

Act No. 246
Public Acts of 2022
Approved by the Governor
December 22, 2022
Filed with the Secretary of State
December 22, 2022
EFFECTIVE DATE: Sine Die

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. Rabhi, Howell, Borton, Kuppa, Martin, O'Malley, VanSingel, Manoogian, Tate, Cambensy, Pohutsky, Anthony, Brixie, Sowerby, Liberati, Hood, Markkanen, Breen, Morse, Cavanagh, Aiyash, Puri, Brabec, Brenda Carter and Hammoud

ENROLLED HOUSE BILL No. 4457

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," 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.

The People of the State of Michigan enact:

SUBPART 4 FINANCIAL ASSURANCE

Sec. 11523. (1) The department shall not issue a license to operate a disposal area until the applicant has filed, as a part of the application for a license, evidence of the following financial assurance, as applicable:

(a) Subject to section 11523b, financial assurance for a landfill described in this subdivision shall be a bond in an amount equal to \$20,000.00 per acre of licensed landfill within the solid waste boundary. However, the total amount of the bond shall not be less than \$20,000.00 or more than \$2,000,000.00. Each bond shall provide assurance for the maintenance of the landfill site or a portion thereof for a period of 30 years beginning when the department approved a closure certification as described in section 11523a(5)(b) for the landfill or portion thereof, respectively. In addition to this bond, the owner or operator of a landfill described in this subdivision shall maintain a perpetual care fund. All of the following landfills are subject to this subdivision, unless the owner or operator of the landfill, by written notice to the department, elects to provide financial assurance under subdivision (b):

- (i) A preexisting unit at a type II landfill.
- (ii) A type II landfill that stopped receiving waste and was certified as closed before April 9, 1997.
- (iii) A type III landfill that stopped receiving waste before the effective date of the amendatory act that added this subparagraph.

(iv) A type III landfill that received waste on or after the effective date of the amendatory act that added this subparagraph. However, beginning 2 years after the effective date of the amendatory act that added this subparagraph, upon the issuance of a new license for such a landfill, the landfill is not subject to this subdivision but is subject to subdivision (b).

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

(c) Financial assurance for an existing coal ash impoundment shall be a bond in an amount equal to \$20,000.00 per acre within the impoundment boundary. However, the total amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. The bond shall provide assurance for the maintenance of the coal ash impoundment or a portion thereof for a period of 30 years after the coal ash impoundment or any approved portion is completed. In addition to the bond, the owner or operator of an existing coal ash impoundment shall maintain a perpetual care fund. For applications for a license to operate submitted to the department after December 28, 2020, an applicant that demonstrates that it meets the requirements of R 299.9709 of the 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 shall be a bond in the amount of \$20,000.00. The financial assurance shall be maintained in effect for 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 or partially finished compost 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).

(c) An innovative technology facility shall submit to the department a detailed written estimate, in current dollars, of the cost for the owner or operator to hire a third party to close the facility, including the cost to dispose of any remaining waste material, or otherwise contain and control any remaining waste residues. The department shall approve, approve with modifications, or disapprove the closure cost estimate in writing. The financial assurance shall be a bond in the amount of the approved closure cost estimate. 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).

(3) An owner or operator of a materials management facility who elects to post cash as a bond shall accrue interest on that bond quarterly at the annual rate of 6%, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund. 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) An owner or operator of a disposal area that is not a landfill may, beginning 2 years after closure of the disposal area, request that the department terminate the bond required under this section. 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 has been certified by a licensed professional engineer and approved by the department.

(5) 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 to the extent necessary to correct 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 part 115 and shall provide the owner or operator an opportunity for a hearing. This subsection does not apply to a perpetual care fund.

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

(a) The department may draw on the bond.

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

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

(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) Before closure of a landfill, if money is disbursed from the perpetual care fund, the department may require a corresponding increase in the amount of a required bond if necessary to meet the requirements of this section.

