Act No. 383
Public Acts of 1996
Approved by the Governor
July 23, 1996
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STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996

Introduced by Reps. Wetters, Middaugh, Alley, DeHart, Bobier, Freeman, Sikkema, Bodem, Hill, Byl and Yokich

ENROLLED HOUSE BILL No. 5672

AN ACT to amend sections 20101, 20107a, 20113, and 20120d of Act No. 451 of the Public Acts of 1994, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," sections 20101 and 20107a as amended by Act No. 115 of the Public Acts of 1996 and section 20113 as amended and section 20120d as added by Act No. 71 of the Public Acts of 1995, being sections 324.20101, 324.20107a, 324.20113, and 324.20120d of the Michigan Compiled Laws; and to add sections 20104a, 20108b, and 20109a.

The People of the State of Michigan enact:

Section 1. Sections 20101, 20107a, 20113, and 20120d of Act No. 451 of the Public Acts of 1994, sections 20101 and 20107a as amended by Act No. 115 of the Public Acts of 1996 and section 20113 as amended and section 20120d as added by Act No. 71 of the Public Acts of 1995, being sections 324.20101, 324.20107a, 324.20113, and 324.20120d of the Michigan Compiled Laws, are amended and sections 20104a, 20108b, and 20109a are added to read as follows:

Sec. 20101. (1) As used in this part:

(a) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(b) "Agricultural property" means real property used for farming in any of its branches, including cultivating of soil; growing and harvesting of any agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; turf and tree farming; and performing any practices on a farm as an incident to, or in conjunction with, these farming operations. Agricultural property does not include property used for commercial storage, processing, distribution, marketing, or shipping operations.

(c) "Attorney general" means the department of the attorney general.

(d) "Baseline environmental assessment" means an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstance at the facility so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination.

(e) "Board" means the brownfield redevelopment board created in section 20104a.

(f) "Department" means the director of the department of environmental quality or his or her designee to whom the director delegates a power or duty by written instrument.

(g) "Director" means the director of the department of environmental quality.

(h) "Directors" means the directors or their designees of the departments of environmental quality, community health, agriculture, and state police.

(i) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance into or on any land or water so that the hazardous substance or any constituent of the hazardous substance may enter the environment or be emitted into the air or discharged into any groundwater or surface water.

(j) "Enforcement costs" means court expenses, reasonable attorney fees of the attorney general, and other reasonable expenses of an executive department that are incurred in relation to enforcement under this part or rules promulgated under this part, or both.

(k) "Environment" or "natural resources" means land, surface water, groundwater, subsurface, strata, air, fish, wildlife, or biota within the state.

(*l*) "Environmental contamination" means the release of a hazardous substance, or the potential release of a discarded hazardous substance, in a quantity which is or may become injurious to the environment or to the public health, safety, or welfare.

(m) "Evaluation" means those activities including, but not limited to, investigation, studies, sampling, analysis, development of feasibility studies, and administrative efforts that are needed to determine the nature, extent, and impact of a release or threat of release and necessary response activities.

(n) "Exacerbation" means the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to existing contamination:

(*i*) Contamination that has migrated beyond the boundaries of the property which is the source of the release at levels above cleanup criteria specified in section 20120a(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to section 20120b.

(*ii*) A change in facility conditions that increases response activity costs.

(o) "Facility" means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under part 213 has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in section 20120a(1)(a) and (17) or at which corrective action has been completed under part 213 which satisfies the cleanup criteria for unrestricted residential use.

(p) "Feasibility study" means a process for developing, evaluating, and selecting appropriate response activities.

(q) "Foreclosure" means possession of a property by a lender on which it has foreclosed on a security interest or the expiration of a lawful redemption period, whichever occurs first.

(r) "Free product" means a hazardous substance in a liquid phase equal to or greater than 1/8 inch of measurable thickness that is not dissolved in water and that has been released into the environment.

(s) "Fund" means the cleanup and redevelopment fund established in section 20108.

(t) "Hazardous substance" means 1 or more of the following, but does not include fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices developed pursuant to the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws:

(*i*) Any substance that the department demonstrates, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material, dose-response, toxicity, or adverse impact on natural resources.

(*ii*) Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

(*iii*) Hazardous waste as defined in part 111.

(*iv*) Petroleum as described in part 213.

(u) "Interim response activity" means the cleanup or removal of a released hazardous substance or the taking of other actions, prior to the implementation of a remedial action, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. Interim response activity also includes, but is not

limited to, measures to limit access, replacement of water supplies, and temporary relocation of people as determined to be necessary by the department. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release.

