HOUSE BILL No. 5151

November 3, 2011, Introduced by Reps. Meadows, Dillon, Irwin, Heise, Rutledge and Kandrevas and referred to the Committee on Energy and Technology.

A bill to amend 1994 PA 451, entitled

"Natural resources and environmental protection act,"

by amending section 61501 (MCL 324.61501), as amended by 1998 PA 303, and by adding sections 61528, 61529, and 61530.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 61501. Unless the context requires a different meaning, the words defined in this section have the following meanings when used in this part:

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

(B) "EPA HYDRAULIC FRACTURING RESEARCH STUDY" MEANS THE STUDY BY THE OFFICE OF RESEARCH AND DEVELOPMENT AT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON THE RELATIONSHIP BETWEEN HYDRAULIC FRACTURING AND DRINKING WATER THAT MAY BE DEVELOPED AND

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IMPLEMENTED BEGINNING IN 2011, WITH INITIAL RESEARCH AVAILABLE BY THE END OF 2012.

(C) ~~(b)~~ "Field" means an underground reservoir or reservoirs containing oil or gas, or both. Field also includes the same general surface area that is underlaid or appears to be underlaid by at least 1 pool. Field and pool have the same meaning if only 1 underground reservoir is involved. However, field, unlike pool, may relate to 2 or more pools.

(D) "FLOW BACK" MEANS THE FRACTURING FLUIDS THAT RETURN TO THE SURFACE AFTER A HYDRAULIC FRACTURE IS COMPLETED.

(E) "FRACTURING FLUIDS" MEANS A MIXTURE OF WATER, PROPPANT, AND ADDITIVES USED TO HYDRAULICALLY INDUCE CRACKS IN A GEOLOGIC FORMATION.

(F) ~~(c)~~ "Fund" means the oil and gas regulatory fund created in section 61525b.

(G) ~~(d)~~ "Gas" means a mixture of hydrocarbons and varying quantities of nonhydrocarbons in a gaseous state which may or may not be associated with oil, and includes those liquids resulting from condensation.

(H) "HYDRAULIC FRACTURING" MEANS INJECTING FRACTURING FLUIDS INTO A GEOLOGIC FORMATION AT A FORCE EXCEEDING THE PARTING PRESSURE OF THE ROCK, INDUCING FRACTURES THROUGH WHICH OIL OR NATURAL GAS CAN FLOW TO THE WELLBORE.

(I) ~~(e)~~ "Illegal container" means a receptacle that contains illegal oil or gas or illegal products.

(J) ~~(f)~~ "Illegal conveyance" means a conveyance by or through which illegal oil or gas or illegal products are being transported.

(K) ~~(g)~~ "Illegal oil or gas" means oil or gas that has been produced by an owner or producer in violation of this part, a rule promulgated under this part, or an order of the supervisor issued under this part.

(*l*) ~~(h)~~ "Illegal product" means a product of oil or gas or any part of a product of oil or gas that was knowingly processed or derived in whole or in part from illegal oil or gas.

(M) ~~(i)~~ "Market demand" means the actual demand for oil or gas from any particular pool or field for current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of oil or gas or the products of oil or gas.

(N) ~~(j)~~ "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and that are not the result of condensation of gas after it leaves the underground reservoir.

(O) ~~(k)~~ "Owner" means the person who has the right to drill a well into a pool, to produce from a pool, and to receive and distribute the value of the production from the pool for himself or herself either individually or in combination with others.

(P) ~~(*l*)~~ "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Pool includes a productive zone of a general structure that is completely separated from any other zone in the structure, or is declared to be a pool by the supervisor of wells.

(Q) ~~(m)~~ "Producer" means the operator, whether owner or not, of a well or wells capable of producing oil or gas or both in paying quantities.

(R) ~~(n)~~ "Product" means any commodity or thing made or manufactured from oil or gas, and all derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue treated crude oil, residuum, gas oil, naphtha, distillate, gasoline, casing-head gasoline, natural gas gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, and blends or mixtures of oil or gas or any derivatives of oil or gas whether enumerated or not.

(S) ~~(o)~~ "Supervisor" or "supervisor of wells" means the department.

(T) ~~(p)~~ "Tender" means a permit or certificate of clearance, approved and issued or registered under the authority of the supervisor, for the transportation of oil or gas or products.

(U) ~~(q)~~ "Waste" in addition to its ordinary meaning includes all of the following:

(*i*) "Underground waste", as those words are generally understood in the oil business, and including all of the following:

(A) The inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool.

