



**House
Legislative
Analysis
Section**

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HAZARDOUS SPILLS/EMERGENCY MANAGEMENT

House Bill 4929 (Substitute H-2)
Sponsor: Rep. Ken DeBeaussiaert

House Bills 4931-4933 (Substitutes H-1, H-2, H-3)
Sponsor: Rep. Tom Alley

House Bill 5263 (Substitute H-1)
Sponsor: Rep. James M. Middaugh

Committee: Conservation, Recreation & Environment
First Analysis (12-11-89)

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H.B. 4929 et al (12-11-89)

THE APPARENT PROBLEM:

Following the Alaskan oil spill in the spring of this year — in which 270,000 barrels of crude oil spilled into Prince William Sound after an Exxon oil tanker struck a reef, soiling hundreds of miles of pristine Alaskan shoreline — state officials have taken steps to ensure that Michigan has in place a workable plan for the prevention, containment, and cleanup of similar spills on the Great Lakes. With over one-third of Great Lakes' coastline (3,200 miles) touching Michigan, the state has perhaps the most to lose if such a spill were to occur on Great Lakes' waters. Although Great Lakes tankers are smaller than ocean-going vessels, a major spill here could be much more devastating than an ocean spill as there is no larger sea to help disperse contaminants, resulting in extended retention time. Further, the Great Lakes hold 95 percent of the nation's (one-fifth of the world's) supply of fresh water, and are the main drinking-water source for nearly 24 million people in eight states and two countries.

Hazardous materials spills occur frequently both in U.S. and Canadian waters now, although most are not major (though the collective effect of all spills adds to a growing pollution problem). According to a Department of Natural Resources (DNR) report, 78 oil and chemical spills were reported (in Michigan alone) in 1988. Specific spill information — i.e. what is spilled, how much, and why — however, is neither collected nor analyzed, while spill reports are fielded by three different state departments (DNR, state police, and public health). In Canada one agency collects all spill information for storage and analysis. By establishing a central state agency where spills could be reported and data stored for analysis, some feel the state could better prevent a major spill from occurring and would know how to respond to one that did occur. Also, Congress recently adopted the Emergency Planning and Community Right-To-Know Act which requires states to establish emergency response commissions and local emergency planning committees (for the prevention and management of all disaster and emergency situations). Legislation has been proposed to coordinate emergency management among state and local agencies, particularly emergencies involving hazardous materials spills on the Great Lakes.

THE CONTENT OF THE BILLS:

Among other things, the bills would provide for the creation of a hazardous spills prevention research fund, establish a state spills action center (for fielding spill reports 24 hours per day), specify duties and responsibilities of various state departments, require a statewide hazardous spill

prevention program be implemented by June 1, 1990, provide liability immunity for certain remedial actions taken relative to hazardous spills, and specify new responsibilities and procedures for state and local authorities under the act governing emergency preparedness.

House Bill 4929 would amend the Great Lakes Protection Act (MCL 323.40 and 323.41) to create the Great Lakes Spill Prevention Research Fund to pay for research on the prevention of spills during the transportation of hazardous substances on the Great Lakes and major tributaries of the Great Lakes, including research into the causes of hazardous spills and the contribution of hazardous substance spills relative to the total pollution of the Great Lakes Basin. The fund would provide revenue for the development of an approach to address Great Lakes pollution problems that includes human factors and socio-technical considerations, for research to determine the role of human factors in spills of hazardous substances, and for research into the deployment of new technology related to transportation of hazardous substances and the appropriate allocation of functions between individuals and machines. The bill would define the term "major tributary of the Great Lakes" to mean a river that flows into the Great Lakes that has a drainage area in excess of 700 square miles or has a drainage area that contains a population of 1 million or more individuals.

Money in the fund could be appropriated by the legislature and could also come from gifts and contributions. Interest and earnings would be credited to the fund, and money in the fund at the close of a fiscal year would remain in the fund. The state treasurer would direct the fund's investment.

House Bill 4931 would create an act to require the Department of State Police, in conjunction with the DNR and the Department of Public Health, to establish a Michigan Spills Action Center relative to spills of hazardous materials into the environment. The center would be staffed and operated cooperatively by the three departments (24 hours per day), although the state police would lead in managing the center's operations. If any of the departments required reporting of a hazardous spill pursuant to law, the state police department could require that reporting be done to the center.

The bill specifies that a person would have to immediately report to the center each spill of a hazardous material, and that this report would have to include all relevant information required by the center. The center would 1) receive reports on hazardous material spills, 2) provide

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technical advice and guidance on immediate emergency response to hazardous spills and advise on necessary health and environmental protective measures, 3) compile information on spill history for spills reported to the center, 4) relay reports of spills to other agencies obligated by law to receive the information, and 5) assess actions necessary to respond to a reported spill, monitor the local response activity, and coordinate state assistance as needed.

