

# HOUSE BILL NO. 5246

October 25, 2023, Introduced by Reps. Tsernoglou, Morgan, Conlin, Rheingans, Miller, Wilson, Paiz, Churches, Breen, Glanville, Hood, Steckloff, Hoskins, MacDonell, Arbit, Skaggs, Brixie, McKinney, Hope, Mentzer, Neeley, Koleszar, Wegela, Hill, Brabec, Andrews, Young, Puri, Martus, Dievendorf, Weiss, Aiyash and Coffia and referred to the Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3101, 3103, and 3115 (MCL 324.3101, 324.3103, and 324.3115), section 3101 as amended by 2015 PA 247, section 3103 as amended by 2005 PA 33, and section 3115 as amended by 2004 PA 143, and by adding section 3106c.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 3101. As used in this part:
- 2       (a) "Aquatic nuisance species" means a nonindigenous species

1 that threatens the diversity or abundance of native species or the  
2 ecological stability of infested waters, or commercial,  
3 agricultural, aquacultural, or recreational activities dependent on  
4 such waters.

5 (b) "Ballast water" means water and associated solids taken on  
6 board a vessel to control or maintain trim, draft, stability, or  
7 stresses on the vessel, without regard to the manner in which it is  
8 carried.

9 (c) "Ballast water treatment method" means a method of  
10 treating ballast water and sediments to remove or destroy living  
11 biological organisms through 1 or more of the following:

12 (i) Filtration.

13 (ii) The application of biocides or ultraviolet light.

14 (iii) Thermal methods.

15 (iv) Other treatment techniques approved by the department.

16 (d) **"Bond" means a financial instrument guaranteeing**  
17 **performance, including a surety bond from a surety company**  
18 **authorized to transact business in this state, a certificate of**  
19 **deposit, a cash bond, an irrevocable letter of credit, an insurance**  
20 **policy, or a combination of any of these instruments in favor of**  
21 **the department.**

22 (e) "Certificate of deposit" means a negotiable certificate of  
23 deposit that meets all of the following requirements:

24 (i) Is negotiable.

25 (ii) Is held by a bank or other financial institution regulated  
26 and examined by a state or federal agency.

27 (iii) Is fully insured by an agency of the United States  
28 government.

29 (iv) Is in the sole name of the department.

1           (v) Has a maturity date of not less than 1 year.

2           (vi) Is renewed not later than 60 days before the maturity  
3 date.

4           (f) ~~(d)~~ "Department" means the department of ~~environmental~~  
5 ~~quality~~. **environment, Great Lakes, and energy.**

6           (g) ~~(e)~~ "Detroit ~~consumer price index~~" **Consumer Price Index**  
7 means the most comprehensive index of consumer prices available for  
8 the Detroit area from the United States Department of Labor, Bureau  
9 of Labor Statistics.

10           (h) ~~(f)~~ "Emergency management coordinator" means that term as  
11 defined in section 2 of the emergency management act, 1976 PA 390,  
12 MCL 30.402.

13           (i) "Escrow account" means an account that is managed by a  
14 bank or other financial institution whose account operations are  
15 regulated and examined by a federal or state agency and that  
16 complies with section 11523b.

17           (j) ~~(g)~~ "Great Lakes" means the Great Lakes and their  
18 connecting waters, including Lake St. Clair.

19           (k) ~~(h)~~ "Group 1 facility" means a facility whose discharge is  
20 described by R 323.2218 of the Michigan ~~administrative~~  
21 ~~code~~. **Administrative Code.**

22           (l) ~~(i)~~ "Group 2 facility" means a facility whose discharge is  
23 described by R 323.2210(y), R 323.2215, or R 323.2216 of the  
24 Michigan ~~administrative code~~. **Administrative Code.** Group 2 facility  
25 does not include a Group 2a facility.

26           (m) ~~(j)~~ "Group 2a facility" means a facility whose discharge  
27 is described by R 323.2210(y) or R 323.2215 of the Michigan  
28 ~~administrative code~~. **Administrative Code** and that meets 1 or more of  
29 the following:

1 (i) The facility's discharge is from a coin-operated  
2 laundromat.

