



# HOUSE BILL No. 6001

September 10, 1996, Introduced by Reps. Middaugh and Alley and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend section 11525 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," as amended by Act No. 359 of the Public Acts of 1996, being section 324.11525 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 11525 of Act No. 451 of the Public Acts  
2 of 1994, as amended by Act No. 359 of the Public Acts of 1996,  
3 being section 324.11525 of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 11525. (1) The owner or operator of a landfill shall  
6 establish and maintain a perpetual care fund for a period of 30  
7 years after final closure of the landfill as specified in this  
8 section. A perpetual care fund may be established as a trust or  
9 an escrow account and may be used to demonstrate financial

1 assurance for type II landfills under section 11523 and  
2 section 11523a.

3       (2) Except as otherwise provided in this section, the owner  
4 or operator of a landfill shall deposit into ~~its~~ HIS OR HER  
5 perpetual care fund 75 cents for each ton or portion of a ton or  
6 25 cents for each cubic yard or portion of a cubic yard of solid  
7 waste that is disposed of in the landfill after June 17, 1990.  
8 The deposits shall be made not less than semiannually until the  
9 fund reaches the maximum required fund amount. As of ~~the effec-~~  
10 ~~tive date of 1996 amendments to this part~~ JULY 1, 1996, the max-  
11 imum required fund amount is \$1,156,000.00. This amount shall be  
12 annually adjusted for inflation and rounded to the nearest  
13 thousand. The department shall adjust the maximum required fund  
14 amount for inflation annually by multiplying the amount by an  
15 inflation factor derived from the most recent bureau of reclama-  
16 tion composite index published by the United States department of  
17 commerce or another index more representative of the costs of  
18 closure and postclosure monitoring and maintenance as determined  
19 appropriate by the department.

20       (3) The owner or operator of a landfill that is used for the  
21 disposal of the following materials shall deposit into the per-  
22 petual care fund 7.5 cents for each ton or cubic yard or portion  
23 of a ton or cubic yard of the following materials that are dis-  
24 posed of in the landfill after June 17, 1990:

25       (a) Coal or wood ash that is disposed of in a landfill that  
26 is used only for the disposal of coal or wood ash, or that is  
27 permanently segregated in a landfill.

1 (b) Wastewater treatment sludge or sediments from wood pulp  
2 or paper producing industries that is disposed of in a landfill  
3 that is used only for the disposal of wastewater treatment sludge  
4 and sediments from wood pulp or paper producing industries, or  
5 that is permanently segregated in a landfill.

6 (c) Foundry sand or other material that is approved by the  
7 department for use as daily cover at an operating landfill, that  
8 is disposed of in a landfill that is used only for the disposal  
9 of foundry sand, or that is permanently segregated in a  
10 landfill.

11 (4) The owner or operator of a landfill that is used only  
12 for the disposal of a mixture of 2 or more of the materials  
13 described in subsection (3)(a) to (c) or in which a mixture of 2  
14 or more of these materials are permanently segregated shall  
15 deposit into the perpetual care fund 7.5 cents for each ton or  
16 cubic yard or portion of a ton or cubic yard of these materials  
17 that are disposed of in the landfill after ~~the effective date of~~  
18 ~~the 1996 amendments to this section~~ JULY 1, 1996.

19 (5) Money is not required to be deposited into a perpetual  
20 care fund for materials that are regulated under part 631.

21 (6) The owner or operator of a landfill may contribute addi-  
22 tional amounts into the perpetual care fund at his or her  
23 discretion.

24 (7) The custodian of a perpetual care fund shall be a bank  
25 or other financial institution that has the authority to act as a  
26 custodian and whose account operations are regulated and examined  
27 by a federal or state agency. Until the perpetual care fund

