

# HOUSE BILL No. 4640

May 6, 2003, Introduced by Reps. Gielegem, Kolb, Minore and Tobocman and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 11507a, 11525, and 11525a (MCL 324.11507a,  
324.11525, and 324.11525a), section 11507a as added by 1996  
PA 359, section 11525 as amended by 1996 PA 506, and  
section 11525a as added by 1996 PA 358.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 11507a. (1) The owner or operator of a landfill shall  
2 annually submit a report to the state and the county and  
3 municipality in which the landfill is located that contains  
4 information on the amount of solid waste received by the landfill  
5 during the year itemized, to the extent possible, by county,  
6 state, or country of origin. **The report shall be submitted on a**  
7 **form provided by the department within 30 days following the end**  
8 **of each state fiscal year.**

1       (2) By September 1, 1996, the department shall develop and  
2 submit to the legislature a plan to gather data on the amount of  
3 recyclable materials recovered in the state itemized, to the  
4 extent possible, by county, state, or country of origin.

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  
10 assurance for type II landfills under section 11523 and  
11 section 11523a.

12       (2) Except as otherwise provided in this section, the owner  
13 or operator of a landfill shall deposit into his or her perpetual  
14 care fund 75 cents for each ton or portion of a ton or 25 cents  
15 for each cubic yard or portion of a cubic yard of solid waste  
16 that is disposed of in the landfill after June 17, 1990. The  
17 deposits shall be made not less than semiannually until the fund  
18 reaches the maximum required fund amount. As of July 1, 1996,  
19 the maximum required fund amount is \$1,156,000.00. This amount  
20 shall be annually adjusted for inflation and rounded to the  
21 nearest thousand. The department shall adjust the maximum  
22 required fund amount for inflation annually by multiplying the  
23 amount by an inflation factor derived from the most recent bureau  
24 of reclamation composite index published by the United States  
25 department of commerce or another index more representative of  
26 the costs of closure and postclosure monitoring and maintenance  
27 as determined appropriate by the department.

1       (3) The owner or operator of a landfill that is used for the  
2 disposal of the following materials shall deposit into the  
3 perpetual care fund 7.5 cents for each ton or cubic yard or  
4 portion of a ton or cubic yard of the following materials that  
5 are disposed of in the landfill after June 17, 1990:

6       (a) Coal or wood ash that is disposed of in a landfill that  
7 is used only for the disposal of coal or wood ash, or that is  
8 permanently segregated in a landfill.

9       (b) Wastewater treatment sludge or sediments from wood pulp  
10 or paper producing industries that is disposed of in a landfill  
11 that is used only for the disposal of wastewater treatment sludge  
12 and sediments from wood pulp or paper producing industries, or  
13 that is permanently segregated in a landfill.

14       (c) Foundry sand or other material that is approved by the  
15 department for use as daily cover at an operating landfill, that  
16 is disposed of in a landfill that is used only for the disposal  
17 of foundry sand, or that is permanently segregated in a  
18 landfill.

19       (4) The owner or operator of a landfill that is used only for  
20 the disposal of a mixture of 2 or more of the materials described  
21 in subsection (3)(a) to (c) or in which a mixture of 2 or more of  
22 these materials are permanently segregated shall deposit into the  
23 perpetual care fund 7.5 cents for each ton or cubic yard or  
24 portion of a ton or cubic yard of these materials that are  
25 disposed of in the landfill after July 1, 1996.

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

1           (6) The owner or operator of a landfill may contribute  
2 additional amounts into the perpetual care fund at his or her  
3 discretion.