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

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

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

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

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

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

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

Sec. 11523a. (1) The department shall not issue a license to operate a landfill that is subject to section 11523(1)(b) unless the applicant demonstrates that the combination of the landfill care fund and the financial capability of the applicant as evidenced by a financial test provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount not more than 70% of the closure, postclosure, and corrective action cost estimate. For applications for a license to operate submitted on or after the date 2 years after the effective date of the amendatory act that added subsection (3)(c), an applicant may utilize a financial test for an amount more than 70% but not more than 95% of the closure, postclosure, and corrective action cost estimate if the owner or operator demonstrates that the owner or operator passes a financial test under and otherwise meets the requirements of R 299.9709 of the MAC.

(2) An applicant may demonstrate compliance with this section by submitting to the department evidence that the applicant has financial assurance for any existing unit or new unit in an amount equal to or more than the sum of the following standardized costs:

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

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

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

(iii) A supplemental cost of \$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 \$9,000.00 per acre, to construct a passive gas collection system in the final cover 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(3):

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

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

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

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

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

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

(vii) A groundwater monitoring cost of \$2,000.00 per monitoring well per year.

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

(c) A corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in compliance with part 115.

(3) Instead of using some or all of the standardized costs specified in subsection (2), an applicant may use the site-specific costs of closure or postclosure maintenance and monitoring. A site-specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. For the purposes of this subsection, a parent corporation or a subsidiary of the owner or operator is not a third party. Site-specific cost estimates shall comply with the following, as applicable:

(a) For closure, be based on the cost to close the largest area of the landfill requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in compliance with the approved closure plan. The closure cost estimate shall not incorporate any salvage value from the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

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

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

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation. The standard closure cost estimate and corrective action cost estimate shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent United States Department of the Interior, Bureau of Reclamation Composite Index published by the United States Department of Commerce or another index that is more representative of the costs of closure and postclosure

monitoring and maintenance as approved by the department. The owner or operator shall document the adjustment on a form consistent with part 115 as provided or approved by the department and shall place the documentation in the operating record of the facility.

(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill. Within 60 days after receiving the financial assurance reduction request under this subdivision, the department shall approve or deny the request in writing. A denial shall state the reasons for the denial. A financial assurance reduction request shall certify completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall submit with the request a certification under the seal of a licensed professional engineer of both of the following:

(i) That a portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and part 115.

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

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

(i) Approve the certification and notify the owner or operator that the closure cost estimate may be reduced to zero.

(ii) Disapprove the certification and provide the owner or operator with a detailed written statement of the reasons the department has determined that closure certification has not been conducted in compliance with part 115 or an approved closure plan.

(c) Postclosure maintenance and monitoring. A landfill owner or operator 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 compliance with the approved postclosure plan. Within 60 days after receiving a cost estimate reduction request, the department shall grant written approval or issue a written denial stating the reason for denial. If the department grants the request, the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period. The department shall deny the request if the owner or operator has not performed the specific tasks consistent with 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 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.

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.

(2) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for the custodian's responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay taxes owed by the trust fund or escrow account, without permission of the department.

(3) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account as of the end of the month immediately preceding the submittal of the report.

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

(5) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

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

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

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

(2) The owner or operator of a landfill or coal ash impoundment shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill or coal ash impoundment as specified in this section. A perpetual care fund may be established as a trust fund, an escrow account, or a perpetual care fund bond and may be used to demonstrate financial assurance for a landfill or coal ash impoundment.

(3) Except as otherwise provided in this section, the owner or operator of a landfill shall increase the amount of the perpetual care fund 75 cents for each ton or portion of a ton of solid waste, other than materials described in subsection (4), that is disposed of in the landfill until the fund reaches the maximum required fund amount. As of July 1, 2018, the maximum required fund amount for a landfill or coal ash impoundment is \$2,257,000.00. The department shall annually adjust this amount for inflation by multiplying the amount by an inflation factor derived from the most recent United States Department of the Interior, Bureau of Reclamation Composite Index published by the United States Department of Commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as approved by the department. The department shall round the resulting amount to the nearest thousand dollars. Increases to the amount of a perpetual care fund required under this subsection shall be calculated based on solid waste disposed of in the landfill as of the end of the state fiscal year and shall be made within 30 days after the end of each state fiscal year.

