



**House
Legislative
Analysis
Section**

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CLEAN AIR ASSISTANCE PROGRAM

**House Bill 4073 with committee
amendments
First Analysis (2-3-93)**

**Sponsor: Rep. Ken Sikkema
Committee: Conservation, Environment
and Great Lakes Affairs**

THE APPARENT PROBLEM:

Although the 1977 amendments to the federal Clean Air Act (CAA) brought about significant improvements in this country's air quality, the problems of acid rain, urban air pollution, and toxic air emissions still pose threats to the public health and to the environment. As a result, Congress revised the CAA in 1990 to curb these problems. The legislation (known as the Clean Air Act Amendments of 1990) establishes a national enforcement program, and also contains research and development provisions, programs to address the accidental release of toxic air pollutants, and provisions that incorporate agreements reached under international negotiations to limit emissions of ozone depleting chemicals. Meeting the requirements of the Clean Air Act Amendments of 1990 will require extensive amendments to Michigan's Air Pollution Act. Failure to meet the new law's requirements could result in sanctions, including reduced federal highway funding.

Under Title I of the CAA, the United States Environmental Protection Agency (EPA) is required to establish national ambient, or outdoor, air quality standards (NAAQSs) for pollutants emitted by mobile (e.g., automobiles) or stationary (e.g., factories) sources that are determined to be injurious to public health or the environment. The CAA targeted six pollutants and pollutant categories, known as "criteria pollutants": sulfur dioxide (SO₂), particulate matter of 10 microns in size or smaller (PM-10), carbon monoxide (CO), ozone (smog), nitrogen dioxide (NO₂), and lead (Pb). The act prescribes standards for "primary" and "secondary" NAAQSs, which establish concentration limits of air pollutants that are considered to present a risk of harm if exceeded: each primary NAAQS must be established at a level that will protect public health with "an adequate margin of safety," and each "secondary" NAAQS must be established at a level to protect "public

welfare." (However, since "public welfare," as defined in the CAA, can be defined with regard to a pollutant's effect on soil, water, wildlife, crops, visibility, and even personal comfort, secondary NAAQSs may have standards that are more stringent than primary standards.)

The 1990 amendments to the CAA also create new regulatory standards for areas that have not reached the required air quality standards. Each state must designate all areas of the state as either "nonattainment," meaning that the area does not meet one or more NAAQSs; "attainment;" or "unclassifiable," meaning that it cannot be classified as "attainment" or "nonattainment" on the basis of current information. "Nonattainment" areas must reach "attainment" with primary NAAQSs as expeditiously as practicable, but no later than five years from the date the area was designated "nonattainment," for ozone, CO, SO₂, NO₂, and lead; and no later than six years for PM-10. "Nonattainment" areas must achieve secondary NAAQSs as quickly as practicably possible after the area is designated. In addition, each state must submit a comprehensive state implementation plan (SIP) for areas in the state that are not in compliance with NAAQSs. Among other requirements, an SIP must provide for the attainment of NAAQSs within a set time frame. The EPA may also designate an area within a state as part of a multi-state nonattainment area. In these areas, the EPA must issue a federal implementation program (FIP) if a state fails to issue a state plan.

Title III of the CAA regulates "hazardous air pollutants." Until now, implementation of Title III requirements has failed to reduce the emissions of these substances. Reportedly, more than 2.7 billion pounds of toxic air pollutants are emitted annually

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in the United States. Only seven pollutants were regulated before the 1990 amendments; under the 1990 amendments, a list of 189 hazardous pollutants (172 pollutants and 17 families or combinations) is established, ranked from the most to the least hazardous. The criterion for listing a pollutant is that the substance may present a threat of adverse effect on human health or the environment. In addition, the EPA lists categories of sources that emit certain levels of these pollutants: "major" sources are those that emit 10 tons per year of a listed pollutant, or 25 tons per year of any combination of those pollutants. Included in this category are chemical and steel plants and industrial incinerators. "Area" sources are smaller stationary sources, such as dry cleaners, that present a threat of adverse effects to human health or the environment. The EPA must issue "Maximum Achievable Control Technology" (MACT) emissions standards for each category of sources. The federal goal is to assure that 90 percent of the emissions of the 30 most serious pollutants are regulated so that the cancer risks associated with them are reduced by 75 percent within five years. (Note: automobile emissions are not covered under Title III, although they constitute a major source of toxic air pollution.)

