

HOUSE BILL No. 4901

July 18, 2013, Introduced by Reps. Hovey-Wright, Geiss, Tlaib, Lipton, Barnett, Cavanagh, Slavens, Irwin, Roberts, Townsend, Schor, Singh and Darany 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:

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

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

6 (b) "EPA HYDRAULIC FRACTURING RESEARCH STUDY" MEANS THE STUDY
7 BY THE OFFICE OF RESEARCH AND DEVELOPMENT AT THE UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY ON THE RELATIONSHIP BETWEEN

1 **HYDRAULIC FRACTURING AND DRINKING WATER.**

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

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

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

13 (F) ~~(e)~~—"Fund" means the oil and gas regulatory fund created
14 in section 61525b.

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

19 (H) **"HYDRAULIC FRACTURING" MEANS INJECTING FOAM OR FLUID IN A**
20 **WELL UNDER PRESSURE TO CREATE FRACTURES IN A FORMATION AND THEREBY**
21 **ENHANCE PRODUCTION OF HYDROCARBONS.**

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

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

26 (K) ~~(g)~~—"Illegal oil or gas" means oil or gas that has been
27 produced by an owner or producer in violation of this part, a rule

1 promulgated under this part, or an order of the supervisor issued
2 under this part.

3 (I) ~~(h)~~—"Illegal product" means a product of oil or gas or any
4 part of a product of oil or gas that was knowingly processed or
5 derived in whole or in part from illegal oil or gas.

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

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

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

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

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

1 paying quantities.

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

10 (S) ~~(e)~~—"Supervisor" or "supervisor of wells" means the
11 department.

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

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

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

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

25 (B) Unreasonable damage to underground fresh or mineral
26 waters, natural brines, or other mineral deposits from operations
27 for the discovery, development, and production and handling of oil

1 or gas.

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

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

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

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

17 (D) The drilling of unnecessary wells.

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

21 **SEC. 61528. (1) THE DEPARTMENT, THE DEPARTMENT OF COMMUNITY**
22 **HEALTH, AND THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL**
23 **UNDERTAKE A STUDY OF THE PUBLIC HEALTH, ENVIRONMENTAL, AND NATURAL**
24 **RESOURCE IMPACTS ASSOCIATED WITH THE EXTRACTION OF OIL OR GAS, OR**
25 **BOTH, FROM SHALE FORMATIONS IN THIS STATE.**

26 **(2) IN DESIGNING AND UNDERTAKING THE STUDY, THE DEPARTMENT,**
27 **THE DEPARTMENT OF COMMUNITY HEALTH, AND THE DEPARTMENT OF NATURAL**

1 RESOURCES JOINTLY SHALL CONSULT, AS APPROPRIATE, OTHER STATE
2 AGENCIES, OTHER STATES IN THE REGION, AND FEDERAL AGENCIES.

3 (3) THE STUDY SHALL INCLUDE A REVIEW OF THE RESULTS OF THE EPA
4 HYDRAULIC FRACTURING RESEARCH STUDY AND THE UNIVERSITY OF MICHIGAN
5 GRAHAM INSTITUTE'S INTEGRATED ASSESSMENT OF HYDRAULIC FRACTURING IN
6 MICHIGAN OF POTENTIAL IMPACTS TO THE PUBLIC HEALTH, SAFETY,
7 ENVIRONMENT, OR NATURAL RESOURCES.

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

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

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

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

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

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

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

1 HYDRAULIC FRACTURING ACTIVITIES.

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

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

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

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

17 (K) IMPACTS TO STATE RESOURCES AND RECREATION LANDS.

18 (L) THE PROJECTED POSITIVE AND NEGATIVE ECONOMIC IMPACT OF
19 HYDRAULIC FRACTURING ACTIVITIES TO THIS STATE.

20 (M) THE ESTABLISHMENT OF A BONDING REQUIREMENT OR AN INDUSTRY-
21 FUNDED ESCROW ACCOUNT TO FUND THE COST OF REMEDIATION AND
22 REGULATORY ENFORCEMENT.

23 (N) THE POTENTIAL IMPACTS OF VARYING HYDRAULIC FRACTURING
24 WASTE DISPOSAL METHODS INCLUDING RISKS TO GROUNDWATER AND SURFACE
25 WATER FROM THE PRESENCE OF, AND POTENTIAL SPILLING OR OTHER
26 ACCIDENTS INVOLVING RADIOACTIVE MATERIALS IN FLOW BACK WATER, AND
27 INCLUDING THE RISKS TO GROUNDWATER AND SURFACE WATER FROM THE DEEP

1 INJECTION, OR ANY OTHER DISPOSAL METHOD, OF OIL AND GAS WASTEWATER
2 CONTAINING THESE MATERIALS.

3 (O) WELL CONSTRUCTION STANDARDS, INCLUDING CONSTRUCTION
4 METHODS AND MATERIALS USED.

