

HOUSE BILL No. 6225

November 5, 1998, Introduced by Reps. Bogardus, Hanley, Kelly, Callahan, Hale and Willard and referred to the Committee on Conservation, Environment and Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 302.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 302 WATER RIGHTS

2 SEC. 30201. AS USED IN THIS PART:

3 (A) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING A BUILDING,
4 HIGHWAY, UTILITY, OR ANOTHER STRUCTURE. CONSTRUCTION INCLUDES
5 ALL OF THE FOLLOWING:

6 (i) THE PROCESS OF ASSEMBLING MATERIALS.

7 (ii) DISASSEMBLING AND REMOVING A STRUCTURE.

8 (iii) THE PREPARATION OF THE CONSTRUCTION SITE.

9 (iv) RELATED WORK.

10 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
11 QUALITY.

1 (C) "DEWATERING WELL" MEANS A TEMPORARY WATER WELL THAT
2 MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

3 (i) IS USED AS PART OF A CONSTRUCTION PROJECT TO REMOVE
4 WATER FROM A SURFACE OR SUBSURFACE AREA.

5 (ii) CEASES TO BE USED UPON COMPLETION OF THE CONSTRUCTION
6 PROJECT OR SHORTLY AFTER COMPLETION OF THE PROJECT.

7 (D) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF ENVI-
8 RONMENTAL QUALITY.

9 (E) "FUND" MEANS THE GROUNDWATER EMERGENCY FUND CREATED IN
10 SECTION 30213.

11 (F) "GROUNDWATER" MEANS ALL WATER OCCURRING BENEATH THE SUR-
12 FACE OF THE GROUND REGARDLESS OF LOCATION AND FORM.

13 (G) "NONSIGNIFICANT GROUNDWATER WELL" MEANS 1 OR MORE WATER
14 WELLS AT A LOCATION THAT, IN THE AGGREGATE FROM ALL SOURCES AND
15 BY ALL METHODS, HAVE A CAPABILITY OF WITHDRAWING LESS THAN
16 100,000 GALLONS OF GROUNDWATER IN 1 DAY.

17 (H) "OWNER" INCLUDES ALL OF THE FOLLOWING:

18 (i) THE OWNER OF AN INTEREST IN REAL PROPERTY.

19 (ii) A PERSON IN POSSESSION OF REAL PROPERTY.

20 (iii) FOR A TEMPORARY DEWATERING WELL, THE PERSON WHO AUTHO-
21 RIZED THE CONSTRUCTION THAT NECESSITATED THE INSTALLATION OF THE
22 DEWATERING WELL.

23 (I) "POTABLE WATER" MEANS WATER THAT AT THE POINT OF USE IS
24 ACCEPTABLE FOR HUMAN CONSUMPTION UNDER THE SAFE DRINKING WATER
25 ACT, 1976 PA 399, MCL 325.1001 TO 325.1023.

26 (J) "SIGNIFICANT GROUNDWATER WELL" MEANS 1 OR MORE WATER
27 WELLS AT A LOCATION THAT, IN THE AGGREGATE FROM ALL SOURCES AND

1 BY ALL METHODS, HAVE THE CAPABILITY OF WITHDRAWING AT LEAST
2 100,000 GALLONS OF GROUNDWATER IN 1 DAY.

3 (K) "WATER WELL" MEANS AN EXCAVATION, HOWEVER CONSTRUCTED,
4 THAT IS USED FOR THE PURPOSE OF WITHDRAWING GROUNDWATER. WATER
5 WELL DOES NOT INCLUDE AGRICULTURAL AND URBAN DRAINAGE SYSTEMS.

6 SEC. 30202. WITHIN 24 HOURS AFTER RECEIVING A WRITTEN COM-
7 PLAIN FROM THE OWNER OF A NONSIGNIFICANT GROUNDWATER WELL THAT A
8 WATER WELL ON PROPERTY IN THE OWNER'S POSSESSION HAS DONE EITHER
9 OF THE FOLLOWING, THE DIRECTOR SHALL CAUSE AN ON-SITE INVESTIGA-
10 TION TO BE MADE:

11 (A) FAILED TO FURNISH THE WELL'S NORMAL SUPPLY OF WATER.

