

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 11523, 11523a, 11523b, 11525, 11525a, and  
11525b (MCL 324.11523, 324.11523a, 324.11523b, 324.11525,  
324.11525a, and 324.11525b), sections 11523, 11523a, 11523b, 11525,  
and 11525b as amended by 2018 PA 640 and section 11525a as amended  
by 2019 PA 77, by designating sections 11523 to 11525f as subpart 4  
of part 115, and by adding sections 11525d and 11525f.

1 SUBPART 4 FINANCIAL ASSURANCE

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1 financial assurance, as applicable:

2 (a) ~~Financial assurance established for a type III landfill or~~  
 3 ~~a preexisting unit at a type II landfill and until April 9, 1997,~~  
 4 ~~existing and new type II landfills shall be in the form of Subject~~  
 5 **to section 11523b, financial assurance for a landfill described in**  
 6 **this subdivision shall be** a bond in an amount equal to \$20,000.00  
 7 per acre of licensed landfill within the solid waste boundary.  
 8 However, the **total** amount of the bond shall not be less than  
 9 \$20,000.00 or more than ~~\$1,000,000.00.~~ **\$2,000,000.00.** Each bond  
 10 shall provide assurance for the maintenance of the ~~finished~~  
 11 landfill site **or a portion thereof** for a period of 30 years ~~after~~  
 12 **beginning when the department approved a closure certification as**  
 13 **described in section 11523a(5)(b) for** the landfill or ~~any approved~~  
 14 ~~portion is completed.~~ **portion thereof, respectively.** In addition to  
 15 this bond, **the owner or operator of a landfill described in this**  
 16 **subdivision shall maintain** a perpetual care fund. ~~shall be~~  
 17 ~~maintained under section 11525.~~ **All of the following landfills are**  
 18 **subject to this subdivision, unless the owner or operator of the**  
 19 **landfill, by written notice to the department, elects to provide**  
 20 **financial assurance under subdivision (b):**

21 (i) A preexisting unit at a type II landfill.

22 (ii) A type II landfill that stopped receiving waste and was  
 23 certified as closed before April 9, 1997.

24 (iii) A type III landfill that stopped receiving waste before  
 25 the effective date of the amendatory act that added this  
 26 subparagraph.

27 (iv) A type III landfill that received waste on or after the  
 28 effective date of the amendatory act that added this subparagraph.  
 29 However, beginning 2 years after the effective date of the

1 amendatory act that added this subparagraph, upon the issuance of a  
 2 new license for such a landfill, the landfill is not subject to  
 3 this subdivision but is subject to subdivision (b).

4 (b) Financial assurance for a type II **or type III** landfill  
 5 that is an existing unit **not subject to subdivision (a)** or a new  
 6 unit **or for a landfill, otherwise subject to subdivision (a), whose**  
 7 **owner or operator elects to be subject to this subdivision** shall be  
 8 **a bond** in an amount equal to the cost, in current dollars, of  
 9 hiring a third party ~~to~~ to conduct closure, postclosure maintenance  
 10 and monitoring, and, if necessary, corrective action. ~~An~~ **A license**  
 11 application for a type II landfill that is ~~an existing unit or new~~  
 12 ~~unit~~ **subject to this subdivision** shall demonstrate financial  
 13 assurance in ~~accordance~~ **compliance** with section 11523a. **A license**  
 14 **application for a type III landfill shall demonstrate financial**  
 15 **assurance in compliance with section 11523a if the application is**  
 16 **filed on or after the date 2 years after the effective date of the**  
 17 **amendatory act that added subsection (2).**

18 (c) Financial assurance ~~established~~ for an existing coal ash  
 19 impoundment shall be ~~in the form of a~~ bond in an amount equal to  
 20 \$20,000.00 per acre within the impoundment boundary. However, the  
 21 **total** amount of the bond shall not be less than \$20,000.00 or more  
 22 than \$1,000,000.00. The bond shall provide assurance for the  
 23 maintenance of the ~~finished~~ coal ash impoundment **or a portion**  
 24 **thereof** for a period of 30 years after the coal ash impoundment or  
 25 any approved portion is completed. In addition to the bond, **the**  
 26 **owner or operator of an existing coal ash impoundment shall**  
 27 **maintain** a perpetual care fund. ~~shall be maintained under section~~  
 28 ~~11525.~~ For applications for a license to operate submitted to the  
 29 department after ~~the date that is 2 years after the effective date~~

~~of the amendatory act that added section 11511a, December 28, 2020,~~  
 an applicant that demonstrates that it meets the requirements of R  
 299.9709 of the ~~Michigan Administrative Code~~ **MAC** may utilize the  
 financial test under that rule for an amount not exceeding 95% of  
 the closure, postclosure, and corrective action cost estimate.

(d) Financial assurance established for a **licensed** solid waste  
**processing and** transfer facility ~~, or incinerator, processing~~  
~~plant, other solid waste handling or disposal facility, or a~~  
~~combination of these utilized in the disposal of solid waste shall~~  
~~be in the form of a bond in an amount equal to 1/4 of 1% of the~~  
~~construction cost of the facility, but shall not be less than~~  
~~\$4,000.00, and shall be a bond in the amount of \$20,000.00. The~~  
**financial assurance** shall be ~~continued~~ **maintained** in effect for a  
~~period of 2~~ years after the disposal area is closed.

(2) The department shall not issue an approval under a general  
 permit for a materials utilization facility unless the applicant  
 has filed, as a part of the application for the approval, evidence  
 of the following financial assurance, as applicable:

(a) Financial assurance established for a materials recovery  
 facility or anaerobic digester that requires a general permit shall  
 be a bond in the amount of \$20,000.00. The bond shall be maintained  
 in effect until the facility has ceased accepting material, all  
 managed material has been removed from the site, and the facility's  
 closure certification has been approved by the department as  
 described in section 11525b(4)(a).

(b) Financial assurance established for a composting facility  
 with a general permit shall be a bond in the amount of \$20,000.00.  
 The financial assurance shall be maintained in effect until the  
 facility has ceased accepting compostable materials, any finished

1 or partially finished compost has been removed from the site, and  
2 the facility's closure certification has been approved by the  
3 department as described in section 11525b(4) (a) .

