

HOUSE BILL No. 4678

May 2, 2013, Introduced by Reps. Daley, Brunner, Lauwers, Brown and Muxlow and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 31701, 31702, 31703, 31704, 31705, 31706, 31708, and 31712 (MCL 324.31701, 324.31702, 324.31703, 324.31704, 324.31705, 324.31706, 324.31708, and 324.31712), as added by 2012 PA 602.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31701. As used in this part:

2 (a) "Agricultural well" means a high-capacity well that is
3 ~~used for an agricultural purpose.~~ **LOCATED ON A FARM AND IS USED FOR**
4 **AN AGRICULTURAL PURPOSE AS THAT TERM IS DEFINED IN SECTION 32701.**

5 (b) "Complaint" means a complaint submitted under section
6 31702 alleging a potential groundwater dispute.

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

4 (i) Assembling materials.

5 (ii) Disassembling and removing a structure.

6 (iii) Preparing the construction site.

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

9 (d) "Department" means the department of environmental
10 quality.

11 (e) "Dewatering well" means a well or pump that is used to
12 remove water from a mining operation or that is used for a limited
13 time period as part of a construction project to remove or pump
14 water from a surface or subsurface area and ceases to be used upon
15 completion of the construction project or shortly after completion
16 of the construction project.

17 (f) "Director" means the director of the department or his or
18 her designee.

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

21 (h) "Fund" means the aquifer protection revolving fund created
22 in section 31710.

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

26 (j) "Groundwater dispute" means a groundwater dispute declared
27 by order of the director **OR THE DIRECTOR OF THE DEPARTMENT OF**

1 **AGRICULTURE AND RURAL DEVELOPMENT** under section 31703.

2 (k) "High-capacity well" means 1 or more water wells
3 associated with an industrial or processing facility, an irrigation
4 facility, or a farm that, in the aggregate from all sources and by
5 all methods, have the capability of withdrawing 100,000 or more
6 gallons of groundwater in 1 day.

7 (l) "Local health department" means that term as it is defined
8 in section 1105 of the public health code, 1978 PA 368, MCL
9 333.1105.

10 ~~—— (m) "Owner" means either of the following:~~

11 ~~—— (i) The owner of an interest in property.~~

12 ~~—— (ii) A person in possession of property.~~

13 (M) "OWNER OF A HIGH-CAPACITY WELL" MEANS THE PERSON THAT OWNS
14 OR CONTROLS THE PARCEL OF PROPERTY WHERE A HIGH-CAPACITY WELL IS
15 LOCATED.

16 (N) "OWNER OF A SMALL-QUANTITY WELL" MEANS THE PERSON THAT
17 OWNS OR CONTROLS THE PARCEL OF PROPERTY WHERE A SMALL-CAPACITY WELL
18 IS LOCATED.

19 (O) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
20 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

21 (P) ~~(n)~~—"Potable water" means water that at the point of use
22 is acceptable for human consumption.

23 (Q) ~~(e)~~—"Small-quantity well" means 1 or more water wells of a
24 person at the same location that, in the aggregate from all sources
25 and by all methods, do not have the capability of withdrawing
26 100,000 or more gallons of groundwater in 1 day.

27 (R) ~~(p)~~—"Water well" means an opening in the surface of the

1 earth, however constructed, that is used for the purpose of
2 withdrawing groundwater. Water well does not include a drain as
3 defined in section 3 of the drain code of 1956, 1956 PA 40, MCL
4 280.3.

5 (S) ~~(g)~~—"Well drilling contractor" means a well drilling
6 contractor registered under part 127 of the public health code,
7 1978 PA 368, MCL 333.12701 to 333.12771.

8 Sec. 31702. (1) The owner of a small-quantity well may submit
9 a complaint alleging a potential groundwater dispute if the small-
10 quantity well has failed to furnish the well's normal supply of
11 water or the well has failed to furnish potable water and the owner
12 has credible reason to believe that the well's problems have been
13 caused by a high-capacity well. A complaint shall be submitted to
14 the director or to the director of the department of agriculture
15 and rural development if the complaint involves an agricultural
16 well. The complaint shall be in writing and shall be submitted in
17 person, via certified mail, via the toll-free facsimile telephone
18 number provided in subsection (6), or via other means of electronic
19 submittal as developed by the department. However, the director or
20 the director of the department of agriculture and rural development
21 may refuse to accept an unreasonable complaint. The complaint shall
22 include all of the following information:

23 (a) The name, address, and telephone number of the owner of
24 the small-quantity well.