The directors of the three departments would have to enter into a cooperative agreement to establish and operate the center. The agreement would have to specify at least the following:

- training of center staff;
- reporting requirements;
- responsibilities of each department;
- equipment requirements for operation of the center;
- software and other support materials required for the center's operation;
- the center's operating procedures;
- the programs within each of the departments that would direct reporting be done to the center; and
- other relevant information.

All three department directors would have to annually review the agreement and revise it when necessary. The legislature would also have to annually appropriate sufficient funds to implement the bill.

House Bill 4932 would require the DNR, in consultation with the public health, agriculture, state police, and transportation departments, to develop a statewide hazardous substance spill prevention program by June 1, 1990. In developing the program, the DNR would 1) assess the potential of hazardous spills into state waters that were associated with a "fixed installation" (meaning a place that "manufactures, produces, sells, uses, or stores" hazardous materials, operates as a "transfer station" for these, or from which a hazardous spill could contaminate state waters) and with a "mobile source" (basically, a vehicle transporting hazardous materials) that could cause, or have caused, spills; 2) develop a listing of "general types" of mobile sources and fixed installations and identify those with a high risk of resulting in hazardous spills in state waters; 3) plan and conduct public meetings and discussion seminars involving the public, owners and operators of mobile sources and fixed installations, and appropriate professional and industrial groups to receive and evaluate suggestions for developing the program; 4) consult various scientific and technical information and consult with recognized hazardous spill experts; and 5) determine, and advise the governor and legislature, if initiatives are needed to prevent hazardous spills, and to ensure they were reported.

The program would 1) apply to those mobile sources and fixed installations identified by the department to have the greatest potential to result in a hazardous spill, 2) have to include planning and conducting of public education and discussion seminars involving the public and other professional and industrial groups in the spill prevention program, and 3) evaluate existing prevention plans and identify necessary changes to those plans. Further, the program would have to recommend new spill prevention programs for situations that could contribute to them, including 1) mobile source and fixed installation engineering design, 2) causal factors in hazardous spills, 3) human factors contributing to human error and how these could be eliminated through employee assistance and other employer and state support programs, 4)

deployment of new technology related to the prevention of hazardous spills, 5) mobile sources and fixed installations operator and employee training programs, and 6) monitoring and enforcement of laws or rules pertaining to mobile sources and fixed installations.

The program would be implemented in coordination with other state, federal, local, and international agencies in developing new spill prevention and response technologies specific to spill prevention needs in the state, and would provide for the collection and dissemination of existing information on contributing factors in spills. The legislature would have to annually appropriate sufficient funds to implement the bill.

House Bill 4933 would create an act to limit liability for persons assisting in remedial actions associated with hazardous substance spills into state waters by providing that those persons would not be liable in a civil action for damages resulting from an act or omission arising out of the person's good faith rendering of assistance unless the act or omission was the result of the person's gross negligence or willful misconduct. However, this provision would not apply to a person rendering assistance for profit, and the bill would specify that it would not grant immunity to a person who caused a spill.

House Bill 5263 would amend the Emergency Preparedness Act (MCL 30.401, et al.) to change the title to the "Emergency Management Act," to explicitly include hazardous materials incidents and other matters within the scope of the act, to provide for gubernatorial declarations of emergencies (the law would continue to provide for the governor to declare a disaster), to explicitly authorize the state police to set standards for local disaster programs and personnel, to protect volunteer disaster relief workers against liability, to expand and clarify provisions for local coordinators, and to increase appropriations for the disaster contingency fund.

Scope of act. The definition of "disaster" would be expanded to explicitly include hazardous materials incidents, terrorist activities and civil disorders (civil disorders are at present included in a more limited way).

Gubernatorial declarations. The act distinguishes between "disasters," which tend to occur over a widespread area, and "emergencies," which are more localized. The act provides for the governor to declare a state of disaster, but does not explicitly provide for him or her to declare a state of emergency. The bill would provide for gubernatorial declarations of emergency under procedures paralleling those for declarations of disaster. The governor's authority to take certain actions in response to disasters — such as suspending regulatory statutes, transferring state personnel, and compelling evacuation — also would be extended to emergencies.

Local standards. The emergency management division of the state police is charged with coordinating federal, state, and local disaster plans, developing and updating a state disaster plan, and apportioning federal pass-through grants. The bill would authorize the division to promulgate rules to establish standards for local emergency management programs and coordinators. Various related activities, such as surveying industries and facilities and providing for state emergency operations centers, also would be explicitly authorized.

Local emergency coordinators. The act provides for the local appointment of county coordinators, multicounty coordinators, and municipal coordinators in municipalities

with populations of over 10,000. Counties are required to have coordinators; municipalities are not. Under the bill, if a county board of commissioners did not appoint a county coordinator, the coordinator would be the chairperson of the county board. A municipality with a population of 25,000 or more would have to appoint either its own coordinator or the county coordinator; in the absence of an appointment, the coordinator would be the municipality's chief executive official. Provisions affecting smaller municipalities would remain much as they are now.