The Clean Air Act Amendments of 1990 also require that all states promulgate and implement permit programs that regulate the modification, construction, and operation of any stationary sources (facilities that contaminate the air). The operating permit program is designed to consolidate in one document all of the applicable air pollution information and control requirements outlined in Titles I and III for a source. However, the small businesses that are regulated under this provision of the 1990 amendments predictably face financial limitations and do not have access to the same technical information that larger businesses have. (For purposes of the act, a "small business stationary source" is defined as any stationary source that is owned or operated by a person who employs 100 or fewer people; is a small business concern as defined in the Small Business Act; is not a major stationary source; does not emit 50 tons or more of any regulated pollutants; and emits less than 75 tons per year of all regulated pollutants.) In anticipation of this new burden on small businesses, Title V of the 1990 amendments established a technical assistance program in order to help these smaller businesses comply with the act's permit requirements. The EPA and the individual states

are to implement the plan. Michigan's Air Pollution Act contains no provisions pertaining to the regulation of small businesses under the act. It will therefore be necessary to establish the above requirements in statute.

THE CONTENT OF THE BILL:

House Bill 4073 would create the Small Business Clean Air Assistance Act to assist certain small businesses in their efforts to comply with Titles I, III, and V of the provisions of the federal Clean Air Act (CAA). The provisions of the bill would apply to a company that was a "stationary source" (although not defined in the bill, the term presumably applies to an activity or facility, other than a vehicle, that contaminates the air, as defined by the federal Clean Air Act.) The bill would create an Office of the Small Business Clean Air Ombudsman within the Department of Commerce to ensure compliance with the program. In addition, the bill would create a Small Business Clean Air Compliance Advisory Panel, consisting of members of the regulated small business community.

Eligibility Criteria. To qualify for assistance under the act, a company would have to qualify as a small business under the federal Small Business Act and meet the following requirements:

- (a) Be independently owned and operated;
- (b) Not be "dominant in its field" as defined by federal rule;
- (c) Employ up to 100 employees;
- (d) Not be a "major stationary source" as defined in Titles I and III of the CAA, or be a major source only because of its location in a "nonattainment" area (an area where air emissions exceed federal limitations);
- (e) Emit less than 50 tons per year of any, or less than 75 tons per year of all, air contaminants or air pollutants regulated under the Air Pollution Act or the CAA.

A small business that didn't meet the above requirements, could, however, petition the Air Pollution Control Commission to be included under the provisions of the act, provided that it did not emit more than 100 tons per year of all regulated

air contaminants and air pollutants (as defined under the CAA or the Air Pollution Act). If the state determined that a particular category of sources had sufficient technical and financial capabilities to meet the requirements of the CAA and the Air Pollution Act, then the commission could exclude that category from the act's definition of "small business stationary source", and thus from eligibility for assistance under the act.

Small Business Clean Air Assistance Program. The program, in the Department of Commerce, would develop and coordinate information on compliance methodology; encourage lawful cooperation among small businesses and others to further compliance with the CAA; assist small businesses with information on pollution prevention and accidental release detection and prevention; establish a compliance assistance program; provide access to information to enable companies to comply with the CAA and the Air Pollution Act; inform small businesses of their obligations under the CAA; and provide information for modifications of work practices, technological methods of compliance, or the scheduling of milestones to reduce emissions before the applicable compliance date.

Small Business Clean Air Compliance Advisory Panel. An advisory panel, consisting primarily of members of the regulated small business community, would be created within the program. The panel would consist of two members appointed by the governor, who represented the general public and not the small business stationary source community. The small business stationary source community would be represented by one member appointed by the Republican leader of the Senate; one member appointed by the Democratic leader of the Senate; one member appointed by the Republican leader of the House; and one member appointed by the Democratic leader of the House. One additional member would be appointed by the Department of Natural Resources (DNR). The panel would be required to do the following:

--Consult with the Small Business Clean Air Ombudsman (see below) and the head of the program to plan the panel's work.

--Determine whether to utilize private contractors in providing technical assistance to small businesses.

