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SFA BILL ANALYSIS

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Senate Bill 813 (Substitute S-1 as reported)
Sponsor: Senator Christopher D. Dingell
Committee: Natural Resources and Environmental Affairs

Date Completed: 5-12-98

RATIONALE

Under 1990 amendments to the Federal Clean Air Act (CAA), states are required to develop programs to attain national ambient air quality standards and to monitor closely the amounts of air pollutants that are emitted by industrial facilities operating within their borders. In implementing Title V of the CAA, which governs operating permits, states are required to reduce the amounts of "fee-subject air pollutants" that are released into the atmosphere and develop a comprehensive permit program approved by the U.S. Environmental Protection Agency (EPA).

Under the operating permit program, industrial facilities must pay a fee for a permit to emit specific amounts of pollutants, and the fees must be sufficient for a state to fund its permit program. If a state fails to continue implementation of Title V, the state may lose Federal highway funds and have industrial growth restricted in areas that do not continue to attain national air quality standards.

Michigan already has established an operating permit program and air quality fee structure, which were enacted in 1993, that fully implement the Title V requirements. Part 55 of the Natural Resources and Environmental Protection Act (NREPA) requires that the owner or operator of a "fee-subject facility" pay air quality fees between October 1, 1994, and September 30, 1998, requires the fees to be deposited in the Emissions Control Fund, and provides for the expenditure of the Fund for purposes related to implementing the operating permit required by Title V of the CAA. The NREPA also requires the Department of Environmental Quality (DEQ) to do the following: establish an operating permit program for facilities subject to the CAA; require other facilities to obtain a permit to operate from the DEQ; require facilities to obtain a permit to install; and convene a task force to report on the adequacy of fee revenues and appropriateness of program activities. Under the Act, the air quality fees will expire on September 30, 1998. It has been recommended, therefore, that the fee requirement should be extended to September 30, 2000, and revised fees and reports should be implemented to reflect recommendations by the task force.

CONTENT

The bill would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to:

- **Require the owner or operator of each fee-subject facility to pay air quality fees from October 1, 1998, to September 30, 2001.**
- **Increase the facility charges for different categories in the annual air quality fee calculation.**
- **Revise the definition of "fee-subject air pollutant".**
- **Revise the details required on the annual report provided by each State department receiving Emissions Control Fund money.**
- **Eliminate the provisions pertaining to the Federal Clean Air Act implementation account and the permit review and urban airshed study account in the Emissions Control Fund.**

("Fee-subject facility" means any major source defined in the Code of Federal Regulations; any source or affected source subject to a standard, limitation, or other requirement under the Clean Air Act; or any other source designated by the administrator of the EPA to obtain an operating permit.)

Air Quality Fees

Under the Act, for the State fiscal year beginning October 1, 1994, and continuing until September 30, 1998, the owner or operator of each fee-subject facility must pay annual air quality fees. The bill would revise the dates of the requirement to begin October 1, 1998, and continue until September 30, 2001.

The annual fee must be calculated, and would be increased, as follows:

-- For "category I facilities", the fee must be the sum of a $2,500 facility charge and an emissions charge as specified below. The bill would increase the facility charge to $3,375.
-- For "category II facilities", the fee must be the sum of a $1,000 facility charge and an emissions charge. The bill would increase the facility charge to $1,350.
-- For "category III facilities", the fee must be $200. The bill would retain this fee.

For "municipal electric generating facilities" subject to category I that emit 18,000 tons or less but more than 600 tons of fee-subject air pollutants, the fee must be a $10,000 operating facility charge. The bill provides, instead, that for municipal electric generating facilities subject to category I that emit 18,000 tons or less but more than 400 tons of pollutants, the fee would have to be an $18,675 operating facility charge. The bill also would add that the annual air quality fee was based on the category I facility charges of $3,375 plus an emissions charge equal to the product of 450 tons of fee-subject air pollutants and $34 per ton of fee-subject air pollutant.

The emissions charge for category I and II facilities equals the product of the actual tons of fee-subject air pollutants emitted and the emission charge rate. The emission charge rate is $25 per ton of fee-subject air pollutants. The bill would increase the emission charge rate to $34 per ton of fee-subject air pollutants.

The emissions tonnage must be calculated for the calendar year two years preceding the year of the billing. The actual tons of fee-subject air pollutants emitted are the sum of all fee-subject air pollutants emitted at the fee-subject facility, except that for the purposes of the emissions charge calculation the actual tons charged must not exceed either a) 4,000 tons, or b) 1,000 tons per pollutant if the sum of all fee-subject air pollutants except carbon monoxide emitted at the facility is under 4,000 tons.