(v) "Lender" means any of the following:

(*i*) A state or nationally chartered bank.

(*ii*) A state or federally chartered savings and loan association or savings bank.

(*iii*) A state or federally chartered credit union.

(*iv*) Any other state or federally chartered lending institution or regulated affiliate or regulated subsidiary of any entity listed in this subparagraph or subparagraphs (*i*) to (*iii*).

(*v*) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(*vi*) A motor vehicle finance company subject to the motor vehicle finance act, Act No. 27 of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws, with net assets in excess of $50,000,000.00.

(*vii*) A foreign bank.

(*viii*) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of $50,000,000.00.

(*ix*) A state or federal agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(*x*) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(*xi*) Any other person who loans money for the purchase of or improvement of real property.

(*xii*) Any person who retains or receives a security interest to service a debt or to secure a performance obligation.

(w) "Local health department" means that term as defined in section 1105 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws.

(x) "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include the state or federal government or a state or federal agency.

(y) "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that person participates in the management of the facility as described in section 20101a.

(*ii*) A person who is acting as a fiduciary in compliance with section 20101b.

(z) "Owner" means a person who owns a facility. Owner does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, including, but not limited to, a vendor's interest under a recorded land contract, unless that person participates in the management of the facility as described in section 20101a.

(*ii*) A person who is acting as a fiduciary in compliance with section 20101b.

(aa) "Permitted release" means 1 or more of the following:

(*i*) A release in compliance with an applicable, legally enforceable permit issued under state law.

(*ii*) A lawful and authorized discharge into a permitted waste treatment facility.

(*iii*) A federally permitted release as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

(bb) "Release" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. Release does not include any of the following:

(*i*) A release that results in exposure to persons solely within a workplace, with respect to a claim that these persons may assert against their employers.

(*ii*) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.

(*iii*) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the release is subject to requirements with respect to

financial protection established by the nuclear regulatory commission under section 170 of chapter 14 of title I of the atomic energy act of 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) of title I or 302(a) of title III of the uranium mill tailings radiation control act of 1978, Public Law 95-604, 42 U.S.C. 7912 and 7942.

(*iv*) If applied according to label directions and according to generally accepted agricultural and management practices, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in part 85, and pesticide has the meaning given to that term in part 83.

(*v*) A release does not include fruits, vegetables, field crop processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices developed pursuant to the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws.

(cc) "Remedial action" includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.

(dd) "Remedial action plan" means a work plan for performing remedial action under this part.

(ee) "Response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of public health and enforcement actions related to any response activity.

(ff) "Response activity costs" or "costs of response activity" means all costs incurred in taking or conducting a response activity, including enforcement costs.

(gg) "Security interest" means any interest, including a reversionary interest, in real property created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, consignments, or any other transaction in which evidence of title is created if the transaction creates or establishes an interest in real property for the purpose of securing a loan or other obligation.

(hh) "Site" means the location of environmental contamination.

(ii) "Threatened release" or "threat of release" means any circumstance that may reasonably be anticipated to cause a release.

(2) As used in this part, the phrase "a person who is liable" includes a person who is described as being subject to liability in section 20126. The phrase "a person who is liable" does not presume that liability has been adjudicated.

Sec. 20104a. (1) The brownfield redevelopment board is created within the department of environmental quality.

(2) The board shall consist of the following members:

(a) The director of the department of environmental quality or his or her designee.

(b) The director of the department of management and budget or his or her designee.

(c) The chief executive officer of the jobs commission or his or her designee.

(3) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board.

(4) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) The board shall implement the duties and responsibilities as provided in this part and as otherwise provided by law.

Sec. 20107a. (1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation of the existing contamination.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(2) Notwithstanding any other provision of this part, a person who violates subsection (1) is liable for response activity costs and natural resource damages attributable to any exacerbation of existing contamination and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(3) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

(4) Subsection (1) does not apply to the state or to a local unit of government that is not liable under section 20126(3)(a), (b), (c), or (e) or to a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to the effective date of this section or to a person who is exempt from liability under section 20126(4)(c).

(5) Subsection (1) does not apply to a person who is exempt from liability under section 20126(3)(c) or (d) except with regard to that person's activities at the facility.

Sec. 20108b. (1) The department shall create a revitalization revolving loan program for the purpose of making loans to certain local units of government to provide for eligible activities at certain properties in order to promote economic redevelopment.