3 (ii) The facility's discharge is from a car wash or vehicle  
4 wash open to the public.

5 (iii) The facility's discharge is a subsurface sanitary  
6 discharge of fewer than 10,000 gallons per day that does not meet  
7 the terms for authorization under R 323.2211(a) of the Michigan  
8 ~~administrative code.~~**Administrative Code.**

9 (iv) The facility's discharge is a seasonal sanitary discharge  
10 from a public park, public or private recreational vehicle park or  
11 campground, or recreational or vacation camp.

12 (n) ~~(k)~~—"Group 3 facility" means a facility whose discharge is  
13 described by R 323.2211 or R 323.2213 of the Michigan  
14 ~~administrative code.~~**Administrative Code.**

15 (o) **"Insurance policy" means an insurance policy that conforms**  
16 **to the requirements of 40 CFR 258.74(d) and is provided by an**  
17 **insurer that has a certificate of authority from the director of**  
18 **insurance and financial services to sell this line of coverage. An**  
19 **applicant for an operating license or general permit shall submit**  
20 **evidence of the required coverage by submitting both of the**  
21 **following to the department:**

22 (i) **A certificate of insurance that uses wording approved by**  
23 **the department.**

24 (ii) **A certified true and complete copy of the insurance**  
25 **policy.**

26 (p) ~~(l)~~—"Local health department" means that term as defined  
27 in section 1105 of the public health code, 1978 PA 368, MCL  
28 333.1105.

29 (q) ~~(m)~~—"Local unit" means a county, city, village, or

1 township or an agency or instrumentality of any of these entities.

2       **(r)** ~~(n)~~—"Municipality" means this state, a county, city,  
3 village, or township, or an agency or instrumentality of any of  
4 these entities.

5       **(s)** ~~(o)~~—"National response center" means the National  
6 Communications Center established under the clean water act, 33 USC  
7 1251 to 1387, located in Washington, DC, that receives and relays  
8 notice of oil discharge or releases of hazardous substances to  
9 appropriate federal officials.

10       **(t)** ~~(p)~~—"Nonocean-going vessel" means a vessel that is not an  
11 ocean-going vessel.

12       **(u)** ~~(q)~~—"Ocean-going vessel" means a vessel that operates on  
13 the Great Lakes or the St. Lawrence waterway after operating in  
14 waters outside of the Great Lakes or the St. Lawrence waterway.

15       **(v)** ~~(r)~~—"Open water disposal of contaminated dredge materials"  
16 means the placement of dredge materials contaminated with toxic  
17 substances as defined in R 323.1205 of the Michigan administrative  
18 code into the open waters of the waters of the state but does not  
19 include the siting or use of a confined disposal facility  
20 designated by the United States Army Corps of Engineers or beach  
21 nourishment activities utilizing uncontaminated materials.

22       **(w)** ~~(s)~~—"Primary public safety answering point" means that  
23 term as defined in section 102 of the emergency telephone service  
24 enabling act, 1986 PA 32, MCL 484.1102.

25       **(x)** **"Response activity costs" means that term as defined in**  
26 **section 20101.**

27       **(y)** ~~(t)~~—"Sediments" means any matter settled out of ballast  
28 water within a vessel.

29       **(z)** ~~(u)~~—"Sewage sludge" means sewage sludge generated in the

1 treatment of domestic sewage, other than only septage or industrial  
2 waste.

3 **(aa)** ~~(v)~~ "Sewage sludge derivative" means a product for land  
4 application derived from sewage sludge that does not include solid  
5 waste or other waste regulated under this act.

6 ~~(w)~~ "Sewage sludge generator" means a person who generates  
7 sewage sludge that is applied to land.

8 **(bb)** ~~(x)~~ "Sewage sludge distributor" means a person who  
9 applies, markets, or distributes, except at retail, a sewage sludge  
10 derivative.

