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**SFA**



**BILL ANALYSIS**

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Senate Bills 419 and 500 (as enrolled)  
Sponsor: Senator William Van Regenmorter (Senate Bill 419)  
Senator Thaddeus G. McCotter (Senate Bill 500)  
Senate Committee: Judiciary  
House Committee: Criminal Law and Corrections

**PUBLIC ACTS 147 and 148 of 1999**

Date Completed: 2-9-00

**RATIONALE**

The number of lawsuits brought by prisoners has been a concern for many years. At the Federal level, the Prison Litigation Reform Act of 1995 (PLRA) governs civil actions with respect to prison conditions brought by prisoners in Federal court. Among other things, the PLRA requires the court to dismiss frivolous suits; prevents a person from recovering for mental or emotional injury without a showing of physical injury; prohibits a prisoner from suing if three or more prior suits have been dismissed, unless the prisoner is in imminent danger of serious physical injury; limits the prospective relief that may be granted; and permits the court to revoke a prisoner's good time credit under certain circumstances. The PLRA also governs the payment of filing fees by prisoners who claim indigence, and requires the court to collect an initial partial filing fee equal to 20% of average monthly deposits to the prisoner's account or 20% of the average monthly balance in the account in the six months before suit was filed.

In Michigan, Public Act 555 of 1996 enacted provisions similar to those in the PLRA concerning prisoners' filing fees, although the initial partial filing fee under the State law is 50% of the average monthly deposits to or balance in a prisoner's institutional account. At the time Public Act 555 was passed, apparently it was common practice for prisoners to request that filing fees be waived on the ground of indigence, and uncommon for such requests to be denied. Despite the 1995 amendments, the number of suits filed by prisoners evidently has remained over 1,600 per year. According to a *Detroit News* article (5-17-99), figures from the Attorney General's office showed that prisoners filed 1,803 lawsuits in 1996, 1,805 in 1997, 1,686 in 1998, and 456 in the first three months of 1999. Also, it has been estimated that 800 to 1,000 of these yearly are frivolous. In order to reduce the number of lawsuits filed by prisoners, it was suggested that additional measures similar to the PLRA be enacted in Michigan.

**CONTENT**

**Senate Bill 419 added Chapter 55 (Prisoner Litigation Reform) to the Revised Judicature Act (RJA) to regulate litigation by prisoners concerning prison conditions. In regard to this litigation, the bill does the following:**

- Requires a court to dismiss an action that is frivolous or seeks monetary relief from a defendant who is immune from the requested relief.
- Prohibits a prisoner from claiming indigence if three or more prior actions or appeals have been dismissed as frivolous, unless the prisoner has suffered or is in danger of suffering serious physical injury or criminal sexual conduct.
- Prohibits a court from appointing counsel paid at taxpayer expense to a prisoner for the purpose of filing an action.
- Provides that a defendant does not have to reply to a prisoner's suit, and the court may not grant relief if the defendant does not reply.
- Restricts a court's ability to grant prospective relief, and provides for the termination of prospective relief.
- Allows a court to revoke good time or disciplinary credit under certain circumstances.
- Specifies that Section 2963 of the RJA (which provides for the payment of filing fees and costs from a prisoner's institutional account) applies to civil actions concerning prison conditions.
- Prohibits a prisoner from filing a new action or appeal until outstanding fees and costs have been paid.

**The bill also prohibits a person from suing the**

**State or a local unit for mental or emotional harm suffered while in custody without a showing of physical harm.**

**Senate Bill 500 amended the prison code to specify that a court may order the reduction or forfeiture of good time credits, disciplinary credits, and/or special disciplinary credits pursuant to Senate Bill 419.**

The bills were tie-barred to each other. A more detailed description of Senate Bill 419 follows.

#### Filing and Dismissal of Action

Filing. The bill requires a civil action concerning prison conditions to be brought in the circuit court or the court of claims, as appropriate. A prisoner may not file an action concerning prison conditions until he or she has exhausted all available administrative remedies. (The bill defines “prisoner” as a person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of State or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program. “Civil action concerning prison conditions” means any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties, but does not include proceedings challenging the fact or duration of confinement in prison, parole appeals, or major misconduct appeals.)

