

Legislative Analysis



INTRASTATE MICHIGAN EMERGENCY MANAGEMENT ASSISTANCE AGREEMENT

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House Bill 4729

Sponsor: Rep. Dale W. Zorn

Committee: Local Government

Complete to 9-18-13

A SUMMARY OF HOUSE BILL 4729 AS INTRODUCED 5-14-13

House Bill 4729 would create a new act to be known as the Intrastate Emergency Management Assistance Agreement. The agreement would provide for mutual assistance among the participating governments in the prevention of, mitigation, response to, and recovery from an emergency or disaster.

Purpose. Under the bill, an intrastate emergency management assistance agreement would be created between the participating governments within Michigan. The purpose of the agreement would be to create a system of intrastate mutual aid between participating governments, to recognize that emergencies often transcend political jurisdictional boundaries, and that intergovernmental coordination is essential for the protection of lives and property and for best use of available assets, both public and private.

Supplementary mutual aid agreements. The new act would not preclude participating governments from entering into supplementary mutual aid agreements, and would not affect or in any way supersede any existing mutual aid agreement.

Opting out. The bill specifies that unless it had declined to participate, each political subdivision in Michigan would be a participating government under this act. A participating government could decline to participate if its legislative body adopted a resolution, and that resolution is filed with the director of the Department of State Police. If the department received such a resolution, then the department would be required to promptly notify the appropriate emergency management coordinator of that fact.

Requests for assistance. Under the bill, a participating government could request the assistance of other participating governments in preventing, mitigating, responding to, or recovering from disasters that resulted in locally declared emergencies, serious threats to public health and safety, or in concert with authorized drills or exercises. Requests for assistance would be made through an authorized representative of a participating government (or a designee), in a manner that is consistent with the Emergency Management Act, Public Act 390 of 1976 (MCL 30.401 to 30.421).

Assistance requirements. The bill specifies that a participating government's obligation to provide assistance would be subject to the following requirements:

- A requesting government must have exhausted all of its local resources, be anticipating a serious threat to public health and safety, or be a participant in authorized drills and exercises;
- A responding government could withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction;
- A responding government could withdraw its resources at any time, provided notice was given to the requesting government before withdrawal;
- Emergency response personnel of a responding government would continue under the command and control of the responding jurisdiction (to include medical protocols, standard operating procedures, and other protocols) but would be under the operational control of the appropriate officials within the *incident management system* of the requesting government;
- Assets and equipment of the responding government would continue to be under the command and control of the responding government but would be under the operational control of the appropriate officials within the *incident command system* of the requesting government.

Reimbursement for services rendered. A requesting participating government would be required to reimburse the responding governments for the entire period of assistance. An assisting government could, however, donate assets of any kind to a requesting government. The rate for reimbursement under this subsection would be as follows:

- An agreed upon rate, if any, by the requesting and responding governments;
- If no agreed upon rate, then at the rate established under the fee schedule of the Federal Emergency Management Agency (FEMA) that is in place at the time the assistance is provided, or the actual cost of the assistance provided, whichever was less.

Dispute arbitration. If a dispute arose between parties to the system regarding reimbursement, then the involved parties would be required to make every effort to resolve the dispute within 30 days after being provided with written notice of the dispute by the party asserting noncompliance. If the dispute was not resolved within 90 days, either party could request the dispute be resolved through arbitration. Any arbitration would be conducted under the commercial arbitration rules of the American Arbitration Association.

Gubernatorial or presidential declarations of emergency or disaster. The bill specifies that nothing in the new act would preclude the chief executive official of a participating government from requesting state or federal assistance (through the Emergency Management Homeland Security Division), or preclude the issuance of a gubernatorial or presidential declaration of emergency or disaster under the state Emergency Management Act or the federal Disaster Relief and Emergency Assistance Act.

Injury or death of personnel. The personnel of a participating government, who sustain injury or death in the course of, and arising out of, their employment would be entitled to all applicable benefits normally available while performing their duties for their

employer. Emergency response personnel would receive any additional state and federal benefits that may be available to them for line of duty deaths.

Responsibilities of participating governments. Each participating government would be responsible for its own acts and the acts of its employees, agents, volunteers, and subcontractors.

Emergency Management Act prevails. The bill specifies that in the event of a conflict between the requirements of this act and the requirements of the Emergency Management Act (MCL 30.401 to 30.421), the requirements of the Emergency Management Act would prevail.

