

Legislative Analysis



CLEAN CORPORATE CITIZENS PROGRAM

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Senate Bill 939 (S-2 w/ floor amendment)
Sponsor: Sen. Arlan Meekhof

Senate Bill 941 as introduced
Sponsor: Sen. Tom Casperson

Senate Bill 940 (S-1 without amendment)
Sponsor: Sen. John Proos

Senate Bill 942 as introduced
Sponsor: Sen. Mike Green

House Committee: Natural Resources, Tourism, and Outdoor Recreation
Senate Committee: Natural Resources, Environment, and Great Lakes

Complete to 12-5-12

A SUMMARY OF SENATE BILLS 939 - 942 AS REPORTED FROM COMMITTEE 11-27-12

Senate Bill 939 (S-2 as amended on the floor) would add a new Part 14 (Clean Corporate Citizens) to the Natural Resources and Environmental Protection Act to provide for a "Clean corporate citizen" (C3) designation from the Department of Environmental Quality. The bill would essentially codify the C3 program that is currently being operated by the DEQ through administrative rules. A more detailed analysis of Senate Bill 939 follows below.

Senate Bill 940 (S-1) would amend the Management and Budget Act to include C3 designated facilities among the entities given a preference in purchasing decisions made by the state.

Senate Bills 941 and 942 would amend the Public Health Code and the Safe Drinking Water Act to provide that Parts 135 (Radiation Control) and 138 (Medical Waste) would be subject to Part 14 (established in Senate Bill 939).

Senate Bills 940-942 are tie-barred to Senate Bill 939, meaning they cannot go into effect unless Senate Bill 939 is enacted.

FISCAL IMPACT:

Senate Bills 939, 940, 941, and 942 would have no significant fiscal impact on the State of Michigan or local units of government. The bills would essentially place the existing Clean Corporate Citizen Program established by administrative rules within the Department of Environmental Quality (DEQ) into statute.

The Clean Corporate Citizen Program is a voluntary program that encourages and gives recognition to environmental stewardship displayed by corporate entities. The program is administered by the Office of Environmental Assistance within DEQ. Currently, there

are 112 facilities in the program that have been awarded the Clean Corporate Citizen designation.

Senate Bill 939 requires that the Department provide free training for performing environmental audits to employees of participating facilities and doubles the term of permits granted to the facility. However, because the current DEQ program provides these benefits as well, these requirements would not cause a significant cost increase to the Department.

DETAILED SUMMARY OF SENATE BILL 939 (S-2):

Qualify for C3 Designation

To qualify for a C3 designation a facility could not have been subject to any of the following in the previous three years: (1) a conviction for a criminal violation of an applicable environmental requirement; (2) a civil fine, penalty, or damages of \$10,000 or more for violating an applicable environmental requirement as assessed by a court of appropriate jurisdiction; (3) a determination of responsibility for an illegal action that substantially endangered the public health, safety, or welfare, or the environment; or (4) a departmental assessment, judicial consent decree, or administrative consent order, imposing a fine of \$32,500 or more (excluding the cost of any supplemental environmental project used to offset a fine) for violating an applicable environmental standard.

Facilities would be prevented from qualifying if the DEQ determines that it was responsible for a pattern of illegal actions within the previous three years that endangered the public health, safety, or welfare or the environment.

To qualify, facilities would have to address any outstanding violations cited by the DEQ that substantially endanger the public health, safety, welfare, or the environment, by (1) promptly resolving the violation, (2) demonstrating to the DEQ, EPA, or local agency that the violation did not occur, or (3) adhering to a compliance schedule to correct the violation that is acceptable to the DEQ, EPA, or local agency that issued the violation notice.

Designation Requirements

To qualify for a C3 designation, a facility would have to meet one of the following:

- Obtain and operate in accordance with requirements for registration or certification under an environmental management standard that is approved by the DEQ director.
- Adopt and maintain an environmental management system that is set in writing and is consistent with industry standards and appropriate for the nature, scale, and potential environmental impact of the facility's operations.
- Adopt and maintain an environmental management system that is provided in writing, approved by the DEQ director, and applicable to a specific group or classification of facilities including that facility.
- For facilities with 100 or fewer employees, adopt and maintain elements of an environmental management system, including an environmental policy, the

environmental aspects, the objectives and targets of operations, the roles and responsibilities, and the procedures.