12 (B) FAILED TO FURNISH POTABLE WATER.

13 SEC. 30203. (1) IF AN INVESTIGATION UNDER SECTION 30202 OF
14 THE NONSIGNIFICANT GROUNDWATER WELL DISCLOSES ALL OF THE FOLLOW-
15 ING, THE DIRECTOR SHALL, BY TEMPORARY ORDER, DECLARE A GROUNDWA-
16 TER EMERGENCY:

17 (A) THAT THE WELL HAS DONE EITHER OF THE FOLLOWING:

18 (i) FAILED TO FURNISH THE WELL'S NORMAL SUPPLY OF WATER.

19 (ii) BASED UPON REASONABLE EVIDENCE OF PRIOR POTABILITY SUP-
20 PLIED BY THE OWNER, FAILED TO FURNISH POTABLE WATER.

21 (B) THAT THE WELL AND THE WELL'S EQUIPMENT WERE FUNCTIONING
22 PROPERLY AT THE TIME OF THE FAILURE.

23 (C) THAT THE FAILURE OF THE WELL WAS CAUSED BY THE LOWERING
24 OF THE GROUNDWATER LEVEL IN THE AREA.

25 (D) THAT THE LOWERING OF THE GROUNDWATER LEVEL DOES BOTH OF
26 THE FOLLOWING:

1 (i) EXCEEDS NORMAL SEASONAL WATER LEVEL FLUCTUATIONS.

2 (ii) SUBSTANTIALLY IMPAIRS CONTINUED USE OF THE GROUNDWATER
3 RESOURCE IN THE AREA.

4 (E) THAT THE LOWERING OF THE GROUNDWATER LEVEL WAS CAUSED BY
5 AT LEAST 1 SIGNIFICANT GROUNDWATER WELL.

6 (2) UPON THE DECLARATION OF A GROUNDWATER EMERGENCY UNDER
7 SUBSECTION (1), THE DIRECTOR SHALL, BY TEMPORARY ORDER, REQUIRE
8 THE IMMEDIATE TEMPORARY PROVISION AT THE PRIOR POINT OF USE OF AN
9 ADEQUATE SUPPLY OF POTABLE WATER.

10 SEC. 30204. AS AN ALTERNATIVE TO SECTION 30203, IF THE
11 DIRECTOR HAS REASONABLE EVIDENCE THAT INDICATES THAT CONTINUED
12 GROUNDWATER WITHDRAWALS FROM A SIGNIFICANT GROUNDWATER WELL WILL
13 EXCEED THE RECHARGE CAPABILITY OF THE GROUNDWATER RESOURCE OF THE
14 AREA, THE DIRECTOR SHALL, BY TEMPORARY ORDER, DECLARE A GROUNDWA-
15 TER EMERGENCY.

16 SEC. 30205. A TEMPORARY ORDER UNDER SECTION 30203 OR 30204
17 REMAINS IN EFFECT FOR 90 DAYS UNLESS:

18 (A) TERMINATED BY THE DIRECTOR BEFORE THE EXPIRATION OF 90
19 DAYS.

20 (B) EXTENDED BY THE DIRECTOR DURING THE PENDENCY OF A PRO-
21 CEEDING UNDER THIS PART.

22 SEC. 30206. A TEMPORARY ORDER UNDER SECTION 30203 OR 30204
23 SHALL INCLUDE A NOTICE OF HEARING TO BE HELD PURSUANT TO THE
24 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
25 24.328, AS SOON AS PRACTICABLE AFTER THE DECLARATION OF THE
26 GROUNDWATER EMERGENCY. FOLLOWING THE HEARING, THE DIRECTOR MAY
27 CONTINUE, AMEND, OR TERMINATE THE ORDER DECLARING THE GROUNDWATER

1 EMERGENCY. THE EMERGENCY ORDER SHALL BE TERMINATED AS SOON AS
2 JUSTIFIED BY CHANGED CONDITIONS.

3 SEC. 30207. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), AN
4 ORDER DECLARING A GROUNDWATER EMERGENCY UNDER THIS PART MAY
5 RESTRICT THE QUANTITY OF GROUNDWATER THAT MAY BE EXTRACTED FROM A
6 SIGNIFICANT GROUNDWATER WELL IF EITHER OF THE FOLLOWING CONDI-
7 TIONS IS MET:

8 (A) THE DIRECTOR REASONABLY BELIEVES THAT A SIGNIFICANT
9 GROUNDWATER WELL CAUSED THE FAILURE OF THE COMPLAINANT'S WATER
10 WELL AND AN ADEQUATE TEMPORARY SUPPLY OF POTABLE WATER HAS NOT
11 BEEN IMMEDIATELY PROVIDED.

