

HOUSE BILL No. 5425

January 8, 1992, Introduced by Reps. DeBeaussiaert, DeMars, Alley, Byrum, Kosteva, Gubow, Gire and Yokich and referred to the Committee on Appropriations.

A bill to amend the title and sections 10 and 11 of Act No. 245 of the Public Acts of 1929, entitled as amended

"An act to regulate, protect, and conserve the water resources of the state, to provide for the control over the pollution of any waters of the state and the Great Lakes, to provide for the control over the alteration of the watercourses and the floodplains of all rivers and streams; to create a water resources commission; to prescribe the powers and duties of certain state agencies and officials; to require the registration of manufacturing products, production materials, and waste products where certain wastes are discharged; to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit the pollution of any waters of the state and the Great Lakes; to prohibit the obstruction of the floodways of the rivers and streams of the state; to designate the department of natural resources as the state agency to cooperate and negotiate with other governments and agencies in matters concerning the water resources of the state; and to provide penalties and remedies for the violation of this act,"

as amended by Act No. 19 of the Public Acts of 1990, being sections 323.10 and 323.11 of the Michigan Compiled Laws; and to add section 10a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 10 and 11 of Act No. 245
2 of the Public Acts of 1929, as amended by Act No. 19 of the
3 Public Acts of 1990, being sections 323.10 and 323.11 of the
4 Michigan Compiled Laws, are amended and section 10a is added to
5 read as follows:

6	TITLE
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7 An act to regulate, protect, and conserve the water
8 resources of the state, to provide for the control over the pol-
9 lution of any waters of the state and the Great Lakes, to provide
10 for the control over the alteration of the watercourses and the
11 floodplains of all rivers and streams; to create a water
12 resources commission; to prescribe the powers and duties of cer-
13 tain state agencies and officials; to require the registration of
14 manufacturing products, production materials, and waste products
15 where certain wastes are discharged; to require permits to regu-
16 late the discharge or storage of any substance which may affect
17 the quality of the waters of the state and to establish restric-
18 tions to assure compliance with applicable state standards and to
19 authorize the establishment of permit restrictions and programs
20 to assure compliance with applicable federal law and regulations;
21 to prohibit the pollution of any waters of the state and the
22 Great Lakes; to prohibit the obstruction of the floodways of the
23 rivers and streams of the state; to designate the department of

1 natural resources as the state agency to cooperate and negotiate
2 with other governments and agencies in matters concerning the
3 water resources of the state; TO CREATE A FUND AND PROVIDE FOR
4 THE ADMINISTRATION OF THAT FUND; and to provide penalties and
5 remedies for the violation of this act.

6 Sec. 10. (1) The department or the commission may request
7 the attorney general to commence a civil action for appropriate
8 relief, including a permanent or temporary injunction, for a vio-
9 lation of this act or the provisions of a permit, order, rule, or
10 stipulation of the department or the commission. An action under
11 this subsection may be brought in the circuit court for the
12 county of Ingham or for the county in which the defendant is
13 located, resides, or is doing business. The court has jurisdic-
14 tion to restrain the violation and to require compliance. In
15 addition to any other relief granted under this subsection, the
16 court shall impose a civil fine of not less than \$2,500.00 and
17 may award reasonable attorney fees and costs to the prevailing
18 party. However, the maximum fine imposed by the court shall be
19 not more than \$25,000.00 per day of violation.

20 (2) A person who at the time of the violation, knew or
21 should have known that he or she discharged a substance contrary
22 to this act, or contrary to the provisions of a permit, order,
23 rule, or stipulation of the department or the commission, or who
24 intentionally makes a false statement, representation, or certi-
25 fication in an application for, or form pertaining to a permit,
26 or in a notice or report required by the terms and conditions of
27 an issued permit, or who intentionally renders inaccurate a

1 monitoring device or record required to be maintained by the
2 commission, is guilty of a felony and shall be fined not less
3 than \$2,500.00 or more than \$25,000.00 for each violation. The
4 court may impose an additional fine of not more than \$25,000.00
5 for each day during which the unlawful discharge occurred. If
6 the conviction is for a violation committed after a first conviction
7 of the person under this subsection, the court shall impose
8 a fine of not less than \$25,000.00 per day and not more than
9 \$50,000.00 per day of violation. Upon conviction, in addition to
10 a fine, the court in its discretion may sentence the defendant to
11 imprisonment for not more than 2 years or impose probation upon a
12 person for a violation of this act. With the exception of the
13 issuance of criminal complaints, issuance of warrants, and the
14 holding of an arraignment, the circuit court for the county in
15 which the violation occurred has exclusive jurisdiction.

16 However, the person shall not be subject to the penalties of this
17 subsection if the discharge of the effluent is in conformance
18 with and obedient to a rule, order, or permit of the commission.
19 In addition to a fine, the attorney general may file a civil suit
20 in a court of competent jurisdiction to recover the full value of
21 the injuries done to the natural resources of the state and the
22 costs of surveillance and enforcement by the state resulting from
23 the violation.