Required Actions to Qualify for Designation

To qualify for a C3 designation a facility would have to adopt and maintain a written environmental policy and establish and maintain a program specific for that facility under which the operation does all of the following:

- Posts the environmental policy at the facility.
- Conducts periodic assessments that identify opportunities for pollution prevention.
- Establishes goals for reducing or preventing pollution.
- Prepares and maintains reports to demonstrate progress toward reaching the established goals.

Facilities are encouraged to initiate community-based activities and provide for the exchange of information concerning pollution prevention activities.

Application

Facilities wishing to obtain a C3 designation would have to apply to the DEQ and provide:

- A list of fines, penalties, or damages assessed relative to applicable federal environmental requirements over the previous three years.
- A certified statement that the applicant meets the requirements of the act.
- Information to verify compliance with the act.
- A list of significant goals.

The DEQ would have to determine administrative completeness of the application within 14 days and a final determination on the application within 90 days. Applications that meet the requirements of the act would have to be approved. Unsuccessful applicants could reapply at any time or withdraw an application without prejudice at any time.

Length of Designation

A C3 designation would last for five years.

Termination of Designation

The DEQ director could terminate any designation upon a determination that the facility no longer meets the applicable requirements of the act. In such an event, the director would have to notify the facility of the intent to terminate the designation and provide specific reasons for the termination not less than 30 days prior to termination.

Annual Report

A C3 designated facility would have to file annual reports within 60 days before the annual anniversary of the current designation. The report would have to:

- Summarize the activities undertaken over the previous year to (1) identify and report on implementation of standardized pollution prevention measures; and (2) set, revise, and attain objectives and implement measures in the environmental management system and pollution prevention programs.

- Include a certified statement that the C3 designated facility is in compliance with applicable sections of the act.

Benefits of Designation

Upon request, a C3 designated facility would be entitled to the following benefits:

- Priority over non-designated facilities in compliance assistance programs applicable to the facility and processing permit or operating license renewal applications for the facility.
- Free training for employees would be provided by the DEQ on performing environmental audits under Part 148.
- Terms of a permit issued by the DEQ twice as long as would otherwise apply.
- Preference for state purchases.
- Any additional C3 benefits set forth in rules.
- Half as frequent inspections by the DEQ.
- 72 hours advance notice of any routine inspection by the DEQ.
- Immunity from civil fines for violations of applicable state environmental requirements under certain conditions.

The benefits would not apply if the facility's actions pose or posed a substantial endangerment to the public health, safety, or welfare, or the violation was intentional or occurred as the result of the operator's gross negligence.

Termination of Benefits

All benefits provided to a facility would be terminated upon the termination of a facility's C3 designation.

The DEQ would also be required to maintain a list of C3 designated facilities on its website.

Rescind Promulgated Rules

The Clean Corporate Citizen program rules, R 324.1501 to 324.1511, would be rescinded.

The bill states that Part 14 shall not be construed in a manner that conflicts with or authorizes any violation of state law or federal regulation or law.

POSITIONS:

Michigan Department of Environmental Quality supports the bills. (11-27-12)

Michigan Environmental Council opposes the bills. (11-27-12)

BACKGROUND INFORMATION AND DISCUSSION:

The voluntary program, which has operated through administrative rules since 1997, is designed to provide incentives to encourage corporations to go beyond the minimum environmental standards and act as environmentally responsible citizens. Participating

corporations that meet the guidelines are eligible for certain benefits, including advanced notice for routine inspections, preferences in state purchasing, longer terms of permits, and routine DEQ inspections conducted half as frequently as is currently required. According to the DEQ, there are currently 112 C3 designated facilities.

There was concern that putting the C3 designation in statute could become a slippery slope and would eventually lead to its standards becoming the new minimum environmental standards. According to testimony, the program has been in place since 1997 and there has been no effort to move in that direction. The program is intended to simply provide recognition and benefits to corporations that go above and beyond current environmental standards.

There was also concern that the program does not require corporations to go above and beyond current environmental standards, but rather allows them to receive additional benefits for simply complying with current standards. In some cases, some believe that companies that have committed violations may still be able to receive a C3 designation under the bill. Opponents would like to see the program's qualifications enhanced to ensure that corporations receiving additional benefits are truly going above and beyond the current environmental standards.

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■ 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.