12 (B) THERE IS A REASONABLE BELIEF THAT CONTINUED GROUNDWATER
13 WITHDRAWALS FROM THE SIGNIFICANT GROUNDWATER WELL WILL EXCEED THE
14 RECHARGE CAPABILITY OF THE GROUNDWATER RESOURCE OF THE AREA.

15 (2) IF AN OWNER OR OPERATOR OF A SIGNIFICANT GROUNDWATER
16 WELL WITHDRAWS WATER BY A MEANS OTHER THAN PUMPING, AN ORDER
17 DECLARING A GROUNDWATER EMERGENCY UNDER THIS PART MAY TEMPORARILY
18 RESTRICT THE QUANTITY OF GROUNDWATER THAT MAY BE EXTRACTED ONLY
19 IF THE CONDITIONS IN SUBSECTION (1)(A) HAVE BEEN MET.

20 SEC. 30208. (1) A DECLARATION OF A GROUNDWATER EMERGENCY
21 UNDER THIS PART IS EFFECTIVE WHEN A COPY OF A DECLARATION IS
22 SERVED UPON THE OWNER OF THE SIGNIFICANT GROUNDWATER WELL THAT IS
23 REASONABLY BELIEVED TO HAVE CAUSED THE FAILURE OF THE
24 COMPLAINANT'S WATER WELL.

25 (2) IF THE GROUNDWATER EMERGENCY REQUIRES ACTION BEFORE
26 SERVICE CAN BE COMPLETED UNDER SUBSECTION (1), ORAL NOTIFICATION
27 IN PERSON BY A REPRESENTATIVE OF THE DEPARTMENT AND AUTHORIZED BY

1 THE DIRECTOR IS SUFFICIENT UNTIL SERVICE CAN BE COMPLETED. ORAL
2 NOTIFICATION IS EFFECTIVE FOR NOT MORE THAN 96 HOURS.

3 (3) AS SOON AS POSSIBLE AFTER A DECLARATION OF A GROUNDWATER
4 EMERGENCY HAS BEEN MADE, COPIES OF THE DECLARATION SHALL BE GIVEN
5 TO THE NEWSPAPERS OF GENERAL CIRCULATION LOCATED IN THE AFFECTED
6 COUNTY.

7 SEC. 30209. THE OWNER OF A SIGNIFICANT GROUNDWATER WELL
8 SHALL, SUBJECT TO AN ORDER ISSUED UNDER THIS PART, PROVIDE TIMELY
9 AND REASONABLE COMPENSATION TO PERSONS WHO OWN NONSIGNIFICANT
10 GROUNDWATER WELLS IF THERE IS FAILURE OR SUBSTANTIAL IMPAIRMENT
11 OF THOSE WELLS IF THE FAILURE OR SUBSTANTIAL IMPAIRMENT WAS
12 CAUSED BY THE GROUNDWATER WITHDRAWALS OF THE SIGNIFICANT GROUND-
13 WATER WELL.

14 SEC. 30210. (1) TIMELY AND REASONABLE COMPENSATION UNDER
15 SECTION 30209 CONSISTS OF AND IS LIMITED TO THE FOLLOWING:

16 (A) THE IMMEDIATE TEMPORARY PROVISION AT THE PRIOR POINT OF
17 USE OF AN ADEQUATE SUPPLY OF POTABLE WATER.

18 (B) REIMBURSEMENT OF EXPENSES REASONABLY INCURRED BY THE
19 COMPLAINANT FOR THE FOLLOWING:

20 (i) THE RESTORATION OF THE AFFECTED NONSIGNIFICANT GROUNDWA-
21 TER WELL TO THE WELL'S FORMER RELATIVE CAPABILITY.

