

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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House Bill 4792 (Substitute H-4 as reported without amendment)  
Sponsor: Representative Charles LaSata  
House Committee: Appropriations  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 7-5-01

### **RATIONALE**

Under 1990 amendments to the Federal Clean Air Act, states are required to develop programs to attain national ambient air quality standards and to monitor the amounts of air pollutants emitted by industrial facilities operating within their borders. Title V of the Act governs operating permits, and requires states to reduce the amounts of fee-subject air pollutants that are released into the atmosphere and develop a comprehensive permit program approved by the Environmental Protection Agency (EPA). Under the operating permit program, industrial facilities must pay a fee for a permit to emit specific amounts of pollutants, and the fees must be sufficient for a state to fund its permit program. If a state fails to continue implementation of Title V, the state may lose Federal funds and have industrial growth restricted in areas that do not continue to attain national air quality standards.

Michigan's operating permit program and air quality fee structure were enacted in 1993, and are contained in Part 55 of the Natural Resources and Environmental Protection Act. Depending on a facility's category, the owner or operator of a fee-subject facility must pay a facility charge plus an emissions charge. The Michigan Department of Environmental Quality (DEQ) collects the fees, and they are deposited in the Emissions Control Fund. The original fees were scheduled to expire in 1998. Public Act 245 of 1998 amended Part 55 to increase the fees to their current levels and extend the fee requirements through September 30, 2001.

As required by Part 55, in 1999 the DEQ's Air Quality Division convened the Air Quality Fee Task Force, made up of representatives of fee-subject facilities, environmental groups, State

departments that receive funding from the Emissions Control Fund, and the general public. The task force met to review the adequacy of the fee revenue, the fee structure, and the appropriateness of program activities. The task force suggested that the fee requirements should be renewed, and that the fee formula should ensure a stable level of funding each year. Some believe that the fees should be increased to continue to help fund the Renewable Operating Permit Program for facilities that are major sources of air pollution emissions.

### **CONTENT**

**The bill would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to do the following:**

- **Extend air quality fee requirements for four years, until September 30, 2005.**
- **Increase the annual fees that apply to Category I, II, and III facilities.**
- **Increase the emissions charge rate (which applies to Category I and II facilities) from \$34 per ton of fee-subject air pollutants to \$45.25 per ton.**
- **For municipal electric generating facilities that emit more than 450 but less than 18,000 tons, replace the current \$18,675 fee with a fee ranging from \$24,816 to \$159,459, based on tons emitted.**
- **Require the Department of Environmental Quality to include revenue information in its annual report to the Governor and the Legislature.**

**The bill also provides that the air quality fees under Part 55 would not apply if the administrator of the U.S. Environmental Protection Agency (EPA) determined that the DEQ was not adequately administering or enforcing the renewable operating permit program and the administrator promulgated and administered such a program for Michigan.**

(Under Part 55, "fee-subject facility" refers to various sources of air pollutants as defined in the Code of Federal Regulations and the Federal Clean Air Act, or another source designated by the EPA administrator to obtain an operating permit under Title V of that Act. Part 55 defines "Category I facility" and "Category II facility" with reference to the Clean Air Act. As a rule, a Category I facility is a stationary source of air pollutants that emits or has the potential to emit at least 100 tons per year of any air pollutant. A Category II facility generally is a stationary source or group of stationary sources that emits or has the potential to emit 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. "Category III facility" means any fee-subject facility that is not a Category I or II facility.)

#### Category I, II, and III Facilities

The current annual air quality fees are as follows:

- Category I: A facility charge of \$3,375 plus an emissions charge.
- Category II: A facility charge of \$1,350 plus an emissions charge.
- Category III: \$200.

The bill would increase the facility charge for a Category I facility to \$4,485 and for a Category II facility to \$1,795. The fee for a Category III facility would be increased to \$250.

The bill would raise the emission charge rate from \$34 to \$45.25 per ton of fee-subject air pollutants, but otherwise would retain the current method of calculating the emissions charge for Category I and II facilities. This calculation multiplies the emission charge rate by the actual tons of fee-subject air pollutants emitted at a fee-subject facility for the calendar year two years before the year of billing. Currently, the actual tons may not

exceed either a) 4,000 tons or b) 1,000 tons per pollutant, if the sum of all fee-subject pollutants except carbon monoxide emitted at the facility is under 4,000 tons. Under the bill, the actual tons could not exceed the lesser of those two amounts. ("Fee-subject air pollutants" refers to particulates, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under certain sections of the Clean Air Act.)

