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Senate Bill 26 (Substitute S-5 as passed by the Senate)
Sponsor: Senator Stephanie Chang
Committee: Energy and Environment

Date Completed: 2-8-24

RATIONALE

Air pollution administrative fines under Part 55 (Air Pollution Control) of the National Resources and Environmental Protection Act (NREPA) are deposited into the General Fund. Many individuals who live in communities affected by air pollution experience health effects such as asthma, COPD, and other respiratory diseases.¹ The communities with the worst air quality in Michigan are in Detroit, as evidenced by the presence of an asthma hospitalization rate for children that is four times the statewide rate.² These same communities, on bad days, often rank among the worst communities for pollution in the nation.³ Some people believe that communities affected by air pollution should receive the funds from the administrative fines to reduce harm done by that air pollution. Accordingly, it has been suggested that the Air Quality Enforcement and Mitigation Fund (AQEM) be created and that the Department of Environment, Great Lakes, and Energy (EGLE) distribute Part 55 administrative fines to communities affected by air pollution.

CONTENT

The bill would add Section 5534 to Part 55 of NREPA to do the following:

- **Create the AQEM Fund within the State Treasury and require all civil and administrative fines collected by Part 55 to be deposited into it.**
- **Prescribe the purposes and limitations for EGLE's usage of AQEM funds.**
- **Define "environmental justice community" and require EGLE to develop a process for identifying environmental justice communities.**
- **Require EGLE to establish an Air Quality Community Impact Grant Program and to provide grants nonprofit entities, school districts, institutions of higher education, and local units of government.**
- **Require EGLE to develop program guidelines in consultation with an advisory committee made up of specific members as prescribed by the bill.**
- **Specify that an air quality facility supplemental environmental project would not be a fine.**

The bill would take effect 90 days after its enactment.

Among other things, Part 55 of NREPA establishes rules relating to air pollution and to the issuance of permits for a new, modified, or existing emissions source, process, or process equipment. Part 55 also prescribes fines for fee-subject facilities, such as an electric provider regulated by the Michigan Public Service Commission, among others, that violate Part 55's

¹ National Institute of Environmental Health Sciences, Air Pollution and Your Health, December 2023.

² Prudence Kunyangna & Beth Anderson, Michigan Department of Health and Human Services, *Detroit: The Current Status of Asthma Burden – 2021 Update*, 2021.

³ Asthma and Allergy Foundation of America, *2023 Asthma Capitals – The Most Challenging Places to Live With Asthma*, 2023.

permitted tonnage of fee-subject emissions. (Fee-subject emissions include pollutants such as nitrous oxide and ozone which are regulated under the Federal Clean Air Act.)

The bill would add a section to Part 55 creating the AQEM Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer also would direct the investment of the Fund and would have to credit to the Fund interest and earnings from its investments. Money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund. All civil and administrative fines collected under Part 55 would have to be deposited into the AQEM Fund.

The bill specifies that, if the person responsible for an alleged violation agreed to a settlement of an enforcement action under Section 5528 or 5530 of NREPA, money that person spent on an air quality facility supplemental environmental project would not be a fine that could be deposited into the AQEM Fund. (The bill would define "air quality facility supplemental environmental project" as an environmentally beneficial project for air pollution prevention, air pollution reduction, or air monitoring or evaluation that an alleged violator agreed to undertake at the facility where an air quality violation occurred as part of a settlement of an enforcement action, but that the alleged violator is not otherwise legally required to perform.)

(Section 5528 of NREPA allows an alleged violator of Part 55 to enter into an agreement with EGLE to correct the alleged violation. Section 5530 allows the Attorney General to commence a civil action against a person for relief for generally failing to comply with Part 55.)

The bill would require EGLE to spend money from the Fund, upon appropriation, only for specific purposes. The Department would have to spend 30% of the money for staffing and other EGLE functions that would benefit environmental justice communities and be related to one or more of the following:

- Increased air monitoring.
- Additional compliance assistance and training at the location of a source to support source owner and operator compliance efforts and prevent future violations.
- Increased inspections under Part 55.
- Administration of the Air Quality Community Impact Grant Program (described below).

The other 70% of the money would have to be spent for air quality impacts grants for one or more of the following purposes in the communities where Part 55 violations occurred or nearby communities, giving priority to environmental justice communities:

- Mitigation of air pollution, such as by buffers or vegetation, air filtration systems in homes or schools, and diesel engine retrofit or diesel equipment replacement programs.
- Assessments of the health impacts of air pollution.
- Education and training programs for community residents and local environmental regulators to increase effectiveness of enforcement programs for rules promulgated or orders issued under Part 55 and in deterring violations of the Act.

The bill would define "environmental justice community" as a geographic area that EGLE has identified as a community facing a disproportionate environmental burden, using tools such as the U.S. Environmental Protection Agency's EJSCREEN and indicators such as sensitive populations, socioeconomic factors, exposures, and environmental effects. The Department, in collaboration with environmental justice and environmental interest groups, would have to develop a process to identify environmental justice communities and use community engagement to obtain information and feedback. The Department also would have to identify environmental protection communities within 150 days after census block data from a decennial census became publicly available.

To fund these education and mitigation programs, the bill would require EGLE to establish an Air Quality Community Impact Grant Program. The Program would have to provide grants to nonprofit entities, school districts, institutions of higher education, and local units of government, including local health or environmental departments. The Department would have to develop guidelines for the allocation of grants, the procedures for grant applications, the criteria for awarding grants, and administrative and fiscal requirements governing the receipt and expenditure of grants, at a minimum.

