



**House
Legislative
Analysis
Section**

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LIABILITY: FIREFIGHTER TRAINING

Senate Bill 844 (Substitute H-2)
Senate Bill 845 (Substitute H-2)
First Analysis (11-29-88)

RECEIVED

JAN 18 1989

Sponsor: Senator Richard D. Fessler
Senate Committee: Judiciary
House Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

Public Act 196 of 1987 (enrolled House Bill 4704) amended the Fire Fighters Training Council Act of 1966 to establish minimum training standards for newly-hired fire fighters and to provide for council approval of fire fighter training schools and the qualification and certification of instructors. While the bill was moving through the legislative process, the importance of such oversight was tragically emphasized in October 1987 when three volunteer fire fighters died in a training exercise in Milford Township. The conduct of that training exercise, in which a house was set afire to provide fire fighter practice, was roundly criticized by fire fighting experts. Among the errors noted was the failure to comply with National Fire Protection Association guidelines (also employed by the Michigan council) for the use of flammable materials in starting "controlled burn" fires.

To encourage the proper training and certification of fire fighter instructors, the council has suggested that instructors certified or assigned by the council be given a measure of protection from lawsuits.

THE CONTENT OF THE BILLS:

Senate Bill 844 would create a new public act to provide for the Michigan Fire Fighters Training Council to assume tort liability on behalf of its instructors. The council would assume all liability for tort damages resulting from instructional services provided by an instructor approved or contracted by the council, if the damages were caused by the ordinary negligence of the instructor. Such tort damage claims could not be brought against the instructor, but instead would be brought against the council. The bill would take effect January 1, 1989.

Senate Bill 845 would create a new public act to provide for the Michigan Fire Fighters Training Council to assume tort liability on behalf of community college and hospital employees participating in a council training program. The council would assume all liability for tort damages resulting from instructional services provided by an employee of an institution of higher education or an employee of a health facility or agency as part of his or her participation in a training program provided by the council, if the tort damages were caused by the ordinary negligence of the instructor. Such tort damage claims could not be brought against the employee, but instead would be brought against the council. The bill would take effect January 1, 1989.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted substitute bills that differed from the Senate-passed versions in assigning liability to the fire fighters training council. The Senate-passed versions relieved instructors from liability for damages, if those damages were not caused by gross

negligence or wilful or wanton misconduct; liability for ordinary negligence was not reassigned elsewhere.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bills would have an undetermined fiscal impact on state and local governments. (11-28-88)

ARGUMENTS:

For:

By relieving fire fighter instructors of tort liability only if they have been properly trained through or approved by the Michigan Fire Fighters Training Council, the bills would offer a strong incentive for instructors to obtain council approval. As council approval would require that an instructor be knowledgeable in safety techniques and training methods, the bills could, by encouraging proper education, help to protect the lives and property of instructors, trainees, and fire victims. Further, as liability concerns may prevent some talented people from becoming instructors, the bills could forestall instructor shortages and ensure that community colleges and others continue to participate in council training programs.

Against:

The bills propose a questionable public policy. Should the state, through its agency the fire fighters training council, assume the liability for injuries caused by the negligence of fire fighter instructors? "Ordinary negligence" is the failure to do something which a reasonably careful person would do or the doing of something which a reasonably careful person would not do. Excusing someone from the financial consequences of failing to exercise reasonable care may not be the best way to encourage that person to receive proper training and, presumably, exercise reasonable care. If a cadre of well-trained and careful instructors is the main goal, then the bills should give greater emphasis to qualifications and less to liability protections.

POSITIONS:

The Michigan Fire Fighters Training Council supports the bills. (11-21-88)

The Michigan Joint Fire Service Council (an organization which includes various groups representing fire chiefs, fire fighters, arson investigators, fire inspectors, and fire service instructors) supports the bills. (11-23-88)

The Michigan Trial Lawyers Association does not oppose the House committee substitutes. (11-16-88)

The State Bar of Michigan does not oppose the House committee substitutes. (11-21-88)

S.B. 844 & 845 (11-29-88)

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