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BILL ANALYSIS

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Senate Fiscal Agency

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Senate Bill 531 (as enrolled) (Public Act 269 of 1987)**Sponsor:** Senator Harmon Cropsey**Senate Committee:** Agriculture and Forestry**House Committee:** Appropriations**Date Completed:** 1-19-88***RATIONALE***

Since 1977, Federal law has required states to meet national clean air standards, and has authorized the Environmental Protection Agency (EPA) to impose certain economic sanctions against noncomplying areas that fail to implement or maintain an automobile emissions testing (AET) program. As a result, Michigan enacted Public Acts 83 and 84 of 1980, which established an AET program in Wayne, Oakland, and Macomb Counties; set requirements for vehicles that fail the emissions tests; and provided for the expiration of Public Act 83 on December 31, 1987. Recently, there has been extensive discussion of the Act's scheduled expiration: although the EPA has informed Michigan that it will take steps to restrict Federal air quality and highway funds and impose a moratorium on major "stationary source" (e.g., factory) construction if Michigan does not comply, many question the effectiveness of the program. They believe that it is an unreasonably expensive proposition whose limited benefits are unmeasurable, and that the State should examine other issues — such as the relative volatility of certain fuels, and the actual origins of air pollution — to develop a potentially acceptable alternative to the AET program. (For a more detailed discussion of the Federal law and Michigan's compliance, see BACKGROUND.)

CONTENT

The bill would amend the Vehicle Emissions Inspection and Maintenance Act to create the Michigan Ambient Air Quality Standards Committee to develop an "alternative air quality plan" that would employ alternative fuels and alternative pollution control technologies, and that could replace in whole or in part the Act's inspection and maintenance program. The Committee would be required to:

- Consider a program providing for the use of oxygenated or other alternative fuel mixtures in affected areas.
- In conjunction with the Department of Natural Resources, petition the U.S. Environmental Protection Agency to declare that the State is in compliance with national ambient air quality standards for carbon monoxide.
- Actively advocate that the EPA accept the Committee's plan in lieu of the inspection and maintenance program provided in the Act.
- Submit a preliminary plan to the Legislature by July 1, 1988.

The bill is tie-barred to Senate Bill 420, which passed the Senate on November 4, 1987, and would repeal the Vehicle Emissions Inspection and Maintenance Act on July 1, 1988. The bill would be repealed as of December 31, 1990.

Committee

The bill specifies that the Michigan Ambient Air Quality Standards Committee would be created in order to aid in bringing the State into compliance with national ambient air quality standards; to provide for more effective and efficient alternatives to the inspection and maintenance program provided in the Act; and to institute a program that minimized the regulatory and financial impact on the State's motorists.

The Committee would consist of three individuals appointed by the Senate Majority Leader, three appointed by the Speaker of the House of Representatives, and five appointed by the Governor. The members appointed by the Governor would have to include the following:

- One who had knowledge of and expertise in matters pertaining to air pollution control technology.
- One who had knowledge of and expertise in agricultural matters.
- One who had knowledge of and expertise in petroleum industry matters.
- One who was from a college or university and had knowledge of and expertise in matters pertaining to an environmental field.
- One who had knowledge of and expertise in the automobile industry.

The Directors of the Departments of Natural Resources, Transportation, and Commerce, and the Secretary of State would be required to provide staff and technical assistance to the Committee. The Committee would be authorized to contract for technical and staff assistance upon approval of the Legislature. Committee members would be entitled to per diem compensation and reimbursement for expenses.

Committee Plan

Among the alternatives considered by the Committee in preparing the alternative air quality plan, the Committee would have to consider including a program that provided for the use of oxygenated or other alternative fuel mixtures in "affected areas". The Committee also would have to consult with persons in the automobile and petroleum industries and with gasoline vendors in the State concerning the availability and feasibility of alternative fuel mixtures and other pollution control technologies; the supply of oxygenated fuels available in the State; and the seasonal impact of the use of oxygenated and other alternative fuels. In addition, the Committee would have to consider and analyze the effect of automobile fleet turnover, expanded car pooling efforts, and more stringent anti-tampering penalties on improving ambient air quality. "Alternative fuels" would mean oxygenated fuels and low

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volatility blends of gasoline. "Oxygenated fuels" would mean blends of unleaded gasoline and oxygenated hydrocarbons.

The bill also would require the Committee to examine the impact of the use of chlorofluorocarbons in automotive air-conditioning and refrigeration on the ambient air quality of lower atmospheric levels to determine whether alternative coolants would have to be required for automotive air-conditioning and refrigeration.