Disaster relief workers; liability. Under the bill, a volunteer disaster relief worker or a member of any agency engaged in disaster relief activity would not be civilly liable for damages arising from the person's good faith actions, unless the person's behavior constituted gross negligence or willful misconduct. Liability protection would not apply in the case of a disaster relief worker receiving remuneration beyond reimbursement for out-of-pocket expenses.

Disaster relief fund; grants. The act provides for a disaster contingency fund which is to receive annual appropriations sufficient to maintain the fund at a level not to exceed \$500,000. The bill would raise this cap to \$750,000 and establish a fund minimum of \$30,000. Assistance grants to locals are at present capped at \$20,000 or ten percent of the previous year's operating budget for the county or municipality. The bill would raise the former figure to \$30,000. The bill would explicitly authorize the use of the fund in emergencies, as well as disasters. The bill would require that rules be promulgated to govern the application and eligibility for the use of the state disaster contingency fund; rules promulgated prior to December 31, 1988 would remain in effect until revised or replaced.

FISCAL IMPLICATIONS:

According to the Department of State Police, House Bill 4931 would cost about \$1.046 million in the first year for start-up costs relative to obtaining computer hardware, communication equipment, chemical data bases, office equipment, and similar items. For each year thereafter, the department would need approximately \$832,000 to maintain spill prevention equipment and programs under the bill. According to the DNR, House Bills 4929 and 4932 would also have fiscal implications although the fiscal impact of these could not be determined. The departments indicated House Bills 4933 and 5263 would have no fiscal impact. (12-6-89)

ARGUMENTS:

For:

The transport of large amounts of hazardous materials over the Great Lakes, especially near the ports of highly industrialized (and heavily populated) cities, puts the state at great risk of having a disastrous spill. Hazardous spills, in fact, occur regularly now though none yet have been on the same scale as the Exxon spill that occurred last March in Alaska. These bills would help the state prepare for such a spill by coordinating existing responsibilities among different departments into one single agency. Among other things, the bills would 1) establish a spill prevention research fund, 2) require various state departments to work together to establish and staff a spills action center (24 hours per day), 3) require reports be made only to this center, 4) require the DNR to develop a statewide spills prevention program by June 1 of next year, and 5) conform the state's emergencies management programs and guidelines with existing federal law (House Bill 5263).

Under House Bill 4931, spill information that would have to be reported to one agency would be stored and could be utilized for on-going analysis. By studying available information staff experts could determine what types of factors, generally and in each specific situation, contribute to a spill (both before and after one occurs) and what could be done to prevent these from happening in the future. If and when a major spill occurred, a centralized response agency could better coordinate all state and local emergency planning groups and their resources to more effectively avert a disaster. The bills, however, emphasize prevention of spills by providing for the use of available data on how, where, and why spills occur and specifying what could be done to minimize future spills.

Against:

While House Bill 4929 would establish a hazardous spills research fund, for paying the cost of computer hardware, data collection equipment, staff, and so forth, the bill fails to provide a funding mechanism. The Department of State Police estimates the bill would cost about \$1.046 million to implement and over \$800,000 each year thereafter which would have to be appropriated by the legislature (or received through public and private gifts). As a slower economy and a tight state budget are expected in following years, some feel it would be more appropriate to ensure success of hazardous spills programs by charging fees to, or taxing, those who produce and/or transport hazardous materials, whether on the Great Lakes or otherwise.

Against:

The provisions in House Bill 4933 for liability immunity for remedial actions taken in the event of a hazardous spill are too broad. For instance, a person who, in good faith while assisting in containing or cleaning up a hazardous spill, accidentally killed someone (perhaps in a car accident) could be immune from liability under the bill even if they were at fault. The bill should limit the scope of immunity to remedial actions taken (or not taken) specifically related to a hazardous spill cleanup (see SUGGESTED AMENDMENTS).

SUGGESTED AMENDMENTS:

The Michigan Environmental Council suggests amendments to House Bills 4929 and 4933 which would 1) specifically identify a funding mechanism for the spill prevention research fund (such as charging fees to those who produce and/or transport hazardous materials) and 2) limit the scope of liability immunity for "remedial action" taken by persons involved in cleaning up a hazardous materials spill.

POSITIONS:

The Department of Natural Resources supports the bills. (12-6-89)

The Department of State Police strongly supports the bills. (12-6-89)

The Sierra Club (Mackinac Chapter) supports the concept of the bills. (12-7-89)

The Michigan Environmental Council supports the concept of the bills. (12-8-89)

The Association of Petroleum Industries of Michigan generally supports the bills. (12-7-89)

The Department of Public Health currently has no position on the bills. (12-6-89)

The Department of Transportation has no position on the bills. (12-6-89)

The Department of Agriculture has not yet taken a position on the bills. (12-7-89)

The State Bar of Michigan has not yet taken a position on the bills. (12-7-89)

The Michigan Trial Lawyers Association feels the liability immunity provisions in House Bill 4933 are too broad and, therefore, opposes this bill. The association, however, supports the concept of the other bills. (12-7-89)