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BILL ANALYSIS



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House Bill 5586 (Substitute S-1 as reported)
Sponsor: Representative Daniel Acciavatti
House Committee: Great Lakes and Tourism
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-24-04

RATIONALE

For years, people have complained about poor communication between Canada, the United States, and local units of government following a spill of pollutants into the St. Clair River. Sarnia, Ontario, and Port Huron, Michigan, straddle the river and crowd its banks with heavy industry. The Sarnia side is home to Chemical Valley, said to be the largest grouping of chemical and petrochemical plants in Canada. Since the mid-1980s, there have been numerous accidental discharges into the river from the industrial plants--most of them from Chemical Valley. These spills are a concern to the nearby residents, who drink the water provided by five water intake plants located on the river.

Reportedly, Ontario officials frequently have failed to contact Michigan officials in a timely manner after a discharge from Chemical Valley into the St. Clair River. In some cases, Michigan evidently was not notified for many hours, or even days, after a spill, which meant that dangerous chemicals could have been drawn into Michigan drinking water facilities. Reportedly, Michigan also has failed to give immediate notice to local residents and Ontarian officials after a spill on its side of the river.

In an attempt to improve communication in the event of a spill, Michigan's Department of Environmental Quality (DEQ), since August 2001, has required that a Michigan plant owner or operator call the Department's 1-800 number to report an accidental discharge. The DEQ then notifies affected municipalities and advises them on

how to handle the spill, including whether a water intake plant should temporarily stop drawing water. While most agree that the new DEQ system is working, some believe that local municipalities need to be more quickly informed when a spill occurs on the Michigan side.

CONTENT

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act to require a person who polluted Michigan waters to report the release to the Department of Environmental Quality (DEQ), to the primary public safety answering point (PSAP) where the release occurred, and to local health departments.

Also, the bill would amend a section of the Act that adjusts, in 2004 and every 10 years, the Department of Natural Resources' rate of reimbursement to counties containing commercial forest land.

The bill is tie-barred to Senate Bill 977. (As passed by the House, that bill would prescribe mandatory civil fines for failure to report a release to a PSAP or local health department.)

Reporting Requirements

Under the House bill, a person required to report a release to the DEQ under Part 5 of the Water Resources Protection Rules of the Administrative Code would be required, at

the same time, to report the release via a 9-1-1 call to the PSAP serving the jurisdiction where the release occurred. If Part 5 of the rules required the person subsequently to submit to the DEQ a written report on the release, the person would have to submit simultaneously a copy of the report to the local health department serving the jurisdiction where the release occurred.

If the Department of State Police or another State agency received, under an agreement with, or the laws of, another state, Canada, or the Province of Ontario, notification of the release in that jurisdiction of a polluting material in excess of the threshold reporting quantity, and if the polluting material had entered or could enter surface waters or groundwaters of this State, the State Police or other State agency would have to contact the PSAP serving each county that could be affected by the release.

("Threshold reporting quantity" would be defined as it is the Michigan Administrative Code (R 324.2002), which establishes minimum amounts of oil, salt, and other polluting materials that, when released, must be reported. "Primary public safety answering point" would be defined as it is in the Emergency Telephone Service Enabling Act", i.e., a communication facility operated or answered on a 24-hour basis assigned responsibility by a public agency or county to receive 9-1-1 calls and to dispatch public safety response services.)

The emergency management coordinator of each county would have to develop and oversee the implementation of a plan to provide timely notification of a release required to be reported under the bill to appropriate local, State, and Federal agencies. In developing and overseeing the implementation of the plan, the emergency management coordinator would have to consult with the directors of the PSAPs with jurisdiction within the county, and with any emergency management coordinator appointed for a city, village, or township located in that county.

If rules promulgated under Part 31 require a person to maintain a pollution incident prevention plan, the person would have to update the plan to include these reporting requirements when conducting any evaluation of the plan required by rule.

DEQ Requirements

When a person reported a release to the DEQ, the Department would have to notify the person of the bill's reporting requirements and request that the person, even if not responsible for the release, report it via a 9-1-1 call to the PSAP serving either the jurisdiction where the release occurred, if known; or if not known, the jurisdiction where the release was discovered.

The DEQ would have to notify the public and interested parties by posting on its website, within 30 days of the bill's effective date, the proposed 9-1-1 and written reporting requirements; the relevant voice and, if applicable, facsimile telephone numbers of the DEQ and the National Response Center (established under the Federal Clean Water Act); and the applicable criminal and civil sanctions under Section 3115 (proposed by Senate Bill 977).

The Department's failure to notify a person of the bill's requirements would not relieve the person of any obligation to report a release or other obligation.