The NREPA defines "fee-subject air pollutant" as particulates, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under certain sections of the Clean Air Act. The bill would retain this definition but refer to "particulates, expressed as PM-10 pursuant to 1996 MR 11, R 336.1116(k)".

Under the NREPA, if the owner or operator of a fee-subject facility wishes to challenge its fee, the owner or operator must submit a written challenge to the DNR within 30 days of the mailing date of the fee notification. The bill would delete that deadline, and would prohibit the DNR from processing the challenge unless the Department received it within 45 days of the mailing date of the fee notification.

Annual Report

Under the Act, the director of each State department to which funds are appropriated from the Emissions Control Fund, must prepare and submit to the Governor and the Legislature an annual report that details the activities funded by the Fund for his or her department. The bill would require the annual report to be submitted by March 1 and to detail activities of the previous fiscal year.

The bill would retain the requirement that all of the following information be included in the report:

-- The number of full-time equated positions performing air quality enforcement, compliance, and permitting activities, and the number of hours worked on Title V activities in relation to hours worked on other matters.
-- The number of letters of violation sent.
-- The amount of penalties collected from all consent orders and judgments.
-- For each enforcement action that includes payment of a penalty, a description of what corrective actions were required by the action.
-- The number of inspections done on sources required to obtain a permit and the number of inspections of other sources.
-- The number of air pollution complaints received and investigated by the DEQ. (The bill also would require the number of complaints resolved and not resolved by the DEQ.)
-- The number of contested case hearings and civil actions initiated and completed, and the number of voluntary consent orders, administrative penalty orders, and emergency orders entered or issued, for sources required to obtain a permit.

The bill also would require the following information relating to the permit to install program authorized under the NREPA:

-- The number of applications received by the DEQ.
-- The number of applications for which a final action was taken by the DEQ.
-- The number of permits to install approved that were or were not required to complete or not complete public participation before final action.
-- The average number of final permit actions per permit to install reviewer full-time equivalents.
-- The percentage and number of applications that were reviewed for administrative completeness within 10 days of receipt by the DEQ.
-- The percentage and number of applications that were reviewed for technical completeness within 30 days of receipt of an administratively complete application by the DEQ.
-- The percentage and number of applications submitted that were administratively complete.
-- The percentage and number of applications for which a final action was taken by the DEQ within 60 days of receipt of a technically complete application for those not required to complete public participation before final action and within 120 days of receipt for those required to complete public participation.

In addition, the bill would require the following information for the renewable operating permit program: the number of applications received; the number of applications for which a final action was taken by the DEQ, reported as the number of applications approved, denied, and withdrawn; the percentage and number of applications initially processed within the required time; the percentage and number of renewals and modifications processed within the required time; number of applications reopened by the DEQ; and the number of general permits issued by the DEQ.

The bill would eliminate all of the following information, which currently is required in the annual report:

-- The total number of new source review and operating permit applications received by the DEQ, including those received but not processed or issued.
-- A breakdown of the new source review and operating permits issued based on amount of emissions per year as follows: less than one ton; between one and 10 tons; between 10 and 50 tons; and over 50 tons.
-- The total number of new source review and operating permits issued over the course of the year.
-- The total number of such permits issued per permit reviewer.
-- The total number of such permits issued the previous year.
-- The total number of permits at the start of the year that are carried over from preceding years plus the number received by the DEQ in the current year minus the number issued.
-- The total number of permits that were denied.
-- The ratio of the number of permits rejected to the number issued.
-- The average amount of time to take final action on a permit from the time the DEQ first receives the application to the time it issues the permit for each tonnage category.
-- A list of State implementation plan development accomplishments.
-- The number of compliance reports and certifications reviewed for sources required to obtain an operating permit.
-- The number of criminal investigations and prosecutions initiated and completed.
-- The amount of criminal and civil fines collected from all administrative and judicial orders and judgments.

Task Force

The current Act states that by May 13, 1995, the DEQ must convene a task force made up of representatives of fee-subject facilities, environmental groups, the general public, and any State department to which Emissions Control Fund money is appropriated. By July 1, 2000, the task force must provide the Legislature a report on the adequacy of the fee revenues and appropriateness of program activities, and must recommend changes concerning fees and reports, as appropriate, to match fee revenues to program costs.

The bill would reinstate this provision but would require the DEQ to convene a task force by August 1, 1999; require the task force to provide a report by August 1, 2000; and require the task force to provide the fee structure relative to all sectors of the regulated industry.

