

Legislative Analysis



FIREFIGHTING FOAM CONTAINING PFAS

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House Bill 4389 (H-1) as referred to second committee
Sponsor: Rep. Sue Allor

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House Bill 4390 (H-1) as referred to second committee
Sponsor: Rep. Jeff Yaroch

House Bill 4391 (H-2) as referred to second committee
Sponsor: Rep. Jeff Yaroch

1st Committee: Natural Resources and Outdoor Recreation
2nd Committee: Ways and Means
Complete to 7-29-19

BRIEF SUMMARY: House Bills 4389, 4390, and 4391 would amend various acts to regulate the use and reporting of firefighting foam containing PFAS, defined by the bills as a perfluoroalkyl or polyfluoroalkyl substance.

FISCAL IMPACT: House Bill 4389 would increase costs for EGLE; House Bill 4390 would increase costs for LARA; and House Bill 4391 would not have a fiscal impact on LARA or any other unit of state or local government. More information can be found under **Fiscal Information**, below.

THE APPARENT PROBLEM:

Firefighters use a variety of techniques to extinguish a fire, including the use of firefighting foam with PFAS. According to committee testimony, foam containing PFAS has been widely used as an efficient fire suppressant for petroleum and other gas or chemical fires. However, with emerging scientific studies on PFAS and health risks, it is becoming increasingly apparent that all firefighters should know the proper procedures to sufficiently clean up the foam with PFAS after use, as PFAS (which often drains into lakes, rivers, and even food sources or municipal water supplies) harms both the environment and the humans handling the foam. Legislation has been proposed to ensure that all firefighters coming into contact with foam containing PFAS know the risks as well as proper handling and remediation techniques and to make a collection program available to those fire departments who wish to cease use of the foam altogether.

THE CONTENT OF THE BILLS:

House Bill 4389 would amend Part 147 (Chemical Substances) of the Natural Resources and Environmental Protection Act (NREPA) to add a new subpart regulating the use and reporting of intentionally added PFAS in firefighting foam.

The bill would require a *fire chief*, within 48 hours after an *organized fire department* uses firefighting foam containing intentionally added PFAS, to submit to the Department of Environment, Great Lakes, and Energy (EGLE) a written report containing all of the following information:

- The reason the foam was used.
- The physical address, including longitude and latitude, of the location where the foam was used.
- The quantity of both the foam concentrate used and water used to produce the foam or used in conjunction with the foam.
- The name brand and manufacturer of the foam concentrate.
- The name of any body of water potentially affected by the foam or *firewater* through surface water runoff, groundwater, or a storm sewer or combined sewer, its distance and direction from the location where the foam was used, practices employed for containment and proper disposal of the foam and firewater, and whether the foam or firewater was known to have entered it.
- Practices employed for cleanup and disposal of materials contaminated by the foam concentrate, foam, or firewater.

Firewater would mean water that has been used for firefighting.

Fire chief would mean the chief operating officer of an organized fire department.

Organized fire department would mean a department, authority, or other governmental entity that safeguards life and property from damage from explosion, fire, or disaster and that provides fire suppression and other related services in this state. It would include any lawfully organized firefighting force in this state.

EGLE could prescribe the format of the above report and the means by which the report would be submitted. Failure to submit a report could result in a civil fine of up to \$500, and a violation could be prosecuted by the attorney general or the prosecutor of the county where the violation occurred.

EGLE also would be required to establish a collection program for firefighting foam concentrate containing intentionally added PFAS and establish guidelines for the program. Under the program, EGLE would have to accept the foam concentrate free of charge and properly dispose of the foam concentrate. However, the program would be contingent on legislative appropriations to cover costs.

Proposed MCL 324.14701 et seq.

House Bill 4390 would amend the Firefighters Training Council Act to add a new section requiring certain training regarding PFAS.

The new section 9c would prohibit firefighting foam containing intentionally added PFAS from being used in any firefighter training required under the act. Additionally, until

December 31, 2023, training conducted under the act would have to include both of the following:

- The proper use, handling, and storage of firefighting foam concentrate.
- The best environmental and public health practices, including at least containment and proper disposal, and decontamination of the firefighter's equipment and body, following the use of firefighting foam.

The new training requirements could involve the use of a video or online resource.

Currently, the state fire marshal prepares and publishes rules establishing minimum standards for certification as a fire service member. The standards must comply with the current Michigan Occupational Safety and Health Administration general industry safety standard (R 408.17411 of the Michigan Administrative Code). The bill would add that the standards for certification must also comply with the new section 9c.

Additionally, the bill would require veteran firefighters or persons certified in a different state to complete the new training requirements even if other general examination requirements had been waived.

The bill would take effect 90 days after its enactment.

MCL 29.362 and 29.369 and proposed MCL 29.369c

House Bill 4391 would add a new section to the Michigan Occupational Safety and Health Act (MiOSHA) to require the director of the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules regarding a *firefighter's* use of firefighting foam concentrate.

Firefighter would mean either of the following:

- A member of an organized fire department or public safety department who is responsible for extinguishing fires, directing the extinguishment of fires, directing or managing emergency response activities, fire safety prevention inspection, plans examination, fire investigation, hazardous materials response, technical rescue response, airport rescue response and firefighting, fire service instruction, and enforcing the general fire laws of this state and the community where he or she serves.
- An employee who, in his or her employment, is knowledgeable, trained, and skilled in at least basic firefighting operations.