4 (c) An innovative technology facility shall submit to the  
5 department a detailed written estimate, in current dollars, of the  
6 cost for the owner or operator to hire a third party to close the  
7 facility, including the cost to dispose of any remaining waste  
8 material, or otherwise contain and control any remaining waste  
9 residues. The department shall approve, approve with modifications,  
10 or disapprove the closure cost estimate in writing. The financial  
11 assurance shall be a bond in the amount of the approved closure  
12 cost estimate. The bond shall be maintained in effect until the  
13 facility has ceased accepting material, all managed material has  
14 been removed from the site, and the facility's closure  
15 certification has been approved by the department as described in  
16 section 11525b(4) (a) .

17 (3) ~~(2) The owner or operator of a landfill may post a cash~~  
18 ~~bond with the department instead of other bonding mechanisms to~~  
19 ~~fulfill the remaining financial assurance requirements of this~~  
20 ~~section. An owner or operator of a disposal area materials~~  
21 **management facility** who elects to post cash as a bond shall accrue  
22 interest on that bond **quarterly** at the annual rate of 6%, ~~to be~~  
23 ~~accrued quarterly,~~ except that the interest rate payable to an  
24 owner or operator shall not exceed the rate of interest accrued on  
25 the state common cash fund for the quarter in which an accrual is  
26 determined. Interest shall be paid to the owner or operator upon  
27 release of the bond by the department. Any interest greater than 6%  
28 shall be deposited in the state treasury to the credit of the  
29 general fund. ~~and shall be appropriated to the department to be~~

~~used by the department for administration of this part.~~ **An owner or operator who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.**

**(4)** ~~(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may, beginning 2 years after closure of the disposal area, request that the department terminate the bond required under this section. The department shall approve termination of the bond within~~ **Within** 60 days after the request is made, **the department shall approve or deny the request in writing. The department shall approve the request** if all waste and waste residues have been removed from the disposal area and closure ~~is~~ **has been certified by a licensed professional engineer and approved by the department.**

**(5)** ~~(4) The If the owner or operator violates the closure and postclosure monitoring and maintenance requirements of part 115, the department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such~~ **the** violations. At least 7 days before utilizing the bond, the department shall issue a notice of violation or other order that alleges violation of ~~this part or rules promulgated under this part~~ **115 and shall provide the owner**

1 **or operator** an opportunity for a hearing. This subsection does not  
 2 apply to a perpetual care fund. ~~bond.~~

3 (6) ~~(5) Under the~~ **The** terms of a surety bond, **irrevocable**  
 4 letter of credit, insurance policy, or perpetual care fund bond ~~7~~  
 5 **shall require** the issuing institution ~~shall to~~ notify both the  
 6 department and the owner or operator at least 120 days before the  
 7 expiration date or ~~any~~ cancellation of the bond. If the owner or  
 8 operator does not extend the effective date of the bond, or  
 9 establish alternate financial assurance within 90 days after  
 10 receipt of an expiration or cancellation notice from the issuing  
 11 institution, ~~all both~~ of the following apply:

12 (a) The department may draw on the bond.

13 (b) In the case of a perpetual care fund bond, the issuing  
 14 institution shall deposit the proceeds into the standby trust **fund**  
 15 or escrow account unless the department agrees to the expiration or  
 16 cancellation of the perpetual care fund bond.

17 (7) ~~(6)~~ The department shall not issue a construction permit  
 18 or a new license to operate a disposal area to an applicant that is  
 19 the subject of a bankruptcy action commenced under title 11 of the  
 20 United States Code, 11 USC 101 to 1532, or any ~~other predecessor or~~  
 21 successor statute.

22 ~~(7) A person required under this section to provide financial~~  
 23 ~~assurance in the form of a bond for a landfill may request a~~  
 24 ~~reduction in the bond based upon the amount of the perpetual care~~  
 25 ~~fund established under section 11525. A person requesting a bond~~  
 26 ~~reduction shall do so on a form consistent with this part and~~  
 27 ~~provided by the department. The department shall grant this request~~  
 28 ~~unless there are sufficient grounds for denial and those reasons~~  
 29 ~~are provided in writing. The department shall grant or deny a~~

~~request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills that are preexisting units, the amount of the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).~~

~~(8) The department shall release the bond required by this section if the amount of the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).~~

**(8) An owner or operator of a landfill that utilizes a financial test as financial assurance for the landfill may utilize a financial test for other types of materials management facilities that are located on the permitted landfill site.**

**(9) The department may utilize a bond required under this section for a facility subject to approval under a general permit for bringing the facility into compliance with part 115, including, but not limited to, removing managed material from the facility, cleanup at the facility, and fire suppression or other emergency response at the facility, including reimbursement to any local unit of government that incurred emergency response costs. Not less than 7 days before utilizing the bond, the department shall issue a notice of violation or order that alleges violation of part 115 and shall provide the owner or operator an opportunity for a hearing.**

**(10)** ~~(9) Prior to~~ **Before** closure of a landfill, if money is disbursed from the perpetual care fund, ~~then the department may require a corresponding increase in the amount of bonding required to be provided~~ **a required bond** if necessary to meet the requirements of this section.



1        **(11) ~~(10)~~** If an owner or operator of a disposal area fulfills  
 2 the financial assurance requirements of ~~this part~~ **115** by obtaining  
 3 a bond, including, but not limited to, a perpetual care fund bond,  
 4 and the surety company, insurer, trustee, bank, or financial or  
 5 other institution that issued or holds the bond becomes the subject  
 6 of a bankruptcy action **commenced under title 11 of the United**  
 7 **States Code, 11 USC 101 to 1532, or any successor statute** or has  
 8 its authority to issue or hold the bond ~~or to act as an escrow~~  
 9 ~~agent or trustee~~ suspended or revoked, the owner or operator shall,  
 10 within 60 days after receiving notice of that event, establish  
 11 alternate financial assurance under ~~this part~~ **115**.

12        **(12) Owners or operators may demonstrate all or a portion of**  
 13 **required financial assurance for 2 or more materials management**  
 14 **facilities that are not landfills with a risk pooling financial**  
 15 **mechanism approved by the department that meets all of the**  
 16 **following requirements:**

17        **(a) The mechanism is administered by a surety company,**  
 18 **insurer, surety, bank, or other financial institution that has**  
 19 **authority to issue such a mechanism and is regulated and examined**  
 20 **by a state or federal agency.**

21        **(b) The mechanism is irrevocable and renews automatically**  
 22 **unless, not less than 120 days before the automatic renewal date,**  
 23 **the insurer, surety, bank, or other financial institution notifies**  
 24 **the department and the owners or operators of the covered**  
 25 **facilities that the mechanism will not be renewed, and the**  
 26 **department agrees in writing to termination of the mechanism.**

27        **(c) The amount of financial assurance available for any single**  
 28 **covered facility is not less than would be available for that**  
 29 **facility if it was covered alone under a bond.**

1           (d) The addition or deletion of facilities covered under the  
2 mechanism requires written agreement of the director.

