

SUBSTITUTE FOR
HOUSE BILL NO. 6202

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding sections 21558, 21559, 21560,
21561, 21562, and 21563.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21558. (1) IN ORDER TO RECEIVE MONEY UNDER THE TEMPORARY
2 REIMBURSEMENT PROGRAM, AN ELIGIBLE PERSON SHALL RETAIN A CONSULTANT
3 TO PERFORM THE CORRECTIVE ACTIONS REQUIRED UNDER PART 213.

4 (2) THE CONSULTANT SHALL COMPLY WITH ALL OF THE FOLLOWING
5 REQUIREMENTS:

6 (A) THE CONSULTANT SHALL SUBMIT THE FOLLOWING ITEMS FOR
7 COMPETITIVE BIDDING IN ACCORDANCE WITH PROCEDURES ESTABLISHED IN
8 THIS SECTION:

9 (i) WELL DRILLING, INCLUDING MONITORING WELLS.

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1 (ii) LABORATORY ANALYSIS.

2 (iii) CONSTRUCTION OF TREATMENT SYSTEMS.

3 (iv) REMOVAL OF CONTAMINATED SOIL.

4 (v) OPERATION OF TREATMENT SYSTEMS.

5 (B) ALL BIDS RECEIVED BY THE CONSULTANT SHALL BE SUBMITTED ON
6 A STANDARDIZED BID FORM PREPARED BY THE DEPARTMENT.

7 (C) A CONSULTANT MAY PERFORM WORK ACTIVITIES SPECIFIED IN
8 SUBSECTION (2) (A) ONLY IF THE CONSULTANT BIDS FOR THE WORK ACTIVITY
9 AND THE CONSULTANT'S BID IS THE LOWEST RESPONSIVE BID. A CONSULTANT
10 WHO INTENDS TO SUBMIT A BID MUST SUBMIT THE BID TO THE DEPARTMENT
11 PRIOR TO RECEIVING BIDS FROM CONTRACTORS.

12 (D) UPON RECEIPT OF BIDS, THE CONSULTANT SHALL SUBMIT TO THE
13 DEPARTMENT A COPY OF ALL BID FORMS RECEIVED AND THE BID ACCEPTED.

14 (E) THE CONSULTANT SHALL NOTIFY THE DEPARTMENT IN WRITING OF
15 THE BID ACCEPTED. IF THE LOWEST RESPONSIVE BID WAS NOT ACCEPTED,
16 THE CONSULTANT SHALL PROVIDE SUFFICIENT JUSTIFICATION TO THE
17 DEPARTMENT AND RECEIVE CONCURRENCE FROM THE DEPARTMENT BEFORE
18 COMMENCING WORK. FAILURE OF THE DEPARTMENT TO PROVIDE A RESPONSE
19 WITHIN 21 DAYS SHALL BE CONSIDERED AS CONCURRENCE.

20 (3) AN ELIGIBLE PERSON MAY REQUEST THAT THE CONSULTANT
21 RETAINED BY THE ELIGIBLE PERSON ADD QUALIFIED BIDDERS TO THE LIST
22 FOR REQUESTS FOR BIDS.

23 (4) UPON HIRING A CONTRACTOR, A CONSULTANT MAY INCLUDE A
24 MARKUP TO THE CONTRACTOR'S WORK INVOICES ONLY IF THE CONSULTANT
25 PAYS THE CONTRACTOR AND DOES THE BILLING.

26 [(5) AFTER THE CONSULTANT EMPLOYS THE COMPETITIVE BIDDING PROCESS
27 DESCRIBED IN THIS SECTION, THE OWNER OR OPERATOR MAY HIRE CONTRACTORS

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1 DIRECTLY.

