



**House
Legislative
Analysis
Section**

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**GOVERNMENT IMMUNITY:
VOLUNTEERS**

**House Bill 5454 as introduced
First Analysis (1-31-02)**

**Sponsor: Rep. Michael Bishop
Committee: Civil Law and the Judiciary**

THE APPARENT PROBLEM:

People who use their free time and abilities to help others play an invaluable role in society, but it was only in 1997 that “volunteerism” became a household word. President Clinton convened the President’s Summit for America’s Future in April 1997, which according to Allpolitics.com was originally the vision of Michigan’s former Governor George Romney who planned the summit as a volunteerism summit. At the conclusion of his opening remarks at the summit, President Clinton, along with Presidents Ford, Carter, and (G.H.W.) Bush and Mrs. Reagan signed a declaration stating in part that: “As each of us has the right to Life, Liberty and the Pursuit of Happiness, each of us has an obligation to give something back to country and community -- a duty to take responsibility not just for ourselves and our families, but for one another. . . . As Americans and as Presidents, we ask every caring citizen to pledge individual commitments of citizen service, voluntary action, the efforts of their organizations, or commitments to individual children in need.” That same year, the United Nations General Assembly anointed 2001 as the International Year of Volunteers. The events of September 11 serve as a cruelly ironic reminder that, however strong a community may appear, true greatness ultimately depends on individuals’ willingness to help their neighbors, even when their neighbors cannot offer anything but gratitude in return.

Although “volunteerism” often conjures up images of people who donate their time in nonprofit community-based organizations and religious institutions, various governmental agencies also benefit from such service. In many communities throughout Michigan volunteers help in the courts, libraries, parks, and jails. When creating emergency management plans, governments often anticipate the need to recruit volunteers to keep their communities going. For instance, Oakland County relied on the unpaid expertise of ham radio operators to solve its Y2K problems. Michigan’s governmental immunity act gives governmental employees, officers, and

volunteers immunity from tort liability when acting in an official capacity on behalf of a governmental agency. Such immunity provides reassurance to people who might otherwise decide not to volunteer because they are concerned that they might be sued, if they do something wrong, despite their good intentions.

The governmental immunity act gives volunteers immunity from liability, but it does not prevent an aggrieved person from bringing a lawsuit against a volunteer. In other words, if a volunteer is sued, he or she might well have a solid defense, but he or she may still be forced to go to court to offer that defense to a judge and jury. Under the act, a governmental agency may provide legal advice and representation, settle claims and indemnify officers and employees and may purchase liability insurance in the case of a successful lawsuit against an officer or employee. However, the law does not authorize a governmental agency to take such actions on behalf of its volunteers or insure against a successful lawsuit against a volunteer.

THE CONTENT OF THE BILL:

Under the governmental immunity act, governmental agencies and their officers, employees, and volunteers are immune from tort liability when engaged in the exercise or discharge of official functions (with certain exceptions). Section 7 of the act explicitly extends this immunity to volunteers. Elsewhere in the act, a governmental agency is authorized to pay for or furnish an attorney to represent officers and employees in civil actions arising from their official duties, and to settle claims and pay damages on their behalf. Further, a governmental agency is authorized to purchase liability insurance to indemnify the agency and its agents, officers, and employees. House Bill 5454 would amend these provisions to also authorize governmental agencies to provide legal

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representation and provide liability insurance for their volunteers.

MCL 691.1408 and 691.1409

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state. Fiscal impact on local units would depend on the additional costs (if any) of legal representation and liability insurance. (1-30-01)

ARGUMENTS:

For:

With limited budgets, governments in many communities often have to marshal all their resources to keep their residents satisfied. Many governmental agencies rely on volunteers to perform services that the agency simply does not have money to pay for. Except in special circumstances, volunteers do not get paid for their time and energy, and various organizations that rely on volunteer support have long recognized the potential disincentive that the threat of a lawsuit represents. State (and federal) law already give immunity from (tort) lawsuits to volunteers of governmental agencies who are performing official tasks, and in this respect, volunteers are treated similarly to governmental officers and employees.

In comparison to governmental officers and employees, volunteers find themselves at a great disadvantage when faced with an actual lawsuit. Again, a person may offer immunity as a defense once he or she is in court, but he or she may incur significant legal expenses in preparing a defense, whether or not the lawsuit is successful and even if the suit is eventually dropped. Since 1978, the state has permitted government agencies to provide various forms of legal assistance and protection to officers and employees, when criminal actions are brought against them for actions performed in an official capacity. Governmental agencies “owe” assistance to anyone who, by prior agreement, conscientiously performs services on behalf of the agency. Moreover, by offering assurance of such assistance, government agencies might have more success attracting competent individuals to serve. At a time when the state and the nation face serious budget deficits and when residents of the state are acutely aware of the value of serving their government in emergencies, the state should

eliminate any potential disincentives to individuals who would like to volunteer.

POSITIONS:

The Oakland County Bar Association supports the bill. (1-30-02)

The Genesee County Board of Commissioners supports the bill. (1-30-02)

The Oakland County Executive supports the bill. (1-30-02)

Analyst: J. Caver

■ 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.