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BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4460 (as reported with amendments)**Sponsor: Representative Jerry C. Bartnik****House Committee: Military and Veterans Affairs****Senate Committee: Local Government and Veterans****Date Completed: 5-26-87****RECEIVED****JUN 11 1987**

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RATIONALE

Vietnam veterans claim that a number of health problems that they and their families have experienced are the result of the veterans' exposure in Southeast Asia to the powerful chemical defoliant Agent Orange, a combination of two herbicides and a toxic by-product, dioxin. These health problems include numbness, tingling and intermittent paralysis in the arms and legs; skin rashes (including chloracne, a severe skin condition); liver disorders; kidney damage; loss of sex drive; psychological disturbances (including insomnia and radical mood changes); increased susceptibility to infections (immunosuppression); loss of appetite and weight; weakness; cancers (including rare, soft-tissue cancers); and reproductive health problems such as miscarriages, stillbirths, and birth defects in children born after the fathers returned from Vietnam.

The Federal government has refused to pay disability claims for exposure to Agent Orange on the grounds that there was no documented scientific proof of a causal relationship between exposure to dioxin and any disease other than chloracne. In the early 1980s, Congress passed a law that required the Veterans' Administration (VA) to treat some conditions associated with dioxin exposure, such as chloracne and liver disorders, as "presumptive disabilities". The VA also was required to establish a free Agent Orange screening program and registry for veterans. A report issued by the U.S. General Accounting Office was highly critical of the VA's conduct of the screening and recommended that the registry be scrapped because it was so inadequate. In addition, the VA was required to conduct comprehensive studies, but reportedly has not. Instead, the Federal Centers for Disease Control have taken over this function and reportedly are in the process of completing a validation study to demonstrate a correlation between exposure to Agent Orange and dioxin levels in the body before embarking on a much larger study.

Frustrated by the Federal government's failure to address their concerns about Agent Orange exposure, Vietnam veterans across the nation began taking a number of steps to resolve some of these issues themselves. A class action product liability lawsuit was filed against seven chemical manufacturers of Agent Orange (including Dow Chemical Company of Midland) in January 1979. In 1984 the lawsuit was settled out of court for \$180 million, but the settlement was contested by some veterans' groups. The U.S. Court of Appeals, in New York, recently affirmed the \$180 million settlement, but the Federal government had been removed from the case. Angered by the ruling and removal of the Federal government, Vietnam veterans are turning to the states for assistance. Since 1980, when New Jersey became the first state to create an Agent Orange

commission, as many as 28 state projects or commissions have been established, though not all of them currently are in operation. In Michigan, various veterans groups have proposed that the State conduct certain epidemiological studies on Vietnam veterans, maintain a birth defects registry, and provide referral services to veterans seeking counseling about their concerns with Agent Orange.

CONTENT

The bill would amend the Public Health Code to add Part 57, entitled "Exposure to Chemical Herbicides", under which the Department of Public Health, in association with a proposed Agent Orange Commission, would be required to conduct certain epidemiological studies on Michigan Vietnam-era veterans. The bill also would do the following:

- Require the Department to establish a birth defects registry.
- Require the Department to provide referral services for Vietnam-era veterans and their dependents who wanted counseling or referral.
- Authorize the Attorney General to bring a class action suit on behalf of Vietnam-era veterans for the release of medical records or other information concerning Agent Orange exposure.

"Vietnam-era veteran" would mean a person who served in the U.S. armed forces between 12:01 a.m., January 1, 1961, and 12:01 a.m., September 1, 1973, and who met either of the following criteria:

- Had been a resident of the State continuously since the effective date of the bill.
- Was a resident of the State at the time the veteran began participating in the testing or other activities under the bill, and was a State resident at the time of induction into the U.S. armed forces.

The bill would take effect Memorial Day, May 30, 1987. It is tie-barred to Senate Bill 218, which would create an Agent Orange Commission and an Agent Orange Information Center.

