

SFA

BILL ANALYSIS

~~RECEIVED~~

MAY 22 1987

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373 5383

Mich. State Law Library

Senate Bill 218 (as reported with amendments)

Sponsor: Senator Vern Ehlers

Committee: Local Government and Veterans

Date Completed: 5-6-87

RATIONALE

According to a Veterans of Foreign Wars report, some medical experts believe that all men and women who served in Vietnam, including medical and civilian personnel, may have been exposed to dioxin (a by-product of Agent Orange) either directly through spraying or through contamination of food and water. Many of these people have complained about their medical problems and birth defects in their children since returning from the war. In response to these complaints, the Veterans Administration (VA) offers a free Agent Orange screening to any veteran who requested it and maintains a registry of those veterans. In a report issued in October 1982, however, the General Accounting Office was highly critical of the VA's conduct of certain aspects of the screening and recommended that the registry be scrapped because it was so inadequate. Many Vietnam veterans have become frustrated with government delays in moving toward a resolution of the Agent Orange matter and with what they perceive as a lack of concern and compassion for themselves and their children by many Federal agencies, especially the VA. Reportedly, of the hundreds of Agent Orange claims brought by veterans since the war, only 13 claims have been allowed, with the remainder either having been rejected or placed in abeyance by the VA.

These frustrations have resulted in an effort on the part of veterans' organizations to seek resolution of the Agent Orange problem at the State level. Since 1980, 21 states have established Agent Orange commissions or programs to help refer veterans to the proper medical facilities for diagnosis, to collect data, and to report on the health effects of Agent Orange. It has been proposed that Michigan create such a program to help the 380,000 Vietnam veterans who reside in this State, and to make Federal compensation more accessible to veterans.

CONTENT

The bill would amend the Public Health Code to:

- Create within the Department of Public Health the Agent Orange Commission and the Agent Orange Information Resource Center.
- Describe the membership of the Agent Orange Commission, members' terms of service, and requirements for the Commission to hold meetings.
- Prescribe the duties of the Agent Orange Commission and the information resource center.
- Require the Department to refer Vietnam-era veterans to appropriate State and Federal agencies in order to file claims for medical and financial problems caused by exposure to Agent Orange or a chemical agent.
- Provide for the Department to promulgate rules to implement the bill.

The bill would take effect on Memorial Day, May 30, 1987, and is tie-barred to House Bill 4460 (discussed below).

Agent Orange Commission

The Agent Orange Commission would be required to do all of the following:

- Review the toxicological and epidemiological literature on herbicide compounds and their by-product contaminants of the type used by the armed forces used during the period prescribed in House Bill 4460, i.e., between January 1, 1961, and September 1, 1973.
- Review and publicize the Department's public information program directed at Vietnam-era veterans who had been exposed to Agent Orange, a chemical agent, or other herbicide mixtures that contained dioxin. ("Agent Orange", "chemical mixture", and "Vietnam-era veteran" would be defined in House Bill 4460.)
- Review the Department's programmatic and research activities and provide recommendations to the Department, the chairpersons of the committees of the Senate and House of Representatives for legislation concerning veterans and other appropriate governmental offices, as to the Department's ongoing investigations of the adverse effects on human health of Agent Orange, chemical agents, and other herbicide mixtures that contained dioxin.
- Advise and assist the Department in the bill's implementation.

Commission Membership

The Commission would be composed of 14 members who would include the director, or his or her designee, the Attorney General, or his or her designee, and the following members who would be appointed by the Governor, with the advice and consent of the Senate:

- A representative of the Michigan Veterans Trust Fund.
- Four researchers who were experts in the fields of cytogenetic evaluations, birth defects, immunological studies, neurological studies, toxicology, oncology, or other fields relevant to the purposes of the bill whose knowledge could contribute to the bill's implementation.
- Five Vietnam-era veterans, at least one of whom would have to be a female.
- Two representatives of the general public, one of whom would have to be appointed from a list of nominees provided by the Senate Majority Leader and one from a list provided by the Speaker of the House.

