



**House
Legislative
Analysis
Section**

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AIR QUALITY FEES

**House Bill 4792 as enrolled
Public Act 49 of 2001
Second Analysis (8-2-01)**

**Sponsor: Rep. Charles LaSata
First House Committee: Appropriations
Second House Committee: Commerce
Senate Committee: Natural Resources
and Environmental Affairs**

THE APPARENT PROBLEM:

The fees that support the state's clean air program expire on September 30, 2001. The fees need to be reauthorized for the Department of Environmental Quality (DEQ) to continue to operate the program. According to information from the DEQ, Title V of the federal Clean Air Act requires states to adopt a system of user fees adequate to fund a renewable operating permit program for facilities that are major sources of air pollution emissions. (See Background Information.) The fee system was first put in place in 1993 and first reauthorized in 1998. Various interested parties, including state regulators and representatives of affected industries, have been working on producing an acceptable new fee schedule.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to reauthorize the charging of annual air quality fees that would otherwise sunset on September 30, 2001, and adjust the amount of the fees. These fees support the state's air quality operating permit program as required by the federal Clean Air Act. The bill would apply to the state fiscal year beginning October 1, 2001, and continue to apply until September 30, 2005.

The bill would provide new fees as follows.

• The current fee for Category I facilities is composed of a facility charge of \$3,375, plus an emissions charge of \$34 per ton of fee-subject air pollutants. The bill would increase the facility charge to \$4,485 and increase the emissions charge to \$45.25 per ton. The emissions charge is capped at 4,000 tons. The actual tons of fee-subject air pollutants is calculated based on emissions for the calendar year two years preceding the year of billing.

• The current Category II fee is composed of a facility charge of \$1,350, plus an emissions charge of \$34 per ton of fee-subject air pollutants. The bill would increase the facility charge to \$1,795 and would increase the emissions charge to \$45.25 per ton. The emissions charge is capped at 4,000 tons. The actual tons of fee-subject air pollutants is calculated based on emissions for the calendar year two years preceding the year of billing.

• The fees for municipal electric generating facilities that are also Category I facilities would also be increased. Currently, such a municipal generating facility's fee is an operating permit facility charge of \$18,675 for facilities that emit less than 18,000 tons but more than 450 tons of fee-subject air pollutants. The bill would instead charge air quality fees based on the number of tons of fee-subject air pollutants emitted, as follows:

- (1) For more than 450 tons but less than 4,000 tons, the fee would be \$24,816.
- (2) For 4,000 tons to 5,300 tons, the fee would be \$24,816 plus \$45.25 for each ton in excess of 4,000 tons.
- (3) For more than 5,300 but not more than 12,000 tons, the fee would be \$85,045.
- (4) For more than 12,000 tons but less than 18,000 tons, the fee would be \$159,459.

• The fee for Category III facilities would be increased from \$200 to \$250.

Other Provisions. The act currently requires an annual report from the Department of Environmental Quality to be submitted to the governor and legislature detailing the activities of the previous fiscal year that were funded by the Emissions Control

House Bill 4792 (8-2-01)

Fund. The bill would specify that the report would have to be sent to the chair of the standing committee of the Senate and House of Representatives with primary responsibility for environmental protection issues related to air quality, and the chairs of the subcommittees of the Senate and House appropriations committees with primary responsibility for appropriations to the department. The bill would also require that the report contain, in addition the information currently required, the amount of revenue in the fund at the end of the fiscal year and the amount of revenue for programs received during the prior fiscal year from fees, from federal funds, and from general fund appropriations. Each of these amounts would have to be expressed as a dollar amount and as a percentage of the total annual cost of programs.

The bill would also add a provision stating that the section being amended would not apply if the administrator of the United States Environmental Protection Agency determined that the department was not adequately administering or enforcing the renewable operating permit program, and the administrator promulgated and administered a renewable operating permit program for the state.

