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SFA



BILL ANALYSIS

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House Bill 5496 (Substitute H-2 as passed by the House)
Sponsor: Representative Gary A. Newell
House Committee: Commerce
Senate Committee: Judiciary

Date Completed: 2-20-02

CONTENT

The bill would amend the Emergency Management Act to do all of the following:

- Allow the Governor to declare a Heightened State of Alert and exercise certain authority if there were good cause to believe that terrorists were within the State or that acts of terrorism could be committed in Michigan or against a vital resource.
- Prohibit, and provide a misdemeanor penalty for, disobeying or interfering with a rule, order, or directive issued by the Governor under a Heightened State of Alert.
- Extend from 14 to 28 days the maximum period of a State of Disaster or State of Emergency declared by the Governor, before the declaration must be terminated or extended.
- Allow the Director of the Department of State Police, with the Governor's concurrence, to amend a proclamation or directive regarding a State of Disaster, State of Emergency, or Heightened State of Alert declaration.
- Allow the Emergency Management Division of the Department of State Police to propose and administer statewide mutual aid compacts and agreements.
- Specify that, for certain purposes under the Act, the judicial branch of the State would be considered a department of State government.
- Require that the director of each State department, and of those State agencies required to provide an annex to the Michigan emergency management plan, serve as the emergency management coordinator for their respective departments or agencies.
- Require some public colleges or universities to appoint an emergency management coordinator and allow others to do so.
- Require that, in each county and municipality that appointed an emergency management coordinator under the Act, emergency operations plans and programs include provisions for disseminating public information, that local broadcasters be consulted in developing those provisions, and that local plans include local courts.
- Allow Federally recognized Tribal Nations to be included in local mutual or reciprocal aid agreements, and extend those agreements to serious threats to public health and safety.
- Revise the Act's liability provision pertaining to disaster relief forces.
- Repeal a section of the Act that provides for the creation and activities of the Michigan Emergency Management Advisory Council (MCL 30.415).

Heightened State of Alert

The bill specifies that, if there were good cause to believe that terrorists were within Michigan or that acts of terrorism could be committed in this State or against a "vital resource", the Governor could declare a Heightened State of Alert by executive order or proclamation. If the Governor did so, in an effort to safeguard the interests of the State or a vital resource, to prevent or respond to acts of terrorism, or to facilitate the apprehension of terrorists and those acting in concert with them, the Governor would have the authority to exercise various powers granted to him or her under the Act during a

declared State of Disaster or State of Emergency. Those powers include the authority to do any of the following:

- Issue executive orders, proclamations, and directives having the force and effect of law to implement the Act.
- Use the resources of the State and political subdivisions, and those made available to the State by the Federal government, as reasonably necessary to cope with the disaster or emergency.
- Transfer the direction, personnel, or functions of State departments and agencies to perform or facilitate emergency management.
- Direct and compel the evacuation of all or part of the population from a stricken or threatened area, if necessary for the preservation of life or other mitigation, response, or recovery activities.
- Prescribe routes, modes, and destinations of transportation in connection with an evacuation.
- Control ingress and egress to and from a stricken or threatened area, removal of people within that area, and the occupancy of premises within the area.
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. (The bill, however, would not allow the Governor to suspend or limit the sale, dispensing, or transportation of alcoholic beverages under a Heightened State of Alert.)
- Provide for the availability and use of temporary emergency housing.
- Direct all other actions that are necessary and appropriate under the circumstances.

Within seven days after declaring a Heightened State of Alert, the Governor would have to notify the Majority Leader and Minority Leader of the Senate and the Speaker and Minority Leader of the House of the declaration. The Governor could use the services, facilities, and resources available under the Act under a declared State of Disaster or State of Emergency. The exercise of those powers would have to be consistent with the State Constitution and the U.S. Constitution and could continue until the Heightened State of Alert was no longer in effect.

The Heightened State of Alert would continue until the Governor found that the threat or danger had passed, the Heightened State of Alert had been dealt with to the extent that

conditions requiring it no longer existed, or until it had been in effect for 60 days. After 60 days, the Governor would have to terminate the Heightened State of Alert, unless a request by the Governor for an extension for a specific number of days was approved by resolution of both the Senate and the House.

The bill would prohibit a person from willfully disobeying or interfering with the implementation of a rule, order, or directive issued by the Governor under a Heightened State of Alert. A violation would be a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$100. The bill specifies that a prosecuting agency could not prosecute any person or seize any property for conduct presumptively protected by the First Amendment to the U.S. Constitution in a manner that violated any constitutional provision.

The Attorney General or a prosecuting attorney could bring a civil action for damages or equitable relief to enforce the Act and any orders, rules, or regulations made in conformity with it.

"Act of terrorism" and "terrorist" would mean those terms as defined in Chapter 83-A of the Michigan Penal Code, proposed by Senate Bill 930.

"Vital resource" would mean a public or private building, facility, property, function, or location, whose protection was considered necessary to the public health, safety, and welfare and that the Governor had designated, in writing, as a vital resource of the State.

Maximum Period

Currently, a State of Disaster or State of Emergency may continue until the Governor finds that the threat of danger has passed, the disaster or emergency has been dealt with to the extent that disaster or emergency conditions no longer exist, or until the declared State of Disaster or State of Emergency has been in effect for 14 days. The bill would extend that to 28 days. After that period, the Governor must issue an executive order or proclamation declaring the State of Disaster or State of Emergency terminated, unless the Legislature approves his or her request to extend it for a specific number of days. Under the bill, legislative approval would have to be by resolution of both the Senate and the House.

