

SENATE BILL No. 157

February 1, 2007, Introduced by Senators McMANUS, PAPPAGEORGE, CROPSEY, KAHN and KUIPERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," (MCL 324.101 to 324.90106) by adding part 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 27 ENVIRONMENTAL COMPLIANCE ASSISTANCE

2 SEC. 2701. AS USED IN THIS PART:

3 (A) "ADVISORY PANEL" MEANS THE SMALL BUSINESS ENVIRONMENTAL
4 COMPLIANCE ADVISORY PANEL CREATED IN SECTION 2707.

5 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
6 QUALITY.

7 (C) "ENVIRONMENTAL REQUIREMENT" MEANS A REQUIREMENT OF A PART
8 OF THIS ACT ADMINISTERED BY THE DEPARTMENT OR A RULE PROMULGATED OR
9 ORDER OR PERMIT ISSUED THEREUNDER.

1 (D) "SMALL BUSINESS" MEANS A BUSINESS THAT MEETS ALL OF THE
2 FOLLOWING REQUIREMENTS:

3 (i) IS INDEPENDENTLY OWNED AND OPERATED.

4 (ii) IS NOT DOMINANT IN ITS FIELD OF OPERATION AS DESCRIBED IN
5 13 CFR 121.102.

6 (iii) MEETS THE SMALL BUSINESS SIZE STANDARDS SET FORTH IN 13
7 CFR 121.201.

8 (E) "SMALL BUSINESS ENVIRONMENTAL COMPLIANCE ASSISTANCE
9 PROGRAM" OR "ASSISTANCE PROGRAM" MEANS A PROGRAM OF THE DEPARTMENT
10 IMPLEMENTING THIS PART.

11 (F) "VIOLATION" MEANS A VIOLATION OF AN ENVIRONMENTAL
12 REQUIREMENT.

13 SEC. 2703. (1) THE DEPARTMENT SHALL ASSIST SMALL BUSINESSES IN
14 DETERMINING BOTH OF THE FOLLOWING:

15 (A) APPLICABLE ENVIRONMENTAL REQUIREMENTS.

16 (B) THE PROCEDURES FOR OBTAINING PERMITS IN AN EFFICIENT AND
17 TIMELY MANNER.

18 (2) THE DEPARTMENT SHALL PUBLISH 1 OR MORE GUIDES TO ASSIST
19 SMALL BUSINESSES IN COMPLYING WITH ENVIRONMENTAL REQUIREMENTS. THE
20 DEPARTMENT SHALL DESIGNATE THE PUBLICATIONS AS SMALL BUSINESS
21 COMPLIANCE GUIDES. THE DEPARTMENT SHALL COOPERATE WITH ASSOCIATIONS
22 OF SMALL BUSINESSES TO DEVELOP AND DISTRIBUTE THE GUIDES. EACH
23 GUIDE SHALL DO ALL OF THE FOLLOWING:

24 (A) COVER A GROUP OR CLASS OF SIMILARLY AFFECTED SMALL
25 BUSINESSES. BY APRIL 30, 2008, THE DEPARTMENT SHALL DEVELOP A PLAN
26 TO DEVELOP AND A SCHEDULE TO COMPLETE SMALL BUSINESS COMPLIANCE
27 GUIDES. A GUIDE SHALL BE COMPLETED FOR THE FRUIT AND VEGETABLE

1 PROCESSING SECTOR BY SEPTEMBER 30, 2008.

2 (B) EXPLAIN THE ACTIONS A SMALL BUSINESS IN THAT GROUP OR
3 CLASS IS REQUIRED TO TAKE TO COMPLY WITH ENVIRONMENTAL
4 REQUIREMENTS.

5 (C) USE PLAIN LANGUAGE LIKELY TO BE UNDERSTOOD BY AFFECTED
6 SMALL BUSINESSES.