Mandatory Dismissal. The bill requires a court, on its own motion or on the motion of a party, to dismiss an action concerning prison conditions brought by a prisoner as to one or more defendants, if the court is satisfied that the action is frivolous or seeks monetary relief from a defendant who is immune from the requested relief. (“Frivolous” means that at least one of the following conditions is met:

- The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- The party had no reasonable basis to believe that the facts underlying that party’s legal position were true.
- The party’s legal position was devoid of arguable legal merit.)

As soon as practicable, a court must review a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. On review, the court must dismiss the complaint or a portion of it if the court finds either that the complaint or portion is

frivolous, or that the complaint seeks monetary relief from a defendant who is immune from the requested relief. If the court does not dismiss the complaint after reviewing it, the court must indicate in the record the reasons for that decision.

Defendant’s Reply. A defendant may waive the right to reply to an action brought by a prisoner. Notwithstanding any other law or rule of procedure, a waiver does not constitute an admission of the allegations contained in the complaint. Relief may not be granted to the plaintiff unless a reply has been filed. The court may require a defendant to reply if it finds that the plaintiff is likely to prevail on the merits.

Filing Fees. The bill specifies that Section 2963 (described below) applies to civil actions concerning prison conditions. Regardless of any filing fee that may have been paid, the court must dismiss a case at any time if the court finds any of the following:

- A prisoner’s allegation of indigence is untrue.
- The action or appeal is frivolous.
- The action or appeal seeks monetary relief against a defendant who is immune from the requested relief.
- A prisoner fails to comply with Section 2963.

Appointed Counsel. The court may not appoint counsel paid for in whole or in part at taxpayer expense to a prisoner for the purpose of filing a civil action concerning prison conditions.

Mental or Emotional Harm. A person may not bring an action against the State or a subdivision of the State, or an official, employee, or agent of the State or a subdivision of the State, for mental or emotional harm suffered while in custody without a showing of physical injury arising out of the incident giving rise to the mental or emotional injury.

#### Successive Actions

The bill prohibits a prisoner from claiming indigence under Section 2963 in a civil action concerning prison conditions or an appeal of a judgment in such an action, or being allowed legal representation by an attorney who is directly or indirectly compensated in whole or in part by State funds, if the prisoner has, on three or more prior occasions, while incarcerated or detained in any prison, brought an action or appeal in a court of this State that was dismissed on the ground that it was frivolous, unless the prisoner has suffered serious physical injury or is in imminent danger of suffering serious physical injury, or has suffered or in imminent danger of suffering first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC.

Upon commencing the action or initiating the appeal, the prisoner must disclose the number of civil actions and appeals that he or she has previously initiated.

Regardless of any filing fee that may have been paid, the court must dismiss a civil action or appeal at any time, if the court finds that the prisoner's claim of injury or imminent danger is false, or the prisoner fails to disclose the number of previous actions and appeals.

#### Prospective Relief/Injunctive Relief

Granting of Prospective Relief. The bill prohibits a court from granting or approving any prospective relief in a civil action concerning prison conditions unless the court finds that the relief is narrowly drawn, extends no further than necessary to correct the violation of a right, and is the least intrusive means necessary to correct the violation. A defendant or intervener is entitled to the immediate termination of prospective relief, if it was ordered in the absence of these findings. The court also must give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief. (The bill defines "prospective relief" as all relief other than monetary damages. "Relief" means all relief in any form that may be granted or approved by the court, including consent decrees but not private settlement agreements. "Consent decree" means any relief entered by the court that is based in whole or in part upon the parties' consent or acquiescence, but does not include private settlements.)

The court may not order prospective relief that requires or permits a government official to exceed his or her authority under State or local law, or that otherwise violates local law, unless all of the following conditions exist:

- State law permits the relief to be ordered in violation of local law.
- The relief is necessary to correct the violation of a right under State or local law.
- No other relief will correct the violation of the right.

