



Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## DELEGATE POLLUTION POWERS

House Bill 4164

Sponsor: Rep. Ilona Varga

Committee: Conservation, Recreation  
and Great Lakes Affairs

Complete to 2-5-93

### A SUMMARY OF HOUSE BILL 4164 AS INTRODUCED 2-4-93

House Bill 4164 would amend the Air Pollution Act to allow the Air Pollution Control Commission to delegate a portion of its authority to implement an air pollution control program to a city or county. Under the bill, the commission could also, with the department's consent, delegate a designated portion of the Department of Natural Resources' (DNR) authority. Local governments could receive state grants to implement their air pollution control programs.

Delegation of Authority. Before entering into a delegation of authority, the commission would conduct a public hearing in the jurisdiction for which delegation was sought. The delegation of authority would be in writing and would include -- at a minimum -- a description of the delegated authority and of the resources that the city or county would use in meeting its obligations.

Under the bill, the commission could delegate certain powers to a city or county if all of the following requirements were met:

--The local program would, at a minimum, comply with those aspects of the Clean Air Act, and rules promulgated under the Air Pollution Act, for which delegated authority had been requested.

--The local program would have adequate staff and funding, comparable to that which the state would have provided, to meet the responsibilities delegated to it.

--The local program had lawful authority to implement its responsibility, and the ability and authority to enforce the rules promulgated under the act.

As a condition of maintaining a delegation, a city or county would provide the commission with an annual report that included a description of its staff and funding, and the status of its efforts to comply with its delegated responsibilities. The commission could withdraw a city or county's delegation of powers if a report were not filed, or if a report indicated deficiencies in a program. The commission could also withdraw a delegation, if, after a public hearing, it determined that the city or county was not effectively administering its authority.

Renewals of Delegations of Authority. A delegation of authority would be made for a term of one to five years, and could be renewed. A renewal application would have to

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be filed with the commission one year prior to the delegation's expiration date, unless the commission established a different date. The commission could deny a renewal for just cause.

Air Pollution Control Program Grants. A city or county would have to enter into a one-year agreement that detailed how the grant money would be expended, and the following provisions would apply:

--The DNR could not issue a grant in an amount greater than the amount the state would have expended to operate a city or county's air pollution program.

--The DNR could not issue a grant unless the city or county were contributing resources for its air pollution control program for the fiscal year for which the agreement applied in an amount equal to the resources contributed by the city or county in the preceding fiscal year. (The commission could exempt a city or county from this requirement if the city or county contribution for the preceding fiscal year were elevated due to extraordinary circumstances, or if a city or county's reduction in expenditures resulted from a nonselective reduction in overall funding.)

Restrictions on Permit Applications. A permit issued by a city or county with delegate authority would carry the same weight as one issued by the DNR if it met or exceeded the requirements of the act. However, House Bill 4164 would place the following restrictions on the issuance of permits:

--A city or county could not issue a permit or enter into an order for which there was a known unresolved objection regarding air pollution or other environmental issues.

--A city or county could be required to submit to the commission a copy of each permit application, each permit modification or renewal application, each order, and each permit issued or about to be issued.

--The commission could modify, terminate, or revoke a permit, or require the city or county to issue a revised one, provided that it objected to the permit within 45 days of its issuance. If the city or county failed to submit a revision within 90 days after the objection, the commission would either issue or deny the permit, according to the provisions of the act.

The commission could waive either or both of the above requirements at the time of a delegation's approval as long as the source, or category of sources, covered by the program was not a major source of air pollution.

Authority to Collect Fees. The authority to collect fees could not be delegated. Fees paid by a source within a local unit of government that had delegated authority would be divided between the state and the local unit of government according to an equitable formula established by the commission and based on the division of responsibilities between the state and the city or county.

**DNR Authority.** Notwithstanding a delegation of authority, the DNR would retain the authority to bring any appropriate action authorized under the act. The department would also have the authority to bring any appropriate action necessary to enforce a city or county's permit or consent order.

MCL 336.16a