



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5768 (Substitute H-1 as passed by the House)
Sponsor: Representative Tom McMillin
House Committee: Government Operations
Senate Committee: Judiciary

Date Completed: 12-11-12

CONTENT

The bill would create a new statute to prohibit State and local agencies and employees acting in their official capacity, including a member of the National Guard on official State duty, from aiding the U.S. military in any investigation, prosecution, or detention under a section of the National Defense Authorization Act for Fiscal Year 2012.

Specifically, no agency of the State, no political subdivision of the State, no employee of an agency of the State or a political subdivision, acting in his or her official capacity, and no member of the Michigan National Guard on official State duty could aid an agency of the U.S. Armed Forces in any investigation, prosecution, or detention of any person pursuant to Section 1021 of the National Defense Authorization Act for Fiscal Year 2012, if that aid would place the State agency, political subdivision, employee, or National Guard member in violation of the U.S. Constitution, the State Constitution, or any Michigan law.

This prohibition would not apply to participation by State or local law enforcement or the Michigan National Guard in a joint task force, partnership, or other similar cooperative agreement with Federal law enforcement, if that arrangement were not for the purpose of investigating, prosecuting, or detaining any person pursuant to Section 1021 of the National Defense Authorization Act for Fiscal Year 2012.

BACKGROUND

Under Section 1021 of the National Defense Authorization Act for Fiscal Year 2012, the authority of the U.S. President to use force pursuant to the Authorization for Use of Military Force (50 USC 1541; Public Law 107-40) includes the authority for the U.S. Armed Forces to detain covered persons pending disposition under the law of war. (Public Law 107-40 is the joint resolution of Congress, pursuant to the War Powers Resolution, authorizing the use of military force against the September 11 terrorists.)

The disposition of a person under Section 1021 may include any of the following:

- Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.
- Trial under Chapter 47A (Military Commissions) of Title 10 (Armed Forces) of the U.S. Code.
- Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

- Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.

Under Section 1021, a "covered person" is any of the following:

- A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.
- A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

Section 1021 states: "Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States."

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Bruce Baker

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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.