Each member would serve for a two-year term and could be reappointed once. A vacancy would have to be filled in the same manner as the original appointment for the duration of the unexpired term.

S.B. 218 (5-6-87)

Commission Meetings

Commissions members would be required to elect a chairperson annually and to meet at least four times each year at the call of the chairperson. The first meeting would have to be held no later than three months after the bill's effective date.

Commission members would be required to serve without compensation, but would be reimbursed for their "necessary" travel expenses in order to attend the Commission meetings.

The Commission would be subject to the Open Meetings Act and the Freedom of Information Act.

Agent Orange Information Resource Center

The Agent Orange Information Resource Center, created within the Department, would be required to have members with expertise in human medicine, toxicology, epidemiology, and data management and analysis.

The information resource center would be required to:

- Perform searches of technical documents and published scientific literature and maintain a registry of all known ongoing Agent Orange-related research. The center, with appropriate "extramural" consultation, would be required to develop the survey questionnaires, data base management system, and the medical analysis system for the registry. These information resources would have to be used in the annual analysis of data on Vietnam-era veterans and in providing the annual reports required in House Bill 4460.
- Solicit State and local media organizations to inform Vietnam-era veterans of their rights under the bill and to encourage Vietnam-era veterans to submit health information, and other relevant information, to the Department, Commission, and information resource center as required under the bill.
- Provide local health and veteran's facilities with a comprehensive and annually updated list of tertiary medical care facilities as defined in the health code (MCL 333.22108), specializing in areas appropriate for the clinical laboratory evaluation of veterans to determine if a Vietnam-era veteran had suffered physical damage as a result of "substantial" exposure to Agent Orange or a chemical agent.
- Annually request local veterans' organizations and health agencies to evaluate the operation of the center's program from their perspective.

Claims

The Department, through the information resource center or otherwise, would be required to refer Vietnam-era veterans to appropriate State and Federal agencies for the purpose of filing claims to seek remedies for medical and financial problems caused by the Vietnam-era veterans' exposure to Agent Orange or chemical agents.

Tie-Bar

House Bill 4460, to which Senate Bill 218 is tie-barred, would amend the Public Health Code to require the Department of Public Health, in cooperation with the proposed Commission, to conduct toxicological studies on a sample of Vietnam-era veterans to establish their exposure to Agent Orange or a chemical agent; to study the causes of death among Vietnam era veterans; and to conduct epidemiological studies on a sample of Vietnam-era veterans who have a history of cancer or other medical problems associated with exposure to Agent Orange or a chemical agent, or who have children with birth defects after the veteran's exposure.

The Department also would be required to establish a birth defects registry, to maintain comprehensive statewide records of all information reported to the registry, to evaluate the information reported to the registry, to publish public reports summarizing the information collected, and to establish counseling sources and counseling and referral services for veterans and their dependents.

"Chemical agent" would mean "a chemical herbicide or defoliant other than Agent Orange, or a chemical weapon, which chemical herbicide, defoliant, or weapon is of the type used by the armed forces of the United States".

"Vietnam-era veteran" would mean "a person who served in the armed forces of the United States between 12:01 a.m., January 1, 1961, and 12:01 a.m., September 1, 1973, and who is a resident of this state or was a resident of this state at the time of induction into the armed forces".

"Department" would refer to the Department in cooperation with the Veterans' Services Offices.

Proposed MCL 333.5731-333 5747

BACKGROUND

Dioxin

Dioxin, one of the most lethal synthetic chemicals, is a trace by-product of Agent Orange, a herbicide that the United States sprayed in Vietnam and parts of Cambodia and Laos to defoliate jungle areas. Approximately 20 million gallons of herbicides were sprayed throughout these Southeast Asian countries from 1962-71. Of the that total, Agent Orange 1 and 2 made up more than 11 million gallons. Also used were approximately nine million gallons of Agents Purple, Green, and Pink—which were similar in chemical composition to Agent Orange—plus less than one million gallons of Agent White, another herbicide, and Agent Blue, a form of arsenic. In 1984, the U.S. Congress passed legislation that allows disability compensation for certain diseases believed to be linked to dioxin exposure.

