

Legislative Analysis



CITIZEN CORPS IMMUNITY

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House Bill 5416 as introduced

Sponsor: Rep. Mike Nofs

Committee: Veterans Affairs and Homeland Security

First Analysis (3-9-04)

BRIEF SUMMARY: The bill would provide members of the Michigan Citizen Corps with immunity from tort liability while providing services.

FISCAL IMPACT: There is no information at present.

THE APPARENT PROBLEM:

In the wake of the September 11th attacks, President Bush called for a renewed sense of volunteerism from citizens to assist their neighbors and communities in responding to disasters, whether caused by nature or through acts of terrorism. In his 2002 State of the Union Address, the president announced the creation of the USA Freedom Corps, an initiative to strengthen existing federal service programs and encourage citizens to serve their communities. On January 29, 2002, President Bush issued a Executive Order 13254 establishing the USA Freedom Corps. The USA Freedom Corps is an interagency initiative that combines the executive branch departments, agencies, and offices with public service programs such as AmeriCorps, the Senior Corps, and the Peace Corps.

One component of the USA Freedom Corps is the Citizen Corps. The Citizens Corps is a national initiative coordinated by the Federal Emergency Management Agency (FEMA) in conjunction with the Corporation for National and Community Service to promote volunteer service activities that support homeland security and community safety efforts in communities throughout the country. The activities of the Citizen Corps are a coordinated effort among a national network of state, local, and tribal Citizen Corps Councils. These councils bring together law enforcement, fire, medical, and emergency management personnel as well as volunteer organizations, local elected officials, the private sector, and other community stakeholders to develop community service strategies.

Following the president's lead in engaging citizen participation, Governor Engler issued Executive Order 2002-9 establishing the Michigan Citizen Corps Council. The council is an advisory body established within the Michigan Community Service Commission to oversee the development and operation of the Michigan Citizen Corps. The Michigan Citizen Corps helps communities coordinate volunteers to prepare for and respond to local emergencies. Locally, these activities are led by local citizen corps councils. Governor Granholm has continued the call for increased volunteerism in the state, stating in her 2004 State of the State address that the Michigan Community Service Commission

has trained 225 people to be first responders in their communities. These people are then charged with the task of training 50 more people, thereby “creating a network of citizen patriots prepared to help their fellow citizens recover from the shattered rubble of a tornado’s wake or the twisted steel of a freeway accident.” The governor is aiming for 15,000 volunteers to be trained in disaster relief by the year’s end.

The Michigan Citizen Corps operates four programs. The Community Emergency Response Training (CERT) program trains people in neighborhoods, the workplace, and schools in basic disaster response skills, such as fire suppression, urban search and rescue, and medical operations. When a disaster occurs, CERT members support the work of first responders (police, fire, etc.) and provide assistance to disaster victims. The Medical Reserve Corps coordinates the work of volunteer health professionals and other concerned citizens to provide ongoing support for public health needs during a disaster. The Citizen Corps also expands the scope of Neighborhood Watch programs to include awareness of terrorism and other homeland security issues. Finally, the Volunteers in Police Service (VIPS) program assists local law enforcement agencies in incorporating the volunteer work of community volunteers into the work of local law enforcement agencies.

The Emergency Management Act provides that the employees, agents, or representatives of this state or a political subdivision of this state and nongovernmental disaster relief workers or private or volunteer personnel engaged in a disaster relief activity are immune from tort liability to the extent provided under Section 7 of the Governmental Immunity Act. The Governmental Immunity Act defines the scope of governmental immunity for government officers, employees, and volunteers. The problem is that the extent to which the Governmental Immunity Act provides immunity to Citizen Corp members is not entirely clear.

According to a January 10, 2004 memo from the attorney general’s office to the Michigan Community Service Commission, “*Michigan case law does not clearly answer whether Citizen Corps volunteers are statutorily immune from civil liability... Ultimately, new legislation would be the best way to assure that Citizen Corps volunteers will be protected from liability when performing services in connection with the Citizen Corps program.*” Legislation has been introduced to extend immunity from tort liability to Citizen Corps volunteers.

