

**SUBSTITUTE FOR
HOUSE BILL NO. 4792**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 5522 (MCL 324.5522), as amended by 1998 PA
245.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5522. (1) For the state fiscal year beginning
2 October 1, ~~1998~~ 2001, and continuing until September 30, ~~2001~~
3 2005, the owner or operator of each fee-subject facility shall
4 pay air quality fees as required and calculated under this
5 section. The department may levy and collect an annual air qual-
6 ity fee from the owner or operator of each fee-subject facility
7 in this state. The legislature intends that the fees required
8 under this section meet the minimum requirements of the clean air
9 act and that this expressly stated fee system serve as a

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1 limitation on the amount of fees imposed under this part on the
2 owners or operators of fee-subject facilities in this state.

3 (2) The annual air quality fee shall be calculated for each
4 fee-subject facility, according to the following procedure:

5 (a) For category I facilities, the annual air quality fee
6 shall be the sum of a facility charge and an emissions charge as
7 specified in subdivision (e). The facility charge shall be
8 ~~-\$3,375.00~~ \$4,485.00.

9 (b) For category II facilities, the annual air quality fee
10 shall be the sum of a facility charge and an emissions charge as
11 specified in subdivision (e). The facility charge shall be
12 ~~-\$1,350.00~~ \$1,795.00.

13 (c) For category III facilities, the annual air quality fee
14 shall be ~~-\$200.00~~ \$250.00.

15 (d) For municipal electric generating facilities ~~subject to~~
16 ~~category I which~~ THAT ARE CATEGORY I FACILITIES AND THAT emit
17 MORE THAN 450 TONS BUT less than 18,000 tons ~~, but more than 450~~
18 ~~tons~~ of fee-subject air pollutants, the annual air quality fee
19 shall be ~~an operating permit facility charge of \$18,675.00~~
20 ~~only. This annual air quality fee is based upon the category I~~
21 ~~facility charges of \$3,375.00 plus an emissions charge equal to~~
22 ~~the product of 450 tons of fee-subject air pollutants and \$34.00~~
23 ~~per ton of fee-subject air pollutant~~ THE FOLLOWING AMOUNT, BASED
24 ON THE NUMBER OF TONS OF FEE-SUBJECT AIR POLLUTANTS EMITTED:

25 (i) MORE THAN 450 TONS BUT LESS THAN 4,000 TONS,
26 \$24,816.00.

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1 (ii) AT LEAST 4,000 TONS BUT NOT MORE THAN 5,300 TONS,
2 \$24,816.00 PLUS \$45.25 PER TON OF FEE-SUBJECT AIR POLLUTANT IN
3 EXCESS OF 4,000 TONS.

4 (iii) MORE THAN 5,300 TONS BUT NOT MORE THAN 12,000 TONS,
5 \$85,045.00.

6 (iv) MORE THAN 12,000 TONS BUT LESS THAN 18,000 TONS,
7 \$159,459.00.

8 (e) The emissions charge for category I and category II
9 facilities ~~equals~~ SHALL EQUAL the ~~product of~~ EMISSION CHARGE
10 RATE OF \$45.25, MULTIPLIED BY the actual tons of fee-subject air
11 pollutants emitted. ~~and the emission charge rate.~~ A pollutant
12 that qualifies as a fee-subject air pollutant under more than 1
13 class shall be charged only once. ~~The charge shall be calcu-~~
14 ~~lated as follows: (i) The emissions tonnage shall be calculated~~
15 ~~for the calendar year 2 years preceding the year of the billing.~~
16 The actual tons of fee-subject air pollutants emitted is
17 CONSIDERED TO BE the sum of all fee-subject air pollutants
18 emitted at the fee-subject facility ~~, except that for the pur-~~
19 ~~poses of the emissions charge calculation the actual tons charged~~
20 ~~shall not exceed either~~ FOR THE CALENDAR YEAR 2 YEARS PRECEDING
21 THE YEAR OF BILLING, BUT NOT MORE THAN THE LESSER of the
22 following:

23 (i) ~~(A)~~ 4,000 tons.

24 (ii) ~~(B)~~ 1,000 tons per pollutant, if the sum of all
25 fee-subject air pollutants except carbon monoxide emitted at the
26 fee-subject facility is less than 4,000 tons.

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8 ~~(ii) The emission charge rate shall be \$34.00 per ton of~~
9 ~~fee subject air pollutants.~~

10 (3) The auditor general shall conduct a biennial audit of
11 the federally mandated operating permit program required in title
12 V. The audit shall include the auditor general's recommendation
13 regarding the sufficiency of the fees required under
14 subsection (2) to meet the minimum requirements of the clean air
15 act.

