

HOUSE BILL No. 6211

June 18, 2002, Introduced by Reps. Kooiman, Pappageorge, Newell, Meyer, Voorhees, Vander Veen, Kowall, Bishop, Hart, Pestka, Stewart, Kolb and DeWeese and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 11525 (MCL 324.11525), as amended by 1996 PA 506, and by adding sections 11532a and 11532b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11525. (1) The owner or operator of a landfill shall
2 establish and maintain a perpetual care fund for a period of 30
3 years after final closure of the landfill as specified in this
4 section. A perpetual care fund may be established as a trust or
5 an escrow account and may be used to demonstrate financial assur-
6 ance for type II landfills under section 11523 and
7 section 11523a.

8 (2) Except as otherwise provided in this section, the owner
9 or operator of a landfill shall deposit into his or her perpetual

1 care fund 75 cents for each ton or portion of a ton or 25 cents
2 for each cubic yard or portion of a cubic yard of solid waste
3 that is disposed of in the landfill after June 17, 1990. The
4 deposits shall be made not less than semiannually until the fund
5 reaches the maximum required fund amount. As of July 1, 1996,
6 the maximum required fund amount is \$1,156,000.00. This amount
7 shall be annually adjusted for inflation and rounded to the near-
8 est thousand. The department shall adjust the maximum required
9 fund amount for inflation annually by multiplying the amount by
10 an inflation factor derived from the most recent bureau of recla-
11 mation composite index published by the United States department
12 of commerce or another index more representative of the costs of
13 closure and postclosure monitoring and maintenance as determined
14 appropriate by the department.

15 (3) The owner or operator of a landfill that is used for the
16 disposal of the following materials shall deposit into the per-
17 petual care fund 7.5 cents for each ton or cubic yard or portion
18 of a ton or cubic yard of the following materials that are dis-
19 posed of in the landfill after June 17, 1990:

20 (a) Coal or wood ash that is disposed of in a landfill that
21 is used only for the disposal of coal or wood ash, or that is
22 permanently segregated in a landfill.

23 (b) Wastewater treatment sludge or sediments from wood pulp
24 or paper producing industries that is disposed of in a landfill
25 that is used only for the disposal of wastewater treatment sludge
26 and sediments from wood pulp or paper producing industries, or
27 that is permanently segregated in a landfill.

1 (c) Foundry sand or other material that is approved by the
2 department for use as daily cover at an operating landfill, that
3 is disposed of in a landfill that is used only for the disposal
4 of foundry sand, or that is permanently segregated in a
5 landfill.

6 (4) The owner or operator of a landfill that is used only
7 for the disposal of a mixture of 2 or more of the materials
8 described in subsection (3)(a) to (c) or in which a mixture of 2
9 or more of these materials are permanently segregated shall
10 deposit into the perpetual care fund 7.5 cents for each ton or
11 cubic yard or portion of a ton or cubic yard of these materials
12 that are disposed of in the landfill after July 1, 1996.

13 (5) Money is not required to be deposited into a perpetual
14 care fund for materials that are regulated under part 631.

15 (6) The owner or operator of a landfill may contribute addi-
16 tional amounts into the perpetual care fund at his or her
17 discretion.

18 (7) The custodian of a perpetual care fund shall be a bank
19 or other financial institution that has the authority to act as a
20 custodian and whose account operations are regulated and examined
21 by a federal or state agency. Until the perpetual care fund
22 reaches the maximum required fund amount, the custodian of a per-
23 petual care fund shall credit interest and earnings of the per-
24 petual care fund to the perpetual care fund. ~~However, upon the~~
25 ~~direction of the owner or operator, the custodian may utilize the~~
26 ~~interest and earnings of the perpetual care fund to pay the pro~~
27 ~~rata share of the solid waste management program administration~~

1 ~~fee imposed under section 11525a against the landfill for which~~
2 ~~the perpetual care fund was established.~~ After the perpetual
3 care fund reaches the maximum required fund amount, interest and
4 earnings shall be distributed as directed by the owner or
5 operator. The agreement governing the operation of the perpetual
6 care fund shall be executed on a form consistent with this part
7 as prepared by the department. The custodian may be compensated
8 from the fund for reasonable fees and costs incurred for his or
9 her responsibilities as custodian. The custodian of a perpetual
10 care fund shall annually make an accounting to the department
11 within 30 days following the close of the state fiscal year.

12 (8) The custodian of a perpetual care fund shall not dis-
13 burse any funds to the owner or operator of a landfill for the
14 purposes of the perpetual care fund except upon the prior written
15 approval of the department. However, the custodian shall ensure
16 the filing of all required tax returns for which the perpetual
17 care fund is liable and shall disburse funds to pay lawfully due
18 taxes owed by the perpetual care fund without permission of the
19 department. ~~, and may disburse interest and earnings of the per-~~
20 ~~petual care fund to pay the solid waste management program admin-~~
21 ~~istration fee as provided in subsection (7).~~ The owner or opera-
22 tor of the landfill shall provide notice of requests for dis-
23 bursement and denials and approvals to the custodian of the per-
24 petual care fund. Requests for disbursement from a perpetual
25 care fund shall be submitted not more frequently than
26 semiannually. The owner or operator of a landfill may request
27 disbursement of funds from a perpetual care fund whenever the

1 amount of money in the fund exceeds the maximum required fund
2 amount specified in subsection (2). The department shall approve
3 the disbursement provided the total amount of financial assurance
4 maintained meets the requirements of sections 11523 and 11523a.
5 As used in this subsection, "maximum required fund amount"
6 means:

7 (a) For those landfills containing only those materials
8 specified in subsection (3), an amount equal to 1/2 of the maxi-
9 mum required fund amount specified in subsection (2).

