



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

REVISIONS TO EMERGENCY MANAGEMENT ACT

House Bill 5496 as enrolled
Public Act 132 of 2002
Second Analysis (4-5-02)

Sponsor: Rep. Gary A. Newell
House Committee: Commerce
Senate Committee: Local, Urban and
State Affairs

THE APPARENT PROBLEM:

Even before the tragic terrorist attacks of September 11, 2001, state emergency planners were working on a revision of the state's Emergency Management Act to address problems and concerns that had arisen with the act since its expansion in 1990. The act is designed to allow the state to deal with so-called disasters and emergencies. It spells out the duties of state and local governments and calls for the creation of emergency management plans at the state and local level. The events of September 11, however, put the dangers of terrorism at the forefront, and concentrated public attention on the need to deal with terrorist threats through the kinds of responses associated with declarations of a "heightened state of alert". A number of provisions related to increased awareness of the threat of terrorism have been added to legislation intended to improve the operations of the state's emergency management system.

THE CONTENT OF THE BILL:

The bill would amend the Emergency Management Act in the following ways.

- The governor would be authorized to declare a "heightened state of alert" when good cause existed to believe that terrorists or members of a terrorist organization were in the state or that acts of terrorism might be committed against the state or against a vital resource. Currently, the governor is able under the act to declare a state of disaster or a state of emergency. (See below.)
- The term "vital resource" as used above would refer to a public or private building, facility, property, function, or location, the protection of which is considered necessary to the public health, safety, and welfare and which the governor has designated, in writing, as a vital resource of the state.

- The bill would rewrite the provisions regarding immunity for those engaged in disaster relief in order to provide employees, agents, or representatives of the state or a political subdivision of the state, nongovernmental disaster relief force workers, and private or volunteer personnel engaged in disaster relief immunity from tort liability to the same extent as provided under the Governmental Immunity Act. (See below.)

- The director of each department of state government, and of any agency required by the state emergency management plan to provide an annex to that plan, would serve as emergency management coordinator for his or her respective department or agency. Currently, the act requires the directors to employ or appoint a coordinator. Instead, the bill would allow each director to appoint or employ a designated representative as emergency management coordinator, provided that the representative acted for and at the direction of the director while acting as coordinator upon the activation of the state emergency operations center or the declaration of a state of disaster or emergency.

- The bill would specify that for the purpose of states of disaster or emergency, the judicial branch of state government would be considered a department of state government and the chief justice would be considered the director of the department.

- The bill would require a public college or university with a combined average population of faculty, students, and staff of 25,000 or more, including its satellite campuses, to appoint an emergency management coordinator. Public colleges and universities with a combined average population of 10,000 or more could (but would not be required to) appoint a coordinator. The act currently requires a county board of commissioners to appoint an

House bill 5496 (4-5-02)

emergency management coordinator (although up to three adjoining counties can combine to do this); requires a municipality with a population of 25,000 or more to appoint an emergency management coordinator or appoint the county coordinator to serve in this role; allows a municipality of 10,000 or more to appoint its own coordinator; and allows a municipality of less than 10,000 to appoint a coordinator who would serve at the direction of the county coordinator. The act further allows a county coordinator to be appointed coordinator for any municipality within the county and allows a municipal coordinator to be appointed county coordinator.

- Currently, a state of disaster or state of emergency stays in effect for 14 days, and then the governor must declare it terminated or seek an extension for a specific number of days, which must be approved by the legislature. The bill would extend the time periods for a state of disaster or emergency to 28 days rather than 14 days. It also would specifically require any extension to be approved by resolution of both houses of the legislature.

- The bill would provide that if the governor had issued a proclamation, executive order, or directive related to a state of disaster or a state of emergency, the director of the Department of State Police could, with the concurrence of the governor, amend the proclamation or directive by adding counties or municipalities or terminating the orders and restrictions as considered necessary.

- The Division of Emergency Management within the Department of State Police would be authorized, in addition to its other powers, to propose and administer statewide mutual aid compacts and agreements.

- The bill would specifically include mitigation, preparedness, response, and recovery among the emergency management activities to be included in emergency management plans and updates of those plans, and would require that emergency management plans and programs include local courts.

- The emergency operation plans and programs of counties and municipalities would have to include provisions for the dissemination of public information, and local broadcasters would have to be consulted in developing such provisions.

