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BILL ANALYSIS

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Senate Bill 354 (Substitute S-3 as passed by the Senate)
Senate Bills 355 and 399 (as passed by the Senate)
Sponsor: Senator Laura M. Toy (S.B. 354)
Senator Bill Hardiman (S.B. 355)
Senator Gerald Van Woerkom (S.B. 399)
Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 8-10-05

RATIONALE

The Department of Environmental Quality (DEQ) administers a Clean Corporate Citizen program, which is governed by administrative rules. According to the DEQ, the program "...allows regulated establishments that have demonstrated environmental stewardship and a strong environmental ethic through their operations in Michigan to be recognized as Clean Corporate Citizens". Under this voluntary program, an establishment may seek a Clean Corporate Citizen (C3) designation from the DEQ. A C3 designation entitles the establishment to certain regulatory benefits, including expedited permit reviews and, in some cases, fewer monitoring and reporting requirements. It has been suggested that the C3 program should be created in statute, rather than in rules, and that establishments receiving a C3 designation should receive a one-time reduction in the fees they must pay to the DEQ.

CONTENT

Senate Bill 354 (S-3) would add Part 14 (Clean Corporate Citizens) to the Natural Resources and Environmental Protection Act (NREPA) to establish a program in which an establishment could obtain a "clean corporate citizen" designation from the Department of Environmental Quality. The bill would do the following:

-- Repeal administrative rules that provide for the existing clean corporate citizen program.

- Require the DEQ, during the first year of a person's initial C3 designation, to waive the first \$500 of the total of all permit, license, or other fees that the person otherwise would have to pay to the Department.
- Provide that a clean corporate citizen would receive benefits set forth in rules promulgated certain statutes.
- Require a C3 to meet environmental management system requirements.
- Describe factors that would disqualify an establishment from C3 designation.
- Require a C3 to submit a statement regarding compliance with environmental requirements and to address any cited violations.
- Require a C3 to adopt a philosophy of pollution prevention, and establish and maintain a pollution prevention program.
- Establish an application process, which would include public notice and an opportunity for public comment.
- Establish requirements for retaining a C3 designation.
- Require the DEQ to terminate a C3 designation under certain circumstances.
- Allow a person operating an establishment in Michigan to reapply for C3 designation at any time.
- Specify that Part 14 could not be construed in a manner that authorized any violation of State or Federal law.

- Prohibit the DEQ from promulgating rules concerning the C3 program.

The bill would define "clean corporate citizen" as a person who operates an establishment that has demonstrated environmental stewardship and a strong environmental ethic by voluntarily meeting the criteria set forth in Part 14.

Senate Bill 355 would amend the Safe Drinking Water Act to specify that the Act would be subject to Part 14 of NREPA.

Senate Bill 399 would amend Part 135 (Radiation Control) and Part 138 (Medical Waste) of the Public Health Code to specify that those parts would be subject to Part 14 of NREPA.

Senate Bills 355 and 399 are tie-barred to Senate Bill 354.

The following is a detailed description of Senate Bill 354 (S-3).

Benefits of Designation

A designated clean corporate citizen would qualify for C3 benefits for the relevant establishment set forth in rules promulgated under any of the following:

- Article II (Pollution Control) of NREPA.
- Chapter 1 (Habitat Protection Inland Waters) and Chapter 3 (Management of Natural Resources) of Article III (Natural Resources Management) of NREPA.
- The Safe Drinking Water Act.
- Part 135 (Radiation Control) and Part 138 (Medical Waste) of the Public Health Code.

During the one-year period beginning on the initial designation of a person as a C3, the DEQ would have to waive the first \$500 of the total of all permit, license, or other fees that the person otherwise would be required to pay to the Department.

The bill would define "establishment" as any of the following that operates in accordance with or under the jurisdiction of applicable environmental requirements:

- A stationary source.

- A location.
- A public institution.
- A municipal, commercial, industrial, or other business facility.

EMS Requirements

A clean corporate citizen would have to meet the environmental management system (EMS) requirements described below. ("Environmental management system" would mean the part of an overall management system that addresses environmental concerns through the allocation of resources, assignment of responsibilities, and ongoing evaluation of practices, procedures, and processes to achieve sound environmental performance.)

