

**SUBSTITUTE FOR
HOUSE BILL NO. 6074**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20113, 21506, 21508, 21546, 21548, and 21550
(MCL 324.20113, 324.21506, 324.21508, 324.21546, 324.21548, and
324.21550), section 20113 as amended by 1996 PA 383, sections
21506 and 21508 as amended by 1995 PA 269, sections 21546 and
21548 as amended by 1996 PA 181, and section 21550 as amended by
1995 PA 252, and by adding section 21552; and to repeal acts and
parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

1 Stat. 2767.

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

4 (d) Completion of response activities initiated by the state
5 using environmental protection bond funds or completion of
6 response activities at facilities initiated by a person who was
7 liable under this part prior to ~~Public Act 71 of 1995~~ **June 5,**
8 **1995**, but is not liable under section 20126 of this part, where
9 such response activities have ceased.

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

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

14 **(g) Administrative costs of the department and the department**
15 **of treasury under this act.**

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

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

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

15 Sec. 21506. (1) The Michigan underground storage tank
16 financial assurance fund is created.

17 (2) The state treasurer shall direct the investment of the
18 fund. Interest and earnings from fund investments shall be
19 credited to the fund.

20 (3) Money in the fund at the close of the fiscal year shall
21 remain in the fund and shall not lapse to the general fund.

22 (4) Except as provided in subsection (5), money in the fund
23 shall be expended only as follows and in the following order of
24 priority:

25 (a) To pay off **in the most cost-effective way** bonds or notes
26 pursuant to this part plus any amount necessary to maintain a
27 fully funded debt reserve or other reserve intended to secure the

1 principal and interest on the bonds or notes as may be required
2 by resolution indenture or other agreement of the authority.

3 (b) For the reasonable administrative cost of implementing
4 this part by the department, the department of treasury, the
5 department of attorney general, and the authority as annually
6 appropriated by the legislature. Administrative costs include
7 the actual and necessary expenses incurred by the board and its
8 members in carrying out the duties imposed by this part. Total
9 administrative costs expended under this subdivision shall not
10 exceed 7% of the fund's projected revenues in any year. Costs
11 incurred by the authority for the issuance of bonds or notes
12 which may also be payable from the proceeds of the bonds or notes
13 shall not be considered administrative costs in making such a
14 determination.

15 (c) For payment of rewards under section 21549.

16 (d) For the interest subsidy program established in section
17 21522. The money expended under this subdivision shall not
18 exceed 10% of the fund's projected revenues in any year.
19 However, 10% of the revenue of the fund during the first year of
20 the fund's operation shall be expended on the interest subsidy
21 program. If this money is not expended during the first year,
22 this money shall be carried over for expenditure in the
23 succeeding years of the fund's operation. Additional fund
24 revenue shall not be set aside for the interest subsidy program
25 until all of the first year revenue is expended.

26 (e) For corrective action and indemnification including all
27 of the following:

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1 (i) Payments for work invoices submitted prior to 5 p.m. on
2 June 29, 1995 and approved by the department pursuant to this
3 part.

4 (ii) Payments for requests for indemnification submitted
5 prior to 5 p.m. on June 29, 1995 and approved by the department
6 pursuant to this part.

7 (iii) Payments for work invoices or requests for
8 indemnification that were submitted prior to 5 p.m. on June 29,
9 1995 and denied by the department pursuant to this part but which
10 denials were subsequently reversed on appeal.

11 (f) For the gasoline inspection and testing program and the
12 vapor-recovery program established under the motor fuels quality
13 act, 1984 PA 44, MCL 290.641 to 290.650d.

