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JUN 28 1990

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Senate Bill 757 (Substitute S-1 as passed by the Senate)

Senate Bill 862 (as passed by the Senate)

Sponsor: Senator Vern Ehlers (S.B. 757)

Senator John D. Cherry, Jr. (S.B. 862)

Committee: Natural Resources and Environmental Affairs

Date Completed: 4-9-90

RATIONALE

The protection of the environment and the management of natural resources are considered by many to be among the most important issue areas facing policy-makers now and in the immediate future. Although the protection of Michigan's ground and surface water, soil, and air is of vital interest to the general public, some contend that there are few opportunities for public input into the decision-making processes on environmental issues. They feel that, in order to facilitate greater public participation in the management of natural resources and the making of environmental policy, an environmental ombudsman's office--independent of the State departments and agencies responsible for environmental policy-making and enforcement--should be created in the legislative branch of government. Further, since governmental entities can set a positive example in observing environmentally safe practices, some feel that each State department should designate an individual to ensure the department's compliance with all environmental laws.

CONTENT

Senate Bills 757 (S-1) and 862 would create the "Environmental Auditor Act" and the "Environmental Ombudsman Act",

respectively, to ensure that State departments comply with all environmental laws and to provide the general public with assistance in affecting environmental decision-making.

Senate Bill 757 (S-1)

The bill would require the director of each State department to appoint an individual to serve in the position of environmental auditor for that department. A department's environmental auditor would have to assure that the department complied with all environmental laws and rules and would have to serve as the department's liaison to the Office of Environmental Ombudsman, which would be created by Senate Bill 862. Senate Bill 757 (S-1) would take effect on April 15, 1990.

Senate Bill 862

The bill would establish the "Office of the Environmental Ombudsman" within the Legislative Council. The executive officer of the proposed Office would be the Environmental Ombudsman. The Ombudsman would be appointed by the Legislative Council for one nonrenewable six-year term, but could

S.B. 757 & S.B. 862 (4-9-90)

be removed for cause. The Ombudsman would have to do all of the following:

- Act within State government on behalf of those concerned with environmental protection and natural resources management; assist in directing and communicating their concerns to the proper State agency; and serve as a liaison between the public and State environmental agencies.
- Assist the public in gaining access to the environmental decision-making process and in obtaining adequate responses to related questions.
- Recommend to the Legislature and State agencies, methods to improve public participation.
- Compile, maintain, and make available upon request, a list of citizen advisory committees within State agencies that are involved with environmental and natural resource issues.
- Investigate complaints regarding violations of environmental laws or State agencies' failure to enforce such laws.
- Assist individuals, businesses, and local governments in obtaining information pertaining to permit applications and the permit process, but refrain from intervening on any party's behalf after that process began.

The bill specifies that the proposed Act could not limit or affect any existing rights of public participation or appeals pertaining to State agencies, but would be in addition to any such processes. The bill would require all agencies of State government to cooperate with the Ombudsman's Office and to assist the Ombudsman in performing his or her duties and responsibilities. The bill would take effect on October 1, 1990.

FISCAL IMPACT

Senate Bill 757 (S-1)

The cost of environmental auditors for each State department would depend on whether the functions of that office could be performed by existing staff. If a new FTE employee had to be hired in each State department, the total cost would be approximately \$700,000 to \$1

million annually depending on the civil service classification for the position.

Senate Bill 862

The bill would result in increased costs to the State. The annual budget for the Office of Environmental Ombudsman would depend on approval of the Legislative Council. A minimal staff of one professional and one clerical worker would cost approximately \$100,000 annually.

ARGUMENTS

Supporting Argument

Environmental problems have perhaps a greater and more direct impact on the lives of individuals than any other area of public policy. Clean air, soil, and water are essential to the safe and healthy existence of Michigan's people and wildlife, yet there is very little opportunity for public participation in the decision-making process for natural resources management and environmental issues. By providing the public with direct access to the Legislature and to departments of State government, Senate Bill 862 would help to facilitate public input into policy and enforcement decisions relating to environmental issues and would give individuals the opportunity to seek assistance in investigating complaints of and pursuing solutions to particular environmental problems.

Supporting Argument

It is incumbent upon government to provide a positive example in observing environmentally sound practices. The State should lead the way in acknowledging the importance of complying with all laws designed to protect the environment. By requiring each State department to designate an environmental auditor to assure such compliance, Senate Bill 757 (S-1) would send a strong signal about the importance of protecting the State's environment and, thereby, the public health and welfare.

Opposing Argument

While oversight of the executive branch of government is within the purview of the Legislature, Senate Bill 862 would extend that traditional legislative role to one of carrying out environmental policy and thereby infringe on the executive branch's responsibilities. The role of environmental ombudsman would be more

appropriately placed within the Department of Natural Resources (DNR); in fact the DNR reportedly requested such a program to be included in its budget for the 1990-91 fiscal year. If the Legislature desires a strong public advocate on environmental issues, it should fund such an office in the DNR's budget.

Response: Senate Bill 862 would not be an infringement on the authority of the executive branch. The Office of Environmental Ombudsman proposed in the bill would not be a policy-making or enforcement body, but would simply facilitate public access to policy-making and enforcement decisions. The Office would operate in a fashion similar to the current Legislative Corrections Ombudsman, which acts as an advocate for those affected by corrections policies. Further, placement of the Environmental Ombudsman in the Legislative Council would be appropriate because such an office would have to be independent of the DNR Director in order to serve adequately as a proponent for the public. Placing an Ombudsman's office within the DNR could subject it to reprisals if the Director or the Governor disagreed with the Office's actions.

Opposing Argument

The bills would do little more than add to the layers of bureaucracy in State government. There are numerous commissions, committees, and councils already in existence to facilitate public participation in the various areas of environmental policy-making. In addition, creating a new office within the legislative branch and requiring a new position within each State department could be very costly.

Response: While various public bodies relating to environmental policy do exist, they are scattered throughout State government, are not necessarily public proponents, and have very limited scope. The Environmental Ombudsman would be an all-purpose resource for the public to become involved with all areas of environmental policy and would act as an advocate for individuals. Many felt that the Toxic Substance Control Commission (TSCC) was the only governmental body to play such a public advocate role, but since the funding for the TSCC was cut for the 1989-90 fiscal year, the public has been left without a governmental proponent on environmental issues. In addition, although Senate Bill 862 would establish a new office within the Legislature, it could operate at minimal expense, and Senate

Bill 757 (S-1) would not require the hiring of any additional personnel, but merely the designation of an employee as an environmental auditor.

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JUN 28 1990

A8990/S757B

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