



**House
Legislative
Analysis
Section**

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HAZARDOUS SPILLS/EMERGENCY MANAGEMENT

House Bill 4929 as enrolled
Sponsor: Rep. Ken DeBeaussaert

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House Bill 4933 as enrolled
Sponsor: Rep. Tom Alley

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House Bill 5263 as enrolled Mich. State Law Library.
Sponsor: Rep. James M. Middaugh

House Committee: Conservation, Recreation &
Environment

Senate Committee: Natural Resources & Environmental
Affairs

Second Analysis (7-25-90)

THE APPARENT PROBLEM:

Following the Alaskan oil spill in the spring of 1989 — 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 — some people are concerned about the impact that such a spill might have 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. Some people feel the state would be wise to use all of the information collected from past spills in order to research the various causes which contribute to hazardous spills (for instance, human error). In this way, the state could better prevent a major spill from occurring and could better respond to one that did occur. If a catastrophic spill did occur, questions regarding the extent of liability of persons who volunteered in the cleanup would need to be clarified as well. Finally, 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 spills on the Great Lakes.

THE CONTENT OF THE BILLS:

The bills would provide for the creation of a hazardous spills prevention research fund, grant immunity from liability to a "volunteer" who assisted in remedial actions

associated with 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 4933 would create an act to grant immunity from liability to a "volunteer" (defined as an individual designated as such by the public entity designated by the governor, who acted solely on behalf of that entity without remuneration beyond reimbursement for out-of-pocket expenses related to the assistance rendered) who, after the governor had declared that a spill had caused a state of disaster, assisted in remedial actions associated with a hazardous spill into the state's ground — or surface water for damages that resulted from an act or omission in the course of the volunteer's good faith rendering of assistance. Immunity would not be granted, however, if

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the volunteer's act or omission were the result of gross negligence or willful misconduct.

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 commissioner 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 Natural Resources, House Bill 4929 would have fiscal implications as it provides for the legislature to appropriate money to the Great Lakes Spill Prevention Research Fund; the impact to the state would depend on how much the legislature appropriated to the fund. The department also said that House Bill 4933 would have no fiscal impact on state or local government. The Department of State Police said House Bill 5263 would require the legislature to appropriate at least \$30,000 to fund the Disaster Contingency Fund, but that additional money (up to \$750,000) could be appropriated. (7-25-90)

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 in Alaska. These bills would help the state prepare for such a spill by establishing a fund (under House Bill 4929) that would help pay for research into the causes of spills and what might be done to prevent future mishaps. Also, once a spill occurred, action taken to clean up an area could be hampered due to fear of liability suits against volunteers acting in good faith. Just as medical personnel are given limited liability for voluntary and emergency work performed in some circumstances, volunteers in cleaning up hazardous spills should also be granted immunity. House Bill 4933 not only would grant liability immunity to publicly appointed volunteers, but also would encourage more volunteer activity. Finally, House Bill 5263 would update the state's emergencies management programs and guidelines and make them conform with existing federal law.

For:

House Bill 5263 would require at least \$30,000 to be appropriated to the Disaster Contingency Fund (although the legislature could appropriate up to \$750,000) to ensure that the fund could be used quickly and effectively if a disaster should occur. The \$30,000 figure is the amount emergency management officials felt would be needed to provide immediate, initial relief to an average municipality that was declared a disaster by the governor. Public Act 390 (which the bill would repeal and replace) provides no minimum appropriation for the fund, which merely encourages the legislature to ignore the fund altogether. The bill, however, also specifies that relief funds could only

be disbursed "when federal assistance is not available." This allows the fund to fill an important role of providing relief for state disasters considered not major enough to warrant federal assistance but which, nonetheless, still required some form of public aid.

Against:

By requiring that volunteers to a cleanup project be appointed by a public entity (which, itself, would be designated by the governor), House Bill 4933 may encourage improper state intervention into remedial actions taken in the wake of a spill. Many private companies specialize in oil spill cleanup (including a number of which are located in Michigan) and having the state determine who should or should not take part in a cleanup could slow progress on a cleanup. Such companies are well-equipped and amply staffed to react quickly and effectively to mitigate the effects of spills (and, as professionals, are paid well for their efforts by those responsible for a spill). Also, protection from liability, except where willful misconduct or gross negligence occurred, should apply to spill control professionals as well as to volunteers. Without such guaranteed protections, those who possess the necessary expertise and resources to respond adequately to hazardous spills might refrain from offering help in especially risky circumstances. While it seems reasonable to have certain decisions in such disasters be made by specific public officials, the bill could actually hurt the process of responding to a disaster.

Against:

House Bill 4933 could encourage too much volunteer activity. In potentially dangerous cleanup projects, volunteers who may not necessarily possess the expertise to be of help could be a hindrance to the project. The bill should offer liability protections only to those who respond to requests for volunteer activity.

Response: The bill would avoid this problem by specifying that a "volunteer" would have to be designated as such by a public entity involved in the cleanup project in order to receive immunity.