

HOUSE BILL No. 4137

February 9, 1989, Introduced by Reps. Kosteva, Perry Bullard, Bartnik, Gubow, Leland, Weeks, DeBeaussaert, Van Regenmorter, Hunter, DeMars and Murphy and referred to the Committee on Public Health.

A bill to amend the title and sections 6 and 10 of Act

No. 245 of the Public Acts of 1929, entitled as amended

"An act to create a water resources commission to protect and conserve the water resources of the state, to have control over the pollution of any waters of the state and the Great Lakes, to have control over the alteration of the watercourses and the flood plains of all rivers and streams, with powers to make rules governing the same, and to prescribe the powers and duties of such commission; to require the registration of manufacturing products, production materials and waste products where certain wastes are discharged; to provide for surveillance fees upon discharges to the waters of the state in order to provide for investigation, monitoring and surveillance necessary to prevent and abate water pollution; to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit the pollution of any waters of the state and the Great Lakes; to prohibit the obstruction of the floodways of the rivers and streams of the state; to designate the commission as the state agency to cooperate and negotiate with other governments and agencies in matters concerning the water resources of the state; and to provide penalties for the violation of this act,"

being sections 323.6 and 323.10 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 6 and 10 of Act No. 245
2 of the Public Acts of 1929, being sections 323.6 and 323.10 of
3 the Michigan Compiled Laws, are amended to read as follows:

4 **TITLE**

5 An act to create a water resources commission to protect and
6 conserve the water resources of the state, to have control over
7 the pollution of any waters of the state and the Great Lakes, to
8 have control over the alteration of the watercourses and the
9 floodplains of all rivers and streams, with powers to make rules
10 governing the same, and to prescribe the powers and duties of
11 such commission; to require the registration of manufacturing
12 products, production materials and waste products where certain
13 wastes are discharged; to provide for surveillance fees upon dis-
14 charges to the waters of the state in order to provide for inves-
15 tigation, monitoring and surveillance necessary to prevent and
16 abate water pollution; to require permits to regulate the dis-
17 charge or storage of any substance which may affect the quality
18 of the waters of the state and to establish restrictions to
19 assure compliance with applicable state standards and to autho-
20 rize the establishment of permit restrictions and programs to
21 assure compliance with applicable federal law and regulations; to
22 prohibit the pollution of any waters of the state and the Great
23 Lakes; to prohibit the obstruction of the floodways of the rivers
24 and streams of the state; to designate the commission as the
25 state agency to cooperate and negotiate with other governments

1 and agencies in matters concerning the water resources of the
2 state; and to provide penalties AND REMEDIES for the violation of
3 this act.

4 Sec. 6. (a) ~~It shall be unlawful for any persons~~ A PERSON
5 SHALL NOT directly or indirectly ~~to~~ discharge into the waters
6 of the state any substance which is or may become injurious to
7 the public health, safety, or welfare; or which is or may become
8 injurious to domestic, commercial, industrial, agricultural, rec-
9 reational, or other uses which are being or may be made of such
10 waters; or which is or may become injurious to the value or util-
11 ity of riparian lands; or which is or may become injurious to
12 livestock, wild animals, birds, fish, aquatic life, or plants or
13 the growth or propagation thereof be prevented or injuriously
14 affected; or whereby the value of fish and game is or may be
15 destroyed or impaired.

16 (b) The discharge of any raw sewage of human origin,
17 directly or indirectly into any of the waters of the state shall
18 be considered prima facie evidence of a violation of this section
19 by the municipality in which the discharge originated unless the
20 discharge shall have been permitted by an order or rule of the
21 commission. If the discharge is not the subject of a valid
22 permit issued by the commission, a municipality responsible for
23 the discharge shall be subject only to the remedies provided in
24 section ~~7~~ 10. If the discharge is the subject of a valid
25 permit issued by the commission pursuant to section 7, and is in
26 violation thereof, a municipality responsible for the discharge
27 shall be subject to the penalties prescribed in section 10.

1 (C) THE DISCHARGE, INTO THE WATERS OF THIS STATE, OF ANY
2 SOLID OR LIQUID WASTE GENERATED BY ANY FACILITY LICENSED OR OTH-
3 ERWISE REGULATED PURSUANT TO THE PROVISIONS OF THE PUBLIC HEALTH
4 CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS
5 333.1101 TO 333.25211 OF THE MICHIGAN COMPILED LAWS, THE MENTAL
6 HEALTH CODE, ACT NO. 258 OF THE PUBLIC ACTS OF 1974, BEING SEC-
7 TIONS 330.1001 TO 330.2106 OF THE MICHIGAN COMPILED LAWS, AND THE
8 HAZARDOUS WASTE MANAGEMENT ACT, ACT NO. 64 OF THE PUBLIC ACTS OF
9 1979, BEING SECTIONS 299.501 TO 299.551 OF THE MICHIGAN COMPILED
10 LAWS, OR THE DISCHARGE OF MEDICAL WASTE AS DEFINED IN SECTION 2
11 OF THE INFECTIOUS MEDICAL WASTE REGULATORY ACT INTO THE WATERS OF
12 THIS STATE SHALL BE PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS
13 ACT AND SHALL SUBJECT THE PERSON RESPONSIBLE TO THE PENALTIES
14 PRESCRIBED IN SECTION 10.

15 (D) ~~(c)~~ A violation of ~~a provision of~~ this section shall
16 be prima facie evidence of the existence of a public nuisance and
17 in addition to the remedies provided for in this act may be
18 abated according to law in an action brought by the attorney gen-
19 eral in a court of competent jurisdiction.

