



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

OFFICE OF POW-MIA AFFAIRS

**House Bill 5495 (Substitute H-2)
First Analysis (1-17-96)**

**Sponsor: Rep. Alan Cropsey
Committee: Senior Citizens and Veterans
Affairs**

THE APPARENT PROBLEM:

In 1993, twenty years after the Paris Peace Accord ended the war in Vietnam, Michigan adopted a House Concurrent Resolution (HCR 185) in an attempt to end the controversy surrounding those American military personnel -- including 72 persons from Michigan -- who remained listed as "missing in action (MIA)" or as prisoners of war (POW). HCR 185 alleged that the civil rights of the Michigan POW-MIAs had been violated and requested that the attorney general file suit in the U.S. Supreme Court against the U.S. government and the representatives of Vietnam, Laos, Cambodia, China, and Russia, demanding the release of documents concerning the 73 Michigan personnel. Reportedly, no action has been taken by the attorney general. Many still believe that states should take an active role in this matter. It is felt by some that the solution lies in creating an official ombudsman to work with the families of those listed as POWs or MIAs, represent them in dealings with the federal government, and, where necessary, initiate lawsuits on their behalf concerning the person's status as a POW-MIA. Consequently, it is proposed that an office be created within the Legislative Council to handle POW-MIA affairs for this purpose.

THE CONTENT OF THE BILL:

The bill would create an office of POW-MIA Affairs within the Legislative Council. "POW-MIA" would be defined as "a person designated by the federal government as a prisoner of war, a person reported in missing status, or a person determined dead under Chapter 10 of Title 37 of the United States Code, 37 U.S.C. 551 to 559, while serving in or with the Armed Forces of the United States."

Administrative Officer's Responsibilities. The Legislative Council would be required to appoint an administrative officer who would be permitted to administer oaths and subpoena witnesses in matters brought before the office. The officer would perform

the following duties for a resident, former resident, or family member of a resident of the state:

*Investigate claims and review evidence, remains, or information regarding the person's status as a POW-MIA.

*Notify the next of kin of each POW-MIA of the office's purpose, and obtain a determination from the U.S. Department of Defense on whether each person was officially listed as a POW-MIA.

*Seek assistance or information on the person's status as a POW-MIA from members of the state's Congressional delegation.

*Annually report all relevant information to the legislature.

All writings, except those deemed by the administrative officer to be confidential or to identify sources of confidential information, that were prepared, owned, used, in the possession of, or retained by the administrative officer in the performance of an official function would be subject to the Freedom of Information Act (MCL 15.231).

Office of POW-MIA Responsibilities. The office could, upon a concurrent resolution of the Senate and House of Representatives, do one or more of the following, to the extent provided in the resolution:

*Initiate a lawsuit against any entity, including the federal government, regarding a resident, former resident, or family member of a POW-MIA who is a state resident, concerning the person's status as a POW-MIA.

*Provide legal assistance and aid to a family member of a state resident who is a POW-MIA regarding information on the person's POW-MIA status.

MCL 4.1101 et al.

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FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the provisions of the bill would result in indeterminate costs to the state. The agency estimates that the staffing and travel costs for investigating claims regarding the status of POW-MIAs could potentially be quite considerable, since reviewing evidence, remains or information would most likely require travel to Washington, D.C., where the federal records are located, or travel to a foreign country where a POW-MIA was last known to be. In addition, since there it is estimated that there are 72 POW-MIAs from Michigan, then providing the Office of POW-MIA's services to family members could incorporate many people in country-wide investigations. (1-10-96)

ARGUMENTS:

For:

When the Vietnam War and the prolonged fighting in Cambodia and Laos ended, hundreds of American military personnel, including 72 persons from Michigan, were left behind as prisoners of war (POWs). In addition to those held in Southeast Asia, it was reported that some American personnel had been transported to Russia. Further, according to testimony before the House Senior Citizens and Veterans Affairs Committee by a former Laotian soldier, U.S. Air Force personnel are being hidden in Laotian camps, where their skills are put to use in repairing U.S. aircraft that were shot down during the war. Reportedly, many of the families of these prisoners suspect that the federal government has not attempted to negotiate their release; others maintain that Congress has been ineffective in its attempts to investigate and report on the problem. Others maintain that the federal government has been less than honest in providing an accounting of the missing personnel. There is, however, no "special interest group" to represent the relatives of missing POWs. The bill would respond to this predicament by creating an official ombudsman who would take an active role in helping family members of Michigan citizens seek out the truth about their husbands, sons, brothers, and father.

Against:

While it is difficult to deny the need of the families of prisoners of war for some accountability, the bill would seem to be unnecessary. First, it is impossible to guarantee the return of all personnel in any war. Second, it is unreasonable to assume that all the military personnel involved in the long, protracted conflict in Vietnam could ever be accounted for, since the value systems of our opponents in the war differ from those

held in the United States, and individual rights are not held sacred. For example, no clerks were employed to keep records of prisoners.

The provisions of the bill could also be prohibitively expensive to carry out. For example, if a Senate and House concurrent resolution were adopted according to the provisions of the bill, then the administrative officer appointed to head the proposed Office of POW-MIA Affairs would be authorized to "initiate a lawsuit against any entity" in investigating the status of Michigan prisoners of war or those declared missing in action. Under the provisions of the bill, it would seem that the officer could conceivably incur unlimited travel expenses -- both at home, and abroad -- in pursuing claims.

POSITIONS:

The Disabled American Veterans (DAV) supports the bill. (1-12-96)

The Paralyzed Veterans of America supports the bill. (1-12-96)

American Veterans of WW II, Korea, and Vietnam (AMVETS) has no position on the bill. (1-12-96)

The American Legion has no position on the bill. (1-12-96)

The Department of Military Affairs has no position on the bill. (1-12-96)

The Polish Legion of American Veterans U.S.A. favors a resolution of the missing POW problem, but does not support the provisions of the bill. (1-12-96)

The Veterans of Foreign Wars (VFW) opposes the bill. (1-12-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.