Director-Approved Standard. The C3 could obtain and operate in accordance with registration or certification under an environmental management standard, such as ISO 14001, that was approved by the DEQ Director. ("ISO 14001" would mean a standard approved by the International Organization for Standardization to prescribe uniform requirements for the purpose of certification or registration of an EMS.)

C3-Developed System. The C3 could develop and maintain a written environmental management system that was appropriate to the nature, scale, and potential environmental impact of the operation and that required the C3 to adopt an environmental policy approved by the responsible official or operate under an adopted corporate environmental policy. The policy would have to do all of the following:

- Demonstrate a high level of commitment to environmental management through the establishment of guiding principles.
- Articulate the C3's mission and values.
- Emphasize continuous improvement.
- Promote pollution prevention.
- Acknowledge the importance of communication with the public.
- Emphasize compliance with relevant environmental laws and regulations.
- Recognize that every individual at the establishment could contribute to environmental improvement.

The EMS also would have to establish and maintain an environmental program and procedures that 1) developed and

implemented objectives and targets within each organizational level of the establishment; and 2) identified the environmental implications of the C3's activities, products, and services over which the C3 could be expected to have an influence; determined the activities, products, or services that had or could have significant impacts on the environment; and ensured that the impacts and opportunities for environmental improvement were considered in setting the C3's environmental objectives.

In addition, the environmental management system would have to establish a procedure to provide for regular voluntary environmental self-audits and ensure that there was an effective mechanism in place to respond promptly and adequately to, and address, any violations of applicable environmental requirements.

The EMS also would have to identify specific operations and activities that had significant environmental impact or the potential for significant environmental impact, and have procedures in place to do all of the following:

- Monitor the operations and activities.
- Ensure that the operations and activities remained within acceptable parameters.
- Implement prompt correction if a deviation occurred.
- Systematically review records and report on environmentally related actions relative to the operations and activities.

Further, the system would have to establish and maintain the following:

- Reporting and record-keeping procedures to document the environmental status of all operations and activities.
- Procedures to identify and track the environmental training needs of all personnel who had responsibility or authority over activities having significant environmental impact or the potential for significant environmental impact.
- Procedures to respond to and report, as appropriate, accidents, malfunctions, spills, upsets, and other emergency situations; to mitigate any associated environmental impacts; and to provide for a review of the procedures after an accident or emergency occurred.

- Procedures for effectively communicating information on environmental issues and the EMS to the public, including the local community and environmental interest groups, in a manner that facilitated and encouraged public understanding and dialogue.

In addition, the EMS would have to define the authority, responsibility, and methods for auditing and correcting nonconformance with the procedures set forth in the system; and develop and maintain procedures for internal communication about the system and environmental issues between personnel across functional and organizational levels.

("Responsible official" would refer to an individual who, on behalf of an applicant for a C3 designation, had the authority to sign and certify to the truth, accuracy, and completeness of the application. The particular individual would depend on whether the applicant was a corporation; a partnership or sole proprietorship; a county, city, village, township, State, Federal, or other public agency; or an affected source under Title IV of the Federal Clean Air Act amendments of 1990.)

Specific Group or Classification. The clean corporate citizen could adopt and maintain an environmental management system, approved by the Director, applicable to a specific group or classification of establishments. At a minimum, this EMS would have to meet all of the requirements described above.

Disqualification

An establishment would not qualify for C3 designation if it had been subject to either of the following within 10 years before the initial C3 application was filed:

- Conviction of a criminal violation of applicable environmental requirements.
- A determination by a court of responsibility for an illegal action that caused substantial endangerment to the public health, safety, or welfare, or to the environment.

An establishment would not qualify for C3 designation if it had been subject to either of the following within three years before the initial application was filed:

- Assessment by final Department action of an administrative fine of \$25,000 or more for a violation of applicable environmental requirements.
- Assessment by a court of a civil fine, penalty, or damages of \$10,000 or more for violation of applicable environmental requirements.