THE CONTENT OF THE BILL:

The bill would amend the Emergency Management Act to provide immunity from tort liability to a volunteer member of the Citizen Corps or other component of the USA Freedom Corps for the death or injury of a person or damage to property that he or she caused while providing service as a member of the corps.

Immunity would be provided if the volunteer acts or reasonably believes that he or she is acting within the proper scope of authority and the volunteer’s conduct is not willful or does not amount to gross negligence that is the proximate cause of the injury or damage.

The bill would define “gross negligence” to mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

MCL 30.411

BACKGROUND INFORMATION:

According to the Michigan Community Service Commission, there are 28 Citizen Corps councils across the state, in addition to the state Citizens Corps Council. Of those 28 councils, 16 are county councils and 12 are local councils. The county councils are in Alpena, Calhoun, Cass, Genesee, Ingham, Isabella, Kalamazoo, Manistee, Marquette, Montcalm, Oakland, Osceola, Otsego, Saginaw, St. Clair, and Wayne counties. Local counties are in Denton Township, Detroit, Dowagiac, Farmington Hills, Garrish Township, Marshall, Pontiac, Rochester Hills, Rose City, Sterling Heights, West Bloomfield, and Watersmeet.

ARGUMENTS:

For:

The bill is needed to clarify that Citizen Corps volunteers are immune from tort liability while serving as a member of the corps. Generally speaking, under the Governmental Immunity Act, each volunteer acting on behalf of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the actions of the volunteer, provided that the volunteer is acting or reasonably believes he or she is acting within the proper scope of authority, the governmental agency is engaged in the exercise or discharge of a governmental function, and the volunteer’s conduct does not amount to gross negligence that is the proximate cause of the injury or damage. The act further defines “volunteer” to mean an individual who is specifically designated as a volunteer and who is acting solely on behalf of a governmental agency.

Since Citizen Corps volunteers are individuals who are recruited by and who will provide service under the authority of the Michigan Community Service Commission, it is likely that they would be considered “volunteers” under the Governmental Immunity Act. However, a memo from the attorney general notes that while the Michigan Supreme Court has ruled that the Governmental Immunity Act “treats a volunteer acting on behalf of a governmental agency in the same manner that it treats an employee of a governmental agency”, there is no case law concerning the immunity of volunteers who have performed emergency medical first aid. This is particularly disconcerting considering a provision in the Governmental Immunity Act that provides that the act does not grant immunity to a governmental agency (or an employee or agent) with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the Department of Community Health or the Department of Corrections. It isn’t clear whether a “disaster victim” would be considered to be a “patient”. If so, Citizen Corps volunteers providing emergency medical treatment to disaster victims (i.e. patients) might not be considered immune from

liability. Furthermore, provisions in the Good Samaritan Law (Public Act 17 of 1963), which provides immunity to a physician, registered professional nurse, or licensed practical nurse when providing emergency care at the scene of an emergency, aren't likely to cover Citizen Corps volunteers either.

The bill addresses this by explicitly stating that Citizen Corps members would be immune from tort liability for the death or injury of a person or property damage while acting as a member of the Citizen Corps. There would then be no doubt that these individual are protected from tort liability.

For:

The bill is necessary to encourage individuals to join the Citizen Corps. Any uncertainty regarding potential liability for actions taken while serving the corps greatly dissuades individuals from serving in the corps.

POSITIONS:

The Michigan Community Service Commission supports the bill. (2-24-04)

The Oakland County Sheriff's Office supports the bill. (2-24-04)

The Michigan Nonprofit Association supports the bill. (2-24-04)

The American Red Cross supports the bill. (2-24-04)

Legislative Analyst: Mark Wolf

■ 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.