



# HOUSE BILL No. 4073

February 2, 1993, Introduced by Reps. Sikkema, Middaugh, Alley, Brown, Dolan, Bodem, Nye, Yokich, Varga and Bobier and referred to the Committee on Conservation, Environment and Great Lakes.

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) "Rule" means a rule promulgated pursuant to the adminis-  
14 trative procedures act of 1969, Act No. 306 of the Public Acts of  
15 1969, being sections 24.201 to 24.328 of the Michigan Compiled  
16 Laws.

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

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

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

25 (iii) Is not a major stationary source as defined in title I  
26 and III of the clean air act or is a major stationary source as

1 defined in title I and III of the clean air act because of its  
2 location in a nonattainment area.

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

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

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

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

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

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

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

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

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

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

15       (d) Assist in providing reports to the governor and legisla-  
16 ture and the public regarding the applicability of the require-  
17 ments of this act, the clean air act, and the air pollution act  
18 to small business.

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

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

25       (g) Aid in investigating and resolving complaints and dis-  
26 putes from small businesses against the state or local air  
27 pollution control authorities, or both.

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

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

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

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

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

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

24 (n) Conduct studies to evaluate the impacts of the clean air  
25 act and the air pollution act on the state's economy, local econ-  
26 omies, and small businesses.

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

5 (p) Make recommendations to the commission and the legisla-  
6 ture concerning the reduction of any fee required under the clean  
7 air act or the air pollution act to take into account the finan-  
8 cial resources of small businesses.

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

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

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

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

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

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

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

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

19 Sec. 7. Upon request, the ombudsman shall be given access  
20 to all information, records, and documents in the possession of  
21 the commission of natural resources, the department of natural  
22 resources, and the commission that the ombudsman considers neces-  
23 sary to fulfill the responsibilities of the office other than  
24 information described in section 13 of the freedom of information  
25 act, Act No. 442 of the Public Acts of 1976, being section 15.243  
26 of the Michigan Compiled Laws. The commission of natural  
27 resources, department of natural resources, and commission shall

1 also assist the ombudsman in fulfilling his or her  
2 responsibilities under this act.

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

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

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

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

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

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



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

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

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

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

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

22 (5) The first meeting of the advisory panel shall be called  
23 within 90 days of the appointment of all advisory panel members.  
24 At the first meeting the advisory panel shall elect from among  
25 its members a chairperson and other officers as it considers nec-  
26 essary or appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (f) Utilize the program to act as staff to develop and dis-  
16 seminate the work product of the advisory panel.

17 (9) The advisory panel shall provide copies of advisory  
18 reports prepared by the advisory panel to the United States envi-  
19 ronmental protection agency, the commission, the department of  
20 natural resources, the legislature, and the department of  
21 commerce. In addition, the reports shall be made available to  
22 any person upon request.