22 (ii) THE PERMANENT PROVISION AT THE POINT OF USE OF AN
23 ALTERNATIVE POTABLE SUPPLY OF EQUAL QUANTITY.

24 (iii) THE PERMANENT RESTRICTION OR SCHEDULING OF THE GROUND-
25 WATER WITHDRAWALS OF THE SIGNIFICANT GROUNDWATER WELL SO THAT THE
26 AFFECTED WATER WELL CONTINUES TO PRODUCE THE FOLLOWING, AS
27 APPROPRIATE:

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1 (A) THE WELL'S NORMAL SUPPLY OF WATER.

2 (B) THE NORMAL SUPPLY OF POTABLE WATER IF THE WELL NORMALLY
3 FURNISHES POTABLE WATER.

4 (2) THE DEPARTMENT SHALL IMPLEMENT THIS SECTION BY ORDER.
5 BEFORE THE DEPARTMENT ENTERS AN INITIAL DETERMINATION OF THE
6 ORDER, THE DEPARTMENT SHALL CONDUCT AN INVESTIGATION AND PROVIDE
7 AFFECTED PERSONS WITH AN INFORMAL OPPORTUNITY TO CONTRIBUTE TO
8 THE INVESTIGATION.

9 SEC. 30211. THE REFUSAL OF AN OWNER OF AN AFFECTED NONSIG-
10 NIFICANT GROUNDWATER WELL TO ACCEPT TIMELY AND REASONABLE COMPEN-
11 SATION IS SUFFICIENT GROUNDS FOR THE DEPARTMENT TO TERMINATE AN
12 ORDER IMPOSED ON THE OWNER OF A SIGNIFICANT GROUNDWATER WELL. AN
13 OWNER OF A SIGNIFICANT GROUNDWATER WELL MAY REQUEST A HEARING
14 UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,
15 MCL 24.201 TO 24.328, IF THE OWNER DOES NOT BELIEVE COMPENSATION
16 WAS TIMELY OR REASONABLE.

17 SEC. 30212. AN OWNER OF A NONSIGNIFICANT GROUNDWATER WELL
18 THAT WAS DRILLED AFTER THE EFFECTIVE DATE OF THIS PART WHO
19 DESIRES TO RECEIVE THE PROTECTION OF THIS PART SHALL CONSTRUCT
20 THE WELL TO CONFORM WITH R 325.1601 TO R 325.1781 OF THE MICHIGAN
21 ADMINISTRATIVE CODE.

22 SEC. 30213. (1) THE GROUNDWATER EMERGENCY FUND IS CREATED
23 WITHIN THE STATE TREASURY.

24 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
25 FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER
26 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER

1 SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND
2 INVESTMENTS.

3 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
4 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

5 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
6 APPROPRIATION, FOR THE IMPLEMENTATION OF THIS PART.

7 SEC. 30214. THE DEPARTMENT MAY PROMULGATE RULES TO IMPLI-
8 MENT THIS PART.

9 SEC. 30215. (1) A PERSON WHO VIOLATES AN ORDER ISSUED UNDER
10 THIS PART IS RESPONSIBLE FOR THE PAYMENT OF A CIVIL FINE OF NOT
11 MORE THAN \$1,000.00 FOR EACH DAY OF VIOLATION.

12 (2) A DEFAULT IN THE PAYMENT OF A CIVIL FINE OR COSTS
13 ORDERED UNDER THIS SECTION OR AN INSTALLMENT OF THE FINE OR COSTS
14 MAY BE REMEDIED BY ANY MEANS AUTHORIZED UNDER THE REVISED JUDICA-
15 TURE ACT OF 1961, 1961 PA 236, MCL 600.101 TO 600.9948.

16 (3) IN ADDITION TO THE REMEDIES PROVIDED IN THIS SECTION,
17 THE ATTORNEY GENERAL ON BEHALF OF THE DEPARTMENT MAY MAINTAIN AN
18 ACTION TO ENJOIN A VIOLATION OF THIS PART.