MCL 324.5522

BACKGROUND INFORMATION:

According to information provided to the House Commerce Committee by the Department of Environmental Quality, there are about 1,970 facilities in the state required to pay an air quality fee. Of these, about 430 are Category I facilities, about 440 are Category II facilities, and about 1,100 are Category III facilities. All Category I facilities and about 20 percent of Category II facilities are required to obtain a renewable operating permit. The federal Environmental Protection Agency is said to have deferred the permit requirement for other Category II facilities for five years. Category III facilities are not required to obtain a permit, although they must meet special federal regulations. A Category I facility is described as one that produces more than 100 tons each year of any pollutant regulated under the federal law. A Category II facility produces more than 10 tons of any single hazardous air pollutant or 25 tons of any combination of hazardous air pollutants. Category III facilities produce emissions below these thresholds. Many are dry cleaners.

The fees collected go into the Emissions Control Fund and can be used for the following purposes as they relate to implementing the operating permit

program required by federal law: 1) preparing generally applicable rules or guidance regarding the operating permit program or its implementation or enforcement; 2) reviewing and acting on any application for a permit, permit revision, or permit renewal, the development of an applicable requirement as part of the processing of a permit, or permit revision or approval; 3) general administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry; 4) implementing and enforcing the terms of any operating permit, not including court costs or other costs associated with enforcement actions; 5) emissions and ambient monitoring; 6) modeling, analysis, or demonstration; 7) preparing inventories and tracking emissions; and 8) providing direct and indirect support to facilities under the small business clean air assistance program.

FISCAL IMPLICATIONS:

According to testimony before the House Commerce Committee from the Department of Environmental Quality and industry representatives, the bill is designed to produce an average of \$11.5 million dollars per year over a four-year period (2002-2005). The fees are expected to bring in a decreasing amount of revenue each year due to decreases in emissions. In the first year, the fees are expected to raise \$12.2 million. After that, revenues are expected to decline by about four percent each year. The department is supposed to "bank" extra revenues in the first two years to cover shortfalls in the second two years. (Testimony on 5-30-01)

The Senate Fiscal Agency's analysis of the bill estimates that the revenue generated would average \$10.5 million to \$11.5 million between fiscal years 2001-02 and 2004-05, compared with the average of \$9.8 million per year generated between fiscal years 1998-99 and 2000-01. The higher end of the revenue estimate assumes emissions will be reduced less than three percent per year. Billable emissions have fallen an average of more than six percent per year between 1993 and 1999, according to the SFA. The agency estimates air quality program spending from fees to average about \$11.3 million per year, based on current program spending. (SFA analysis dated 7-5-01)

ARGUMENTS:

For:

Representatives of the Department of Environmental Quality and of the industry groups that pay air quality fees describe this bill as an acceptable compromise that will produce sufficient revenue to fund a viable air quality program. It imposes a 33 percent fee increase on many of the regulated industries. Industry representatives say they are willing to support this because they believe it achieves the twin goals of an adequate response time by regulators and fairness among fee-payers. It is important for industry, and for economic development efforts in the state generally, that regulators are able to issue air quality permits in a reasonable amount of time. Significantly, the compromise proposal does not rely on indexing, as an earlier proposal would have. Some business representatives are strongly opposed to indexing mechanisms that raise fees as emissions are reduced (so as to keep revenue steady). Such an approach penalizes industry for reducing emissions, they say. This bill builds on the existing fee structure to provide revenue over the next four years. It should be noted that it provides significant increases not only to private industry, but also to municipal electric generating facilities. The department has said it can carry out its responsibilities with this level of funding from fees. This is an important program for the protection of public health and the environment, as well as for economic development. Without this legislation, the fees that support the air quality permitting and monitoring program, required by federal law, would expire at the end of the fiscal year.

Against:

Environmental organizations believe the bill would not raise enough money to support a credible air quality program. A representative of the Michigan Environmental Council (MEC) has argued that the bill will not even raise the promised amount of revenue, and claims that over four years will result in the layoff of needed employees and leave the division in shambles. Critics point out that the special task force created to study the adequacy of program fees said in its October 2000 report that \$12.8 million per year was needed to adequately fund programs from 2002 to 2007. That is the level of funding that a new fee structure needs to support. The department already is unable to fully carry out its responsibilities, say critics. (Indeed one early department analysis recommended \$14.5 million in fees annually.) Air pollution each year causes hundreds of thousands of asthma attacks and causes hundreds of premature deaths for those suffering from respiratory and heart

diseases, says the MEC. Funding a credible program to ensure compliance with air quality laws would save lives and keep health care costs down.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.