7 (3) BEGINNING IN 2008, THE DEPARTMENT SHALL PUBLISH AT LEAST 2
8 GUIDES ANNUALLY UNTIL ALL THE GUIDES NECESSARY TO SATISFY THE
9 REQUIREMENTS OF SUBSECTION (2) ARE PUBLISHED. THE DEPARTMENT SHALL
10 REEVALUATE A GUIDE EVERY 5 YEARS AFTER PUBLICATION AND REVISE THE
11 GUIDE IF NECESSARY. NOT LESS THAN 30 DAYS BEFORE PUBLISHING A GUIDE
12 OR REVISED GUIDE, THE DEPARTMENT SHALL SUBMIT A COPY OF THE
13 PROPOSED GUIDE TO THE ADVISORY PANEL FOR REVIEW AND COMMENT.

14 (4) IN ANY CIVIL OR ADMINISTRATIVE ACTION AGAINST A SMALL
15 BUSINESS FOR A VIOLATION OCCURRING AFTER THE EFFECTIVE DATE OF THIS
16 SECTION, THE CONTENT OF A RELEVANT SMALL BUSINESS COMPLIANCE GUIDE
17 MAY BE CONSIDERED AS EVIDENCE OF THE REASONABLENESS OR
18 APPROPRIATENESS OF ANY PROPOSED SANCTIONS.

19 SEC. 2705. (1) SUBJECT TO SUBSECTION (3), THE DEPARTMENT SHALL
20 WAIVE CIVIL FINES AND OTHER CIVIL SANCTIONS ASSESSED AGAINST A
21 SMALL BUSINESS FOR A VIOLATION IF THE SMALL BUSINESS MEETS ALL OF
22 THE FOLLOWING REQUIREMENTS:

23 (A) THE SMALL BUSINESS DISCLOSES THE VIOLATION TO THE
24 DEPARTMENT WITHIN 21 DAYS AFTER THE SMALL BUSINESS DISCOVERS THE
25 VIOLATION. THE SMALL BUSINESS MAY REQUEST AN EXTENSION OF THIS
26 DEADLINE FROM THE DIRECTOR.

27 (B) THE DISCLOSURE IS VOLUNTARY. VOLUNTARY DISCLOSURE DOES NOT

1 INCLUDE EITHER OF THE FOLLOWING:

2 (i) DISCLOSURE OF A MONITORING OR SAMPLING RESULT IF THE
3 DISCLOSURE IS REQUIRED BY A LAW, PERMIT, JUDICIAL OR ADMINISTRATIVE
4 ORDER, OR CONSENT AGREEMENT.

5 (ii) DISCLOSURE OF A VIOLATION DISCOVERED THROUGH AN
6 INFORMATION REQUEST OR INSPECTION OR REPORTED BY A MEMBER OF THE
7 PUBLIC.

8 (C) THE SMALL BUSINESS CORRECTS THE VIOLATION PROMPTLY AND
9 WITHIN 180 DAYS AFTER DISCLOSURE OR, IF THE CORRECTION INCLUDES
10 POLLUTION PREVENTION CHANGES, WITHIN 360 DAYS AFTER DISCLOSURE. IF
11 THE VIOLATION IS FAILURE TO OBTAIN A PERMIT, THE VIOLATION IS
12 CONSIDERED TO BE CORRECTED WHEN THE SMALL BUSINESS SUBMITS AN
13 ADMINISTRATIVELY COMPLETE PERMIT APPLICATION.

14 (2) SUBJECT TO SUBSECTION (3), IF THE REQUIREMENTS OF
15 SUBSECTION (1) (A) TO (C) ARE MET, BUT THE VIOLATION RESULTED IN A
16 SUBSTANTIAL ECONOMIC BENEFIT GIVING THE SMALL BUSINESS A CLEAR
17 ADVANTAGE OVER ITS BUSINESS COMPETITORS, THE DEPARTMENT SHALL WAIVE
18 CIVIL FINES AND OTHER CIVIL SANCTIONS ASSESSED AGAINST THE SMALL
19 BUSINESS TO THE EXTENT THAT THE AMOUNT OF THE FINES AND THE LIKELY
20 COSTS TO THE SMALL BUSINESS OF THE OTHER CIVIL SANCTIONS EXCEED THE
21 AMOUNT OF THE ECONOMIC BENEFIT.