(2) To be eligible for a loan, applications must meet the following requirements:

(a) The applicant is a county, city, township, or village, or an authority established pursuant to the brownfield redevelopment financing act, provided that the municipality which created the authority pursuant to the brownfield redevelopment financing act commits to secure the loan with a pledge of the municipality's full faith and credit.

(b) The application is for eligible activities at a property within the applicant's jurisdiction that is a facility or is suspected to be a facility based on current or historic use.

(c) The application is complete and submitted on a form provided by the department.

(d) The application is received by the deadline established by the department.

(e) The application is for eligible activities only as provided for in subsection (3).

(3) Eligible activities are limited to evaluation and demolition at the property or properties in an area-wide zone, and interim response activities required to facilitate evaluation and demolition conducted prior to redevelopment of a property or properties in an area-wide zone. Eligible activities include only those necessary to facilitate redevelopment. Eligible activities do not include activities necessary only to design or complete a remedial action that fully complies with the requirements of section 20120a. All eligible activities must be consistent with a work plan or remedial action plan approved in advance by the department under this part or pursuant to section 15 of the brownfield redevelopment financing act. Unless otherwise approved by the director, only activities carried out and costs incurred after execution of a loan agreement are eligible.

(4) The department shall provide for at least 1 application cycle per fiscal year. Prior to each application cycle, the department shall develop written instructions for prospective applicants including the criteria that will be used in application review and approval.

(5) Final application decisions shall be made by the department within 4 months of the application deadline.

(6) A complete application shall include the following:

(a) A description of the proposed eligible activities.

(b) An itemized budget for the proposed eligible activities.

(c) A schedule for the completion of the proposed eligible activities.

(d) Location of the property.

(e) Current ownership and ownership history of the property.

(f) Current use of the property.

(g) A detailed history of the use of the property.

(h) Existing and proposed future zoning of the property.

(i) If the property is not owned by the applicant, a draft of an enforceable agreement between the property owner and the applicant that commits the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete at a minimum the proposed activities.

(j) A description of the property's economic redevelopment potential.

(k) A resolution from the local governing body of the applicant committing to repayment of the loan according to the terms of this section.

(*l*) Other information as specified by the department in its written instructions.

(7) To receive loan funds, approved applicants must enter into a loan agreement with the department. At a minimum, the loan agreement shall contain all of the following:

(a) The approved eligible activities to be undertaken with loan funds.

(b) The loan interest rate, terms, and repayment schedule as determined by the department pursuant to subsection (10).

(c) A commitment that the loan is secured by a full faith and credit pledge of the applicant, or if the applicant is an authority established pursuant to the brownfield redevelopment financing act, the commitment shall be from the municipality that created the authority pursuant to that act.

(d) An implementation schedule.

(e) Reporting requirements, including at a minimum the following:

(*i*) The recipient shall submit a progress status report to the department every 6 months during the implementation schedule.

(*ii*) The recipient shall provide a final report within 3 months of completion of the loan funded activities that includes documentation of project costs and expenditures, including invoices and proof of payment.

(f) If the property is not owned by the recipient, an executed agreement that has been approved by the department that meets the requirements of subsection (6)(i).

(g) Other provisions as considered appropriate by the department.

(8) If an approved applicant fails to sign a loan agreement within 90 days of a written loan offer by the department, the department may cancel the loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

(9) The department may terminate a loan agreement and require immediate repayment of the loan if the recipient uses loan funds for any purpose other than for the approved eligible activities specified in the loan agreement. The department shall provide written notice 30 days prior to the termination.

(10) Loans shall have the following terms:

(a) A loan interest rate of not more than 50% of the prime rate as determined by the department as of the date of approval of the loan.

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after execution of a loan agreement and concluding not later than 15 years after execution of a loan agreement.

(11) Loan payments and interest shall be deposited back into the revitalization revolving loan fund created in section 20108a.

(12) Upon default of a loan, as determined by the department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold state payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the revitalization revolving loan fund created in section 20108a until the loan is repaid.

Sec. 20109a. (1) A municipal landfill cost-share grant program is established for the purpose of making grants to reimburse local units of government for a portion of the response activity costs at certain municipal solid waste landfills as provided in this section.

(2) The municipal landfill cost-share grant program shall be administered by the board. The board shall provide for at least 1 application cycle per fiscal year. Prior to each application cycle, the board shall develop written instructions for prospective applicants including the criteria that will be used in application review and approval.

(3) To be eligible for a cost-share grant under this section, the following requirements shall be met:

(a) The applicant is a local unit of government.