(B) Unreasonable damage to underground fresh or mineral

waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

(*ii*) "Surface waste", as those words are generally understood in the oil business, and including all of the following:

(A) The unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas, oil, or other product, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially a loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing a well or wells, or incident to or resulting from inefficient storage or handling of oil.

(B) The unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values from or by oil and gas operations.

(C) The unnecessary endangerment of public health, safety, or welfare from or by oil and gas operations.

(D) The drilling of unnecessary wells.

(*iii*) "Market waste", which includes the production of oil or gas in any field or pool in excess of the market demand as defined in this part.

SEC. 61528. (1) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL UNDERTAKE A STUDY OF THE PUBLIC HEALTH, ENVIRONMENTAL, AND NATURAL RESOURCE IMPACTS ASSOCIATED WITH THE EXTRACTION OF NATURAL GAS FROM SHALE FORMATIONS IN THIS STATE.

(2) IN DESIGNING AND UNDERTAKING THE STUDY, THE DEPARTMENT AND

THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL CONSULT, AS APPROPRIATE, OTHER STATE AGENCIES, OTHER STATES IN THE REGION, AND FEDERAL AGENCIES.

(3) THE STUDY SHALL INCLUDE A REVIEW OF THE RESULTS OF THE EPA HYDRAULIC FRACTURING RESEARCH STUDY AND OTHER AVAILABLE STUDIES OF POTENTIAL IMPACTS TO THE PUBLIC HEALTH, SAFETY, ENVIRONMENT, OR NATURAL RESOURCES.

(4) THE STUDY SHALL ADDRESS ALL OF THE FOLLOWING:

(A) THE PROBABILITY OF AND NATURAL RESOURCE IMPACTS OF CONTAMINATION TO GROUNDWATER AND SURFACE WATER BY FRACTURING FLUIDS AND GAS.

(B) THE PROBABILITY OF AND NATURAL RESOURCE IMPACTS OF CONTAMINATION TO WATER AND OTHER NATURAL RESOURCES FROM THE TRANSPORTATION, STORAGE, AND HANDLING OF LIQUIDS, INCLUDING FRACTURING FLUIDS.

(C) THE PROBABILITY OF AND NATURAL RESOURCE IMPACTS OF CONTAMINATION TO WATER AND OTHER NATURAL RESOURCES FROM THE HANDLING AND DISPOSAL OF FLOW BACK AND OTHER WASTEWATER AND WASTES.

(D) THE RISKS OF TRESPASS AND THE TAKING OF PROPERTY RIGHTS THROUGH CONTAMINATION OF, NEGATIVE IMPACTS TO, OR TRESPASS ON WATER AND OTHER NATURAL RESOURCES FROM THE HANDLING AND DISPOSAL OF FLOW BACK AND OTHER WASTEWATER AND WASTES.

(E) THE LONG-TERM CONSEQUENCES OF THE POTENTIAL NUMBER OF OIL OR GAS WELLS THAT COULD BE LOCATED WITHIN A WATERSHED, TO THE WATER CYCLE OF THAT WATERSHED, INCLUDING RECHARGE FROM PRECIPITATION AND DISCHARGE TO STREAMS, AND OTHER LARGE-SCALE INPUTS AND OUTPUTS.

(F) THE LONG-TERM AVAILABILITY OF WATER RESOURCES TO SUPPORT

HYDRAULIC FRACTURING ACTIVITIES.

(G) RISKS TO HABITAT OF ENDANGERED OR THREATENED OR RARE SPECIES, OR TO CLOSED-CANOPY DEPENDENT SPECIES, OR ANY OTHER SPECIFIC-HABITAT DEPENDENT SPECIES, FROM HABITAT FRAGMENTATION AND OTHER ENVIRONMENTAL IMPACTS DUE TO THE CONSTRUCTION OF DRILLING PLATFORMS, GATHERING LINES, TRANSMISSION PIPELINES, AND OTHER OIL AND GAS DEVELOPMENT INFRASTRUCTURE.

(H) INCREASED RISKS OF TRAFFIC ACCIDENTS AND DAMAGE TO ROADS AND BRIDGES FROM TRUCK TRAFFIC AND ADDITIONAL COSTS TO COMMUNITIES DUE TO TRAFFIC ACCIDENTS.

(I) LONG-TERM IMPACTS TO LOCAL LAND USE PATTERNS AND THE CHARACTER OF RURAL AREAS AND SMALL CITIES AND VILLAGES.