The bill would require the new rules to include all of the following:

- The best practices regarding the proper use, handling, and storage of firefighting foam concentrate.
- The best health practices, including all of the following:
 - Containment and handling of PFAS-contaminated materials, including a firefighter's equipment, until they are disposed of pursuant to NREPA.

- Decontamination of a firefighter's body and equipment following the use of firefighting foam.
- Prohibition of the use by a firefighter for training purposes of firefighting foam concentrate containing intentionally added PFAS.
- Prohibition of the use by a firefighter after January 1, 2020, of firefighting foam concentrate containing intentionally added PFAS for equipment calibration purposes, unless one or more of the following apply:
 - The calibration is otherwise required by law.
 - The facility where the calibration will take place has implemented measures that comply with the rules promulgated by LARA.

Currently under MiOSHA, the director of LARA is required to adopt administrative rules that are substantially similar to federal occupational safety and health standards. Proposed rules that address matters not addressed by federal standards are generally presented to the Joint Committee on Administrative Rules for review and implementation only after the director has determined that there is a clear and convincing need for the standard, among other requirements.

Under the bill, this current rule-making process would not apply to the new section described above.

MCL 408.1014 and proposed MCL 408.1014r

BACKGROUND INFORMATION:

A PFAS workgroup was created in May 2019 to bring together different stakeholders and interested parties regarding the bills. The workgroup met on May 17, 2019, and conducted discussions on how to accommodate the concerns of all parties involved. The bills referred from the House Natural Resources and Outdoor Recreation committee are the outcome of that meeting.

FISCAL INFORMATION:

House Bill 4389 would increase costs for EGLE by requiring the department to establish a PFAS firefighting foam collection program. The extent of this cost increase is unclear, as the quantity of extant PFAS firefighting foam is unclear, but the bill requires appropriations to cover program costs, so the net fiscal impact on the department is likely to be zero. The bill would increase costs for local units of government with fire departments whose use of PFAS firefighting foam would be subject to the written reporting requirements of the bill; these costs are unlikely to be significant. The bill is also unlikely to affect local government revenues.

House Bill 4390 would increase costs for LARA. The bill would require firefighters to receive training in the proper use, handling, storage, disposal, and decontamination of firefighting foams containing PFAS chemicals. LARA indicated that any applicable training costs would likely be borne by the department. Potential training costs are

unknown, but the department initially estimated a minimum likely cost of \$20,000 for the training of current firefighters. In the future, firefighters would receive the required training through completion of firefighter I and II certification.

House Bill 4391 would not have a fiscal impact on LARA or any other unit of state or local government. The bill would require the department to promulgate rules for various activities involving firefighting foam concentrates. However, the rules promulgation required under the bill would be accomplished by existing staff utilizing existing appropriations.

ARGUMENTS:

For:

Supporters of the bills argue that, because recent studies have shown adverse effect of PFAS in humans, and because PFAS is used in certain firefighting foam by firefighters, firefighters should know the risks as well as proper handling and remediation techniques when using foam containing PFAS. Supporters argue that this training is imperative to protect Michigan firefighters from the risks associated with contacting PFAS.

Additionally, even if one fire station did not have foam containing PFAS, a nearby station could. Fire departments across the state sometimes rely on mutual aid from neighboring departments, which means that a neighboring station could use foam containing PFAS during a fire while assisting a department that does not have foam containing PFAS. Given this, supporters of the bills argue that training for all firefighters is imperative.

Against:

Critics of the bills have raised concerns regarding funding for the extra training that would be required under the bills. Many fire departments in Michigan are small and operate on extremely tight budgets, including having to rely on and recruit local volunteer firefighters. Additional training, especially for fire departments that do not use or store foam containing PFAS, could be more burdensome than helpful.

POSITIONS:

The following organizations indicated support for the bills:

- Michigan United Conservation Clubs (5-7-19)
- Michigan Professional Fire Fighters Union (5-7-19)
- National Wildlife Federation (5-7-19)
- Southeast Michigan Council of Governments (5-7-19)
- Michigan Municipal League (6-11-19)
- Michigan League of Conservation Voters (6-11-19)
- Michigan Environmental Council (6-11-19)
- Marathon Petroleum / API MI (6-11-19)

A representative of the Ecology Center testified in support of HB 4389. (4-30-19)

The following organizations indicated support for HB 4389:

- Department of Environment, Great Lakes, and Energy (6-11-19)
- City of Ann Arbor (5-7-19)
- Michigan Sierra Club (6-11-19)
- Michigan Association of Fire Chiefs (6-11-19)
- Michigan Chemistry Council (6-11-19)

The Department of Licensing and Regulatory Affairs indicated being open to the concept of HBs 4390 and 4391. (4-30-19)

The following organizations indicated a neutral position on HBs 4390 and 4391 (6-11-19):

- Michigan Sierra Club
- Michigan Association of Fire Chiefs

The Michigan Chemistry Council indicated a neutral position on HB 4390. (6-11-19)

A representative of Public Safety Advocates testified in opposition to the bills. (4-30-19)

Representatives of the following organizations testified in opposition to HBs 4390 and 4391:

- Ecology Center (4-30-19)
- City of Ann Arbor (5-7-19)

The Michigan Chemistry Council indicated opposition to HB 4391. (6-11-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.