Further, the Committee would have to select a lead department from among the Departments of Natural Resources, Transportation, State, and Commerce, to assist the Committee in the actual preparation of the plan. In conjunction with the Department of Natural Resources, the Committee would have to petition the EPA to declare the State to be in compliance with national ambient air quality standards for carbon monoxide.

The Committee also would be required to recommend the steps necessary to develop an air quality modeling program to demonstrate the State's ability to meet national ambient air quality standards.

Liaison

The Committee would be required to serve as the liaison between the State and the U.S. Environmental Protection Agency on matters concerning the State's implementation plan submitted under the Federal Clean Air Act. The Committee also would be required to advocate actively that the EPA accept the Committee's plan in lieu of the inspection and maintenance program provided in the Act as a way to meet the national ambient air quality standards.

The Department of Natural Resources would be required to submit the plan to the Legislature and the administrator of the EPA under the Federal Clean Air Act.

Proposed MCL 257.1025 and 257.1026

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. 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 EPA were designated non-attainment areas. Under the 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 an automobile emissions testing and maintenance program in non-attainment areas. In Michigan, the EPA required an AET program for Oakland, Macomb, and Wayne Counties.

Public Acts 83 and 84 of 1980, which establish the AET program in non-attainment areas, 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, required an AET program.
- Gave the Department of State the authority to promulgate rules defining an AET 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 failed 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 program and the EPA formally proposed sanctions against Michigan for failure to implement an AET 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 1984, the Joint Committee on Administrative Rules reconsidered and passed the AET program rules (R 257.3102-257.3609), as proposed by the Department of State. The program was funded by an appropriation of \$2.66 million in the 1985-86 fiscal year and \$2 million in 1986-87.

Recent debate has involved the program's planned expiration. According to an Attorney General's Opinion, the expiration date contained within the AET program statute is invalid. The statutory basis of the program, therefore, apparently will extend beyond the December 31, 1987, expiration date. (Senate Bill 420, however, passed by the Senate on November 4, 1987, would cure the statute's defect and effectuate its expiration.)

Possible EPA sanctions against States that fail to implement or maintain an AET program in non-attainment areas 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 potential discontinuation of the AET program in southeastern Michigan has drawn the EPA's attention. In a letter dated March 5, 1987, the Regional Administrator for EPA, Valdis V. Adamkus, stated that without successful redesignation of the area as attaining the NAAQS, the "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 AET 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 bill would create a mechanism for Michigan to develop an alternative to the AET program that could be presented to the Environmental Protection Agency. The existing program is highly unpopular for a number of reasons. The \$40-\$50 million estimated cost of compliance would pay for a program whose benefits were not only limited, but also unmeasurable. While more effective emission control technologies could be implemented, current law limits the State to a program that would accomplish little. Before Michigan commits itself and its citizenry to this program, it should examine various related issues, including the relative volatility of fuels, the cars inspected, stationary sources of emissions, the geographical areas affected, and seasonal considerations. For instance, although many people advocate the use of alcohol-gasoline blends, gasohol performs differently when the temperature changes, and does not affect all cars in the same way; what would work best in Michigan needs to be determined. Also, all sources of pollution should be examined; although older cars are the worst polluters, the AET program specifically exempts pre-1972 models, as well as cars owned by Medicaid recipients. Moreover, cars are far from the only sources of harmful emissions: factories are also large contributors. In fact, not only are factories in the Chicago area responsible for air pollution in western Michigan, but industry in Port Huron is the source of many emissions found in the Detroit area. Nevertheless, it is Wayne, Oakland, and Macomb Counties, not Sanilac County, that will be penalized. Other issues include the comparative costs and tax advantages of various fuels, compensating for phased-out farm subsidies through increased agricultural production of alcohol cereal or grain, and reducing the domestic reliance on foreign oil. These and other concerns would be studied by the proposed committee, in order to develop a viable alternative to the current AET program.

Response: Any plan should also take into account the money already invested by Detroit-area auto repair facilities in gearing up for the AET program.

Opposing Argument

The Environmental Protection Agency already has gone on record stating that it "could not accept an oxygenated fuels program in the Detroit area in lieu of the AET program". The EPA also has pointed out that the oxygenated fuels program being implemented in Denver, Colorado is in addition to an existing vehicle inspection and maintenance program. Under the bill, however, the plan developed by the proposed committee would be recommended as an alternative to the AET program, and the bill is tie-barred to a measure that would repeal Michigan's AET statute. To avoid jeopardizing millions of dollars in Federal highway and construction funding, the most prudent course of action — at least for the time being — would be to retain and comply with existing law.

Response: Reportedly, preliminary discussions concerning the proposed committee already are under way with EPA officials, who have indicated receptivity to the idea.

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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.