- Currently, the act allows municipalities and counties to enter into mutual aid or reciprocal aid agreements or compacts with other counties,

municipalities, public agencies, and private sector agencies. The bill would add federally recognized tribal nations. The compacts are limited to the exchange of personnel, equipment, and other resources in times of emergency or disaster. The bill would allow the compacts in cases of other serious threats to public health and safety.

- Section 15 of the act, which created the Michigan Emergency Management Advisory Council, would be repealed. (This council had previously been eliminated by executive order in 1993.)

Heightened State of Alert. If a good cause existed to believe that terrorists or members of a terrorist organization were in the state or that acts of terrorism could be committed in the state or against a vital resource, the governor could by executive order or proclamation declare a heightened state of alert and subsequently exercise the same authority as for a state of disaster or state of emergency in an effort to safeguard the interests of the state or a vital resource, prevent or respond to acts of terrorism, or to help apprehend terrorists and those acting in concert with them. (However, the governor could not suspend or limit the sale, dispensing, or transportation of alcoholic beverages during a heightened state of alert.) Within seven days after declaring the heightened state of alert, the governor would have to notify the Majority Leader and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives of the declaration. The governor could use the services, facilities, and resources available under a declared state of emergency or disaster. The exercise of those powers would have to be consistent with the provisions of the state constitution and the federal constitution and could continue until the heightened state of alert was no longer in effect. The heightened state of alert would continue until the governor found that the threat or danger had passed, the state of alert had been dealt with so that the conditions no longer existed, or until it had been in effect for 60 days. After 60 days, the governor would have to terminate the state of alert unless a request for an extension for a specific number of days was approved by resolution of both houses of the legislature.

It would be a misdemeanor for a person to willfully disobey or interfere with the implementation of a rule, order, or directive issued by the governor related to a heightened state of alert. The misdemeanor would be punishable by imprisonment for not more than 90 days or a fine of not more than \$100 or both. However, a prosecuting agency could not prosecute anyone or seize any property for conduct

presumptively protected by the First Amendment to the U.S. Constitution in a manner that violated any constitutional provision. The attorney general or a prosecuting attorney could bring a civil action for damages or equitable relief to enforce the provisions of the act and the orders, rules, or regulations made in conformity with the act.

Immunity in Disaster Relief. Under the bill, the state or a political subdivision of the state engaged in disaster relief activity would not be liable for the death of or injury to a person or persons, or for damage to property, as a result of that activity. The employees, agents, or representatives of the state or a political subdivision, and nongovernmental disaster relief force workers or private or volunteer personnel engaged in disaster relief activity, would be immune from tort liability under Section 7 of the Governmental Immunity Act. (Generally speaking, that act provides immunity except when the conduct of the officer, employee, member, or volunteer amounts to gross negligence that is the proximate cause of the injury or damage.) The term "disaster relief activity" would include training for or responding to an actual, impending, mock, or practice disaster or emergency.

(This provision would replace the current immunity language in the act, which states that, except in cases of willful misconduct, gross negligence, or bad faith, employees, agents, or representatives of the state or a political subdivision, or any volunteer or auxiliary disaster relief worker or member of any agency engaged in disaster relief activity, complying with or reasonably attempting to comply with the act, or any order, promulgated rule, ordinance enacted by a political subdivisions relating to any precautionary measures, would not be liable for the death of or injury to persons, or for damage to property, as a result of that activity.)

Also, current language in the act applying exclusively to volunteer disaster relief workers or members of agencies engaged in disaster relief activity would be deleted. Instead the bill would say the state, any political subdivision of the state, or the employees, agents, or representatives of the state or a political subdivision would not be liable for personal injury or property damage by any person appointed or acting as a member of disaster relief forces.

The bill would take effect May 1, 2002.

MCL 30.403 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no apparent substantial fiscal impact, although there could be some administrative costs associated with new responsibilities for state and local governments and for public universities. The agency also points out that to the extent that new penalties were applied, local correctional costs would increase and fine revenue earmarked for local libraries would increase. (HFA fiscal note dated 2-11-02)

ARGUMENTS:

For:

The bill would make a number of changes to the state's emergency management system in recognition of increased concerns about terrorism and to address problems and concerns that have arisen in administering the Emergency Management Act since its most recent revision in 1990. The bill is considered to be a component in the multi-bill legislative package on terrorism introduced since the terrorist attacks of September 11. Among the improvements to current law are the following.

