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BILL ANALYSIS

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Senate Bill 99 (Substitute S-3 as reported)
Sponsor: Senator Gilda Z. Jacobs
Committee: Commerce and Labor

Date Completed: 5-19-03

RATIONALE

According to information provided by the National Kidney Foundation of Michigan, as of April 1, 2003, 1,314 people in Michigan had died awaiting an organ transplant since 1996, including 32 in the first three months of this year. Also, on April 1, 1,776 Michigan patients were awaiting a kidney transplant, a procedure that can be performed using a living donor. According to the Foundation, in some cases, potential living donors decline to provide an organ because of the loss of income they would experience for several weeks while undergoing and recovering from organ donation surgery. Under Federal legislation enacted in 1999, a Federal employee may take up to 30 days' paid leave to serve as an organ donor, and some states reportedly have enacted donor leave programs for their employees. Some people believe that Michigan also should adopt an organ donor leave program for its employees, in order to encourage potential donors to step forward.

CONTENT

The bill would create the "Organ Donor Leave Act" to require the Department of Management and Budget to implement and administer an organ donor leave time program for State employees other than those in the State classified civil service.

The bill also specifies that the Civil Service Commission would be encouraged to approve an organ donor leave time program for State employees in the classified civil service.

Under the bill, a State employee, other than one employed in the State classified civil service, would have to be allowed leave time to permit him or her to serve as an organ donor under the organ donor leave time program. Participation in the program could

not result in a loss or reduction in pay or affect any of the following:

- Leave time to which the organ donor otherwise was entitled.
- Credit for time of service.
- A performance or efficiency rating.

In any calendar year, an eligible State employee could use up to 30 days of leave to serve as an organ donor.

"Organ" would mean a "human organ" as that term is defined in the Public Health Code. (The Code defines "human organ" as the human kidney, liver, heart, lung, pancreas, intestine, bone marrow, cornea, eye, bone, skin, cartilage, dura matter, ligaments, tendons, fascia, pituitary gland, and middle ear structures and any other human organ specified by rule, but does not include whole blood, blood plasma, blood products, blood derivatives, other self-replicating body fluids, or human hair (MCL 333.10204).)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The number of people in need of an organ transplant far exceeds the number of available donor organs. According to testimony before the Senate Committee on Commerce and Labor by a representative of the National Kidney Foundation of Michigan, 2,388 people in Michigan were waiting for a transplanted kidney, heart, lung, liver, or pancreas as of April 1, 2003. In the first three months of 2003, only 90 people had received organ

transplants in this State, while 32 people had died waiting for transplants.

In recent years, much attention has been given to building a Michigan organ donor registry and raising public awareness; for example, the Secretary of State is required to provide information about organ donation when issuing a driver's license. While most people might think of organ donation as a gift they can provide after death, there also are instances in which a person can provide a living donation, such as providing a kidney or bone marrow, while the donor remains in good health. Undergoing a medical procedure to make such a donation, however, can require several weeks' recovery time. Reportedly, potential living donors sometimes decline to provide an organ for transplant because of the financial hardship that would accompany missing work during their medical recovery. By requiring a paid organ donor leave program for nonclassified employees and urging the Civil Service Commission to adopt such a plan for State civil service employees, the bill would encourage potential donors to donate organs in living transplants, and would allow those donors to do so without taking unpaid leave time for their own medical recovery period.

Opposing Argument

Considering the current sluggish economy and State budget difficulties, the proposed organ donor leave program should not include paid leave. Having a guaranteed return to employment should be sufficient incentive for an employee to take time off to donate an organ. The State currently provides a job guarantee for employees serving in military service, without paying their salary during the leave time. In addition, under the Federal Family and Medical Leave Act, employees may take unpaid leave for medical purposes, such as donating a kidney. Furthermore, by establishing a paid organ donor leave program, the State could encourage employees throughout the public and private sectors to demand such a program. Smaller units of government, and small businesses, could be influenced to adopt a policy that would be difficult for them to afford.

Response: Providing paid leave time to non-civil service State employees who donated organs would not strain the State budget. The National Kidney Foundation testified that 0.0034% of the Michigan adult

population served as living donors in 2000. Based on approximately 55,000 State employees, that donation rate would translate into about two employees per year serving as organ donors; the number of non-civil service employees would be far lower. On the other hand, for some people, loss of pay during the recovery from organ donation procedures apparently is an obstacle to donating an organ. Thus, the bill could encourage more people to make living organ donations.

In addition, the State should act as a role model for other employers. In providing a paid organ donor leave program, Michigan would be following an example set by the Federal government and other states. Reportedly, Colorado, Delaware, Florida, Maryland, Missouri, New York, Virginia, and Wisconsin offer organ donor leave programs; 19 other states are considering similar legislation this year; and many companies and private institutions are examining their leave policies to ensure that employees may donate organs.

Opposing Argument

The bill would require the organ donor leave program only for State employees who are not in the classified civil service system, which would exclude the vast majority of State employees. As introduced, the bill would have required an organ donor leave program for all State employees, regardless of whether they were in the classified civil service. In order to encourage widespread organ donation, the bill should require that the program apply to all State employees.

Response: Such a statutory requirement would be unconstitutional. Article 11, Section 5 of the State Constitution grants the Civil Service Commission the exclusive authority to establish and regulate all terms and conditions of employment in the classified civil service, including compensation, leaves of absence, service credit, and employee evaluation. By requiring the Department of Management and Budget to administer an organ donor leave program for nonclassified employees and explicitly encouraging the Civil Service Commission to approve a program for classified employees, the bill could result in the implementation of an organ donor leave program for all State employees without mandating it in statute.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State government depending on the number of employees who would receive leave time under the proposed program. The cost also would depend on whether an employee would have to be replaced during the leave period.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.