25 (b) The location of the small-quantity well, including the
26 county, township, township section, and address of the property on
27 which the small-quantity well is situated, and all other available

1 information that ~~defines~~ **INDICATES** the location of that well.

2 (c) A written assessment by a well drilling contractor that
3 the small-quantity well failure was not the result of well design
4 or equipment failure. The assessment shall include a determination
5 of the static water level in the well at the time of the assessment
6 and, if readily available, the type of pump and equipment.

7 (d) An explanation of why the small-quantity well owner
8 believes that a high-capacity well has interfered with the proper
9 function of the small-quantity well and any information available
10 to the small-quantity well owner about the location and operation
11 of the high-capacity well.

12 (e) The date or dates on which the interference by a high-
13 capacity well occurred.

14 (f) Sufficient evidence to establish a reasonable belief that
15 the interference was caused by a high-capacity well.

16 (2) The owner of a small-quantity well may call the toll-free
17 telephone line provided for in subsection (6) to request a
18 complaint form or other information regarding the dispute
19 resolution process provided in this part.

20 (3) Within 2 business days after receipt of a complaint under
21 subsection (1), the director or the director of the department of
22 agriculture and rural development, as appropriate, shall contact
23 the complainant and the owner of each high-capacity well identified
24 in the complaint, **SHALL PROVIDE ACTUAL NOTICE OF THE COMPLAINT TO**
25 **THE OWNER OF EACH HIGH-CAPACITY WELL IDENTIFIED IN THE COMPLAINT,**
26 and **SHALL** begin an investigation. ~~However, if the owner of the~~
27 ~~high capacity well notifies the department that he or she does not~~

1 ~~wish to participate in the dispute resolution process provided for~~
2 ~~in this part, the investigation shall be suspended and the dispute~~
3 ~~shall be resolved as otherwise provided by law.~~

4 (4) Within 5 business days after receipt of a complaint under
5 ~~subsection (1),~~ **THE OWNER OF EACH HIGH-CAPACITY WELL HAS BEEN**
6 **PROVIDED WITH ACTUAL NOTICE OF THE COMPLAINT UNDER SUBSECTION (3),**
7 the director or the director of the department of agriculture and
8 rural development, as appropriate, shall conduct an on-site
9 evaluation. **IF THE WELL IS AN AGRICULTURAL WELL, THE DEPARTMENT**
10 **SHALL CONSULT WITH AND PROVIDE TECHNICAL ASSISTANCE TO THE**
11 **DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT REGARDING THE ON-**
12 **SITE EVALUATION.** However, if the complaint is for a small-quantity
13 well that is in close proximity to other small-quantity wells for
14 which documented complaints have been received and investigated
15 during the previous 60 days, the department **OR THE DEPARTMENT OF**
16 **AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,** need not conduct
17 an on-site evaluation unless ~~the department~~ **IT** determines that an
18 on-site evaluation is necessary. The director or the director of
19 the department of agriculture and rural development, as
20 appropriate, shall give affected persons an opportunity to
21 contribute to the investigation of a complaint. In conducting the
22 investigation, the director or the director of the department of
23 agriculture and rural development, as appropriate, shall consider
24 whether the owner of the high-capacity well is using industry-
25 recognized water conservation management practices.

26 (5) After conducting an investigation, the director or the
27 director of the department of agriculture and rural development, as

1 appropriate, shall make a diligent effort to resolve the complaint.
2 In attempting to resolve a complaint, the director or the director
3 of the department of agriculture and rural development, as
4 appropriate, may propose a remedy that he or she believes would
5 equitably resolve the complaint. ~~If, within 14 days following the~~
6 ~~submittal of a complaint, the director of the department of~~
7 ~~agriculture and rural development is unable to resolve a complaint,~~
8 ~~the director of the department of agriculture and rural development~~
9 ~~shall refer the complaint, and provide all relevant information, to~~
10 ~~the director.~~

11 (6) The director shall provide for the use of a toll-free
12 facsimile line to receive complaints and a toll-free telephone line
13 for owners of small-quantity wells to request complaint forms and
14 to obtain other information regarding the dispute resolution
15 process provided in this part.

16 (7) The director and the director of the department of
17 agriculture and rural development shall do both of the following:

18 (a) Publicize the toll-free facsimile line and the toll-free
19 telephone line provided for in subsection (6).

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

23 (8) A complainant who submits more than 2 unverified
24 complaints under this section within 1 year may be ordered by the
25 director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL**
26 **DEVELOPMENT** to pay for the full costs of investigation of any third
27 or subsequent unverified complaint. As used in this subsection,

1 "unverified complaint" means a complaint in response to which the
2 director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL**
3 **DEVELOPMENT** determines that there is not reasonable evidence to
4 declare a groundwater dispute.