Pollution Prevention Philosophy & Program

A clean corporate citizen would have to adopt, in the form of a written policy, a philosophy of pollution prevention that promoted all of the following: the elimination or reduction of waste at the source of generation; the reuse of waste, including the purchasing of recycled materials; and environmentally sound on-site and off-site recycling.

A clean corporate citizen also would have to establish and maintain an establishment-specific pollution prevention program under which the C3 did all of the following:

- Adopted and posted its pollution prevention policy, signed by a responsible official.
- Conducted periodic pollution prevention assessments that identified opportunities for reuse, recycling, and eliminating waste at the source.
- Established pollution prevention goals that specified the environmental media and types of pollution to be prevented or reduced, implementation activities, and projected time frames.
- Recorded and maintained reports to demonstrate progress on pollution prevention goal implementation.
- Encouraged efforts to exchange pollution prevention technologies, such as attending or sponsoring workshops; developing case studies; establishing pollution prevention supplier networks; and giving the DEQ pollution prevention information for possible publication and dissemination.

A C3 could satisfy the requirements for a pollution prevention program through formal participation and by being a member in good standing in a recognized DEQ pollution prevention program.

("Waste" would mean any material, energy, or other resource that is not incorporated into product, such as surplus, obsolete, off-

specification, contaminated, or unused material, including all of the following: air emissions, water discharges, hazardous waste, and solid waste. "Environmental medium" would mean the air, water, or land that is affected, or would have been affected, by a waste.)

Environmental Compliance

As part of its C3 application, a clean corporate citizen would have to give the DEQ a statement signed by a responsible official that he or she had reviewed the C3's compliance record and, to the best of his or her knowledge, the C3 was in compliance with all applicable environmental requirements and had no outstanding unresolved past or current violations that had not been corrected or, in the case of a renewal of C3 designation, resolved by the C3's adherence to a binding compliance schedule to abate the violations.

A clean corporate citizen also would have to address any violation cited in a violation notice by resolving the violation, making a showing to the Director that the violation did not occur, or, in the case of renewal of C3 designation, being in compliance with a binding schedule, agreed to by the Director, to correct any violation specified in a notice issued by the Director. ("Violation notice" would mean any written notice or formal enforcement action by the DEQ in response to a violation of an applicable environmental requirement. A violation disclosure made under Part 148 (Environmental Audit Privilege and Immunity) would not constitute a violation notice.)

A C3 could not have been found by the Director to be in significant violation of environmental requirements established by a local unit of government.

If C3 did not meet the requirements described above, the Director still could approve the person's application if it included either a binding and significant reduction in wastes below what otherwise would be required by applicable environmental requirements, or a significant and permanent retirement of air emission reduction credits in accordance with Rules 336.2201 to 336.2218 (Emission Averaging and Emission Reduction Credit Trading) of the Michigan Administrative Code.

In the case of a change of ownership, the Director could consider the environmental record of the new owner in determining whether the preceding criteria had been met.

("Applicable environmental requirements" would mean any of the following or any rules promulgated or permits, orders, or other legally binding documents issued under any of the following:

- Article II and Chapters 1 and 3 of Article III of NREPA.
- The Safe Drinking Water Act.
- Parts 135 and 138 of the Public Health Code.)

Application

A person operating an establishment in this State could apply to the DEQ for a clean corporate citizen designation with respect to that establishment.

At least 30 days before applying, the applicant would have to notify the DEQ of its intent to submit an application and publish in a local newspaper notice of that intent and of the availability of the application and related documentation for public review. The application and documentation would have to be made available at a local public library or other public building for at least 30 days. The public notice would have to state that comments on the application could be directed to the applicant or the DEQ.

The documentation provided for public review would have to include all of the following:

- A detailed summary for each element of the EMS demonstrating that the applicant met the related requirements of the bill.
- A copy of the applicant's pollution prevention policy and supporting information demonstrating that the applicant met the bill's requirements.
- A copy of the signed statement of compliance with all applicable environmental requirements.

