



**House
Legislative
Analysis
Section**

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**VOLUNTEER UNDERWATER
DIVERS; WORKER'S COMP**

**House Bill 5107 as introduced
First Analysis (2-20-02)**

**Sponsor: Rep. Jerry VanderRoest
Committee: Employment Relations,
Training and Safety**

THE APPARENT PROBLEM:

According to the *Kalamazoo Gazette*, the county government in Kalamazoo County for many years used a group of local volunteer divers, the Water Safety and Recovery Association, which helped recover the bodies of drowning victims. Then in 1996, a change in state law caused county officials to rethink their use of the volunteer dive team, and they decided the cost was too prohibitive, so they stopped. That year the state legislature adopted Public Act 460 of 1996, a bill that provided workers' compensation benefits to the volunteers who served on emergency rescue teams. See *BACKGROUND INFORMATION* below. Some interpreted the new law to mean that when a volunteer emergency worker was injured (for example a diver during a recovery dive) and could not work his or her regular job, the local unit of government on behalf of local taxpayers would be responsible for all worker compensation costs. Previously the costs had been borne by a volunteer's employer.

Kalamazoo County officials were advised in 1997 that compensation insurance costs for its volunteer dive team could reach as much as \$50,000 annually. The program was discontinued, and the county government now uses divers from Van Buren, Calhoun or Allegan counties when there is a need to recover a body, which occurs, according to the press report, about once a year, or to recover weapons that were used to commit a crime. However, according to committee testimony, the county does not have divers available for cold water rescues--those rare occasions when a would-be drowning victim can survive if rescued within 60 minutes time--under its mutual aid agreement.

A volunteer diver undertakes a high-risk activity, which increases the cost of the worker's compensation insurance that the county government must pay to provide medical expenses and indemnity (wages, at his or her regular job), in the event the diver is injured. For example, the Kalamazoo

County Human Resources Department notes that in 1997 the cost of worker's compensation insurance for clerical personnel was about \$.46 per \$100; for reserve deputies about \$6.33 per \$100; and for divers about \$46.30 per \$100 of wages.

Despite these costs, some have argued that volunteer divers provide a vital public service, and they and their families should be eligible for worker's compensation insurance benefits if they are injured or killed during their volunteer service. One way to reduce the insurance costs a local unit of government incurs would be to include the volunteer divers in the same rate category as volunteer firefighters. To that end, legislation has been introduced.

THE CONTENT OF THE BILL:

House Bill 5107 would amend the Worker's Disability Compensation Act to include members of a volunteer underwater diving team.

Currently under the law, on-call members of a fire department whether paid or unpaid, who contract with or receive reimbursement from one or more local units of government, are entitled to all the benefits of the act when they are personally injured in the performance of their duties. The bill would retain this provision, and extend it to all on-call members of volunteer underwater diving teams, whether they are paid or unpaid.

Further, the bill specifies that for the purpose of calculating the weekly rate of compensation provided under the act, the on-call members of a volunteer underwater diving team would be assumed to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the fire department. [Under section 355, the maximum weekly rate is adjusted once each year in accord with the increase or decrease in the average weekly wage, as determined by the Michigan

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Employment Security Commission.] However, if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, then the member's weekly rate of compensation would be determined based on that wage.

MCL 418.161

BACKGROUND INFORMATION:

In 1996 the legislature enacted Public Act 460, in order to provide worker's compensation insurance for a new group of emergency rescue volunteers called the Michigan Technical Rescue Operations Team (MTROT). In order to provide the team insurance coverage, Public Act 460 amended the definition of "employee" under the Worker's Disability Compensation Act so that the term would include "a member of an organization recognized by one or more counties, cities, villages, or townships within this state as an emergency rescue team."

MTROT was being formed as an independent, privately-funded specialized technical rescue organization to assist fire departments. The state organization was needed because the Federal Emergency Management Agency (FEMA) was preparing to disband the 25 specialized rescue teams it had deployed in response to major disasters (such as the Oklahoma City bomb disaster). MTROT operated as a division of the National Fire Safety Council (located in Jackson, Michigan), which donated accounting, legal, and fundraising services to MTROT. Its goal was to establish a minimum of five responder teams strategically located throughout the state, the first in southeastern Michigan, with the Detroit Fire Department as the team's lead fire department, and the University of Michigan Hospital as the team's lead medical facility. Under the organization's mission statement, an MTROT responder team would be activated only upon the request of the state or local governmental agencies for disaster assistance. All MTROT activities were to be operated under the Federal Incident Command System, reporting to but independent of the Incident Commander established by the local jurisdiction.

Because all members of MTROT were volunteers, and were responsible to a volunteer commander, serious doubt was expressed by insurance carriers concerning insurance coverage for the volunteers.

To ensure worker's compensation insurance coverage for the volunteers, the legislature enacted Public Act 460 of 1996. The act provided that each member of the rescue team would be covered by a worker's

compensation insurance policy obtained by the team, unless the team member's employer agreed in writing to provide coverage for that member under its policy.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Volunteer divers undertake a great risk when they are called upon to perform both underwater recovery operations of bodies or property, and cold water rescues of drowning victims. If the volunteer divers are injured while performing their vital public service, the local unit of government being assisted should bear the costs of their worker's compensation claim. This bill would enable local units of government to include divers in the same category as they do firefighters, and it would allow the Worker's Compensation insurance system to provide divers insurance coverage in the same rate group as is currently provided for firefighters. At least one local unit of government has stopped using its local volunteer dive team because costs were prohibitive when worker's compensation insurance was sought for the divers in a special "divers rate category." If the divers are included in the existing firefighters rate category, the insurance coverage for divers could be made more affordable for local units of government.

For:

The bill would ensure that a volunteer diver's employer would not have to incur the cost of worker's compensation insurance claims for those among their employees who are volunteer divers, if their employees are injured while responding to a call for assistance. The local unit of government-- customarily a county or township government-- should assume responsibility for the volunteer's potential risk at the moment the volunteer is called (generally by pager) to report for a recovery operation, and their responsibility should last until the volunteer completes his recovery or rescue work. This bill would enable the local units of government to assume these worker's compensation insurance costs and claims.

Against:

The bill could be very expensive for local units of government, if they chose to assemble a volunteer diving team. According to committee testimony, the Kalamazoo County Human Resources Department was informed that worker's compensation insurance

coverage for each volunteer diver would cost about \$46.30 per \$100 of their wages, as compared to reserve deputies for whom coverage would cost about \$6.33 per \$100. As a result of the high insurance cost, the county government suspended its use of the volunteer diver recovery unit that had assisted the county sheriff's department. It is not absolutely clear that the worker's compensation insurance system would include volunteer divers in the same rate category as volunteer firefighters, if their risk of injury or death was much higher. What's more, the local unit of government could incur significant costs when claims were made if the volunteers had been highly paid professionals, since the law specifies that the rate of compensation would be determined on the volunteer's average weekly wage at the time of the injury, if that was greater than the state average weekly wage for the fire department.

POSITIONS:

A representative of the Kalamazoo County Water Safety and Recovery Association testified in support of the bill. (2-19-02)

Analyst: J. Hunault

■ 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.