

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4663

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, 31712, 36201, and 36202 (MCL 324.31701, 324.31702,
324.31703, 324.31704, 324.31705, 324.31706, 324.31708, 324.31711,
324.31712, 324.36201, and 324.36202), sections 31701, 31702, 31703,
31704, 31705, 31706, 31708, 31711, and 31712 as added by 2012 PA
602, section 36201 as added by 2000 PA 262, and section 36202 as
amended by 2004 PA 75, and by adding section 31702a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31701. As used in this part:

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

5 (b) "Complaint" means a complaint submitted under section

1 31702 alleging a potential groundwater dispute.

2 (c) "Construction" means the process of building a building,
3 road, utility, or another structure, including all of the
4 following:

5 (i) Assembling materials.

6 (ii) Disassembling and removing a structure.

7 (iii) Preparing the construction site.

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

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

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

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

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

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

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

27 (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) ~~(e)~~ "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.

1 (R) ~~(p)~~ "Water well" means an opening in the surface of the
2 earth, however constructed, that is used for the purpose of
3 withdrawing groundwater. Water well does not include a drain as
4 defined in section 3 of the drain code of 1956, 1956 PA 40, MCL
5 280.3.

6 (S) ~~(q)~~ "Well drilling contractor" means a well drilling
7 contractor registered under part 127 of the public health code,
8 1978 PA 368, MCL 333.12701 to 333.12771.

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

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

26 (b) The location of the small-quantity well, including the
27 county, township, township section, and address of the property on

1 which the small-quantity well is situated, and all other available
2 information that ~~defines~~**INDICATES** the location of that well.

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

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

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

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

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

23 (3) Within 2 business days after receipt of a complaint under
24 subsection (1), the director or the director of the department of
25 agriculture and rural development, as appropriate, shall contact
26 the complainant and the owner of each high-capacity well identified
27 in the complaint, **SHALL PROVIDE ACTUAL NOTICE OF THE COMPLAINT TO**

1 THE OWNER OF EACH HIGH-CAPACITY WELL IDENTIFIED IN THE COMPLAINT,
2 and **SHALL** begin an investigation. ~~However, if the owner of the~~
3 ~~high capacity well notifies the department that he or she does not~~
4 ~~wish to participate in the dispute resolution process provided for~~
5 ~~in this part, the investigation shall be suspended and the dispute~~
6 ~~shall be resolved as otherwise provided by law.~~

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

1 recognized water conservation management practices.

2 (5) After conducting an investigation, the director or the
3 director of the department of agriculture and rural development, as
4 appropriate, shall make a diligent effort to resolve the complaint.
5 In attempting to resolve a complaint, the director or the director
6 of the department of agriculture and rural development, as
7 appropriate, may propose a remedy that he or she believes would
8 equitably resolve the complaint. ~~If, within 14 days following the~~
9 ~~submittal of a complaint, the director of the department of~~
10 ~~agriculture and rural development is unable to resolve a complaint,~~
11 ~~the director of the department of agriculture and rural development~~
12 ~~shall refer the complaint, and provide all relevant information, to~~
13 ~~the director.~~

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

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

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

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

26 (8) A complainant who submits more than 2 unverified
27 complaints under this section within 1 year may be ordered by the

1 director OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL
2 DEVELOPMENT to pay for the full costs of investigation of any third
3 or subsequent unverified complaint. As used in this subsection,
4 "unverified complaint" means a complaint in response to which the
5 director OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL
6 DEVELOPMENT determines that there is not reasonable evidence to
7 declare a groundwater dispute.