14 ~~[(5) Upon payment in full of all obligations listed in~~
15 ~~subsection (4), the Any state treasurer shall file with the~~
16 ~~secretary of state a notice of final payment of all obligations~~
17 ~~lawfully payable from the fund unencumbered funds in the fund at the~~
18 ~~end of the fiscal year ending September 30, 2004 shall lapse to the~~
19 ~~cleanup and redevelopment fund. Any revenue collected after October 1,~~
20 ~~2004 shall be deposited into the Michigan underground storage tank~~
21 ~~financial assurance fund. Funds can be appropriated after the advisory~~
22 ~~council established in section 21552 makes its report.]~~

23 (6) The board shall make recommendations to the
24 appropriations committees in the senate and house of
25 representatives on the distribution and amount of administrative
26 costs under subsection (4)(b). The board shall provide a copy of
27 these recommendations to each affected department.

28 Sec. 21508. (1) An environmental protection regulatory fee
29 is imposed on all refined petroleum products sold for resale in
30 this state or consumption in this state. ~~The regulatory fee~~

1 ~~shall be used pursuant to section 21506(4) for the cleanup and~~
2 ~~prevention of environmental contamination resulting from releases~~
3 ~~of refined petroleum products from underground storage tank~~
4 ~~systems and to pay off bonds or notes pursuant to this part.~~ The
5 regulatory fee shall be charged for capacity utilization of
6 underground storage tanks measured on a per gallon basis. The
7 regulatory fee shall be charged against all refined petroleum
8 products sold for resale in this state or consumption in this
9 state so as to not exclude any products that may be stored in an
10 underground tank at any point after the petroleum is refined.
11 The regulatory fee shall be 7/8 cent per gallon for each gallon
12 of refined petroleum sold for resale in this state or consumption
13 in this state, with the per gallon charge being a direct measure
14 of capacity utilization of an underground storage tank system.

15 (2) The department of treasury shall precollect regulatory
16 fees from persons who refine petroleum in this state for resale
17 in this state or consumption in this state and persons who import
18 refined petroleum into this state for resale in this state or
19 consumption in this state. The department of treasury shall
20 collect regulatory fees that can be collected at the same time as
21 the sales tax under section 6a of the general sales tax act, ~~Act~~
22 ~~No. 167 of the Public Acts of 1933, being section 205.56a of the~~
23 ~~Michigan Compiled Laws— 1933 PA 167, MCL 205.56a~~, at that time.
24 The remainder of the regulatory fees shall be collected in the
25 manner determined by the state treasurer. ~~Notwithstanding any~~
26 ~~other provision of this part, the department of treasury shall~~
27 ~~stop collecting regulatory fees under this part when it has~~

1 ~~received sufficient revenues to pay in full all obligations~~
2 ~~listed in section 21506(4).~~

3 (3) A public utility with more than 500,000 customers in this
4 state is exempt from any fee or assessment imposed under this
5 part if that fee or assessment is imposed on petroleum used by
6 that public utility for the generation of steam or electricity.

7 (4) All regulatory fees collected pursuant to this part shall
8 be deposited into the ~~emergency response fund created in section~~
9 ~~21507 until the emergency response fund reaches \$3,000,000.00.~~
10 ~~When the emergency response fund is at \$3,000,000.00, all~~
11 ~~regulatory fees shall be deposited into the fund.~~

12 (5) Consistent with the March 31, 1995 determination by the
13 state treasurer that revenue will not be sufficient to pay
14 expected expenditures, and consistent with the April 3, 1995
15 notice of the fund administrator pursuant to subsection (6),
16 funding is no longer available under this part for new claims,
17 work invoices, and requests for indemnification received after
18 5 p.m. on June 29, 1995. Claims, work invoices, and requests for
19 indemnification received after 5 p.m. on June 29, 1995 are not
20 eligible for funding under this part. Work invoices and requests
21 for indemnification received prior to 5 p.m. on June 29, 1995 may
22 be paid to the extent money is available in the fund as provided
23 in this part.

24 (6) If the state treasurer determines that fund revenues will
25 not be sufficient to pay expected expenditures from the fund, the
26 state treasurer shall notify the administrator, and 90 days after
27 this notification has been given the administrator shall not

1 accept any new work invoices or requests for indemnification.
2 Upon receiving this notification from the state treasurer, the
3 administrator shall notify by certified mail the owners and
4 operators of petroleum underground storage tank systems
5 registered under part 211 that funding under this part will no
6 longer be available for new claims after the 90-day period has
7 expired. However, work invoices and requests for indemnification
8 that were submitted to the administrator prior to or during this
9 90-day period may be paid to the extent money is available in the
10 fund as provided in this part.