Epidemiological Studies

The Department of Public Health (DPH), in conjunction with the proposed Agent Orange Commission, would be required to conduct a number of epidemiological studies on Vietnam-era veterans, and to publish an annual report that compiled and analyzed the information gathered from the studies and that recommended further actions to the Commission. The report would have to be distributed to

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veterans' organizations, the Federal Centers for Disease Control, the chairpersons of the Senate and House committees responsible for legislation concerning veterans, and other appropriate governmental offices. Unless the report disclosed the identity of individuals who did not consent to the disclosure, the report would be available to the public under the Freedom of Information Act.

The Department would be required to conduct the following studies:

- 1) Toxicological studies designed to establish the exposure of Vietnam-era veterans to Agent Orange or other chemical agents. In conducting these studies, the DPH would have to analyze specimens for dioxin in combination with a review of veterans' military service locations. Information from these studies would have to be compiled in a report that would have to be submitted for review and publication by the Agent Orange Commission. No veteran would be required to participate without first giving written consent.
- 2) A study of the causes of death among Vietnam-era veterans, based on information gathered from the Department's vital statistics records and from the Agent Orange registry data base (that would be established and maintained by the Agent Orange Commission). Information obtained from this study would serve as the foundation for further studies on the relative incidence of disease among Vietnam-era veterans.
- 3) Studies of Vietnam veterans who have a history of cancer or other medical problems associated with exposure to chemical agents (including Agent Orange), or who have children born with birth defects after the veterans' suspected exposure. Levels of dioxin in the veteran's blood serum would have to be established in these studies. The DPH would have to obtain prior written consent from each veteran to be studied under these studies.

Birth Defects Registry

The Department would be required to establish a birth defects registry in order to: provide information on birth defects among Vietnam-era veterans and their families, and among the general population; determine possible associations between these occurrences and exposure to environmental hazards such as Agent Orange; and develop strategies to reduce the incidence of birth defects among Vietnam-era veterans, their families, and the general population.

Each diagnosis of a birth defect and any information relevant to such an incident would have to be reported to the DPH. Reporting would have to begin not later than the next calendar year after the bill's effective date. The Director would be required to establish by rule the kind of information that was to be reported to the registry. The DPH would be required to maintain comprehensive statewide records of all information reported to the birth defects registry.

Within two years after the bill's effective date, the Department would have to begin evaluating the information reported to the registry. The DPH also would have to publish and make available to the public reports summarizing the information collected, and to publish the first such report not later than 180 days after the end of the first two full calendar years following the bill's effective date.

Confidentiality

The bill specifies that information reported to the birth defects registry, and medical information gathered about

an individual under the bill, would be subject to the same requirements of confidentiality as provided in the Code for data or records concerning medical research projects.

Counseling Services

In conjunction with veterans' counseling sources, the DPH would be required to provide referral services for Vietnam-era veterans and their dependents who desired counseling or referral.

Class Action Suits

The bill would authorize the Attorney General, on behalf of the Vietnam-era veterans in the State who may have been injured by chemical agents while serving in the U.S. armed services, to sue the Federal government or any other party for the release of individual veterans' medical records or of information concerning exposure to Agent Orange or other chemical agents.

Proposed MCL 333.5701-333.5725

BACKGROUND

Dioxin refers to a family of chemicals that includes 75 compounds, the most toxic of which and the one that has caused the most concern (as in the case of Agent Orange) is 2,3,7,8-tetrachlorodibenzo-para-dioxin, or TCDD, a very stable compound. TCDD tends to persist in the environment and to break down very slowly in the body. The dioxins usually are the unwanted by-products of chemical reactions used to make the herbicides Silvex and 2,4,5-trichlorophenoxyacetic acid (known as 2,4,5-T); chlorophenols, such as the wood preservative pentachlorophenol; and the antibacterial agent hexachlorophene (which was banned in soaps and deodorants in 1972 after it was shown to cause brain damage in baby monkeys). Dioxin also is released into the atmosphere when wastes that contain chlorinated compounds are burned. These wastes can be domestic trash burned in municipal trash incinerators (including so-called "waste-to-energy" incinerators) or chemical refuse burned in chemical waste incinerators.

The TCDD form of dioxin is the most toxic synthetic organic chemical known, and it ranks with naturally occurring substances as the fourth most deadly poison. (Only the toxins made by the bacteria that cause botulism, tetanus, and diphtheria are stronger.) Research reportedly indicates that, assuming that humans are as sensitive as guinea pigs to dioxin exposure, one ounce of TCDD could constitute a lethal dose for more than 675,000 average-sized adults.