24 (3) Upon a finding by the court that the actions of a civil
25 defendant pose or posed a substantial endangerment to public
26 health, safety, or welfare, the court shall impose, in addition

1 to the penalties set forth in subsection (1), a fine of not less
2 than \$500,000.00 and not more than \$5,000,000.00.

3 (4) Upon a finding by the court that the action of a crimi-
4 nal defendant pose or posed a substantial endangerment to public
5 health, safety, or welfare, the court shall impose, in addition
6 to the penalties set forth in subsection (2), a fine of not less
7 than \$1,000,000.00 and, in addition to a fine, a sentence of
8 5 years' imprisonment.

9 (5) To find a defendant civilly or criminally liable for
10 substantial endangerment under subsections (3) and (4), the court
11 shall determine that the defendant knowingly or recklessly acted
12 in such a manner as to cause a danger of death or serious bodily
13 injury and that either of the following has occurred:

14 (a) The defendant had an actual awareness, or belief, or
15 understanding, that his or her conduct would cause a substantial
16 danger of death or serious bodily injury.

17 (b) The defendant acted in gross disregard of the standard
18 of care which any reasonable person should observe in similar
19 circumstances.

20 (6) Knowledge possessed by a person other than the defendant
21 under subsection (5) may be attributable to the defendant if the
22 defendant took affirmative steps to shield himself or herself
23 from the relevant information.

24 (7) ~~Any~~ A fine or other award ordered paid pursuant to
25 this section shall ~~do both of the following:~~

26 ~~(a) Be payable to the state of Michigan and credited to the~~
27 ~~general fund.~~

1 ~~(b) Constitute~~ CONSTITUTE a lien on any property, of any
2 nature or kind, owned by the defendant. ONE HALF OF EACH CIVIL
3 FINE AND EACH AWARD COLLECTED UNDER THIS ACT SHALL BE CREDITED TO
4 THE CLEAN WATER RESOURCES FUND CREATED IN SECTION 10A. THE BAL-
5 ANCE OF FINES AND AWARDS COLLECTED UNDER THIS ACT SHALL BE DIS-
6 BURSED IN THE MANNER PRESCRIBED BY LAW.

7 (8) A lien under subsection ~~(7)(b)~~ (7) shall take effect
8 and have priority over all other liens and encumbrances except
9 those filed or recorded prior to the date of judgment only if
10 notice of the lien is filed or recorded as required by state or
11 federal law.

12 (9) A lien filed or recorded pursuant to subsection (8)
13 shall be terminated according to the procedures required by state
14 or federal law within 14 days after the fine or other award
15 ordered to be paid is paid.

16 (10) In addition to any other method of collection, any fine
17 or other award ordered paid may be recovered by right of setoff
18 to any debt owed to the defendant by the state of Michigan,
19 including the right to a refund of income taxes paid.

20 SEC. 10A. (1) THE CLEAN WATER RESOURCES FUND IS CREATED
21 WITHIN THE DEPARTMENT OF TREASURY, AND SHALL BE ADMINISTERED BY
22 THE DEPARTMENT OF NATURAL RESOURCES. THE STATE TREASURER MAY
23 RECEIVE MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO
24 THE FUND, OR THE GENERAL FUND, IN THE MANNER PRESCRIBED IN
25 SUBSECTION (2).

26 (2) THE STATE TREASURER SHALL DO EACH OF THE FOLLOWING:

1 (A) DIRECT THE INVESTMENT OF THE FUND.

2 (B) CREDIT THE INTEREST AND EARNINGS OF THE FUND TO THE
3 FUND.

4 (C) UNTIL THE FUND CONTAINS \$30,000,000.00 IN A FISCAL YEAR,
5 DEPOSIT INTO THE FUND ALL MONEY RECEIVED UNDER THIS SECTION.

6 (D) AFTER THE FUND CONTAINS \$30,000,000.00 IN A FISCAL YEAR,
7 CREDIT ONLY INTEREST AND EARNINGS OF THE FUND TO THE FUND DURING
8 THAT FISCAL YEAR.

9 (E) RETAIN MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR
10 AND NOT CONVEY THAT MONEY TO THE GENERAL FUND.

11 (3) THE DEPARTMENT SHALL DISBURSE MONEY IN THE FUND PURSUANT
12 TO SUBSECTION (4) TO ANY OF THE FOLLOWING ENTITIES THAT THE
13 DEPARTMENT DETERMINES QUALIFIED TO RECEIVE FUNDS UNDER THIS ACT:

14 (A) A WATERSHED COUNCIL ORGANIZED PURSUANT TO THE LOCAL
15 RIVER AND MANAGEMENT ACT, ACT NO. 253 OF THE PUBLIC ACTS OF 1964,
16 BEING SECTIONS 323.301 TO 323.320 OF THE MICHIGAN COMPILED LAWS.