11 **(cc)** "Sewage sludge generator" means a person who generates  
12 sewage sludge that is applied to land.

13 **(dd)** ~~(y)~~ "St. Lawrence waterway" means the St. Lawrence River,  
14 the St. Lawrence Seaway, and the Gulf of St. Lawrence.

15 **(ee)** ~~(z)~~ "Threshold reporting quantity" means that term as  
16 defined in R 324.2002 of the Michigan ~~administrative~~  
17 ~~code.~~ **Administrative Code.**

18 **(ff)** ~~(aa)~~ "Waters of the state" means groundwaters, lakes,  
19 rivers, and streams and all other watercourses and waters,  
20 including the Great Lakes, within the jurisdiction of this state.

21 Sec. 3103. (1) The department shall protect and conserve the  
22 water resources of the state and shall have control of the  
23 pollution of surface or underground waters of the state and the  
24 Great Lakes ~~, which~~ **that** are or may be affected by waste disposal  
25 of any person. The department may make or cause to be made surveys,  
26 studies, and investigations of the uses of waters of the state,  
27 both surface and underground, and **may** cooperate with other  
28 governments and governmental units and agencies in making the  
29 surveys, studies, and investigations. The department shall assist

1 in an advisory capacity a flood control district that may be  
2 authorized by the legislature. The department, in the public  
3 interest, shall appear and present evidence, reports, and other  
4 testimony during the hearings involving the creation and  
5 organization of flood control districts. The department shall  
6 advise and consult with the legislature on the obligation of ~~the~~  
7 **this** state to participate in the costs of construction and  
8 maintenance as provided for in the official plans of a flood  
9 control district or intercounty drainage district.

10 (2) The department shall enforce this part and may promulgate  
11 rules as it considers necessary to carry out its duties under this  
12 part. However, notwithstanding any rule-promulgation authority that  
13 is provided in this part, except for rules authorized under section  
14 3112(6) **or rules to implement section 3106c**, the department shall  
15 not promulgate any additional rules under this part after December  
16 31, 2006.

17 (3) The department may promulgate rules and take other actions  
18 as may be necessary to comply with the federal water pollution  
19 control act, 33 USC 1251 to ~~1387, 1389~~, and to expend funds  
20 available under ~~such law that act~~ for extension or improvement of  
21 the state or interstate program for prevention and control of water  
22 pollution. This part ~~shall not be construed as authorizing~~ **does not**  
23 **authorize** the department to expend or to incur any obligation to  
24 expend any state funds for ~~such that~~ purpose in excess of any  
25 amount that is appropriated by the legislature.

26 (4) Notwithstanding the limitations on rule promulgation under  
27 subsection (2), rules promulgated under this part before January 1,  
28 2007 shall remain in effect unless rescinded.

29 **Sec. 3106c. (1) As used in this section:**

1 (a) "Facility" means either of the following:

2 (i) A facility whose owner or operator is required to file a  
3 pollution incident prevention plan under R 324.2006 of the Michigan  
4 Administrative Code.

5 (ii) A dry cleaning facility not described in subparagraph (i).

6 (b) "Polluting material" means that term as defined in R  
7 324.2002 of the Michigan Administrative Code.

8 (c) "Pollution incident prevention plan" or "PIPP" means a  
9 plan required under R 324.2006 of the Michigan Administrative Code.

10 (d) "Response activity" means that term as defined in section  
11 20101.

12 (2) A facility owner or operator shall maintain financial  
13 assurance for the purposes of subsection (12) in the amount  
14 required by subsection (3). The facility owner or operator shall  
15 obtain the financial assurance by the following date:

16 (a) For a facility described in subsection (1) (a) (i), by  
17 January 1, 2027, or the first date after the effective date of the  
18 amendatory act that added this section by which the owner or  
19 operator is required to develop or evaluate the pollution incident  
20 prevention plan under R 324.2006 of the Michigan Administrative  
21 Code, whichever is later.

22 (b) For a facility described in subsection (1) (a) (ii), by  
23 January 1, 2026, or 30 days after the facility begins operation,  
24 whichever is later.