Biennially, the DEQ would have to evaluate the State and local reporting system that the bill would establish, and submit to the Legislature a written report on any changes recommended to the reporting system.

DNR Payment to Counties

Section 51107 of the Act requires an adjustment in 2004 and every 10th year after 2004, in the amount the Department of Natural Resources (DNR) pays to counties as reimbursement for revenue lost when owners of commercial forest land pay reduced property taxes to the counties. Under the bill, the adjustment would take place in 2006, instead of 2004, and every 10th year thereafter.

MCL 324.3101 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

It is vital that municipal water intake plants receive word of a spill as soon as possible. Because the St. Clair River has a fast current, chemicals quickly travel past the five intake plants and into Lake St. Clair. If a water plant is not notified within a few hours of a spill, it may draw contaminated water and then unknowingly provide it to residents. During the August 2003 blackout, a plastics company spilled about 49 gallons of vinyl chloride into the river and did not notify United States officials for five days. It is unknown how much of this chemical made it into the drinking water.

Michigan, obviously, cannot pass a law requiring Canadians to report a spill to this State. The bill, however, would require the State Police (whom Canadian officials often contact first) or another State agency with knowledge of a spill to contact the PSAP serving each county that could be affected by the discharge. When a spill originated in Michigan, local authorities would be notified at the same time as the DEQ. In this way, law enforcement officials and other first responders could quickly react, and local residents would be more readily informed of any danger. Municipalities then could establish their own protocols for how best to deal with a spill in their area. In addition, the bill would require local health departments to be given a report about the spill, which would provide them with information to protect the health of area residents. The bill would allow local municipalities to be "in the loop" more quickly.

Opposing Argument

The bill would fail to address the main problem, which is the sometimes-failure of Canada to notify Michigan when a spill originates in Chemical Valley. The DEQ's current system, called the Pollution Emergency Assistance Program (PEAP), is working for Michigan-based spills. Under Part 5 of the Water Resources Protection Rules, a plant owner or operator must report a spill to the DEQ as soon as it is practicable to do so, and then file a report describing the nature of the release and steps taken to prevent future spills. The PEAP has gone a long way toward solving communication and reporting issues in Michigan. Requiring a person to call 9-1-1 for every spill in excess of the threshold level (which, for many

chemicals, is as little as one pound) could unnecessarily burden local fire and police departments, and take them away from real emergencies.

Response: The bill would merely expand on the success of the PEAP. While it is not possible for Michigan law to address spills that originate in Canada, Michigan must do its part to be a good steward of the Great Lakes.

Opposing Argument

The bill would require every company (not just those in Port Huron) to update each of its Pollution Incident Prevention Plans (PIPPs) with the new reporting requirements. For a small company, updating a single plan would be a minor headache; for large manufacturer, however, updating all of its PIPPs would be a major burden. According to the Michigan Manufacturers Association, one manufacturer has 1,200 PIPPs on file, one for each potential pollutant. Combined, these plans can be as thick as a phone book, and up to 80 copies are placed around the plant and distributed to local emergency planning organizations. Any plan revisions usually involve several levels of review to ensure accuracy. In addition, every affected employee must be trained on the changed regulation to ensure compliance with the law. The bill, therefore, would not result in improved environmental protection Statewide, but would increase the regulatory burden and the cost of doing business in Michigan.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The pollution reporting requirements of the bill would have no fiscal impact on State or local government.

The amendments to Section 51107 postponing the decennial adjustment for payments in lieu of taxes on commercial forest lands would result in savings for the State. In 2003, there were 2,237,000 acres of land in the State certified by the DNR as commercial forest land, for which the DNR paid \$1.20 per acre for a total of \$2,684,400 in payments in lieu of taxes. An appropriation of \$2,691,700 was enacted for FY 2003-04. Since counties are not required to report the number of timber cutover

acres, sufficient information is not available to calculate the per-acre amount of the State equalized valuation (SEV) of timber cutover for the decennial adjustment ratio. Using the true cash value of timber cutover land statewide as an approximation, the current statutory increase will raise the pay rate by 357.6% from \$1.20 to \$4.30 per acre, for a total payment of \$9,619,100. The payments are supported entirely with General Fund revenue.

Using the true cash value of timber cutover land to estimate the increase, the rate paid by owners of commercial forests will increase under current statute from \$1.10 to \$3.93 per acre, for a total payment of \$8,791,410. Since it would maintain the amounts paid by commercial foresters and the State at current levels, the bill would result in a collective loss to counties of \$13,265,410 in additional revenue anticipated in FY 2004-05, and savings for commercial foresters of \$6,330,710 and savings for the State of \$6,934,700.

Fiscal Analyst: Jessica Runnels

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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.