

HOUSE BILL No. 5758

June 14, 1988, Introduced by Reps. Browne, Scott, Bartnik, Weeks, Dobronski, Jonker, Maynard, Dutko, Strand, Docherty, Leland, Sofio, Rocca, Sikkema, DeLange, Trim, Kosteva, Gire and DeMars and referred to the Committee on Appropriations.

A bill to create a fund to protect certain persons from damages resulting from environmental contamination; and to prescribe the powers and duties of certain public bodies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "environmental protection assistance act".

3 Sec. 2. As used in this act:

4 (a) "Claimant" means a person who has suffered damages as a
5 result of environmental contamination.

6 (b) "Commission" means the commission of natural resources
7 or its designee.

8 (c) "Damages" means costs resulting from the treatment, mon-
9 itoring, or replacement of a water supply, or the cost of a
0 temporary or permanent relocation of persons.

1 (d) "Environmental contamination" means the release of a
2 hazardous substance, or the potential release of a discarded
3 hazardous substance, in a quantity, which is injurious to the
4 environment, or to the public health, safety, or welfare.

5 (e) "Fund" means the environmental protection assistance
6 fund created in section 3.

7 (f) "Hazardous substance" means a chemical or other material
8 which is or may become injurious to the public health, safety, or
9 welfare, or to the environment.

10 (g) "Land" means real estate or rights in real estate.

11 (h) "Person" means an individual, sole proprietorship, part-
12 nership, association, or corporation that suffers damages as a
13 result of environmental contamination.

14 Sec. 3. The environmental protection assistance fund is
15 hereby created as a separate fund in the state treasury to be
16 administered and expended by the commission as provided in this
17 act.

18 Sec. 4. (1) The fund may receive money to pay the claims of
19 persons who have suffered damages as the result of environmental
20 contamination pursuant to this act from the following sources:

21 (a) Appropriations from the general fund.

22 (b) General obligation bonds issued for purposes related to
23 environmental contamination cleanup and other remedial action.

24 (c) Money from any other lawful source.

25 (2) The fund shall be utilized to protect persons who file
26 claims under this act alleging that as a result of environmental
27 contamination the person has suffered damages or is in imminent

1 danger of suffering damages and is in need of assistance from the
2 fund.

3 (3) Money in the fund shall be available only if the claim-
4 ant is not entitled to reimbursement or payment for the damages
5 from any other public or private source.

6 Sec. 5. (1) In implementing its responsibilities under this
7 act, the commission shall do all of the following:

8 (a) Designate a person who shall be responsible to the com-
9 mission for implementing this act.

10 (b) Promulgate rules pursuant to the administrative proce-
11 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
12 sections 24.201 to 24.328 of the Michigan Compiled Laws.

13 (c) Obtain from a state or local governmental unit assist-
14 ance and data to enable the commission to carry out its functions
15 and duties.

16 (d) Determine claims for awards and to reinvestigate or
17 reopen cases as the commission considers necessary.

18 (e) Consult the panel created in section 7.

19 (f) Give an annual written report of its activities to the
20 governor and to the legislature.

21 (g) Conduct a program to insure continued public awareness
22 of the provisions of this act in cooperation with state and local
23 agencies.

24 (2) A claimant is not eligible to receive damages under this
25 act if he or she is responsible for the environmental contamina-
26 tion that damaged the claimant.

1 Sec. 6. (1) A claim may be filed by the person eligible to
2 receive an award, or if a person is a minor, by his or her parent
3 or guardian.

4 (2) A claim shall be filed in the office of the commission
5 in person or by mail. The designee of the commission shall
6 accept for filing a claim which is submitted by a person who is
7 eligible and which alleges the jurisdictional requirements set
8 forth in this act and meets the requirements as to form as
9 approved by the commission.

10 Sec. 7. (1) The commission shall examine the papers filed
11 in support of a claim. The commission shall cause an investiga-
12 tion to be conducted into the validity of the claim. The inves-
13 tigation shall include an examination of official records and
14 reports concerning the claim and an examination of any available
15 reports relating to the injury upon which the claim is based.

16 (2) The commission may decide the claim in favor of a claim-
17 ant on the basis of the papers filed in support of the claim and
18 the report of the investigation of the claim. If the commission
19 is unable to decide the claim upon the basis of the papers and
20 the report, it shall order a hearing to be heard by a panel con-
21 sisting of the following individuals:

22 (a) The director of the department of natural resources.