After the 30-day public notice period, the applicant could submit the application to the DEQ, on a form provided by the Department, together with all of the following:

- A checklist of the documentation that had been made available for public review.
- A signed statement by the responsible official that the applicant met the requirements of the bill.
- A detailed summary for each element of the EMS and demonstration of achievement of the bill's EMS requirements.
- The pollution prevention policy and supporting information to demonstrate achievement of the bill's pollution prevention requirements.
- A combined list of the significant goals, objectives, and targets set forth in the EMS and the pollution prevention program.
- The certification of compliance with all applicable environmental requirements.
- A summary of public comments received by the applicant and the DEQ during the public review period, and the applicant's response to them.

The DEQ would have to complete its initial review of the application within 14 days after receiving it. At least 30 days before making a decision on the application, the Department would have to publish, in the DEQ calendar, a notice of receipt of the application and related documentation, and of their availability for public review and comment.

Within 60 days of receiving a complete application, unless the applicant requested an extension of time, the Director would have to consider public comments, determine whether the criteria of the rules had been met, and give the applicant written notice of approval or disapproval. There would be no formal appeal of the Director's decision.

Retaining C3 Designation

To retain a C3 designation, a clean corporate citizen, at least 30 days before the anniversary date of the current designation, would have to submit a renewal request, supporting information, and a certification that the C3 was currently achieving the criteria regarding an environmental management system, a pollution prevention policy and program, and compliance with all applicable environmental requirements. The supporting information would have to include an annual report summarizing the activities undertaken to do all of the

following, and describing the status of the activities:

- Maintain and implement the EMS.
- Identify and implement pollution prevention activities.
- Set, review, and implement goals, objectives, and targets, and the strategy the C3 was employing to resolve any unmet goals, objectives, and targets in its EMS and pollution prevention program.

A renewal request would have to include a statement by the responsible official that the C3 was in compliance with all applicable environmental requirements and had no outstanding violations, or was in compliance with a binding schedule to correct any outstanding violations.

Termination of C3 Designation

The DEQ Director would have to terminate a person's C3 designation if the Director determined that the person failed to maintain and implement an environmental management system or a pollution prevention policy, or to meet the bill's environmental compliance criteria. The Director also would have to terminate a C3 designation upon determining that, after the effective date of the current designation, the person had been subject to any of the following:

- Conviction of a criminal violation of applicable environmental requirements.
- Assessment by a court of a civil fine, penalty, or damages of \$10,000 or more for violation of applicable environmental requirements.
- A determination by a court of responsibility for an illegal action that caused substantial endangerment to the public health, safety, or welfare, or to the environment.
- A finding by the Director of failure to correct and resolve, promptly and adequately, a serious violation of applicable environmental requirements.

The Director would have to advise the person of his or her intent to terminate the designation at least 30 days before taking that action. There would be no formal appeal of the Director's termination decision.

Upon termination of the designation with respect to an establishment, all benefits provided to a former C3 for that establishment would have to be terminated or restricted as provided in Part 14 and as determined by the Director.

Proposed MCL 324.1401-324.1423

(S.B. 354)

MCL 325.1023 (S.B. 355)

Proposed MCL 333.13538 & 333.13833

(S.B. 399)

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

According to the DEQ's website, "The C3 program is built on the concept that these Michigan facilities can be relied upon to carry out their environmental protection responsibilities without rigorous oversight, and should enjoy greater permitting flexibility than those that have not demonstrated that level of environmental awareness." To date, over 100 establishments have received C3 designation. The DEQ's progress report for the program, for 1997 through 2003, states that the goal is to have a large number of Michigan establishments participate in the C3 program, "...with resulting improvements to the environment and regulatory flexibility to the participants". According to the progress report, each C3 commits to making yearly efforts to reduce its environmental impact in the areas of solid and hazardous waste, energy use, air emissions, water consumption, wastewater discharge, and material use. Annually, C3s report their progress in the form of a Clean Corporate Citizen Request for Renewal, which tracks any changes in their EMS as well as the significant accomplishments they achieve in pollution prevention.

