

HOUSE BILL No. 5983

June 30, 1992, Introduced by Reps. Sikkema, Brown, Varga, Hickner, Yokich and Trim and referred to the Committee on Conservation, Recreation and Environment.

A bill to create an office, program, and advisory panel to assist small business stationary sources in their efforts to comply with laws pertaining to air pollution; and to prescribe their powers and duties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "small business clean air assistance act".

3 Sec. 2. As used in this act:

4 (a) "Air pollution act" means the air pollution act, Act
5 No. 348 of the Public Acts of 1965, being sections 336.11 to
6 336.36 of the Michigan Compiled Laws, and the rules promulgated
7 under that act.

8 (b) "Clean air act" means chapter 360, 69 Stat. 322, 42
9 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a,
10 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to

1 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617,
2 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to
3 7661f, and 7671 to 7671q and the regulations promulgated under
4 that act.

5 (c) "Commission" means the air pollution control
6 commission.

7 (d) "Office" means the office of the small business clean
8 air ombudsman.

9 (e) "Ombudsman" means the small business clean air
10 ombudsman.

11 (f) "Program" means the small business clean air assistance
12 program.

13 (g) "Regulated air pollutant" means 1 or more of the
14 following:

15 (i) Nitrogen oxides (NO_x) or any volatile organic compound.

16 (ii) Any pollutant for which a national ambient air quality
17 standard has been promulgated under the clean air act.

18 (iii) Any pollutant that is subject to any standard promul-
19 gated under section 111 of the clean air act.

20 (iv) Any class I or II substance listed pursuant to section
21 602 of the clean air act.

22 (v) Any pollutant subject to a standard promulgated under
23 section 112 or other requirements established under section 112
24 of the clean air act, including section 112(r).

25 (vi) Any pollutant subject to requirements under section
26 112(j) of the clean air act. Such a pollutant shall be
27 considered to be regulated at the time the administrator of the

1 United States environmental protection agency does not promulgate
2 a standard by the date established pursuant to section 112(e) of
3 the clean air act.

4 (vii) Any pollutant for which the requirements of section
5 112(g)(2) of the clean air act have been met, but only with
6 respect to the individual source subject to a section 112(g)(2)
7 requirement.

8 (h) "Rule" means a rule promulgated pursuant to the adminis-
9 trative procedures act of 1969, Act No. 306 of the Public Acts of
10 1969, being sections 24.201 to 24.328 of the Michigan Compiled
11 Laws.

12 (i) "Small business" means a business that is independently
13 owned and operated and that is not dominant in its field as
14 defined in 13 C.F.R. 121 and, unless adjusted as authorized under
15 section 2, is a stationary source that is all of the following:

16 (i) Is owned or operated by a person that employs 100 or
17 fewer individuals.

18 (ii) Is a small business concern as defined in the small
19 business act, Public Law 85-536, 72 Stat. 384.

20 (iii) Is not a major stationary source as defined in title I
21 and III of the clean air act or is a major stationary source as
22 defined in title I and III of the clean air act because of its
23 location in a nonattainment area.

24 (iv) Emits less than 50 tons per year of any regulated air
25 contaminant.

26 (v) Emits less than 75 tons per year of all regulated air
27 contaminants.

1 Sec. 3. (1) Upon petition by a source, the commission may,
2 after notice and opportunity for public comment, include as a
3 small business stationary source for purposes of this section any
4 stationary source that does not meet the criteria of subparagraph
5 (iii), (iv), or (v) of section 2(i) but which does not emit more
6 than 100 tons per year of all regulated air pollutant.

7 (2) The commission, in consultation with the administrator
8 of the United States environmental protection agency and the
9 administrator of the United States small business administration
10 and after providing notice and opportunity for public hearing,
11 may exclude from the small business stationary source definition
12 any category or subcategory of sources that the state determines
13 to have sufficient technical and financial capabilities to meet
14 the requirements of the clean air act and the air pollution act
15 without the application of this act.

16 Sec. 4. (1) The office of the small business clean air
17 ombudsman is created within the department of commerce. The
18 office shall exercise its powers and duties independently of any
19 other state department or entity.

20 (2) The principal executive officer of the office is the
21 small business clean air ombudsman, who shall be appointed by the
22 governor by October 1, 1992. The ombudsman shall serve for a
23 term of 4 years.

