

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5220

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 5522 (MCL 324.5522), as amended by 2007 PA 75.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5522. (1) Until October 1, 2011, the owner or operator of  
2 each fee-subject facility shall pay air quality fees as required  
3 and calculated under this section. The department may levy and  
4 collect an annual air quality fee from the owner or operator of  
5 each fee-subject facility in this state. ~~The~~ **IT IS THE INTENT OF**  
6 **THE** legislature ~~intends~~ that the fees required under this section  
7 meet the minimum requirements of the clean air act and that this  
8 expressly stated fee system serve as a limitation on the amount of  
9 fees imposed under this part on the owners or operators of fee-

1 subject facilities in this state.

2 (2) The annual air quality fee shall be calculated for each  
3 fee-subject facility, ~~according to~~ **USING** the following procedure:

4 (a) Except as provided in subdivision (d), for category I  
5 facilities, the annual air quality fee shall be the sum of a  
6 facility charge and an emissions charge as specified in subdivision  
7 (e). The facility charge ~~shall be~~ **IS** \$4,485.00.

8 (b) For category II facilities, the annual air quality fee  
9 shall be the sum of a facility charge and an emissions charge as  
10 specified in subdivision (e). The facility charge ~~shall be~~ **IS**  
11 \$1,795.00.

12 (c) For category III facilities, the annual air quality fee  
13 ~~shall be~~ **IS** \$250.00.

14 (d) For municipal electric generating facilities that are  
15 category I facilities and that emit more than 450 tons but less  
16 than 18,000 tons of fee-subject air pollutants, the annual air  
17 quality fee ~~shall be~~ **IS** the following amount, based on the number  
18 of tons of fee-subject air pollutants emitted:

19 (i) More than 450 tons but less than 4,000 tons, \$24,816.00.

20 (ii) At least 4,000 tons but not more than 5,300 tons,  
21 \$24,816.00 plus \$45.25 per ton of fee-subject air pollutant in  
22 excess of 4,000 tons.

23 (iii) More than 5,300 tons but not more than 12,000 tons,  
24 \$85,045.00.

25 (iv) More than 12,000 tons but less than 18,000 tons,  
26 \$159,459.00.

27 (e) The emissions charge for category I and category II

1 facilities ~~shall equal~~ **EQUALS** the emission charge rate of \$45.25,  
2 multiplied by the actual tons of fee-subject air pollutants  
3 emitted. A pollutant that qualifies as a fee-subject air pollutant  
4 under more than 1 class shall be charged only once. The actual tons  
5 of fee-subject air pollutants emitted is considered to be the sum  
6 of all fee-subject air pollutants emitted at the fee-subject  
7 facility for the calendar year 2 years preceding the year of  
8 billing, but not more than the lesser of the following:

9 (i) 4,000 tons.

10 (ii) 1,000 tons per pollutant, if the sum of all fee-subject  
11 air pollutants except carbon monoxide emitted at the fee-subject  
12 facility is less than 4,000 tons.

13 (3) The auditor general shall conduct a biennial audit of the  
14 federally mandated operating permit program required in title V.  
15 The audit shall include the auditor general's recommendation  
16 regarding the sufficiency of the fees required under subsection (2)  
17 to meet the minimum requirements of the clean air act.

18 (4) After January 1, but before January 15 of each year, the  
19 department shall notify the owner or operator of each fee-subject  
20 facility of its assessed annual air quality fee. Payment **OF THE AIR**  
21 **QUALITY FEE** is due within 90 calendar days of the mailing date of  
22 the ~~air quality~~ fee notification. If an assessed fee is challenged  
23 under subsection (6), payment is due within 90 calendar days of the  
24 mailing date of the air quality fee notification or within 30 days  
25 of receipt of a revised fee or statement supporting the original  
26 fee, whichever is later. The department shall deposit all fees  
27 collected under this section to the credit of the fund.

1           (5) If the owner or operator of a fee-subject facility fails  
2 to submit the amount due within the time period specified in  
3 subsection (4), the department shall assess the owner or operator a  
4 penalty of 5% of the amount of the unpaid fee for each month that  
5 the payment is overdue up to a maximum penalty of 25% of the total  
6 fee owed.