(b) The application is only for eligible response activity costs at a municipal solid waste landfill.

(c) The application is complete and submitted on a form provided by the board.

(d) The application is submitted by the deadline established by the board.

(4) A complete application shall include the following:

(a) The landfill name and brief history.

(b) The rationale that explains why the applicant incurred the response activity costs.

(c) An analysis of the local unit of government's insurance coverage for the response activity costs at the landfill and any available documentation that supports the analysis.

(d) A brief narrative description of the overall response activities completed or to be completed at the landfill.

(e) A list and narrative description of all eligible costs incurred by the applicant for which it is seeking a grant, including all of the following:

(*i*) A demonstration that each eligible cost is consistent with a work plan or remedial action plan that has been approved by the department or the United States environmental protection agency or has been ordered by a state or federal court. The demonstration shall relate each cost for which reimbursement is being sought to a specific element of the approved work plan or remedial action plan. A copy of the plan and documentation of approval or court order of the plan shall be included with the application.

(*ii*) Documentation that the costs have been incurred by the applicant, including itemized invoices that clearly list each cost and proof of payment of each invoice by the applicant.

(*iii*) A resolution passed by the governing body for the local unit of government attesting that it has not received reimbursement for any of the costs for which it is seeking a grant from any other sources.

(f) A list of persons the applicant believes may be liable under section 20126 or the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767 for a substantial portion of the response activity costs at the landfill and any available supporting documentation.

(5) The board shall allocate the funds available for cost-share grants under this section to eligible facilities according to the following criteria, which are listed in priority order:

(a) Facilities posing a risk to public health.

(b) Facilities posing a risk to the environment.

(c) Facilities in which the local unit of government has taken steps to identify environmental contamination at the facility or caused by the facility or facilities in which remedial action measures have been implemented in accordance with a remedial action plan approved by the department or the United States environmental protection agency.

(d) Facilities in which the local unit of government has implemented appropriate measures to effect proper closure of the facility.

(6) Once a complete application has been submitted and approved by the board, applications submitted by the same applicant for the same landfill, in subsequent application cycles shall only include updated information that was not in the original application, including all of the following:

(a) An updated list of eligible costs incurred by the applicant for which the applicant is seeking a grant and for which the applicant was not approved to receive grant funds in a preceding grant cycle.

(b) Supporting documentation that the costs have been incurred as described in subsection (4)(e)(*ii*).

(c) Any other information needed to update information in the original application.

(7) A cost-share grant under this section shall not exceed 50% of the total eligible costs.

(8) A local unit of government may not receive more than 1 grant for the same municipal landfill during each application cycle.

(9) A recipient of a cost-share grant under this section has an obligation to do all of the following:

(a) Provide timely notification to the department if it receives money or any other form of compensation from any other source to pay for or compensate the local unit of government for any of the response activity costs for which it is liable. Sources of money or compensation include, but are not limited to, the federal government, other liable persons, or insurance policies. The notice shall include all of the following:

(*i*) Source of the money or compensation.

(*ii*) Amount of money or dollar value of the compensation.

(*iii*) Why the local unit of government received the money or compensation.

(*iv*) Any conditions or terms associated with the money or compensation.

(*v*) A detailed estimate of the total eligible response costs at the landfill for which the local unit of government is seeking a grant that are consistent with a work plan or remedial action plan that has been approved by the department or the United States environmental protection agency or has been ordered by a state or federal court and documentation of those costs that have been incurred.

(*vi*) Documentation of the costs incurred by the local unit of government to obtain the funds or compensation.

(*vii*) The amount of money to be repaid to the state based on the formula in subdivision (b).

(b) If the recipient receives money or compensation from any other source as described in subdivision (a), the recipient shall repay the department an amount of money not to exceed the grant amount based on the following formula:

(A minus B) multiplied by (C divided by D)

with A, B, C, and D defined as follows:

A = The total amount of money received from the other source or dollar value of the compensation.

B = All reasonable costs incurred by the recipient to obtain the money or compensation.

C = The total amount of grant funds received.

D = The total amount of response activity costs that the applicant has or will incur that meet all of the following requirements:

(*i*) The costs are for response activities, excluding fees for the services of a licensed attorney.

(*ii*) The costs are required to implement a work plan or remedial action plan for the landfill that has been approved by the department or the United States environmental protection agency or ordered by a state or federal court. The work plan or remedial action plan can be a plan update that was approved or ordered subsequent to the plan that was included in the local unit of government's grant application.

(*iii*) The costs were or will be incurred by the local unit of government after the date of enactment of the amendatory act that added this section.

