



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 977 (as enrolled)
House Bill 5586 (as enrolled)
Sponsor: Senator Jud Gilbert, II (S.B. 977)
Representative Daniel Acciavatti (H.B. 5586)
Senate Committee: Natural Resources and Environmental Protection
House Committee: Great Lakes and Tourism

PUBLIC ACT 143 of 2004
PUBLIC ACT 142 of 2004

Date Completed: 2-3-05

RATIONALE

For years, people have complained about poor communication between Canada, the United States, and local units of government following a spill of pollutants into the St. Clair River. Sarnia, Ontario, and Port Huron, Michigan, straddle the river and crowd its banks with heavy industry. The Sarnia side is home to Chemical Valley, said to be the largest grouping of chemical and petrochemical plants in Canada. Since the mid-1980s, there have been numerous accidental discharges into the river from the industrial plants--most of them from Chemical Valley. These spills are a concern to the nearby residents, who drink the water provided by five water intake plants located on the river.

Reportedly, Ontario officials frequently have failed to contact Michigan officials in a timely manner after a discharge from Chemical Valley into the St. Clair River. In some cases, Michigan evidently was not notified for many hours, or even days, after a spill, which meant that dangerous chemicals could have been drawn into Michigan drinking water facilities. Reportedly, Michigan also has failed to give immediate notice to local residents and Ontarian officials after a spill on its side of the river.

In an attempt to improve communication in the event of a spill, Michigan's Department of Environmental Quality (DEQ), since August 2001, has required that a Michigan plant owner or operator call the Department's 1-800 number to report an accidental discharge. The DEQ then notifies affected municipalities and advises them on

how to handle the spill, including whether a water intake plant should temporarily stop drawing water. While most agreed that the new DEQ system was working, some believe that local municipalities need to be more quickly informed when a spill occurs on the Michigan side.

CONTENT

House Bill 5586 amended Part 31 (Water Pollution Protection) of the Natural Resources and Environmental Protection Act to do the following:

- **Require a person who must report a release of a pollutant to the DEQ, also to report to the primary public safety answering point (PSAP) where the release occurred, and to local health departments.**
- **Require the DEQ to give notice of this reporting requirement to a person who reports a release, and to give public notice of the reporting requirement and other information.**
- **Require the State Police or another State agency that receives notice of a release to contact the PSAP of each county that may be affected, under certain circumstances.**

The bill also amended a section of the Act that provides for an adjustment in the Department of Natural Resources' rate of reimbursement to counties containing commercial forest land.

Senate Bill 977 amended Part 31 to prescribe sanctions for failing to report a release as required by House Bill 5586.

The bills were tie-barred to each other and took effect June 15, 2004. They are described below in further detail.

House Bill 5586

Reporting Requirements

Under the bill, a person required to report a release to the DEQ under Part 5 of the Water Resources Protection Rules (R 324.2001 to R 324.2009) of the Administrative Code is required, at the same time, to report the release via a 9-1-1 call to the PSAP serving the jurisdiction where the release occurred. If Part 5 of the rules requires the person subsequently to submit to the DEQ a written report on the release, the person must submit simultaneously a copy of the report to the local health department serving the jurisdiction where the release occurred.

If the Department of State Police or another State agency receives, under an agreement with or the laws of another state, Canada, or the Province of Ontario, notification of the release in that jurisdiction of a polluting material in excess of the threshold reporting quantity, and if the polluting material has entered or may enter surface waters or groundwaters of this State, the State Police or other State agency must contact the PSAP serving each county that may be affected by the release.

(The bill defines "threshold reporting quantity" as it is defined in the Michigan Administrative Code (R 324.2002), which establishes minimum amounts of oil, salt, and other polluting materials that, when released, must be reported. "Primary public safety answering point" is defined as it is in the Emergency Telephone Service Enabling Act, i.e., a communication facility operated or answered on a 24-hour basis assigned responsibility by a public agency or county to receive 9-1-1 calls and to dispatch public safety response services.)

The emergency management coordinator of each county must develop and oversee the implementation of a plan to provide timely notification of a release required to be

reported under the bill to appropriate local, State, and Federal agencies. In developing and overseeing the implementation of the plan, the emergency management coordinator must consult with the directors of the PSAPs with jurisdiction within the county, and with any emergency management coordinator appointed for a city, village, or township located in that county.