7           (6) If the owner or operator of a fee-subject facility desires  
8 to challenge its assessed fee, the owner or operator shall submit  
9 the challenge in writing to the department. The department shall  
10 not process the challenge unless it is received by the department  
11 within 45 calendar days of the mailing date of the air quality fee  
12 notification described in subsection (4). ~~A~~**THE** challenge shall  
13 identify the facility and state the grounds upon which the  
14 challenge is based. Within 30 calendar days of receipt of the  
15 challenge, the department shall determine the validity of the  
16 challenge and provide the owner with notification of a revised fee  
17 or a statement setting forth the reason or reasons why the fee was  
18 not revised. Payment of the challenged or revised fee is due within  
19 the time frame described in subsection (4). If the owner or  
20 operator of a facility desires to further challenge its assessed  
21 fee, the owner or operator of the facility has an opportunity for a  
22 contested case hearing as provided for under the administrative  
23 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

24           (7) If requested by the department, by March 15 of each year,  
25 or within 45 days of a request by the department, whichever is  
26 later, the owner or operator of each fee-subject facility shall  
27 submit information regarding the facility's previous year's

1 emissions to the department. The information shall be sufficient  
2 for the department to calculate the facility's emissions for that  
3 year and meet the requirements of 40 CFR 51.320 to 51.327.

4 (8) By July 1 of each year, the department shall provide the  
5 owner or operator of each fee-subject facility required to pay an  
6 emission charge pursuant to this section with a copy of the  
7 department's calculation of the facility emissions for the previous  
8 year. Within 60 days of this notification, the owner or operator of  
9 the facility may provide corrections to the department. The  
10 department shall make a final determination of the emissions by  
11 December 15 of that year. If the owner or operator disagrees with  
12 the determination of the department, the owner or operator may  
13 request a contested case hearing as provided for under the  
14 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
15 24.328.

16 (9) By March 1 annually, the department shall prepare and  
17 submit to the governor, the legislature, the chairpersons of the  
18 standing committees of the senate and house of representatives with  
19 primary responsibility for environmental protection issues related  
20 to air quality, and the chairpersons of the subcommittees of the  
21 senate and house appropriations committees with primary  
22 responsibility for appropriations to the department a report that  
23 details the department's activities of the previous fiscal year  
24 funded by the fund. This report shall include, at a minimum, all of  
25 the following as it relates to the department:

26 (a) The number of full-time equated positions performing title  
27 V and non-title V air quality enforcement, compliance, or

1 permitting activities.

2 (b) All of the following information related to the permit to  
3 install program authorized under section 5505:

4 (i) The number of permit to install applications received by  
5 the department.

6 (ii) The number of permit to install applications for which a  
7 final action was taken by the department. The number of final  
8 actions should be reported as the number of applications approved,  
9 the number of applications denied, and the number of applications  
10 withdrawn by the applicant.

11 (iii) The number of permits to install approved that were  
12 required to complete public participation under section 5511(3)  
13 before final action and the number of permits to install approved  
14 that were not required to complete public participation under  
15 section 5511(3) prior to final action.

16 (iv) The average number of final permit actions per permit to  
17 install reviewer full-time equivalent position.

18 (v) The percentage and number of permit to install  
19 applications that were reviewed for administrative completeness  
20 within 10 days of receipt by the department.

21 (vi) The percentage and number of permit to install  
22 applications that were reviewed for technical completeness within  
23 30 days of receipt of an administratively complete application by  
24 the department.

25 (vii) The percentage and number of permit to install  
26 applications submitted to the department that were administratively  
27 complete as received.

1           (viii) The percentage and number of permit to install  
2 applications for which a final action was taken by the department  
3 within 60 days of receipt of a technically complete application for  
4 those not required to complete public participation under section  
5 5511(3) prior to final action, or within 120 days of receipt of a  
6 technically complete application for those which are required to  
7 complete public participation under section 5511(3) prior to final  
8 action.

9           (c) All of the following information for the renewable  
10 operating permit program authorized under section 5506:

11           (i) The number of renewable operating permit applications  
12 received by the department.