5 (P) NEEDED WATER QUANTITY PROTECTIONS THAT INCLUDE AT LEAST
6 THE FOLLOWING:

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

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

17 (Q) RECOMMENDATIONS FOR NEW RULES TO PROTECT WATER QUALITY,
18 INCLUDING BOTH OF THE FOLLOWING:

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

25 (ii) ENFORCEABLE WATER QUALITY PROTECTIONS, INCLUDING, BUT NOT
26 LIMITED TO, THE FOLLOWING:

27 (A) SECONDARY CONTAINMENT FOR CHEMICALS, INCLUDING THOSE

1 STORED PRIOR TO MIXING.

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

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

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

10 (S) THE IDENTIFICATION OF AND USE OF MOST EFFECTIVE METHODS
11 AND TECHNOLOGY FOR REDUCING NOISE.

12 (T) A PUBLIC PARTICIPATION PROCESS INCLUDING BOTH OF THE
13 FOLLOWING:

14 (i) A PROCESS THAT ALLOWS FOR PUBLIC PARTICIPATION WITH NOTICE
15 60 DAYS IN ADVANCE OF THE PERMITTING PROCESS AND ENABLES ALL
16 PERSONS TO COMMENT ON, PROTEST, OR APPEAL THE ISSUANCE OF NEW OR
17 SUBSTANTIALLY CHANGED PERMITS FOR OIL OR GAS DRILLING OR
18 EXTRACTION.

19 (ii) ALTERNATIVES TO COMPULSORY POOLING REQUIREMENTS.

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

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

25 (W) ANY OTHER ISSUES IDENTIFIED BY THE ADVISORY COMMITTEE
26 CONVENED UNDER SECTION 61529.

27 (5) THE DEPARTMENT, THE DEPARTMENT OF COMMUNITY HEALTH, AND

1 THE DEPARTMENT OF NATURAL RESOURCES JOINTLY SHALL PREPARE A DRAFT
2 REPORT BASED ON THE STUDY REQUIRED UNDER THIS SECTION AND SHALL
3 MAKE THAT DRAFT REPORT PUBLICLY AVAILABLE AND OPEN TO PUBLIC
4 COMMENT. PRIOR TO COMPLETION OF THE STUDY, THE PUBLIC MAY COMMENT
5 ON THE STUDY DESIGN.

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

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

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

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

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

5 SEC. 61530. (1) THE DEPARTMENT SHALL ESTABLISH A FEE SCHEDULE
6 AND ASSESS THE OWNERS OF OIL OR GAS INTERESTS IN THIS STATE A FEE
7 IN AN AMOUNT SUFFICIENT TO FUND THE STUDY PROVIDED FOR IN SECTION
8 61528.

9 (2) THE FAILURE TO PAY THE FEE ASSESSED UNDER THIS SECTION
10 WHEN DUE MAY BE GROUNDS FOR DENIAL OF A PERMIT TO EXPLORE FOR OR
11 PRODUCE GAS FROM FORMATIONS ASSOCIATED WITH THE PERSON'S OIL OR GAS
12 INTEREST.

13 (3) AN OWNER WHO DOES NOT OWN THE SURFACE RIGHTS TO A PARCEL
14 OF PROPERTY SHALL NOT PASS THE PAYMENT OF FEES REQUIRED UNDER THIS
15 SECTION THROUGH TO, OR RECOVER THEM FROM, THE PERSON WHO OWNS THE
16 SURFACE RIGHTS OF THE PROPERTY.

17 (4) THE DEPARTMENT SHALL DEPOSIT THE MONEY COLLECTED UNDER
18 THIS SECTION IN THE FUND.

19 (5) UPON ISSUANCE OF THE FINAL REPORT UNDER SECTION 61528, THE
20 DEPARTMENT SHALL COMPARE THE ACTUAL COSTS OF THE STUDY CONDUCTED
21 UNDER SECTION 61528 WITH THE MONEY PAID BY PERSONS ASSESSED A FEE
22 UNDER THIS SECTION. IF THE ACTUAL COST OF THE STUDY IS LESS THAN
23 THE AMOUNT PAID UNDER THIS SECTION, THE DEPARTMENT SHALL REFUND THE
24 DIFFERENCE, PRORATED BY METHOD OF ASSESSMENT, TO THE OWNERS WHO
25 PAID A FEE.

26 (6) AS USED IN THIS SECTION, "OIL OR GAS INTEREST" MEANS THE
27 RIGHT TO EXPLORE FOR OIL OR GAS, OR BOTH, ON, OR PRODUCE OIL OR

1 GAS, OR BOTH, FROM, REAL PROPERTY. HOWEVER, OIL OR GAS INTEREST
2 DOES NOT INCLUDE A FEE SIMPLE INTEREST IN THE SURFACE RIGHTS OF
3 REAL PROPERTY REGARDLESS OF WHETHER THE FEE INTEREST INCLUDES THE
4 MINERAL RIGHTS.