Vietnam Veterans Agent Orange Pilot Program

Public Act 209 of 1986, which made appropriations for the Department of Public Health, mandated that the Department "develop a plan for the implementation of the Vietnam Veterans Agent Orange Program". The Department was required to submit a plan by January 1, 1987, to the Senate and House appropriation subcommittees on public health, the Department of Management and Budget, and the Senate and House Fiscal Agencies.

The Agent Orange Pilot Program has been implemented in the Department's Center for Environmental Health Sciences (CEHS) in order to investigate and aid the State's Vietnam veterans with herbicide exposure. The center's Herbicide Working Group recommended the following objectives for the \$150,000 appropriated in 1986-87 for the pilot program:

- To establish a "Herbicide Information Center" within the CEHS to provide up-to-date information on the possible health effects of herbicide exposure to veterans, their families, and the medical community.
- To create a confidential "cohort registry" of Vietnam-era veterans.
- To perform a limited health survey of Vietnam veterans and their families to obtain their occupational, family, and medical history.
- To pilot further studies by using the Vietnam veterans registry to investigate the causes of morbidity, mortality, disability, the personal needs of the Vietnam veteran, and specific medical conditions selected from the

MORE

findings of completed and ongoing health studies of veterans.

- To develop recommendations for a continuing Vietnam veterans investigation health advice program, and interventions as knowledge changes on the health effects of herbicides on humans.

(The last two objectives, according to the Department, are contingent upon the enactment of Senate Bill 218 and House Bill 4460.)

FISCAL IMPACT

The bill would have no fiscal impact on local governments and would result in an indeterminate increase in costs to the Department of Public Health that would probably total less than \$520,000. Page 5 of 8 pages The cost of the Agent Orange Commission proposed in the bill would depend on the number and length of meetings held and the distance each Commission member would have to travel. Costs probably would be less than \$20,000, based on the experience of similar commissions.

The costs associated with the Agent Orange Information Resource Center that the bill would mandate would depend on the response rate to survey questionnaires, time and staff required to analyze survey responses, and the extent to which these new activities could be supported through existing resources. Based on the costs of similar Department programs and the types of expertise the bill would mandate, the cost of the Agent Orange Information Resource Center probably would be less than \$500,000. In the December 30, 1986, progress report and plan of the Department of Public Health Vietnam Veterans Agent Orange Pilot Program, the cost estimate for an Agent Orange program similar to the total program defined in this bill and House Bill 4460 was approximately \$450,000.

ARGUMENTS

Supporting Argument

Dioxin is one of the most lethal synthetic chemicals. Virtually everyone (whether civilian or military personnel) who was in Vietnam at the time of the spraying of Agent Orange was exposed to the chemical either directly or through contamination of food and water. Understandably, Vietnam-era veterans are concerned about health risks that they and their families could face. Although more than 10 years have passed since the end of the Vietnam conflict, veterans groups contend that the Veterans Administration has recognized only 13 Agent Orange-related claims filed throughout the country—all of them for chloracne, which is an intense form of skin acne. The VA either rejected or has held up any decision on hundreds of other claims.

The fact that 47 railroad workers exposed to dioxin have been awarded nearly \$58 million in damages in a suit against the Norfolk and Western Railway makes the Federal government's rejection of Agent Orange claims seem that much more uncaring.

Documentation and consolidation of information gained through an organized data system, as would be established under the bill, could be used to improve the understanding of the effects of human exposure to Agent Orange and other chemicals. A statewide reporting and referral system would aid veterans in receiving the medical diagnosis and treatment they may need.

Supporting Argument

Approximately 380,000 Michiganders served in the armed forces during the Vietnam conflict, and, of that total, approximately 120,000 military personnel from Michigan served in Vietnam. This is the third highest population of Vietnam-era veterans among all the states. Many of the

veterans believe the VA has not acted in good faith in dealing with the Agent Orange issue. Senate Bill 218 would confirm the State's support of the veterans' concerns and would convey the State's appreciation for their service in the armed forces.

