

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4814 (as reported without amendment)
Sponsor: Representative Patricia Birkholz
House Committee: Conservation and Outdoor Recreation
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 12-6-99

RATIONALE

Under Title V, as added to the Federal Clean Air Act (CAA) in 1990, states are required to develop programs to attain national ambient air quality standards and to monitor closely the amounts of air pollutants that are emitted by industrial facilities operating within their borders. Title V required the U.S. Environmental Protection Agency (EPA) to promulgate regulations setting forth provisions under which states could develop operating permit programs and submit them to the EPA for approval.

Currently, Michigan has received "interim approval" from the EPA to implement the provisions of the CAA. Interim approval delegates authority to operate air pollution control programs provided that the state complies with certain regulations. One of these regulations provides that state law may not require a burden of proof or degree of knowledge or intent greater than the burden of proof or degree of knowledge or intent required under the CAA. In 1994, Michigan's laws pertaining to the environment and natural resources were recodified in the Natural Resources and Environmental Protection Act (NREPA). Part 55 of the NREPA, which addresses air pollution control, includes both criminal and civil penalties for air pollution violations. Section 5534 in effect requires a showing of negligence or intent for violations of Part 55. Since this degree of proof is not required for civil actions under Federal regulations, Part 55 is not in conformity with the CAA. According to the Department of Environmental Quality, the provision should be repealed before December 31, 1999, the date by which the EPA has said Michigan's air pollution control program must comply with the CAA regulations.

CONTENT

The bill would repeal Section 5534 of the Natural Resources and Environmental Protection Act, which provides that penalties or fines imposed under Part 55 (Air Pollution Control) for persons violating any rule cannot be construed as to include any violation that was caused by an act of God, war, strike, riot, catastrophe or other condition as to which negligence

or willful misconduct on the part of the person was not the proximate cause.

MCL 324.5534

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would delete a standard of proof provision to eliminate a concern of the EPA, which is one of the impediments to the State's gaining full delegation of authority to implement the Title V program. The CAA establishes that state law may not require a burden of proof and degree of knowledge or intent greater than the burden of proof or degree of knowledge or intent required under the CAA. Since the CAA's burden of proof or degree of knowledge or intent does not require a showing of negligence or willful misconduct for civil violations, Section 5534 violates the CAA regulations. When the NREPA was enacted, Part 55 recodified what formerly was the Air Pollution Control Act. That Act contained only criminal penalties. In Part 55, separate sections provide for civil penalties as well as criminal sanctions. The section prescribing criminal penalties (Section 5531) contains the same language as that in Section 5534, which means that criminal penalties may not be imposed without a showing of negligence or willful misconduct. If Section 5534 were repealed, that degree of proof would still be required for criminal violations.

If the State fails to implement the regulations of the CAA, then Michigan's Title V operating permit program may be administered by the EPA and the State might lose Federal highway funds and have industrial growth restricted in areas that do not continue to attain national air quality standards.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. However, failure to repeal Section 5534 before December 31, 1999, may result in the imposition of Federal sanctions, including the suspension of certain Federal highway grants in nonattainment areas; limitations on growth of air pollution nonattainment areas; and possible assumption by the Federal Environmental Protection Agency of the responsibility for administering the Clean Air Act.

Fiscal Analyst: P. Graham

H9900\4814a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.