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AIR POLLUTION PENALTIES

House Bill 4814 as introduced First Analysis (10-19-99)

Sponsor: Rep. Patricia Birkholz
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Michigan's laws relating to environmental and natural resources' matters were recodified under Public Act 451 of 1994 to create the Natural Resources and Environmental Protection Act (NREPA). Prior to the recodification, criminal penalties were provided for violations of the Air Pollution Control Act. During the recodification, civil penalties were added. However, a provision of the act which specified that there had to be a showing of "intent" for prosecution was inadvertently left in place (the provision specified that a violation that resulted from an act of God, war, strike, riot, catastrophe, or any other condition over which the person committing the offense had no control, was considered exempt from penalties or fines, since it couldn't be considered as having resulted from negligence or wilful misconduct). Since a showing of intent is not required for civil actions, the provision needs to be deleted. It is especially important that it be repealed before December 31, 1999, the date by which the federal Environmental Protection Agency (EPA) has said Michigan's air pollution control program must comply with the provisions of the federal Clean Air Act. Otherwise, the state's program would be administered by the EPA and certain sanctions and fees would be imposed.

THE CONTENT OF THE BILL:

Public Act 451 of 1994 recodified laws relating to the environment and natural resources to create the Natural Resources and Environmental Protection Act (NREPA). At the time, a criminal violation of the laws concerning air pollution that resulted from an act of God, war, strike, riot, catastrophe, or any other condition over which the person committing the offense had no control, was considered exempt from penalties or fines, since it couldn't be considered as having

resulted from negligence or wilful misconduct. This provision was included in the recodified version of NREPA, which was also amended at the time to include penalties for *civil* violations of air pollution provisions (MCL 324.5531). However, the language establishing the former exemption was inadvertently left in place (MCL 324.5534). House Bill 4814 would repeal this provision.

FISCAL IMPLICATIONS:

According to a House Fiscal Agency (HFA) analysis, the bill would result in an indeterminate amount of revenue each year from fines collected by the state. (10-11-99)

ARGUMENTS:

For:

Michigan has received "interim approval" from the federal Environmental Protection Agency (EPA) to implement the provisions of the federal Clean Air Act (CAA). In other words, the state has been delegated the authority to operate its air pollution control program provided that it complies with certain standards. One of these standards is that state law cannot require a burden of proof and degree of knowledge or intent that is greater than that required under the CAA. Since federal regulations do not require a showing of intent for civil actions, one provision of the state's Air Pollution Control Act (MCL 324.5534) must be repealed. If this is not carried out by December 31, 1999 -- the date on which "final approval" would otherwise be granted -- the state's program would be administered by the EPA and certain sanctions and fees would be imposed.

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POSITIONS:

The Department of Environmental Quality (DEQ) supports the bill. (10-15-99)

The Michigan Environmental Council supports the bill. (10-15-99)

The Michigan United Conservation Clubs (MUCC) supports the bill. (10-14-99)

The Michigan Manufacturers Association (MMA) supports the bill. (10-18-99)

Analyst: R. Young

■ 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.