SUBSTITUTE FOR

HOUSE BILL NO. 4678

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 31701, 31702, 31703, 31704, 31705, 31706, 31708, 31711, and 31712 (MCL 324.31701, 324.31702, 324.31703, 324.31704, 324.31705, 324.31706, 324.31708, 324.31711, and 324.31712), as added by 2012 PA 602.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 31701. As used in this part:

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

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

(c) "Construction" means the process of building a building,

road, utility, or another structure, including all of the following:

(*i*) Assembling materials.

(*ii*) Disassembling and removing a structure.

(*iii*) Preparing the construction site.

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

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

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

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

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

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

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

(j) "Groundwater dispute" means a groundwater dispute declared by order of the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT** under section 31703.

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

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

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

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

~~(*ii*) A person in possession of property.~~

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

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

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

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

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

(R) ~~(p)~~ "Water well" means an opening in the surface of the earth, however constructed, that is used for the purpose of

withdrawing groundwater. Water well does not include a drain as defined in section 3 of the drain code of 1956, 1956 PA 40, MCL 280.3.

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

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

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

(b) The location of the small-quantity well, including the county, township, township section, and address of the property on which the small-quantity well is situated, and all other available information that ~~defines~~ **INDICATES** the location of that well.

(c) A written assessment by a well drilling contractor that the small-quantity well failure was not the result of well design or equipment failure. The assessment shall include a determination of the static water level in the well at the time of the assessment**, IF THE STATIC WATER LEVEL DETERMINATION WILL NOT RESULT IN THE WELL BEING DAMAGED OR DECOMMISSIONED,** and, if readily available, the type of pump and equipment.

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

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

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

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

(3) Within 2 business days after receipt of a complaint under subsection (1), the director or the director of the department of agriculture and rural development, as appropriate, shall contact the complainant and the owner of each high-capacity well identified in the complaint**, SHALL PROVIDE ACTUAL NOTICE OF THE COMPLAINT TO THE OWNER OF EACH HIGH-CAPACITY WELL IDENTIFIED IN THE COMPLAINT,** and **SHALL** begin an investigation. ~~However, if the owner of the~~

~~high-capacity well notifies the department that he or she does not wish to participate in the dispute resolution process provided for in this part, the investigation shall be suspended and the dispute shall be resolved as otherwise provided by law.~~

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

(5) After conducting an investigation, the director or the

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

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

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

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

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

(8) A complainant who submits more than 2 unverified complaints under this section within 1 year may be ordered by the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT** to pay for the full costs of investigation of any third

or subsequent unverified complaint. As used in this subsection, "unverified complaint" means a complaint in response to which the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT** determines that there is not reasonable evidence to declare a groundwater dispute.

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

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

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

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

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

(d) That the lowering of the groundwater level exceeds normal

seasonal water level fluctuations and substantially impairs continued use of the groundwater resource in the area.

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

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

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

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

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

(2) If a groundwater dispute requires action before service can be completed under subsection (1), oral notification in person

by the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,** is sufficient until service can be completed. Oral notification is effective for not more than 96 hours.

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

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

RURAL DEVELOPMENT DISMISSES THE ORDER, THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT SHALL REIMBURSE THE APPELLANT FOR THE COST OF PROVIDING POTABLE WATER UNDER SECTION 31705.

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

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

(a) If the high-capacity well is 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 has not been provided to the complainant by the owner of the high-capacity well.

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

(3) In issuing an order under subsection (2), the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE,** shall consider the impact the order

will have on the viability of a business associated with the high-capacity well or other use of the high-capacity well.

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

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

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

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

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

Sec. 31708. ~~The~~ **NOTWITHSTANDING SECTION 31704(4), THE** owner of a high-capacity well subject to an order under this part may appeal that order directly to circuit court pursuant to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

Sec. 31711. **(1)** Not later than April 1, 2013, and every 2 years thereafter, the department shall prepare and submit to the legislature a report that includes both of the following:

(a) An analysis of the department's costs of implementing this part.

(b) Recommendations on modifications to this part that would improve the overall effectiveness of this part.

(2) THE DEPARTMENT SHALL FILE WITH THE SECRETARY OF THE SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES A REPORT THAT EVALUATES THE EFFECTIVENESS OF THE DISPUTE RESOLUTION PROCESS DURING THE 5-YEAR PERIOD BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION. THE REPORT SHALL BE FILED WITHIN 90 DAYS AFTER THE EXPIRATION OF THAT 5-YEAR PERIOD.

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

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

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

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