1 reaches the maximum required fund amount, the custodian of a  
2 perpetual care fund shall credit interest and earnings of the  
3 perpetual care fund to the perpetual care fund. HOWEVER, UPON  
4 THE DIRECTION OF THE OWNER OR OPERATOR, THE CUSTODIAN MAY UTILIZE  
5 THE INTEREST AND EARNINGS OF THE PERPETUAL CARE FUND TO PAY THE  
6 PRO RATA SHARE OF THE SOLID WASTE MANAGEMENT PROGRAM ADMINISTRA-  
7 TION FEE IMPOSED UNDER SECTION 11525A AGAINST THE LANDFILL FOR  
8 WHICH THE PERPETUAL CARE FUND WAS ESTABLISHED. After the perpet-  
9 ual care fund reaches the maximum required fund amount, INTEREST  
10 AND earnings shall be distributed as directed by the owner or  
11 operator. The agreement governing the operation of the perpetual  
12 care fund shall be executed on a form consistent with this part  
13 as prepared by the department. The custodian may be compensated  
14 from the fund for reasonable fees and costs incurred for his or  
15 her responsibilities as custodian. The custodian of a perpetual  
16 care fund shall annually make an accounting to the department  
17 within 30 days following the close of the state fiscal year.

18 (8) The custodian of a perpetual care fund shall not dis-  
19 burse any funds to the owner or operator of a landfill for the  
20 purposes of the perpetual care fund except upon the prior written  
21 approval of the department. However, the custodian shall ensure  
22 the filing of all required tax returns for which the perpetual  
23 care fund is liable and shall disburse funds to pay lawfully due  
24 taxes owed by the perpetual care fund without permission of the  
25 department, AND MAY DISBURSE INTEREST AND EARNINGS OF THE PERPET-  
26 UAL CARE FUND TO PAY THE SOLID WASTE MANAGEMENT PROGRAM  
27 ADMINISTRATION FEE AS PROVIDED IN SUBSECTION (7). The owner or

1 operator of the landfill shall provide notice of requests for  
2 disbursement and denials and approvals to the custodian of the  
3 perpetual care fund. Requests for disbursement from a perpetual  
4 care fund shall be submitted not more frequently than  
5 semiannually. The owner or operator of a landfill may request  
6 disbursement of funds from a perpetual care fund whenever the  
7 amount of money in the fund exceeds the maximum required fund  
8 amount specified in subsection (2). The department shall approve  
9 the disbursement provided the total amount of financial assurance  
10 maintained meets the requirements of sections 11523 and 11523a.  
11 As used in this subsection, "maximum required fund amount"  
12 means:

13 (a) For those landfills containing only those materials  
14 specified in subsection (3), an amount equal to 1/2 of the maxi-  
15 mum required fund amount specified in subsection (2).

16 (b) For all other landfills, an amount equal to the maximum  
17 required fund amount specified in subsection (2).

18 (9) If the owner or operator of a landfill refuses or fails  
19 to conduct closure, postclosure monitoring and maintenance, or  
20 corrective action as necessary to protect the public health,  
21 safety, or welfare, or the environment or fails to request the  
22 disbursement of money from a perpetual care fund when necessary  
23 to protect the public health, safety, or welfare, or the environ-  
24 ment, or fails to pay the ~~administrative~~ SOLID WASTE MANAGEMENT  
25 PROGRAM ADMINISTRATION fee due the department under this part  
26 within 90 days of the request, then the department may require  
27 the disbursement of money from the perpetual care fund and may

1 expend the money for closure, postclosure monitoring and  
2 maintenance, and corrective action, as necessary. The department  
3 may assess a perpetual care fund for administrative costs associ-  
4 ated with actions taken under this subsection.

5       (10) Upon approval by the department of a request to termi-  
6 nate financial assurance for a landfill under section 11525b, any  
7 money in the perpetual care fund for that landfill shall be dis-  
8 bursed by the custodian to the owner of the ~~disposal area~~  
9 LANDFILL unless a contract between the owner and the operator of  
10 the ~~disposal area~~ LANDFILL provides otherwise.

11       (11) The owner of a landfill shall provide notice to the  
12 custodian of the perpetual care fund for that landfill if there  
13 is a change of ownership of the landfill. The custodian shall  
14 maintain records of ownership of a landfill during the time in  
15 which a perpetual care fund is established.

16       (12) This section does not relieve an owner or operator of a  
17 ~~disposal area that is a~~ landfill of any liability that he or  
18 she may have under this part or as otherwise provided by law.

19       (13) This section does not create a cause of action at law  
20 or in equity against a custodian of a perpetual care fund other  
21 than for errors or omissions related to investments, accountings,  
22 disbursements, filings of required tax returns, and maintenance  
23 of records required by this section or the applicable perpetual  
24 care fund.

25       (14) As used in this section, "custodian" means the trustee  
26 or escrow agent of a perpetual care fund.