(J) THE ADEQUACY OF AND ADDITIONAL COSTS ASSOCIATED WITH ADDING CAPACITY OF LOCAL EMERGENCY RESPONDERS TO QUICKLY AND EFFECTIVELY RESPOND TO AND MANAGE ANY OIL AND GAS DEVELOPMENT ASSOCIATED ACCIDENT OR SPILL.

(K) IMPACTS TO STATE RESOURCES AND RECREATION LANDS.

(*l*) THE PROJECTED POSITIVE AND NEGATIVE ECONOMIC IMPACT OF HYDRAULIC FRACTURING ACTIVITIES TO THIS STATE.

(M) THE FEASIBILITY OF ENACTING A STATE-LEVEL SEVERANCE TAX TO GENERATE REVENUES FOR RESEARCH, REMEDIATION, AND OTHER ACTIVITIES RELATING TO HYDRAULIC FRACTURING.

(N) THE ESTABLISHMENT OF AN INDUSTRY-FUNDED ESCROW ACCOUNT TO FUND THE COST OF REMEDIATION AND REGULATORY ENFORCEMENT.

(O) THE POTENTIAL IMPACTS OF VARYING HYDRAULIC FRACTURING WASTE DISPOSAL METHODS INCLUDING RISKS TO GROUNDWATER AND SURFACE WATER FROM THE PRESENCE OF, AND POTENTIAL SPILLING OR OTHER

ACCIDENTS INVOLVING RADIOACTIVE MATERIALS IN FLOW BACK WATER, AND INCLUDING THE RISKS TO GROUNDWATER AND SURFACE WATER FROM THE DEEP INJECTION, OR ANY OTHER DISPOSAL METHOD, OF OIL AND GAS WASTEWATER CONTAINING THESE MATERIALS.

(P) WELL CONSTRUCTION STANDARDS, INCLUDING CONSTRUCTION METHODS AND MATERIALS USED.

(Q) NEEDED WATER QUANTITY PROTECTIONS THAT INCLUDE AT LEAST THE FOLLOWING:

(*i*) RECOMMENDATIONS FOR THE DEVELOPMENT OF A DOCUMENTED PUBLIC STANDARD OPERATING PROCEDURE FOR SITE-SPECIFIC REVIEWS OF HYDRAULIC FRACTURING RELATED WATER WITHDRAWAL PROPOSALS WHEN THE WATER WITHDRAWAL ASSESSMENT TOOL UNDER PART 327 HAS SHOWN THAT ADVERSE RESOURCE IMPACTS ARE LIKELY. THIS STANDARD OPERATING PROCEDURE RECOMMENDATION SHALL INCLUDE A PROCESS FOR PUBLIC PARTICIPATION AND INPUT THAT INCLUDES A COMMENT PERIOD ON THESE WATER WITHDRAWALS.

(*ii*) THE IDENTIFICATION OF WATER CONSERVATION PRACTICES AND TECHNOLOGY THAT RECYCLES HYDRAULIC FRACTURING WATER USING A FULLY CONTAINED SYSTEM WITH MINIMAL AIR POLLUTION.

(R) RECOMMENDATIONS FOR NEW REGULATIONS TO PROTECT WATER QUALITY, INCLUDING BOTH OF THE FOLLOWING:

(*i*) THE ESTABLISHMENT OF A PROCESS FOR FULL PUBLIC DISCLOSURE OF ALL CHEMICALS TO BE USED AT LEAST 30 DAYS BEFORE ANY DRILLING OR HYDRAULIC FRACTURING IS TO BEGIN. THIS PROCESS SHALL PLACE THE BURDEN OF PROOF ON THE PERMITTEE TO PROVE THE CONFIDENTIAL NATURE OF PROPRIETARY MIXTURES, BUT SHALL REQUIRE DISCLOSURE OF ALL CHEMICAL CONSTITUENTS.

(*ii*) ENFORCEABLE WATER QUALITY PROTECTIONS, INCLUDING, BUT NOT

LIMITED TO, THE FOLLOWING:

(A) SECONDARY CONTAINMENT FOR CHEMICALS, INCLUDING THOSE STORED PRIOR TO MIXING.

(B) APPROPRIATE SETBACKS FOR WELLS FROM SURFACE WATER RESOURCES, RESIDENCES, AND PUBLIC BUILDINGS AND OTHER INSTITUTIONS.

(C) IDENTIFICATION OF, AND RECOMMENDATIONS FOR, NONTOXIC HYDRAULIC FRACTURING FLUIDS AND PROCESSES.

