

# HOUSE BILL No. 5341

November 21, 1991, Introduced by Reps. Alley, Sikkema, Hickner, Middaugh, Brown, Dolan, Anthony, Nye, Byrum, Hillegonds, Trim, Gnodtke, Bodem, Van Singel, DeBeaussiaert, Hunter, Yokich, Varga, Bartnik, DeMars and London and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend sections 11c and 11d of Act No. 307 of the Public Acts of 1982, entitled as amended

"The environmental response act,"

as added by Act No. 234 of the Public Acts of 1990, being sections 299.611c and 299.611d of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 11c and 11d of Act No. 307 of the  
2 Public Acts of 1982, as added by Act No. 234 of the Public Acts  
3 of 1990, being sections 299.611c and 299.611d of the Michigan  
4 Compiled Laws, are amended to read as follows:

5 Sec. 11c. (1) Upon receipt of the items of difference pur-  
6 suant to section 11a or 11b, the CHAIRPERSON OF THE science  
7 advisory council shall appoint 3 of its members TO SERVE ON A  
8 PANEL to provide recommendations for resolving the items of  
9 difference AND SHALL GIVE NOTICE OF THESE APPOINTMENTS TO THE

1 DEPARTMENT AND THE PERSONS THAT MAY BE LIABLE UNDER SECTION 12  
2 FOR THAT FACILITY. WITHIN 14 DAYS OF RECEIPT OF THE NOTICE OF  
3 APPOINTMENTS, THE DEPARTMENT AND THE PERSONS THAT MAY BE LIABLE  
4 UNDER SECTION 12 MAY EACH REJECT 1 OF THE INDIVIDUALS APPOINTED  
5 TO SERVE ON THE PANEL. IF A MEMBER IS REJECTED, THE CHAIRPERSON  
6 OF THE SCIENCE ADVISORY COUNCIL SHALL APPOINT A REPLACEMENT FOR  
7 THAT PERSON.

8 (2) Within 60 days ~~of its receipt of the items for each~~  
9 ~~item of difference~~ AFTER APPOINTMENT OF THE SCIENCE ADVISORY  
10 COUNCIL PANEL UNDER SUBSECTION (1), the department and the per-  
11 sons that may be liable under section 12 may EACH submit a writ-  
12 ten statement not exceeding 20 pages in support of its position.  
13 An interested member of the general public may also submit a  
14 written statement, not exceeding 20 pages, in support of a posi-  
15 tion on any item of difference. The science advisory council  
16 PANEL shall schedule a meeting to deliberate and prepare recom-  
17 mendations on resolving the items of difference. A meeting of  
18 the science advisory council PANEL shall be held pursuant to the  
19 open meetings act, Act No. 267 of the Public Acts of 1976, being  
20 sections 15.261 to 15.275 of the Michigan Compiled Laws. The  
21 science advisory council PANEL shall, within 90 days of receiving  
22 the written statements allowed to be submitted in this subsec-  
23 tion, forward its recommendations on the items of difference to  
24 the department, the persons that may be liable under section 12,  
25 and the ~~facilitator~~ OFFICE OF ENVIRONMENTAL CLEANUP  
26 FACILITATION. The recommendations of the science advisory  
27 council PANEL shall become part of the administrative record.

1       (3) ~~(2)~~ Within 30 days after receipt of the  
2 recommendations of the science advisory council PANEL pursuant to  
3 subsection ~~(1)~~ (2), ~~the~~ A facilitator ASSIGNED BY THE OFFICE  
4 OF ENVIRONMENTAL CLEANUP FACILITATION shall conduct additional  
5 discussions with the department and the persons that may be  
6 liable under section 12 and shall schedule a facilitation  
7 conference. Through these discussions, the facilitator shall  
8 attempt to facilitate an agreement between the department and the  
9 persons that may be liable under section 12 regarding the con-  
10 tents of a remedial action plan. If the department and the per-  
11 sons that may be liable under section 12 are unable to agree to a  
12 remedial action plan at the facilitation conference, the depart-  
13 ment shall approve a remedial action plan that includes the rec-  
14 ommendations of the science advisory council PANEL, unless the  
15 department prepares and approves an alternative remedial action  
16 plan. The department shall approve a remedial action plan pursu-  
17 ant to this subsection within 90 days after the department  
18 receives the recommendations from the science advisory council  
19 PANEL. If the department does not approve a remedial action plan  
20 during this time period, the persons that may be liable under  
21 section 12 may implement a remedial action plan that includes all  
22 of the recommendations of the science advisory council PANEL and  
23 is otherwise in compliance with this act and the rules promul-  
24 gated under this act. This remedial action plan shall be consid-  
25 ered an approved remedial action plan.

26       (4) ~~(3)~~ A person that participates in the allocation  
27 process under section ~~11f or~~ 11g shall not have standing in a

1 civil action to challenge the recommendations of the science  
2 advisory council PANEL, pursuant to subsection ~~-(1)-~~ (2), which  
3 are included in an approved remedial action plan. Additionally,  
4 if a court later upholds the contents of the approved remedial  
5 action plan, the court shall assess against the persons that may  
6 be liable under section 12 for the facility the full costs of  
7 facilitation under this section and section 11b and enforcement  
8 costs. If the department approves a remedial action plan that  
9 does not contain the recommendations endorsed by a majority of  
10 the science advisory council PANEL and if a court later does not  
11 uphold the contents of that remedial action plan, the court shall  
12 assess against the department the full costs of facilitation  
13 under this section and section 11b, court costs, and the reason-  
14 able attorney fees for the persons that may be liable under  
15 section 12. Additionally, if the action is for cost recovery of  
16 response activities at a facility in which remedial action has  
17 been completed, the court shall only assess against the persons  
18 that may be liable under section 12 the cost of remedial action  
19 that the court determines should have been undertaken.

