

# HOUSE BILL No. 4172

February 9, 1999, Introduced by Reps. Bogardus, Martinez, Hale and Basham and referred to the Committee on Agriculture and Resource Management.

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) WORK RELATED TO ANY OF THE ITEMS DESCRIBED IN THIS  
10 SUBDIVISION.

1 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL  
2 QUALITY.

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

5 (i) THE WELL IS USED AS PART OF A CONSTRUCTION PROJECT TO  
6 REMOVE WATER FROM A SURFACE OR SUBSURFACE AREA.

7 (ii) THE WELL CEASES TO BE USED UPON COMPLETION OF THE CON-  
8 STRUCTION PROJECT OR SHORTLY AFTER COMPLETION OF THE PROJECT.

9 (D) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF ENVI-  
10 RONMENTAL QUALITY.

11 (E) "FUND" MEANS THE GROUNDWATER EMERGENCY FUND CREATED IN  
12 SECTION 30213.

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

15 (G) "NONSIGNIFICANT GROUNDWATER WELL" MEANS 1 OR MORE WATER  
16 WELLS AT A LOCATION THAT, IN THE AGGREGATE FROM ALL SOURCES AND  
17 BY ALL METHODS, HAVE A CAPABILITY OF WITHDRAWING LESS THAN  
18 100,000 GALLONS OF GROUNDWATER IN 1 DAY.

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

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

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

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

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

1 (J) "SIGNIFICANT GROUNDWATER WELL" MEANS 1 OR MORE WATER  
2 WELLS AT A LOCATION THAT, IN THE AGGREGATE FROM ALL SOURCES AND  
3 BY ALL METHODS, HAVE THE CAPABILITY OF WITHDRAWING AT LEAST  
4 100,000 GALLONS OF GROUNDWATER IN 1 DAY.

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

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

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

14 (B) FAILED TO FURNISH POTABLE WATER.

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

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

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

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

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

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

1 (D) THAT THE LOWERING OF THE GROUNDWATER LEVEL DOES BOTH OF  
2 THE FOLLOWING:

3 (i) EXCEEDS NORMAL SEASONAL WATER LEVEL FLUCTUATIONS.

4 (ii) SUBSTANTIALLY IMPAIRS CONTINUED USE OF THE GROUNDWATER  
5 RESOURCE IN THE AREA.

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

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

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

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

20 (A) TERMINATED BY THE DIRECTOR BEFORE THE EXPIRATION OF 90  
21 DAYS.

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

24 SEC. 30206. A TEMPORARY ORDER UNDER SECTION 30203 OR 30204  
25 SHALL INCLUDE A NOTICE OF HEARING TO BE HELD PURSUANT TO THE  
26 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
27 24.328, AS SOON AS PRACTICABLE AFTER THE DECLARATION OF THE

1 GROUNDWATER EMERGENCY. FOLLOWING THE HEARING, THE DIRECTOR MAY  
2 CONTINUE, AMEND, OR TERMINATE THE ORDER DECLARING THE GROUNDWATER  
3 EMERGENCY. THE EMERGENCY ORDER SHALL BE TERMINATED AS SOON AS  
4 JUSTIFIED BY CHANGED CONDITIONS.

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

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

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

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

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

1 (2) IF THE GROUNDWATER EMERGENCY REQUIRES ACTION BEFORE  
2 SERVICE CAN BE COMPLETED UNDER SUBSECTION (1), ORAL NOTIFICATION  
3 IN PERSON BY A REPRESENTATIVE OF THE DEPARTMENT AND AUTHORIZED BY  
4 THE DIRECTOR IS SUFFICIENT UNTIL SERVICE CAN BE COMPLETED. ORAL  
5 NOTIFICATION IS EFFECTIVE FOR NOT MORE THAN 96 HOURS.

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

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

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

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

21 (B) REIMBURSEMENT OF EXPENSES REASONABLY INCURRED BY THE  
22 COMPLAINANT FOR THE FOLLOWING:

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

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

1           (iii) THE PERMANENT RESTRICTION OR SCHEDULING OF THE  
2 GROUNDWATER WITHDRAWALS OF THE SIGNIFICANT GROUNDWATER WELL SO  
3 THAT THE AFFECTED WATER WELL CONTINUES TO PRODUCE THE FOLLOWING,  
4 AS APPROPRIATE:

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

6           (B) THE NORMAL SUPPLY OF POTABLE WATER IF THE WELL NORMALLY  
7 FURNISHES POTABLE WATER.

8           (2) THE DEPARTMENT SHALL IMPLEMENT THIS SECTION BY ORDER.  
9 BEFORE THE DEPARTMENT ENTERS AN INITIAL DETERMINATION OF THE  
10 ORDER, THE DEPARTMENT SHALL CONDUCT AN INVESTIGATION AND PROVIDE  
11 AFFECTED PERSONS WITH AN INFORMAL OPPORTUNITY TO CONTRIBUTE TO  
12 THE INVESTIGATION.

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

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

26           SEC. 30213. (1) THE GROUNDWATER EMERGENCY FUND IS CREATED  
27 WITHIN THE STATE TREASURY.

1           (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS  
2 FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER  
3 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER  
4 SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND  
5 INVESTMENTS.

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

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

10          SEC. 30214. THE DEPARTMENT MAY PROMULGATE RULES TO IMPLI-  
11 MENT THIS PART.

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

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

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