3           (13) The department shall access and use funds under a  
4 mechanism approved under subsection (12) subject to the provisions  
5 for bonds under subsection (9).

6           Sec. 11523a. (1) ~~Effective April 9, 1997, the~~ **The** department  
7 shall not issue a license to operate a ~~type II landfill~~ **that is**  
8 **subject to section 11523(1)(b)** unless the applicant demonstrates  
9 that ~~for any new unit or existing unit at the facility, the~~  
10 combination of the ~~perpetual landfill~~ care fund ~~established under~~  
11 ~~section 11525, bonds,~~ and the financial capability of the applicant  
12 as evidenced by a financial test ~~, provides financial assurance in~~  
13 an amount not less than that required by this section. An applicant  
14 may utilize a financial test for an amount ~~up to, but not~~  
15 ~~exceeding,~~ **more than** 70% of the closure, postclosure, and  
16 corrective action cost estimate. **For applications for a license to**  
17 **operate submitted on or after the date 2 years after the effective**  
18 **date of the amendatory act that added subsection (3)(c), an**  
19 **applicant may utilize a financial test for an amount more than 70%**  
20 **but not more than 95% of the closure, postclosure, and corrective**  
21 **action cost estimate if the owner or operator demonstrates that the**  
22 **owner or operator passes a financial test under and otherwise meets**  
23 **the requirements of R 299.9709 of the MAC.**

24           (2) An applicant may demonstrate compliance with this section  
25 by submitting **to the department** evidence ~~, with a form consistent~~  
26 ~~with this part and provided by the department,~~ that the applicant  
27 has financial assurance for any existing unit or new unit in an  
28 amount equal to or ~~greater~~ **more** than the sum of the following  
29 standardized costs:

(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in ~~1996~~**2018** dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

(i) A base cost of ~~\$20,000.00~~**\$40,000.00** per acre to construct a compacted soil final cover using on-site material.

(ii) A supplemental cost of ~~\$20,000.00~~**\$40,000.00** per acre, to install a synthetic cover liner, if required by rules under this part.

(iii) A supplemental cost of ~~\$5,000.00~~**\$10,000.00** per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used instead of low permeability soil in a composite cover.

(iv) A supplemental cost of ~~\$5,000.00~~**\$9,000.00** per acre, to construct a passive gas collection system in the final cover ~~unless an active gas collection system has been installed at the facility.~~**or a supplemental cost of \$15,000.00 per acre for an active gas collection and control system, for those areas without a gas collection and control system already installed.**

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section ~~11525(2)~~**11525(3)**:

(i) A final cover maintenance cost of ~~\$200.00~~**\$400.00** per acre per year.

(ii) A leachate disposal cost of ~~\$100.00~~**\$400.00** per acre per year.

(iii) A leachate transportation cost of ~~\$1,000.00~~**\$4,000.00** per acre per year, if leachate is required to be transported off-site

1 for treatment.

2 (iv) An active gas collection and control system maintenance  
3 cost of \$900.00 per acre per year for active gas collection and  
4 control systems subject to the requirements of standards of  
5 performance for new stationary sources, 40 CFR part 60.

6 (v) An active gas collection and control system maintenance  
7 cost of \$500.00 per acre per year for landfills not subject to the  
8 requirements of standards of performance for new stationary  
9 sources, 40 CFR part 60.

10 (vi) A passive gas collection system maintenance cost of \$35.00  
11 per acre per year.

12 (vii) ~~(iv)~~ A groundwater monitoring cost of ~~\$1,000.00~~ **\$2,000.00**  
13 per monitoring well per year.

14 (viii) ~~(v)~~ A gas monitoring cost of ~~\$100.00~~ **\$200.00** per  
15 monitoring point per year, for monitoring points used to detect  
16 landfill gas at or beyond the facility property boundary.

17 (c) ~~The A~~ corrective action cost estimate, if any. The  
18 corrective action cost estimate shall be a detailed written  
19 estimate, in current dollars, of the cost of hiring a third party  
20 to perform corrective action in ~~accordance~~ **compliance** with ~~this~~  
21 part 115.

22 (3) Instead of using some or all of the standardized costs  
23 specified in subsection (2), an applicant may ~~estimate~~ **use** the ~~site~~  
24 ~~specific~~ **site-specific** costs of closure or postclosure maintenance  
25 and monitoring. A ~~site-specific~~ **site-specific** cost estimate shall  
26 be a written estimate, in current dollars, of the cost of hiring a  
27 third party to perform the activity. For the purposes of this  
28 subsection, a parent corporation or a subsidiary of the owner or  
29 operator is not a third party. ~~Site-specific~~ **Site-specific** cost

1 estimates shall ~~be based on~~ **comply with** the following, as  
2 **applicable:**

3 (a) For closure, **be based on** the cost to close the largest  
4 area of the landfill ~~ever~~ requiring a final cover at any time  
5 during the active life, when the extent and manner of its operation  
6 would make closure the most expensive, in ~~accordance~~ **compliance**  
7 with the approved closure plan. The closure cost estimate ~~may~~ **shall**  
8 not incorporate any salvage value ~~that may be realized by~~ **from** the  
9 sale of structures, land, equipment, or other assets associated  
10 with the facility at the time of final closure.

11 (b) For postclosure, **be based on** the cost **at any given time** to  
12 conduct postclosure maintenance and monitoring in ~~accordance~~  
13 **compliance** with the approved postclosure plan **for the next 30 years**  
14 **of the postclosure period, or for the remainder of the postclosure**  
15 **period if the remainder is less than 30 years. However, the**  
16 **applicant shall submit to the department an estimate of the**  
17 **postclosure maintenance and monitoring cost** for the entire  
18 postclosure period.

19 (c) For costs for operation and maintenance of an on-site  
20 wastewater treatment facility managing leachate at a landfill that  
21 are substituted for the standardized leachate disposal and  
22 transportation costs of this section, be based on an engineering  
23 evaluation of total wastewater flow and include utilities,  
24 staffing, and incidental costs to maintain and ensure compliance  
25 with all applicable permits.