24 Sec. 5. The office of the ombudsman is responsible for
25 assessing and ensuring that the goals of the program are being
26 met and in addition shall do all of the following:

1 (a) Conduct independent evaluations of all aspects of the
2 program.

3 (b) Review and provide comments and recommendations to the
4 United States environmental protection agency and state and local
5 air pollution control authorities regarding the development and
6 implementation of requirements that impact small businesses.

7 (c) Facilitate and promote the participation of small busi-
8 nesses in the development of rules that impact small businesses.

9 (d) Assist in providing reports to the governor and legisla-
10 ture and the public regarding the applicability of the require-
11 ments of this act, the clean air act, and the air pollution act
12 to small business.

13 (e) Aid in the dissemination of information, including, but
14 not limited to, air pollution requirements and control technolo-
15 gies, to small businesses and other interested parties.

16 (f) Participate in and sponsor meetings and conferences with
17 state and local regulatory officials, industry groups, and small
18 business representatives.

19 (g) Aid in investigating and resolving complaints and dis-
20 putes from small businesses against the state or local air pollu-
21 tion control authorities, or both.

22 (h) Periodically review the work and services provided by
23 the program with trade associations and representatives of small
24 business.

25 (i) Operate a toll-free telephone hotline to provide free,
26 confidential help on individual source problems and grievances.

1 (j) Refer small businesses to the appropriate specialist in
2 the program where they may obtain information and assistance on
3 affordable alternative technologies, process changes, and prod-
4 ucts and operational methods to help reduce air pollution and
5 accidental releases.

6 (k) Arrange for and assist in the preparation of guideline
7 documents by the program and ensure that the language is readily
8 understandable by laypersons.

9 (l) Work with trade associations and small businesses to
10 bring about voluntary compliance with the clean air act and the
11 air pollution act.

12 (m) Work with regional and state offices of the small busi-
13 ness administration, the United States department of commerce and
14 state department of commerce, and other federal and state agen-
15 cies that may have programs to financially assist small busi-
16 nesses in need of funds to comply with environmental
17 requirements.

18 (n) Work with private sector financial institutions to
19 assist small businesses in locating sources of funds to comply
20 with state and local air pollution control requirements.

21 (o) Conduct studies to evaluate the impacts of the clean air
22 act and the air pollution act on the state's economy, local econ-
23 omies, and small businesses.

24 (p) Work with other states to establish a network for shar-
25 ing information on small businesses and their efforts to comply
26 with the clean air act and the pertinent air pollution act for
27 their state.

1 (q) Make recommendations to the commission and the
2 legislature concerning the reduction of any fee required under
3 the clean air act or the air pollution act to take into account
4 the financial resources of small businesses.

5 Sec. 6. The program is created in the department of
6 commerce. The program shall develop adequate mechanisms for all
7 of the following:

8 (a) Developing, collecting, and coordinating information on
9 compliance methods and technologies for small businesses.

10 (b) Encouraging lawful cooperation among small businesses
11 and other persons to further compliance with the clean air act
12 and the air pollution act.

13 (c) Assisting small business with information regarding pol-
14 lution prevention and accidental release detection and preven-
15 tion, including, but not limited to, providing information con-
16 cerning alternative technologies, process changes, and products
17 and methods of operation that help reduce air pollution.

18 (d) Establishing a compliance assistance program that
19 assists small businesses in determining applicable requirements
20 for compliance and the procedures for obtaining permits effi-
21 ciently in a timely manner under the clean air act or the air
22 pollution act, or both.

23 (e) Providing mechanisms and access to information so that
24 small businesses receive notification of their rights under the
25 clean air act and the air pollution act in a manner and form that
26 assures reasonably adequate time for small businesses to evaluate

1 their compliance methods or applicable proposed or final rules or
2 standards under the clean air act and the air pollution act.

3 (f) Informing small businesses of their obligations under
4 the clean air act and the air pollution act, including mechanisms
5 for referring small businesses to qualified auditors or to the
6 state if the state elects to provide audits to determine compli-
7 ance with the clean air act and the air pollution act. To the
8 extent permissible by state and federal law, audits shall be sep-
9 arate from the formal inspection and compliance program.

10 (g) Providing information on how to obtain consideration
11 from the commission on requests from small businesses for modifi-
12 cations of any work practice, technological method of compliance,
13 or the schedule of milestones for reductions of emissions preced-
14 ing an applicable compliance date.

