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Michigan Fraternal Order of Police
Attn: John Buczek – Executive Director
112 East Allegan Street – Suite 502
Lansing, Michigan 48933-1701

BY ELECTRONIC MAIL ONLY

Ref: **HB-4838 (Mutual Aid – Private Corporations – Other States)**

Dear Director Buczek:

At your request, I've carefully examined **HB-4838**, the proposed "*Interstate Mutual Emergency Aid Act*;" as well as the analysis published on September 13th by the House Fiscal Agency. It should be noted that the HFA simply repeats sections of **HB-4838**, and concludes by saying that "the bill has an indeterminate fiscal impact."

Much more information was discerned by comparing **HB-4838** with other, current mutual aid statutes – especially the "*Interstate Emergency Management Assistance Compact* – ***Personnel***," at **MCL 3.1001 – 3.1004**. {"**EMA-Personnel**"}

First, I immediately determined that **HB-4838**, at **§7** (page-2, lines 17-20) defers priority to "Interstate Emergency Management Assistance Compact – ***Equipment***," at **MCL 3.991 – 3.994**; and the generic "Emergency Management Act" at **MCL 30.401 – 30. 421** – but ***not*** the EMA – ***Personnel***, cited above. By rules of law, the specific *inclusion* of the other two laws – along with the specific *exclusion* of the EMA-***Personnel***, means that the Bill's sponsors are moving to explicitly water down and modify the original statute – without actually repealing it.

Second, it then becomes clear that the intent of the Bill is to permit *local* Michigan governments to unilaterally contract with out-of-state ***private*** companies/contractors to provide "emergency" aid to the Michigan political subdivision – such as hiring "private security police" from Indiana to come into Michigan and act as pseudo-"Michigan" peace officers. See **§3** of **HB-4838**, at page-3, lines-9-13. In days of old, this would be akin to the mining companies "calling in the Pinkerton security forces" to break the labor strikes of coal miners in Pennsylvania and Colorado.

It also would permit the local Michigan communities to hire out-of-state local governments and private companies, to have those personnel provide services in Michigan communities for "*planned events*" instead of "emergencies" – see **§3**, at page-3, lines 1-5.

Third, there are stark differences in the language of **HB-4838** and the Interstate Emergency Management Assistance Compact {"the **IEMAC**"} at **MCL 3.991 – 3.994**. The **IEMA** specifically states that the State of Michigan will agree that:

> **ARTICLE III**: It shall be the responsibility of **each party state** to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. **MCL 3.991** (My emphasis)

HB-4838, on the other hand, contemplates "training" between the local Michigan political subdivision and the out-of-state participants (including private companies).

Fourth, the **IEMAC** specifically states:

> **ARTICLE VIII**: Each party state shall provide for the ***payment of compensation*** and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state. **MCL 3.991** (My emphasis)

HB-4838, however, explicitly permits local Michigan subdivision to contract **and pay for** out-of-state services, given that the "private corporations" as included in the Bill will not enter the State to perform work for free. **HB-4838** states that "no employment relationship" is created with the out-of-state workers – in other words, they would be independent contractors:

> All pension, relief, disability, death benefits, worker's compensation, and other benefits enjoyed by emergency responders rendering emergency mutual aid shall extend to the services they perform outside their respective jurisdictions as if those services had been rendered in their own jurisdiction. **§-6**, page-4 at lines 5-16.

Note that "***compensation***" is not included the Bill's language – making it clear that the legislation is to contract out services to out-of-state private companies to perform public law enforcement work inside the Michigan local communities. The Bill would permit this by by-passing the requirement that ***the State*** invoke the state of emergency – such as in the **IEMAC**.

HB-4838 would give the local Michigan subdivision the option to ignore already-existing statutes for mutual aid agreements with a *bona fide* law enforcement agency in a physically adjacent state, such as Indiana. **MCL 3.371 – 3.734** (310 PA 2000).

Note also that **MCL 3.371** *et seq* is also specifically excluded from the language in **HB-3848** at **§7**, page6, lines17-20. The exclusion means that **HB-4838** intends to modify that statute, as well.

Fifth, the Bill intends to grant sovereign immunity to out-of-state privately-contracted persons who enter into the Michigan subdivision for "emergencies" ***or*** "planned events." The immunity would also extend to "training" exercises with privately-contracted personnel from other states. See **§5**, page- 3 at lines 24-27; and page-4 at lines 1-4.

All other mutual aid acts grant immunity to only the ***public*** employees of the State that is sending its personnel into Michigan. It is therefore not a problem to extend the State of Michigan's

sovereign immunity to the ***public*** employees of the State that is sending the mutual aid – see **Article VI** of the **IEMAC**, at **MCL 3.991**. By definition, the ***sovereign*** immunity of a State cannot be granted to a ***private*** employee or independently-contracted individual.

Sixth, each local Michigan county and municipality ***already*** has the power to declare a "local state of emergency" whenever circumstances "indicate that the occurrence or threat of widespread or severe damage, injury, or loss of life or property from a natural or human-made cause exists ....." **MCL 30.410(b).**

HB -4838, by its proposed definition of "*mutual aid emergency*" explicitly tries to create a sub-category of "emergency" below the definition contained in **MCL 30.410(b)** be eliminating the word "***severe***." It states, in fact, that the self-declared "local emergency:"

> " ... ***does not include*** a situation that initially raises to the level of disaster or emergency requiring a local or state of declaration of emergency or disaster ... **{MCL 30.410(b)}**" (My emphasis)

Yet the Bill claims that a "*mutual aid emergency*" means an "***immediate risk*** to health, life, property, or the environment ...." Normally, one those conditions would be the exact reason to declare a local emergency under **MCL 30.410(b).**

Under that current law, however, the local community executive cannot extend the ***local*** state of emergency past 7-days without the consent of its local governing body (council, commission, etc).

HB-4838 attempts to circumvent that time limit by having "the local governmental body having jurisdiction over the situation ...." decide to declare a "*mutual aid emergency*" for any indefinite time span ***before*** an event occurs – again, specifically defining an "emergency" to include ***planned*** events.

The Bill then completely ignores all available ***in-state*** mutual aid and permits the local government to immediately hire out-of-state contractors to come into the community with complete authority and immunity.

There is no "ladder of priority" to determine where the so-called "aid" is to be first obtained. And, the Bill makes no distinction between those border communities of Michigan that touch Indiana, Ohio, and Wisconsin. By the Bill's language, Wayne County: the city of Flint: or a township in Isabella County could have "mutual aid" contracts with any other State in the Union – or any private security company within those 49-States.

After this initial review – and for all of these reasons – I foresee the distinct probability that Michigan's local and State law enforcement agencies and officers will inherit numerous legal and practical problems from the language and intent expressed by **HB-4838**. Please do not hesitate to contact me with your concerns and inquiries as this Bill is examined by the Legislature.

Sincerely,

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