16 (4) After January 1, but before January 15 of each year
17 beginning in 1995, the department shall notify the owner or oper-
18 ator of each fee-subject facility of its assessed annual air
19 quality fee. Payment is due within 90 calendar days of the mail-
20 ing date of the air quality fee notification. If an assessed fee
21 is challenged ~~as authorized in~~ UNDER subsection (6), payment is
22 due within 90 calendar days of the mailing date of the air qual-
23 ity fee notification or within 30 days of receipt of a revised
24 fee or statement supporting the original fee, whichever is
25 later. The department shall deposit all fees collected under
26 this section to the credit of the fund.

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1 (5) If the owner or operator of a fee-subject facility fails
2 to submit the amount due within the time period specified in
3 subsection (4), the department shall assess the owner or operator
4 a penalty of 5% of the amount of the unpaid fee for each month
5 that the payment is overdue up to a maximum penalty of 25% of the
6 total fee owed.

7 (6) If the owner or operator of a fee-subject facility
8 desires to challenge its assessed fee, the owner or operator
9 shall submit the challenge in writing to the department. The
10 department shall not process the challenge unless it is received
11 by the department within 45 calendar days of the mailing date of
12 the air quality fee notification described in subsection (4). A
13 challenge shall identify the facility and state the grounds upon
14 which the challenge is based. Within 30 calendar days of receipt
15 of the challenge, the department shall determine the validity of
16 the challenge and provide the owner with notification of a
17 revised fee or a statement setting forth the reason or reasons
18 why the fee was not revised. Payment of the challenged or
19 revised fee is due within the time frame described in
20 subsection (4). If the owner or operator of a facility desires
21 to further challenge its assessed fee, the owner or operator of
22 the facility has an opportunity for a contested case hearing as
23 provided for under the administrative procedures act of 1969,
24 1969 PA 306, MCL 24.201 to 24.328.

25 (7) If requested by the department, by March 15 of each
26 year, ~~beginning in 1995,~~ or within 45 days of a request by the
27 department, whichever is later, the owner or operator of each

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1 fee-subject facility shall submit information regarding the
2 facility's previous year's emissions to the department. The
3 information shall be sufficient for the department to calculate
4 the facility's emissions for that year and meet the requirements
5 of subpart Q of 40 C.F.R. part 51.

6 (8) By July 1 of each year, ~~beginning in 1995,~~ the depart-
7 ment shall provide the owner or operator of each fee-subject
8 facility required to pay an emission charge pursuant to this sec-
9 tion with a copy of the department's calculation of the facility
10 emissions for the previous year. Within 60 days of this notifi-
11 cation, the owner or operator of the facility may provide correc-
12 tions to the department. The department shall make a final
13 determination of the emissions by December 15 of that year. If
14 the owner or operator disagrees with the determination of the
15 department, the owner or operator may request a contested case
16 hearing as provided for under the administrative procedures act
17 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

18 (9) ~~The~~ BY MARCH 1 ANNUALLY, THE department shall prepare
19 and submit to the governor, ~~and~~ the legislature, ~~by March 1 an~~
20 ~~annual~~ THE CHAIR OF THE STANDING COMMITTEE OF THE SENATE AND
21 HOUSE OF REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENVIRON-
22 MENTAL PROTECTION ISSUES RELATED TO AIR QUALITY, AND THE CHAIRS
23 OF THE SUBCOMMITTEES OF THE SENATE AND HOUSE APPROPRIATIONS COM-
24 MITTEES WITH PRIMARY RESPONSIBILITY FOR APPROPRIATIONS TO THE
25 DEPARTMENT A report that details the activities of the previous
26 fiscal year funded by the fund for the department. This report

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1 shall include, at a minimum, all of the following as it relates
2 to the department:

3 (a) The number of full-time equated positions performing
4 TITLE V AND NON-TITLE V air quality enforcement, compliance, or
5 permitting activities. ~~and the number of hours worked on title V~~
6 ~~activities in relation to hours worked on other matters.~~

7 (b) All of the following information related to the permit
8 to install program authorized under section 5505:

9 (i) The number of permit to install applications received by
10 the department.

11 (ii) The number of permit to install applications for which
12 a final action was taken by the department. The number of final
13 actions should be reported as the number of applications
14 approved, the number of applications denied, and the number of
15 applications withdrawn by the applicant.