11 (7) The department of treasury may audit, enforce, collect,
12 and assess the fee imposed by this part in the same manner and
13 subject to the same requirements as revenues collected pursuant
14 to ~~Act No. 122 of the Public Acts of 1941, being sections 205.1~~
15 ~~to 205.31 of the Michigan Compiled Laws~~ **1941 PA 122, MCL 205.1**
16 **to 205.31.**

17 Sec. 21546. (1) This part does not create any liability on
18 behalf of the state. This part shall not be construed as making
19 the state the guarantor of the fund.

20 (2) This part does not relieve any person who may be eligible
21 to receive money from the fund or the **former** emergency response
22 fund from any liability that he or she may incur as the owner or
23 operator of an underground storage tank system. The state is not
24 assuming the liability of an owner or operator eligible for
25 funding under this part; it is only providing assistance to such
26 owners or operators in meeting the financial responsibility
27 requirements.

1 (3) If all bonds or notes of the authority payable from the
2 fund have been fully paid or provided for and if any provision of
3 this part is found to be unconstitutional by a court of competent
4 jurisdiction and the allowable time for filing an appeal has
5 expired or the appellant has exhausted all of his or her avenues
6 of appeal, this whole part shall be considered unconstitutional
7 and invalid.

8 Sec. 21548. (1) ~~Beginning August 8, 1993, a~~ A person who
9 makes or submits or causes to be made or submitted either
10 directly or indirectly any statement, report, affidavit,
11 application, claim, bid, work invoice, or other request for
12 payment or indemnification under this part knowing that the
13 statement, report, application, claim, bid, work invoice, or
14 other request for payment or indemnification is false or
15 misleading is guilty of a felony punishable by imprisonment for
16 not more than 5 years or a fine of not more than \$50,000.00, or
17 both. In addition to any penalty imposed under this subsection,
18 a person convicted under this subsection shall pay restitution to
19 the fund for the amount received in violation of this
20 subsection.

21 (2) A person who makes or submits or causes to be made or
22 submitted either directly or indirectly any statement, report,
23 application, claim, bid, work invoice, or other request for
24 payment or indemnification under this part knowing that the
25 statement, report, affidavit, application, claim, bid, work
26 invoice, or other request for payment or indemnification is
27 false, misleading, or fraudulent, or who commits a fraudulent

1 practice, is subject to a civil fine of not more than \$50,000.00
2 or twice the amount submitted, whichever is greater. In addition
3 to any civil fine imposed under this subsection, a person found
4 responsible under this subsection shall pay restitution to the
5 fund for the amount received in violation of this subsection.
6 The legislature intends that this subsection be given retroactive
7 application.

8 (3) As used in subsection (2), "fraudulent" or "fraudulent
9 practice" includes, but is not limited to, the following:

10 (a) Submitting a work invoice for the excavation, hauling,
11 disposal, or provision of soil, sand, or backfill for an amount
12 greater than the legal capacity of the carrying vehicle or
13 greater than was actually carried, excavated, disposed, or
14 provided.

15 (b) Submitting paperwork for services done or work provided
16 that was not in fact provided or that was not directly provided
17 by the individual indicated on the paperwork.

18 (c) Contaminating an otherwise clean resource or site with
19 contaminated soil or product from a contaminated resource or
20 site.

21 (d) Returning any load of contaminated soil to its original
22 site for reasons other than remediation of the soil.

23 (e) Causing damage intentionally or as the result of gross
24 negligence to an underground storage tank system, which damage
25 results in a release at a site.

26 (f) Placing an underground storage tank system at a
27 contaminated site where no underground storage tank system

1 previously existed for purposes of disguising the source of
2 contamination or to obtain funding under this part.