The bill specifies that these provisions do not authorize a court, in exercising its remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the court's remedial powers.

Preliminary Injunction. The court may enter a temporary restraining order or an order for preliminary injunctive relief to the extent otherwise authorized by law. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds to require

preliminary relief, and be the least intrusive means necessary to correct that harm. In tailoring the preliminary relief, the court must give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the preliminary relief. Preliminary injunctive relief must automatically expire 90 days after the preliminary injunction is entered, unless the court makes the findings required for the entry of prospective relief and makes the order final before the 90-day period expires.

Termination of Prospective Relief. Except as otherwise provided, prospective relief must be terminable upon the motion of a party or intervener, as follows:

- Two years after the date the court granted or approved the prospective relief.
- One year after the date the court entered an order denying termination of prospective relief.
- In the case of an order issued on or before the date of the bill's enactment, two years after that date.

The parties, however, may agree to terminate or modify relief before it is terminated under this provision.

Prospective relief may not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of a right, extends no further than necessary to correct the violation, and is narrowly drawn and the least intrusive means of correcting the violation. A party may not seek modification or termination before the relief is terminable, to the extent that modification or termination would otherwise be legally permissible.

The court must rule promptly on a motion to modify or terminate prospective relief. Any prospective relief subject to a pending motion will be automatically stayed during one of the following periods:

- Beginning on the 30th day after the motion is filed, in the case of a motion made under the provisions described above, and ending on the date the court enters a final order ruling on the motion.
- Beginning on the 180th day after the motion is filed, in the case of a motion made under any other law, and ending on the date the court enters a final order ruling on the motion.

The court may postpone the effective date of an automatic stay for good cause, for up to 60 days. "Good cause" does not include the congestion of the court's calendar.

An order staying, suspending, delaying, or barring the operation of an automatic stay, other than an order to postpone the effective date of the stay for good cause, must be treated as an order denying the dissolution or modification of an injunction, and may be appealed as of right regardless of how the order is styled or whether it is termed a preliminary or final ruling.

Consent Decree. The court may not enter or approve a consent decree unless it complies with the limitations on granting or approving prospective relief, and on entering a temporary restraining order or a preliminary injunction.

#### Damages

Subject to Section 220h of the Department of Corrections law (which requires the Department to deduct funds received by a prisoner who is ordered to pay restitution to a victim) and the Crime Victim's Rights Act, any damages awarded to a prisoner in connection with a civil action brought against a prison or against a prison official, employee, or agent must be paid directly to satisfy any outstanding restitution orders pending against the prisoner, including restitution orders issued under the State Correctional Facility Reimbursement Act, the Prisoner Reimbursement to the County Act, and the Crime Victim's Rights Act, any outstanding costs and fees, and any other debt or assessment owed to the jurisdiction housing the prisoner. The remainder of the award after full payment of all pending restitution orders, costs, and fees, must be forwarded to the prisoner.

Before the payment of any damages to a prisoner, the court awarding the damages must make reasonable efforts to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of damages.

#### Revocation of Good Time/Disciplinary Credit

In a civil action brought by a prisoner, the court may order the revocation of a prisoner's good time credit and/or disciplinary credit if, on its own motion or the motion of a party, the court finds that the prisoner filed an action prohibited by the bill (because the prisoner has not exhausted administrative remedies, the action is frivolous or seeks monetary relief from a defendant who is immune, or the prisoner failed to comply with Section 2963) and one of the following applies:

- The claim was filed for a malicious purpose.
- The claim was filed solely to harass the party against whom it was filed.
- The prisoner testified falsely or otherwise knowingly presented false evidence or

information to the court.

#### In-Prison Proceedings

To the extent practicable, in an action brought by a prisoner, pretrial proceedings in which the prisoner's participation is required or permitted must be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the prison in which he or she is confined.