5 (9) IF AN OWNER OF A HIGH-CAPACITY WELL THAT IS NOT AN
6 AGRICULTURAL WELL DOES NOT WISH TO PARTICIPATE IN THE DISPUTE
7 RESOLUTION PROCESS UNDER THIS PART, THAT DISPUTE SHALL BE RESOLVED
8 AS OTHERWISE PROVIDED BY LAW.

9 Sec. 31703. (1) The director **OR THE DIRECTOR OF THE DEPARTMENT**
10 **OF AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,** shall, by
11 order, declare a groundwater dispute if an investigation of a
12 complaint discloses all of the following, based upon reasonable
13 scientifically based evidence, and within a reasonable amount of
14 time the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE**
15 **AND RURAL DEVELOPMENT, AS APPROPRIATE,** is unable to resolve the
16 complaint:

17 (a) That the small-quantity well has failed to furnish the
18 well's normal supply of water or failed to furnish potable water.

19 (b) That the small-quantity well and the well's equipment were
20 functioning properly at the time of the failure. The determination
21 under this subdivision shall be made based upon an assessment from
22 a well drilling contractor that is provided by the owner of the
23 small-quantity well.

24 (c) That the failure of the small-quantity well was caused by
25 the lowering of the groundwater level in the area.

26 (d) That the lowering of the groundwater level exceeds normal
27 seasonal water level fluctuations and substantially impairs

1 continued use of the groundwater resource in the area.

2 (e) That the lowering of the groundwater level was caused by
3 at least 1 high-capacity well.

4 (f) That the owner of the small-quantity well did not
5 unreasonably reject a remedy proposed by the director or the
6 director of the department of agriculture and rural development
7 under section 31702(5).

8 (2) In addition to the authority under subsection (1) to
9 declare a groundwater dispute, if the director **OR THE DIRECTOR OF**
10 **THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AS**
11 **APPROPRIATE**, has clear and convincing scientifically based evidence
12 that indicates that continued groundwater withdrawals from a high-
13 capacity well will exceed the recharge capability of the
14 groundwater resource of the area, the director **OR THE DIRECTOR OF**
15 **THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AS**
16 **APPROPRIATE**, by order, may declare a groundwater dispute.

17 (3) The director **OR THE DIRECTOR OF THE DEPARTMENT OF**
18 **AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE**, may amend or
19 terminate an order declaring a groundwater dispute at any time.

20 Sec. 31704. (1) ~~An~~ **SUBJECT TO SUBSECTIONS (2) AND (4), AN**
21 order declaring a groundwater dispute is effective when a copy of
22 the order is served upon the owner of a high-capacity well that is
23 reasonably believed to have caused the failure of the complainant's
24 small-quantity well.

25 (2) If a groundwater dispute requires action before service
26 can be completed under subsection (1), oral notification in person
27 by the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE**

1 **AND RURAL DEVELOPMENT, AS APPROPRIATE,** is sufficient until service
2 can be completed. Oral notification is effective for not more than
3 96 hours.

4 (3) As soon as possible after an order declaring a groundwater
5 dispute has been issued, the director **OR THE DIRECTOR OF THE**
6 **DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,**
7 shall provide copies of the order to the local units of government
8 in which the high-capacity well and the small-quantity well are
9 located and to the local health departments with jurisdiction over
10 those wells.

11 (4) **WITHIN 14 DAYS AFTER SERVICE OF AN ORDER UNDER SUBSECTION**
12 **(1), THE OWNER OF AN AGRICULTURAL WELL MAY CONTEST THE ORDER BY**
13 **SUBMITTING AN APPEAL TO THE COMMISSION OF AGRICULTURE AND RURAL**
14 **DEVELOPMENT. THE APPEAL SHALL BE SUBMITTED ON A FORM PROVIDED BY**
15 **THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT AND SHALL**
16 **OUTLINE THE BASIS FOR THE APPEAL. UPON RECEIPT OF AN APPEAL UNDER**
17 **THIS SUBSECTION, THE COMMISSION OF AGRICULTURE AND RURAL**
18 **DEVELOPMENT SHALL SCHEDULE THE APPEAL FOR CONSIDERATION AT THE NEXT**
19 **SCHEDULED MEETING OF THE COMMISSION. EXCEPT FOR THE PROVISION OF AN**
20 **ADEQUATE SUPPLY OF POTABLE WATER UNDER SECTION 31705(1), THE TERMS**
21 **OF THE ORDER ARE STAYED UNTIL A DETERMINATION IS MADE BY THE**
22 **COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT REGARDING THE**
23 **APPEAL. AT THE COMMISSION'S MEETING, THE COMMISSION SHALL REVIEW**
24 **THE ORDER AND CONSIDER ANY TESTIMONY OR OTHER DOCUMENTATION**
25 **CONTESTING THE ORDER AND SHALL MAKE A DETERMINATION TO AFFIRM THE**
26 **ORDER OR DISMISS THE ORDER. IF THE COMMISSION OF AGRICULTURE AND**
27 **RURAL DEVELOPMENT DISMISSES THE ORDER, THE DEPARTMENT OF**