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3 (6) REMOVAL OF UNDERGROUND STORAGE TANK SYSTEMS OR
4 INSTALLATION OF NEW OR UPGRADED EQUIPMENT FOR THE PURPOSE OF
5 ATTAINING COMPLIANCE WITH PART 211, OR WORK PERFORMED FOR ANY OTHER
6 REASON NOT RELATED TO THE PERFORMANCE OF PART 213 CORRECTIVE
7 ACTIONS, IS NOT ELIGIBLE FOR TEMPORARY REIMBURSEMENT PROGRAM
8 FUNDING UNDER THIS PART.

9 SEC. 21559. (1) FOR AN ELIGIBLE PERSON TO RECEIVE MONEY UNDER
10 THE TEMPORARY REIMBURSEMENT PROGRAM FOR CORRECTIVE ACTION, ALL OF
11 THE FOLLOWING CONDITIONS SHALL BE MET:

12 (A) THE ELIGIBLE PERSON, AND THE CONSULTANT RETAINED BY THE
13 ELIGIBLE PERSON, SHALL FOLLOW THE PROCEDURES OUTLINED IN THIS
14 SECTION AND SHALL SUBMIT REPORTS, WORK PLANS, FEASIBILITY ANALYSES,
15 HYDROGEOLOGICAL STUDIES, AND CORRECTIVE ACTION PLANS PREPARED UNDER
16 PART 213 TO THE DEPARTMENT, AND SHALL PROVIDE OTHER INFORMATION
17 REQUIRED BY THE DEPARTMENT RELEVANT TO DETERMINING COMPLIANCE WITH
18 THIS PART AND PART 213.

19 (B) THE ELIGIBLE PERSON SHALL SUBMIT A WORK INVOICE TO THE
20 DEPARTMENT, WITH AN ATTACHED SUMMARY REPORT OF THE WORK PERFORMED
21 UNDER THE INVOICE AND RESULTS OF THE WORK PERFORMED, INCLUDING, BUT
22 NOT LIMITED TO, LABORATORY RESULTS, SOIL BORING LOGS, CONSTRUCTION
23 LOGS, SITE INVESTIGATION RESULTS, AND OTHER INFORMATION THAT MAY BE
24 REQUESTED BY THE DEPARTMENT.

25 (C) WORK INVOICES SHALL COMPLY WITH ALL OF THE FOLLOWING:

26 (i) BE SUBMITTED ON A STANDARDIZED WORK INVOICE FORM PROVIDED
27 BY THE DEPARTMENT.

1 (ii) CONTAIN COMPLETE INFORMATION IN ACCORDANCE WITH THE FORM
2 AND THE REQUIREMENTS OF THIS SECTION AND AS REQUESTED BY THE
3 DEPARTMENT.

4 (iii) BE IN AN AMOUNT NOT LESS THAN \$5,000.00, EXCEPT FOR THE
5 LAST WORK INVOICE SUBMITTED FOR REIMBURSEMENT UNDER THE APPROVED
6 PRECERTIFICATION APPLICATION.

7 (2) UPON RECEIPT OF A WORK INVOICE PURSUANT TO SUBSECTION (1),
8 THE DEPARTMENT SHALL MAKE ALL OF THE FOLLOWING DETERMINATIONS:

9 (A) WHETHER THE WORK PERFORMED IS NECESSARY AND APPROPRIATE
10 CONSIDERING CONDITIONS AT THE SITE OF THE RELEASE.

11 (B) WHETHER THE COST OF PERFORMING THE WORK IS REASONABLE.

12 (C) WHETHER THE ELIGIBLE PERSON IS ELIGIBLE TO RECEIVE FUNDING
13 UNDER THIS PART.

14 (D) WHETHER THE CONSULTANT RETAINED BY THE ELIGIBLE PERSON HAS
15 COMPLIED WITH SECTION 21558.

16 (3) THE DEPARTMENT SHALL DENY PAYMENT OF A WORK INVOICE IF THE
17 DEPARTMENT DETERMINES THAT THE CORRECTIVE ACTION WORK PERFORMED IS
18 NOT CONSISTENT WITH THE REQUIREMENTS OF PART 213 OR DOES NOT COMPLY
19 WITH THE REQUIREMENTS OF THIS PART.