26 (4) The owner or operator of a landfill subject to this  
27 section shall, during the active life of the landfill and during  
28 the postclosure care period, annually adjust the financial  
29 assurance cost estimates and corresponding amount of financial

1 assurance for inflation. ~~Cost estimates~~ **The standard closure cost**  
2 **estimate and corrective action cost estimate** shall be adjusted for  
3 inflation by multiplying the cost estimate by an inflation factor  
4 derived from the most recent United States Department of the  
5 Interior, Bureau of Reclamation ~~composite index~~ **Composite Index**  
6 published by the United States Department of Commerce or another  
7 index that is more representative of the costs of closure and  
8 postclosure monitoring and maintenance as ~~determined appropriate~~  
9 **approved** by the department. The owner or operator shall document  
10 the adjustment on a form consistent with ~~this part 115~~ as prepared  
11 **provided or approved** by the department and shall place the  
12 documentation in the operating record of the facility.

13 (5) The owner or operator of a landfill subject to this  
14 section may request that the department authorize a reduction in  
15 the approved cost estimates and corresponding financial assurance  
16 for the landfill. ~~by submitting a form consistent with this part~~  
17 ~~and provided by the department certifying~~ **Within 60 days after**  
18 **receiving the financial assurance reduction request under this**  
19 **subdivision, the department shall approve or deny the request in**  
20 **writing. A denial shall state the reasons for the denial. A**  
21 **financial assurance reduction request shall certify** completion of  
22 any of the following activities:

23 (a) Partial closure of the landfill. The current closure cost  
24 estimate for partially closed portions of a landfill unit may be  
25 reduced by 80%, if the maximum waste slope on the unclosed portions  
26 of the unit does not exceed 25%. The percentage of the cost  
27 estimate reduction approved by the department for the partially  
28 closed portion shall be reduced 1% for every 1% increase in the  
29 slope of waste over 25% in the active portion. An owner or operator

1 requesting a reduction in financial assurance for partial closure  
 2 shall ~~enclose~~**submit** with the request a certification under the  
 3 seal of a licensed professional engineer ~~that certifies of~~ both of  
 4 the following:

5 (i) That a portion of the licensed landfill unit has reached  
 6 final grades and has had a final cover installed in compliance with  
 7 the approved closure plan and ~~rules promulgated under this part~~  
 8 **115.**

9 (ii) The maximum slope of waste in the active portion of the  
 10 landfill unit at the time of partial closure.

11 (b) Final closure of the landfill. An owner or operator  
 12 requesting a cost estimate reduction for final closure shall submit  
 13 **with the request** a certification under the seal of a licensed  
 14 professional engineer that closure of that landfill unit has been  
 15 fully completed in ~~accordance~~**compliance** with the approved closure  
 16 plan for the landfill. Within 60 days of receiving a certification  
 17 under this ~~subsection, subdivision,~~ the department shall perform a  
 18 consistency review of the submitted certification and do 1 of the  
 19 following:

20 (i) Approve the certification and notify the owner or operator  
 21 that ~~he or she may reduce the closure cost estimate~~ **may be reduced**  
 22 to zero.

23 (ii) Disapprove the certification and provide the owner or  
 24 operator with a detailed written statement of the reasons ~~why~~ the  
 25 department has determined that closure certification has not been  
 26 conducted in ~~accordance~~**compliance** with ~~this part, the rules~~  
 27 ~~promulgated under this part , 115~~ or an approved closure plan.

28 (c) Postclosure maintenance and monitoring. ~~The~~ **A landfill**  
 29 owner or operator ~~of a landfill unit who has completed final~~

~~closure of the unit~~ may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if **final closure of a landfill unit has been completed and** the landfill has been monitored and maintained in ~~accordance~~ **compliance** with the approved postclosure plan. ~~The department shall, within~~ **Within** 60 days ~~of~~ **after** receiving a cost estimate reduction request, **the department shall** grant written approval or issue a written denial stating the reason for denial. ~~The~~ **If the** department ~~shall grant~~ **grants** the request, ~~and~~ the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period. ~~unless the~~ **The** department ~~denies~~ **shall deny** the request ~~and the written denial states that~~ **if** the owner or operator has not performed the specific tasks consistent with ~~this part,~~ rules promulgated under this part ~~, 115~~ and an approved **postclosure** plan. **The department shall not grant a request under this subdivision to reduce the postclosure cost estimate and the corresponding financial assurance to below the maximum required perpetual care fund amount specified in section 11525(3) unless the owner or operator has demonstrated within the past 5-year period that the landfill is on target to achieve functional stability as described in section 11517 within the time remaining in the postclosure period.**

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of ~~one~~ **1** or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the amount required under this section, the department shall approve the request.



~~(7) An owner or operator requesting that the department approve a financial assurance reduction under subsection (5) or (6) shall do so on a form consistent with this part and provided by the department. The department shall grant written approval or, within 60 days of receiving a financial assurance reduction request, issue a written denial stating the reason for the denial.~~

Sec. 11523b. (1) The owner or operator of a landfill or coal ash impoundment may establish a trust fund or escrow account to fulfill the requirements of sections 11523 and 11523a. ~~The trust fund or escrow account shall be executed on a form provided by the department.~~

~~(2) Payments into a trust fund or escrow account shall be made annually over the term of the first operating license issued after the effective date of this section. The first payment into a trust fund or escrow account shall be made prior to licensure and shall be at least equal to the portion of the financial assurance requirement to be covered by the trust fund or escrow account divided by the term of the operating license. Subsequent payments shall be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires.~~

~~(3) If the owner or operator of a landfill or coal ash impoundment establishes a trust fund or escrow account after having used one or more alternate forms of financial assurance, the initial payment into the trust fund or escrow account shall be at least the amount the fund would contain if the fund were established initially and annual payments made according to subsection (2).~~

~~(4)~~ (2) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the

1    custodian may be compensated for reasonable fees and costs for ~~his~~  
2    ~~or her~~ **the custodian's** responsibilities as custodian. The custodian  
3    shall ensure the filing of all required tax returns for which the  
4    trust fund or escrow account is liable and shall disburse funds  
5    from earnings to pay ~~lawfully due~~ taxes owed by the trust fund or  
6    escrow account, without permission of the department.

7        **(3)** ~~(5)~~—The custodian shall annually, 30 days preceding the  
8    anniversary date of establishment of the fund, furnish to the owner  
9    or operator and to the department a statement confirming the value  
10   of the fund or account as of the end of ~~that~~ **the** month **immediately**  
11 **preceding the submittal of the report.**

12        **(4)** ~~(6)~~—The owner or operator may request that the department  
13 authorize the release of funds from a trust fund or escrow account.  
14 The department shall grant the request if the owner or operator  
15 demonstrates that the value of the fund or account exceeds the  
16 owner's or operator's financial assurance obligation. A payment or  
17 disbursement from the fund or account shall not be made without the  
18 prior written approval of the department.

