



SENATE BILL No. 35

January 13, 1993, Introduced by Senator EHLERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend Act No. 64 of the Public Acts of 1979, entitled as amended

"Hazardous waste management act,"

as amended, being sections 299.501 to 299.551 of the Michigan Compiled Laws, by adding sections 41a and 41b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 64 of the Public Acts of 1979, as
2 amended, being sections 299.501 to 299.551 of the Michigan
3 Compiled Laws, is amended by adding sections 41a and 41b to read
4 as follows:

5 SEC. 41A. A PERSON REQUIRED UNDER SECTION 41 TO PROVIDE
6 FINANCIAL ASSURANCE FOR A LANDFILL TO COVER THE COST OF POSTCLO-
7 SURE MONITORING AND MAINTENANCE AT THE LANDFILL MAY REQUEST A
8 REDUCTION IN THE AMOUNT OF FINANCIAL ASSURANCE REQUIRED UPON
9 REAPPLICATION FOR AN OPERATING LICENSE FOR THAT LANDFILL. THE

1 DIRECTOR SHALL GRANT THIS REQUEST UNLESS THERE ARE SUFFICIENT
2 GROUNDS FOR DENIAL AND THOSE REASONS ARE PROVIDED IN WRITING.
3 THE DIRECTOR SHALL GRANT OR DENY A REQUEST FOR A REDUCTION OF THE
4 FINANCIAL ASSURANCE WITHIN 60 DAYS AFTER THE REQUEST IS MADE. IF
5 THE DIRECTOR GRANTS A REQUEST FOR REDUCED FINANCIAL ASSURANCE,
6 THE DIRECTOR SHALL REQUIRE FINANCIAL ASSURANCE IN AN AMOUNT SUCH
7 THAT THE AMOUNT OF MONEY IN THE PERPETUAL CARE FUND REQUIRED IN
8 SECTION 41B PLUS THE AMOUNT OF THE REDUCED FINANCIAL ASSURANCE
9 EQUALS THE AMOUNT OF THE FINANCIAL ASSURANCE REQUIRED IN SECTION
10 41 FOR POSTCLOSURE MONITORING AND MAINTENANCE, PLUS AN ADDITIONAL
11 20% OF THAT AMOUNT. THE DIRECTOR SHALL RELEASE THE FINANCIAL
12 ASSURANCE REQUIRED BY SECTION 41 FOR POSTCLOSURE MONITORING AND
13 MAINTENANCE IF THE AMOUNT IN THE PERPETUAL CARE FUND EXCEEDS THE
14 AMOUNT OF THE FINANCIAL ASSURANCE REQUIRED UNDER SECTION 41 FOR
15 POSTCLOSURE MONITORING AND MAINTENANCE. PRIOR TO CLOSURE OF A
16 LANDFILL, IF MONEY IS DISBURSED FROM THE PERPETUAL CARE FUND,
17 THEN THE DIRECTOR MAY REQUIRE A CORRESPONDING INCREASE IN THE
18 AMOUNT OF FINANCIAL ASSURANCE REQUIRED TO BE PROVIDED.

19 SEC. 41B. (1) THE OWNER OR OPERATOR OF A LANDFILL SHALL
20 ESTABLISH AND MAINTAIN A PERPETUAL CARE FUND TO BE USED EXCLU-
21 SIVELY FOR CLOSURE, MONITORING, AND MAINTENANCE OF THE LANDFILL,
22 AND FOR RESPONSE ACTIVITY NECESSITATED BY A DISCHARGE FROM THE
23 LANDFILL OF A SUBSTANCE WHICH IS OR MAY BECOME INJURIOUS TO THE
24 PUBLIC HEALTH, SAFETY, OR WELFARE, OR TO THE ENVIRONMENT. A PER-
25 PETUAL CARE FUND MAY BE ESTABLISHED AS A TRUST OR AN ESCROW
26 ACCOUNT.

