

# Legislative Analysis

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## **GROUNDWATER DISPUTE RESOLUTION & FARMLAND AND OPEN SPACE PRESERVATION PROGRAM ADMINISTRATIVE CAP**

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**House Bill 4663 (Substitute S-2 as passed by the Senate)**

**Sponsor: Rep. Phil Potvin**

**House Committee: Appropriations**

**Senate Committee: Appropriations**

**Complete to 6-20-13**

### **A SUMMARY OF HOUSE BILL 4663 (S-2) AS PASSED BY THE SENATE 6-13-13:**

The bill would amend Parts 317 (Aquifer Protection and Dispute Resolution) and Part 362 (Agricultural Preservation Fund) of the Natural Resources and Environmental Protection Act to (1) make participation in the Part 317 aquifer dispute resolution program mandatory for agricultural well owners and (2) revise the maximum amount that may be expended annually for administration of the Farmland and Open Space Preservation Program from \$900,000 to \$1,400,000.

[The Senate-passed bill includes changes contained in the House-passed versions of House Bills 4663 and 4678].

Specifically, the bill would amend Part 317 to make the following changes regarding the groundwater dispute resolution process:

- Allow agricultural well owners, within 14 days after service of a dispute order, to contest the order by filing an appeal with the Agriculture Commission. Appeals would have to be scheduled for consideration at the next commission meeting and all terms of the order, except for the provision providing for an adequate supply of potable water, would be stayed until a determination is made. If a groundwater dispute order is dismissed by the Commission, the Department of Agriculture and Rural Development (MDARD) would be required to provide reimbursement for the cost of providing potable water.
- Remove the ability of all high-capacity well owners to opt out of the dispute resolution program, and allow only non-agricultural, high-capacity well owners to opt out and resolve the dispute as otherwise provided by law.
- Require the department(s) to provide actual notice of a complaint to the owner of each high-capacity well that is identified in a complaint.
- Require the MDARD director to schedule and provide written notice of an informal meeting between the parties involved in a dispute if a complaint involving an agricultural well is unable to be resolved. The informal meeting

would have to take place at least ten days before a dispute order is issued and would have to include the MDARD director and the owners of the agricultural well and the impacted small-quantity well(s). The owner of the agricultural well would be able to challenge MDARD's assertions and submit information that problems with a small-quantity well are not being caused by the agricultural well. The small-quantity well owners would also be permitted to submit additional information about the complaint.

- Require the MDARD to provide notice and schedule an informal meeting prior to amending a groundwater dispute order.
- Provide the MDARD director with the same authority currently given to the director of the Department of Environmental Quality (DEQ) in disputes involving agricultural wells.
- Require an on-site investigation to begin within five business days of the owner of each high-capacity well being provided with the actual notice of complaint. Currently, an investigation must begin within five business days of the department receiving a complaint.
- In the case of a complaint involving an agricultural well, require the DEQ to consult with and provide technical assistance to MDARD regarding the on-site evaluation.
- Remove a provision that requires the MDARD director to refer a complaint to the DEQ director if the MDARD director is unable to resolve a complaint within 14 days of it being submitted.
- Add a provision that requires the MDARD director to schedule and provide written notice of an informal meeting between the parties if a complaint regarding an agricultural well is not resolved, and conduct the meeting. The parties may submit additional information regarding the complaint at the informal meeting, and the owner of the well in dispute shall have an opportunity to challenge the department's assertions.
- Redefine agricultural well to mean a high-capacity well that is "located on a farm and is used for an agricultural purpose."

The bill would also amend Part 362 to make the following changes regarding the Agricultural Preservation Fund:

- Establish that the Department of Agriculture and Rural Development shall be the administrator of the Fund for auditing purposes.
- Revise the maximum amount that may be expended annually for administrative costs of the Department and the Agricultural Preservation Fund Board from

\$900,000 to \$1,400,000, to implement Part 361, Farmland and Open Space Preservation, and Part 362 of the Act.

- Remove language regarding revenue to the Fund in excess of \$11.25 million annually.

***FISCAL IMPACT:***

House Bill 4663 will increase costs for the Michigan Department of Agriculture and Rural Development (MDARD) to carry out responsibilities related to the aquifer dispute resolution program. Current costs are estimated at \$40,000 and 0.25 FTEs by MDARD, but would likely be higher with enactment of this bill. Under Act 602 of 2012, actual costs for this program are reimbursed to MDARD from the Aquifer Protection Revolving Fund. The Fund is currently appropriated in the DEQ budget with total program costs estimated at \$200,000 annually.

House Bill 4663 would have a minimal fiscal impact on the Department of Environmental Quality related to the aquifer dispute resolution program. Any fiscal impact would be related to additional administrative costs from the bill's provisions that the director of DEQ (or the director of the MDARD) provide actual notice of the complaint to the owner of each high-capacity well identified in the complaint within two business days after receiving any complaint.

House Bill 4663 also provides a statutory change on which the FY 2013-14 budget for the Department of Agriculture and Rural Development is based. The enacted budget (Act 59 PA 2013, Article I) includes an increase in funding for the administration of the Farmland and Open Space Preservation program from \$872,000 to \$1,300,000. This reflects the current costs of administering the program, which includes 9.0 FTEs to support over 42,500 farmland agreements involving 3.2 million acres of land. According to the Department, recently enacted changes to the program (Act 79 PA 2011) prompted a fourfold increase in requests for extensions to farmland agreements resulting in increased administrative costs. Total appropriations of the Fund in the FY 2013-14 budget are \$1.6 million and include \$300,000 for capital outlay purchases of development rights under the program. The Fund may not have sufficient available revenue to fully support all appropriations. Funds available in FY 2013-14 are projected to total about \$1.38 million. This may be managed by limiting capital outlay expenditures.

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