(4) The owner or operator of a landfill or coal ash impoundment shall increase the amount of the perpetual care fund 7.5 cents for each ton or portion of a ton of the following that are disposed of after December 28, 2018 until the fund reaches the maximum required fund amount under subsection (3):

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

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill if the landfill is used only for the disposal of these materials or these materials are permanently segregated in the landfill.

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

(5) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (4)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall increase the amount of the perpetual care fund 7.5 cents for each ton or portion of a ton of these materials that are disposed of in the landfill.

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

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

(8) The custodian of a perpetual care fund trust fund or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund trust fund or escrow account reaches the maximum required fund amount, the custodian of the perpetual care fund trust fund or escrow account shall credit any interest and earnings of the perpetual care fund trust fund or escrow account to the perpetual care fund trust fund or escrow account. After the perpetual care fund trust fund or escrow account reaches the maximum required fund amount, any interest and earnings shall be distributed as directed by the owner or operator. The custodian may be compensated from the fund for reasonable fees and costs incurred in discharging the custodian's responsibilities. The custodian of a perpetual care fund trust fund or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(9) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill or coal ash impoundment for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual

care fund is liable and shall disburse funds to pay taxes owed by the perpetual care fund without permission of the department. The owner or operator of the landfill or coal ash impoundment shall provide notice of requests for disbursement and the department's denials and approvals to the custodian of the perpetual care fund. The owner or operator of a landfill or coal ash impoundment may request disbursement of funds from a perpetual care fund if the amount of money in the fund exceeds the maximum required fund amount under subsection (3), unless a disbursement for that reason has been approved by the department within the preceding 180 days. The department shall approve the disbursement if the total amount of financial assurance maintained meets the requirements of section 11523(1)(a) or (c), as applicable.

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

(11) Upon approval by the department of a request to terminate financial assurance for a landfill or coal ash impoundment under section 11525b, any money in the perpetual care fund for that landfill or coal ash impoundment shall be disbursed by the custodian to the owner of the landfill or coal ash impoundment unless an agreement between the owner and the operator provides otherwise.

(12) The owner of a landfill or coal ash impoundment shall provide notice to the custodian of the perpetual care fund for that landfill or coal ash impoundment if there is a change of 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) This section does not relieve an owner or operator of a landfill or coal ash impoundment of any liability that the owner or operator may have under part 115 or as otherwise provided by law.

(14) 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.

(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 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 an agreement between the owner and operator specifies otherwise.

(16) An owner or operator of a landfill or coal ash impoundment that uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust fund or escrow account. All payments made under the terms of the perpetual care fund bond shall be deposited by the custodian directly into the standby trust fund or escrow account in compliance with instructions from the department. The standby trust fund or escrow account must meet the requirements for a trust fund or escrow account established as a perpetual care fund under subsection (2), except that until the standby trust fund or escrow account is funded pursuant to the requirements of this subsection, the following are not required:

(a) Payments into the standby trust fund or escrow account as specified in subsection (3).

(b) Annual accountings as required in subsection (8).

(17) 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 fund or escrow account.

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

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

(a) Except as provided in subdivision (b), for a landfill or coal ash impoundment that is not a captive facility, 36 cents for each ton or portion of a ton of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill or coal ash impoundment before October 1, 2023.

(b) For a landfill or coal ash impoundment that is not a captive facility, 12 cents per ton or portion of a ton of foundry sand, slag from metal melting, baghouse dust, furnace refractory brick, pulp and paper mill material, paper mill ash, wood ash, coal bottom ash, mixed wood ash, fly ash, flue gas desulfurization sludge, contaminated soil, cement kiln dust, lime kiln dust, and other industrial waste that weighs at least 1 ton per cubic yard, as determined by the generator.

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

- (i) 100,000 or more tons of waste, \$3,000.00.
- (ii) 75,000 or more but less than 100,000 tons of waste, \$2,500.00.
- (iii) 50,000 or more but less than 75,000 tons of waste, \$2,000.00.
- (iv) 25,000 or more but less than 50,000 tons of waste, \$1,000.00.
- (v) Less than 25,000 tons of waste, \$500.00.