Fee Collection

The Attorney General could bring an action for the collection of air quality fees. Currently, the Attorney General may bring an action for the collection of the fees and any penalty assessed for failure to submit emissions information as required under the NREPA.

Emissions Control Fund

The bill would eliminate the current provisions that require the State Treasurer to establish, within the Fund, a Clean Air Act implementation account and a permit review and urban airshed study account, and require the Department to spend Fund money, upon appropriation, for specific purposes in fiscal years ending September 30, 1993, and September 30, 1994.

Repealer

The bill would repeal a section that required the owner or operator of a major emitting facility to submit emissions information to the Department each year through March 15, 1994 (MCL 324.5519). The bill also would repeal a section requiring the owner of a major emitting facility to pay an emission fee for specific pollutants for the 1992-93 and 1993-94 fiscal years (MCL 324.5520).

MCL 324.5501 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would reestablish air quality fees that owners of facilities that are major emitters of "fee-subject air pollutants" must pay based on a per-ton amount of pollutants emitted annually into the atmosphere. The revised fees, which would be in effect until September 30, 2001, would enable the State to continue to implement an operating permit program and monitor the amounts of air pollutants emitted by approved industrial facilities, as required under the Federal law. Under the bill, the annual air quality fees would increase for category I and II facilities and would remain the same for category III facilities. The emissions charge rate would increase to $34 per ton of fee-subject air pollutants. The fee increase would allow the State to continue to collect a presumptive minimum amount of fees as established by the EPA, in order to avoid having to demonstrate the adequacy of a lower level of fees. In addition, increased fees would provide an incentive for major polluters to reduce and eventually eliminate the amount of pollutants emitted in the air.

Supporting Argument

The bill would implement the recommendations of the task force by requiring additional information in the annual report relating to the permit to install program and the renewable operating permit program. Under the current Act, the task force is made up of representatives of fee-subject facilities, environmental groups, the general public, and any State department to which Emissions Control Fund money is appropriated, and must provide the Legislature with a report on the adequacy of the fee revenues and appropriateness of program activities, as well as recommend changes concerning fees and reports to match revenues and program costs.

Opposing Argument

Under the CAA, 893 Michigan businesses are required to pay air quality fees to fund the required operating permit program. Instead of imposing a $34-per-ton fee with a 4,000-ton cap, the bill could set a lower per-ton fee without any cap. Since coal-burning utilities are the main beneficiaries of the cap, eliminating the cap in the emissions charge calculations would lower the cost to all other businesses subject to the fee. Evidently, 876 businesses could be paying lower air quality fees on a "per unit of pollution" basis, while the 17 heaviest polluters, which emit 68% of the State's air pollutants from fee-subject stationary sources, would see an increase in air pollution fees. Restructuring the fees could use market-based incentives to decrease emissions and improve air quality across the State.

Response: The current and proposed fee structures represent a delicate balancing act that applies to all sources that have obtained an operating permit. The cap ensures that the cost of the program does not disproportionately fall on a handful of companies.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would maintain a current $8.1 million revenue source to the State, and thereby maintain a $1.6 million local air pollution grant

program that is reliant upon that revenue. The bill would also increase revenue to the State by 31%, or approximately $2.6 million.

Current air emissions fees are scheduled for sunset on September 30, 1998. Both the current FY 1997-98 and the proposed FY 1998-99 Department of Environmental Quality budget rely upon $10.85 million in air emissions fees.

The following table summarizes the fee increases by type of facility and tonnage. The tonnage would change in Senate Bill 813 (S-1) due to the use of PM-10 in the definition of fee-subject pollutants.

Senate Bill 813	Number of Tons		Amount of Fee		Amount of Revenue		Change to Current	
	Current	S.B. 813	Current	S.B. 813	Current	SB 813	Dollar	Percent
Category I								
Facility Fee			2,500	3,375	1,217,500	1,643,625	426,125	35.0%
Tonnage Fee	238,855	231,503	25	34	5,971,375	7,871,102	1,899,727	31.8%
Subtotal					7,188,875	9,514,727	2,325,852	32.4%
Category II								
Facility Fee			1,000	1,350	373,000	503,550	130,550	35.0%
Tonnage Fee	9,257	7,848	25	34	231,425	266,832	35,407	15.3%
Subtotal					604,425	770,382	165,957	27.5%
Category III			200	200	239,000	239,000	0	0.0%
Municipal Electric			10,000	18,675	90,000	168,075	78,075	86.8%
TOTALS					8,122,300	10,692,184	2,569,884	31.6%

Date Source: Department of Environmental Quality, Air Quality Division.

Fiscal Analyst: G. Cutler

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