Supporting Argument

Agent Orange is chemically related to polybrominated biphenyl (PBB) and polychlorinated biphenyl (PCB), which caused a major contamination problem for some Michigan farmers in the late 1970s. Since these chemicals exhibit similarities, such as accumulating in the fatty tissues of the body, research into human exposure to Agent Orange could be beneficial to the total research efforts on the affects of dangerous chemicals to the population as a whole.

Supporting Argument

A recent ruling of the U.S. Court of Appeals, in New York, only heightens the need for states to assist Vietnam veterans exposed to Agent Orange. The appeals court affirmed the \$180 million settlement that was reached in the class action suit on behalf of 2.4 million veterans against seven chemicals companies cited as producers of Agent Orange. The Federal government had been removed from the case on the basis that a person could not sue the government if he or she was injured in the course of serving in the armed forces. Vietnam veterans, angered by the ruling and removal of the Federal government from the case, are turning to the states for assistance through such efforts as Senate Bill 218.

Supporting Argument

Last year, the Legislature appropriated \$150,000 to the Department of Public Health to implement a registry of veterans in the State who served in Vietnam. Senate Bill 218, along with House Bill 4460, is needed to extend the Department's efforts beyond merely gathering information to conducting studies on the effects of Agent Orange and developing recommendations for a continuing health advice program for these veterans.

Opposing Argument

The bill is not necessary since it would duplicate many of the efforts already undertaken by the Veterans Administration. The VA started Agent Orange screening in 1978 and Congress passed a law in 1980 to continue this screening. So far, more than 200,000 Vietnam veterans have undergone physical examinations. The VA also has developed a national Agent Orange registry that is designed to identify Vietnam veterans who are concerned about exposure to Agent Orange. Currently, a veteran who believes that he or she had been exposed to Agent Orange, can obtain from the VA a physical exam; receive medical care at a VA medical center without having to establish a relationship between the medical problem Agent Orange exposure; request compensation for ailments directly related to Agent Orange exposure, and be included in the VA's Agent Orange registry. In addition, the VA has formed a national advisory committee on Agent Orange and conducts ongoing research into the effects of Agent Orange. Two major research efforts by the VA include the "Ranch Hand" study, which examines Air Force personnel who were in direct contact with Agent Orange, and research done in conjunction with the Center for Disease Control on Agent Orange exposure to military personnel and the effects on their offspring. The VA is doing everything possible to deal with Vietnam veterans' health concerns and is conducting research on long-range health problems resulting from exposure to Agent Orange.

Response: While the VA claims that a Vietnam veteran can request compensation for an ailment directly related

to Agent Orange exposure, only 13 claims made solely for chloracne have been approved. The VA contends that there is no scientific evidence clearly linking Agent Orange exposure to health problems, except for chloracne. As a result, Vietnam veterans are not eligible for Federal disability compensation for exposure to Agent Orange. Information gathered from Agent Orange efforts in Michigan, as proposed in the bill, might go along way in compelling the VA to acknowledge the direct relationship between Agent Orange exposure and serious health problems. Vietnam veterans then might be able to receive the compensation they deserve.

Opposing Argument

States do not declare war nor do they use chemical weapons. The question of Agent Orange exposure and Vietnam veterans is an issue of the Federal government. The State cannot afford to take on a responsibility that it should not have had in the first place.

Response: Despite the passage of more than 10 years since the end of the Vietnam conflict, many veterans are frustrated over what they see as a lack of concern and action by the VA. Some veterans contend that the VA never will acknowledge the direct link between Agent Orange exposure and severe health disorders because, in doing so, the Federal government would be admitting to the international community that the United States employed a form of chemical warfare in the Vietnam conflict. While veterans' matters are the concern of the Federal government, states must become involved in order to prod the Federal government into resolving the issue.

Legislative Analyst: L. Arasim

Fiscal Analyst: P. Graham

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.