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SCIENCE ADVISORY COUNCIL
AS ENROLLED

House Bill 5341 (Substitute H-2)
Sponsor: Rep. Tom Alley

House Bill 5500 (Substitute H-1)
Sponsor: Rep. James M. Middaugh

First Analysis (4-1-92)
Committee: Conservation,
Recreation and Environment

THE APPARENT PROBLEM:

Public Act 234 of 1990 (the "Polluters Pay" act) amended the Environmental Response Act to allow the Department of Natural Resources (DNR) to assign responsibility, -- and to require polluters to pay -- for cleanup of sites that have been contaminated with hazardous substances. Under Public Act 234, a panel composed of three members of a Science Advisory Council that would be established in the Department of Management and Budget (DMB) were to provide recommendations on the scientific and technical issues in a dispute. Although provisions of the act that established the council became effective July 1, 1991, controversy over certain aspects of the act have prevented it from being formed: Public Act 234 attempted to forestall potential conflicts of interest by specifying that a member of the council who made recommendations regarding a dispute could not have any personal or business interest in common with persons involved in a dispute. This provision has been criticized as being too broad, since there is no way of predicting which parties might be involved in future disputes. As a result, few candidates have applied for membership on the council. Legislation is needed that would clarify the conflict of interest provisions of the act so that a council can be formed and the provisions of the "polluter's pay" act finally implemented.

THE CONTENT OF THE BILLS:

Currently, under the Environmental Response Act, individuals who are liable for a facility where a hazardous substance has been released may submit a proposed remedial action plan to the Department of Natural Resources (DNR). If the DNR recommends changes to the plan that the responsible party rejects, then the two parties may either work out their disagreements or submit items

of difference to the Science Advisory Council in the Department of Management and Budget. The council is required, under the act, to appoint three of its members to serve on a panel on a rotating basis to provide recommendations for resolving the differences between the department and the responsible party. The council is then required to forward its recommendations on the differences to the department, the party, and a facilitator assigned by the Office of Environmental Cleanup Facilitation, in the Department of Management and Budget, to assist in resolution of the dispute. House Bills 5341 and 5500, which are tie-barred to each other, would amend the act to require that the council forward its recommendations to the Office of Environmental Cleanup Facilitation rather than to the facilitator, to require that the council chairperson appoint the three-member panel with expertise related to the issues in dispute, and to require full disclosure from members of the panel regarding their relationship with those who are liable for a facility's response activity costs.

Science Advisory Council. The bills would require that the first meeting of the council be called by the governor, and that the council elect a chairperson and other officers at that meeting. After the first meeting, the council would meet at the call of the chair, or upon request of four or more members.

Three-Member Panel. At present, the Science Advisory Council is required to appoint three of its members to serve on a rotating basis to provide recommendations to resolve items of difference between the Department of Natural Resources (DNR) and those liable for a facility's response activity costs. House Bill 5341 would extend this provision to clarify that the three members would serve on a panel and to require that the panel

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include members with expertise related to the issues in dispute. The chairperson of the panel would appoint the three members. Further, House Bill 5500 would require that the chairperson of the council notify each member of a dispute. After each member had made full disclosure of any present or past personal, contractual, financial, business, or employment interest in matters related to persons involved in the dispute, the chairperson would then appoint three members who had no conflict of interest to serve on a panel to provide recommendations. The chairperson would also notify the DNR and those who could be liable for the facility's response activity costs. Within 60 days after the appointment of the council, the parties could each submit written statements in support of their positions.

Conflict of Interest. The act prohibits members of the council who make recommendations regarding the contents of a remedial action plan for a facility from having any present or past personal, contractual, financial, business, or employment interest in matters related to persons with disputes before the council. House Bill 5500 would amend the act to clarify that this prohibition would also apply to the three-member science advisory council panel. Further, House Bill 5341 would clarify the current provision under the act that prohibits a member of the council from being employed -- for a period of six months after leaving the council -- by the DNR, by an individual who has had a dispute before a council panel on which the member served, or by a consulting firm associated with that individual or with the department. In addition, members of a panel who made recommendations regarding a remedial action plan would be required to make full disclosure of any past personal, contractual, financial, business, or employment interest in matters related to persons involved in a dispute.

Plan of Operation. Under the bills, the Science Advisory Council would be required to prepare a plan of operation for the internal operations and procedures of the council, and to promulgate rules it considered necessary to implement procedures relating to the council.

MCL 299.611c et al.

BACKGROUND INFORMATION:

In an attempt to solve the conflict of interest provisions of Public Act 234 of 1990, Executive Order 1991-34 was issued to replace the current provision with one that would have specified that a member who had a direct conflict of interest in the dispute before the panel could not serve on the panel during the resolution of that dispute. However, other provisions in the executive order appeared to violate the intent of the law by specifying that the panel take into account the cost effectiveness of alternatives to remedial action in their recommendations. This was interpreted to mean that responsible parties would be allowed to negotiate a settlement. In addition, under the executive order, the council chairperson would have been appointed by the governor, a provision that some saw as detrimental because the chairperson would have been susceptible to political influences. In response, the House Conservation, Recreation, and Environment Committee reported House Concurrent Resolution 488, disapproving the executive order. The executive order was later rescinded.

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the bill would have no fiscal implications for the state. (3-31-92)

ARGUMENTS:

For:

The Science Advisory Council's role is vital in the effort to clean up contaminated sites. Under Public Act 234, recommendations on the scientific and technical issues in a dispute were to be provided by a Science Advisory Council that would be established in the Department of Management and Budget (DMB). The Office of Environmental Cleanup Facilitation, also in DMB, would then attempt to facilitate an agreement between DNR and the responsible party regarding a remedial action plan for the cleanup. If the two sides continued to disagree, then the Department of Natural Resources (DNR) could approve a remedial action plan that included the council's recommendations; if the DNR didn't approve a remedial action plan, then the party could implement a plan that included all of the council's recommendations and otherwise complied with the act. The conflict of interest provisions contained in

the bills would permit the council to be formed, and these steps to be implemented.

POSITIONS:

A representative of the Executive Office testified before the House Conservation, Recreation, and Environment Committee in support of the bills. (3-31-92)

The Department of Natural Resources supports the bills. (3-31-92)

The Michigan Environmental Council supports the bills. (3-31-92)

The Department of Management and Budget has no position on the bills. (3-31-92)

The Michigan Municipal League has no position on the bills. (3-31-92)

The Public Interest Research Group in Michigan (PIRGRIM) has no position on the bills. (3-31-92)

The Sierra Club - Mackinac Chapter has no position on the bills. (3-31-92)

The National Federation of Independent Business has no position on the bill. (3-31-92)

The Michigan Retailers Association has no position on the bills. (3-31-92)

The Michigan Homebuilders Association has no position on the bills. (4-1-92)