13           (ii) The number of renewable operating permit applications for  
14 which a final action was taken by the department. The number of  
15 final actions should be reported as the number of applications  
16 approved, the number of applications denied, and the number of  
17 applications withdrawn by the applicant.

18           (iii) The percentage and number of permit applications initially  
19 processed within the required time.

20           (iv) The percentage and number of permit renewals and  
21 modifications processed within the required time.

22           (v) The number of permit applications reopened by the  
23 department.

24           (vi) The number of general permits issued by the department.

25           (d) The number of letters of violation sent.

26           (e) The amount of penalties collected from all consent orders  
27 and judgments.

1 (f) For each enforcement action that includes payment of a  
2 penalty, a description of what corrective actions were required by  
3 the enforcement action.

4 (g) The number of inspections done on sources required to  
5 obtain a permit under section 5506 and the number of inspections of  
6 other sources.

7 (h) The number of air pollution complaints received,  
8 investigated, not resolved, and resolved by the department.

9 (i) The number of contested case hearings and civil actions  
10 initiated and completed, and the number of voluntary consent  
11 orders, administrative penalty orders, and emergency orders entered  
12 or issued, for sources required to obtain a permit under section  
13 5506.

14 (j) The amount of revenue in the fund at the end of the fiscal  
15 year.

16 (10) The report under subsection (9) shall also include the  
17 amount of revenue for programs under this part received during the  
18 prior fiscal year from fees, from federal funds, and from general  
19 fund appropriations. Each of these amounts shall be expressed as a  
20 dollar amount and as a percent of the total annual cost of programs  
21 under this part.

22 (11) BY AUGUST 1, 2010, THE DEPARTMENT SHALL PREPARE AND  
23 SUBMIT TO THE GOVERNOR, THE LEGISLATURE, THE CHAIRPERSONS OF THE  
24 STANDING COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH  
25 PRIMARY RESPONSIBILITY FOR ENVIRONMENTAL PROTECTION ISSUES RELATED  
26 TO AIR QUALITY, AND THE CHAIRPERSONS OF THE SUBCOMMITTEES OF THE  
27 SENATE AND HOUSE APPROPRIATIONS COMMITTEES WITH PRIMARY



1 RESPONSIBILITY FOR APPROPRIATIONS TO THE DEPARTMENT A REPORT THAT  
2 BENCHMARKS ALL INFORMATION IDENTIFIED IN SUBSECTION (8) (C) ,  
3 INCLUDING THE AVERAGE TIME TAKEN TO PROCESS PERMITS, WITH THAT OF  
4 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5 STATES.  
5 THE REPORT MAY CONTAIN BENCHMARK INFORMATION FROM ADDITIONAL  
6 STATES.

7 (12) BY AUGUST 1, 2010, THE DEPARTMENT SHALL COMPLETE A  
8 REENGINEERING PROCESS EVALUATION FOR THE ACTIVITIES FUNDED BY THE  
9 FUND.

10 (13) ~~(11)~~ The attorney general may bring an action for the  
11 collection of the fees imposed under this section.

12 (14) ~~(12)~~ This section does not apply if the administrator of  
13 the United States environmental protection agency determines that  
14 the department is not adequately administering or enforcing the  
15 renewable operating permit program and the administrator  
16 promulgates and administers a renewable operating permit program  
17 for this state.

18 (15) IN MAKING A DETERMINATION ON AN APPLICATION FOR A PERMIT  
19 TO INSTALL AN ELECTRIC GENERATING FACILITY, THE DEPARTMENT SHALL  
20 NOT REVIEW OR CONSIDER ANY OF THE FOLLOWING:

21 (A) THIS STATE'S NEEDS FOR ELECTRICITY.

22 (B) ALTERNATIVE METHODS FOR ELECTRIC GENERATION.

23 (C) ALTERNATIVES TO THE CONSTRUCTION OF ELECTRIC GENERATING  
24 FACILITIES.

25 Enacting section 1. This amendatory act does not take effect  
26 unless all of the following bills of the 95th Legislature are  
27 enacted into law:

1 (a) Senate Bill No. 434.

2 (b) Senate Bill No. 436.