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

12 SEC. 31702A. (1) IF A COMPLAINT REGARDING AN AGRICULTURAL WELL
13 IS NOT RESOLVED UNDER SECTION 31702, THE DIRECTOR OF THE DEPARTMENT
14 OF AGRICULTURE AND RURAL DEVELOPMENT SHALL SCHEDULE AND PROVIDE
15 WRITTEN NOTICE OF AN INFORMAL MEETING BETWEEN THE PARTIES TO THE
16 DISPUTE. THE INFORMAL MEETING SHALL BE SCHEDULED AT LEAST 10
17 BUSINESS DAYS PRIOR TO THE ISSUANCE OF AN ORDER DECLARING A
18 GROUNDWATER DISPUTE UNDER SECTION 31703. THE PARTICIPANTS AT THE
19 INFORMAL MEETING SHALL INCLUDE THE DIRECTOR OF THE DEPARTMENT OF
20 AGRICULTURE AND RURAL DEVELOPMENT, THE OWNER OF THE AGRICULTURAL
21 WELL, AND THE OWNER OR OWNERS OF THE SMALL-QUANTITY WELLS THAT ARE
22 ALLEGED TO BE IMPACTED BY THE AGRICULTURAL WELL WHO WISH TO ATTEND.
23 HOWEVER, UPON WRITTEN NOTICE PROVIDED TO THE DIRECTOR OF THE
24 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, THE OWNER OF THE
25 AGRICULTURAL WELL MAY WAIVE THE INFORMAL MEETING.

26 (2) AT THE INFORMAL MEETING HELD PURSUANT TO SUBSECTION (1),
27 THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

1 SHALL PRESENT THE INFORMATION THAT HE OR SHE HAS OBTAINED REGARDING
2 THE ITEMS LISTED IN SECTION 31703(1)(A) THROUGH (F) AND (2). THE
3 OWNER OF THE AGRICULTURAL WELL SHALL BE GIVEN AN OPPORTUNITY TO
4 CHALLENGE THE DEPARTMENT'S ASSERTIONS AND MAY SUBMIT INFORMATION
5 THAT THE PROBLEMS ASSOCIATED WITH THE SMALL-QUANTITY WELL OR WELLS
6 ARE NOT BEING CAUSED BY THE AGRICULTURAL WELL. THE OWNER OR OWNERS
7 OF THE SMALL-QUANTITY WELLS ALLEGED TO BE IMPACTED MAY ALSO SUBMIT
8 ADDITIONAL INFORMATION REGARDING THE COMPLAINT.

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

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

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

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

26 (d) That the lowering of the groundwater level exceeds normal
27 seasonal water level fluctuations and substantially impairs

1 continued use of the groundwater resource in the area.

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

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

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

17 (3) The director **OR THE DIRECTOR OF THE DEPARTMENT OF**
18 **AGRICULTURE AND RURAL DEVELOPMENT, AS APPROPRIATE**, may amend or
19 terminate an order declaring a groundwater dispute at any time.
20 **PRIOR TO AMENDING AN ORDER DECLARING A GROUNDWATER DISPUTE**
21 **REGARDING AN AGRICULTURAL WELL UNDER THIS SUBSECTION, THE DIRECTOR**
22 **OF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT SHALL**
23 **SCHEDULE AN INFORMAL MEETING AND PROVIDE NOTICE OF THE INFORMAL**
24 **MEETING IN THE MANNER PROVIDED UNDER SECTION 31702A.**

25 Sec. 31704. (1) ~~An~~ **SUBJECT TO SUBSECTIONS (2) AND (4), AN**
26 order declaring a groundwater dispute is effective when a copy of
27 the order is served upon the owner of a high-capacity well that is

1 reasonably believed to have caused the failure of the complainant's
2 small-quantity well.

3 (2) If a groundwater dispute requires action before service
4 can be completed under subsection (1), oral notification in person
5 by the director **OR THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE**
6 **AND RURAL DEVELOPMENT, AS APPROPRIATE,** is sufficient until service
7 can be completed. Oral notification is effective for not more than
8 96 hours.

