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House Bill 4389 (Substitute H-2 as passed by the House)  
House Bill 4390 (Substitute H-1 as passed by the House)  
House Bill 4391 (Substitute H-2 as passed by the House)  
Sponsor: Representative Sue Allor (H.B. 4839)  
Representative Jeff Yaroch (H.B. 4390 & 4391)  
House Committee: Natural Resources and Outdoor Recreation  
Ways and Means  
Senate Committee: Environmental Quality

Date Completed: 10-15-19

### **CONTENT**

**House Bill 4389 (H-2)** would amend the Part 147 (Chemical Substances) of the Natural Resources and Environmental Protection Act to do the following:

- Require the fire chief of an organized fire department that used firefighting foam containing intentionally added perfluoroalkyl or polyfluoroalkyl (PFAS) to submit to the Department of Environment, Great Lakes, and Energy (DEGLE) a written report within 48 hours, and specify the contents of the written report.
- Prescribe a penalty for failing to submit the written report as described under the bill.
- Require DEGLE to establish a collection program for firefighting foam concentrate containing intentionally added PFAS and establish guidelines for the program.

**House Bill 4390 (H-1)** would amend the Firefighters Training Council Act to do the following:

- Include in minimum standards for certification as a fire service member certain provisions regarding firefighting foam and PFAS use.
- Prohibit firefighting foam concentrate containing intentionally added PFAS from being used in any firefighter training required under the Act.
- Require the firefighter training under the Act to include additional subjects related to firefighting foam until December 21, 2023.
- Require a veteran or person certified as a firefighter in another state who received an examination waiver to complete the firefighting foam training under the bill not later than one year after obtaining the waiver.

**House Bill 4391 (H-2)** would amend the Michigan Occupational Safety and Health Act to do the following:

- Specify that a section of the Act that governs conflicts between Federal and State occupational safety and health standards would not apply to rules promulgated to regulate a firefighters use of firefighting foam concentrate.

- **Require the Director of the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules regarding a firefighter's use of firefighting foam concentrate, and prescribe certain topics that would have to be addressed in those rules.**

House Bill 4390 (H-1) would take effect 90 days after it was enacted.

### **House Bill 4389 (H-2)**

#### Definitions

Under the bill, "fire chief" would mean that term as defined in the Fire Prevention Code: the chief operating officer of an organized fire department. "Firewater" would mean water that has been used for firefighting.

"Organized fire department" would mean that term as defined in the Code: a department, authority, or other governmental entity that safeguards life and property from damage from explosion, fire, or disaster and that provides fire suppression and other related services in Michigan, including any lawfully organized firefighting force in the State.

#### Written Report

Within 48 hours after an organized fire department used firefighting foam containing intentionally added PFAS, the fire chief would have to submit to DEGLE a written report that included all of the following information:

- The purpose for which the foam was used.
- The physical address and the latitude and longitude of the location at which the foam was used.
- The quantity of foam concentrate used.
- The quantity of water used to produce the foam or used in conjunction with the foam.
- The name brand and manufacturer of the foam concentrate.
- If a member of the organized fire department knew that the foam or firewater entered a storm sewer or combined sewer, the distance and direction of the point of entry from the location at which the foam was used.
- If a member of the organized fire department knew that the foam or firewater entered a water body, including a drain under the Drain Code, the name or number of the water body and the distance and direction of the point of entry from the location at which the foam was used.
- Practices employed for containment and disposal of the foam and firewater.
- Practices employed for cleanup and disposal of materials contaminated by the foam concentrate, foam, or firewater.

A person who violated these provisions could be ordered to pay a civil fine of not more than \$500. A violation could be prosecuted by the prosecutor of the county in which the violation occurred or by the Attorney General.

#### Collection & Disposal Program

The Department would have to establish a collection program for firefighting foam concentrate containing intentionally added PFAS and guidelines for the program. Under the program, DEGLE would have to accept the foam concentrate free of charge and properly dispose of it. The program would be contingent on legislative appropriations to cover its costs.

## **House Bill 4390 (H-1)**

The Firefighters Training Council Act requires the State Fire Marshall, with the approval of a majority of the Firefighters Training Council, to prepare and publish rules and establish minimum standards for certification as a fire service member. The standards must comply with the Michigan Occupational Safety and Health Administration General Industry Safety Standard of the Michigan Administrative Code.

Also to maintain compliance, the employer of a fire service member must provide initial and continued training to the member commensurate with and specific to the duties that the member is expected to perform. This training must be provided before the member is permitted to perform emergency operations.

Under the bill, the standards and training required would have to include those provided for in Section 9c.