25 (3) The financial assurance required under subsection (2)  
26 shall be a bond in not less than the following amount:

27 (a) For a facility described in subsection (1) (a) (i), 70% of  
28 the estimated response activity costs if all polluting materials  
29 typically on-site were released into the environment.



1           (b) For a facility described in subsection (1) (a) (ii) , 70% of  
2 the estimated response activity costs if all polluting materials  
3 typically on-site were released into the environment, or  
4 \$25,000.00, whichever is greater.

5           (4) For the purposes of subsection (3) , response activity  
6 costs shall be estimated by either of the following methods at the  
7 option of the owner or operator:

8           (a) Costs per-pound for each pound of each polluting material  
9 reported in the pollution incident prevention plan inventory. A  
10 PIPP inventory updated or initially filed after the effective date  
11 of the amendatory act that added this section shall include  
12 estimates of the number of pounds of each polluting material that  
13 will typically be on-site.

14           (b) A site-specific third-party estimate approved by the  
15 department.

16           (5) The department may by rule authorize a financial test for  
17 financial assurance as an alternative to a bond.

18           (6) A facility owner or operator shall submit to the  
19 department evidence of financial assurance as required by the  
20 department. The evidence shall be submitted by the date on which  
21 financial assurance is first required under subsection (2) and  
22 every 3 years thereafter and within 30 days after the financial  
23 assurance is drawn upon for the purposes of subsection (12) .  
24 Evidence of an insurance policy shall include both of the  
25 following:

26           (a) A certificate of insurance that uses wording approved by  
27 the department.

28           (b) A certified true and complete copy of the insurance  
29 policy.

1           (7) Not more than 60 days after receiving evidence of  
2 financial assurance, the department shall approve or reject the  
3 financial assurance in writing and notify the owner or operator of  
4 the decision. If the department rejects the financial assurance,  
5 the facility owner or operator shall submit new evidence of  
6 financial assurance within 30 days or shall suspend operations  
7 until the department approves financial assurance for the facility.  
8 Not more than 45 days after receiving new evidence of financial  
9 assurance for a facility whose immediately preceding evidence of  
10 financial assurance was rejected, the department shall approve or  
11 reject the financial assurance in writing and notify the owner or  
12 operator of the decision. Notice of a decision rejecting the  
13 financial assurance shall include a statement specifically  
14 describing why the financial assurance was rejected. If a  
15 facility's evidence of financial assurance is rejected more than  
16 once consecutively, the facility shall suspend operations until the  
17 department approves a financial assurance for the facility. The  
18 department shall include in a notice rejecting financial assurance  
19 under this subsection a statement specifically describing why the  
20 financial assurance was rejected.

21           (8) A facility owner or operator that posts cash as a bond  
22 shall accrue interest on the bond quarterly at the annual rate of  
23 6%, except that the interest rate payable to the owner or operator  
24 shall not exceed the rate of interest accrued on the state common  
25 cash fund for the quarter in which an accrual is determined.  
26 Interest shall be paid to the owner or operator upon release of the  
27 bond by the department. Any interest greater than 6% shall be  
28 deposited in the state treasury to the credit of the general fund.  
29 An owner or operator that uses a certificate of deposit as a bond

1 shall receive any accrued interest on that certificate of deposit  
2 upon release of the bond by the department.

3 (9) The terms of a surety bond, an irrevocable letter of  
4 credit, or an insurance policy shall require the issuing  
5 institution to notify both the department and the facility owner or  
6 operator at least 120 days before the expiration date or any  
7 cancellation of the bond. If the owner or operator does not extend  
8 the effective date of the bond, or establish alternate financial  
9 assurance within 60 days after receipt of an expiration or  
10 cancellation notice from the issuing institution, the department  
11 may draw on the bond.