20 (5) ~~-(4)-~~ In any court proceeding pursuant to this section,  
21 there is a rebuttable presumption that the recommendations of the  
22 science advisory council PANEL on the items of difference are  
23 supported by a preponderance of scientific evidence.

24 (6) ~~-(5)-~~ This section does not preclude the department from  
25 taking action as provided in sections 10e and 10f.

26 Sec. 11d. (1) The science advisory council is created as an  
27 independent, autonomous entity within the department of

1 management and budget. The council shall consist of 7  
2 individuals appointed by the governor, with the advice and con-  
3 sent of the senate, who have expertise in 1 or more of the fol-  
4 lowing areas:

5 (a) Toxicology.

6 (b) Environmental engineering.

7 (c) Biology.

8 (d) Environmental chemistry.

9 (e) Hydrogeology.

10 (f) Soil science.

11 (g) Statistics.

12 (2) THE SCIENCE ADVISORY COUNCIL SHALL ELECT FROM AMONG ITS  
13 MEMBERS A CHAIRPERSON AND OTHER OFFICERS AS THE COUNCIL CONSIDERS  
14 APPROPRIATE.

15 (3) ~~-(2)-~~ A member of the science advisory council shall  
16 serve for a term of 3 years, or until a successor is appointed by  
17 the governor, whichever is later, except of the members first  
18 appointed, 3 shall serve for 3 years, 2 shall serve for 2 years,  
19 and 2 shall serve for 1 year.

20 (4) ~~-(3)-~~ The governor may remove a member of the science  
21 advisory council for incompetency, dereliction of duty, malfea-  
22 sance in office, or any other good cause.

23 (5) ~~-(4)-~~ For a period of 6 months after an individual  
24 ceases to serve on the science advisory council, that individual  
25 shall not be employed by the department, a person that ~~may be~~  
26 ~~liable under section 12~~ HAS HAD A DISPUTE BEFORE A SCIENCE  
27 ADVISORY COUNCIL PANEL IN WHICH THAT INDIVIDUAL SERVED, or a

1 consulting firm associated with the department or a person that  
2 ~~may be liable under section 12~~ HAS HAD A DISPUTE BEFORE A  
3 SCIENCE ADVISORY COUNCIL PANEL IN WHICH THAT INDIVIDUAL SERVED.

4 (6) ~~(5)~~ Three members of the science advisory council,  
5 ~~shall~~ APPOINTED BY THE CHAIRPERSON OF THE SCIENCE ADVISORY  
6 COUNCIL on a rotating basis, SHALL SERVE ON PANELS TO make recom-  
7 mendations on resolving the items of difference between the  
8 department and the persons that may be liable under section 12  
9 for a facility with regard to the contents of a remedial action  
10 plan pursuant to this act. ~~The~~ A science advisory council  
11 PANEL need not recommend a position advocated by either the  
12 department or the persons that may be liable under section 12,  
13 but may recommend an alternative that is supported by scientific  
14 evidence and is consistent with this act and the rules promul-  
15 gated under this act.

16 (7) ~~(6)~~ ~~The~~ A science advisory council PANEL shall make  
17 recommendations only on the scientific and technical issues in  
18 dispute consistent with the rules promulgated under this act,  
19 including, but not limited to:

- 20 (a) Risk assessment assumptions and calculations.  
21 (b) Data collection and interpretation.  
22 (c) Technological effectiveness of remedial action  
23 alternatives.  
24 (d) Chemical, biological, and physical properties.  
25 (e) Impacts on various media.

26 (8) ~~(7)~~ ~~The~~ A science advisory council PANEL shall not  
27 make recommendations on issues that are not primarily scientific

1 or technical in nature including, but not limited to, any of the  
2 following:

3 (a) Cost effectiveness of remedial action alternatives.

4 (b) Current and reasonably foreseeable uses of natural  
5 resources.

6 (c) Reasonably foreseeable uses of the facility.

7 (9) ~~-(8)-~~ The members of ~~the~~ A science advisory council  
8 PANEL who make recommendations regarding the contents of a reme-  
9 dial action plan for a facility shall not have any present or  
10 past personal, contractual, financial, business, or employment  
11 interest in matters related to the persons that have disputes  
12 before the science advisory council PANEL.

13 (10) ~~-(9)-~~ Upon request of the science advisory council, the  
14 department shall provide the science advisory council with all  
15 information the department has in its possession related to a  
16 facility.

17 (11) THE SCIENCE ADVISORY COUNCIL SHALL PREPARE A PLAN OF  
18 OPERATION FOR THE INTERNAL OPERATIONS AND PROCEDURES OF THE  
19 SCIENCE ADVISORY COUNCIL AND MAY PROMULGATE RULES IT CONSIDERS  
20 NECESSARY TO IMPLEMENT THIS SECTION.