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House Bill 4138 (Substitute H-1)
Sponsor: Rep. Tom McMillin
House Committee: Oversight

Complete to 4-16-13

A SUMMARY OF HOUSE BILL 4138 (H-1) AS REPORTED BY HOUSE COMMITTEE

House Bill 4138 (H-1) would create a new act that would prohibit state agencies and political subdivisions and their employees when acting in an official capacity from aiding an agency of the armed forces of the United States in any *investigation, prosecution, or detention* of any person under Section 1021 of the National Defense Authorization Act for fiscal year 2012, if such aid would place an agency or employee in violation of the U.S. Constitution, the Michigan State Constitution of 1963, or any law of the state of Michigan.

Specifically, the bill would apply to an agency of this state, a political subdivision, an employee of an agency or political subdivision acting in an official capacity, and a member of the Michigan National Guard on active state service.

The bill specifies that this prohibition would not apply to state or local law enforcement or the National Guard working within joint task forces, partnerships, or other similar cooperative federal law enforcement agreements, if those agreements were *not* for the purpose of investigating, prosecuting, or detaining any person under Section 1021 of the National Defense Authorization Act for fiscal year 2012. See *Background Information*.

FISCAL IMPACT:

House Bill 4138 does not appear to have any direct fiscal impact on state or local government.

BACKGROUND INFORMATION:

Legislative History. An identical bill, Senate Bill 94 (S-1), passed the Michigan Senate earlier in this legislative session on March 6, 2013.

Further, a substantially similar bill, House Bill 5768, passed the House of Representatives on December 5, 2012, during the last legislative session, by a vote of 107 to 0. The bill was reported from the Senate Judiciary Committee on December 12, 2012, but died on the Senate calendar at the end of the 2011-2012 legislative session.

The National Defense Authorization Act (NDAA) is the annual bill to provide funding for the military and defense-related items. The following are the relevant portions of Section 1021.

SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

(a) **IN GENERAL.**—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

(b) **COVERED PERSONS.**—A covered person under this section is any person as follows:

(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

(c) **DISPOSITION UNDER LAW OF WAR.**—The disposition of a person under the law of war as described in subsection (a) may include the following:

(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111–84)).

(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

(4) Transfer to the custody or control of the person’s country of origin, any other foreign country, or any other foreign entity.

(d) **CONSTRUCTION.**—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

(e) **AUTHORITIES.**—Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

POSITIONS:

The American Civil Liberties Union of Michigan supports the bills. (3-19-13)

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■ 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.