23 (b) The director of public health.

24 (c) An individual representing a university or college
25 within this state.

26 (d) An individual representing a private consulting firm
27 within this state.

1 (e) A member of the commission.

2 At the hearing any relevant evidence, not legally privileged, is
3 admissible.

4 (3) After examining the papers filed in support of a claim
5 and the report of investigation, and after a hearing, if any, the
6 commission shall make a decision granting or denying the award.
7 The panel may hold hearings, administer oaths or affirmations,
8 examine any person under oath or affirmation, issue subpoenas
9 requiring the attendance and giving of testimony of witnesses,
10 and the production of books, papers, documentary, or other
11 evidence. For the purposes of this section, a certified copy of
12 any investigative report relating to the hearing in question will
13 meet the requirements of this section. In addition, the panel
14 may take or cause to be taken affidavits or depositions within or
15 without the state. The panel shall make a written recommendation
16 to the commission regarding the claim.

17 (4) Within 90 days of receiving a claim and any papers filed
18 in support of the claim, the commission shall file a written
19 report setting forth the decision and the reasons for the
20 decision. The commission shall notify the claimant and furnish
21 the claimant with a copy of the report.

22 Sec. 8. (1) Within 30 days after receipt of the copy of the
23 report containing the final decision of the commission, the
24 claimant may by leave to appeal commence a proceeding in the
25 court of appeals to review the decision of the board.

1 (2) A proceeding pursuant to this section shall be commenced
2 by the service of notice upon the commission in person or by
3 mail.

4 Sec. 9. If it appears to the commission, before it takes
5 action upon the claim, that the claim is one with respect to
6 which an award probably will be made and undue hardship will
7 result to the claimant if immediate payment is not made, the com-
8 mission may make an emergency award to the claimant pending a
9 final decision in the case. The amount of the emergency award
10 shall not exceed \$5,000.00. The amount of the emergency award
11 shall be deducted from the final award made to the claimant. The
12 excess of the amount of the emergency award over the amount of
13 the final award, if any, shall be repaid by the claimant to the
14 commission.

15 Sec. 10. An award shall not be made unless the commission
16 finds all of the following:

17 (a) That an environmental contamination has occurred.

18 (b) The claimant has or will suffer damages as a result of
19 the environmental contamination.

20 (c) The claimant is not responsible for the environmental
21 contamination.

22 Sec. 11. (1) The aggregate award under this act shall not
23 exceed \$70,000.00 per claimant.

24 (2) An award shall be reduced by the amount of a payment
25 received or to be received as a result of the injury from any of
26 the following:

1 (a) The person or on behalf of the person who is responsible
2 for the environmental contamination.

3 (b) Insurance.

4 (c) Public funds.

5 (d) An emergency award pursuant to section 9.

6 (3) The commission shall determine whether the claimant con-
7 tributed to the infliction of his or her injury and shall reduce
8 the amount of the award or reject the claim altogether, in
9 accordance with the determination.

10 Sec. 12. The award shall be paid in a lump sum, except that
11 in the case of death or protracted disability, the commission may
12 specify that the award shall provide for periodic payments to
13 compensate for loss of earnings or support. An award made pursu-
14 ant to this act shall not be subject to execution or attachment
15 other than for expenses resulting from the injury which is the
16 basis for the claim.

17 Sec. 13. The record of a proceeding before the commission
18 or a panel formed pursuant to section 7 shall be a public
19 record. A record or report obtained by the panel, the confiden-
20 tiality of which is protected by any other law or rule, shall
21 remain confidential.

22 Sec. 14. Acceptance of an award made pursuant to this act
23 shall subrogate the state, to the extent of the award, to any
24 right or right of action accruing to the claimant to recover pay-
25 ments on account of losses resulting from the environmental con-
26 tamination with respect to which the award is made.

1 Sec. 15. A person who, with intent to defraud or cheat by
2 falsely presenting the facts and circumstances of an
3 environmental contamination to the commission, causes an award of
4 money less than \$100.00 to be made under this act to any person
5 is guilty of a misdemeanor punishable by imprisonment for not
6 more than 3 months, or by a fine of not more than \$1,000.00, or
7 both; if the award is valued at more than \$100.00, the person
8 shall be guilty of a felony, punishable by imprisonment for not
9 more than 10 years, or by a fine of not more than \$15,000.00, or
10 both.