House
Legislative
Analysis
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ENVIRONMENTAL JUSTICE

House Bill 5902
Sponsor: Kwame Kilpatrick
Committee: Conservation, Environment and Recreation

Complete to 6-4-98

A SUMMARY OF HOUSE BILL 5902 AS INTRODUCED 6-2-98

House Bill 5902 would specify the procedures to be observed to ensure that a community that is going to be exposed to pollution from a proposed new pollution source, or a proposed modification to an existing pollution source, receives fair treatment, without regard to race, income, or other factors. The bill would rename Part 13 of the Natural Resources and Environmental Protection Act (NREPA), which is currently reserved for "permits." Under the bill, this part heading would, instead, be entitled "permits and environmental justice." "Environmental justice" would be defined to mean the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. "Fair treatment" would mean that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the adverse impacts resulting from industrial, municipal, or commercial operations or the execution of federal, state, local, or tribal programs and policies.

Department Assessment. The bill would specify that the Department of Environmental Quality (DEQ) could, on its own initiative, prepare a detailed assessment of the individual and cumulative impacts of the activity for which a permit was sought. However, if both of the following circumstances applied, the DEQ would be required to prepare the assessment:

- There was a public comment period for the permit.

- One or more of the following applied: a) the assessment had been requested by the governing body of a local unit of government or adjacent local unit of government in the vicinity of the proposed site; b) the assessment had been requested by a local health department whose jurisdictional area included the proposed site, or was adjacent to a local unit of government that included the proposed site; or c) there was a known public controversy over the permit. The DEQ would have to make a written finding as to whether there was a public controversy at least 21 days before the public comment period on the permit began.

The bill would also specify that the DEQ would have to prepare an assessment before the public comment period began, and could charge a fee based on the reasonable costs of preparing the assessment. The assessment would be designed to determine the potential effects on the affected community and exposure pathways, including but not limited to dermal, ingestion, inhalation, and existing body burden. The DEQ would overlay this information with information obtained from locational analyses, using geographic information system and census data to identify

minority communities or low-income populations that were located within the identified exposure pathways. The assessment could also use other sources of information, including but not limited to the following: the National Human Exposure Assessment Survey; the National Health and Nutrition Examination Survey III; environmental data from air monitoring systems; and the toxic release inventory database.

Certain information would have to be included in the assessment, including: a description of the affected community; a description of the potential impacts of the activity for which the permit was sought; a description of the probable, unavoidable adverse impacts of the activity for which the permit was sought; a description of other locations of known or potential environmental risk in the host community within a three-mile radius; a description of any vulnerable populations in the affected community; a description of whether the host community or affected community was predominantly residential; the number of jobs expected to be created by the activity for which the permit was sought; and the possible modifications to the activity for which the permit was sought or mitigation measures that would eliminate or minimize adverse impacts.

After an assessment was completed the DEQ would have to make it part of an applicant's official record. Copies would have to be provided to the public at any public hearings, to the Environmental Equity and Justice Commission, to appropriate local agencies, to public and private organizations, and, upon request, to citizens for their review and comment. The DEQ would also have to provide a forum for public comments on any action that might have adverse impacts if it determined that the public had not had sufficient opportunity to be heard. In addition, a permit could not be issued unless the DEQ determined, based on the assessment, that the activity for which the permit was sought would not have a significant impact.

Public Hearing. The DEQ would have to hold a public hearing when it received an application for an air pollution control permit if one or both of the following applied: 1) The hearing was requested by a resident of the host community; a resident of the affected community, as described in a DEQ assessment; or a local unit of government or local health department within that jurisdiction; 2) There was a known public controversy over the permit application. The public hearing would have to be held in the city, village, or township of a proposed facility or activity, as close to the site as possible, and at a time and location that would enable the greatest numbers of interested individuals to attend.

Under the bill, the DEQ would be required to maintain a record showing public hearing participants' organizational affiliations, and a complete text of written comments. The bill would also require that department officials conducting public hearings answer questions from the public on issues pertaining to the permit application and encourage and solicit both questions from department staff, and staff reactions to public input. In addition, the bill would require that the opportunity for public comment be distributed equitably between regulated parties and members of the general public.

The bill would also specify that the DEQ would be required to determine whether the activity for which a permit was sought had the potential for disproportionate environmental effects or disproportionate human health effects. If so, it would have to attempt to provide information

to the potentially affected population, and to seek input from the affected low-income population or minority community. The DEQ would also be required to contact local community members or interest groups with specific interests in, or understandings of, environmental justice issues for advice to identify potential areas of concern and mitigation actions.

Air Pollution Control Permit. Under the bill, the DEQ could not issue a permit that would allow a hazardous or major source to locate within 5,000 feet of any residential, day-care, church, school, or park property. The bill would also specify that the provisions of Part 13 would apply to permits issued not less than 120 days after the bill's effective date.

Remedies. A person seeking to enforce the provisions of the bill could sue, either on his or her own behalf, or for other persons similarly situated, or both, in the circuit court in the county in which the person resided, or in Ingham County Circuit Court. The bill would also specify that the rights and remedies provided would be in addition to -- and not in lieu of -- any other statutory rights and remedies, and were not intended to alter or affect other statutory rights and remedies. In addition, the bill would specify that a person seeking to enforce the provisions of Part 13 would have to bring an action within three years following a decision to grant a permit; and, in a suit under the provisions of Part 13, the court would have the discretion of allowing the prevailing plaintiffs an award of costs, including reasonable attorney fees.

MCL 324.1301 et al.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.