20 Sec. 10. (1) The DEPARTMENT OR THE commission may request
21 the attorney general to commence a civil action for appropriate
22 relief, including a permanent or temporary injunction, for a vio-
23 lation of this act or ~~rules promulgated hereunder~~ THE PROVI-
24 SIONS OF A PERMIT, ORDER, RULE, OR STIPULATION OF THE DEPARTMENT
25 OR THE COMMISSION. An action under this subsection may be
26 brought in the circuit court for the county of Ingham or for the
27 county in which the defendant is located, resides, or is doing

1 business. The court has jurisdiction to restrain the violation
2 and to require compliance. In addition to any other relief
3 granted under this subsection, the court ~~may impose a civil pen-~~
4 ~~alty of not more than \$10,000.00 per day of violation~~ SHALL
5 IMPOSE A CIVIL PENALTY OF NOT LESS THAN \$2,500.00 AND NOT MORE
6 THAN \$25,000.00 PER DAY OF VIOLATION AND SHALL AWARD REASONABLE
7 ATTORNEY FEES AND COSTS TO THE DEPARTMENT IF A VIOLATION IS
8 FOUND.

9 (2) A person who ~~discharges a substance into the waters of~~
10 ~~the state contrary to the provisions of~~ VIOLATES this act, or
11 contrary to the provisions of a permit, order, rule, or stipula-
12 tion of the DEPARTMENT OR THE commission, or who makes a false
13 statement, representation, or certification in an application
14 for, or form pertaining to a permit, or in a notice or report
15 required by the terms and conditions of an issued permit, or who
16 renders inaccurate a monitoring device or record required to be
17 maintained by the commission, is guilty of a ~~misdemeanor~~ FELONY
18 and shall be fined not less than \$2,500.00 nor more than
19 \$25,000.00 for each violation. The court may impose an addi-
20 tional fine of not more than \$25,000.00 for each day during which
21 the unlawful discharge occurred. If the conviction is for a vio-
22 lation committed after a first conviction of the person under
23 this subsection, the court ~~may~~ SHALL impose a fine of NOT LESS
24 THAN \$25,000.00 PER DAY AND not more than \$50,000.00 per day of
25 violation. UPON CONVICTION, IN ADDITION TO A FINE, THE COURT IN
26 ITS DISCRETION MAY SENTENCE THE DEFENDANT TO IMPRISONMENT FOR NOT
27 MORE THAN 2 YEARS OR IMPOSE PROBATION UPON A PERSON FOR A

1 VIOLATION OF THIS ACT. The circuit court for the county in which
2 the violation occurred has exclusive jurisdiction. However, the
3 person shall not be subject to the penalties of this subsection
4 if the discharge of the effluent is in conformance with and obe-
5 dient to a rule, order, or permit of the commission. In addition
6 to a fine, the attorney general may file a CIVIL suit in a court
7 of competent jurisdiction to recover the full value of the inju-
8 ries done to the natural resources of the state and the costs of
9 surveillance and enforcement by the state resulting from the
10 violation. ~~In addition to a fine, the court in its discretion~~
11 ~~may impose probation upon a person for a violation of this act.~~

12 (3) UPON A FINDING BY THE COURT THAT THE ACTIONS OF A CIVIL
13 DEFENDANT POSE OR POSED A SUBSTANTIAL ENDANGERMENT TO PUBLIC
14 HEALTH, SAFETY, OR WELFARE, THE COURT SHALL IMPOSE, IN ADDITION
15 TO THE PENALTIES SET FORTH IN SUBSECTION (1), A FINE OF NOT LESS
16 THAN \$1,000,000.00 AND NOT MORE THAN \$5,000,000.00.

17 (4) UPON A FINDING BY THE COURT THAT THE ACTIONS OF A CRIMI-
18 NAL DEFENDANT POSE OR POSED A SUBSTANTIAL ENDANGERMENT TO PUBLIC
19 HEALTH, SAFETY, OR WELFARE, THE COURT SHALL IMPOSE, IN ADDITION
20 TO THE PENALTIES SET FORTH IN SUBSECTION (2), A FINE OF
21 \$1,000,000.00 AND A SENTENCE OF 5 YEARS' IMPRISONMENT.

22 (5) ANY FINE OR OTHER AWARD ORDERED PAID PURSUANT TO THIS
23 SECTION SHALL DO ALL OF THE FOLLOWING:

24 (A) BE PAYABLE TO THE STATE OF MICHIGAN AND CREDITED TO THE
25 GENERAL FUND.

26 (B) CONSTITUTE A LIEN ON ANY PROPERTY, OF ANY NATURE OR
27 KIND, OWNED BY THE DEFENDANT.

1 (C) HAVE PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES
2 EXCEPT THOSE RECORDED PRIOR TO THE DATE OF JUDGMENT.

3 (6) IN ADDITION TO ANY OTHER METHOD OF COLLECTION, ANY FINE
4 OR OTHER AWARD ORDERED PAID MAY BE RECOVERED BY RIGHT OF SETOFF
5 TO ANY DEBT OWED TO THE DEFENDANT BY THE STATE OF MICHIGAN,
6 INCLUDING THE RIGHT TO A REFUND OF INCOME TAXES PAID.

7 Section 2. This amendatory act shall not take effect unless
8 Senate Bill No. _____ or House Bill No. 4136 (request
9 no. 00587'89) of the 85th Legislature is enacted into law.