19        **(5)** ~~(7)~~—The owner or operator shall receive all interest or  
20 earnings from a trust fund or escrow account upon its termination.

21        **(6)** **If an owner or operator of a disposal area fulfills the**  
22 **financial assurance requirements of part 115 by establishing a**  
23 **trust fund or escrow account and the custodian has its authority to**  
24 **act as a custodian suspended or revoked, the owner or operator**  
25 **shall, within 60 days after receiving notice of the suspension or**  
26 **revocation, establish alternative financial assurance under part**  
27 **115.**

28        **(7)** ~~(8)~~—As used in this section, "custodian" means the trustee  
29 of a trust fund or escrow agent of an escrow account.

1       Sec. 11525. **(1) This section does not apply to a landfill**  
 2 **unless the landfill is subject to section 11523(1) (a) .**

3       **(2)** ~~(1)~~ The owner or operator of a landfill or coal ash  
 4 impoundment shall establish and maintain a perpetual care fund for  
 5 a period of 30 years after final closure of the landfill or coal  
 6 ash impoundment as specified in this section. A perpetual care fund  
 7 may be established as a trust **fund**, an escrow account, or a  
 8 perpetual care fund bond and may be used to demonstrate financial  
 9 assurance for ~~type II and type III landfills and coal ash~~  
 10 ~~impoundments under sections 11523 and 11523a.~~ **a landfill or coal ash**  
 11 **impoundment.**

12       **(3)** ~~(2)~~ Except as otherwise provided in this section, the  
 13 owner or operator of a landfill shall increase the amount of ~~his or~~  
 14 ~~her~~ ~~the~~ perpetual care fund 75 cents for each ton or portion of a  
 15 ton ~~or 25 cents for each cubic yard or portion of a cubic yard of~~  
 16 solid waste, **other than materials described in subsection (4)**, that  
 17 is disposed of in the landfill ~~after June 17, 1990~~ until the fund  
 18 reaches the maximum required fund amount. As of July 1, ~~1996~~, **2018**,  
 19 the maximum required fund amount for a landfill or coal ash  
 20 impoundment is ~~\$1,156,000.00. This amount shall be annually~~  
 21 ~~adjusted for inflation and rounded to the nearest thousand.~~  
 22 **\$2,257,000.00.** The department shall **annually** adjust ~~the maximum~~  
 23 ~~required fund~~ **this** amount for inflation ~~annually~~ by multiplying the  
 24 amount by an inflation factor derived from the most recent United  
 25 States Department of the Interior, Bureau of Reclamation ~~composite~~  
 26 ~~index~~ **Composite Index** published by the United States Department of  
 27 Commerce or another index more representative of the costs of  
 28 closure and postclosure monitoring and maintenance as ~~determined~~  
 29 ~~appropriate~~ **approved** by the department. **The department shall round**

1 **the resulting amount to the nearest thousand dollars.** Increases to  
 2 the amount of a perpetual care fund required under this subsection  
 3 shall be calculated based on solid waste disposed of in the  
 4 landfill as of the end of the state fiscal year and shall be made  
 5 within 30 days after the end of each state fiscal year.

6 **(4)** ~~(3)~~ The owner or operator of a landfill or coal ash  
 7 impoundment ~~that is used for the disposal of the following~~  
 8 ~~materials~~ shall increase the amount of the perpetual care fund 7.5  
 9 cents for each ton ~~or cubic yard~~ or portion of a ton ~~or cubic yard~~  
 10 of the following ~~materials~~ that are disposed of ~~in the landfill or~~  
 11 ~~coal ash impoundment after the effective date of the amendatory act~~  
 12 ~~that added section 11511a~~ **after December 28, 2018** until the fund  
 13 reaches the maximum required fund amount under subsection ~~(2)~~ **(3)**:

14 (a) Coal ash, wood ash, ~~or~~ cement kiln dust, **or a combination**  
 15 **thereof** that is disposed of in ~~a~~ **the** landfill ~~that~~ **or coal ash**  
 16 **impoundment if the disposal area** is used only for the disposal of  
 17 ~~coal ash, wood ash, or cement kiln dust, or a combination of these~~  
 18 ~~materials, or that is~~ **these materials or these materials are**  
 19 permanently segregated in ~~a landfill~~ **the disposal area.**

20 (b) Wastewater treatment sludge or sediments from wood pulp or  
 21 paper producing industries that is disposed of in a landfill ~~that~~  
 22 **if the landfill** is used only for the disposal of ~~wastewater~~  
 23 ~~treatment sludge and sediments from wood pulp or paper producing~~  
 24 ~~industries, or that is~~ **these materials or these materials are**  
 25 permanently segregated in ~~a~~ **the** landfill.

26 (c) Foundry sand or other material that is approved by the  
 27 department for use as daily cover at **a landfill if it is** an  
 28 operating landfill, **foundry sand** that is disposed of in a landfill  
 29 ~~that~~ **if the landfill** is used only for the disposal of foundry sand,

1 or **foundry sand** that is permanently segregated in a landfill.

2 (5) ~~(4)~~—The owner or operator of a landfill that is used only  
 3 for the disposal of a mixture of 2 or more of the materials  
 4 described in subsection ~~(3)(a)~~ **(4)(a)** to (c) or in which a mixture  
 5 of 2 or more of these materials are permanently segregated shall  
 6 increase the amount of the perpetual care fund 7.5 cents for each  
 7 ton ~~or cubic yard~~ or portion of a ton ~~or cubic yard~~ of these  
 8 materials that are disposed of in the landfill. ~~after July 1, 1996.~~

9 (6) ~~(5)~~—The amount of a perpetual care fund is not required to  
 10 be increased for materials that are regulated under part 631.

11 (7) ~~(6)~~—The owner or operator of a landfill may increase the  
 12 amount of the perpetual care fund above the amount otherwise  
 13 required by this section at his or her discretion.