(*iv*) The department has determined that the costs incurred by a local unit of government are reasonable taking into consideration the rationale provided in the application, the existence of other persons liable under section 20126 or the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767, and the need for the local unit of government to proceed with the response activity.

(*v*) The costs are for response activities that are or will be all or part of a cost-effective remedy consistent with this part.

(*vi*) The costs were or will be incurred for work that was competitively bid.

(*vii*) The costs, once incurred, can be documented with invoices and proof of payment by the local unit of government.

(c) All documentation of costs and the calculations and assumptions used by the recipient to determine the amount of money to be repaid shall be submitted to the board and are subject to review and approval by the board. The money shall be repaid to the department within 60 days of board approval of the documentation, calculations, and assumptions.

(d) Funds repaid to the department under this section shall be placed into the fund.

(10) To receive a cost-share grant under this section, approved applicants shall enter into an agreement with the board. The agreement shall contain at a minimum all of the following:

(a) A list of board-approved eligible costs for which the recipient will be reimbursed up to 50%.

(b) The agreement period.

(c) A resolution passed by the governing body for the local unit of government committing to make reasonable efforts to pursue any insurance coverage for the eligible costs.

(d) Grant repayment provisions under subsection (9).

(11) Upon execution of a grant agreement, grant funds shall be disbursed by the department within 45 days.

(12) If a local unit of government fails to sign a grant agreement within 90 days of a written grant offer by the board, the board may cancel the grant offer. The local unit of government may not appeal or contest cancellation of a grant pursuant to this subsection.

(13) The existence of this grant program does not in any way affect the liability of any person under this part or any other state or federal law. The state, the board, and the fund are not liable or in any way obligated to make grants for eligible costs, if funds are not appropriated by the legislature for this purpose or if the funds are insufficient. The availability of this program shall not be used by any liable person as a basis to delay necessary response activities.

(14) Funds granted to local units of government under this section shall be considered response activity costs incurred by the state. The state may pursue recovery or a claim for contribution of the grant funds from persons other than the grant recipient who are liable under section 20126. In addition, a local unit of government may pursue recovery or a claim for contribution from persons liable under section 20126 for the costs it has incurred but for which it has not received grant funds. This subsection does not in any way affect a local unit of government's eligibility to make a claim for insurance for any response activity costs, including the costs for which it received a grant.

(15) As used in this section:

(a) "Municipal solid waste landfill" means a landfill that as of the effective date of this section is on the national priority list or is proposed by the governor for inclusion on the national priority list.

(b) "National priority list" has the meaning attributed to this term in section 105(a)(8)(b) of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

(c) "Eligible costs" or "eligible response activity costs" means response activity costs, excluding all fees for the services of a licensed attorney, that meet all of the following criteria:

(*i*) The costs have been incurred by a local unit of government after the date of enactment of the amendatory act that added this section.

(*ii*) The costs incurred by a local unit of government are reasonable taking into consideration the rationale provided in the application, the existence of other persons liable under section 20126 or the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767, and the need for the local unit of government to proceed with the response activity.

(*iii*) The costs are consistent with a work plan or remedial action plan that was approved by the department or the United States environmental protection agency or was ordered by a state or federal court prior to the work being conducted.

(*iv*) The costs were incurred for response activities that are part of a cost-effective remedy consistent with the requirements of this part.

(*v*) The costs were incurred for work that was competitively bid.

(16) This section shall not take effect until the earlier of the 2 following dates:

(a) The effective date of reauthorization of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

(b) Twelve months after the date of enactment of the amendatory act that added this section.

(17) Following reauthorization of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767, if a federal cost-share program is established that is similar to the program in this section, a grant under this section shall not be made for any response activity cost until the United States environmental protection agency makes a final determination that the response activity cost will not be paid for under the federal program.

Sec. 20113. (1) Money required to implement the programs described under this part and to pay for response activities recommended under this part shall be appropriated from the fund and any other source the legislature considers necessary to implement the requirements of this part.

(2) Money from the fund shall be appropriated only for response activities at sites that have been subjected to the risk assessment process described in section 20105.

(3) The department shall annually submit to the governor a request for appropriation from the fund. The request will include a lump sum amount for the purposes of subsection (4)(a) and a lump sum amount for the purposes of subsection (4)(f). For the purposes set forth in subsection (4)(b), (c), (d), and (e), the request shall include a list of sites where the department is proposing to expend funds. The list shall include the following information for each site: the common name of the site, the response activities that are planned to be conducted, and the estimated amount of money that is needed to conduct the response activities. The legislature shall approve by law the list of sites to be addressed and shall provide a lump sum appropriation for these sites based on the total estimated amount needed for the approved sites.