Despite its known toxicity, much about dioxin's action on the body remains unknown. The herbicides now associated with Agent Orange (and the contaminant dioxin) were first developed at the end of World War II, but dioxin (TCDD) was not identified until 1957. Once dioxin had been synthesized and identified, scientists began to study its effects in laboratory animals. The lethal dosage of dioxin for laboratory animals, adjusted for body weight, varies among species by factors as high as 5,000; therefore, most of the information of its effects on humans has been taken from industrial accidents and, more recently, agricultural exposures.

The U.S. Air Force estimates that 17.4 million gallons of herbicides used in South Vietnam and Laos between 1962 and 1971, including Agent Orange, contained 368 pounds of dioxin. (Mixtures of different proportions of the herbicides 2,4,5-T and 2,4-D became known as Agents Orange, Blue, Pink, White, Green, and Purple.) The Federal Centers for Disease Control have reported that significantly higher amounts of Agent Orange were distributed by the armed forces in Southeast Asia than what was reported.

SENATE COMMITTEE ACTION

The Senate Committee on Local Government and Veterans adopted an amendment to the bill to remove specific reference to stillbirths and miscarriages from information to be gathered for the birth defects registry. Committee amendments also establish residency requirements for participants in the program, as well as require the Department of Public Health to provide referral services to veterans seeking counseling, instead of requiring the Department to provide the counseling.

FISCAL IMPACT

In preparing this analysis, both the provisions of this bill and the tie-barred Senate Bill 218 were taken into consideration. Since the staff expertise needed to perform the activities specified in House Bill 4460 is provided for in Senate Bill 218, it was difficult to separate the costs of the two bills. The bills 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 \$500,000. Costs would depend on the sample size for the toxicological and epidemiological studies; the number of births and birth defects reported to the registry proposed in the bill; the extent to which the Department contracted for required services or activities; and the extent to which activities could be absorbed within existing resources.

ARGUMENTS

Supporting Argument

Many Vietnam veterans who were put at risk physically through their exposure to extremely toxic chemicals in Southeast Asia have faced resistance and even hostility, in their attempts to learn about the aftereffects of their chemical exposure.

The Federal government has resisted veterans' claims of having been harmed by their exposure to the chemicals used in the war in Southeast Asia by insisting that the only proven link between exposure to one of these chemicals—dioxin—is the severe but nonfatal skin disease known as chloracne, despite the known fact that dioxin is the most deadly synthetic poison. The Federal government has been reluctant to act on the Agent Orange issue. Many veterans have given up waiting for Federal action and turned to the states, requesting that they embark on their own investigations. As a result, a number of states have established programs to collect data related to the effects of Agent Orange exposure. For example, New Jersey's Agent Orange Commission has discovered that the levels of dioxin in the blood and fat of exposed veterans it studied were 10 times higher than those of two control groups. The New Jersey findings reportedly provide "compelling evidence" that dioxin lingers in the body as long as 20 years after exposure.

Now is the time for Michigan to act, especially since other states have taken action in the face of Federal inaction. The efforts to address the aftermath of exposure to herbicides and dioxin during the Vietnam war have accelerated, including the formation of the National Association of Agent Orange Programs to coordinate states' activities and share research findings. Michigan should be an integral part of this process. The knowledge and expertise developed from this research would benefit not only the affected veterans and their families, but also the population at large, which has been exposed to many of the same chemicals and compounds through agricultural and lawn herbicides. Even though the states alone may not be able to resolve all of the concerns surrounding the Agent Orange issue, the states should act to take a leadership position by conducting research on Agent

Orange and pressing for appropriate action at the Federal level.

Opposing Argument

While there is sympathy for the plight of Vietnam veterans and their concern about exposure to Agent Orange, this is a Federal, and not a State, issue. The State should make every effort, short of establishing a research program such as that proposed in the bill, to convince the Federal government of its responsibility in resolving the Agent Orange issue. The State cannot afford to take on a responsibility that rightfully belongs to the Federal government.

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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.