14 (8) ~~(7)~~—The custodian of a perpetual care fund trust **fund** or  
 15 escrow account shall be a bank or other financial institution that  
 16 has the authority to act as a custodian and whose account  
 17 operations are regulated and examined by a federal or state agency.  
 18 Until the perpetual care fund trust **fund** or escrow account reaches  
 19 the maximum required fund amount, the custodian of ~~a~~ **the** perpetual  
 20 care fund trust **fund** or escrow account shall credit any interest  
 21 and earnings of the perpetual care fund trust **fund** or escrow  
 22 account to the perpetual care fund trust **fund** or escrow account.  
 23 After the perpetual care fund trust **fund** or escrow account reaches  
 24 the maximum required fund amount, any interest and earnings shall  
 25 be distributed as directed by the owner or operator. ~~The agreement~~  
 26 ~~governing the operation of the perpetual care fund trust or escrow~~  
 27 ~~account shall be executed on a form consistent with this part and~~  
 28 ~~provided by the department.~~ The custodian may be compensated from  
 29 the fund for reasonable fees and costs incurred ~~for his or her in~~

1 **discharging the custodian's** responsibilities. ~~as custodian.~~ The  
 2 custodian of a perpetual care fund trust **fund** or escrow account  
 3 shall make an accounting to the department within 30 days following  
 4 the close of each state fiscal year.

5 **(9)** ~~(8)~~ The custodian of a perpetual care fund shall not  
 6 disburse any funds to the owner or operator of a landfill or coal  
 7 ash impoundment for the purposes of the perpetual care fund except  
 8 upon the prior written approval of the department. However, the  
 9 custodian shall ensure the filing of all required tax returns for  
 10 which the perpetual care fund is liable and shall disburse funds to  
 11 pay ~~lawfully due~~ taxes owed by the perpetual care fund without  
 12 permission of the department. The owner or operator of the landfill  
 13 or coal ash impoundment shall provide notice of requests for  
 14 disbursement and **the department's** denials and approvals to the  
 15 custodian of the perpetual care fund. ~~Requests for disbursement~~  
 16 ~~from a perpetual care fund shall be submitted not more frequently~~  
 17 ~~than semiannually.~~ The owner or operator of a landfill or coal ash  
 18 impoundment may request disbursement of funds from a perpetual care  
 19 fund ~~whenever~~ **if** the amount of money in the fund exceeds the  
 20 maximum required fund amount **under subsection (3), unless a**  
 21 **disbursement for that reason has been approved by the department**  
 22 **within the preceding 180 days.** The department shall approve the  
 23 disbursement if the total amount of financial assurance maintained  
 24 meets the requirements of ~~sections 11523 and 11523a. As used in~~  
 25 ~~this subsection, "maximum required fund amount" means:~~ **section**  
 26 **11523(1)(a) or (c), as applicable.**

27 ~~(a) For those landfills or coal ash impoundments containing~~  
 28 ~~only those materials specified in subsection (3), an amount equal~~  
 29 ~~to 1/2 of the maximum required fund amount specified in subsection~~

1 ~~(2).~~

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

4 **(10)** ~~(9)~~—If the owner or operator of a landfill or coal ash  
 5 impoundment ~~refuses or~~ fails to conduct closure, postclosure  
 6 monitoring and maintenance, or corrective action as necessary to  
 7 protect **the environment, natural resources, or** the public health,  
 8 safety, or welfare, ~~or the environment or~~ fails to request the  
 9 disbursement of money from a perpetual care fund when necessary to  
 10 protect **the environment, natural resources, or** the public health,  
 11 safety, or welfare, ~~or the environment,~~ or fails to pay the solid  
 12 waste management program administration fee or the surcharge  
 13 required under section 11525a, then the department may draw on the  
 14 perpetual care fund and may expend the money for closure,  
 15 postclosure monitoring and maintenance, and corrective action **or**  
 16 **for payment of the fee or surcharge,** as necessary. The department  
 17 may **also** draw on a perpetual care fund for administrative costs  
 18 associated with actions taken under this subsection.

19 **(11)** ~~(10)~~—Upon approval by the department of a request to  
 20 terminate financial assurance for a landfill or coal ash  
 21 impoundment under section 11525b, any money in the perpetual care  
 22 fund for that landfill or coal ash impoundment shall be disbursed  
 23 by the custodian to the owner of the landfill or coal ash  
 24 impoundment unless ~~a contract~~ **an agreement** between the owner and  
 25 the operator provides otherwise.

26 **(12)** ~~(11)~~—The owner of a landfill or coal ash impoundment  
 27 shall provide notice to the custodian of the perpetual care fund  
 28 for that landfill or coal ash impoundment if there is a change of  
 29 ownership of the landfill. The custodian shall maintain records of

ownership of a landfill or coal ash impoundment during the period of existence of the perpetual care fund.

(13) ~~(12)~~ This section does not relieve an owner or operator of a landfill or coal ash impoundment of any liability that ~~he or she~~ **the owner or operator** may have under ~~this part 115~~ or as otherwise provided by law.

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

~~(14) As used in this section, "custodian" means the trustee or escrow agent of any of the following:~~

~~(a) A perpetual care fund that is established as a trust or escrow account.~~

~~(b) A standby trust or escrow account for a perpetual care fund bond.~~

(15) A perpetual care fund that is established as a trust **fund** or escrow account may be replaced with a perpetual care fund that is established as a perpetual care fund bond that complies with this section. Upon such replacement, the ~~director~~ **department** shall authorize the custodian of the trust **fund** or escrow account to disburse the money in the trust **fund** or escrow account to the owner of the landfill or coal ash impoundment unless ~~a contract~~ **an agreement** between the owner and operator specifies otherwise.

(16) An owner or operator of a landfill or coal ash impoundment ~~who~~ **that** uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust



1 **fund** or escrow account. All payments made under the terms of the  
 2 perpetual care fund bond shall be deposited by the custodian  
 3 directly into the standby trust **fund** or escrow account in  
 4 ~~accordance-compliance~~ with instructions from the ~~director-~~  
 5 **department**. The standby trust **fund** or escrow account must meet the  
 6 requirements for a trust **fund** or escrow account established as a  
 7 perpetual care fund under subsection ~~(1)-(2)~~, except that until  
 8 the standby trust **fund** or escrow account is funded pursuant to the  
 9 requirements of this subsection, the following are not required:

10 (a) Payments into the standby trust **fund** or escrow account as  
 11 specified in subsection ~~(2)-(3)~~.

12 (b) Annual ~~accounting valuations-accountings~~ as required in  
 13 subsection ~~(7)-(8)~~.

14 (17) As used in this section, "custodian" means the trustee or  
 15 escrow agent of any of the following:

16 (a) A perpetual care fund that is established as a trust fund  
 17 or escrow account.

18 (b) A standby trust fund or escrow account for a perpetual  
 19 care fund bond.