1 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE OWNER
2 OR OPERATOR OF A LANDFILL SHALL DEPOSIT INTO THE PERPETUAL CARE
3 FUND \$5.00 FOR EACH TON OR PORTION OF A TON OF HAZARDOUS WASTE
4 THAT IS DISPOSED OF IN THE LANDFILL AFTER THE EFFECTIVE DATE OF
5 THIS SECTION. IF THE LANDFILL IS NOT EQUIPPED WITH A SCALE, THE
6 OWNER OR OPERATOR SHALL DEPOSIT INTO THE PERPETUAL CARE FUND
7 \$5.00 FOR EACH CUBIC YARD OR PORTION OF A CUBIC YARD OF HAZARDOUS
8 WASTE THAT IS DISPOSED OF IN THE LANDFILL AFTER THE EFFECTIVE
9 DATE OF THIS SECTION.

10 (3) THE OWNER OR OPERATOR OF A LANDFILL MAY CONTRIBUTE ADDI-
11 TIONAL AMOUNTS INTO THE PERPETUAL CARE FUND AT HIS OR HER
12 DISCRETION.

13 (4) THE CUSTODIAN OF A PERPETUAL CARE FUND SHALL BE A BANK
14 OR OTHER FINANCIAL INSTITUTION THAT HAS THE AUTHORITY TO ACT AS A
15 CUSTODIAN AND WHOSE ACCOUNT OPERATIONS ARE REGULATED AND EXAMINED
16 BY A FEDERAL OR STATE AGENCY. THE CUSTODIAN SHALL INVEST MONEY
17 IN A PERPETUAL CARE FUND IN TIME OR DEMAND DEPOSITS OF THE CUSTO-
18 DIAN OR ANY OTHER FINANCIAL INSTITUTION, TO THE EXTENT INSURED BY
19 AN AGENCY OF THE FEDERAL GOVERNMENT, IN DIRECT OBLIGATIONS OF THE
20 FEDERAL GOVERNMENT, OR THIS STATE, OR IN OBLIGATIONS WHERE THE
21 PRINCIPAL AND INTEREST ARE GUARANTEED BY THE FEDERAL GOVERNMENT
22 OR THIS STATE OR IN A COMMON TRUST FUND OR REGISTERED MUTUAL FUND
23 COMPRISED SOLELY OF THESE INVESTMENTS. EARNINGS SHALL BE CRED-
24 ITED TO THE PERPETUAL CARE FUND. THE AGREEMENT GOVERNING THE
25 OPERATION OF THE PERPETUAL CARE FUND SHALL BE EXECUTED ON A FORM
26 PROVIDED BY THE DIRECTOR. THE CUSTODIAN MAY BE COMPENSATED FOR
27 REASONABLE FEES AND COSTS INCURRED FOR HIS OR HER

1 RESPONSIBILITIES AS CUSTODIAN. THE ACCOUNTS OF A PERPETUAL CARE
2 FUND SHALL BE KEPT ON A CALENDAR YEAR BASIS. THE CUSTODIAN SHALL
3 ANNUALLY MAKE AN ACCOUNTING TO THE DIRECTOR WITHIN 30 DAYS FOL-
4 LOWING THE CLOSE OF THE CALENDAR YEAR.