Amendment by the State Police Director

The Act provides that an executive order, proclamation, or directive may be amended or rescinded by the Governor. Under the bill, if the Governor declared a State of Disaster, State of Emergency, or Heightened State of Alert, or invoked powers authorized to the Governor under any of those scenarios, the Director of the Department of State Police, with the Governor's concurrence, could amend the proclamation or directive by adding additional counties or municipalities or terminating the orders and restrictions as considered necessary.

Emergency Management Division

Mutual Aid. The Act requires that the Department of State Police establish an Emergency Management Division, and lists certain activities that the Division may undertake. The bill would add to that list the authority to propose and administer statewide mutual aid compacts and agreements.

Courts. One of the activities the Division is authorized to do is to provide for the coordination and cooperation of State agencies and departments with Federal and local agencies and departments in emergency management activities. The bill specifies that, for that purpose, the judicial branch of the State would be considered a department of State government.

Emergency Management Coordinators

The Act specifies that each department of State government, and those agencies of State government required by the Michigan Emergency Management Plan to provide an annex to the plan, must employ or appoint an emergency management coordinator. The bill provides, instead, that the director of each of those departments and agencies would have to serve as emergency management coordinator for his or her department or agency. Each director, however, could appoint or employ a designated representative as emergency management coordinator, if that representative acted for and at the direction of that director while serving in that capacity upon the activation of the State Emergency Operations Center or the declaration of a State of Disaster or State of Emergency.

In addition, the Act specifies that, upon the declaration of a State of Disaster or State of

Emergency, each State agency must cooperate to the fullest possible extent with the director in performing the services that it is suited to perform and as described in the Michigan Emergency Management Plan, in prevention, mitigation, response to, or recovery from the disaster or emergency. The bill specifies that, for that purpose, the judicial branch of the State would be considered a department of State government and the Chief Justice of the Michigan Supreme Court would be considered the Director of that Department.

Colleges & Universities

Under the bill, a public college or university with a combined average population of faculty, students, and staff of 25,000 or more, including satellite campuses within the State, would have to appoint an emergency management coordinator for the college or university.

A public college or university with a combined average population of faculty, students, and staff of 10,000 or more, including satellite campuses within Michigan, could appoint an emergency management coordinator for the college or university.

County & Municipal Emergency Management Plans

The Act requires that each county and municipalities with a population of 25,000 or more appoint an emergency management coordinator. Municipalities with a population of 10,000 or more may choose to appoint a coordinator. Each county and municipality that appoints an emergency management coordinator may undertake certain activities, including directing and coordinating the development of emergency operations plans and programs. The bill specifies that those plans and programs would have to include provisions for the dissemination of public information and that local broadcasters would have to be consulted in developing those provisions.

The bill also specifies that county and local emergency operations plans and programs would have to include local courts.

Mutual Aid

The Act provides that, for the purpose of providing assistance during a disaster or emergency, municipalities and counties may

enter into mutual aid or reciprocal aid agreements or compacts with other counties, municipalities, public agencies, or private sector agencies, or all of those entities. The bill would add Federally recognized Tribal Nations to that list of entities.

Liability

The Act provides that the State, any political subdivision of the State, or the agents or representatives of the State or any political subdivision are not liable for personal injury or property damage sustained by any person appointed or acting as a volunteer disaster relief worker or a member of any agency engaged in disaster relief activity. The bill would refer to a member of disaster relief forces, rather than a volunteer disaster relief worker or member of an agency engaged in disaster relief, and would include employees of the State or a political subdivision in the liability protection.

The bill would delete provisions that specify the following:

- A volunteer disaster relief worker or a member of any agency engaged in disaster relief activity is not liable in a civil action for damages resulting from an act or omission arising out of and in the course of the person's good faith rendering of that activity, unless the person's act or omission was the result of his or her gross negligence or willful misconduct.
- The Act's liability protections do not apply to a person engaged in disaster relief activity for remuneration beyond reimbursement for out-of-pocket expenses in connection with that activity.

Currently, the State, a political subdivision of the State, or, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the State or a political subdivision, or any volunteer or auxiliary disaster relief worker or member or any agency engage in any disaster relief activity, is not liable for the death or injury to people, or for damages to property, as a result of that activity. The bill specifies, instead, that the State or a political subdivision of the State engaged in disaster relief activity would not be liable for the death of or injury to a person or for damage to property, as a result of that activity. The employees, agents, or representatives of the State or a political subdivision and nongovernmental disaster relief force workers

or private or volunteer personnel engaged in disaster relief activity would be immune from tort liability to the extent provided under the governmental immunity Act (MCL 691.1407). "Disaster relief activity" would include training for or responding to an actual, impending, mock, or practice disaster or emergency.

Repealer

The bill would repeal Section 15 of the Act, which creates in the Department of State Police the 15-member Michigan Emergency Management Advisory Council. Under that section, the Council is to be appointed by the Governor, with the advice and consent of the Senate, and serves at the pleasure of the Governor. The Council is to advise the Governor and the Director of the Department in the development of plans for the use of the State's resources and facilities for the purposes of the Act.

MCL 30.403 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have a minimal fiscal impact on State and local law enforcement. It is likely that public universities and local governments already have sufficient designated emergency management administrative personnel to handle the new responsibilities that would be required under the bill.

There are no data to indicate how many people would be convicted of disobeying an executive rule, order, or directive issued under a Heightened State of Emergency. Offenders convicted of a misdemeanor would serve up to 90 days in a local facility and/or pay a fine of up to \$100. Local units would incur the costs, which vary by county from \$27 to \$65 per day. Libraries would receive all additional penal fine revenue.

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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.