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Analysis
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HAZARDOUS SUBSTANCE EMERGENCY

House Bill 4907 with committee amendments
Revised First Analysis (3-26-90)

Sponsor: Rep. Thomas Scott
Committee: Conservation, Recreation, & Environment

THE APPARENT PROBLEM:

On December 14, 1989 the members of the Toxic Substance Control Commission (TSCC) submitted their resignations en masse in order to protest budget cuts that resulted in the layoff of support staff to the commission. Since the commission is required to investigate problems involving toxic substances and to declare a toxic substance emergency, and the commission members are no longer active, some have suggested that there is no method by which an emergency may be declared. In order to address this problem and to provide for restructuring of the Department of Natural Resources, a nine-bill package of legislation was introduced in the House of Representatives. Because of increasing concerns about the lapse in emergency procedures and potential harm to the health, safety and welfare of the public, a proposal to establish a procedure for the declaration of a hazardous substance emergency has been separated from the other issues in that package.

THE CONTENT OF THE BILL:

The bill would amend the Environmental Response Act to establish a procedure for the declaration of a hazardous substance emergency. The bill would specify that the Natural Resources Commission would have to devote a portion of its agenda at each of its scheduled meetings to public comment on problems, conditions, and irregularities involving hazardous substances or environmental contamination, or both. If the commission found problems that required immediate attention in order to protect the safety, health and welfare of the public or the environment, it could recommend a declaration of a hazardous substance emergency to the governor. When declaring a hazardous substance emergency, the governor would designate a lead agency to investigate and remedy the condition or practice causing the hazardous substance emergency. The agency would issue specific guidelines as were necessary to respond to the hazardous substance emergency.

The bill would also delete references to the Toxic Substance Control Commission from the act.

MCL 299.603

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the bill would have no fiscal implications for the state. (3-20-90)

ARGUMENTS:

For:

The walkout by the Toxic Substance Control Commission members has left the state without a procedure to declare a toxic substance emergency. It is not clear when, or if, commission members will return. Therefore, a new procedure needs to be established; the bill would address this deficiency in the emergency declaration system.

Against:

Although the Toxic Substance Control Commission is now defunct, there is still a procedure that can be used to address hazardous substance emergencies, established under the Emergency Preparedness Act. Since the 1970s, the Emergency Management Division of the Department of State Police has been designated to address situations in which hazardous substances and environmental contamination threaten the health, safety and welfare of the public or the environment. The Department of State Police is also charged with coordinating federal, state and local efforts to address these emergency situations. Legislation that would strengthen the department's coordinating role and specify that hazardous materials incidents would be included in the scope of the act (House Bill 5263) recently passed the House. The bill would be in direct conflict with that legislation. Further, if, or when, the Toxic Substance Control Commission became active once again, the procedure established under the bill would be a duplication of effort.

Response: Since both the Department of State Police and the TSCC currently address emergency situations, there should not be a problem if the Natural Resources Commission acts in place of the TSCC. If, or when, the TSCC members become active again, legislation could be introduced to address the duplication. Further, the procedure used by the Department of State Police does not include a hearing process and is predicated on the idea that an emergency already exists. The bill would establish a procedure allowing citizens to comment about problems that may not necessarily involve hazardous materials but still need to be addressed, and situations not necessarily involving a hazardous substance emergency but which could quickly escalate to that point.

Rebuttal: Some feel that the TSCC's historical role has been one in which it helped facilitate action to address contamination, instead of a role in which it declared or responded to several emergencies. Therefore, it is unnecessary that the TSCC's emergency declaration role be passed to the Natural Resource Commission.

POSITIONS:

The Ecology Center of Ann Arbor will not take a position on the bill until other issues are clarified, including the future role of the Toxic Substance Control Commission. (3-20-90)

A representative of the Department of Natural Resources testified before the House Conservation, Recreation, and Environment Committee that the department had no position on the bill. (3-20-90)

The Michigan Environmental Council will not take a position on the bill until other issues are clarified, including the future role of the Toxic Substance Control Commission. (3-20-90)

The Department of State Police opposes the bill. (3-21-90)

H.B. 4907 (3-26-90)