12 (10) If an owner or operator of a disposal area fulfills the  
13 financial assurance requirements of this part by obtaining a bond,  
14 and the surety company, insurer, or financial or other institution  
15 that issued or holds the bond becomes the subject of a bankruptcy  
16 action commenced under title 11 of the United States Code, 11 USC  
17 101 to 1532, or any successor statute, or has its authority to  
18 issue or hold the bond suspended or revoked, the owner or operator  
19 shall, within 60 days after receiving notice of that event,  
20 establish alternate financial assurance under this part.

21 (11) If a facility is sold or transferred, the owner or  
22 operator shall maintain the financial assurance until the new  
23 owner's or operator's financial assurance is approved under  
24 subsection (7). If the facility is being closed, the owner or  
25 operator may request in writing that the department authorize the  
26 termination of the financial assurance. The request shall include a  
27 certification that all polluting materials have been removed and  
28 that any releases have been reported as required. Within 60 days,  
29 the department shall, in writing, do either of the following:

1           (a) Except as provided in subdivision (b), approve the  
2 request, notify the owner or operator that the owner or operator is  
3 no longer required to maintain financial assurance, and return or  
4 release the financial assurance.

5           (b) If the department has reason to believe that all polluting  
6 materials have not been removed, that a release has not been  
7 reported, or that the facility is not in compliance with part 201,  
8 part 213, or this part, deny the request.

9           (12) The department may utilize a financial assurance required  
10 under this section for bringing the facility into compliance with  
11 part 201, part 213, or this part, including, but not limited to,  
12 removing polluting material from the facility, cleanup at the  
13 facility, and fire suppression or other emergency response at the  
14 facility, including reimbursement to any local unit of government  
15 that incurred emergency response costs. Not less than 7 days before  
16 utilizing the financial assurance, the department shall issue a  
17 notice of violation or order that alleges violation of part 201,  
18 part 213, or this part and shall provide the owner or operator an  
19 opportunity for a hearing.

20           Sec. 3115. (1) The department may request the attorney general  
21 to commence a civil action for appropriate relief, including a  
22 permanent or temporary injunction, for a violation of this part or  
23 a provision of a permit or order issued or rule promulgated under  
24 this part. An action under this subsection may be brought in the  
25 circuit court for the county of Ingham or for the county in which  
26 the defendant is located, resides, or is doing business. If  
27 requested by the defendant within 21 days after service of process,  
28 the court shall grant a change of venue to the circuit court for  
29 the county of Ingham or for the county in which the alleged

1 violation occurred, is occurring, or, in the event of a threat of  
 2 violation, will occur. The court has jurisdiction to restrain the  
 3 violation and to require compliance. In addition to any other  
 4 relief granted under this subsection, the court ~~, except as~~  
 5 ~~otherwise provided in this subsection,~~ shall impose a civil fine of  
 6 not less than \$2,500.00 **and not more, per day of violation, than**  
 7 **\$25,000.00**, and the court may award reasonable attorney fees and  
 8 costs to the prevailing party. However, all of the following apply:

9 ~~(a) The maximum fine imposed by the court shall be not more~~  
 10 ~~than \$25,000.00 per day of violation.~~

11 **(a)** ~~(b)~~ For a failure to report a release to the department or  
 12 to the primary public safety answering point under section  
 13 3111b(1), the court shall impose a civil fine of not more than  
 14 \$2,500.00.

15 **(b)** ~~(c)~~ For a failure to report a release to the local health  
 16 department under section 3111b(2), the court shall impose a civil  
 17 fine of not more than \$500.00.

18 **(c) For a violation of section 3106c, the court shall impose a**  
 19 **civil fine of not less than \$1,000.00 per day of violation and not**  
 20 **more than \$10,000.00 per day of violation.**

21 (2) A person who at the time of the violation knew or should  
 22 have known that he or she discharged a substance ~~contrary to~~ **in**  
 23 **violation of** this part ~~, or contrary to~~ **or** a permit or order issued  
 24 or rule promulgated under this part, or who intentionally makes a  
 25 false statement, representation, or certification in an application  
 26 for or form pertaining to a permit or in a notice or report  
 27 required by the terms and conditions of an issued permit, or who  
 28 intentionally renders inaccurate a monitoring device or record  
 29 required to be maintained by the department, is guilty of a felony