Definitions. The new act would define 15 terms, including "authorized representative," "department," "director," "disaster," "emergency," "emergency management coordinator," "emergency management homeland security division," "emergency responder," "incident command system," "participating government," "period of assistance," "political subdivision," "requesting participating government," "responding participating government," and "serious threats to public health and safety."

Under the bill, the term "disaster" is defined to mean an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders.

The term "department" means the Department of State Police. The term "Emergency Management Homeland Security Division" refers to a division within the Department of State Police.

The term "incident command system" means a standardized on-scene emergency management construct specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents without being hindered by jurisdictional boundaries. The incident command system is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure that is designed to aid in the management of resources during incidents.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the state and on local units of government, depending on the number and nature of emergencies and disasters occurring, and the extent to which assistance under the agreement is provided.

Currently, the state and its many of its local governments provide intrastate aid through the Michigan Emergency Management Assistance Compact (MEMAC), which was approved by the governor in March 2006 under the authority of the Emergency Management Act, 1976 PA 390.¹ That act, in pertinent part, permits local governments to enter into mutual aid agreements (MCL 30.410) and expressly permits the Michigan State Police – Emergency Management and Homeland Security Division (EMHSD) to administer statewide mutual aid agreements (MCL 30.407a). Whereas participating MEMAC jurisdictions must "opt-in" in order to participate, HB 4729 provides that local jurisdictions are required to participate unless they "opt-out."

The Michigan State Police reports that there are 356 jurisdictions currently participating in MEMAC, representing fewer than 20% of the state's general purpose local governments. It's not immediately clear how the change from "opt-in" to "opt-out" would impact participation, but presumably a significant portion of the 1,500 cities, villages, townships, and counties that are not MEMAC participants currently, would participate under the new mutual aid compact established under HB 4729. While a system of mutual aid is in place through the current MEMAC agreement, it is only infrequently, if ever, invoked.

Clearly, there is the potential for a significant fiscal impact on local governments should a large-scale disaster or emergency require the utilization of local resources under HB 4729 that might not otherwise be utilized under the existing MEMAC agreement. Ultimately, it would still be up to individual local units to choose to participate in the compact.

Generally, the bill is consistent with much of the basic structure of the existing MEMAC agreement. The bill, like MEMAC currently, provides that a responding jurisdiction shall assess its own situation and needs to determine what assistance it pay provide, and allows the responding jurisdiction to withdraw its resources at any time.

As provided in the bill, responding jurisdictions would be reimbursed by the local government that requests the assistance. In this regard, the bill appears to provide a greater degree of flexibility than currently provided for under the existing MEMAC agreement in determining reimbursement rates. The bill, for instance, allows the responding jurisdictions to be reimbursed at an agreed upon rate or, in the absence of any pre-existing agreement, the lesser of (1) the rate established by the Federal Emergency Management Agency² or (2) the actual costs of the assistance provided. In contrast, the

¹ On this, MSP has noted, "MEMAC creates an organized process and structure spelled out in advance for jurisdictions large and small across the state to render or receive assistance in times of crisis. It addresses problematic issues concerning workers' compensation insurance, expense reimbursement and liability coverage, prior to the need and request for assistance. Designed to be flexible, MEMAC is also intended to supplement rather than replace existing, local mutual aid agreements already in place to handle smaller scale public safety services among neighboring jurisdictions and fire departments." See, MSP Emergency Management and Homeland Security Division *Informational Letter 06-23* (June 22, 2006), http://www.michigan.gov/documents/06-23_164009_7.pdf. See, also, the MSP's MEMAC website, http://www.michigan.gov/msp/0,4643,7-123-1593_3507-9460--,00.html, which includes a copy of the current compact.

² See the FEMA Schedule of Equipment Rates, http://www.fema.gov/pdf/government/grant/pa/eqrates_2010.pdf.

existing MEMAC agreement has specific directions about how personnel costs (direct and indirect payroll, plus travel), equipment (a pre-established hourly rate or the FEMA Schedule of Equipment Rate), and materials/supplies (federal allowable cost principles) should be reimbursed. Both the existing MEMAC agreement and the bill subject any disagreements regarding reimbursement to arbitration.

According to Michigan State Police data, from January 1977 through July 2012, there have been 21 presidential declarations and 63 gubernatorial declarations of emergency or disaster in Michigan.³

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■ 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.

³ Michigan State Police - Emergency Management and Homeland Security Division, Publication No. 103, *Michigan Hazard Analysis*, July 2012, http://www.michigan.gov/documents/msp/Doc1_394216_7.pdf.