

House Bill 4761 with committee amendments
First Analysis (5-23-89)

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Sponsor: Rep. Michael J. Bennane
Committee: Public Health Mich. State Law Library

THE APPARENT PROBLEM:

Mosquitoes not only can be a nuisance, interfering with peoples' enjoyment of outdoor activities, they also can have an adverse impact on the state's tourism industry by discouraging tourists from visiting areas with annoying mosquito populations. In addition to affecting the tourism industry and generally lowering the quality of living for residents, however, mosquitoes also can pose a health threat both to humans and to other animals, because some of the more than 65 kinds of mosquitoes are potential disease carriers. For example, both eastern equine encephalitis (EEE), a serious viral disease that can affect both horses and people, and heartworm, a parasite affecting only dogs, are transmitted by mosquitoes.

Michigan has three existing mosquito abatement districts (one each in Bay, Midland, and Saginaw counties) and many cities, villages, townships, and housing and neighborhood or lake associations apply pesticides in an attempt to control mosquitoes. In addition, there is an increasingly severe problem with gypsy moths in the state, and there are programs aimed at eradicating (in the Upper Peninsula) or suppressing (in the Lower Peninsula) the problem. However, financing such programs reportedly sometimes is difficult, and one municipality has hesitated to impose special assessments for mosquito abatement programs without statutory authority. At the request of constituent groups, legislation has been introduced which would facilitate the financing of mosquito control and gypsy moth programs.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to allow for the creation of pest management authorities within local units of government (counties, cities, villages, or townships) having at least 10,000 people. "Pest" would be defined to mean mosquito, gypsy moth, "or other insect determined by the department [of public health] or the department of agriculture to be causing harm to the public health, safety, or welfare, or the environment."

Establishing and terminating pest management authorities.

A petition to a county board of commissioners to create a pest management authority could be initiated either by eight percent of the registered voters or by resolution by at least two local units of government within the proposed district. If, after a public hearing, the board decided that a pest management authority was needed, the board would create an authority and determine its boundaries. Two or more counties could consolidate their pest management authorities if they so desired.

Cities, villages, or townships could develop their own pest management programs, and existing city, village, or township programs would not have to be included in a pest management authority if the local unit's governing body notified the county board of commissioners of its intent not to be included in the authority.

After a pest management authority had been in operation for two years, but no more than once every two years, voters in the district could petition to have the authority operations terminated. The petition would have to be signed by at least eight percent of the registered voters and filed with the county board of commissioners, which then would have to hold a special election within 60 days of receiving the petition. The board would have to terminate the authority if a majority of the votes cast in the special election were in favor of this action.

Pest management board. If an authority were located within a single county, the county board of commissioners could either appoint a five-member governing board to run the authority or assign this responsibility to a county agency. If the authority crossed county lines, the board would consist of five members: two members from each county in the authority (appointed by their respective county boards), and one member, chosen by consensus of the appointed members, who was knowledgeable about pest management. Board members could not be paid for their services, but could be reimbursed for any necessary expenses they incurred when acting as board members.

The board (or its designated agents) would be responsible for taking all "necessary and proper" steps for pest management within the authority. This would include, but not be limited to, using professional entomologists to ensure that pest management operations were in accord with the latest technology and good pesticide management practices, establishing a public education program, buying supplies, and hiring seasonal employees (including college students and the chronically unemployed). The board also would be able to accept appropriations from the state or a local unit of government, as well as gifts and contributions from individuals, and to spend this money to implement the bill.

Financing pest management operations. Local units of government would be allowed to finance pest management authority operations in a number of ways. They could:

- (1) appropriate money to the pest management authority board;
- (2) impose a service charge on residents of the authority,
- (3) levy a special assessment on lands benefited by the authority, or
- (4) levy an ad valorem tax on the taxable property in the authority.

If a local government chose to impose a service charge or a special assessment, the pest management authority board would have to hold a public hearing (after giving public notice of the hearing in the newspaper) and consider public comments before deciding on how much to charge. Service charges could not be greater than the actual or anticipated costs of the pest management procedures and

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special assessments would be collected at the same time as ad valorem property taxes.

If a local government wished to levy an ad valorem tax it could do so only if a millage were approved by a majority of the registered voters in a general or special election. An election could be called by resolution of the board, which would have to file a copy of the resolution with the clerks of the affected local units of government at least 60 days before the election. Elections to levy ad valorem taxes for pest management authorities could not be held more than twice in a calendar year, and the authority would be responsible for its share of the costs of a special election. Pest management authority taxes would be levied and collected in the same way as other ad valorem taxes.

Pesticide spraying reports. Every year, before January 31, certified or commercial pesticide applicators would be required to submit reports to the Department of Public Health (DPH) and the Department of Agriculture on all pest control spraying done in the previous year for local units of government, neighborhood organizations, lake associations, or subdivisions. These mandatory reports would have to include the name of the group that hired the pesticide applicator (and two contacts from this group), the date(s) on which spraying was done, the area sprayed, and the kind of pesticides used.