If rules promulgated under Part 31 require a person to maintain a pollution incident prevention plan, the person must update the plan to include these reporting requirements when conducting any evaluation of the plan required by rule.

DEQ Requirements

If a person reports a release to the DEQ, the Department must notify the person of the bill's reporting requirements and request that the person, even if not responsible for the release, report it via a 9-1-1 call to the PSAP serving either the jurisdiction where the release occurred, if known, or if not known, the jurisdiction where the release was discovered.

The DEQ must notify the public and interested parties by posting on its website, within 30 days of the bill's effective date and by other appropriate means, the 9-1-1 and written reporting requirements; the relevant voice and, if applicable, facsimile telephone numbers of the DEQ and the National Response Center (established under the Federal Clean Water Act); and the applicable criminal and civil sanctions under Section 3115 (established by Senate Bill 977).

The Department's failure to notify a person of the bill's requirements does not relieve the person of any obligation to report a release or other obligation.

Biennially, the DEQ must evaluate the State and local reporting system that the bill established, and submit to the Legislature a written report on any changes recommended to the reporting system.

DNR Payment to Counties

Section 51107 of the Act required an adjustment in 2004 and every 10th year after 2004, in the amount the Department of Natural Resources (DNR) pays to counties as

reimbursement for revenue lost when owners of commercial forest land pay reduced property taxes to the counties. Under the bill, the adjustment must take place in 2006, instead of 2004, and every 10th year thereafter.

Senate Bill 977

Under the Act, the DEQ may request the Attorney General to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of Part 31 or a provision of a permit or order issued or rule promulgated under Part 31. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted, the court must impose a minimum civil fine of \$2,500, and may award reasonable attorney fees and costs to the prevailing party. The court may not impose a fine of more than \$25,000 per day of violation.

The bill makes two exceptions to the minimum fine of \$2,500. Under the bill, failing to report a release to the DEQ or a PSAP is subject to a maximum fine of \$2,500, and the maximum fine is \$500 for failing to report a release to the local health department as required by House Bill 5586.

MCL 324.3101 et al. (H.B. 5586)
324.3115 (S.B. 977)

BACKGROUND

The Michigan Administrative Code (R 324.2007) requires an owner, operator, or manager of an oil storage facility or an on-land facility that releases, or permits to be released, any polluting material in excess of a threshold reporting quantity during any 24-hour period to notify the DEQ by using a toll-free telephone number. Within 10 days after the release, the owner or operator must file a written report with the chief of the DEQ's Waste Management Division, outlining the cause of the release, discovery of the release, and the response measures taken, or a schedule for completion of measures to be taken, or both, to prevent recurrence of similar releases.

Under R 324.2006, the owner or operator of an on-land facility that receives, uses, processes, manufactures, stores, or ships polluting materials in excess of the applicable threshold management quantity

must develop a pollution incident prevention plan, and operate in accordance with it. The plan must include information and be maintained as prescribed by the rule. A facility that is subject to other local, State, or Federal emergency or contingency planning requirements may integrate the pollution incident prevention plan with other plans if the integrated plan contains the required elements of the prevention plan. The facility owner or operator must evaluate the prevention plan or integrated plan every three years or after any release that requires implementation of the plan, whichever is more frequent.

(An "on-land facility" is a temporary or permanent land-based industry, plant, establishment, firm, storage site, or other facility, that receives, processes, manufactures, uses, stores, or ships polluting materials, at which an amount equal to or more than its threshold management quantity is present, and that is so situated that loss of polluting materials could directly or indirectly reach the surface or groundwaters of the State, including any facility that discharges through a public sewer system. The term does not include an oil storage facility, an oil field petroleum or brine storage facility, a recreational marina, installations of oil containing electrical equipment, or a transportation-related facility as defined in Federal regulations.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

It is vital that municipal water intake plants receive word of a spill as soon as possible. Because the St. Clair River has a fast current, chemicals quickly travel past the five intake plants and into Lake St. Clair. If a water plant is not notified within a few hours of a spill, it may draw contaminated water and then unknowingly provide it to residents. During the August 2003 blackout, a plastics company spilled about 49 gallons of vinyl chloride into the river and did not notify United States officials for five days. It is unknown how much of this chemical made it into the drinking water.