16 (iii) The number of permits to install approved that were
17 required to complete public participation under section 5511(3)
18 before final action and the number of permits to install approved
19 that were not required to complete public participation under
20 section 5511(3) prior to final action.

21 (iv) The average number of final permit actions per permit
22 to install reviewer full-time ~~equivalents~~ EQUIVALENT POSITION.

23 (v) The percentage and number of permit to install applica-
24 tions which were reviewed for administrative completeness within
25 10 days of receipt by the department.

26 (vi) The percentage and number of permit to install
27 applications which were reviewed for technical completeness

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1 within 30 days of receipt of an administratively complete
2 application by the department.

3 (vii) The percentage and number of permit to install appli-
4 cations submitted to the department that were administratively
5 complete as received.

6 (viii) The percentage and number of permit to install appli-
7 cations for which a final action was taken by the department
8 within 60 days of receipt of a technically complete application
9 for those not required to complete public participation under
10 section 5511(3) prior to final action, or within 120 days of
11 receipt of a technically complete application for those which are
12 required to complete public participation under section 5511(3)
13 prior to final action.

14 (c) All of the following information for the renewable oper-
15 ating permit program authorized under section 5506:

16 (i) The number of renewable operating permit applications
17 received by the department.

18 (ii) The number of renewable operating permit applications
19 for which a final action was taken by the department. The number
20 of final actions should be reported as the number of applications
21 approved, the number of applications denied, and the number of
22 applications withdrawn by the applicant.

23 (iii) The percentage and number of permit applications ini-
24 tially processed within the required time.

25 (iv) The percentage and number of permit renewals and modi-
26 fications processed within the required time.

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1 (v) The number of permit applications reopened by the
2 department.

3 (vi) The number of general permits issued by the
4 department.

5 (d) The number of letters of violation sent.

6 (e) The amount of penalties collected from all consent
7 orders and judgments.

8 (f) For each enforcement action that includes payment of a
9 penalty, a description of what corrective actions were required
10 by the enforcement action.

11 (g) The number of inspections done on sources required to
12 obtain a permit under section 5506 and the number of inspections
13 of other sources.

14 (h) The number of air pollution complaints received, inves-
15 tigated, not resolved, and resolved by the department.

16 (i) The number of contested case hearings and civil actions
17 initiated and completed, and the number of voluntary consent
18 orders, administrative penalty orders, and emergency orders
19 entered or issued, for sources required to obtain a permit under
20 section 5506.

21 (J) THE AMOUNT OF REVENUE IN THE FUND AT THE END OF THE
22 FISCAL YEAR.

23 (10) ~~By August 1, 1999, the department shall convene a task~~
24 ~~force made up of representatives of fee-subject facilities, envi-~~
25 ~~ronmental groups, the general public, and any state department to~~
26 ~~which funds are appropriated from the fund. Not later than~~
27 ~~August 1, 2000, the task force shall provide to the legislature a~~

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1 ~~final report on the adequacy of the fee revenues, the fee~~
2 ~~structure relative to all sectors of the regulated industry, and~~
3 ~~the appropriateness of program activities and shall recommend~~
4 ~~changes to this section, as appropriate, to match fee revenues to~~
5 ~~program costs.~~ THE REPORT UNDER SUBSECTION (9) SHALL ALSO
6 INCLUDE THE AMOUNT OF REVENUE FOR PROGRAMS UNDER THIS PART
7 RECEIVED DURING THE PRIOR FISCAL YEAR FROM FEES, FROM FEDERAL
8 FUNDS, AND FROM GENERAL FUND APPROPRIATIONS. EACH OF THESE
9 AMOUNTS SHALL BE EXPRESSED AS A DOLLAR AMOUNT AND AS A PERCENT OF
10 THE TOTAL ANNUAL COST OF PROGRAMS UNDER THIS PART.

11 (11) The attorney general may bring an action for the col-
12 lection of the fees imposed under this section.

13 (12) THIS SECTION DOES NOT APPLY IF THE ADMINISTRATOR OF THE
14 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY DETERMINES THAT THE
15 DEPARTMENT IS NOT ADEQUATELY ADMINISTERING OR ENFORCING THE
16 RENEWABLE OPERATING PERMIT PROGRAM AND THE ADMINISTRATOR PROMUL-
17 GATES AND ADMINISTERS A RENEWABLE OPERATING PERMIT PROGRAM FOR
18 THIS STATE.