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

16 (4) **WITHIN 14 DAYS AFTER SERVICE OF AN ORDER UNDER SUBSECTION**
17 **(1), THE OWNER OF AN AGRICULTURAL WELL MAY CONTEST THE ORDER BY**
18 **SUBMITTING AN APPEAL TO THE COMMISSION OF AGRICULTURE AND RURAL**
19 **DEVELOPMENT. THE APPEAL SHALL BE SUBMITTED ON A FORM PROVIDED BY**
20 **THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT AND SHALL**
21 **OUTLINE THE BASIS FOR THE APPEAL. UPON RECEIPT OF AN APPEAL UNDER**
22 **THIS SUBSECTION, THE COMMISSION OF AGRICULTURE AND RURAL**
23 **DEVELOPMENT SHALL SCHEDULE THE APPEAL FOR CONSIDERATION AT THE NEXT**
24 **SCHEDULED MEETING OF THE COMMISSION. EXCEPT FOR THE PROVISION OF AN**
25 **ADEQUATE SUPPLY OF POTABLE WATER UNDER SECTION 31705(1), THE TERMS**
26 **OF THE ORDER ARE STAYED UNTIL A DETERMINATION IS MADE BY THE**
27 **COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT REGARDING THE**

1 APPEAL. AT THE COMMISSION'S MEETING, THE COMMISSION SHALL REVIEW
2 THE ORDER AND CONSIDER ANY TESTIMONY OR OTHER DOCUMENTATION
3 CONTESTING THE ORDER AND SHALL MAKE A DETERMINATION TO AFFIRM THE
4 ORDER OR DISMISS THE ORDER. IF THE COMMISSION OF AGRICULTURE AND
5 RURAL DEVELOPMENT DISMISSES THE ORDER, THE DEPARTMENT OF
6 AGRICULTURE AND RURAL DEVELOPMENT SHALL REIMBURSE THE APPELLANT FOR
7 THE COST OF PROVIDING POTABLE WATER UNDER SECTION 31705.

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

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

20 (a) If the high-capacity well is reasonably believed to have
21 caused the failure of the complainant's small-quantity well and an
22 immediate temporary provision of an adequate supply of potable
23 water has not been provided to the complainant by the owner of the
24 high-capacity well.

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

1 groundwater resource of the area.

2 (3) In issuing an order under subsection (2), the director **OR**
3 **THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL**
4 **DEVELOPMENT, AS APPROPRIATE**, shall consider the impact the order
5 will have on the viability of a business associated with the high-
6 capacity well or other use of the high-capacity well.

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

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

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

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

27 (b) The small-quantity well was constructed prior to February

1 14, 1967 or, if the small-quantity well was constructed on or after
2 February 14, 1967, the well was constructed in compliance with part
3 127 of the public health code, 1978 PA 368, MCL 333.12701 to
4 333.12771.

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

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

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

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

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

22 Sec. 31712. **(1)** A person who violates an order issued under
23 this part is responsible for a civil fine of not more than
24 \$1,000.00 for each day of violation, but not exceeding a total of
25 \$50,000.00.

26 **(2)** A default in the payment of a civil fine or costs ordered
27 under this section or an installment of the fine or costs may be

1 remedied by any means authorized under the revised judicature act
2 of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

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

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

9 Sec. 36201. As used in this part:

10 (a) "Agricultural conservation easement" means a conveyance,
11 by a written instrument, in which, subject to permitted uses, the
12 owner relinquishes to the public in perpetuity his or her
13 development rights and makes a covenant running with the land not
14 to undertake development.

15 (b) "Agricultural use" means substantially undeveloped land
16 devoted to the production of plants and animals useful to humans,
17 including forages and sod crops; grains, feed crops, and field
18 crops; dairy and dairy products; poultry and poultry products;
19 livestock, including breeding and grazing of cattle, swine, captive
20 cervidae, and similar animals; berries; herbs; flowers; seeds;
21 grasses; nursery stock; fruits; vegetables; Christmas trees; and
22 other similar uses and activities. Agricultural use includes use in
23 a federal acreage set-aside program, a federal conservation reserve
24 program, or a wetland reserve program. Agricultural use does not
25 include the management and harvesting of a woodlot.

26 (c) "Board" means the agricultural preservation fund board
27 created in section 36204.

1 (d) "Commission" means the commission of agriculture **AND RURAL**
2 **DEVELOPMENT**.

3 (e) "Department" means the department of agriculture **AND RURAL**
4 **DEVELOPMENT**.

5 (f) "Development" means an activity that materially alters or
6 affects the existing conditions or use of any land in a manner that
7 is inconsistent with an agricultural use.