22 (3) SUBSECTIONS (1) AND (2) DO NOT APPLY IF ANY OF THE
23 FOLLOWING APPLY:

24 (A) THE VIOLATION CAUSED ACTUAL SERIOUS HARM TO PUBLIC HEALTH,
25 SAFETY, OR THE ENVIRONMENT.

26 (B) THE VIOLATION MAY PRESENT AN IMMINENT AND SUBSTANTIAL
27 ENDANGERMENT TO PUBLIC HEALTH, SAFETY, OR THE ENVIRONMENT.

1 (C) THE FACILITY HAS RECEIVED A WARNING LETTER OR NOTICE OF
2 VIOLATION, OR HAS BEEN SUBJECT TO A CITIZEN SUIT, FOR A VIOLATION
3 OF THE SAME ENVIRONMENTAL REQUIREMENT WITHIN THE PAST 3 YEARS.

4 (D) THE FACILITY HAS BEEN THE SUBJECT OF 2 OR MORE ENFORCEMENT
5 ACTIONS, FOR VIOLATIONS IN THE PAST 5 YEARS.

6 SEC. 2707. (1) THE SMALL BUSINESS ENVIRONMENTAL COMPLIANCE
7 ADVISORY PANEL IS CREATED WITHIN THE DEPARTMENT.

8 (2) THE ADVISORY PANEL SHALL BE BROADLY REPRESENTATIVE OF
9 REGULATED SMALL BUSINESSES. THE ADVISORY PANEL SHALL CONSIST OF ALL
10 OF THE FOLLOWING:

11 (A) THE MEMBERS OF THE SMALL BUSINESS CLEAN AIR COMPLIANCE
12 ADVISORY PANEL CREATED IN SECTION 5708.

13 (B) FOUR ADDITIONAL MEMBERS APPOINTED BY THE GOVERNOR.

14 (3) A MEMBER OF THE ADVISORY PANEL APPOINTED UNDER SUBSECTION
15 (2)(B) SHALL SERVE FOR A TERM OF 4 YEARS, OR UNTIL A SUCCESSOR IS
16 APPOINTED, WHICHEVER IS LATER. HOWEVER, OF THE MEMBERS FIRST
17 APPOINTED UNDER SUBSECTION (2)(B), 1 MEMBER SHALL SERVE FOR A TERM
18 OF 3 YEARS, 1 MEMBER FOR A TERM OF 2 YEARS, AND 1 MEMBER FOR A TERM
19 OF 1 YEAR.

20 (4) IF A VACANCY OCCURS ON THE ADVISORY PANEL AMONG THE
21 MEMBERS APPOINTED UNDER SUBSECTION (2)(B), THE GOVERNOR SHALL MAKE
22 AN APPOINTMENT FOR THE UNEXPIRED TERM.

23 (5) THE FIRST MEETING OF THE ADVISORY PANEL SHALL BE CALLED BY
24 THE CHAIRPERSON OF THE SMALL BUSINESS CLEAN AIR COMPLIANCE ADVISORY
25 PANEL WITHIN 90 DAYS OF THE APPOINTMENT OF ALL ADVISORY PANEL
26 MEMBERS UNDER SUBSECTION (2)(B). AT THE FIRST MEETING, THE ADVISORY
27 PANEL SHALL ELECT FROM AMONG ITS MEMBERS A CHAIRPERSON AND OTHER

1 OFFICERS AS IT CONSIDERS NECESSARY OR APPROPRIATE.

2 (6) A MAJORITY OF THE MEMBERS OF THE ADVISORY PANEL
3 CONSTITUTES A QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING
4 OF THE ADVISORY PANEL. A MAJORITY OF THE MEMBERS PRESENT AND
5 SERVING ARE REQUIRED FOR OFFICIAL ACTION OF THE ADVISORY PANEL.

6 (7) MEMBERS OF THE ADVISORY PANEL SHALL SERVE WITHOUT
7 COMPENSATION. HOWEVER, MEMBERS OF THE ADVISORY PANEL MAY BE
8 REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE
9 PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE ADVISORY
10 PANEL.