1 and shall be fined not less than \$2,500.00 or more than \$25,000.00  
 2 for each violation. The court may impose an additional fine of not  
 3 more than \$25,000.00 for each day during which the unlawful  
 4 discharge occurred. If the conviction is for a violation committed  
 5 after a first conviction of the person under this subsection, the  
 6 court shall impose a fine of not less than \$25,000.00 per day and  
 7 not more than \$50,000.00 per day of violation. Upon conviction, in  
 8 addition to a fine, the court in its discretion may sentence the  
 9 defendant to imprisonment for not more than 2 years or impose  
 10 probation ~~upon a person for a violation of this part.~~ **on the**  
 11 **defendant.** With the exception of the issuance of criminal  
 12 complaints, issuance of warrants, and the holding of an  
 13 arraignment, the circuit court for the county in which the  
 14 violation occurred has exclusive jurisdiction. However, the person  
 15 ~~shall not be~~ **is not** subject to the penalties of this subsection if  
 16 the discharge of the effluent is in ~~conformance with and obedient~~  
 17 ~~to~~ **compliance with** a rule, order, or permit of the department. In  
 18 addition to a fine, the attorney general may file a civil suit in a  
 19 court of competent jurisdiction to recover the full value of the  
 20 injuries done to the natural resources of ~~the~~ **this** state and the  
 21 costs of surveillance and enforcement by ~~the~~ **this** state resulting  
 22 from the violation.

23 (3) Upon a finding by the court that the actions of a civil  
 24 defendant pose or posed a substantial endangerment to the public  
 25 health, safety, or welfare, the court shall impose, in addition to  
 26 the sanctions set forth in subsection (1), a fine of not less than  
 27 \$500,000.00 and not more than \$5,000,000.00.

28 (4) Upon a finding by the court that the actions of a criminal  
 29 defendant pose or posed a substantial endangerment to the public

1 health, safety, or welfare, the court shall impose, in addition to  
 2 the penalties set forth in subsection (2), a fine of not less than  
 3 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'  
 4 imprisonment.

5 (5) To find a defendant civilly or criminally liable for  
 6 substantial endangerment under subsection (3) or (4), the court  
 7 shall determine that the defendant knowingly or recklessly acted in  
 8 such a manner as to cause a danger of death or serious bodily  
 9 injury and that either of the following occurred:

10 (a) The defendant had an actual awareness, belief, or  
 11 understanding that his or her conduct would cause a substantial  
 12 danger of death or serious bodily injury.

13 (b) The defendant acted in gross disregard of the standard of  
 14 care that any reasonable person should observe in similar  
 15 circumstances.

16 (6) Knowledge possessed by a person other than the defendant  
 17 under subsection (5) may be attributable to the defendant if the  
 18 defendant took affirmative steps to shield himself or herself from  
 19 the relevant information.

20 (7) ~~A Both of the following apply to a~~ civil fine or other  
 21 award ordered paid pursuant to this section: ~~shall do both of the~~  
 22 ~~following:~~

23 (a) ~~Be~~ **It is** payable to the state of Michigan and **shall be**  
 24 credited to the general fund.

25 (b) ~~Constitute~~ **It constitutes** a lien on any property, of any  
 26 nature or kind, owned by the defendant.

27 (8) A lien under subsection (7)(b) shall take effect and have  
 28 priority over all other liens and encumbrances except those filed  
 29 or recorded ~~prior to~~ **before** the date of judgment only if notice of

1 the lien is filed or recorded as required by state or federal law.

2 (9) A lien filed or recorded pursuant to subsection (8) shall  
3 be terminated according to the procedures required by state or  
4 federal law within 14 days after the fine or other award ordered to  
5 be paid is paid.

6 (10) In addition to any other method of collection, any fine  
7 or other award ordered paid may be recovered by right of setoff to  
8 any debt owed to the defendant by ~~the~~**this** state, ~~of Michigan,~~  
9 including the right to a refund of income taxes paid.