

Act No. 12  
Public Acts of 1993  
Approved by the Governor  
April 1, 1993  
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April 1, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Sikkema, Middaugh, Alley, Brown, Dolan, Bodem, Nye, Yokich, Varga and Bobier

# **ENROLLED HOUSE BILL No. 4073**

AN ACT 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:*

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

Sec. 2. As used in this act:

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

(b) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q and the regulations promulgated under that act.

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

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

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

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

(g) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(h) "Small business" means a business that is independently owned and operated and that is not dominant in its field as defined in 13 C.F.R. 121 and, unless adjusted as authorized under this section or section 3, is a stationary source that is all of the following:

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

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

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

(iv) Emits less than 50 tons per year of any air contaminant or air pollutant regulated pursuant to the air pollution act or the clean air act.

(v) Emits less than 75 tons per year of all air contaminants or air pollutants regulated pursuant to the air pollution act or the clean air act.

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

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

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

(2) The principal executive officer of the office is the small business clean air ombudsman, who shall be appointed by the governor.

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

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

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

(c) Facilitate and promote the participation of small businesses in the development of rules that impact small businesses.

(d) Assist in providing reports to the governor and legislature and the public regarding the applicability of the requirements of this act, the clean air act, and the air pollution act to small business.

(e) Aid in the dissemination of information, including, but not limited to, air pollution requirements and control technologies, to small businesses and other interested parties.

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

(g) Aid in investigating and resolving complaints and disputes from small businesses against the state or local air pollution control authorities, or both.

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

(i) Refer small businesses to the appropriate specialist in the program where they may obtain information and assistance on affordable alternative technologies, process changes, and products and operational methods to help reduce air pollution and accidental releases.

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

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

(l) Work with regional and state offices of the small business administration, the United States department of commerce and state department of commerce, and other federal and state agencies that may have programs to financially assist small businesses in need of funds to comply with environmental requirements.

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

(n) Conduct studies to evaluate the impacts of the clean air act and the air pollution act on the state's economy, local economies, and small businesses.

(o) Work with other states to establish a network for sharing information on small businesses and their efforts to comply with the clean air act and the pertinent air pollution act for their state.

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

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

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

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

(c) Assisting small business with information regarding pollution prevention and accidental release detection and prevention, including, but not limited to, providing information concerning alternative technologies, process changes, and products and methods of operation that help reduce air pollution.

(d) Establishing a compliance assistance program that assists small businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under the clean air act or the air pollution act, or both.

(e) Providing mechanisms and access to information so that small businesses receive notification of their rights under the clean air act and the air pollution act in a manner and form that assures reasonably adequate time for small businesses to evaluate their compliance methods or applicable proposed or final rules or standards under the clean air act and the air pollution act.

(f) Informing small businesses of their obligations under the clean air act and the air pollution act, including mechanisms for referring small businesses to qualified auditors or to the state if the state elects to provide audits to determine compliance with the clean air act and the air pollution act. To the extent permissible by state and federal law, audits shall be separate from the formal inspection and compliance program.

(g) Providing information on how to obtain consideration from the commission on requests from small businesses for modifications of any work practice, technological method of compliance, or the schedule of milestones for reductions of emissions preceding an applicable compliance date.

Sec. 7. Upon request, the ombudsman shall be given access to all information, records, and documents in the possession of the commission of natural resources, the department of natural resources, and the commission that the ombudsman considers necessary to fulfill the responsibilities of the office other than information described in section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws. The commission of natural resources, department of natural resources, and commission shall also assist the ombudsman in fulfilling his or her responsibilities under this act.

Sec. 8. Information obtained by the office or the program from small businesses that utilize their services shall be held in confidence by those employed by the office or the program to the extent authorized under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, including, but not limited to, those provisions pertaining to exemptions from disclosure for trade secrets, and commercial and financial information.

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

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

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

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

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

(d) One member appointed by the republican leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

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

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

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

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

(5) The first meeting of the advisory panel shall be called within 90 days of the appointment of all advisory panel members. At the first meeting the advisory panel shall elect from among its members a chairperson and other officers as it considers necessary or appropriate.

(6) A majority of the members of the advisory panel constitute a quorum for the transaction of business at a meeting of the advisory panel. A majority of the members present and serving are required for official action of the advisory panel.

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

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

(a) Consult with the ombudsman and the head of the program to plan the work of the panel, including the frequency of meetings, agenda items, and reports to be issued by the panel.

(b) Determine whether the program should utilize private contractors hired by the program or utilize expertise within the program, or both, to meet the requirements of this act that pertain to providing technical assistance to small businesses.

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

(i) The effectiveness of the office and program.

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

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

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

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

(i) Chapter 35 of title 44 of the United States Code, 44 U.S.C. 3501 to 3520, relating to paperwork reduction.

(ii) Sections 601 to 612 of title 5 of the United States Code, 5 U.S.C. 601 to 612, relating to regulatory flexibility.

(iii) Section 504 of title 5 of the United States Code, 5 U.S.C. 504, and section 2412 of title 28 of the United States Code, 28 U.S.C. 2412, relating to equal access to justice.

(e) Review information prepared by the program for small businesses to assure that the information is understandable to laypersons.

(f) Utilize the program to act as staff to develop and disseminate the work product of the advisory panel.

(9) The advisory panel shall provide copies of advisory reports prepared by the advisory panel to the United States environmental protection agency, the commission, the department of natural resources, the legislature, and the department of commerce. In addition, the reports shall be made available to any person upon request.

This act is ordered to take immediate effect.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.