



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5214 (as reported without amendment)
 Sponsor: Representative Eric Bush
 House Committee: Transportation
 Senate Committee: Transportation and Tourism

Date Completed: 3-4-96

RATIONALE

Since the late 1970s, the State Fire Marshal, within the Department of State Police, has been responsible for certifying vehicles that transport hazardous materials. Public Act 3 of 1978 amended the Fire Prevention Code to establish this responsibility, among other things, and to require that certified vehicles bear identification as assigned by the State Fire Marshal. These provisions were revised by Public Act 247 of 1980, which requires the Fire Marshal also to certify vehicles used for the transportation of flammable liquid, combustible liquid, or liquefied petroleum gas. To fulfill its responsibilities, the State Fire Marshal created the permanent identification number (PIN) program, which requires a special placard to be used by vehicles transporting these substances. In 1982, after an executive order transferred motor carrier enforcement from the Public Service Commission to the Department of State Police (Executive Reorganization Order 1982-1), the Fire Marshal assigned responsibility for the PIN program to the newly created State Police motor carrier division.

According to a Department spokesperson, the motor carrier division and Federal transportation officials entered into a "good faith agreement" that required the State to adopt in statute certain Federal rules governing the transport of hazardous materials by the end of 1995, or risk losing Federal transportation funds. In response, Michigan enacted Public Acts 248 and 265 of 1995, which amended the Michigan Vehicle Code and the Motor Carrier Safety Act, respectively. The Department further reports that the State cannot use Federal grant funds for regulating hazardous materials transporters as long as a State program is in place. According to the State Police, Michigan's program was enacted in response to accidents involving double-bottom tankers carrying

flammable products, which are no longer a problem. Since the reason for the State program apparently is gone, and retaining it could jeopardize the receipt of Federal funds, it has been suggested that the program be eliminated.

CONTENT

The bill would amend the Fire Prevention Code to repeal provisions requiring the State Fire Marshal to certify vehicles designed or used for transporting hazardous materials or flammable liquid, combustible liquid, or liquefied petroleum gas (MCL 29.5b and 29.5f); and to make the following changes, which would sunset on October 1, 1996:

- Require vehicles that transported flammable or combustible liquids or liquefied petroleum gas to be certified annually by the motor carrier division of the State Police.
- Exempt from certification certain trucks carrying cargo for agricultural or horticultural operations.
- Require each certified vehicle to bear an identification number as assigned by the motor carrier division.
- Establish an annual certification fee of \$95 for each vehicle, and require the fees to be deposited in the Hazardous Materials Transportation Regulatory Enforcement Fund.
- Provide for a suspension of this fee if the Fund exceeded \$1 million at the close of any fiscal year; and, permit the fee's reinstatement if the amount of money in the Fund, at the close of any succeeding fiscal year, were less than \$250,000.

The bill also would do the following:

- Require a Michigan State Police certification decal to be removed from a vehicle by January 1, 1997, and make failure to remove the decal a misdemeanor.**
- Prohibit a local government from enforcing an ordinance or resolution that was inconsistent with the Code or any rule promulgated under it.**
- Require the fire safety board to promulgate rules for the storage, transportation, and handling of liquefied petroleum gas and for the storage, noncommercial transportation, and handling of other hazardous materials.**

Vehicle Certification

Each vehicle in this State that transported in bulk flammable or combustible liquids, or liquefied petroleum gas could not operate without annual certification by the motor carrier division of the Department of State Police. A truck carrying a cargo tank with a capacity of less than 300 gallons and engaged in agricultural or horticultural operations would not have to be certified.

The motor carrier division would have to determine compliance with the Code by conducting an annual inspection before certifying the vehicle. Each certified vehicle would have to bear an identification number as assigned by the motor carrier division. The division would have to prescribe the size, color, design, and placement of the identification number. The owner of each certified vehicle would have to provide information relative to certification, as required by the division.

The annual fee for certification would be \$95 for each vehicle. The fee would have to be paid by the owner of the vehicle before the certificate was issued when the vehicle was used at any time during the State fiscal year to transport a flammable liquid, combustible liquid, or liquefied petroleum gas in bulk.

Upon a finding of noncompliance, the motor carrier division could revoke or deny the renewal of a certificate and prohibit the owner of a vehicle required to be certified from being operated in the State.

Fees would have to be deposited in the Hazardous Materials Transportation Regulatory Enforcement

Fund, with interest and earnings being credited to the Fund. Money in the fund at the end of the fiscal year would have to remain in the Fund, could not revert to the General Fund, and would have to be used by the motor carrier division for enforcement of the Code. If at the close of any fiscal year, the amount of money in the Fund exceeded \$1 million, the division could not collect from existing vehicles a fee for the Fund for the following year. After the fee had been suspended, it could be reinstated only if, at the close of any succeeding fiscal year, the amount of money in the Fund were less than \$250,000. Before November 1 of each year, the Department of Treasury would have to notify the Department of State Police of the Fund's balance at the close of the preceding fiscal year.

The bill specifies that the above provisions would apply until October 1, 1996.

The owner or lessee of a vehicle displaying a Michigan State Police certification decal would have to remove the decal from the vehicle by January 1, 1997. Failure to remove the certification decal from a vehicle by January 1, 1997, would be a misdemeanor.