5 (5) THE CUSTODIAN SHALL NOT DISBURSE ANY FUNDS TO THE OWNER
6 OR OPERATOR OF A LANDFILL FOR THE PURPOSES OF THE PERPETUAL CARE
7 FUND EXCEPT UPON THE PRIOR WRITTEN APPROVAL OF THE DIRECTOR.
8 HOWEVER, THE CUSTODIAN SHALL FILE ALL REQUIRED TAX RETURNS FOR
9 WHICH THE PERPETUAL CARE FUND IS LIABLE AND SHALL DISBURSE FUNDS
10 FROM EARNINGS OF THE FUND TO PAY LAWFULLY DUE TAXES OWED BY THE
11 PERPETUAL CARE FUND WITHOUT PERMISSION OF THE DIRECTOR. UPON THE
12 REQUEST OF THE OWNER OR OPERATOR OF A LANDFILL FOR A DISBURSEMENT
13 OF FUNDS FROM A PERPETUAL CARE FUND, THE DIRECTOR SHALL, WITHIN
14 60 DAYS, GRANT WRITTEN APPROVAL OR ISSUE A WRITTEN DENIAL STATING
15 THE REASONS FOR DENIAL. THE OWNER OR OPERATOR OF THE LANDFILL
16 SHALL PROVIDE NOTICE OF REQUESTS FOR DISBURSEMENT, AND DENIALS
17 AND APPROVALS TO THE CUSTODIAN OF THE PERPETUAL CARE FUND.
18 REQUESTS FOR DISBURSEMENT FROM A PERPETUAL CARE FUND SHALL BE
19 SUBMITTED NOT MORE FREQUENTLY THAN QUARTERLY. IF THE AMOUNT OF
20 MONEY IN A PERPETUAL CARE FUND FALLS BELOW AN AMOUNT EQUAL TO
21 THAT REQUIRED IN SECTION 41 FOR POSTCLOSURE MONITORING AND MAIN-
22 TENANCE, THE DIRECTOR IS NOT REQUIRED TO APPROVE A DISBURSEMENT
23 FROM THE FUND, AND THE COST OF NECESSARY CLOSURE, MONITORING,
24 MAINTENANCE, AND RESPONSE ACTIVITIES SHALL BE BORNE BY THE OWNER
25 AND OPERATOR OF THE LANDFILL.

26 (6) IF THE OWNER OR OPERATOR OF A LANDFILL REFUSES OR FAILS
27 TO CONDUCT CLOSURE, MONITORING, MAINTENANCE, OR RESPONSE

1 ACTIVITIES AS ARE NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY,
2 WELFARE, OR THE ENVIRONMENT OR FAILS TO REQUEST THE DISBURSEMENT
3 OF MONEY FROM A PERPETUAL CARE FUND WHEN NECESSARY TO PROTECT THE
4 PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT, THEN THE
5 DIRECTOR MAY REQUIRE THE DISBURSEMENT OF MONEY FROM THE PERPETUAL
6 CARE FUND AND MAY EXPEND THE MONEY FOR CLOSURE, MONITORING, MAIN-
7 TENANCE, AND RESPONSE ACTIVITIES. THE DEPARTMENT MAY ASSESS A
8 PERPETUAL CARE FUND FOR ADMINISTRATIVE COSTS ASSOCIATED WITH
9 ACTIONS TAKEN UNDER THIS SUBSECTION.

10 (7) EXCEPT AS PROVIDED IN SUBSECTION (9), UPON THE EXPIRA-
11 TION OF 30 YEARS AFTER THE CLOSURE OF A LANDFILL, ANY MONEY IN
12 THE PERPETUAL CARE FUND FOR THAT LANDFILL SHALL BE DISBURSED BY
13 THE CUSTODIAN UPON APPROVAL OF THE DIRECTOR AS FOLLOWS:

14 (A) FIFTY PERCENT SHALL BE DEPOSITED IN THE ENVIRONMENTAL
15 RESPONSE FUND CREATED IN THE ENVIRONMENTAL RESPONSE ACT, ACT
16 NO. 307 OF THE PUBLIC ACTS OF 1982, BEING SECTIONS 299.601 TO
17 299.618 OF THE MICHIGAN COMPILED LAWS.

18 (B) FIFTY PERCENT SHALL BE RETURNED TO THE OWNER OF THE
19 LANDFILL UNLESS A CONTRACT BETWEEN THE OWNER AND THE OPERATOR OF
20 THE LANDFILL PROVIDES OTHERWISE.