15 Sec. 7. Upon request, the ombudsman shall be given access
16 to all information, records, and documents in the possession of
17 the commission of natural resources, the department of natural
18 resources, and the commission that the ombudsman considers neces-
19 sary to fulfill the responsibilities of the office other than
20 information described in section 13 of the freedom of information
21 act, Act No. 442 of the Public Acts of 1976, being section 15.243
22 of the Michigan Compiled Laws. The commission of natural
23 resources, department of natural resources, and commission shall
24 also assist the ombudsman in fulfilling his or her responsibili-
25 ties under this act.

26 Sec. 8. Information obtained by the office or the program
27 from small businesses that utilize their services shall be held

1 in confidence by those employed by the office or the program to
2 the extent authorized under the freedom of information act, Act
3 No. 442 of the Public Acts of 1976, being sections 15.231 to
4 15.246 of the Michigan Compiled laws, including, but not limited
5 to, those provisions pertaining to exemptions from disclosure for
6 trade secrets, and commercial and financial information.

7 Sec. 9. (1) The small business clean air compliance
8 advisory panel is created within the program.

9 (2) The advisory panel shall be broadly representative of
10 the regulated small business community and shall include women
11 members and members who are minorities. The advisory panel shall
12 consist of the following members:

13 (a) Two members appointed by the governor to represent the
14 general public and who are not owners or representatives of
15 owners of small business stationary sources.

16 (b) One member appointed by the majority leader of the
17 senate who is an owner or a representative of owners of small
18 business stationary sources.

19 (c) One member appointed by the minority leader of the
20 senate who is an owner or a representative of owners of small
21 business stationary sources.

22 (d) One member appointed by the speaker of the house of rep-
23 resentatives who is an owner or a representative of owners of
24 small business stationary sources.

25 (e) One member appointed by the minority leader of the house
26 of representatives who is an owner or a representative of owners
27 of small business stationary sources.

1 (f) One member appointed by the director of the department
2 of natural resources.

3 (3) The members first appointed to the advisory panel shall
4 be appointed by October 1, 1992.

5 (4) Members of the advisory panel shall serve for terms of
6 4 years, or until a successor is appointed, whichever is later.
7 However, of the members first appointed, the members appointed by
8 the governor shall serve for 3 years, the members appointed by
9 the senate shall serve for 1 year, and the members appointed by
10 the house of representatives and the member appointed by the
11 director of the department of natural resources shall serve for 2
12 year.

13 (5) If a vacancy occurs on the advisory panel, the governor,
14 the director of the department of natural resources, or the
15 appropriate legislative leader who made the appointment shall
16 make an appointment for the unexpired term in the same manner as
17 the original appointment.

18 (6) The first meeting of the advisory panel shall be called
19 within 90 days of the appointment of all advisory panel members.
20 At the first meeting the advisory panel shall elect from among
21 its members a chairperson and other officers as it considers nec-
22 essary or appropriate.

23 (7) A majority of the members of the advisory panel consti-
24 tute a quorum for the transaction of business at a meeting of the
25 advisory panel. A majority of the members present and serving is
26 required for official action of the advisory panel.

1 (8) Members of the advisory panel shall serve without
2 compensation. However, members of the advisory panel may be
3 reimbursed for their actual and necessary expenses incurred in
4 the performance of their official duties as members of the
5 advisory panel.

6 (9) The advisory panel shall do all of the following:

7 (a) Consult with the ombudsman and the head of the program
8 to plan the work of the panel, including the frequency of meet-
9 ings, agenda items, and reports to be issued by the panel.

10 (b) Determine whether the program should utilize private
11 contractors hired by the program or utilize expertise within the
12 program, or both, to meet the requirements of this act that per-
13 tain to providing technical assistance to small businesses.

14 (c) Prepare advisory reports concerning all of the
15 following:

16 (i) The effectiveness of the office and program.

17 (ii) The difficulties encountered and degree and severity of
18 enforcement of the air pollution act.

19 (iii) The costs of operating the office and the program.

20 (iv) The average costs of different categories of small
21 businesses in complying with the air quality enforcement program
22 of this state.

23 (d) Periodically report to the administrator of the United
24 States environmental protection agency regarding compliance by
25 the program with the broad intent of all of the following acts as
26 may be applicable: