

HOUSE BILL No. 4996

June 28, 2001, Introduced by Reps. Kolb, Neumann, Jacobs, Rivet, Hansen, Bogardus, Rich Brown, Minore, McConico, Garza, Whitmer and Lemmons and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding sections 1511, 1512, 1513,
1514, and 1515.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1511. AS USED IN SECTIONS 1512 TO 1515:

2 (A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
3 QUALITY.

4 (B) "SUPPLEMENTAL ENVIRONMENTAL PROJECT" MEANS A PROJECT OR
5 ACTION CARRIED OUT BY OR ON BEHALF OF A PERSON, IN RESPONSE TO AN
6 ENFORCEMENT ACTION BY THE DEPARTMENT, WHICH BENEFITS THE
7 ENVIRONMENT.

8 (C) "VIOLATION" MEANS A VIOLATION OF A PART OF THIS ACT THAT
9 IS ADMINISTERED BY THE DEPARTMENT.

1 SEC. 1512. (1) IN ENFORCING OR SETTling A VIOLATION, THE
2 DEPARTMENT SHALL ENSURE THAT THE ECONOMIC BENEFITS OF THE
3 VIOLATION DO NOT EXCEED THE MONETARY VALUE OF THE PENALTIES AND
4 OTHER RELIEF IMPOSED FOR THE VIOLATION.

5 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, IN
6 ENFORCING OR SETTling A VIOLATION, IF THE FINES, PENALTIES, AND
7 REMEDIES OTHERWISE PROVIDED FOR IN THIS ACT DO NOT EXCEED THE
8 ECONOMIC BENEFITS OF THE VIOLATION, THE DEPARTMENT SHALL REQUIRE
9 THE VIOLATOR TO UNDERTAKE 1 OR MORE SUPPLEMENTAL ENVIRONMENTAL
10 PROJECTS IF THE DEPARTMENT MAKES A SPECIFIC FINDING, SUPPORTED BY
11 CREDIBLE EVIDENCE, OF THE MONETARY VALUE OF THE SUPPLEMENTAL
12 ENVIRONMENTAL PROJECT OR PROJECTS.

13 SEC. 1513. (1) THE DEPARTMENT SHALL IMPLEMENT A PROGRAM OF
14 COMPLIANCE INSPECTION, MONITORING, AND ENFORCEMENT WITH RESPECT
15 TO PERMITS AND LICENSES ISSUED BY THE DEPARTMENT. AS PART OF
16 THIS PROGRAM, EACH YEAR THE DEPARTMENT SHALL CONDUCT A COMPLIANCE
17 INSPECTION OF AT LEAST 33% OF ALL UNEXPIRED PERMITS AND LICENSES
18 THAT HAVE BEEN ISSUED BY THE DEPARTMENT, INCLUDING AT LEAST 50%
19 OF THE 100 MOST ENVIRONMENTALLY SIGNIFICANT PERMITS OR LICENSES
20 FOR EACH CATEGORY OF PERMITS OR LICENSES, AS DETERMINED BY THE
21 DEPARTMENT. AT LEAST 50% OF THE COMPLIANCE INSPECTIONS CONDUCTED
22 BY THE DEPARTMENT SHALL BE UNANNOUNCED AND SHALL INCLUDE INDEPEN-
23 DENT SAMPLING AND ANALYSIS BY THE DEPARTMENT OR A PERSON WHO IS
24 NOT AFFILIATED WITH THE PERMITTEE OR LICENSEE.

25 (2) BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THIS SEC-
26 TION, THE DEPARTMENT SHALL PUBLISH AND UPDATE THE FOLLOWING
27 LISTS:

1 (A) A VIOLATORS LIST THAT IDENTIFIES THE NAME OF EACH
2 PERMITTEE OR LICENSEE WHO, DURING THE PRECEDING 5 YEARS, HAS BEEN
3 DETERMINED BY THE DEPARTMENT OR A COURT AS HAVING 2 OR MORE SIG-
4 NIFICANT PERMIT OR LICENSE VIOLATIONS OR HAS BEEN CONVICTED OF A
5 CRIME FOR A PERMIT OR LICENSE VIOLATION.

6 (B) A COMPLIANCE LIST THAT IDENTIFIES THE NAMES OF EACH PER-
7 MITTEE OR LICENSEE WHO HAS BEEN IN FULL COMPLIANCE WITH HIS OR
8 HER PERMIT OR LICENSE DURING THE PRECEDING 5 YEARS. THE LIST
9 SHALL ALSO IDENTIFY THE MOST RECENT DATE IN WHICH THE DEPARTMENT
10 HAS CONDUCTED A COMPLIANCE INSPECTION OF THE FACILITY SUBJECT TO
11 THE PERMIT OR LICENSE.

12 (3) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION,
13 THE DEPARTMENT OF MANAGEMENT AND BUDGET SHALL PROMULGATE RULES
14 PROVIDING THAT, TO THE EXTENT ALLOWED BY LAW, PERSONS LISTED ON
15 THE VIOLATORS LIST UNDER SUBSECTION (2)(A) SHALL BE PROHIBITED
16 FROM RECEIVING ANY STATE CONTRACT AS LONG AS THEY REMAIN ON THE
17 VIOLATORS LIST. THE RULES SHALL ALSO PROVIDE THAT A PERSON
18 LISTED ON THE COMPLIANCE LIST UNDER SUBSECTION (2)(B) SHALL BE
19 PREFERRED TO RECEIVE A STATE CONTRACT FOR WHICH THEY HAVE APPLIED
20 AND ARE OTHERWISE ELIGIBLE AS LONG AS THEY REMAIN ON THE COMPLI-
21 ANCE LIST.