4           (7) The custodian of a perpetual care fund shall be a bank or  
5 other financial institution that has the authority to act as a  
6 custodian and whose account operations are regulated and examined  
7 by a federal or state agency. Until the perpetual care fund  
8 reaches the maximum required fund amount, the custodian of a  
9 perpetual care fund shall credit interest and earnings of the  
10 perpetual care fund to the perpetual care fund. However, upon  
11 the direction of the owner or operator, the custodian may utilize  
12 the interest and earnings of the perpetual care fund to pay the  
13 ~~pro rata share of the solid waste management program~~  
14 ~~administration fee imposed under~~ **surcharge required by** section  
15 11525a ~~against~~ **for** the landfill for which the perpetual care  
16 fund was established. After the perpetual care fund reaches the  
17 maximum required fund amount, interest and earnings shall be  
18 distributed as directed by the owner or operator. The agreement  
19 governing the operation of the perpetual care fund shall be  
20 executed on a form consistent with this part as prepared by the  
21 department. The custodian may be compensated from the fund for  
22 reasonable fees and costs incurred for his or her  
23 responsibilities as custodian. The custodian of a perpetual care  
24 fund shall annually make an accounting to the department within  
25 30 days following the close of the state fiscal year.

26           (8) The custodian of a perpetual care fund shall not disburse  
27 any funds to the owner or operator of a landfill for the purposes

1 of the perpetual care fund except upon the prior written approval  
2 of the department. However, the custodian shall ensure the  
3 filing of all required tax returns for which the perpetual care  
4 fund is liable and shall disburse funds to pay lawfully due taxes  
5 owed by the perpetual care fund without permission of the  
6 department, and may disburse interest and earnings of the  
7 perpetual care fund to pay the ~~solid waste management program~~  
8 ~~administration fee~~ **surcharge required by section 11525a** as  
9 provided in subsection (7). The owner or operator of the  
10 landfill shall provide notice of requests for disbursement and  
11 denials and approvals to the custodian of the perpetual care  
12 fund. Requests for disbursement from a perpetual care fund shall  
13 be submitted not more frequently than semiannually. The owner or  
14 operator of a landfill may request disbursement of funds from a  
15 perpetual care fund whenever the amount of money in the fund  
16 exceeds the maximum required fund amount. ~~specified in~~  
17 ~~subsection (2).~~ The department shall approve the disbursement  
18 provided the total amount of financial assurance maintained meets  
19 the requirements of sections 11523 and 11523a. As used in this  
20 subsection, "maximum required fund amount" means:

21 (a) For those landfills containing only those materials  
22 specified in subsection (3), an amount equal to 1/2 of the  
23 maximum required fund amount specified in subsection (2).

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

26 (9) If the owner or operator of a landfill refuses or fails  
27 to conduct closure, postclosure monitoring and maintenance, or

1 corrective action as necessary to protect the public health,  
2 safety, or welfare, or the environment or fails to request the  
3 disbursement of money from a perpetual care fund when necessary  
4 to protect the public health, safety, or welfare, or the  
5 environment, or fails to pay the ~~solid waste management program~~  
6 ~~administration fee due the department under this part within 90~~  
7 ~~days of the request~~ **surcharge required under section 11525a,**  
8 then the department may require the disbursement of money from  
9 the perpetual care fund and may expend the money for closure,  
10 postclosure monitoring and maintenance, and corrective action, as  
11 necessary. The department may assess a perpetual care fund for  
12 administrative costs associated with actions taken under this  
13 subsection.

14 (10) Upon approval by the department of a request to  
15 terminate financial assurance for a landfill under section  
16 11525b, any money in the perpetual care fund for that landfill  
17 shall be disbursed by the custodian to the owner of the landfill  
18 unless a contract between the owner and the operator of the  
19 landfill provides otherwise.

20 (11) The owner of a landfill shall provide notice to the  
21 custodian of the perpetual care fund for that landfill if there  
22 is a change of ownership of the landfill. The custodian shall  
23 maintain records of ownership of a landfill during the time in  
24 which a perpetual care fund is established.

25 (12) This section does not relieve an owner or operator of a  
26 landfill of any liability that he or she may have under this part  
27 or as otherwise provided by law.