Subject to the agreement of the official of the State or local unit of government with custody over the prisoner, hearings may be conducted at the prison in which the prisoner is confined. To the extent practicable, the court must allow counsel to participate by telephone, video conference, or other communications technology in a hearing held at the prison.

#### List of Previous Actions

The bill requires the State Court Administrative Office to compile and maintain a list of the civil actions concerning prison conditions brought by a prisoner that are dismissed as frivolous. The list must include an account of the amount of unpaid fees and costs associated with each dismissed case. The list must be made available to the courts for the purpose of ascertaining the existence and number of civil actions concerning prison conditions filed by each prisoner, and any associated unpaid fees and costs, for the purposes described in Chapter 55.

The court in which a civil action concerning prison conditions is brought must refer to the list to determine the number and existence of such actions previously filed by a prisoner and any associated unpaid fees and costs.

## Section 2963

Under Section 2963, if a prisoner submits a civil action or appeal for filing and claims that he or she is indigent and unable to pay the filing fee, the court must suspend the filing of the action or appeal until the court receives the filing fee or an initial partial filing fee. If the balance in the prisoner's institutional account equals or exceeds the full amount of the filing fee, the court must order the prisoner to pay that amount. If the balance is less than the amount of the filing fee, the court must require the prisoner to pay an initial partial filing fee, equal to 50% of the average monthly deposits made to the institutional account or the average monthly balance in the account (whichever is greater) for the 12 months preceding the filing. If the prisoner fails to pay the full or partial filing fee within 21 days after it is ordered, the action or appeal may not be filed. In addition to an initial partial filing fee, the court must order the prisoner to make monthly payments equal to 50% of the deposits made to his or her account. Section 2963 also provides that if costs are assessed against a prisoner and the balance of his or her institutional account is not sufficient to pay the full amount, the court must order the prisoner to make payments in the same manner as required for the payment of filing fees.

The bill specifies that a prisoner who has failed to pay outstanding fees and costs as required under Section 2963 may not commence a new civil action or appeal until the outstanding fees and costs have been paid.

The bill also provides that, if a prisoner is ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs, the agency having custody of the prisoner must remove those amounts from his or her institutional account and, when an amount equal to the balance of the filing fees or costs due is removed, remit that amount as directed in the order.

MCL 600.2963 et al. (S.B. 419)  
800.33 (S.B. 500)

## **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 bills will reduce the number of frivolous lawsuits filed by prisoners, and ensure that courts reject those that are filed. Examples of this litigation include suits based on a prison's failure to mail a sweepstakes entry before the contest deadline, an inmate's being

served cold soup, and the denial of a dental implant that a prisoner felt he needed to become more attractive (*Detroit News*, 5-17-99). Responding to these complaints apparently has absorbed the time of nearly two dozen lawyers in the Michigan Attorney General's office, in addition to wasting the time and resources of the judicial system. To address this situation, Senate Bill 419 reinforces the 1995 amendments requiring prisoners to pay filing fees, requires judges to throw out frivolous suits or suits that seek monetary damages from defendants who are immune from that relief, and protects taxpayers from footing the bill for appointed attorneys who would file prisoners' lawsuits. The bill also ensures that a prisoner cannot have his or her filing fees suspended if three or more prior suits have been thrown out as frivolous, unless the prisoner is a victim of serious physical injury or criminal sexual conduct. In addition, a prisoner may lose his or her good time or disciplinary credit for bringing a prohibited lawsuit if the claim is filed for a malicious purpose or solely to harass the defendant, or if the prisoner has committed perjury.

The bill also imposes substantial limitations on prospective relief. For example, if a judge orders the State to take certain actions to change a prison condition that violates prisoners' rights, the responsibilities imposed on the State must address only that violation and must do so in a way that imposes the least burden on the State. Also, in deciding what relief to impose, the judge must give substantial consideration to the effect it will have on public safety or the criminal justice system. The bill also provides for the termination of prospective relief after a specific amount of time, which means that the State will not have to continue performing additional responsibilities unless the court finds that the violation is ongoing and the relief remains limited to correcting the violation.