20 (4) WITHIN 45 DAYS AFTER RECEIPT OF A WORK INVOICE, THE
21 DEPARTMENT SHALL DETERMINE WHETHER THE WORK INVOICE COMPLIES WITH
22 SUBSECTIONS (1) TO (3). THE DEPARTMENT SHALL NOTIFY THE ELIGIBLE
23 PERSON IN WRITING OF SUCH A DETERMINATION.

24 (5) THE DEPARTMENT SHALL KEEP RECORDS OF APPROVED
25 PRECERTIFICATION APPLICATIONS AND WORK INVOICES. IF THE ELIGIBLE
26 PERSON HAS NOT EXCEEDED THE ALLOWABLE AMOUNT OF EXPENDITURE
27 PROVIDED IN SECTIONS 21556 AND 21557, THE DEPARTMENT SHALL FORWARD

1 AN APPROVED PAYMENT VOUCHER TO THE STATE TREASURER WITHIN 45 DAYS
2 AFTER APPROVAL OF THE WORK INVOICE.

3 (6) EXCEPT AS PROVIDED IN SUBSECTION (7) OR AS OTHERWISE
4 PROVIDED IN THIS SUBSECTION, UPON RECEIPT OF AN APPROVED PAYMENT
5 VOUCHER, THE STATE TREASURER SHALL MAKE A PAYMENT JOINTLY TO THE
6 ELIGIBLE PERSON AND THE CONSULTANT WITHIN 30 DAYS. HOWEVER, THE
7 ELIGIBLE PERSON MAY SUBMIT TO THE DEPARTMENT A SIGNED AFFIDAVIT
8 STATING THAT THE CONSULTANT LISTED ON A WORK INVOICE HAS BEEN PAID
9 IN FULL. THE AFFIDAVIT SHALL LIST THE WORK INVOICE NUMBER AND
10 PRECERTIFICATION APPLICATION TO WHICH THE AFFIDAVIT APPLIES, A
11 STATEMENT THAT THE ELIGIBLE PERSON HAS MAILED A COPY OF THE
12 AFFIDAVIT BY FIRST-CLASS MAIL TO THE CONSULTANT LISTED ON THE WORK
13 INVOICE, AND THE DATE THAT THE AFFIDAVIT WAS MAILED TO THE
14 CONSULTANT. THE DEPARTMENT IS NOT REQUIRED TO VERIFY AFFIDAVITS
15 SUBMITTED UNDER THIS SUBSECTION. IF, WITHIN 14 DAYS AFTER THE
16 AFFIDAVIT WAS MAILED TO THE CONSULTANT UNDER THIS SUBSECTION, THE
17 DEPARTMENT HAS NOT RECEIVED AN OBJECTION IN WRITING FROM THE
18 CONSULTANT LISTED ON THE WORK INVOICE, THE STATE TREASURER SHALL
19 MAKE THE PAYMENT DIRECTLY TO THE ELIGIBLE PERSON. IF A CHECK HAS
20 ALREADY BEEN ISSUED TO THE ELIGIBLE PERSON AND THE CONSULTANT, THE
21 ELIGIBLE PERSON SHALL RETURN THE ORIGINAL CHECK TO THE DEPARTMENT
22 ALONG WITH THE AFFIDAVIT. IF, WITHIN 14 DAYS AFTER THE AFFIDAVIT
23 WAS MAILED TO THE CONSULTANT, THE DEPARTMENT HAS NOT RECEIVED AN
24 OBJECTION FROM THE CONSULTANT LISTED ON THE CHECK, THE STATE
25 TREASURER SHALL REISSUE A CHECK TO THE ELIGIBLE PERSON. IF A
26 CONSULTANT OBJECTS TO AN AFFIDAVIT RECEIVED UNDER THIS SUBSECTION
27 AND NOTIFIES THE DEPARTMENT IN WRITING WITHIN 14 DAYS AFTER THE

