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EXEMPT GAS SAFETY STANDARDS FROM APA

House Bill 5545 (Substitute H-1) First Analysis (6-17-98)

Sponsor: Rep. Dennis Olshove
Committee: Public Utilities

THE APPARENT PROBLEM:

According to the Public Service Commission, under the federal Natural Gas Pipeline Safety Act (49 USC 60101 et al.), Michigan maintains an annual certification with the United States Department of Transportation. Under the certification, Michigan is eligible to receive grant-in-aid funding for up to 50 percent of state pipeline safety program expenditures.

To qualify for this funding, Michigan is required to adopt pipeline safety standards at least as restrictive as those promulgated by the Department of Transportation. Under the current rulemaking process in the Administrative Procedures Act, it is difficult to meet the federal timetable. Currently, the Public Service Commission is required to go through a time consuming procedural process in order to promulgate rules regarding gas safety standards. As a result of the delay, Michigan continually risks failing to meet the federal deadline and, as a result, risks losing the funding. These procedures are not only burdensome for both the PSC and industry, but are also unnecessary, as many of the rules that are promulgated under the Michigan Gas Safety Standards mirror those adopted under the federal Pipeline Safety Laws.

In order to streamline the process of rule promulgation for certain rules, it has been suggested that a special, quicker approval process similar to the one already in existence for certain MIOSHA rules be adopted for amending the Gas Safety Code in those instances where the amendments result from and are identical to federal rule changes.

THE CONTENT OF THE BILL:

The bill would amend the Administrative Procedures Act (APA) to provide an exemption from the usual rules process for rules promulgated under the Gas

Safety Standards Act that were substantially similar to existing federal standards adopted under the Federal Pipeline Safety Laws. [Note: The term "substantially similar" is already defined within the APA as meaning identical, with the exception of style or format differences needed to conform to the APA or other state laws, as determined by the Department of Attorney General.] The exemption would provide the same allowances for the promulgation of rules as are currently provided for certain MIOSHA rules. Notice of the proposed rule would have to be published in the Michigan Register at least 60 days before the rule was submitted to the secretary of state. After publication, a reasonable period of up to 30 days would have to be provided for the submission of written comments.

Rules promulgated under the Gas Safety Standards Act would also be exempt from the sections of the APA which require, among other things, the following: the agency promulgating the rule, following the period for written comments, to file three copies of the rule with the secretary of state along with the approval of the Legislative Service Bureau and the attorney general; that rules be submitted to the Legislative Service Bureau and the attorney general for approval as to form and legality; a call for a public hearing on the proposed rules subsequent to notice; submission of rules to the Joint Committee on Administrative Rules for approval or disapproval; and the provision of regulatory impact statements, small business economic impact statements, and fiscal impact reports.

MCL 24.244 and 24.245

BACKGROUND INFORMATION:

An identical bill, House Bill 4981, was reported with recommendation by the Public Utilities Committee during the last legislative session. The bill died on the House calendar.

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FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill would have no fiscal impact on the state or on local units of government. (6-15-98)

ARGUMENTS:

For:

The bill would streamline the regulatory process for the promulgation of certain rules while protecting interested parties with a more reasonable notice requirement. While the rulemaking procedures would still be required for state standards that go beyond those at the federal level, it would no longer be necessary to apply the lengthy rules process to rules that have already passed scrutiny at the federal level. The PSC estimates that the bill would allow rules for gas safety standards to be promulgated in a more timely manner and in some instances would shorten the time frame by at least two months.

The APA procedures are intended allow affected persons and members of the general public ample opportunity for input; however, pipeline operators and others have extensive opportunity for input in the federal rulemaking process. Furthermore, the gas safety code has been altered fifteen times in the past 25 years and the only participants have been the PSC staff and representatives of the gas industry. There has been no controversy regarding the adoption of rules that have been adopted at the federal level. The only concern is whether Michigan can alter its rules in time to meet the federal funding requirements.

Against:

This bill could interfere with the public's opportunity for input and debate over the rules that would be exempted from the usual promulgation procedures. Although public comment is permitted, no attention must be paid to the comments that are offered. The determination of whether a rule is "substantially similar" is left to the attorney general, but no provision is made for anyone to dispute the attorney general's determination. The bill would be improved by a allowing the attorney general's decision to be challenged and then requiring the regular rules procedure to be followed in such cases. Furthermore, the opportunity for input and comment on federal rules is not equivalent to those same opportunities with regard to state rules. The citizens of Michigan are more likely to be aware of and have a realistic opportunity to comment on the rules in question when those rules are being dealt with by the Michigan PSC.

POSITIONS:

The Michigan Electric and Gas Association supports the bill. (6-16-98)

Analyst: B. Flory/J. Hunault

■ 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.