22 (4) THE DEPARTMENT MAY PROMULGATE RULES TO ESTABLISH CRI-
23 TERIA FOR DETERMINING SIGNIFICANT PERMIT OR LICENSE VIOLATIONS
24 UNDER SUBSECTION (2).

25 SEC. 1514. WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS
26 SECTION, THE DEPARTMENT SHALL ANNUALLY FURNISH TO THE SENATE AND
27 HOUSE APPROPRIATIONS COMMITTEES AND THE COMMITTEES OF THE SENATE

1 AND HOUSE OF REPRESENTATIVES WITH JURISDICTION OVER ISSUES
2 PRIMARILY RELATED TO NATURAL RESOURCES AND THE ENVIRONMENT BOTH
3 OF THE FOLLOWING:

4 (A) AN ESTIMATE OF THE ANNUAL BUDGET AMOUNT REQUIRED BY THE
5 DEPARTMENT FOR COMPLIANCE INSPECTION, MONITORING, AND ENFORCEMENT
6 OF ALL PERMITS AND LICENSES ISSUED BY THE DEPARTMENT. AS PART OF
7 THE ESTIMATE, THE DEPARTMENT SHALL RECOMMEND A SCHEDULE OF ANNUAL
8 COMPLIANCE ASSURANCE FEES THAT COULD BE CHARGED TO PERMITTEES AND
9 LICENSEES THAT WOULD BE SUFFICIENT TO DEFRAY THE COSTS CONTAINED
10 IN THE ESTIMATE.

11 (B) A REPORT THAT ITEMIZES ALL OF THE FOLLOWING:

12 (i) THE NUMBER OF FACILITIES THAT HAVE BEEN ISSUED A PERMIT
13 OR LICENSE.

14 (ii) THE NUMBER OF NEW, MODIFIED, AND EXPIRED PERMITS AND
15 LICENSES.

16 (iii) THE NUMBER OF ON-SITE COMPLIANCE INSPECTIONS CON-
17 DUCTED, AND THE NUMBER OF COMPLIANCE INSPECTIONS THAT WERE NOT
18 ANNOUNCED IN ADVANCE TO THE PERMITTEE OR LICENSEE.

19 (iv) THE NUMBER OF PERMIT OR LICENSE VIOLATIONS BY CATEGORY
20 OF PERMIT OR LICENSE.

21 (v) THE NUMBER OF ADMINISTRATIVE ENFORCEMENT ACTIONS TAKEN
22 FOR PERMIT OR LICENSE VIOLATIONS AND THE RESULTS OF THE ENFORCE-
23 MENT ACTIONS, INCLUDING THE AMOUNT OF FINES AND PENALTIES
24 COLLECTED.

25 (vi) THE NUMBER OF JUDICIAL ENFORCEMENT ACTIONS TAKEN FOR
26 PERMIT OR LICENSE VIOLATIONS AND THE RESULTS OF THE ENFORCEMENT
27 ACTIONS, INCLUDING THE AMOUNT OF FINES AND PENALTIES COLLECTED.

1 (vii) ANY MEASURABLE IMPROVEMENT IN ENVIRONMENTAL QUALITY
2 ACHIEVED AS A RESULT OF THE ENFORCEMENT ACTIVITY DESCRIBED IN
3 SUBPARAGRAPHS (v) AND (vi).

4 (viii) ANY SUPPLEMENTAL ENVIRONMENTAL PROJECTS UNDERTAKEN
5 UNDER SECTION 1512 AND THE ENVIRONMENTAL BENEFITS RESULTING FROM
6 EACH SUCH PROJECT.

7 SEC. 1515. (1) THE DEPARTMENT OF ENVIRONMENTAL QUALITY
8 SHALL ESTABLISH AND MAINTAIN AN ENFORCEMENT DATABASE OF VIOLA-
9 TIONS THAT IS AVAILABLE FOR PUBLIC INSPECTION ON THE DEPARTMENT'S
10 WEBSITE AND THAT INCLUDES ALL OF THE FOLLOWING:

11 (A) A LIST OF EACH VIOLATION.

12 (B) THE EXTENT OF EACH VIOLATION.

13 (C) ANY ENFORCEMENT ACTIONS THAT ARE ONGOING OR THAT HAVE
14 BEEN TAKEN IN THE PRECEDING 2 YEARS.

15 (D) THE RESULTS OF ANY ENFORCEMENT ACTIONS IDENTIFIED IN
16 SUBDIVISION (C).

17 (2) THE ENFORCEMENT DATABASE ESTABLISHED UNDER SUBSECTION
18 (1) SHALL CONTAIN AND BE SEARCHABLE BY ALL OF THE FOLLOWING AS
19 THEY RELATE TO A VIOLATION:

20 (A) THE NAME OF THE VIOLATOR.

21 (B) THE NAME OF THE FACILITY AT WHICH THE VIOLATION
22 OCCURRED, IF APPLICABLE.

23 (C) THE LOCATION AT WHICH THE VIOLATION OCCURRED.

24 (D) THE NATURE OF THE VIOLATION, INCLUDING WHETHER THE VIO-
25 LATION INVOLVED A DISCHARGE TO AIR OR WATER OR ONTO LAND.