1 AFFIDAVIT WAS MAILED TO THE CONSULTANT, THE DEPARTMENT SHALL NOTIFY
2 THE STATE TREASURER, AND THE STATE TREASURER SHALL ISSUE OR REISSUE
3 THE CHECK TO THE ELIGIBLE PERSON AND THE CONSULTANT. THE GROUNDS
4 FOR AN OBJECTION BY A CONSULTANT UNDER THIS SUBSECTION SHALL BE
5 THAT THE CONSULTANT HAS NOT BEEN PAID IN FULL AND THE OBJECTION
6 SHALL BE MADE BY AFFIDAVIT. THE STATE TREASURER SHALL ISSUE CHECKS
7 UNDER THIS SUBSECTION WITHIN 60 DAYS AFTER AN AFFIDAVIT HAS BEEN
8 RECEIVED BY THE DEPARTMENT. ONCE PAYMENT HAS BEEN MADE UNDER THIS
9 SECTION, THE REFINED PETROLEUM FUND IS NOT LIABLE FOR ANY CLAIM ON
10 THE BASIS OF THAT PAYMENT.

11 (7) THE TEMPORARY REIMBURSEMENT PROGRAM IS SUBJECT TO SECTION
12 21548.

13 (8) UPON DIRECTION OF THE DEPARTMENT, THE STATE TREASURER MAY
14 WITHHOLD PARTIAL PAYMENT OF MONEY ON PAYMENT VOUCHERS IF THERE IS
15 REASONABLE CAUSE TO BELIEVE THAT THERE ARE VIOLATIONS OF SECTION
16 21548 OR IF NECESSARY TO ASSURE ACCEPTABLE COMPLETION OF THE
17 CORRECTIVE ACTIONS.

18 SEC. 21560. (1) AN ELIGIBLE PERSON WITH A PRECERTIFICATION
19 APPLICATION APPROVED PURSUANT TO SECTION 21556 OR 21557 FOR WHICH
20 CORRECTIVE ACTION IS IN PROGRESS THAT SELLS, OR HAS SOLD, OR
21 TRANSFERS THE PROPERTY THAT IS THE SUBJECT OF THE APPROVED
22 PRECERTIFICATION APPLICATION TO ANOTHER PERSON MAY ASSIGN OR
23 TRANSFER THE APPROVED PRECERTIFICATION APPLICATION TO THAT OTHER
24 PERSON. THE PERSON TO WHOM THE ASSIGNMENT OR TRANSFER IS MADE IS
25 ELIGIBLE TO RECEIVE MONEY FROM THE REFINED PETROLEUM FUND TEMPORARY
26 REIMBURSEMENT PROGRAM AS AN ELIGIBLE PERSON FOR THE RELEASE WHICH
27 IS THE SUBJECT OF THE APPROVED PRECERTIFICATION APPLICATION.

1 PREVIOUS REIMBURSEMENTS AND CO-PAYMENTS OF THE ELIGIBLE PERSON
2 MAKING THE ASSIGNMENT OR TRANSFER SHALL BE COUNTED TOWARD THE
3 REIMBURSEMENT AND CO-PAY AMOUNT OF THE PERSON TO WHOM THE
4 ASSIGNMENT OR TRANSFER IS MADE.

5 (2) AN ELIGIBLE PERSON ASSIGNING OR TRANSFERRING AN APPROVED
6 PRECERTIFICATION APPLICATION PURSUANT TO THIS SECTION SHALL NOTIFY
7 THE DEPARTMENT OF THE PROPOSED ASSIGNMENT OR TRANSFER AT LEAST 10
8 DAYS PRIOR TO THE ASSIGNEE'S OR TRANSFEREE'S SUBMITTAL OF WORK
9 INVOICES FOR REIMBURSEMENT.