The Department would have to develop these guidelines in consultation with an advisory committee that included at least one of each of the following:

- A public health expert.
- A representative of an environmental justice organization.
- A representative of the Department of Health and Human Services (DHHS).
- A representative of a local health department or local environmental department.
- Two residents of environmental protection communities.

The Department would have to post on its website and otherwise make publicly available an annual report on the purposes for which grants were awarded, including the communities affected.

Proposed MCL 324.5534

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of Senate Bill 54 of the 2021-2022 Legislative Session.

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 address harms imposed on residents by sending money from air pollution fines back into the communities affected by air pollution. According to testimony before the Senate Committee on Energy and Environment, the State has done little to ensure that residents of communities with poor air quality receive direct redress at the expense of the entity responsible for the pollution. Many companies routinely violate air quality laws despite existing legal enforcement.⁴ A recent example of a company out of compliance with air pollution laws is Stellantis N.V. – a multinational automobile manufacturer. Its Detroit Assembly Complex violated air quality emissions standards involving volatile organic compounds (VOC) from its paint shops. These compounds have a high vapor pressure and low water solubility, and when emitted in industrial processes, have short-term and long-term adverse health effects.⁵⁶ Breathing in VOCs can irritate the eyes, nose, and throat, cause difficult breathing and nausea, and can damage the central nervous system and other organs.⁷ Some VOCs can cause cancer.⁸

⁴ Great Lakes Environmental Law Center, *Air Quality Enforcement Tracker*, October 9, 2023.

⁵ United States Environmental Protection Agency, *What are volatile organic compounds (VOCs)?*, March 15, 2023.

⁶ *Id.*

⁷ American Lung Association, *Volatile Organic Compounds*, November 2, 2023.

⁸ *Id.*

In the most recent violation, Stellantis N.V. exceeded the VOC emission limit of 4.8 pounds per job with an emissions rate of 5.01 pounds per job from September 2022 to September 2023 at its paint shop on their Jefferson North plant.⁹ For these air pollution violations, Stellantis N.V. agreed to pay a fine of \$84,420, which will go to the State General Fund.¹⁰ Much of this money has not gone to the communities affected by air pollution, such as the residents of Beniteau Street, a neighborhood that reportedly ranks first in the State for asthma prevalence among adults. Detroit also has a heightened rate of asthma among adults and children.¹¹ Funding under the bill could support programs for health impact assessments, provide education and training, or organize community-driven relocation for residents who bear the burden of the air pollution.

Supporting Argument

The bill would ensure that communities affected by air pollution have input in the use of funding from administrative fines. According to testimony before the Senate Committee on Energy and Environment, there have been few instances where the residents of communities affected by air pollution have been able to influence meaningfully a government process to reduce pollution in their communities. Since EGLE does not have the authority to keep communities affected by air pollution free from all air pollution and may not be able to incentivize factories to stop violations, a community's voice is important for discerning how to best mitigate the effects of air pollution in that community. In addition, testimony indicates that communities often know about the harm caused by air pollution before the State does, meaning they can affect change more quickly. The advisory committee proposed by the bill would offer a voice for communities affected by air pollution in the policymaking process by granting two residents of environmental protection communities membership on the committee.

Response: There would be no representative for industry or business on the committee. This excludes a valuable perspective. Businesses should have a seat at the table to work with communities to make sure grant money gathered from violations is used as intended.

Opposing Argument

The bill could undermine the integrity of EGLE's air quality violation process by incentivizing individuals who work in the Air Quality Division to issue more violations because EGLE would benefit financially from more administrative fines. According to testimony before the Senate Committee on Energy and Environment, allowing EGLE to benefit directly from revenue collected in the enforcement of air pollution violations could create a conflict of interest and complicate its regulatory intent. Some have concern that a fine for an air quality violation could fluctuate depending on the Air Quality Division's desire for more funding or staff. This practice could generate mistrust. The integrity of regulatory agencies like EGLE is protected and good government is practiced when administrative fines do not directly benefit these regulatory agencies.

Response: The law prohibits companies from violating air pollution standards. Individual decision-making could not increase or decrease funding for AQEM because the standard that the Air Quality Division enforces is an established standard not susceptible to sudden change. Additionally, according to testimony before the Senate Committee on Energy and Environment, there have been problems within the Air Quality Division's ability to fully staff enforcement agents. The Air Quality Division deserves the funding to enforce air quality standards more fully.

⁹ Robert Byrnes, Michigan Department of Environment, Great Lakes, and Energy, Detroit District Office, *Violation Notice*, November 14, 2022.

¹⁰ Michigan Department of Environment, Great Lakes, and Energy, *Proposed Enforcement Summary, FCA US LLC (Stellantis) – Jefferson North Assembly Plant, Detroit, Michigan, December 2023*

¹¹ Prudence Kuyangna & Beth Anderson, Michigan Department of Health and Human Services, *Detroit: The Current Status of Asthma Burden – 2021 Update*, 2021.

FISCAL IMPACT

The bill would have no fiscal impact on the State through the collection of civil and administrative fines as these fines are already being collected. This bill would have a positive fiscal impact on EGLE. Any costs, administrative or otherwise, would be offset with 30% of the revenue deposited into the AQEM Fund created by the bill. The bill would have a significant positive fiscal impact on local units of government that received grant funding from the remaining 70% of the Fund revenue.

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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.