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House Bill 5282 (Substitute H-1 as passed by the House)  
Sponsor: Representative Al Pscholka  
House Committee: Energy and Technology  
Senate Committee: Energy and Technology

Date Completed: 3-17-14

### **CONTENT**

**The bill would create a new act to authorize an officer providing security at a nuclear generating facility to do the following:**

- **Use physical force, other than deadly force, to prevent or terminate an individual's trespass at the facility.**
- **Use physical force, including deadly force, to prevent or terminate an individual from breaking and entering into the business premises of a nuclear generating or storage structure with the intent to commit a crime involving serious physical harm to any individual.**
- **Use physical force, including deadly force, to deter a threat of radiological sabotage or theft or diversion of special nuclear material.**

The bill would take effect 90 days after it was enacted.

Specifically, an officer providing security at a nuclear generating facility could use physical force, other than deadly physical force, against another individual if the officer honestly and reasonably believed it was necessary to prevent or terminate the other person's unlawful trespass at the facility under Section 552 of the Michigan Penal Code. (That section prohibits a person from doing any of the following:

- Entering the land or premises of another without lawful authority after having been forbidden to do so by the owner or occupant or the agent of the owner or occupant.
- Remaining without lawful authority on the land or premises of another after being notified to depart by the owner or occupant or an agent.
- Entering or remaining without lawful authority on another person's fenced or posted farm property without the consent of the owner or his or her lessee or agent.)

The officer could use physical force, including deadly physical force, if he or she honestly and reasonably believed that it was necessary to prevent or terminate an individual from breaking and entering or attempting to break and enter into the business premises of a nuclear generating or nuclear storage building or structure with the intent to commit a crime involving the infliction or threatened infliction of serious physical harm to any individual, or to deter a threat of radiological sabotage or a threat of theft or diversion of special nuclear material.

Notice of the authorization to use physical force, including deadly physical force, would have to be conspicuously posted at all entrances to the business premises of a nuclear generating

or storage building or structure and at intervals along the perimeter in such a manner as to provide reasonable notice to people about to enter.

Notwithstanding any other provision of the proposed act, a security officer could threaten to use physical force, including deadly physical force, if he or she honestly and reasonably believed it was necessary to protect himself or herself or another individual against a person's potential use of physical force, including deadly physical force, or to deter a threat of radiological sabotage or theft or diversion of special nuclear material.

A security officer, the employer of an officer providing security at a nuclear generating facility, and the owner and the operator of the facility would be immune from civil liability for the conduct of a security officer that was lawful under the proposed act.

Except as otherwise provided, the act would not modify Michigan common law in existence on its effective date regarding the use of deadly force.

"Nuclear generating facility" would mean one or more of the following:

- A facility that is located in Michigan that generates or that formerly was used to generate electricity using nuclear power for sale, directly or indirectly, to the public.
- The land surrounding such a facility that is in the possession of the facility owner or operator.
- Any nuclear generating or nuclear storage building or structure on land surrounding a facility.

"Officer providing security at a nuclear generating facility" would mean a security officer employed by or under contract with a nuclear generating facility who is employed as part of any security plan approved by the U.S. Nuclear Regulatory Commission or its successor agency and who is performing his or her duties under that plan.

"Business premises of a nuclear generating or nuclear storage building or structure" would mean a building or other structure used to generate electricity using nuclear power, or used to store special nuclear material associated with or resulting from electric generation. The term would include any appurtenant building or structure and any barrier or barrier system surrounding the building, structure, or appurtenant building or structure that is designed to protect against radiological sabotage or theft or diversion of special nuclear material that is required to be designated and posted against trespassing under Federal law. "Special nuclear material" would mean material capable of a self-sustaining fission chain reaction.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.