10 SEC. 21561. (1) IF THE DEPARTMENT DENIES A PRECERTIFICATION
11 APPLICATION OR A WORK INVOICE SUBMITTED UNDER THE TEMPORARY
12 REIMBURSEMENT PROGRAM, THE APPLICANT WHO SUBMITTED THE
13 PRECERTIFICATION APPLICATION OR THE ELIGIBLE PERSON WHO SUBMITTED
14 THE WORK INVOICE MAY, WITHIN 14 DAYS FOLLOWING THE DENIAL, REQUEST
15 REVIEW BY THE DEPARTMENT. UPON RECEIPT OF A REQUEST FOR REVIEW
16 UNDER THIS SUBSECTION, THE DEPARTMENT SHALL FORWARD THE REQUEST TO
17 THE ADVISORY BOARD FOR A PRELIMINARY REVIEW. THE ADVISORY BOARD
18 SHALL CONDUCT A REVIEW OF THE DENIAL AND SHALL SUBMIT A
19 RECOMMENDATION TO THE DEPARTMENT AS TO WHETHER THE PRECERTIFICATION
20 APPLICATION OR THE WORK INVOICE COMPLIES WITH THIS PART. NOT LATER
21 THAN 21 DAYS FOLLOWING REVIEW BY THE ADVISORY BOARD, THE DEPARTMENT
22 SHALL APPROVE THE PRECERTIFICATION APPLICATION OR THE WORK INVOICE
23 IF THE DEPARTMENT DETERMINES THAT THE PRECERTIFICATION APPLICATION
24 OR THE WORK INVOICE SUBSTANTIALLY COMPLIES WITH THE REQUIREMENTS OF
25 THIS PART. IN MAKING ITS DETERMINATION, THE DEPARTMENT SHALL GIVE
26 SUBSTANTIAL CONSIDERATION TO THE RECOMMENDATIONS OF THE ADVISORY
27 BOARD.

1 (2) AN ELIGIBLE PERSON OR APPLICANT WHO SUBMITTED A
2 PRECERTIFICATION APPLICATION WHO IS DENIED APPROVAL BY THE
3 DEPARTMENT AFTER REVIEW UNDER SUBSECTION (1) MAY APPEAL THE
4 DECISION PURSUANT TO SECTION 631 OF THE REVISED JUDICATURE ACT OF
5 1961, 1961 PA 236, MCL 600.631, DIRECTLY TO THE CIRCUIT COURT FOR
6 THE COUNTY OF INGHAM.

7 SEC. 21562. (1) THE TEMPORARY REIMBURSEMENT PROGRAM ADVISORY
8 BOARD IS CREATED. THE ADVISORY BOARD SHALL CONDUCT REVIEWS OF
9 DENIED WORK INVOICES UPON THE REQUEST OF ELIGIBLE PERSONS AND
10 PROVIDE RECOMMENDATIONS TO THE DEPARTMENT UPON COMPLETION OF SUCH
11 REVIEWS. THE ADVISORY BOARD SHALL ALSO ADVISE THE DEPARTMENT ON ALL
12 MATTERS RELATED TO THE IMPLEMENTATION OF THE TEMPORARY
13 REIMBURSEMENT PROGRAM.

14 (2) THE ADVISORY BOARD SHALL CONSIST OF THE FOLLOWING:

15 (A) THREE INDIVIDUALS APPOINTED BY THE GOVERNOR, NOT MORE THAN
16 2 OF WHOM ARE EMPLOYED BY STATE DEPARTMENTS.

17 (B) TWO INDIVIDUALS APPOINTED BY THE SPEAKER OF THE HOUSE OF
18 REPRESENTATIVES.

19 (C) TWO INDIVIDUALS APPOINTED BY THE SENATE MAJORITY LEADER.

20 (3) AN INDIVIDUAL APPOINTED TO THE ADVISORY BOARD SHALL SERVE
21 FOR A TERM OF 3 YEARS, COMMENCING ON THE INITIATION DATE OF THE
22 TEMPORARY REIMBURSEMENT PROGRAM.

23 (4) A VACANCY ON THE ADVISORY BOARD SHALL BE FILLED IN THE
24 SAME MANNER AS THE ORIGINAL APPOINTMENT WAS MADE.