20 Sec. 11525a. (1) The owner or operator of a landfill or coal  
 21 ash impoundment shall pay a surcharge as follows:

22 (a) ~~For-Except as provided in subdivision (b), for~~ a landfill  
 23 or coal ash impoundment that is not a captive facility, ~~12-36~~ cents  
 24 for each ~~cubic yard-ton~~ or portion of a ~~cubic yard-ton~~ of solid  
 25 waste or municipal solid waste incinerator ash that is disposed of  
 26 in the landfill or coal ash impoundment before October 1, 2023.

27 (b) **For a landfill or coal ash impoundment that is not a**  
 28 **captive facility, 12 cents per ton or portion of a ton of foundry**  
 29 **sand, slag from metal melting, baghouse dust, furnace refractory**

1 brick, pulp and paper mill material, paper mill ash, wood ash, coal  
 2 bottom ash, mixed wood ash, fly ash, flue gas desulfurization  
 3 sludge, contaminated soil, cement kiln dust, lime kiln dust, and  
 4 other industrial waste that weighs at least 1 ton per cubic yard,  
 5 as determined by the generator.

6 (c) ~~(b)~~ For a type III landfill or coal ash impoundment that  
 7 is a captive facility and annually receives the following amount of  
 8 waste, the following annual corresponding surcharge ~~amount~~ **for each**  
 9 **state fiscal year, based on the amount of waste received during**  
 10 **that fiscal year:**

11 (i) 100,000 or more ~~cubic yards~~ **tons** of waste, \$3,000.00.

12 (ii) 75,000 or more but less than 100,000 ~~cubic yards~~ **tons** of  
 13 waste, \$2,500.00.

14 (iii) 50,000 or more but less than 75,000 ~~cubic yards~~ **tons** of  
 15 waste, \$2,000.00.

16 (iv) 25,000 or more but less than 50,000 ~~cubic yards~~ **tons** of  
 17 waste, \$1,000.00.

18 (v) Less than 25,000 ~~cubic yards~~ **tons** of waste, \$500.00.

19 (2) ~~The~~ **Within 30 days after the end of each quarter of a**  
 20 **state fiscal year, the** owner or operator of a landfill or coal ash  
 21 impoundment that is not a captive facility shall pay the surcharge  
 22 under subsection (1) (a) ~~within 30 days after the end of each~~ **for**  
 23 **waste received during that** quarter of the state fiscal year. ~~The~~  
 24 **Within 30 days after the end of a state fiscal year, the** owner or  
 25 operator of a type III landfill or coal ash impoundment that is a  
 26 captive facility shall pay the surcharge under subsection (1) (b) ~~by~~  
 27 ~~January 31 of each~~ **for waste received during that state fiscal**  
 28 **year.**

29 (3) ~~The~~ **If the** owner or operator of a landfill or coal ash

1 impoundment ~~who~~ is required to pay the surcharge under subsection  
 2 (1), **the owner or operator** shall pass through and collect the  
 3 surcharge from any person ~~who~~**that** generated the solid waste or ~~who~~  
 4 arranged for its delivery to the ~~solid waste hauler or~~ **solid waste**  
 5 **processing and** transfer facility, notwithstanding the provisions of  
 6 any ~~contract or agreement~~ to the contrary or the absence of any  
 7 ~~contract or agreement~~.

8 (4) Surcharges collected under this section shall be forwarded  
 9 to the state treasurer for deposit in the solid waste staff account  
 10 of the solid waste management fund. ~~established in section 11550.~~

11 Sec. 11525b. (1) The owner or operator of **a materials**  
 12 **utilization facility for which financial assurance is required**  
 13 **under section 11523 or of** a disposal area shall provide continuous  
 14 financial assurance coverage until released from these requirements  
 15 by the department ~~under the provisions of this~~ **as provided in part**  
 16 **115.**

17 (2) Upon transfer of **a materials utilization facility for**  
 18 **which financial assurance is required under section 11523 or of a**  
 19 **disposal area, the former owner or operator shall continue to**  
 20 **maintain financial assurance until the financial assurance is**  
 21 **replaced by the new owner or operator or until the materials**  
 22 **utilization facility or disposal area is released from the**  
 23 **financial assurance obligation at the end of the postclosure**  
 24 **period.**

25 (3) ~~(2) The~~ **If the** owner or operator of a landfill or coal ash  
 26 impoundment ~~who~~ has completed postclosure maintenance and  
 27 monitoring in ~~accordance with this part, rules promulgated under~~  
 28 ~~this part,~~ **compliance with part 115 and the** approved postclosure  
 29 plan, **the owner or operator** may request that financial assurance

1 required by sections 11523 and 11523a be terminated. ~~A~~**The** person  
 2 requesting termination of ~~bonding and~~ financial assurance shall  
 3 submit to the department a statement that the landfill or coal ash  
 4 impoundment has been monitored and maintained in ~~accordance with~~  
 5 ~~this part, rules promulgated under this part,~~ **compliance with part**  
 6 **115** and the approved postclosure plan for the postclosure period  
 7 specified in section 11523 and shall certify that the landfill or  
 8 coal ash impoundment is not subject to corrective action under  
 9 section ~~11515.~~ **11512(21)**. Within 60 days ~~of~~**after** receiving a  
 10 statement under this subsection, the department shall perform a  
 11 consistency review of the submitted statement and do 1 of the  
 12 following:

13 (a) Approve the statement, notify the owner or operator that  
 14 ~~he or she~~**the owner or operator** is no longer required to maintain  
 15 financial assurance, return or release all financial assurance  
 16 mechanisms, and, if the perpetual care fund ~~is~~**was** established as a  
 17 trust **fund** or escrow account, notify the custodian of the perpetual  
 18 care fund ~~that to disburse~~ money from the fund ~~shall be disbursed~~  
 19 as provided in section ~~11525(10).~~ **11525(11)**.

20 (b) Disapprove the statement and provide the owner or operator  
 21 with a detailed written ~~statement~~**explanation** of the reasons why  
 22 the department has determined that postclosure maintenance and  
 23 monitoring and corrective action, if any, have not been conducted  
 24 in ~~accordance with this part, the rules promulgated under this~~  
 25 ~~part, or an~~ **compliance with part 115 or the** approved postclosure  
 26 plan.

27 (4) **The owner or operator of a materials utilization facility**  
 28 **required to provide financial assurance under section 11523(2) may**  
 29 **request that the financial assurance be terminated. The person**

1 requesting termination of financial assurance shall submit to the  
2 department a statement that the facility has been maintained in  
3 compliance with part 115 and that all managed material has been  
4 removed from the facility. Within 60 days after receiving a  
5 statement under this subsection, the department shall perform a  
6 consistency review of the statement and do 1 of the following:

7 (a) Approve the statement, notify the owner or operator that  
8 the owner or operator is no longer required to maintain financial  
9 assurance, and return or release all financial assurance  
10 mechanisms.

