

HOUSE BILL No. 6475

September 14, 2006, Introduced by Reps. Gillard, Miller, Palsrok and Pavlov and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding section 16908b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16908B. (1) ALL UNPAID CLEANUP COSTS FOR SCRAP TIRES
2 ACCUMULATED AFTER JANUARY 1, 1991 THAT ARE INCURRED UNDER SECTION
3 16908(2)(C), INCLUDING ANY STAFF COSTS, COSTS OF SURVEILLANCE AND
4 ENFORCEMENT, AND ATTORNEY COSTS OR FEES CONSTITUTE A LIEN IN FAVOR
5 OF THIS STATE UPON A COLLECTION SITE THAT HAS BEEN THE SUBJECT OF
6 CLEANUP ACTIVITY BY THIS STATE. A LIEN UNDER THIS SUBSECTION HAS
7 PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES EXCEPT LIENS AND
8 ENCUMBRANCES RECORDED BEFORE THE DATE THE LIEN UNDER THIS
9 SUBSECTION IS RECORDED. A LIEN UNDER THIS SUBSECTION ARISES WHEN

1 THIS STATE FIRST INCURS SUCH CLEANUP COSTS AT THE COLLECTION SITE.

2 (2) IF THE ATTORNEY GENERAL DETERMINES THAT THE LIEN PROVIDED
3 IN SUBSECTION (1) IS INSUFFICIENT TO PROTECT THE INTEREST OF THIS
4 STATE IN RECOVERING THE CLEANUP COSTS AT A COLLECTION SITE, THE
5 ATTORNEY GENERAL MAY FILE A PETITION IN THE CIRCUIT COURT FOR THE
6 COUNTY IN WHICH THE PROPERTY IS LOCATED SEEKING EITHER OR BOTH OF
7 THE FOLLOWING:

8 (A) A LIEN UPON THE COLLECTION SITE SUBJECT TO THE SCRAP TIRE
9 CLEANUP ACTIVITY THAT TAKES PRIORITY OVER ALL OTHER LIENS AND
10 ENCUMBRANCES THAT ARE OR HAVE BEEN RECORDED ON THE COLLECTION SITE.

11 (B) A LIEN UPON REAL OR PERSONAL PROPERTY OR RIGHTS TO REAL OR
12 PERSONAL PROPERTY OTHER THAN THE COLLECTION SITE, OWNED BY THE
13 PERSON WHO OWNS THE COLLECTION SITE, HAVING PRIORITY OVER ALL OTHER
14 LIENS AND ENCUMBRANCES RECORDED PRIOR TO THE DATE THE LIEN UNDER
15 THIS SUBSECTION IS RECORDED. HOWEVER, THE FOLLOWING ARE NOT SUBJECT
16 TO THE LIEN PROVIDED FOR IN THIS SUBDIVISION:

17 (i) ASSETS OF A QUALIFIED PENSION PLAN OR INDIVIDUAL RETIREMENT
18 ACCOUNT UNDER THE INTERNAL REVENUE CODE.

19 (ii) ASSETS HELD EXPRESSLY FOR THE PURPOSE OF FINANCING A
20 DEPENDENT'S COLLEGE EDUCATION.

21 (iii) UP TO \$500,000.00 IN NONBUSINESS REAL OR PERSONAL PROPERTY
22 OR RIGHTS TO REAL OR PERSONAL PROPERTY, EXCEPT THAT NOT MORE THAN
23 \$25,000.00 OF THIS AMOUNT MAY BE CASH OR SECURITIES.

24 (3) A PETITION SUBMITTED PURSUANT TO SUBSECTION (2) SHALL SET
25 FORTH WITH AS MUCH SPECIFICITY AS POSSIBLE THE TYPE OF LIEN SOUGHT,
26 THE PROPERTY THAT WOULD BE AFFECTED, AND THE REASONS THE ATTORNEY
27 GENERAL BELIEVES THE LIEN IS NECESSARY. UPON RECEIPT OF A PETITION

1 UNDER SUBSECTION (2), THE COURT SHALL PROMPTLY SCHEDULE A HEARING
2 TO DETERMINE WHETHER THE PETITION SHOULD BE GRANTED. NOTICE OF THE
3 HEARING SHALL BE PROVIDED TO THE ATTORNEY GENERAL, THE PROPERTY
4 OWNER, AND ANY PERSONS HOLDING LIENS OR PERFECTED SECURITY
5 INTERESTS IN THE REAL PROPERTY SUBJECT TO THE CLEANUP ACTIVITY.

6 (4) IN ADDITION TO THE LIEN PROVIDED IN SUBSECTIONS (1) AND
7 (2), IF THIS STATE INCURS COSTS FOR CLEANUP ACTIVITY UNDER SECTION
8 16908(2)(C) THAT INCREASE THE MARKET VALUE OF THE REAL PROPERTY
9 THAT IS THE LOCATION OF THE CLEANUP ACTIVITY, THE INCREASE IN VALUE
10 CAUSED BY THE STATE-FUNDED CLEANUP ACTIVITY, TO THE EXTENT THIS
11 STATE INCURRED UNPAID CLEANUP COSTS, CONSTITUTES A LIEN IN FAVOR OF
12 THE STATE UPON THE REAL PROPERTY. THIS LIEN HAS PRIORITY OVER ALL
13 OTHER LIENS OR ENCUMBRANCES THAT ARE OR HAVE BEEN RECORDED UPON THE
14 PROPERTY.

15 (5) A LIEN PROVIDED IN SUBSECTION (1), (2), OR (4) IS
16 PERFECTED AGAINST REAL PROPERTY WHEN A NOTICE OF LIEN IS FILED BY
17 THE DEPARTMENT WITH THE REGISTER OF DEEDS IN THE COUNTY IN WHICH
18 THE REAL PROPERTY IS LOCATED. IN ADDITION, THE DEPARTMENT SHALL, AT
19 THE TIME OF THE FILING OF THE NOTICE OF LIEN, PROVIDE A COPY OF THE
20 NOTICE OF LIEN TO THE OWNER OF THAT PROPERTY BY CERTIFIED MAIL.

21 (6) A LIEN UNDER THIS SECTION CONTINUES UNTIL THE LIABILITY
22 FOR THE CLEANUP COSTS IS SATISFIED.

23 (7) UPON SATISFACTION OF THE LIABILITY SECURED BY THE LIEN,
24 THE DEPARTMENT SHALL FILE A NOTICE OF RELEASE OF LIEN IN THE SAME
25 MANNER AS PROVIDED IN SUBSECTION (5).

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 93rd Legislature are

1 enacted into law:

2 (a) Senate Bill No. 1423 or House Bill No.____ (request no.
3 05010'05).

4 (b) Senate Bill No.____ or House Bill No. 6477 (request no.
5 06892'06).

6 (c) Senate Bill No. 1424 or House Bill No.____ (request no.
7 07116'06 *).

8 (d) Senate Bill No. 1418 or House Bill No.____ (request no.
9 07316'06).

10 (e) Senate Bill No. 1419 or House Bill No.____ (request no.
11 07318'06).

12 (f) Senate Bill No. 1420 or House Bill No.____ (request no.
13 07326'06).

14 (g) Senate Bill No.____ or House Bill No. 6474 (request no.
15 07328'06).

16 (h) Senate Bill No. 1422 or House Bill No.____ (request no.
17 07332'06).

18 (i) Senate Bill No. 1421 or House Bill No.____ (request no.
19 07333'06).

20 (j) Senate Bill No.____ or House Bill No. 6476 (request no.
21 07338'06).