

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.

1 (iii) Preparing the construction site.

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

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

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

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

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

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

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

20 (j) "High capacity well" means 1 or more water wells
21 associated with an industrial or processing facility, an
22 irrigation facility, a farm, or a public water supply system
23 that, in the aggregate from all sources and by all methods, have
24 the capability of withdrawing 100,000 or more gallons of
25 groundwater in 1 day.

26 (k) "Industrial or processing facility" means that term as it
27 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.

1 Sec. 31713. (1) A person who violates an order issued under
2 this part is responsible for a civil fine of not more than
3 \$1,000.00 for each day of violation, but not exceeding a total of
4 \$50,000.00.

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

9 (3) All civil fines recovered under this section shall be
10 forwarded to the state treasurer for deposit into the general
11 fund.

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

15 Enacting section 1. This amendatory act does not take
16 effect unless Senate Bill No. 289 of the 92nd Legislature is
17 enacted into law.