, 1994, in compliance with the Public Health Code.

In addition the bill specifies that the owner of a high capacity well would be required to reimburse the director an amount equal to the actual and reasonable costs incurred by the DEQ in investigating and resolving the groundwater conflict.

Under the bill, timely and reasonable compensation would consist of (and be limited to) the reimbursement of expenses incurred by the complainant beginning 30 days prior to the date on which a complaint had been made, in doing the following: a) obtaining an immediate temporary provision at the prior point of use of an adequate supply of potable water; b) obtaining one of the following: i) the restoration of the affected small quantity well to the well's former capability; ii) the permanent provision at the point of use of an alternative potable supply of equal quantity; or, iii) the permanent restriction or scheduling of the groundwater withdrawals of the high capacity well so that the affected small quantity well could continue to produce either the well's normal supply of water, or the normal supply of potable water if the well normally furnished potable water.

The bill specifies that the refusal of an owner of an affected small quantity well to accept timely and reasonable compensation would be sufficient grounds for the director to terminate an order imposed on a responsible high capacity well. However, an owner could request a contested case hearing, if the owner did not believe compensation was timely or reasonable.

Penalties. A person who violated an order would be responsible for a civil fine or not more than \$1,000 for each day of violation, but not exceeding 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. All civil fines recovered would be forwarded to the state treasurer for deposit into the Water Use Protection Fund. Finally, the bill specifies that the director of the DEQ could bring an action in a court of competent jurisdiction to enforce an order, including injunctive or other equitable relief.

House Bill 4097 would amend the Natural Resources and Environmental Protection Act (MCL 324.32714) to authorize the department to expend money from the Water Use Protection Fund (created within the state treasury), upon appropriation, for the implementation and

administration of the groundwater conflict resolution process. The bill also would delete an outdated portion of the law that required the department, by December 31, 1999, to conduct an assessment of the fund for the legislature, in order to determine if the amount of the annual water use reporting fees could be lowered.

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■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.