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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 653 (Substitute S-1 as passed by the Senate)
Senate Bill 654 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Doug Carl (Senate Bill 653)
Senator Jack Welborn (Senate Bill 654)
Committee: Criminal Justice and Urban Affairs

Date Completed: 1-24-90

RATIONALE

As prison populations continue to grow, support for alternative forms of sentencing for some criminal offenders increases. Requiring offenders to perform various types of community service activities is one popular alternative to incarceration. Some people feel that, in order to encourage community service probationary sentences, rather than jail or prison terms, there should be statutory authorization and guidelines for such sentences. In addition, some contend that offering limited immunity from liability to private nonprofit and public agencies for the actions of community service probationers might persuade such agencies to accept community service offenders.

CONTENT

Senate Bill 653 (S-1) would create a new Act to provide immunity from civil liability to courts and certain other agencies and organizations and their employees, officers, and directors with respect to the performance of community service by criminal and civil offenders. Senate Bill 654 (S-1) would amend the Code of Criminal Procedure to allow a court to order that a probationer perform community service instead of, or in addition to, other conditions of probation or as a method of paying fines, costs, or fees that the probationer was unable to pay. The bills are tie-barred.

Under both bills, "agency" would mean "a

nonprofit organization, governmental unit, or other public body that accepts community service from offenders". "Community service" would be "uncompensated labor performed by an offender for an agency for the purpose of enhancing the physical, intellectual, or mental well-being, environmental quality, or social welfare of the community". "Court" would include the probation department and other offices or instrumentalities of a Michigan court of record that are responsible for funding or supervising community service work.

Senate Bill 653 (S-1)

The bill provides that a court and its officers and employees would not be liable for civil damages resulting from or arising out of an offender's assignment to community service, work performed in community service, or the supervision of an offender during his or her community service. The bill's immunity would supplement any immunity from liability granted to courts under the governmental immunity law (MCL 691.1401-691.1415). In addition, the bill specifies that an agency, and an agency's directors, officers, and employees would not be liable for civil damages resulting from or arising out of community service work or the supervision of an offender during his or her community service. An agency, director, officer, or employee could be held liable, however, for actions or omissions that amounted to gross negligence or willful or wanton misconduct.

S.B. 653 & 654 (1-24-90)

Senate Bill 654 (S-1)

The bill provides that if community service were ordered as a way to discharge payment of fines, costs, or fees, then the defendant would have to be credited with such payment for community service performed at a rate determined by the court. The rate could not be less than the prevailing minimum wage. In ordering community service, the court would have to select tasks that were within the defendant's capabilities and that could be performed within a reasonable period of time. Failure to perform community service as ordered would be grounds for revoking probation. The length of community service ordered as a condition of probation would be subject to the following limits:

- For a misdemeanor traffic offense other than a "major traffic offense", a maximum of 120 hours or 15 days. (A "major traffic offense" would be an offense that was a misdemeanor and for which at least four points could be imposed.)
- For a misdemeanor that is not a traffic offense and is punishable by up to six months' imprisonment, or for a major traffic offense, a maximum of 240 hours or 30 days.
- For other misdemeanors punishable by imprisonment for six months to one year, up to 480 hours or 60 days.
- For an offense punishable by more than one year's imprisonment, no more than 3,840 hours or 480 days.

The bill would not prevent a court from requiring community service in connection with finding a person responsible for a civil infraction. The bill would not apply to community service ordered in place of paying a probation oversight fee as required in MCL 771.3c.

Proposed MCL 771.3d

FISCAL IMPACT

Senate Bill 653 (S-1) would have an indeterminate fiscal impact on the State and local units of government. The savings that would result from reducing the potential

liability of the State and local units cannot be estimated.

Senate Bill 654 (S-1) could result in an indeterminate increase in State expenditures as a result of increased administrative responsibilities associated with monitoring offenders' community service activities.

ARGUMENTS

Supporting Argument

The bills are an important step toward relieving the State's reliance upon imprisonment as punishment for criminal offenses. As prisons and jails become more crowded, the need for community corrections alternative programs becomes more apparent. To make such alternatives more viable, however, tools and mechanisms for their development and operation must be provided and safety and security for participating agencies must be assured. By specifically authorizing community service as a sentence for certain types of offenses and limiting agencies' exposure to liability for the actions of community service offenders, the bills would go a long way toward encouraging the development and operation of community corrections alternative programs, and thereby relieve the overcrowding pressures on Michigan's jails and prisons.

Opposing Argument

Senate Bill 653 would reduce the safety that the public has in knowing that individuals who perform work are held responsible for the safety of that work. The bill would set a lower standard of performance for community service done by convicted misdemeanants and felons than for the general public. If a law-abiding citizen were to volunteer for the same agency for which an offender was performing community service, the law-abiding citizen would continue to be held liable for negligence in his or her actions while the convicted criminal would be held to a lower standard.

Opposing Argument

The bills are neither necessary nor in the best interest of the public welfare. Currently, many individuals convicted of misdemeanor and felony offenses perform community service work in lieu of, or in addition to, incarceration. Such work is in high demand and, in some

cases, agencies have a waiting list for this type of work. Legislation is needed to authorize and operate more community service agencies, not to provide immunity to them for work performed by criminals.

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SENATE ANALYSIS SECTION

SENATE BILL 654

ANALYSIS First

SEE SB 653