(4) Money from the fund may be used, upon appropriation, for the following as determined by the department:

(a) National priority list municipal landfill cost-share grants to be approved by the board pursuant to section 20109a.

(b) Superfund match, which includes funding for any response activity that is required to match federal dollars at a superfund site as required under the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

(c) Response activities to address actual or potential public health or environmental problems.

(d) Completion of response activities initiated by the state using environmental protection bond funds or completion of response activities at facilities initiated by a person who was liable under this part prior to Public Act 71 of 1995 but is not liable under section 20126 of this part, where such response activities have ceased.

(e) Response activities at sites that will facilitate redevelopment.

(f) Emergency response actions for sites to be determined by the department.

(5) Money in the fund shall be expended first for the purposes described in subsection (4)(b) and (f) and health or environmental problems under subsection (4)(c) that are related to acute health or environmental problems. Following these expenditures, not less than 50% of the remaining money expended under this section shall be expended for response activities that facilitate redevelopment of urbanized areas. All additional expenditures under this section shall be expended following the expenditures described in this subsection. As used in this subsection, "urbanized area" means an urbanized area as determined by the economics and statistics administration, United States bureau of census, according to the 1990 census.

(6) The total amount of funds expended by the department for national priority list municipal landfill cost-share grants shall not exceed the lesser of 12% of the funds appropriated from the fund in a fiscal year or $6,000,000.00 in a fiscal year.

(7) Not later than December 31 of each year, the department shall provide to the governor, the senate and house of representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment, and the senate and house of representatives appropriations committees a list of all projects financed under this part through the preceding fiscal year. The list shall include the project site and location, the nature of the project, the total amount of money authorized, the total amount of money expended, and project status.

Sec. 20120d. (1) At a facility where state funds will be spent to develop or implement a remedial action plan or where the department determines there is a significant public interest, within 30 days after the completion of a remedial investigation for the facility, the department shall provide the county and the township, city, or village in which the facility is located a notice of the completion of the remedial investigation, a summary of the remedial investigation, and notice of an opportunity for the people in the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility. Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government, the department shall, within 30 days of the request, meet with persons in the local unit of government. The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting. The meeting shall be held in the local unit of government in which the facility is located. The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government, to the known persons who are liable under section 20126, and to the main public library of the local unit of government in which the facility is located. The department shall send representatives to the meeting who are familiar with the facility and who are involved with determining the appropriate remedial actions to be taken at the facility. Persons who are liable under section 20126 for the facility may send representatives to the meeting.

(2) The department shall maintain, and periodically publish, a list of remedial action plans submitted for approval that comply with the requirements of R 299.5515 of the Michigan administrative code.

(3) Before approval of a proposed remedial action plan which is to be implemented with money from the fund, or is based on categorical criteria provided for in section 20120a(1)(f) to (j) or (2), or if section 20118(5) or (6) applies, or the department determines that there is significant public interest, the department shall do all of the following:

(a) Publish a notice and brief summary of the proposed remedial action plan.

(b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan, including, if applicable, the feasibility study that outlines alternative remedial action measures considered.

(c) Provide an opportunity for a public meeting at or near the facility when any of the following occur:

(*i*) The department determines that there is a significant public interest or that for any other reason a public meeting is appropriate.

(*ii*) A city, township, or village in which the facility is located, by a majority vote of its governing body, requests a public meeting.

(*iii*) A local health department with jurisdiction in the area in which the facility is located requests a public meeting.

(d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan.

(4) For purposes of this section, publication shall include, at a minimum, publication in a local newspaper or newspaper of general circulation in this state. In addition, the administrative record shall be made available by the department for inspection by members of the public at or near the facility and in Lansing.

(5) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan. In addition, the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan. The administrative record shall contain all of the following:

(a) Remedial investigation data regarding the facility.

(b) If applicable, a feasibility study and potential remedial actions.

(c) If applicable, a summary document that explains the reasons why a remedial investigation or feasibility study was not conducted.

(d) Applicable comments and information received from the public, if any.

(e) If applicable, a document that summarizes the significant concerns raised by the members of the public and how they are to be addressed.

(f) Other information appropriate to the facility.

(6) If comments or information are submitted for inclusion in the administrative record that are not included in the administrative record, a brief explanation of why the information was not considered relevant shall be sent to the party by the department and included in the record.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.