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## USE NATIONAL GUARD TO ASSIST WITH DRUG ENFORCEMENT

### House Bill 4860 with committee amendments First Analysis (3-12-98)

**Sponsor: Rep. Jim McBryde**  
**Committee: Judiciary**

#### ***THE APPARENT PROBLEM:***

Michigan and several other states use National Guard helicopters and reconnaissance and interdiction units routinely to support the state police, local law enforcement, and federal agencies in their enforcement of controlled substance laws. Since 1988, according to the Department of Military Affairs, Michigan has received federal funding for the use of its National Guard in this fashion. Currently, the Michigan National Guard receives a budget of about \$1.4 million in federal funds for its drug enforcement assistance. In order to facilitate the National Guard's assistance in drug law enforcement, a number of other states have entered into interstate counterdrug reciprocal aid agreements. These agreements allow the National Guard of each state to cross state lines and provide enforcement assistance to law enforcement agencies at the request of the governor of another state. Michigan's governor does not currently have the statutory authority to enter into such agreements. It has been suggested that states that have not adopted legislation allowing these reciprocal agreements will receive a reduced amount of federal funding in the next fiscal year. Furthermore, when the Michigan National Guard is used to assist with drug law enforcement and arrests are made and assets seized, Michigan's National Guard is currently prohibited from taking a share of the federally forfeited assets. As a result, these assets are currently divided between other states or placed into the U.S. general fund.

In response to these problems, legislation has been introduced to allow the Michigan National Guard to obtain a share of federally forfeited assets and to allow the governor to enter into reciprocal drug enforcement aid agreements with other states.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Military Act to allow for the deployment of the National Guard to

assist in the enforcement of laws against the illegal importation, sale, delivery, possession, or use of drugs in this state and in other states.

The bill would expand the governor's authority to enter into reciprocal agreements with the governors of other states to authorize the use of the National Guard in those other states for mutual assistance in the public interest. Currently, the circumstances under which such agreements may be entered are times of invasion, rebellion, public disaster, or catastrophe. The bill would allow such agreements to be made in order to assist state or local law enforcement agencies upon their request with the enforcement of the laws of this state or similar laws of other states that prohibit the importation, sale, delivery, possession, or use of illegal drugs.

When engaged in support duty to a federal, state, or local law enforcement agency, a member of the National Guard from another state would have the same degree of immunity as would a member of the Michigan National Guard. [Two provisions exist setting forth the immunity of the National Guard. One provision states that a member of the National Guard has the same immunity as a police officer, provided that he or she was acting *in the aid of civil authorities* and in the line of duty. However, another provision states that a member of the National Guard is not civilly or criminally liable for any act done in the performance of his or her duty. This section also provides immunity for commanding officers, providing that a commanding officer's honest and reasonable judgment under the circumstances is full protection, civilly and criminally, for any act done in the line of duty. This second section applies to actions to execute the laws, engage in disaster relief, suppress or prevent actual or threatened riot or insurrection, or repel invasion, and, if the bill is adopted in its current form, would apply to assisting in the enforcement of controlled substance laws.]

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Finally, the bill would designate the National Guard as a law enforcement agency for the purpose of receiving or using property or money forfeited under certain federal laws, including the United States Code, the Tariff Act of 1930, and the Comprehensive Drug Abuse Prevention and Control Act of 1970.

MCL 32.505 et al.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available.

### **ARGUMENTS:**

#### **For:**

The National Guard is already involved in assisting state, local and federal authorities in the war on drugs. Illegal drugs continue to play a significant role in crime and violence in this state and strong law enforcement is needed to fight both supply and demand in order to reduce the use of illegal drugs. Increasing the opportunities for the National Guard to assist in drug law enforcement is one of the best ways to help to deal with this problem. By allowing this state's National Guard to work in other states under reciprocal agreements, the bill would increase flexibility and efficiency in drug law enforcement.

The bill will increase the ability of the National Guard to assist in drug law enforcement, not merely in this state but in other states as well. It will help to make certain that Michigan's National Guard keeps its level of federal funding and it will make Michigan eligible for an increased level of funding. The bill would help Michigan to qualify as a regional counterdrug center, which would make the state eligible for increased federal funds. [Michigan will not qualify unless it has legislation in place allowing it to enter into reciprocal aid agreements with other states.]

Further, the bill will allow the National Guard to collect a share in federal forfeited assets. According to the Michigan National Guard counterdrug 1997 year end report, the National Guard assisted law enforcement in the seizure of salable property and cash amounting to about \$8.5 million in 1997. Furthermore, a full 15 percent of the federally forfeited assets can be used to fund local youth programs.

#### **Against:**

Some predict that further expenditures in the war on drugs will have the same effect as the preceding

increases in drug enforcement spending: the price of the drugs will increase and the drug kingpins will make more money. The war on drugs has been a very effective price support measure helping to make some dealers very wealthy; however, the only effective means of dealing with the drug problem is preventing drug use through education.

#### **Response:**

The National Guard does engage in drug prevention and education efforts -- its Drug Demand Reduction Program organizes resources, members and their families to support federal, state and local law enforcement and community based organizations in drug abuse prevention programs. The increased funds received as a result of this bill will also assist in funding these educational programs. However, education alone is not sufficient to deal with the drug problem. It is only one piece of the puzzle, not the entire solution.

#### **Against:**

The bill appears to give a rather extensive grant of immunity to members of the National Guard when they assist with drug law enforcement. Apparently, a member of the National Guard would not be civilly or criminally liable for any act done in the performance of his or her duty while assisting in the enforcement of controlled substance laws. However, the act also provides that a member of the National Guard has the immunity of a police officer when acting in the line of duty and in the aid of civil authorities. It could be argued that actions taken to assist in the enforcement of drug laws should be considered in the aid of civil authorities. [A police officer's immunity is set under the governmental immunity act. Generally, a police officer is immune from tort liability for injuries to persons or damage to property when he or she was engaged in the exercise or discharge of a governmental function and acted within the scope of his or her authority or what he or she reasonably believed to be his or her authority. However, an officer could be liable if his or her conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury would result.]

As a result of the potential for confusion, the language should be clarified before it is enacted. Further, since it is likely that the former, more specific, grant of immunity would take precedence over the more general grant, the language should be changed to make certain that National Guard members are not granted a greater amount of immunity than the peace officers who they are assisting.

***POSITIONS:***

The Department of Military and Veterans Affairs supports the bill. (3-11-98)

The Department of State Police supports the bill. (3-11-98)

Analyst: W. Flory

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.