- In recognition of the need to make the emergency system operative when officials believe the threat of terrorism is imminent, the governor would be authorized to declare a "heightened state of alert", which could stay in effect for as long as 60 days. This would allow the governor and the emergency system to take precautions to protect the public and the state's critical infrastructure in advance of actual emergency or disaster. The governor would have the same powers and could use the same resources, facilities, and services, as are currently available under a state of emergency or state of disaster, in order to safeguard the state's interests and vital resources, prevent or respond to acts of terrorism, and apprehend terrorists. The state of alert could only be extended beyond 60 days with the approval, by resolution, of both houses of the state legislature.
- The bill would provide the same immunity from tort liability to disaster relief workers as now exists for officers, employees, members, and volunteers of governmental agencies under the Governmental Immunity Act.
- Currently, a state of emergency or disaster can stay in effect for only 14 days and then requires extension by the legislature. The bill would extend that time period to 28 days and would specifically require that both houses of the legislature pass a resolution in

order to extend the time period. This recognizes that sometimes the legislature may not be in session during the time when a state of emergency or disaster needs extending. The longer time period makes this less likely. The act currently provides no specific procedure for the legislature to use in extending a time period; the bill makes it clear that this must be done by resolution.

- The bill would bring both the courts, under the direction of the Michigan Supreme Court, and large public universities into the emergency management system, to make sure that there is proper coordination. As a result, universities would be treated much like municipalities are currently treated, with the largest required to appoint emergency management coordinators, and the judicial branch would be treated like a state department (with the chief justice of the state supreme court treated like a department head). State emergency officials say that the courts want to be involved in emergency planning and that local units often consider universities to be state agencies and may not include them in local emergency planning. While universities likely already engage in emergency and disaster planning, it is important that this be done within the overall emergency planning system, so that different entities are not working at cross purposes.

- Recently, Michigan joined an interstate compact that allows participating states to provide mutual assistance in case of emergencies and disasters, and the current state emergency law allows local units to enter into similar compacts. The bill, however, would specifically permit the Emergency Management Division of the Department of State Police to organize and administer statewide mutual aid compacts and agreements. Cooperation between state and local agencies is important in providing comprehensive and appropriately aligned emergency management services.

- Department directors would be the emergency management coordinators for their departments. They then could appoint a designated representative to carry out the duties of that office. Currently, each department simply must appoint an emergency management coordinator to act as a liaison to the Department of State Police's emergency management division. The bill would ensure that there was a direct link between a department director and the duties of the department's office of emergency management coordinator and would eliminate any intermediate lines of authority. In times of emergencies, disasters, and states of alert, it is important that each department's coordinator act

directly for and at the direction of the department director rather than having to go through a more complicated chain of command.

Against:

Some people have expressed misgivings about expanding the power of state agencies in the name of fighting terrorism or dealing with emergencies. This bill, for example, allows a heightened state of alert to remain in place for 60 days at the direction of the governor. That is a considerable length of time for the state government to be able to exercise emergency powers. While the legislature is given a role in extending such a state of alert, there is no provision allowing the legislature to shorten a state of alert or to override a governor's declaration. This might be a useful protection against abuses of executive power. (Moreover, the maximum duration, without legislative approval, of a state of emergency or a state of disaster would be increased from 14 days to 28 days. Similar concerns have been expressed about this.) In disasters, emergencies, and (with this bill) heightened states of alert, the government can suspend statutes and rules, control where people can travel, remove people from their homes and businesses, suspend the sale of firearms, and engage in a variety of other activities. Questions have also been raised about the penalties that would be imposed during heightened states of alert for willfully disobeying or interfering with the implementation of a rule, order, or directive issued by the governor. Additionally, questions have been raised about the impact of new requirements on public universities and questions about whether they have been consulted about these new requirements.

Response:

The bill contains provisions that aim to protect citizens from government actions that presumptively violate constitutional rights (and the legislation was strengthened in this regard as it moved through the legislative process). It should be noted that the penalties in the bill relating to heightened states of alert are consistent with those currently in the act for states of emergency and disaster.

Analyst: C. Couch

■ 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.