By giving an establishment a \$500 reduction in the total fees paid to the DEQ during its first year of designation, Senate Bill 354 (S-3) would create a tangible, monetary incentive for additional establishments to seek C3 designation. This would promote greater environmental protection, since establishments would have to meet EMS criteria, comply with applicable environmental requirements, and maintain a

pollution prevention program, in order to receive and retain C3 designation. As the DEQ progress report states, "Recognizing and rewarding environmental performance provides incentive to C3s to continue striving towards greater pollution prevention..., but most importantly sustains our shared environment."

Also, while the bill largely mirrors the existing administrative rules governing the C3 program, the legislation contains more detail and would give the Legislature more direct control over the program. Future legislation, for example, could enhance the benefits extended to clean corporate citizens, thereby increasing program participation.

Opposing Argument

The existing program is successful and popular, and the public recognition and permitting flexibility that C3s receive are incentive enough. The program also gives companies that exercise best practices the opportunity to share them with others. According to the program's 1997-2003 progress report, the DEQ promotes the success of the top performers in workshops, publications, and conferences. The bills, however, would unnecessarily cost the State money and increase bureaucracy. By removing the program from rules and putting it in statute, Senate Bill 354 (S-3) would deprive the DEQ of the flexibility it presently has to respond to the needs of the participants. Furthermore, the proposed fee reduction would have a significant impact on the Department's decision-making process, due to the potential cost to the State. The entitlement to a fee reduction upon C3 designation also could make the process subject to contested case provisions of the Administrative Procedures Act.

Although the C3 program ensures that an environmental management system is in place and applicable environmental regulations are met, it does not guarantee a reduction in pollution or discharges. Some clean corporate citizens go above and beyond applicable requirements, but doing so is not a criterion of C3 designation. Instead of altering the nature of a successful, voluntary program, perhaps the State should explore other methods of encouraging establishments to protect the environment. For example, facilities already may receive a sales or use tax break for

installing pollution control equipment; perhaps this could be expanded to pollution reduction equipment. Another possibility would be to tie permit fees directly to rates of emission or discharge. While these alternatives also would present a cost to the State, they would correspond to actual pollution reduction.

Opposing Argument

Senate Bill 354 (S-3) should require termination of an establishment's C3 designation if a court imposed a fine, penalty, or damages of any amount, rather than \$10,000 or more, for a violation of applicable environmental regulations, or if the DEQ assessed an administrative fine for such a violation. Establishments that violate environmental laws are not, in fact, clean corporate citizens.

Response: Every establishment can slip once in a while. For example, a deadline might be missed or an employee might send a document to the wrong person. It would not be fair to strip the hard-earned C3 designation from a business for such a commonplace error.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would result in a loss of \$59,000 to the State. The bills would add a benefit for participants in the Clean Corporate Citizen program by requiring the DEQ to waive \$500 of the total permit, license, or other fees in the initial year of C3 designation. There are 118 C3 facilities under the current program. If additional facilities were encouraged to attain a C3 designation, there would be a loss of \$500 per facility and, in the long term, there would be beneficial impacts on the environment from reduced pollution, waste disposal, and cleanup activities.

Under Senate Bill 355, fees levied under the Safe Drinking Water Act (SDWA) would be included to reach the total amount payable by a facility. (Annual fees for community supply providers range from \$250 to \$90,000. Fees for noncommunity supply providers range from \$85 to \$400. These fees are increased annually for inflation.) A C3 designee also would be entitled to benefits provided in rules promulgated under the SDWA.

Under Senate Bill 399, fees levied under Parts 135 and 138 of the Public Health Code would be included to reach the total amount payable by a facility. (Part 135 of the Public Health Code establishes annual registration fees (between \$25 and \$75) for radiation-emitting medical diagnostic equipment. Inspection fees for this equipment are established between \$100 and \$700 annually. Part 138 of the Public Health Code establishes an annual registration fee for facilities that produce medical waste. This fee is set between \$25 and \$150, depending upon the type of facility and its size.) A C3 designee also would be entitled to benefits provided in rules promulgated under Parts 135 and 138.

In addition, in order to receive C3 designation, a facility would have to be in compliance with all applicable environmental regulations, which could include requirements under the Safe Drinking Water Act and Parts 135 and 138 of the Public Health Code.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.