25 (5) THE FIRST MEETING OF THE ADVISORY BOARD SHALL BE CALLED BY
26 THE DEPARTMENT. AT ITS FIRST MEETING, THE ADVISORY BOARD SHALL
27 ELECT FROM AMONG ITS MEMBERS A CHAIRPERSON AND OTHER OFFICERS AS IT

1 CONSIDERS NECESSARY. AFTER THE FIRST MEETING, A MEETING OF THE
2 ADVISORY BOARD SHALL BE CALLED BY THE CHAIRPERSON ON HIS OR HER OWN
3 INITIATIVE OR BY THE CHAIRPERSON ON PETITION OF 3 OR MORE MEMBERS.
4 UPON RECEIPT OF A PETITION OF 3 OR MORE MEMBERS, A MEETING SHALL BE
5 CALLED FOR A DATE NOT LATER THAN 21 DAYS AFTER THE DATE OF RECEIPT
6 OF THE PETITION.

7 (6) THE BUSINESS THAT THE ADVISORY BOARD MAY PERFORM SHALL BE
8 CONDUCTED AT A PUBLIC MEETING OF THE ADVISORY BOARD HELD IN
9 COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO
10 15.275.

11 (7) A MAJORITY OF THE MEMBERS OF THE ADVISORY BOARD CONSTITUTE
12 A QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE
13 ADVISORY BOARD. ACTION BY THE ADVISORY BOARD SHALL BE BY A MAJORITY
14 OF THE VOTES CAST.

15 (8) THE DEPARTMENT MAY SUBMIT TO THE ADVISORY BOARD, FOR ITS
16 REVIEW AND EVALUATION, THE COMPETITIVE BIDDING PROCESS EMPLOYED BY
17 A CONSULTANT PURSUANT TO SECTION 21558. IN CONDUCTING THIS REVIEW
18 AND EVALUATION, THE ADVISORY BOARD MAY CONVENE A PEER REVIEW PANEL.
19 FOLLOWING COMPLETION OF ITS REVIEW AND EVALUATION, THE ADVISORY
20 BOARD SHALL FORWARD A COPY OF ITS FINDINGS TO THE DEPARTMENT AND
21 THE CONSULTANT. IF THE ADVISORY BOARD FINDS THE PRACTICES EMPLOYED
22 BY A CONSULTANT TO BE INAPPROPRIATE, THE ADVISORY BOARD MAY
23 RECOMMEND THAT THE DEPARTMENT REVOKE THE CONSULTANT'S
24 CERTIFICATION.

25 (9) A MEMBER OF THE ADVISORY BOARD SHALL ABSTAIN FROM VOTING
26 ON ANY MATTER IN WHICH THAT MEMBER HAS A CONFLICT OF INTEREST.

27 SEC. 21563. (1) THE TEMPORARY REIMBURSEMENT PROGRAM SHALL

1 CEASE UPON PAYMENT OF ALL APPROVED WORK INVOICES AND RESOLUTION OF
2 WORK INVOICE APPEALS.

3 (2) ANY TEMPORARY REIMBURSEMENT PROGRAM FUNDS REMAINING AFTER
4 APPROVED WORK INVOICES ARE PAID, LESS ANY DOLLAR AMOUNTS HELD IN
5 RESERVE PENDING RESOLUTION OF WORK INVOICE APPEALS, SHALL BE
6 AVAILABLE FOR FUTURE APPROPRIATIONS PURSUANT TO SECTION 21506A(4).

7 (3) ANY TEMPORARY REIMBURSEMENT PROGRAM FUNDS REMAINING AFTER
8 RESOLUTION OF ALL WORK INVOICE APPEALS SHALL BE AVAILABLE FOR
9 FUTURE APPROPRIATIONS PURSUANT TO SECTION 21506A(4).

10 Enacting section 1. This amendatory act does not take effect
11 unless all of the following bills of the 93rd Legislature are
12 enacted into law:

13 (a) House Bill No. 6047.

14 (b) Senate Bill No. 1260.