Another way in which the bill reduces the burden on the State and State officials is by providing that a defendant does not have to reply to a prisoner's lawsuit about prison conditions. If a defendant chooses not to reply, the court may not grant relief to the prisoner. The court may require a defendant to reply only if it finds that the prisoner is likely to prevail on the merits of the case. In addition, the bill prohibits anyone from suing for mental or emotional harm suffered while in custody, unless the person also can show physical injury.

This legislation mirrors many provisions of the Federal PLRA, which has been in place for several years. Federal courts already have upheld various provisions of the law that have been challenged.

**Response:** The PLRA was designed, in part, to reduce Federal intervention in state prison systems; it assumes that prisoners will continue to have

access to state courts. The law evidently was enacted as part of an omnibus appropriations bill and passed with little Congressional debate or media attention. Although a version of the PLRA had been separately introduced, apparently it received only one committee hearing, and never was the subject of a committee mark-up or a committee report.

### **Opposing Argument**

Litigation by prisoners is a critical means of identifying and correcting conditions that violate constitutional or statutory standards, and can serve as a deterrent to violations. Senate Bill 419, however, will prevent prisoners with serious, legitimate complaints about prison conditions or the actions of prison personnel from seeking judicial redress. Prisoners who attempt to litigate on their own already face significant obstacles--such as illiteracy, mental illness, and little access to competent legal advice--that can prevent them from filing complaints that appear meritorious. This bill further ensures that prisoners do not receive appointed counsel (paid to any extent with public funding) in order to file an action concerning prison conditions--whether or not the action may be meritorious. The bill then makes it clear that a defendant does not have to reply to a prisoner's lawsuit, and a judge cannot grant relief to the prisoner unless the defendant does reply. A court may require a defendant to reply only if the court finds that the prisoner is likely to win--a determination that might be difficult to make without the defendant's answer. Unlike the Federal court system, Michigan courts do not have a staff that investigates the basis of complaints filed by prisoners representing themselves. Also, requiring a court to review a prisoner's lawsuit "as soon as practicable" sets an ambiguous and perhaps meaningless standard, considering today's dockets.

Furthermore, the judicial system provides a venue where disputes can be resolved in a nonviolent manner. "To the extent that the doors to the courthouse are closed and not replaced with other means by which inmates may have their complaints considered, efforts to limit court access may have the unintended effect of increasing tension and frustration in the institution" (*Corrections Compendium*, December 1997). Given the decreasing access to Michigan's prisons by the public and the media, the ability of prisoners to raise their grievances in a safe, impartial, and visible forum is essential.

### **Opposing Argument**

Senate Bill 419 prohibits a prisoner from claiming indigence if the prisoner has had three or more suits or appeals dismissed as frivolous in the past. That is, a prisoner must pay the full amount of the filing fee before he or she can file an action or appeal a

judgment concerning prison conditions--regardless of the merit of the prisoner's present complaint. This applies to any type of prior action, not just those concerning prison conditions, and it applies retroactively to all prior suits, not just those filed after the bill took effect. The exception for prisoners who have been injured or are in "imminent danger" of injury is too limited, since prisoners who are about to be attacked cannot easily run to court.

**Response:** This provision is considerably less severe than in prior versions of the bill, and is less restrictive than the PLRA. The Federal law prohibits a prisoner from filing an action or appeal if three or more prior suits or appeals have been dismissed. Under the bill, the prisoner may still file a claim or appeal but may not claim indigence or receive appointed counsel paid with State funds.

### **Opposing Argument**

The prohibition against bringing an action for mental or emotional injury without a showing of physical harm ignores the realities of prison life. Serious mental or emotional injury can result from the improper use of such behavior control techniques as prolonged isolation, extreme sensory deprivation, and four-point restraints, yet there might be no physical injury. If mentally ill prisoners are not given the proper care, they may have causes of action that are barred by this prohibition. Also, it is not clear whether sexual assaults are included in the term "physical injury". As long as there is an objective manifestation of serious mental or emotional injury, a lawsuit should not be barred.