3 (g) Submitting a work invoice for the excavation of soil from
4 a site that was removed for reasons other than removal of the
5 underground storage tank system or remediation.

6 (h) Any intentional act or act of gross negligence that
7 causes or allows contamination to spread at a site.

8 (i) Registration of a nonexistent underground storage tank
9 system with the department.

10 (j) Loaning to an owner or operator the co-pay amount
11 required under section 21514 and then submitting or causing to be
12 submitted inflated claims or invoices designed to recoup the
13 co-pay amount.

14 (k) Confirming a release without simultaneously providing
15 notice to the owner or operator.

16 (l) Inflating bills or work invoices, or both, by adding
17 charges for work that was not performed.

18 (m) Submitting a false or misleading laboratory report.

19 (n) Submitting bills or work invoices, or both, for sampling,
20 testing, monitoring, or excavation that are not justified by the
21 site condition.

22 (o) Falsely characterizing the contents of an underground
23 storage tank system for purposes of obtaining funding under this
24 part.

25 (p) Submitting or causing to be submitted bills or work
26 invoices by or from a person who did not directly provide the
27 service.

1 (q) Characterizing legal services as consulting services for
2 purposes of obtaining funding under this part.

3 (r) Misrepresenting or concealing the identity, credentials,
4 affiliation, or qualifications of principals or persons seeking,
5 either directly or indirectly, funding or approval for
6 participation under this part.

7 (s) Falsifying a signature on a claim application or a work
8 invoice.

9 (t) Failing to accurately disclose the actual amount and
10 carrier of unencumbered insurance coverage available for new
11 environmental impairment or professional liability claims.

12 (u) Any other act or omission of a false, fraudulent, or
13 misleading nature undertaken in order to obtain funding under
14 this part.

15 (4) The attorney general or county prosecutor may conduct an
16 investigation of an alleged violation of this section and bring
17 an action for a violation of this section.

18 (5) If the attorney general or county prosecutor has
19 reasonable cause to believe that a person has information or is
20 in possession, custody, or control of any document or records,
21 however stored or embodied, or tangible object which is relevant
22 to an investigation of a violation or attempted violation of this
23 part or a crime or attempted crime against the fund, the attorney
24 general or county prosecutor may, before bringing any action,
25 make an ex parte request to a magistrate for issuance of a
26 subpoena requiring that person to appear and be examined under
27 oath or to produce the document, records, or object for

1 inspection and copying, or both. Service may be accomplished by
2 any means described in the Michigan court rules. Requests made
3 by the attorney general may be brought in Ingham county.

4 (6) If a person objects to or otherwise fails to comply with
5 a subpoena served under subsection (5), an action may be brought
6 in district court to enforce the demand. Actions filed by the
7 attorney general may be brought in Ingham county.

8 (7) The attorney general or county prosecutor may apply to
9 the district court for an order granting immunity to any person
10 who refuses to provide or objects to providing information,
11 documents, records, or objects sought pursuant to this section.
12 If the judge is satisfied that it is in the interest of justice
13 that immunity be granted, he or she shall enter an order granting
14 immunity to the person and requiring ~~them~~ **the person** to appear
15 and be examined under oath or to produce the document, records,
16 or object for inspection and copying, or both.

17 (8) A person who fails to comply with a subpoena issued
18 pursuant to subsection (5) or a requirement to appear and be
19 examined pursuant to subsection (7) is subject to a civil fine of
20 not more than \$25,000.00 for each day of continued
21 noncompliance.

22 (9) In addition to any civil fines or criminal penalties
23 imposed under this part or the criminal laws of this state, the
24 person found responsible shall repay any money obtained directly
25 or indirectly under this part. Money owed pursuant to this
26 section constitutes a claim and lien by the fund upon any real or
27 personal property owned either directly or indirectly by the

1 person. This lien shall attach regardless of whether the person
2 is insolvent and may not be extinguished or avoided by
3 bankruptcy. The lien imposed by this section has the force and
4 effect of a first in time and right judgment lien.