Michigan, obviously, cannot pass a law requiring Canadians to report a spill to this

State. House Bill 5586, however, requires the State Police (whom Canadian officials often contact first) or another State agency with knowledge of a spill to contact the PSAP serving each county that may be affected by the discharge. When a spill originates in Michigan, local authorities will be notified at the same time as the DEQ. In this way, law enforcement officials and other first responders can quickly react, and local residents will be more readily informed of any danger. Municipalities then can establish their own protocols for how best to deal with a spill in their area. In addition, the bill requires local health departments to be given a report about the spill, which will provide them with information to protect the health of area residents. The bill will allow local municipalities to be "in the loop" more quickly.

Opposing Argument

The bills fail to address the main problem, which is the sometimes-failure of Canada to notify Michigan when a spill originates in Chemical Valley. The DEQ's system, called the Pollution Emergency Assistance Program (PEAP), is working for Michigan-based spills. Under Part 5 of the Water Resources Protection Rules, a plant owner or operator must report a spill to the DEQ as soon as it is practicable to do so, and then file a report describing the nature of the release and steps taken to prevent future spills. The PEAP has gone a long way toward solving communication and reporting issues in Michigan. Requiring a person to call 9-1-1 for every spill in excess of the threshold level (which, for many chemicals, is as little as one pound) might unnecessarily burden local fire and police departments, and take them away from real emergencies.

Response: The bills merely expand on the success of the PEAP. While it is not possible for Michigan law to address spills that originate in Canada, Michigan must do its part to be a good steward of the Great Lakes.

Opposing Argument

House Bill 5586 requires every company (not just those in Port Huron) to update each of its Pollution Incident Prevention Plans (PIPPs) with the new reporting requirements. For a small company, updating a single plan is a minor headache; for a large manufacturer, however, updating all of its PIPPs is a major burden. According to the Michigan Manufacturers Association,

one manufacturer has 1,200 PIPPs on file, one for each potential pollutant. Combined, these plans can be as thick as a phone book, and up to 80 copies are placed around the plant and distributed to local emergency planning organizations. Any plan revisions usually involve several levels of review to ensure accuracy. In addition, every affected employee must be trained on the changed regulation to ensure compliance with the law. The bill, therefore, will increase the regulatory burden and the cost of doing business in Michigan without, in many cases, improving environmental protection Statewide.

Legislative Analyst: Julie Koval
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FISCAL IMPACT

House Bill 5586

The pollution reporting requirements of the bill will have no fiscal impact on State or local government.

The amendments to Section 51107 postponing the decennial adjustment for payments in lieu of taxes on commercial forest lands will result in savings for the State. In 2003, there were 2,237,000 acres of land in the State certified by the DNR as commercial forest land, for which the DNR paid \$1.20 per acre for a total of \$2,684,400 in payments in lieu of taxes. An appropriation of \$2,691,700 was enacted for FY 2004-05. Since counties are not required to report the number of timber cutover acres, sufficient information is not available to calculate the per-acre amount of the State equalized valuation (SEV) of timber cutover for the decennial adjustment ratio. Using the true cash value of timber cutover land statewide as an approximation, the previous statutory increase would have raised the rate paid by the State by 357.6% from \$1.20 to \$4.30 per acre, for a total payment of \$9,619,100. The payments are supported entirely with General Fund revenue.

Using the true cash value of timber cutover land to estimate the increase, the rate paid by owners of commercial forests would have increased under previous statute from \$1.10 to \$3.93 per acre, for a total payment of \$8,791,410. Since it maintains the amounts paid by commercial foresters and the State

at current levels, the bill will result in a collective loss to counties of \$13,265,410 in additional revenue anticipated in FY 2004-05, and savings for commercial foresters of \$6,330,710 and savings for the State of \$6,934,700.

Senate Bill 977

This bill may have an indeterminate impact on the State from fine revenue. A person who fails to report a release of polluting material will be subject to a civil fine, which will be deposited into the General Fund.

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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.