--Prepare advisory reports concerning the office and program's effectiveness; the difficulties encountered

and degree and severity of enforcement of the Air Pollution Act; the costs of operating the office and the program; the average costs of different categories of small businesses in complying with the state's air quality enforcement program.

--Periodically report to the United States Environmental Protection Agency (EPA) on the Small Business Clean Air Assistance Program's compliance with federal laws concerning paperwork reduction, regulatory flexibility, and equal access to justice.

The panel would also review information prepared by the program to assure that it was understandable to a lay person; utilize the program to develop and disseminate the work product of the panel; and provide copies of advisory reports to the EPA, the Air Pollution Control Commission, the DNR, the legislature, the Department of Commerce, and -- upon request -- to the public.

Small Business Clean Air Ombudsman. The ombudsman would be appointed by the governor, and would be responsible for assessing and ensuring that the goals of the Small Business Clean Air Assistance Program were being met. The appointee would, among other duties, conduct independent evaluations of all aspects of the program; review and provide comments and recommendations to the EPA; aid in investigating and resolving complaints and disputes from small businesses against the state or local air pollution control authorities; refer small businesses to the appropriate specialist in the program for information and assistance; work with regional and state offices of the Small Business Administration (SBA), federal and state commerce departments, and other federal and state agencies with programs to assist small businesses in need of funds to comply with environmental requirements; and work with private-sector financial institutions to aid small businesses in locating funds so that they could comply with state and local air pollution control requirements.

When necessary to fulfill the responsibilities of the office, the ombudsman could also request assistance and access to all information, records, and documents in the possession of the natural resources and air pollution control commissions and the DNR.

Confidentiality. Information obtained by the Office of the Small Business Clean Air Ombudsman and

the program from small businesses that utilized their services would be held in confidence to the extent authorized under the Freedom of Information Act.

FISCAL IMPLICATIONS:

The Department of Commerce has not yet estimated the fiscal implications of the bill. (2-3-93)

ARGUMENTS:

For:

The bill would provide for an effective assistance program, which could benefit many small businesses. The Clean Air Act Amendments of 1990 anticipated that the new operating permit requirements would place a burden on small businesses, and required that the United States Environmental Protection Agency (EPA) establish a small stationary source technical and environmental compliance and assistance program by August 15, 1991. In addition, each state must establish a Small Business Assistance Program (SBAP); a Compliance Advisory Panel to render advisory opinions and submit reports to EPA on the program's effectiveness; and a Small Business Ombudsman to serve as a representative for small businesses in meeting the state's responsibilities in implementing the federal standards.

For:

Air pollution problems such as ozone pollution persist, especially in heavily populated urban areas. One reason for this is due to the diversity and number of urban air pollution sources. One component of urban smog comes from automobile emissions, petroleum refineries, chemical plants, dry cleaners, gasoline stations, house painting, and printing shops. The proliferation of small businesses in urban areas provides another reason. While each individual small business may not contribute to this problem in a large measure, since each one may emit less than 10 tons of pollutants per year, the combined air pollution from all small businesses, however, may amount to many hundreds of tons of pollutants. It is important that these types of businesses be regulated so that public health standards for air quality may be attained.

Against:

The bill does not go far enough. Small businesses need more than advice and assistance on how to

implement the Clean Air Act's pollution control and permit requirements. The technology required to implement pollution control measures is extremely costly. In fact, many believe that these costs will force thousands of small companies to go out of business. This is not a problem that either the Small Business Clean Air Compliance Advisory Panel nor the Small Business Clean Air Ombudsman's office will be able to control. When small businesses are required by law to comply with costly government regulations, what is really needed is a "carrot" rather than a "stick" approach: legislation that would grant them Single Business Tax and property tax credits.

POSITIONS:

Representatives of the National Federation of Independent Business and the Small Business Association testified before the House Conservation, Environment and Great Lakes Affairs Committee in support of the bill. (2-2-93)

The Department of Natural Resources supports the bill. (2-2-93)

The Department of Commerce has not yet taken a position on the bill. (2-3-93)

The Sierra Club has no position on the bill. (2-2-93)

Michigan Environmental Defense has no position on the bill. (2-2-93)

Michigan United Conservation Clubs has no position on the bill. (2-2-93)