10 (b) For all other landfills, an amount equal to the maximum
11 required fund amount specified in subsection (2).

12 (9) If the owner or operator of a landfill refuses or fails
13 to conduct closure, postclosure monitoring and maintenance, or
14 corrective action as necessary to protect the public health,
15 safety, or welfare, or the environment or fails to request the
16 disbursement of money from a perpetual care fund when necessary
17 to protect the public health, safety, or welfare, or the environ-
18 ment, ~~or fails to pay the solid waste management program admin-~~
19 ~~istration fee due the department under this part~~ within 90 days
20 of the request, then the department may require the disbursement
21 of money from the perpetual care fund and may expend the money
22 for closure, postclosure monitoring and maintenance, and correc-
23 tive action, as necessary. The department may assess a perpetual
24 care fund for administrative costs associated with actions taken
25 under this subsection.

26 (10) Upon approval by the department of a request to
27 terminate financial assurance for a landfill under section

1 11525b, any money in the perpetual care fund for that landfill
2 shall be disbursed by the custodian to the owner of the landfill
3 unless a contract between the owner and the operator of the land-
4 fill provides otherwise.

5 (11) The owner of a landfill shall provide notice to the
6 custodian of the perpetual care fund for that landfill if there
7 is a change of ownership of the landfill. The custodian shall
8 maintain records of ownership of a landfill during the time in
9 which a perpetual care fund is established.

10 (12) This section does not relieve an owner or operator of a
11 landfill of any liability that he or she may have under this part
12 or as otherwise provided by law.

13 (13) This section does not create a cause of action at law
14 or in equity against a custodian of a perpetual care fund other
15 than for errors or omissions related to investments, accountings,
16 disbursements, filings of required tax returns, and maintenance
17 of records required by this section or the applicable perpetual
18 care fund.

19 (14) As used in this section, "custodian" means the trustee
20 or escrow agent of a perpetual care fund.

21 SEC. 11532A. (1) A SOLID WASTE DISPOSAL SURCHARGE OF \$3.00
22 IS ASSESSED FOR EACH TON OF SOLID WASTE THAT IS DISPOSED OF IN A
23 LANDFILL.

24 (2) THE OWNER OR OPERATOR OF A LANDFILL SHALL FORWARD SOLID
25 WASTE DISPOSAL SURCHARGES UNDER THIS SECTION TO THE STATE TREA-
26 SURER FOR DEPOSIT INTO THE WASTE DIVERSION FUND CREATED IN
27 SECTION 11532B.

1 SEC. 11532B. (1) THE WASTE DIVERSION FUND IS CREATED WITHIN
2 THE STATE TREASURY.

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

8 (3) MONEY IN THE WASTE DIVERSION FUND AT THE CLOSE OF THE
9 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE
10 GENERAL FUND.

11 (4) THE DEPARTMENT, UPON APPROPRIATION, SHALL ANNUALLY
12 EXPEND MONEY IN THE WASTE DIVERSION FUND AS FOLLOWS:

13 (A) NOT MORE THAN \$1,200,000.00 FOR THE IMPLEMENTATION OF
14 THIS PART.

15 (B) MONEY NOT EXPENDED UNDER SUBDIVISION (A) SHALL BE
16 EXPENDED AS FOLLOWS:

17 (i) ONE THIRD FOR RECYCLING PROGRAM GRANTS TO LOCAL UNITS OF
18 GOVERNMENT FOR NEW PROGRAMS THAT INCREASE RECYCLING PARTICIPATION
19 WITHIN LOCAL UNITS OF GOVERNMENT.

20 (ii) ONE THIRD FOR RECYCLING INCENTIVE GRANTS TO NONGOVERN-
21 MENTAL ENTITIES THAT HAVE ESTABLISHED PARTNERSHIPS WITH LOCAL
22 UNITS OF GOVERNMENT TO EXPAND RECYCLING PARTICIPATION.

23 (iii) ONE THIRD FOR RECYCLING INNOVATION GRANTS FOR PROJECTS
24 THAT EXPAND MARKETS FOR RECYCLABLE MATERIALS.

25 (5) THE DEPARTMENT SHALL PROVIDE FOR THE DISTRIBUTION OF
26 GRANTS UNDER SUBSECTION (4).

1 Enacting section 1. Section 11525a of the natural resources
2 and environmental protection act, 1994 PA 451, MCL 324.11525a, is
3 repealed.