8 (g) "Development rights" means an interest in land that
9 includes the right to construct a building or structure, to improve
10 land for development, or to divide a parcel for development
11 purposes.

12 (h) "Farmland" means 1 or more of the following:

13 (i) A farm of 40 or more acres in 1 ownership, with 51% or more
14 of the land area devoted to an agricultural use.

15 (ii) A farm of 5 acres or more in 1 ownership, but less than 40
16 acres, with 51% or more of the land area devoted to an agricultural
17 use, that has produced a gross annual income from agriculture of
18 \$200.00 per year or more per acre of cleared and tillable land. A
19 farm described in this subparagraph enrolled in a federal acreage
20 set-aside program or a federal conservation reserve program is
21 considered to have produced a gross annual income from agriculture
22 of \$200.00 per year or more per acre of cleared and tillable land.

23 (iii) A farm designated by the department ~~of agriculture~~ as a
24 specialty farm in 1 ownership that has produced a gross annual
25 income of \$2,000.00 or more from an agricultural use. Specialty
26 farms include, but are not limited to, greenhouses; equine breeding
27 and grazing; the breeding and grazing of cervidae, pheasants, and

1 other game animals; bees and bee products; mushrooms; aquaculture;
2 and other similar uses and activities.

3 (iv) Parcels of land in 1 ownership that are not contiguous but
4 which constitute an integral part of a farming operation being
5 conducted on land otherwise qualifying as farmland may be included
6 in an application under this part.

7 (i) "Fund" means the agricultural preservation fund created in
8 section 36202.

9 (j) "Grant" means a grant for the purchase of an agriculture
10 conservation easement under this part.

11 (k) "Owner" means a person having a freehold estate in land
12 coupled with possession and enjoyment. If land is subject to a land
13 contract, owner means the vendee in agreement with the vendor.

14 (l) "Permitted use" means any use expressly authorized within
15 an agriculture conservation easement consistent with the farming
16 operation or that does not adversely affect the productivity of the
17 farmland. Storage, retail or wholesale marketing, or processing of
18 agricultural products is a permitted use in a farming operation if
19 more than 50% of the stored, processed, or merchandised products
20 are produced by the farm operator for at least 3 of the immediately
21 preceding 5 years. Permitted use includes oil and gas exploration
22 and extraction, but does not include other mineral development that
23 is inconsistent with an agricultural use.

24 Sec. 36202. (1) The agricultural preservation fund is created
25 within the state treasury.

26 (2) The state treasurer may receive money or other assets from
27 any source for deposit into the fund, including federal funds,

1 other state revenues, gifts, bequests, and other donations. The
2 state treasurer shall direct the investment of the fund and shall
3 credit to the fund interest and earnings from fund investments.

4 (3) Money in the fund at the close of the fiscal year shall
5 remain in the fund and shall not lapse to the general fund.

6 (4) **THE DEPARTMENT SHALL BE THE ADMINISTRATOR OF THE FUND FOR**
7 **AUDITING PURPOSES.**

8 (5) ~~(4)~~ Money in the fund may be expended, upon appropriation,
9 following approval of the board and the commission, as follows:

10 (a) Not more than ~~\$900,000.00~~ **\$1,400,000.00** annually for the
11 administrative costs of the department and the board in
12 implementing this part and part 361. ~~However, if deposits into the~~
13 ~~fund during any given fiscal year exceed \$11,250,000.00, up to 8%~~
14 ~~of the deposits may be expended for administrative costs pursuant~~
15 ~~to this subdivision.~~

16 (b) After expenditures for the administrative costs under
17 subdivision (a), money in the fund may be used to provide grants to
18 local units of government pursuant to section 36203.

19 (c) After expenditures under subdivisions (a) and (b) have
20 been made, if the amount of money remaining in the fund exceeds
21 \$5,000,000.00, money in the fund may be used pursuant to part 361
22 for the purchase of development rights to farmland or the
23 acquisition of agricultural conservation easements.

24 (6) ~~(5)~~ Expenditures of money in the fund as provided in this
25 part are consistent with the state's interest in preserving
26 farmland and are ~~declared to be~~ for an important public purpose.