17 (B) A REGIONAL PLANNING COMMISSION CREATED PURSUANT TO
18 SECTION 2 OF ACT NO. 281 OF THE PUBLIC ACTS OF 1945, BEING
19 SECTION 125.12 OF THE MICHIGAN COMPILED LAWS.

20 (C) A LOCAL HEALTH DEPARTMENT, AS THAT TERM IS DEFINED IN
21 SECTION 1105 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC
22 ACTS OF 1978, BEING SECTION 333.1105 OF THE MICHIGAN COMPILED
23 LAWS.

24 (D) A LOCAL UNIT OF GOVERNMENT.

25 (E) AN ORGANIZATION APPROVED BY THE DEPARTMENT THAT QUALI-
26 FIES FOR EXEMPTION FROM FEDERAL INCOME TAXATION UNDER
27 SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.

1 (F) AN INSTITUTION OF HIGHER LEARNING, AS THAT TERM IS
2 DEFINED IN SECTION 260 OF THE INCOME TAX ACT OF 1967, ACT NO. 281
3 OF THE PUBLIC ACTS OF 1967, BEING SECTION 206.260 OF THE MICHIGAN
4 COMPILED LAWS.

5 (4) THE DEPARTMENT SHALL EXPEND MONEY IN THE FUND ONLY FOR
6 THE FOLLOWING PURPOSES:

7 (A) THE DEVELOPMENT, PROTECTION, AND RESTORATION OF NATURAL
8 FISH HABITAT.

9 (B) THE FUNDING OF PROJECTS UNDERTAKEN BY VOLUNTEERS FOR THE
10 CLEAN-UP OF WATER, BEACHES, SHORELINES, OR RIVERBANKS.

11 (C) ENHANCEMENT OF RECREATIONAL RESOURCES RELATED TO WATER.

12 (D) THE FUNDING OF THE RIVER PARTNERS GRANT PROGRAM ESTAB-
13 LISHED BY THE DEPARTMENT TO SUPPORT PROJECTS THAT ASSESS WATER
14 QUALITY CONDITIONS, PROVIDE COMMUNITY EDUCATION RELATED TO RIVER
15 RESOURCES, AND COORDINATE COMMUNITY EFFORTS TO IMPROVE RIVER
16 ECOSYSTEMS.

17 (E) THE FUNDING OF EDUCATIONAL PROGRAMS APPROVED BY THE
18 DEPARTMENT THAT ARE RELATED TO WATER CONSERVATION AND THE PRESER-
19 VATION OF BEACHES, SHORELINES, RIVERBANKS, AND OTHER WATERFRONT
20 AREAS.

21 (F) THE FUNDING OF PROJECTS FOR THE COLLECTION AND ANALYSIS
22 OF WATER QUALITY DATA UNDERTAKEN BY PERSONS DESCRIBED IN
23 SUBSECTION (3), FOR A PERIOD OF NOT MORE THAN 2 CONSECUTIVE
24 FISCAL YEARS FOR EACH PROJECT.

25 (G) THE FUNDING OF PROGRAMS APPROVED BY THE DEPARTMENT FOR A
26 PERIOD OF NOT MORE THAN 3 YEARS FOR EACH PROJECT, THAT PROVIDE
27 ALTERNATIVE AGRICULTURAL PRACTICES EDUCATION, AND INFORMATION

1 ABOUT APPROPRIATE SEWAGE AND WASTE DISPOSAL, UNDERTAKEN BY
2 PERSONS DESCRIBED IN SUBSECTION (3).

3 Sec. 11. As used in this act:

4 (a) "Commission" means the water resources commission.

5 (b) "Department" means the department of natural resources.

6 (C) "FUND" MEANS THE CLEAN WATER RESOURCES FUND CREATED IN
7 SECTION 10A.

8 (D) "LOCAL UNIT OF GOVERNMENT" MEANS A CITY, VILLAGE, TOWN-
9 SHIP, OR COUNTY.

10 (E) ~~-(e)-~~ "Municipality" means the state, ~~a county, city,~~
11 ~~village or township~~ A LOCAL UNIT OF GOVERNMENT, or an agency or
12 instrumentality of any of these entities.

13 (F) ~~-(d)-~~ "Person" means an individual, municipality, indus-
14 try, public or private corporation, copartnership, firm or any
15 other entity whatsoever.

16 (G) ~~-(e)-~~ "Rule" means a rule promulgated pursuant to the
17 administrative procedures act of 1969, Act No. 306 of the Public
18 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
19 Compiled Laws.

20 (H) ~~-(f)-~~ "Waters of the state" means groundwaters, lakes,
21 rivers and streams and all other watercourses and waters within
22 the confines of the state and also the Great Lakes bordering the
23 state.