1 AGRICULTURE AND RURAL DEVELOPMENT SHALL REIMBURSE THE APPELLANT FOR
2 THE COST OF PROVIDING POTABLE WATER UNDER SECTION 31705.

3 Sec. 31705. (1) Upon declaration of a groundwater dispute, the
4 director OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL
5 DEVELOPMENT, AS APPROPRIATE, shall, by order, require the immediate
6 temporary provision at the point of use of an adequate supply of
7 potable water.

8 (2) Except as provided in subsections (3), (4), and (5), if
9 the director OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND
10 RURAL DEVELOPMENT, AS APPROPRIATE, issues an order declaring a
11 groundwater dispute, the director OR THE DIRECTOR OF THE DEPARTMENT
12 OF AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE, may, by
13 order, restrict the quantity of groundwater that may be extracted
14 from a high-capacity well under either of the following conditions:

15 (a) If the high-capacity well is reasonably believed to have
16 caused the failure of the complainant's small-quantity well and an
17 immediate temporary provision of an adequate supply of potable
18 water has not been provided to the complainant by the owner of the
19 high-capacity well.

20 (b) If there is clear and convincing scientifically based
21 evidence that continued groundwater withdrawals from the high-
22 capacity well will exceed the recharge capability of the
23 groundwater resource of the area.

24 (3) In issuing an order under subsection (2), the director OR
25 THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL
26 DEVELOPMENT, AS APPROPRIATE, shall consider the impact the order
27 will have on the viability of a business associated with the high-

1 capacity well or other use of the high-capacity well.

2 (4) If an operator of a high-capacity well withdraws water by
3 a means other than pumping, the director **OR THE DIRECTOR OF THE**
4 **DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,**
5 may, by order, temporarily restrict the quantity of groundwater
6 that may be extracted only if the conditions of subsection (2)(a)
7 or (b) have not been met.

8 (5) The director **OR THE DIRECTOR OF THE DEPARTMENT OF**
9 **AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,** shall not issue
10 an order that diminishes the normal supply of drinking water or the
11 capability for fire suppression of a public water supply system
12 owned or operated by a local unit of government.

13 Sec. 31706. If a groundwater dispute has been declared, the
14 owner of a high-capacity well shall, subject to an order of the
15 director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL**
16 **DEVELOPMENT, AS APPROPRIATE,** provide timely and reasonable
17 compensation as provided in section 31707 if there is a failure or
18 substantial impairment of a small-quantity well and the following
19 conditions exist:

20 (a) The failure or substantial impairment was caused by the
21 groundwater withdrawals of the high-capacity well.

22 (b) The small-quantity well was constructed prior to February
23 14, 1967 or, if the small-quantity well was constructed on or after
24 February 14, 1967, the well was constructed in compliance with part
25 127 of the public health code, 1978 PA 368, MCL 333.12701 to
26 333.12771.

27 Sec. 31708. ~~The~~ **NOTWITHSTANDING SECTION 31704(4),** THE owner of

1 a high-capacity well subject to an order under this part may appeal
2 that order directly to circuit court pursuant to the revised
3 judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

4 Sec. 31712. (1) A person who violates an order issued under
5 this part is responsible for a civil fine of not more than
6 \$1,000.00 for each day of violation, but not exceeding a total of
7 \$50,000.00.

8 (2) A default in the payment of a civil fine or costs ordered
9 under this section or an installment of the fine or costs may be
10 remedied by any means authorized under the revised judicature act
11 of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

12 (3) All civil fines recovered under this section shall be
13 forwarded to the state treasurer for deposit into the fund.

14 (4) The director **OR THE DIRECTOR OF THE DEPARTMENT OF**
15 **AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,** may bring an
16 action in a court of competent jurisdiction to enforce an order
17 under this part, including injunctive or other equitable relief.