(S) IMPACTS ON AIR, INCLUDING AIR POLLUTION AND OTHER RELATED ISSUES SUCH AS FLARING, METHANE VENTING, DIESEL ENGINE POLLUTION, AND VOC CONDENSATE, AND OTHER RECOMMENDATIONS FOR NEW REGULATIONS TO PROTECT THE HEALTH AND WELL-BEING OF RESIDENTS OF THIS STATE.

(T) THE IDENTIFICATION OF AND USE OF MOST EFFECTIVE METHODS AND TECHNOLOGY FOR REDUCING NOISE.

(U) A PUBLIC PARTICIPATION PROCESS INCLUDING BOTH OF THE FOLLOWING:

(*i*) A PROCESS THAT ALLOWS FOR PUBLIC PARTICIPATION WITH NOTICE 60 DAYS IN ADVANCE OF THE PERMITTING PROCESS AND ENABLES ALL PERSONS TO COMMENT ON, PROTEST, OR APPEAL THE ISSUANCE OF NEW OR SUBSTANTIALLY CHANGED PERMITS FOR NATURAL GAS DRILLING OR EXTRACTION.

(*ii*) ALTERNATIVES TO COMPULSORY POOLING REQUIREMENTS.

(V) MONITORING AND ENFORCEMENT OF SEISMIC ACTIVITY, EXISTING PIPELINES AND WELLS, INCLUDING PLUGGED AND ABANDONED WELLS.

(W) AN ONGOING STUDY OF CUMULATIVE IMPACTS TO PUBLIC HEALTH AND NATURAL RESOURCES FROM HYDRAULIC FRACTURING OPERATION IN THIS STATE.

(X) ANY OTHER ISSUES IDENTIFIED BY THE ADVISORY COMMISSION

CONVENED UNDER SECTION 61529.

(5) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL PREPARE A DRAFT REPORT BASED ON THE STUDY REQUIRED UNDER THIS SECTION AND SHALL MAKE THAT DRAFT REPORT PUBLICLY AVAILABLE AND OPEN TO PUBLIC COMMENT. PRIOR TO COMPLETION OF THE STUDY, THE PUBLIC SHALL HAVE A RIGHT TO COMMENT ON THE STUDY DESIGN.

(6) FOLLOWING THE PUBLIC COMMENT PERIOD UNDER SUBSECTION (5), THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL PREPARE A FINAL REPORT BASED UPON THE STUDY UNDER THIS SECTION. AFTER RECEIVING THE PUBLIC COMMENT ON THE DRAFT REPORT, THE DEPARTMENT SHALL MAKE A FORMAL RESPONSE DOCUMENT TO ADDRESS EACH CONCERN, BEFORE PREPARING A FINAL REPORT.

SEC. 61529. (1) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL CONVENE AN ADVISORY COMMITTEE THAT INCLUDES REPRESENTATIVES OF LOCAL GOVERNMENTS, THE SCIENCE AND ENGINEERING EXPERTS, INDUSTRY GROUPS, ENVIRONMENTAL ORGANIZATIONS, BUSINESSES AND PRIVATE CITIZENS, ACADEMICS FROM STATE UNIVERSITIES INCLUDING SOCIOLOGISTS, ANTHROPOLOGISTS, BIOLOGISTS, ECOLOGISTS, AS WELL AS GEOLOGISTS, LIMNOLOGISTS, AND OTHER SPECIALISTS AS NEEDED, AND PUBLIC HEALTH OFFICIALS FROM THE DEPARTMENT OF COMMUNITY HEALTH, AND ANY OTHER STATE AGENCIES OR OTHER PERSONS THE AGENCIES CONSIDER NECESSARY.

(2) THE ADVISORY COMMITTEE CONVENED UNDER SUBSECTION (1) AFTER REVIEWING THE STUDY UNDER SECTION 61528 SHALL MAKE RECOMMENDATIONS TO THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES ON BOTH OF THE FOLLOWING:

(A) CONDITIONS THAT SHOULD BE INCLUDED IN PERMITS ISSUED UNDER THIS PART FOR HYDRAULIC FRACTURING.

(B) APPROPRIATE CHANGES, IF ANY, THAT SHOULD BE MADE TO STATE LAW AND RULES GOVERNING HYDRAULIC FRACTURING.

SEC. 61530. (1) ON OR BEFORE JULY 1, 2012, OR WITHIN 30 DAYS AFTER ACQUIRING A GAS INTEREST, WHICHEVER IS LATER, AN OWNER THAT ACQUIRES A GAS INTEREST FOR THE PURPOSE OF DRILLING FOR NATURAL GAS SHALL FILE A NOTICE WITH THE DEPARTMENT IDENTIFYING ALL OF THE FOLLOWING:

(A) EACH PARCEL, BY PARCEL NUMBER OR OTHER LEGAL DESCRIPTION, ON WHICH THE OWNER HAS A GAS INTEREST.

