

HOUSE BILL No. 4792

May 17, 2001, Introduced by Rep. LaSata and referred to the Committee on Appropriations.

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

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~~ EXCEPT AS PROVIDED IN SUBDIVISION (D), FOR cate-
6 gory I facilities, the annual air quality fee shall be the sum of
7 a facility charge and an emissions charge as specified in
8 subdivision (e), MULTIPLIED BY THE REVENUE LEVELING FACTOR AS
9 DETERMINED UNDER SUBDIVISION (F). The facility charge shall be
10 \$3,375.00.

11 (b) For category II facilities, the annual air quality fee
12 shall be the sum of a facility charge and an emissions charge as
13 specified in subdivision (e), MULTIPLIED BY THE REVENUE LEVELING
14 FACTOR AS DETERMINED UNDER SUBDIVISION (F). The facility charge
15 shall be \$1,350.00.

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

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

1 BY THE REVENUE LEVELING FACTOR AS DETERMINED UNDER SUBDIVISION
2 (F):

3 (i) LESS THAN 4,000 TONS, \$18,675.00.

4 (ii) AT LEAST 4,000 TONS BUT NOT MORE THAN 5,300 TONS,
5 \$18,675.00 PLUS \$34.00 PER TON OF FEE-SUBJECT AIR POLLUTANT IN
6 EXCESS OF 4,000 TONS.

7 (iii) MORE THAN 5,300 TONS BUT NOT MORE THAN 12,000 TONS,
8 \$64,000.00.

9 (iv) MORE THAN 12,000 TONS BUT LESS THAN 18,000 TONS,
10 \$120,000.00.

11 (e) The emissions charge for category I and category II
12 facilities ~~equals~~ SHALL EQUAL the ~~product of~~ EMISSION CHARGE
13 RATE OF \$34.00, MULTIPLIED BY the actual tons of fee-subject air
14 pollutants emitted. ~~and the emission charge rate.~~ A pollutant
15 that qualifies as a fee-subject air pollutant under more than 1
16 class shall be charged only once. ~~The charge shall be calcu-~~
17 ~~lated as follows: (i) The emissions tonnage shall be calculated~~
18 ~~for the calendar year 2 years preceding the year of the billing.~~
19 The actual tons of fee-subject air pollutants emitted is
20 CONSIDERED TO BE the sum of all fee-subject air pollutants
21 emitted at the fee-subject facility ~~, except that for the pur-~~
22 ~~poses of the emissions charge calculation the actual tons charged~~
23 ~~shall not exceed either~~ FOR THE CALENDAR YEAR 2 YEARS PRECEDING
24 THE YEAR OF BILLING, BUT NOT MORE THAN THE LESSER of the
25 following:

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

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

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

6 (F) THE REVENUE LEVELING FACTOR SHALL BE DETERMINED BY
7 DIVIDING \$11,225,000.00 BY THE SUM OF THE UNADJUSTED ANNUAL AIR
8 QUALITY FEES UNDER SUBDIVISIONS (A), (B), AND (D).

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

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

26 (5) If the owner or operator of a fee-subject facility fails
27 to submit the amount due within the time period specified in

1 subsection (4), the department shall assess the owner or operator
2 a penalty of 5% of the amount of the unpaid fee for each month
3 that the payment is overdue up to a maximum penalty of 25% of the
4 total fee owed.

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

23 (7) If requested by the department, by March 15 of each
24 year, ~~beginning in 1995,~~ or within 45 days of a request by the
25 department, whichever is later, the owner or operator of each
26 fee-subject facility shall submit information regarding the
27 facility's previous year's emissions to the department. The

1 information shall be sufficient for the department to calculate
2 the facility's emissions for that year and meet the requirements
3 of subpart Q of 40 C.F.R. part 51.

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

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

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

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

7 (i) The number of permit to install applications received by
8 the department.

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

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

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

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

24 (vi) The percentage and number of permit to install applica-
25 tions which were reviewed for technical completeness within 30
26 days of receipt of an administratively complete application by
27 the department.

1 (vii) The percentage and number of permit to install
2 applications submitted to the department that were administra-
3 tively complete as received.

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

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

14 (i) The number of renewable operating permit applications
15 received by the department.

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

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

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

25 (v) The number of permit applications reopened by the
26 department.

1 (vi) The number of general permits issued by the
2 department.

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

4 (e) The amount of penalties collected from all consent
5 orders and judgments.

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

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

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

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

19 (J) THE AMOUNT OF REVENUE IN THE FUND AT THE END OF THE
20 FISCAL YEAR.

21 ~~(10) By August 1, 1999, the department shall convene a task~~
22 ~~force made up of representatives of fee-subject facilities, envi-~~
23 ~~ronmental groups, the general public, and any state department to~~
24 ~~which funds are appropriated from the fund. Not later than~~
25 ~~August 1, 2000, the task force shall provide to the legislature a~~
26 ~~final report on the adequacy of the fee revenues, the fee~~
27 ~~structure relative to all sectors of the regulated industry, and~~

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

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

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