

**INTERSTATE EMERGENCY MGT.
ASSISTANCE COMPACT**

**House Bill 5189 (Substitute H-1)
First Analysis (10-17-01)**

**Sponsor: Rep. Andrew Raczkowski
Committee: Commerce**

THE APPARENT PROBLEM:

The Interstate Emergency Management Assistance Compact is typically described as a mutual aid agreement between the states for managing emergencies and disasters, both natural and man-made. It also provides for cooperation among states in training exercises. Some 42 states and two territories are said to have entered into the compact, the most recent two being New York and New Jersey in the wake of the World Trade Center attacks of September 11. Michigan is not a member. The compact is a legal agreement that provides a framework for the mutual assistance activities of the states party to the agreement. It addresses procedures for requesting assistance, the command of personnel, the liability of participants, worker's compensation and death benefits, reimbursement of costs, the treatment of evacuees, reciprocity of licensing of emergency workers, and other matters. It addresses in advance those legal and organizational issues that would complicate mutual assistance if left until after the fact. States join the compact (and leave it) by enacting legislation. There is a model bill containing the compact that states must enact. The compact reportedly has its origins in southern states dealing with the catastrophic consequences of hurricanes, but the idea has spread, as it has been seen as useful in cases of wildfires, floods, extraordinary winter snowstorms, toxic spills, and other large-scale emergencies that can strain the resources of a single state. While some disasters rise to a level sufficient to bring federal aid and involvement, others do not, and even when federal aid is available, supplementary state assistance can be valuable. Legislation has been introduced that would make Michigan a party to the compact.

THE CONTENT OF THE BILL:

The bill would enter Michigan into the interstate emergency management assistance compact. The stated purpose of the compact is "to provide for mutual assistance between the [participating] states in managing any emergency or disaster that is duly

declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack." The compact also provides for mutual cooperation in emergency-related exercises, testing, or other training activities outside of actual declared emergency periods. Mutual assistance includes the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

The bill states that the underlying principle on which all articles of the compact are based is the prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by the party state. The legally designated state official assigned responsibility for emergency management is to be responsible, on behalf of the governor, for the formulation of the appropriate interstate mutual aid plans and procedures necessary to implement the compact.

The compact would become effective for Michigan upon enactment of this bill. The state could withdraw by enacting a repealing statute, but a withdrawal could not take effect until 30 days after the governor had given notice in writing to the governors of the other participating states. Withdrawing would not relieve the state from obligations assumed under the compact prior to the effective date of the withdrawal. A copy of the compact and any supplementary agreements is to be deposited with each of the participating states and with the Federal Emergency Management Agency (FEMA) and other appropriate federal agencies. The bill specifies that the legislature is to review the act every five years after its date of enactment.

The compact is divided into 13 articles covering purpose and authorities; general implementation; party state responsibilities; limitations; licenses and permits; liability; supplementary agreements; compensation; reimbursement; evacuation; implementation; validity; and additional provisions. The following is a brief description of key provisions of the compact.

In formulating plans and programs for interstate cooperation, the state must, as far as is practical, review hazard analyses and determine the potential emergencies that states might jointly suffer; review the participating states' emergency plans and develop a plan for providing emergency assistance; develop procedures to fill gaps and resolve inconsistencies or overlaps in various plans; assist in warning communities adjacent to or crossing state boundaries; assure the uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources; establish procedures for the interstate loan and delivery of human and material resources, along with procedures for reimbursement or forgiveness; and provide, to the extent authorized by law, for the temporary suspension of statutes and ordinances restricting implementation of the state's emergency assistance responsibilities.

- The state's authorized representative is to request assistance by contacting the other state's authorized representative in writing or verbally (with subsequent written confirmation) and describing the emergency service function for which assistance is needed; the amount and type of personnel, equipment, materials, and supplies needed and for how long; and the time and place for staging of the assisting party's response and a point of contact at that location. The compact requires that there be frequent consultation between state officials with emergency management responsibilities and other appropriate representatives and with representatives of the United States government, with a free exchange of information, plans, and resource records.

- A state that is requested to render mutual aid or to conduct related exercises or training is to take actions to provide and make available the resources covered in the compact, provided it is understood that the state rendering aid can withhold resources as necessary for its own protection. Each participating state is to afford the emergency parties of another state the same powers, duties, rights, and privileges afforded in its own state, except that of arrest, unless arrest is specifically authorized by the receiving state.

- Emergency forces continue to be under the command and control of their regular leaders, but the organizational units are to come under the operational control of the emergency service authorities of the state receiving assistance. These conditions could be activated, as needed, only subsequent to a declaration of the state of emergency or disaster by the governor of the state receiving assistance or the commencement of training exercises, and they would continue so long as the exercises are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

- A person holding a license, certificate, or other permit issued by a participating state relating to professional, mechanical, or other skills is deemed licensed, certified, or permitted to render aid involving such a skill in an assistance-receiving state, subject to limitations and conditions as the governor of the requesting state prescribes.