The Departments of Public Health and Agriculture could offer information on pesticide methods and materials to any of the local units of government, neighborhood organizations, or lake associations who hired pesticide applicators to spray for pest control. The information offered by the DPH and MDA would be such as to "help to ensure the methods or materials used are effective and have the least potential for harm."

The DPH also could appoint a state technical advisory committee to advise the department on pest management methods and materials and which could review the required annual reports. Members of the committee would not be paid, and could include medical entomologists, veterinarians, physicians, members of wildlife or conservation organizations, drain commissioners and road commissioners, and anyone designated by the department.

Exemptions from pesticide applications. People owning or renting land in a pest management authority could request annually, in writing, that their property be excluded from pesticide application or other pest management procedures by writing to the authority board. The board could exclude the property from the pest management procedures if it decided that exclusion of the property would not seriously reduce the effectiveness of the program or if the request was because of a medical condition certified by a physician.

Penalties. Under the bill, anyone who intentionally prevented, hindered, delayed or interfered with the board or its designated agents in the exercise of their official powers or duties would be guilty of a misdemeanor punishable by a fine of up to \$100.

MCL 333.1101 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have minimal fiscal implications for the state, and that these would be for staffing the technical advisory committee that the director of the Department of Public Health would be

allowed (but not required) to appoint. (HJR 100, 5/22/89)

ARGUMENTS:

For:

Reportedly, Michigan is one of only three states that does not have laws regulating mosquito abatement programs. The seriousness of the diseases that mosquitoes can transmit to humans and other animals makes it imperative that mechanisms for establishing and disbanding pest management authorities, as well as for financing these authorities, be established.

For:

Gypsy moth infestations have become a serious problem in Michigan, with one estimate being that at least 22 counties will receive heavy damage this year. One county reportedly has been able to finance its gypsy moth control program through ad valorem taxes, but apparently other counties have not been successful in getting similar tax proposals approved and have had difficulty in financing their programs. The bill would provide alternative financing mechanisms for gypsy moth control programs should voters not approve financing through ad valorem taxes.

Against:

While pest management programs should be regulated by state law so that they can be as effective as possible while causing the least amount of harm to the public and the environment, the bill would not ensure either the safety or the effectiveness of such programs. The bill simply would require that if a local unit of government (including a pest management authority), a neighborhood organization, or lake association used a certified or commercial applicator for pesticide spraying, then that applicator would have to submit a report after the fact to the Departments of Public Health and Agriculture. There is no requirement that only certified or commercial applicators be used to do pesticide spraying, nor that pest management methods and materials are effective and pose the least threat of harm to people and the environment. To be effective, moreover, mosquito abatement programs must include more than the application of pesticides. In fact, pesticide spraying is only a minor part of mosquito control, which should include a variety of coordinated and integrated activities, including, for example, monitoring the occurrence and density of mosquito populations to guide when and where to make pesticide applications. Under the bill, a public works employee who drives the snowplow in the winter could be the same person who drives the pesticide sprayer in the summer, and the net result of such spraying could even be that the intended target — mosquitoes — continues to flourish while some unintended, but beneficial animal populations (like the parasitic wasps that attack elm scale larvae) are harmed. The bill does allow the Departments of Public Health and Agriculture to advise those units of government who do use certified or commercial pesticide applicators information "that will help ensure the methods or materials used are effective and have the least potential for harm," but this capacity is merely advisory (their advice need not be acted upon), it would be directed only to those units already using certified or commercial applicators, and it would happen only after the pesticide spraying had already occurred.

Against:

The bill would make it a misdemeanor for someone to intentionally prevent, hinder, delay, or interfere with a pest management board or its designated agents in the exercise of its powers or duties. It is unclear whether activist groups opposed to what they see as the misuse of pesticides who engage in public education efforts would fall under this provision of the bill.

Against:

The bill does not guarantee that individuals who object to being exposed to pesticide spraying will be excluded from spraying ordered by the pest management authority, even if they request exclusion and can back their request up with a letter from their doctor. Nor does the bill provide recourse for them if their request for exclusion from some proposed pesticide application is denied by the pest management authority board.

POSITIONS:

The Department of Public Health supports the bill. (5-22-89)

The Department of Agriculture supports the bill. (5-19-89)

The Michigan Association of Counties supports the bill. (5-22-89)

Midland County Mosquito Control supports the bill. (5-22-89)

Bay County Mosquito Control supports the bill. (5-22-89)

Saginaw County Mosquito Control supports the bill. (5-22-89)

The Department of Natural Resources does not yet have a position on the bill but is concerned that provisions of the face Quality Control Act not be circumvented. (5-22-89)