#### Municipal Electric Generating Facilities

Part 55 establishes a separate annual air quality fee for municipal electric generating facilities that are Category I facilities and emit more than 450 tons but less than 18,000 tons of fee-subject air pollutants. Currently, the annual fee for such a facility is an operating permit facility charge of \$18,675. Under the bill, the annual fee would be based on the number of tons of fee-subject air pollutants emitted, as follows:

- More than 450 tons but less than 4,000 tons: \$24,816.
- At least 4,000 but not more than 5,300 tons: \$24,816 plus \$45.25 per ton in excess of 4,000.
- More than 5,300 but not more than 12,000 tons: \$85,045.
- More than 12,000 but less than 18,000 tons: \$159,459.

#### DEQ Report

Part 55 requires the DEQ, by March 1 each year, to prepare a report that details the activities of the previous fiscal year funded by the Emissions Control Fund for the Department. The report must contain information described in the Act, including information related to the permit to install program and the renewable operating permit program under Part 55, violations, penalties, inspections, air pollution complaints, contested case hearings, and civil actions. The bill would require the report also to include the amount of revenue in the Fund at the end of the fiscal year.

In addition, the report would have to include the amount of revenue for programs under Part 55 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 under Part 55.

Currently, the DEQ must submit the report to the Governor and the Legislature. Under the bill, the DEQ also would have to submit the report to the chair of the Senate and House of Representatives standing committees with primary responsibility for environmental protection issues related to air quality, and to the chairs of the Senate and House Appropriations subcommittees with primary responsibility for appropriations to the Department.

MCL 324.5522

## **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 prevent the scheduled expiration of the air quality fee requirements, and increase fees, in order to enable the State to continue implementing an operating permit program that monitors the amounts of air pollutants emitted by approved industrial facilities, as required under Federal law. According to the Air Quality Fee Task Force Report to the Michigan Legislature (October 2000), fee revenue has declined each year because of emission reductions and more accurate emission estimates. At the same time, the air quality program costs continue to rise due to inflation, while the fee structure contains no inflationary adjustment. Increased fees would assure a stable funding level and allow the Department to continue to carry out its responsibilities as well as address the problems associated with public health and environmental concerns.

In addition, the bill would improve the stability, efficiency, and accountability of the air quality permit program over the next four years. The air quality program is different from other regulatory programs in that economic success for industrial facilities is critically dependent on timely response to air permit requests. New construction or changes in manufacturing processes to meet market demands are prohibited until the air quality permits are issued. The economic cost of a delayed permit can be substantial in a highly competitive world market. The bill would assure adequate funding for the DEQ to issue necessary permits in a reasonable amount of time, and maintain the vital economic aspects of the program.

### **Opposing Argument**

The increased fees under the bill would not provide adequate revenue to support a credible air quality program. Even with the proposed increases, the revenue still would decline due to inflation and reductions in the amount of emissions subject to fees. Over four years, inadequate funding could result in layoffs of needed employees, which could lead to longer delays for permits and further setbacks in an already insufficient enforcement and compliance program. The task force report concluded that if the General Fund level of support for the air quality program is maintained at least at its current level, the program will be adequately funded through fiscal year 2006-07, "provided the fee revenue is maintained at \$12.8 million for each year 2002 through 2007". The bill would not provide the level of funding needed to support the program.

Legislative Analyst: N. Nagata

### **FISCAL IMPACT**

The fee revenue that would be generated under the bill would average \$10.5 million to \$11.5 million per year between fiscal years 2001-02 and 2004-05, compared with the average of \$9.8 million per year that was generated between fiscal years 1998-99 and 2000-01. The higher end of the revenue estimate is based on the assumption that reductions in emissions would be less than 3% per year. It should be noted that billable emissions have fallen by an average of more than 6% per year between 1993 and 1999. The annual reductions in billable emissions range from 3% between 1995 and 1994, to more than 9% between 1999 and 1998, the last year for which data are available.

Based on current Air Quality Program spending from air quality fees, program expenditures from fees would average approximately \$11.3 million during the period covered by the bill.

Fiscal Analyst: P. Graham

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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.