11 (b) Disapprove the statement and provide the owner or operator  
12 with a detailed written explanation of the reasons why the  
13 department has determined that all managed material has not been  
14 removed from the facility or that the facility has not been  
15 maintained in compliance with part 115.

16 Sec. 11525d. (1) This section applies only to landfills  
17 subject to section 11523(1) (b) .

18 (2) The owner or operator of a landfill shall establish and  
19 maintain a landfill care fund as specified in this section. A  
20 landfill care fund may be established as a trust fund, an escrow  
21 account, or a landfill care fund bond and may be used to  
22 demonstrate financial assurance for landfills under section 11523a.

23 (3) The owner or operator of a landfill may increase the  
24 amount of the landfill care fund above the amount otherwise  
25 required by this section at the owner's or operator's discretion.

26 (4) The custodian of a landfill care fund trust fund or escrow  
27 account shall be a bank or other financial institution that has the  
28 authority to act as a custodian and whose account operations are  
29 regulated and examined by a federal or state agency. Any interest

1 and earnings on the fund shall be distributed as directed by the  
2 owner or operator of the landfill. The custodian may be compensated  
3 from the fund for reasonable fees and costs incurred for the  
4 custodian's responsibilities as custodian. The custodian of a  
5 landfill care fund trust fund or escrow account shall make an  
6 accounting to the department within 30 days following the close of  
7 each state fiscal year.

8 (5) The custodian of a landfill care fund trust fund or escrow  
9 account shall not disburse any funds to the owner or operator of a  
10 landfill for the purposes of the landfill care fund and the issuer  
11 or holder of a landfill care fund bond shall not reduce the amount  
12 of the bond except upon the prior written approval of the  
13 department. However, the custodian shall ensure the filing of all  
14 required tax returns for which the landfill care fund is liable and  
15 shall disburse funds to pay taxes owed by the landfill care fund,  
16 without permission of the department. The owner or operator of the  
17 landfill shall provide notice of requests for disbursement from a  
18 landfill care fund trust fund or escrow account or reduction of a  
19 landfill care fund bond and the department's denials and approvals  
20 to the custodian of the landfill care fund trust fund or escrow  
21 account or the issuer or holder of the landfill care fund bond.  
22 Requests for disbursement from a landfill care fund trust fund or  
23 escrow account or a reduction of a landfill care fund bond shall be  
24 submitted not more frequently than semiannually. The owner or  
25 operator of a landfill may request disbursement of funds from a  
26 landfill care fund trust fund or escrow account or a reduction of a  
27 landfill care fund bond. The department shall approve the request  
28 if the total amount of financial assurance maintained meets the  
29 requirements of section 11523a.

1           (6) If the owner or operator of a landfill fails to conduct  
2 closure, postclosure monitoring and maintenance, or corrective  
3 action as necessary to protect the environment, natural resources,  
4 or public health, safety, or welfare, or fails to request the  
5 disbursement of money from a landfill care fund when necessary to  
6 protect the environment, natural resources, or the public health,  
7 safety, or welfare, or fails to pay the surcharge required under  
8 section 11525a, the department may draw on the landfill care fund  
9 and may expend the money for closure, postclosure monitoring and  
10 maintenance, and corrective action, as necessary. The department  
11 may also draw on a landfill care fund for administrative costs  
12 associated with actions taken under this subsection.

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

19           (8) The owner of a landfill shall provide notice to the  
20 custodian of the landfill care fund for that landfill if there is a  
21 change of ownership of the landfill. The custodian shall maintain  
22 records of ownership of a landfill during the period of existence  
23 of the landfill care fund.

24           (9) This section does not relieve an owner or operator of a  
25 landfill of any liability the owner or operator may have under part  
26 115 or as otherwise provided by law.

27           (10) This section does not create a cause of action at law or  
28 in equity against a custodian of a landfill care fund other than  
29 for errors or omissions related to investments, accountings,

1 disbursements, filings of required tax returns, and maintenance of  
2 records required by this section or the applicable landfill care  
3 fund.

4 (11) A perpetual care fund and any other bond that is utilized  
5 by a landfill to demonstrate financial assurance under part 115 and  
6 that is in existence on the effective date of the amendatory act  
7 that added this section is considered a landfill care fund under  
8 this section for purposes of demonstrating compliance with section  
9 11523a until the issuance of a new license for the landfill on or  
10 after the date 2 years after the effective date of the amendatory  
11 act that added this section. A landfill owner or operator may  
12 replace a perpetual care fund or a bond with a landfill care fund  
13 that complies with this section at any time without a license  
14 modification and without the issuance of a new license. Upon such  
15 replacement, the department shall authorize the custodian of a  
16 perpetual care fund trust fund or escrow account to disburse the  
17 money in the trust fund or escrow account to the owner of the  
18 landfill unless an agreement between the owner and operator of the  
19 landfill specifies otherwise.

20 (12) An owner or operator of a landfill that uses a landfill  
21 care fund bond to satisfy the requirements of this section shall  
22 also establish a standby trust fund or escrow account. All payments  
23 made under the terms of the landfill care fund bond shall be  
24 deposited by the custodian directly into the standby trust fund or  
25 escrow account in compliance with instructions from the department.  
26 The standby trust fund or escrow account shall meet the  
27 requirements for a trust fund or escrow account established as a  
28 landfill care fund under subsection (2), except that, until the  
29 standby trust fund or escrow account is funded pursuant to the



requirements of this subsection, annual accountings of the standby trust fund or escrow account are not required.

(13) As used in this section, "custodian" means the trustee or escrow agent of any of the following:

(a) A landfill care fund that is established as a trust fund or escrow account.

(b) A standby trust fund or escrow account for a landfill care fund bond.

Sec. 11525f. If the owner or operator of a materials management facility is required to establish a bond under another state statute or a federal statute, the owner or operator may request the department to approve that bond as meeting the requirements of part 115. The department shall so approve the bond if the bond provides equivalent funds and access by the department as other financial instruments under part 115.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

(a) House Bill No. 4454.

(b) House Bill No. 4455.

(c) House Bill No. 4456.

(d) House Bill No. 4458.

(e) House Bill No. 4459.

(f) House Bill No. 4460.

(g) House Bill No. 4461.