11 SEC. 2709. THE ADVISORY PANEL SHALL DO ALL OF THE FOLLOWING:

12 (A) CONSULT WITH THE SMALL BUSINESS CLEAN AIR OMBUDSMAN
13 APPOINTED UNDER SECTION 5703 AND THE HEAD OF THE SMALL BUSINESS
14 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM TO PLAN THE WORK OF THE
15 PANEL, INCLUDING THE FREQUENCY OF MEETINGS, AGENDA ITEMS, AND
16 REPORTS TO BE ISSUED BY THE PANEL.

17 (B) PREPARE ADVISORY REPORTS CONCERNING ALL OF THE FOLLOWING:

18 (i) THE DIFFICULTIES ENCOUNTERED BY SMALL BUSINESS IN THE
19 ENFORCEMENT OF ENVIRONMENTAL REQUIREMENTS AND THE DEGREE AND
20 SEVERITY OF THAT ENFORCEMENT.

21 (ii) THE AVERAGE COSTS OF DIFFERENT SECTORS OF SMALL BUSINESSES
22 IN COMPLYING WITH ENVIRONMENTAL REQUIREMENTS OF THIS STATE.

23 (iii) THE EFFECTIVENESS OF THE ASSISTANCE PROGRAM.

24 (iv) THE COSTS OF OPERATING THE ASSISTANCE PROGRAM.

25 (C) REVIEW INFORMATION PREPARED BY THE ASSISTANCE PROGRAM FOR
26 SMALL BUSINESSES TO ENSURE THAT THE INFORMATION IS IN PLAIN
27 LANGUAGE LIKELY TO BE UNDERSTOOD BY AFFECTED SMALL BUSINESSES.

1 (D) UTILIZE THE ASSISTANCE PROGRAM STAFF TO ACT AS STAFF TO
2 DEVELOP AND DISSEMINATE THE WORK PRODUCT OF THE ADVISORY PANEL.

3 (E) PROVIDE TO THE GOVERNOR, THE CLERK OF THE HOUSE OF
4 REPRESENTATIVES, THE SECRETARY OF THE SENATE, AND THE DEPARTMENT OF
5 LABOR AND ECONOMIC GROWTH COPIES OF ADVISORY REPORTS PREPARED BY
6 THE ADVISORY PANEL. IN ADDITION, THE REPORTS SHALL BE MADE
7 AVAILABLE TO ANY OTHER PERSON UPON REQUEST AND SHALL BE PUBLISHED
8 ON THE DEPARTMENT'S WEBSITE.

9 SEC. 2711. (1) ANY RECORD OR OTHER INFORMATION PREPARED,
10 OWNED, USED, IN THE POSSESSION OF, OR RETAINED BY THE ASSISTANCE
11 PROGRAM THAT CONCERNS ASSISTANCE PROGRAM INQUIRIES, DISCLOSURES, OR
12 ACTIVITIES AND THAT IDENTIFIES OR DESCRIBES AN INDIVIDUAL FACILITY
13 OR OPERATION IS CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER THE
14 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246,
15 UNLESS THE RECORD OR OTHER INFORMATION IS RELEVANT TO AN EXISTING
16 CLEAR AND IMMEDIATE DANGER TO THE PUBLIC HEALTH OR ENVIRONMENT.

17 (2) BY JULY 1 OF EACH YEAR, BEGINNING IN 2008, THE DEPARTMENT
18 SHALL REPORT TO THE GOVERNOR, THE CLERK OF THE HOUSE OF
19 REPRESENTATIVES, THE SECRETARY OF THE SENATE, AND THE CHAIRPERSONS
20 OF THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON
21 APPROPRIATIONS. THE REPORT SHALL CONTAIN, BUT NOT BE LIMITED TO,
22 ALL OF THE FOLLOWING FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR:

23 (A) THE NUMBER AND TYPES OF INQUIRIES THE ASSISTANCE PROGRAM
24 RECEIVED.

25 (B) THE SERVICES PROVIDED BY THE ASSISTANCE PROGRAM.

26 (C) THE NUMBER OF SMALL BUSINESSES THAT VOLUNTARILY DISCLOSED
27 VIOLATIONS.

1 SEC. 2712. THIS PART DOES NOT AFFECT THE RIGHTS, PRIVILEGES,
2 AND IMMUNITIES PROVIDED BY PART 148.