1       (13) This section does not create a cause of action at law or  
2 in equity against a custodian of a perpetual care fund other than  
3 for errors or omissions related to investments, accountings,  
4 disbursements, filings of required tax returns, and maintenance  
5 of records required by this section or the applicable perpetual  
6 care fund.

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

9       Sec. 11525a. ~~—(1) A solid waste program administration fee~~  
10 ~~is imposed upon the owners or operators of landfills in the~~  
11 ~~state. The annual cumulative total amount of this fee shall be~~  
12 ~~\$1,040,000.00 as this amount is annually adjusted for inflation~~  
13 ~~beginning in 1997 using the Detroit consumer price index. As~~  
14 ~~used in this section, "Detroit consumer price index" means the~~  
15 ~~most comprehensive index of consumer prices available for the~~  
16 ~~Detroit area from the United States department of labor, bureau~~  
17 ~~of labor statistics.~~

18 ~~—— (2) The department shall apportion the cumulative solid waste~~  
19 ~~program administration fee among the operating landfills in the~~  
20 ~~state. The apportionment shall be made on the basis of each~~  
21 ~~landfill's pro rata share of the cumulative total of amounts~~  
22 ~~maintained in individual perpetual care funds in the state.~~

23 ~~—— (3) Within 30 days following the close of each state fiscal~~  
24 ~~year, the owner or operator of a landfill shall report to the~~  
25 ~~department the total amount of assets in its perpetual care~~  
26 ~~fund. The department shall determine the cumulative total amount~~  
27 ~~of perpetual care funds in the state but shall not credit any~~

~~1 individual landfill more than the maximum required fund amount~~  
~~2 established in section 11525(2). The department shall determine~~  
~~3 each landfill's pro rata share of perpetual care fund~~  
~~4 contributions using this amount.~~

~~5 — (4) Within 60 days following the close of each state fiscal~~  
~~6 year, the department shall notify the owner or operator of each~~  
~~7 landfill of its assessed share of the solid waste program~~  
~~8 administration fee. Within 90 days following the close of the~~  
~~9 state fiscal year, the owner or operator of a landfill shall pay~~  
~~10 his or her assessed share of the solid waste program~~  
~~11 administration fee.~~

~~12 — (5) Fees collected under this section shall be forwarded to~~  
~~13 the state treasurer for deposit in the solid waste staff account~~  
~~14 of the solid waste management fund established in section 11550.~~

15 (1) The owner or operator of a landfill shall pay a surcharge  
16 on solid waste received by the landfill during the previous state  
17 fiscal year. The surcharge shall be paid according to this  
18 section.

19 (2) The annual cumulative total of the surcharge established  
20 by this section for the owners or operators of landfills in this  
21 state shall be \$3,900,000.00 as this amount is annually adjusted  
22 for inflation beginning in 2005 using the Detroit consumer price  
23 index. As used in this section, "Detroit consumer price index"  
24 means the comprehensive index of consumer prices available for  
25 the Detroit area from the United States department of labor,  
26 bureau of labor statistics.

27 (3) By January 1 of each year, the department shall notify

1 the owner or operator of each landfill of the amount of the  
2 surcharge that will be paid for each cubic yard of solid waste  
3 received as described in subsection (1) and the total amount of  
4 the surcharge due from that owner or operator. The amount per  
5 cubic yard shall be determined by dividing the amount established  
6 by subsection (2) by the cumulative amount of waste received by  
7 all landfills during the previous state fiscal year as reported  
8 pursuant to section 11507a.

9 (4) The owner or operator of a landfill shall pay the  
10 surcharge established by this section by January 31 of each year  
11 or within 30 days of the date of the notice provided under  
12 subsection (3), whichever is sooner.

13 (5) Surcharges collected under this section shall be  
14 forwarded to the state treasurer for deposit in the solid waste  
15 staff account of the solid waste management fund established in  
16 section 11550.