



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 73 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Patricia L. Birkholz  
Committee: Natural Resources and Environmental Affairs

Date Completed: 5-3-05

### **RATIONALE**

The Federal Clean Air Act identifies six common air pollutants ("criteria air pollutants") and authorizes the Environmental Protection Agency (EPA) to develop science-based guidelines to establish permissible concentrations in the air (national ambient air quality standards, or NAAQS) for specified regions. One criteria pollutant is ozone, a gas composed of molecules of three oxygen atoms that forms when nitrogen oxides and volatile organic compounds from automobile exhaust, industrial emissions, and chemical solvents react in the presence of sunlight. In the upper atmosphere, ozone forms a protective shield against the sun's ultraviolet rays. Ground-level ozone, however, is a harmful pollutant that contributes to smog and respiratory problems.

States monitor the air quality in specified areas and report to the EPA on whether each area is meeting standards for criteria pollutants, including ozone. Based on the data it receives from the states, the EPA designates each area as an "attainment" or "nonattainment" area, and classifies each nonattainment area according to the severity of the ozone pollution. States must submit to the EPA state implementation plans (SIPs) to reduce ozone-forming pollution in nonattainment areas. A nonattainment area must meet Federally mandated deadlines for compliance with the NAAQS, and, in the interim, demonstrate that it is making reasonable progress toward improving air quality.

In a designated nonattainment area, the total pollutant level may not rise above the ceiling set by the EPA. Thus, if a company desires to increase production or change a

process in a way that increases its emissions of a criteria pollutant, an emissions offset must be obtained somewhere in the nonattainment area. An emissions offset is a reduction of the criteria air pollutant by 10% more than the planned increase. An offset may occur anywhere in the nonattainment area, whether it is within the same facility, in a different facility of the same owner, or at a facility of a different owner.

A rule (R 336.1220) promulgated by the Michigan Department of Environmental Quality (DEQ) states that only those offsets occurring after the year used as the baseline for the SIP, or the date on which an area is classified nonattainment, whichever is later, may be used. The DEQ uses calendar year 2002 to establish the baseline emissions inventory, meaning that the earliest possible emissions offset start date is January 1, 2003. The EPA, however, designated 25 counties in Michigan eight-hour ozone nonattainment areas effective June 15, 2004. Thus, under the DEQ rule, only emissions reductions that occurred after that later date count as offsets. The EPA, on the other hand, uses the January 1, 2003, start date. Apparently, some businesses believe that the discrepancy between the State and Federal rules causes confusion as to which pollution reductions may be considered offsets, and discourages economic development.

### **CONTENT**

**The bill would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to establish a start date**

**for emissions offsets eligible to be applied to a permit to install a process or process equipment that emits or might emit an air contaminant.**

Part 55 prohibits a person from installing, constructing, reconstructing, relocating, altering, or modifying any process or process equipment without obtaining from the DEQ a permit to install, or a permit to operate if applicable, authorizing the conduct or activity. Part 55 also requires the DEQ to promulgate rules to establish a permit to install program, which the Department must administer. The permit to install program applies to each new or modified process or process equipment that emits or might emit an air contaminant.

Under the bill, the start date for emissions offsets eligible to be applied to a permit to install would be the date established by Federal rule, or, if a date were not established by Federal rule, January 1 of the year after the emissions baseline year used to prepare the relevant State implementation plan. The bill would require the DEQ to make available information in the permit database and the air emissions inventory established under Section 5503(k) of the Act to identify emissions reductions that could be used as emissions offsets. (Section 5503(k) allows the DEQ to require reports on sources and the quality and nature of emissions, including information necessary to maintain an emissions inventory.) The bill specifies that it would not authorize the DEQ to seek permit changes to make emissions reductions available for use as emissions offsets.

(Under the Act, "air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, or any combination of those items. "Process" means an action, operation, or a series of operations or actions that emits or has the potential to emit an air contaminant. "Process equipment" means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process.)

MCL 324.5505

**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 eliminate the discrepancy between the offset start dates established by the EPA and DEQ. In nonattainment areas, emissions-producing businesses cannot expand production, and new businesses cannot operate, until others close down or reduce emissions. The pollutant ceiling established by the EPA creates a disincentive for new businesses to locate in nonattainment counties. The competitive disadvantage could be alleviated in part if businesses in the 25 designated nonattainment counties were allowed to count emissions reductions as offsets under the EPA's start date, which is approximately a year and a half before the DEQ's start date.

Reportedly, the DEQ has indicated that it will interpret its rule in a way that allows businesses to use offsets implemented after January 1, 2003, rather than June 15, 2004. However, the rule plainly states that the later date must be used, and a different interpretation provides opportunities for legal action to enforce the literal reading. Although the DEQ simply could change the rule, that process could take months. Codifying the EPA's date would take less time and eliminate any ambiguity.

Legislative Analyst: Julie Koval

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Jessica Runnels

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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.