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BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4933 (Substitute S-2 as reported)

Sponsor: Representative Tom Alley

House Committee: Conservation, Recreation, and Environment

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-2-90

RATIONALE

Michigan law extends liability protections to individuals who provide certain public services in good faith. The good samaritan law, for instance, grants such immunity to health care professionals who provide care at the scene of an emergency or physical examinations for participation in competitive sports; to individuals who perform cardiopulmonary resuscitation (CPR); and to members of volunteer organizations who render assistance to minors. Since hazardous chemical spills can be as dangerous to an individual's or the public's well-being as any of those covered instances, and since most people would agree that assistance should be encouraged, some feel that immunity from liability should be granted to volunteers who assist in the cleanup of spills.

CONTENT

The bill would create a new act to grant immunity from liability to a "volunteer" who, after a declaration by the Governor that a spill had caused a state of disaster, assisted in remedial actions associated with the spill of hazardous material into Michigan's groundwater or surface water for damages that resulted from an act or omission in the course of the volunteer's good faith rendering of assistance. Immunity would not be granted, however, if the volunteer's act or omission were the result of gross negligence or willful misconduct.

The bill would define "volunteer" as an individual who was designated as a volunteer by the public entity designated by the Governor

and who acted solely on behalf of that entity without remuneration beyond reimbursement for out-of-pocket expenses in connection with the assistance rendered. "Remedial action" would mean "an activity to protect the public health, safety, welfare, or the environment" and would include, but not be limited to, cleanup, containment, isolation, or removal of spills. "Hazardous material" would mean a chemical or other material that was or could become injurious to the public health, safety, or welfare, or to the environment.

SENATE COMMITTEE ACTION

The Senate Committee on Natural Resources and Environmental Affairs adopted a substitute (S-2) to the bill that would provide immunity from liability for a "volunteer" who assisted in a cleanup rather than for a "person" who did so. (The House-passed version of the bill defined "person" as "an individual, corporation, partnership, association, the state or a local unit of government, or any other legal entity".) The substitute would offer immunity only to an individual designated as a volunteer by the public entity designated by the Governor in a declaration of a state of disaster. In addition, the substitute removed a provision included in the House-passed version that specified that the bill would not grant immunity to a person who caused a spill.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

H.B. 4933 (S-2-90)

ARGUMENTS

Supporting Argument

Just as medical personnel are given limited immunity from liability for voluntary and emergency work performed in some circumstances, volunteers who assist in remedial actions subsequent to hazardous spills in Michigan waters should be granted immunity. The bill not only would give such good-faith volunteers the liability protection they deserve, but also would encourage more volunteer activity.

Opposing Argument

The bill does not go far enough. Protection from liability, except in the case of willful misconduct or gross negligence, should be provided to spill control professionals as well as to those who volunteer their assistance. Without such guaranteed protections, those who possess the necessary expertise and resources to respond adequately to hazardous spills might refrain from taking remedial actions in particularly risky circumstances.

Opposing Argument

The bill could actually encourage too much volunteer activity. In potentially dangerous cleanup projects, volunteers who may not necessarily possess the expertise to be of help could be a hindrance to the project. The bill should offer liability protections only to those who respond to requests for volunteer activity.

Response: The Senate substitute addresses the problem of good-intentioned, though ill-prepared, individuals offering unnecessary or unwanted assistance by specifying that a "volunteer" would have to be designated as such by a public entity involved in the cleanup project in order to receive immunity.

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