Under proposed Section 9c, firefighting foam concentrate containing intentionally added PFAS could not be used in any firefighter training required under the Act. Until December 31, 2023, the firefighter training required under the Act would have to include both of the following subjects:

- The proper use, handling, and storage of firefighting foam concentrate.
- The best environmental and public health practices, including containment and proper disposal, and decontamination of the firefighter's equipment and body, following the use of firefighting foam.

The firefighter training could involve the use of a video or online resource.

### **Examination Waiver**

Under the Act, the State Fire Marshall may waive examination requirements for a veteran who served in and is separated from the Armed Forces and has met certain criteria. In addition, the State Fire Marshall must waive examination requirements and extend reciprocity certification to a person from another state who seeks to become employed or volunteer in the fire service in Michigan if the person was certified in the other state after successfully completing a program that meets or exceeds the National Fire Protection Association standards for the applicable fire service discipline recognized under the Act.

Under the bill, not later than one year after obtaining a waiver of the examination requirements under the conditions listed above, the veteran or person certified in another state would have to complete the training required under Section 9c.

## **House Bill 4391 (H-2)**

Generally, under Section 14 of the Michigan Occupational Safety and Health Act, the occupational safety and health standards that have been adopted or promulgated by the United States Department of Labor under the Federal Occupational Safety and Health Act and that are in effect on January 1, 1975, are incorporated by reference and have the same force and effect as a rule promulgated under the Michigan Occupational Safety and Health Act. A standard that is incorporated by reference remains in effect until either of the following occurs:

- A standard is promulgated under the Act that covers the same or a similar subject.
- The standard is rescinded by a rule promulgated under the Act.

Section 14 also governs conflicts between Federal and State occupational safety and health standards and their resolution. Under the bill, Section 14 would not apply to Section 14r (which the bill would create).

Under proposed Section 14r, the Director of LARA would have to promulgate rules regarding a firefighter's use of firefighting foam concentrate. The rules would have to include all of the following:

- The best practices regarding proper use, handling, and storage of firefighting foam concentrate.
- The best health practices, including, i) containment and handling of PFAS-contaminated materials, including a firefighter's equipment, until they are disposed of under the Natural Resources and Environmental Protection Act, and ii) decontamination of a firefighter's body and equipment following the use of firefighting foam.
- A prohibition on the use of firefighting foam concentrate containing intentionally added PFAS by a firefighter for training purposes.

In addition, the rules would have to include a prohibition on the use of firefighting foam concentrate containing intentionally added PFAS by a firefighter for equipment calibration purposes after January 1, 2020, unless one or more of the following applied:

- The calibration was otherwise required by law.
- The facility where the calibration would take place had implemented measures that complied with the rules promulgated under the bill.

"Firefighter" would mean either of the following:

- That term as defined in the Firefighters Training Council Act: a member of an organized fire department or public safety department who is responsible for, or is in a capacity that includes responsibility for, the extinguishment of fires, the directing of the extinguishment of fires, the directing or management of emergency response activities, fire safety prevention inspection, plans examination, fire investigation, hazardous materials response, technical rescue response, airport rescue response, airport rescue firefighting, fire service instruction, and the enforcement of the general fire laws of Michigan and the community where he or she serves.
- An individual employed by a person and who in that employment is knowledgeable, trained, and skilled in at least basic firefighting operations.

Proposed MCL 324.14701 et al. (H.B. 4389)

Legislative Analyst: Drew Krogulecki

MCL 29.362 et al. (H.B. 4390)

MCL 408.1014 et al. (H.B. 4391)

## **FISCAL IMPACT**

### **House Bill 4389 (H-2)**

The bill could have a negative fiscal impact on the State. Under the bill, the Department of Environment, Great Lakes, and Energy would have to establish a new collection and disposal program for PFAS firefighting foam. The program would be contingent upon appropriations to cover program costs, which likely would result in a net zero fiscal impact to the Department. Program costs would depend upon the extent of PFAS firefighting foam in use by fire departments. The additional reporting requirements for fire chiefs after use of firefighting

foam would have a negative fiscal impact on local governments, although the effect would not be significant.

**House Bill 4390 (H-1)**

The bill would have a minor negative fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. The Department estimates that the cost of providing the necessary training classes to current firefighters would be between \$100,000 and \$150,000. These costs would be borne by LARA. Future firefighters would obtain the necessary training when completing their required certifications.

**House Bill 4391 (H-2)**

The bill would have no fiscal impact on State or local government. The promulgation of rules required by the bill would be adequately funded by existing appropriations.

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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.