(B) A STATEMENT OF THE TOTAL ACREAGE OF THE PARCELS IDENTIFIED UNDER SUBDIVISION (A).

(C) A MAP SHOWING THE PARCELS IDENTIFIED UNDER SUBDIVISION (A).

(2) ON OR BEFORE AUGUST 1, 2012, OR WITHIN 30 DAYS AFTER NOTIFICATION BY THE DEPARTMENT, WHICHEVER IS LATER, AN OWNER THAT FILES A NOTICE UNDER SUBSECTION (1) SHALL PAY TO THE DEPARTMENT, AS A FEE FOR CALENDAR YEAR 2012, AN AMOUNT EQUAL TO $10.00 PER ACRE OF THE TOTAL ACREAGE REPORTED.

(3) ON OR BEFORE AUGUST 1, 2013, OR WITHIN 30 DAYS AFTER NOTIFICATION BY THE DEPARTMENT, WHICHEVER IS LATER, AN OWNER THAT FILES A NOTICE UNDER SUBSECTION (1) SHALL PAY TO THE DEPARTMENT, AS A FEE FOR CALENDAR YEAR 2013, AN AMOUNT EQUAL TO $10.00 PER ACRE OF THE TOTAL ACREAGE REPORTED.

(4) EXCEPT AS PROVIDED IN SUBSECTION (9), A FEE SHALL NOT BE ASSESSED UNDER THIS SECTION AFTER CALENDAR YEAR 2013.

(5) THIS SECTION DOES NOT APPLY TO AN OWNER THAT DEMONSTRATES, TO THE SATISFACTION OF THE DEPARTMENT, GOOD CAUSE FOR THE FAILURE TO MEET THE REQUIREMENTS OTHERWISE PROVIDED IN THIS SECTION.

(6) THE FAILURE TO FILE THE NOTICE REQUIRED UNDER SUBSECTION (1) WHEN DUE, OR FAILURE TO PAY THE AMOUNTS REQUIRED UNDER SUBSECTIONS (2) AND (3) WHEN DUE, MAY BE GROUNDS FOR DENIAL OF A PERMIT TO EXPLORE FOR OR PRODUCE GAS FROM FORMATIONS UNDER THE PARCEL IN WHICH THE FEE HAS NOT BEEN PAID.

(7) AN OWNER SHALL NOT PASS THE PAYMENT OF COSTS REQUIRED UNDER SUBSECTIONS (2) AND (3) THROUGH TO, OR RECOVER THEM FROM, THE PERSON WHO OWNS THE SURFACE RIGHTS OF THE PROPERTY.

(8) THE DEPARTMENT SHALL DEPOSIT THE MONEY COLLECTED UNDER THIS SECTION IN THE FUND.

(9) UPON ISSUANCE OF THE FINAL REPORT UNDER SECTION 61528, THE DEPARTMENT SHALL COMPARE THE ACTUAL COSTS OF THE STUDY CONDUCTED UNDER SECTION 61528 WITH THE MONEY PAID BY PERSONS THAT FILE A NOTICE UNDER SUBSECTION (1). IF THE ACTUAL COST OF THE STUDY IS LESS THAN THE AMOUNT PAID UNDER SUBSECTIONS (2) AND (3), THE DEPARTMENT SHALL REFUND THE DIFFERENCE, PRORATED BY ACREAGE, TO THE OWNERS WHO PAID A FEE. IF THE ACTUAL COST OF THE STUDY IS MORE THAN THE AMOUNT PAID UNDER SUBSECTIONS (2) AND (3), EACH OWNER THAT FILED A NOTICE UNDER SUBSECTION (1) SHALL PAY, WITHIN 90 DAYS AFTER NOTIFICATION BY THE DEPARTMENT, AN AMOUNT DETERMINED BY THE DEPARTMENT, PRORATED BY ACREAGE, TO FULLY FUND THE COST OF THE STUDY CONDUCTED UNDER SECTION 61528.

(10) AS USED IN THIS SECTION, "GAS INTEREST" MEANS THE RIGHT TO EXPLORE FOR GAS ON, OR PRODUCE GAS FROM, REAL PROPERTY. HOWEVER,

GAS INTEREST DOES NOT INCLUDE A FEE SIMPLE INTEREST IN THE SURFACE RIGHTS OF REAL PROPERTY REGARDLESS OF WHETHER THE FEE INTEREST INCLUDES THE MINERAL RIGHTS.