

SENATE BILL No. 628

November 21, 1991, Introduced by Senator WARTNER and referred to the Committee on Natural Resources and Environmental Affairs.

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. THE CHAIRPERSON SHALL NOT APPOINT A MEMBER
3 WHO HAS A DIRECT CONFLICT OF INTEREST IN THE DISPUTE BEFORE THE
4 PANEL. WITHIN 30 DAYS OF RECEIPT OF THE NOTICE OF APPOINTMENTS,
5 THE DEPARTMENT AND THE PERSONS THAT MAY BE LIABLE UNDER
6 SECTION 12 MAY EACH REJECT 1 OF THE INDIVIDUALS APPOINTED TO
7 SERVE ON THE PANEL. IF A MEMBER IS REJECTED, THE CHAIRPERSON OF
8 THE SCIENCE ADVISORY COUNCIL SHALL APPOINT A REPLACEMENT FOR THAT
9 PERSON.

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

1 FACILITATION. The recommendations of the science advisory
2 council PANEL shall become part of the administrative record.

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

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

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

26 (6) ~~-(5)-~~ This section does not preclude the department from
27 taking action as provided in sections 10e and 10f.

1 Sec. 11d. (1) The science advisory council is created as an
2 independent, autonomous entity within the department of manage-
3 ment and budget. The council shall consist of 7 individuals
4 appointed by the governor, with the advice and consent of the
5 senate, who have expertise in 1 or more of the following areas:

6 (a) Toxicology.

7 (b) Environmental engineering.

8 (c) Biology.

9 (d) Environmental chemistry.

10 (e) Hydrogeology.

11 (f) Soil science.

12 (g) Statistics.

13 (2) THE GOVERNOR SHALL DESIGNATE 1 OF THE MEMBERS APPOINTED
14 UNDER SUBSECTION (1) TO SERVE AT THE PLEASURE OF THE GOVERNOR AS
15 CHAIRPERSON OF THE SCIENCE ADVISORY COUNCIL. THE GOVERNOR MAY
16 APPOINT OTHER MEMBERS OF THE SCIENCE ADVISORY COUNSEL TO SERVE AS
17 OFFICERS AT THE PLEASURE OF THE GOVERNOR. IN ADDITION, THE GOV-
18 ERNOR SHALL APPOINT AN EXECUTIVE DIRECTOR TO ADMINISTER THE
19 SCIENCE ADVISORY COUNCIL AND TO SERVE AT THE PLEASURE OF THE
20 GOVERNOR.

21 (3) ~~-(2)-~~ A member of the science advisory council shall
22 serve ~~for a term of 3 years, or until a successor is appointed~~
23 ~~by the governor, whichever is later, except of the members first~~
24 ~~appointed, 3 shall serve for 3 years, 2 shall serve for 2 years,~~
25 ~~and 2 shall serve for 1 year~~ AT THE PLEASURE OF THE GOVERNOR.

1 ~~-(3) The governor may remove a member of the science~~
2 ~~advisory council for incompetency, dereliction of duty,~~
3 ~~malfeasance in office, or any other good cause.~~

4 (4) For a period of 6 months after an individual ceases to
5 serve on the science advisory council, that individual shall not
6 be employed by the department, a person that ~~may be liable under~~
7 ~~section 12~~ HAS HAD A DISPUTE BEFORE A SCIENCE ADVISORY COUNCIL
8 PANEL IN WHICH THAT INDIVIDUAL SERVED, or a consulting firm asso-
9 ciated with the department or a person that ~~may be liable under~~
10 ~~section 12~~ HAS HAD A DISPUTE BEFORE A SCIENCE ADVISORY COUNCIL
11 PANEL IN WHICH THAT INDIVIDUAL SERVED.

12 (5) Three members of the science advisory council, ~~shall~~
13 APPOINTED BY THE CHAIRPERSON OF THE SCIENCE ADVISORY COUNCIL on a
14 rotating basis, SHALL SERVE ON PANELS TO make recommendations on
15 resolving the items of difference between the department and the
16 persons that may be liable under section 12 for a facility with
17 regard to the contents of a remedial action plan pursuant to this
18 act. ~~The~~ A science advisory council PANEL need not recommend a
19 position advocated by either the department or the persons that
20 may be liable under section 12, but may recommend an alternative
21 that is supported by scientific evidence and is consistent with
22 this act and the rules promulgated under this act.

23 (6) ~~The~~ A science advisory council PANEL shall make recom-
24 mendations only on the scientific and technical issues in dispute
25 consistent with the rules promulgated under this act, including,
26 but not limited to:

1 (a) Risk assessment assumptions and calculations.

2 (b) Data collection and interpretation.

3 (c) Technological effectiveness of remedial action
4 alternatives.

5 (d) Chemical, biological, and physical properties.

6 (e) Impacts on various media.

7 (7) ~~The~~ A science advisory council PANEL shall not make
8 recommendations on issues that are not primarily scientific or
9 technical in nature including, but not limited to, any of the
10 following:

11 (a) Cost effectiveness of remedial action alternatives.

12 (b) Current and reasonably foreseeable uses of natural
13 resources.

14 (c) Reasonably foreseeable uses of the facility.

15 (8) The members of ~~the~~ A science advisory council PANEL
16 who make recommendations regarding the contents of a remedial
17 action plan for a facility shall ~~not have~~ MAKE FULL DISCLOSURE
18 OF any present or past personal, contractual, financial, busi-
19 ness, or employment interest in matters related to the persons
20 that have disputes before the science advisory council PANEL.

21 (9) Upon request of the science advisory council, the
22 department shall provide the science advisory council with all
23 information the department has in its possession related to a
24 facility.

25 (10) THE SCIENCE ADVISORY COUNCIL SHALL PREPARE A PLAN OF
26 OPERATION FOR THE INTERNAL OPERATIONS AND PROCEDURES OF THE

- 1 SCIENCE ADVISORY COUNCIL AND MAY PROMULGATE RULES IT CONSIDERS
- 2 NECESSARY TO IMPLEMENT THIS SECTION.