- Officers or employees from a state providing aid to another state are considered agents of the requesting state for tort liability and immunity purposes, and when rendering aid, no state or its officers or employees is liable on account of any act or omission in good faith while engaged in providing aid or on account of the maintenance or use of any equipment or supplies. Good faith does not include willful misconduct, gross negligence, or recklessness.

- States are not precluded from entering into supplementary agreements beyond the compact, including agreements containing provisions for the evacuation and reception of injured people and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

- Each participating state is to provide for the payment of compensation and death benefits to injured members of its own emergency forces and to representatives of deceased members of such forces when those members are injured or killed rendering aid under the compact in the same manner and on the same terms as if the injury or death were sustained within their own state.

- A state rendering aid in another state under the compact is to be reimbursed from the state receiving assistance for any loss or damage to equipment or expense incurred in operating equipment and providing services in answering a request for aid. However, any aiding state could assume in whole or

in part such loss, damage, expense, or other cost, or could loan such equipment or donate such services to the receiving state without charge or cost. Further, states could enter into supplementary agreements regarding the allocation of costs. Compensation for injuries or deaths are not reimbursable.

- Participating states are required to work out plans for the orderly evacuation and interstate reception of the civilian population as the result of an emergency or disaster. Such plans would be put into effect by request of the state from which evacuees came and would have to include the transportation of evacuees, the number to be received in different areas, the manner in which food, clothing, housing, and medical care would be provided, the registration of evacuees, the notification of relatives or friends, among other things. The states would have to reach agreements as to the reimbursement of out-of-pocket expenses involved, and expenses would be reimbursed as agreed by the state from which the evacuees came. The repatriation of evacuees is the responsibility of their home state.

- The compact specifies that it does not authorize or permit the use of military force by the National Guard of a state outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or air force would be prohibited, in the absence of express statutory authorization, under Section 1385 of Title 18 of the United States Code. (That section is known as the Posse Comitatus Act and, generally speaking, limits the use of the military in civilian law enforcement.)

BACKGROUND INFORMATION:

The Emergency Management Assistance Compact lists the participating states and a variety of other information on its web site at www.nemaweb.org/EMAC.

FISCAL IMPLICATIONS:

The House Fiscal Agency has concluded that entering the compact could increase costs to the state when out-of-state personnel are involved in Michigan emergencies, but also could reduce costs if it resulted in more efficient arrangements for dealing with state-level emergencies. Increased costs could result from tort liability and immunity provisions, from the payment of compensation for injury and death, from damage to equipment from assisting states, and from the evacuation of residents from one state to another. Reduced costs could result if the availability of

emergency personnel and services from other states reduced the cost of emergency services in Michigan. For a thorough discussion of the potential costs and savings, see the HFA fiscal note dated 10-15-01.

ARGUMENTS:

For:

This bill would make Michigan the 43rd state to join the Emergency Management Assistance Compact (EMAC). Officials of EMAC offer a number of reasons why states should join. Supporters say the compact offers a quick and easy way for states to send disaster relief assistance to another state when its resources are overwhelmed. It fills the gaps when federal assistance is not available or is inadequate. The existence of the compact does not lead to a lessening of federal disaster aid to states. The compact also establishes a firm legal foundation for mutual assistance efforts. Requests for assistance become legally binding, contractual arrangements under which states asking for assistance become responsible for reimbursing costs of out-of-state aid and become liable for out-of-state personnel. These arrangements reduce the legal and financial burdens of sending aid. The compact is said to ensure fast and flexible assistance. States can ask for whatever aid they need but states are not required to help unless they are able. The arrangements made in advance reduce bureaucratic wrangling in times of need. Planning and training enable states to be prepared to help and let neighboring states know of each other's capabilities and resources. For example, during a recent hurricane threat, Florida was able to call on special aircraft in North Carolina for use in the evacuation of hospital patients. The recent horrific attacks in New York and Washington, although they rise to the level of a Presidentially declared emergency and have not yet involved EMAC, drive home the advantages, for sending and receiving states alike, of coordinating and planning in advance mutual assistance in time of disasters.

Response:

While no one has expressed opposition to the state's joining the compact, concerns have been expressed about the nature of the liability being assumed by the state government and emergency personnel from the state under the compact, and the financial responsibilities that can accompany being part of a mutual assistance effort, either as a receiving or a sending state. A provision requiring the legislature to review the compact after five years is in part a response to such concerns.

POSITIONS:

Representatives of the Michigan State Police and the Department of Military and Veterans' Affairs testified in support of the bill before the House Commerce Committee. (10-16-01)

Analyst: C. Couch

■ 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.