5 (10) Subsection (1) does not preclude prosecutions under
6 other laws of the state including, but not limited to, section
7 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, ~~Act~~
8 ~~No. 328 of the Public Acts of 1931, being sections 750.157a,~~
9 ~~750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan~~
10 ~~Compiled Laws 1931 PA 328, MCL 750.157a, 750.218, 750.248,~~
11 ~~750.249, 750.280, and 750.422.~~

12 (11) All civil fines collected pursuant to this section shall
13 be apportioned in the following manner:

14 (a) Fifty percent shall be deposited in the general fund and
15 shall be used by the department to fund fraud investigations
16 under this part.

17 (b) Twenty-five percent shall be paid to the office of the
18 county prosecutor or attorney general, whichever office brought
19 the action.

20 (c) Twenty-five percent shall be paid to a local police
21 department or sheriff's office, or a city or county health
22 department, if investigation by that office or department led to
23 the bringing of the action. If more than 1 office or department
24 is eligible for payment under this subsection, division of
25 payment shall be on an equal basis. If there is not a local
26 office or department that is entitled to payment under this
27 subdivision, the money shall be forwarded to the state treasurer

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1 for deposit into the ~~emergency response fund created in section~~
2 ~~21507 fund.~~

3 Sec. 21550. (1) Section ~~21507~~ **21508** is repealed effective
4 ~~December 22, 1998~~ **[September 30, 2006]**.

5 ~~(2) Upon the repeal of section 21507, any unexpended money~~
6 ~~in the emergency response fund reverts to the fund.~~

7 ~~— (3) This part is repealed on the date on which the state~~
8 ~~treasurer files with the secretary of state a notice of final~~
9 ~~payment of all obligations lawfully payable from the fund~~
10 ~~pursuant to section 21506(5).~~

11 **(2) —(4)—** Upon repeal of ~~this part~~ **section 21508**, any money
12 in the fund or in the possession of the authority reverts to the
13 environmental response fund created in part 201.

14 **(3) —(5)—** The authority's obligation to pay off any bonds or
15 notes issued pursuant to this part shall survive the repeal of
16 ~~this part~~ **section 21508.**

17 Sec. 21552. (1) The underground storage tank advisory
18 council is created.

19 (2) The council shall consist of all of the following
20 individuals:

21 (a) Three individuals appointed by the governor, 1 of whom
22 shall be a representative of the petroleum industry.

23 (b) Three individuals appointed by the senate majority
24 leader, 1 of whom shall be a representative of the petroleum
25 industry.

26 (c) Three individuals appointed by the speaker of the house
27 of representatives, 1 of whom shall be a representative of the

1 petroleum industry.

2 (3) The members first appointed to the council shall be
3 appointed by November 1, 2004.

4 (4) Members of the council shall serve until a successor is
5 appointed.

6 (5) If a vacancy occurs on the council, the unexpired term
7 shall be filled in the same manner as the original appointment
8 was made.

9 (6) The first meeting of the council shall be called by the
10 director. At the first meeting, the council shall elect from
11 among its members a chairperson and other officers as it
12 considers necessary or appropriate. After the first meeting, the
13 council shall meet at least quarterly, or more frequently at the
14 call of the chairperson or if requested by 2 or more members.

15 (7) A majority of the members of the council constitute a
16 quorum for the transaction of business at a meeting of the
17 council. A majority of the members present and serving are
18 required for official action of the council.

19 (8) Members of the council shall serve without compensation.
20 However, members of the council may be reimbursed for their
21 actual and necessary expenses incurred in the performance of
22 their official duties as members of the council.

23 (9) By December 31, 2005, the council shall submit to the
24 governor and the legislature a report that evaluates and makes
25 recommendations for changes to and the implementation and
26 administration of this part and part 213, including, but not
27 limited to, the underground storage tank financial assurance

1 program.

2 (10) Effective 180 days after the council submits its report
3 under subsection (8), the council is dissolved.

4 (11) This section is repealed August 1, 2006.