(2) Within 30 days after the end of each quarter of a state fiscal year, the owner or operator of a landfill or coal ash impoundment that is not a captive facility shall pay the surcharge under subsection (1)(a) for waste received during that quarter of the state fiscal year. Within 30 days after the end of a state fiscal year, the owner or operator of a type III landfill or coal ash impoundment that is a captive facility shall pay the surcharge under subsection (1)(b) for waste received during that state fiscal year.

(3) If the owner or operator of a landfill or coal ash impoundment is required to pay the surcharge under subsection (1), the owner or operator shall pass through and collect the surcharge from any person that generated the solid waste or arranged for its delivery to the hauler or solid waste processing and transfer facility, notwithstanding the provisions of any agreement to the contrary or the absence of any agreement.

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

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

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

(3) If the owner or operator of a landfill or coal ash impoundment has completed postclosure maintenance and monitoring in compliance with part 115 and the approved postclosure plan, the owner or operator may request that financial assurance required by sections 11523 and 11523a be terminated. The person requesting termination of financial assurance shall submit to the department a statement that the landfill or coal ash impoundment has been monitored and maintained in compliance with part 115 and the approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the landfill or coal ash impoundment is not subject to corrective action under section 11512(21). Within 60 days after receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement and do 1 of the following:

(a) Approve the statement, notify the owner or operator that the owner or operator is no longer required to maintain financial assurance, return or release all financial assurance mechanisms, and, if the perpetual care fund was established as a trust fund or escrow account, notify the custodian of the perpetual care fund to disburse money from the fund as provided in section 11525(11).

(b) Disapprove the statement and provide the owner or operator with a detailed written explanation of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in compliance with part 115 or the approved postclosure plan.

(4) The owner or operator of a materials utilization facility required to provide financial assurance under section 11523(2) may request that the financial assurance be terminated. The person requesting termination of financial assurance shall submit to the department a statement that the facility has been maintained in compliance with part 115 and that all managed material has been removed from the facility. Within 60 days after receiving a statement under this subsection, the department shall perform a consistency review of the statement and do 1 of the following:

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

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

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

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

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

(4) The custodian of a landfill care fund trust fund or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Any interest and earnings on the fund shall be distributed as directed by the owner or operator of the landfill. The custodian may be compensated from the fund for reasonable fees and costs incurred for the custodian's responsibilities as custodian. The custodian of a landfill care fund trust fund or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(5) The custodian of a landfill care fund trust fund or escrow account shall not disburse any funds to the owner or operator of a landfill for the purposes of the landfill care fund and the issuer or holder of a landfill care fund bond shall not reduce the amount of the bond except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the landfill care fund is liable and shall disburse funds to pay taxes owed by the landfill care fund, without permission of the department. The owner or operator of the landfill shall provide notice of requests for disbursement from a landfill care fund trust fund or escrow account or reduction of a landfill care fund bond and the department's denials and approvals to the custodian of the landfill care fund trust fund or escrow account or the issuer or holder of the landfill care fund bond. Requests for disbursement from a landfill care fund trust fund or escrow account or a reduction of a landfill care fund bond shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a landfill care fund trust fund or escrow account or a reduction of a landfill care fund bond. The department shall approve the request if the total amount of financial assurance maintained meets the requirements of section 11523a.

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

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

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

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

(10) This section does not create a cause of action at law or in equity against a custodian of a landfill 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 landfill care fund.

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

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

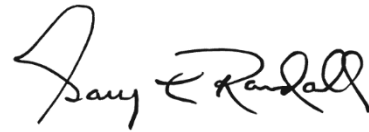
(b) A standby trust fund or escrow account for a landfill care fund bond.

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.

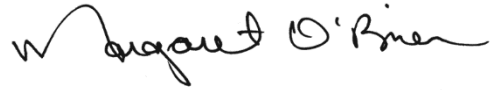
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

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.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor