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Senate Bill 420 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Richard D. Fessler

Committee: Judiciary

Date Completed: 1-13-88

RATIONALE

Federal laws and regulations required the State to implement a vehicle emission inspection and maintenance program in areas that have not attained Federal clean air standards. Thus, the Vehicle Emissions Inspection and Maintenance Act provided for such a program and included an "expiration" date of December 31, 1987. Recent opinions of the Attorney General, however, have suggested that the expiration language in the bill is inadequate for discontinuing the Act. The Attorney General has said that, in order to repeal an Act, the intention to repeal "on a specific date" must be included in the Act's title. Some people feel that the Vehicle Emissions Inspection and Maintenance Act should expire as the law specifies. (See BACKGROUND for a discussion of the Federal requirements and Michigan's compliance.)

CONTENT

The bill would amend the Vehicle Emissions Inspection and Maintenance Act to provide that the Act would be "repealed" effective July 1, 1988, rather than "expire" on December 31, 1987, as current law provides. In addition, the words "and to repeal this act on a specific date" would be inserted into the Act's title.

The bill is tie-barred to Senate Bill 531, which would create the "Michigan Clean Air Committee" to develop an "alternative air quality plan" to replace the Act's inspection and maintenance plan.

MCL 257.1073

BACKGROUND

The Federal Clean Air Act as amended in 1977 requires that the states become active partners with the Federal government to ensure that air quality standards are met. Title I, Part D of the Act describes what States must do if certain geographical areas are unable to meet national ambient air quality standards (NAAQS). Areas or counties within a state that could not meet the NAAQS established by the Environmental Protection Agency (EPA) were designated non-attainment areas. Under the Federal Act, each state was required to submit a state implementation plan (SIP) describing the methods it planned to use to reach compliance with the NAAQS by specified deadlines. States were required to meet the deadlines by December 31, 1982, or request an extension from the EPA. To be granted an extension, however, the states were required to implement a vehicle inspection and maintenance (I/M) program in non-attainment areas. In Michigan, the EPA required an I/M program for Oakland, Macomb, and Wayne Counties.

In 1980, Michigan enacted Public Acts 83 and 84, which establish I/M programs in non-attainment areas. These

statutes formed part of Michigan's required SIP. The Acts did all of the following:

- Required the Department of Natural Resources to define the areas that could not comply with the Federal standards by the 1982 deadline and, therefore, require I/M programs.
- Gave the Department of State the authority to promulgate rules defining an I/M program, with the concurrence of the Department of Transportation.
- Provided the option of using either contractor-owned and -operated facilities or privately owned and operated facilities licensed by the State for emissions testing.
- Set requirements for vehicles that fail the emissions tests, including repair of faulty pollution control devices or a "low emission tune-up" and inspection of pollution control devices for illegal tampering.
- Gave exemptions for pre-1972 vehicles, motorcycles and mopeds, diesel engines, and electric engines.
- Mandated a maximum fee of \$10 and created a State income tax credit for inspection fees.
- Gave an exemption to low-income vehicle owners who were eligible for Medicaid.
- Created compliance requirements before changing registration.
- Declared violation of Public Act 83 of 1980 a misdemeanor punishable by imprisonment for not more than 30 days or a \$500 fine, or both.
- Provided for the "expiration" of Public Act 83 of 1980 on December 31, 1987.

The Joint Committee on Administrative Rules rejected the first set of rules that the Department of State developed for implementing the I/M program and the EPA formally proposed sanctions against Michigan for failure to implement an I/M program in June of 1984. The sanctions included a cutoff of Federal highway funds and a halt to permits for industrial expansion and development in the Detroit area. If enforced, the cost of the sanctions to the State would have been about \$200 million including the loss of numerous highway construction project jobs and the curtailment of economic expansion in the tri-county area according to projections made at that time. In June of 1984, the Joint Committee on Administrative Rules reconsidered and passed the I/M program rules (R 257.3102-257.3609), as proposed by the Department of State. The I/M program was funded by an appropriation of \$2.66 million in the 1985-86 fiscal year and \$2 million in the 1986-87 fiscal year.

Recently, there has been extensive debate over the program's planned expiration. According to a recent Attorney General's Opinion, the expiration date contained within the I/M program statute is invalid. The statutory basis

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of the I/M program, therefore, apparently will extend beyond the December 31, 1987, expiration date.

Under Federal law, if States do not implement or fail to maintain I/M programs in non-attainment areas, the EPA can impose certain economic sanctions against the area. Possible sanctions include all of the following:

- A construction moratorium. (No new or modified plants that would emit large amounts of carbon monoxide or hydrocarbons could be built in non-attainment areas.)
- Highway grant restrictions. (Federal funds for certain projects could be withheld from the non-attainment areas.)
- Air quality program grant restrictions. (Funds that support the State's and Wayne County's air pollution control programs could be withheld by the EPA.)
- Sewage treatment grant restrictions. (These sanctions would restrict grants to wastewater treatment plants needed for increased capacity.)

The recent discussions concerning the potential discontinuation of the I/M program in southeast Michigan has drawn the EPA's attention. In a letter dated March 5, 1987, the Regional Administrator for EPA, Valdes V. Adamkus, stated that without successful redesignation of the area as attaining the NAAQS, "the I/M program will need to be continued beyond December 31, 1987". If the program is discontinued, the EPA will "take steps to impose Federal air quality and highway fund restrictions, as well as a moratorium on major stationary source construction". It has been estimated that highway funds lost through sanctions would total about \$100 million.

Sanctions imposed against the State of New Mexico for discontinuing an I/M program in the Albuquerque area were upheld in an April 23 ruling by the U.S. Court of Appeals.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The Act includes language providing for its expiration at the end of this year. This presumably was what the Legislature had in mind in 1980, when the law was enacted. The demise of the Act and its accompanying inspection and maintenance program should not be postponed because of legal wording technicalities. By using the technically legal language necessary to repeal the law, the bill would bypass the Attorney General's ruling that the Act would remain in effect.

Opposing Argument

The issue is not one of finding the proper method to proceed legally with the Act's "expiration" or "repeal"; rather, the pertinent issue is whether the inspection and maintenance program should be discontinued at all. If the program were allowed to expire, then southeast Michigan would be subject to Federal sanctions. These sanctions would amount to a complete halt on industrial construction in Wayne, Oakland, and Macomb Counties as well as large losses of Federal funds, mostly for highway construction. Such actions would devastate Michigan's economy and hamper the State's efforts to make Michigan a better place in which to do business. Passage of the bill would cause businesses to lose faith in the State's ability to meet deadlines and

the State's role in promoting a positive business environment. Rather than clarifying the program's discontinuance, the bill should eliminate the expiration provision.

Response: Although the EPA has threatened to impose sanctions, the State should not be forced to buckle under to the Federal bureaucracy. The State's duly elected officials, rather than an agency in Washington, D.C., should decide the proper course of action for dealing with its environmental problems. If the Legislature chooses not to impose or maintain an inspection and maintenance program, so be it. As for EPA sanctions and their validity, a court challenge may be necessary to avert Federal regulatory imposition on State law.

Opposing Argument

The expiration of the program could cost the State jobs. Not only would construction and industrial jobs be lost due to EPA sanctions, but Department of State jobs would also be lost. The Department personnel that currently administer the program would be out of work. Further, service stations and auto dealers have invested in the equipment necessary to provide the required inspections and maintenance. If these services were no longer required, the emissions testing equipment would be rendered obsolete and these small businesses would have to absorb the losses.

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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.