Vehicle Inspection

Currently, the State Fire Marshal, the chief of a fire or police department, a peace officer, or a fire fighter when acting under the orders of a local fire chief may inspect a vehicle transporting a hazardous material. If a vehicle is found to violate rules concerning safety equipment, the official is required to attach to the vehicle a notice identifying it and stating that it is condemned against further use in transporting hazardous material. Under the bill, notwithstanding these provisions, an official inspecting a commercial motor vehicle under the authority of the Code could affix notices, and place vehicles and drivers out of service, only as provided under the Motor Carrier Safety Act, and as provided under the out-of-service criteria issued under the authority of the commercial vehicle safety alliance.

The bill would delete current provisions for the annual certification by the State Fire Marshal of vehicles used for transporting hazardous materials. The bill also would delete provisions concerning the State Fire Marshal's initial inspection of a vehicle or the examination following the revocation of a vehicle's certification.

Aboveground Storage

Currently, a firm or person may not establish or maintain an aboveground storage location for a flammable or combustible liquid if the storage location has an individual tank storage capacity of more than 1,000 gallons. In addition, the State Fire Marshal may require that persons or firms obtain approval from the Fire Marshal before installing an aboveground storage tank for flammable or combustible liquids having an individual tank storage capacity of 1,000 gallons or less. This requirement, however, does not apply to farm location storage tanks of 1,000 or less used for storing motor fuel for noncommercial purposes or heating oil for use on the premises where it is stored. The bill would increase the respective storage capacities to 1,100 gallons.

Owners of certain aboveground storage facilities would have to notify the State Fire Marshal of the closure or removal of storage tanks within 30 days after closure or removal on a form provided by the State Fire Marshal.

Ordinances and Rules

The bill would prohibit a township, city, village, or county from adopting or enforcing an ordinance or resolution that was inconsistent with the Code or any rule promulgated under it. The bill also would prohibit a State agency from promulgating rules inconsistent with the Code. The bill specifies that this provision would not apply to the Motor Carrier Safety Act, or rules promulgated under that Act by the motor carrier division of the State Police. The bill would define "inconsistent" as a rule or ordinance that was more restrictive than the provisions of the Fire Prevention Code, or that permitted, prevented, or obstructed compliance with the Code.

The bill would delete language under which a township, city, village, or county may not adopt or enforce an ordinance or resolution that increases or decreases the responsibilities of a person or firm concerning the installation of a required fire alarm system or required fire suppression system.

Fire Safety Board

The Code provides for the creation of the State fire safety board, which must consist of 16 members, one of whom must be a person knowledgeable in dry cleaning equipment and installation. The bill would delete this member, and require instead that

one member be a representative of persons who own adult foster care facilities.

Currently, the board is required to promulgate rules for the storage, transportation, and handling of hazardous material. Under the bill, the board would be required, instead, to promulgate rules for the storage, transportation, and handling of liquefied petroleum gas and for the storage, noncommercial transportation, and handling of other hazardous materials. ("Noncommercial transportation" would mean the occasional transportation of personal property by an individual not for compensation or in furtherance of a commercial enterprise, and transportation not regulated under the Motor Carrier Safety Act.)

MCL 29.1 et al.

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

This bill is part of a package of legislation designed to bring Michigan law into conformity with Federal regulations concerning the transport of hazardous materials. While Public Acts 248 and 265 of 1995 amended the Michigan Vehicle Code and the Motor Carrier Safety Act, House Bill 5214 would make necessary changes to the Fire Prevention Code. Currently, the motor carrier division oversees the PIN program, which regulates persons who commercially transport hazardous materials in trucks. The revenue generated from the current \$95 inspection fee supports the division's enforcement and inspection program. The existence of the program in State statute, however, apparently prevents Michigan from qualifying for some \$4 million in Federal grant funds that could be used for these purposes. The bill would resolve this dilemma by sunseting the program on October 1, 1996. This would free up Federal funds to pay for the motor carrier division's oversight of hazardous materials inspection and enforcement as specified in Public Act 265 of 1995.

Supporting Argument

The bill would prohibit local units of government and State agencies, other than the motor carrier division, from adopting an ordinance or promulgating a rule that was more permissive or restrictive than the Code. Apparently, some local

units have adopted ordinances that deviate from the Code, and require the payment of fees in addition to those required by the Code. The bill would ensure uniform regulation throughout the State.

Supporting Argument

The Code's aboveground storage tank regulations prohibit tanks with a capacity over 1,000 gallons of flammable liquid, and provide for State Fire Marshal approval of tanks with a smaller capacity. According to the State Police, this 1,000-gallon standard is inconsistent with national standards and Federal regulations, which refer to a storage capacity of 1,100 gallons. The bill would eliminate this inconsistency.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would result in a funding shift for a State inspection program that enforces the regulation of vehicles that transport hazardous materials. It would eliminate approximately \$390,000 in fees covered from a \$95 tanker fee beginning October 1, 1996. However, under changes in regulatory policy in this bill and in House Bills 5215 and 5216 that would bring State rules in line with those of the Federal government, an equal or greater amount of Federal funds would become available to the State to replace the lost restricted funds.

Fiscal Analyst: B. Baker

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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.