21 (8) THE OWNER OF A LANDFILL SHALL PROVIDE NOTICE TO THE CUS-
22 TODIAN OF THE PERPETUAL CARE FUND FOR THAT LANDFILL IF THERE IS A
23 CHANGE OF OWNERSHIP OF THE LANDFILL. THE CUSTODIAN SHALL MAIN-
24 TAIN RECORDS OF OWNERSHIP OF A LANDFILL DURING THE TIME IN WHICH
25 A PERPETUAL CARE FUND IS ESTABLISHED.

26 (9) FOLLOWING THE EXPIRATION OF 30 YEARS AFTER THE CLOSURE
27 OF A LANDFILL, THE OWNER OF THE LANDFILL MAY PETITION THE

1 DIRECTOR FOR APPROVAL OF DISBURSEMENT OF MONEY IN A PERPETUAL
2 CARE FUND. THE DIRECTOR SHALL APPROVE DISBURSEMENT PURSUANT TO
3 SUBSECTION (7) UNLESS THE DIRECTOR DETERMINES THAT THE OWNER OR
4 OPERATOR OF THE LANDFILL HAS REFUSED OR FAILED TO CONDUCT CLO-
5 SURE, MONITORING, MAINTENANCE, OR RESPONSE ACTIVITIES AT THE
6 LANDFILL NECESSARY TO PROTECT PUBLIC HEALTH, SAFETY, WELFARE, OR
7 THE ENVIRONMENT. IF THE DIRECTOR MAKES SUCH A DETERMINATION, THE
8 DIRECTOR SHALL DENY THE OWNER'S REQUEST FOR APPROVAL OF DISBURSE-
9 MENT AND SHALL NOTIFY THE OWNER OF THE LANDFILL AND THE CUSTODIAN
10 IN WRITING OF THAT DETERMINATION AND THE REASONS FOR THAT
11 DETERMINATION. NINETY DAYS AFTER RECEIVING NOTICE OF THE
12 DIRECTOR'S DETERMINATION UNDER THIS SUBSECTION, THE CUSTODIAN
13 SHALL DISBURSE ALL OF THE MONEY IN THE PERPETUAL CARE FUND TO THE
14 ENVIRONMENTAL RESPONSE FUND CREATED IN ACT NO. 307 OF THE PUBLIC
15 ACTS OF 1982 UNLESS DURING THIS 90-DAY PERIOD THE OWNER OR OPERA-
16 TOR OF THE LANDFILL HAS APPEALED THE DIRECTOR'S DETERMINATION IN
17 CIRCUIT COURT. IF THE OWNER OF A LANDFILL DOES NOT PETITION FOR
18 THE DIRECTOR'S APPROVAL OF A DISBURSEMENT, THE DIRECTOR ON HIS OR
19 HER OWN MAY APPROVE DISBURSEMENT OF MONEY IN A PERPETUAL CARE
20 FUND PURSUANT TO SUBSECTION (7) OR THIS SUBSECTION.

21 (10) THIS SECTION DOES NOT RELIEVE AN OWNER OR OPERATOR OF A
22 LANDFILL OF ANY LIABILITY THAT HE OR SHE MAY HAVE UNDER THIS ACT
23 OR AS OTHERWISE PROVIDED BY LAW.

24 (11) THIS SECTION DOES NOT CREATE A CAUSE OF ACTION AT LAW
25 OR IN EQUITY AGAINST A CUSTODIAN OF A PERPETUAL CARE FUND OTHER
26 THAN FOR ERRORS OR OMISSIONS RELATED TO INVESTMENTS, ACCOUNTINGS,
27 DISBURSEMENTS, FILINGS OF REQUIRED TAX RETURNS, AND MAINTENANCE

1 OF RECORDS REQUIRED BY THIS SECTION OR THE APPLICABLE PERPETUAL
2 CARE FUND.

3 (12) AS USED IN THIS SECTION, "CUSTODIAN" MEANS THE TRUSTEE
4 OR ESCROW AGENT OF A PERPETUAL CARE FUND.