### **Opposing Argument**

Although Senate Bill 419 might relieve the State of having to respond to prisoners' lawsuits, it is not clear how the bill will reduce the burden on the courts. Judges already have had the means to deal with frivolous lawsuits and, under the bill, still must determine whether a prisoner's complaint is meritorious. It is the cases that do have merit and must be litigated that take up the courts' time and money. The filing fee requirements enacted in 1996 already prevent a number of suits from being filed in the first place.

### **Opposing Argument**

Requiring prospective relief to terminate after a specific period of time, unless the court finds that it remains necessary and narrowly drawn, means that cases will have to be relitigated periodically. This will be burdensome to all parties as well as the judicial system.

### **Opposing Argument**

Under Senate Bill 419, if a prisoner is awarded damages in connection with an action brought against a prison or prison personnel, the damages must be used to pay outstanding restitution orders

against the prisoner, including restitution to the State or a county for housing the prisoner. According to testimony by the American Civil Liberties Union, requiring a damages award to be applied to room and board is unconstitutional. Moreover, this provision may serve to reward the Department of Corrections or local jails for improper behavior, since the amount awarded to a prisoner will then be returned to the State or county.

Legislative Analyst: S. Lowe

**FISCAL IMPACT**

The bills will have an indeterminate fiscal impact on State and local government.

<u>Calendar Year</u>	<u>Cases Filed</u>
1994	1,551
1995	1,796
1996	1,957
1997	1,852
1998 (estimated)	1,775

Table 1 summarizes information from the Department of Corrections' Statistical Report on the number of cases filed by prisoners against the Department and individuals. (Habeas corpus cases to bring the prisoner to court for appeal are not included in the statistics.) As seen in Table 1, the number of suits filed by prisoners increased from 1994 to 1996. In 1997 and 1998, the number of cases decreased. At each prison, 5% to 15% of the assistant-to-the-warden position is allocated to litigation coordination or obtaining documents for these cases. Additionally, the executive office assists the Attorney General in gathering documents for certain cases and establishes procedures for the litigation coordinators; this is estimated as one FTE in the office of hearings and policies.

The Department maintains institutional accounts for prisoners in State prisons called fiduciary accounts. Currently, a report on the fiduciary account is forwarded to courts to determine whether a prisoner is indigent. The Department is responsible for assets held in the prison. Other assets held by a prisoner outside of the prison are the responsibility of the Department of Treasury or the Attorney General. To the extent that this process continues under the legislation, there will be no change in prison operations or operating costs.

To the extent that the definition of a prison as used in Senate Bill 419 includes both State and local facilities and that the definition of a prisoner as used

in the bill includes those accused of, convicted of, sentenced for, or adjudicated delinquent for violations of State or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program, prisoner institutional accounts for facilities other than State prisons will have to be reviewed. Many offenders in local facilities or diversionary programs have minimal institutional accounts for canteen purchases or, in the case of residential programs, do not have institutional accounts.

The bills allow the revocation of good time or disciplinary credit for prisoners who file certain false or aggravating cases. Good time, which is earned by prisoners who committed crimes before April 1, 1987, and disciplinary or special disciplinary credit, which is earned by prisoners who committed crimes after that date, reduce the time served on the minimum sentence of the offender. There are no data to indicate how many prisoners still in the prison system are subject to good time; most prisoners would be subject to disciplinary or special disciplinary credits. There also are no data to indicate how many cases filed by prisoners would be considered false or aggravating. Additionally, some offenders serving in local facilities may reduce their minimum sentence with credits earned in programs that may be referred to as good time programs. With the bills' inclusion of local facilities, certain jail inmates might lose good time credits, increasing the time served by offenders and increasing local jail population. On average, the per diem cost for a prisoner in Michigan prisons is \$61.

Senate Bill 419 will result in additional administrative responsibilities for the State Court Administrative Office regarding tracking actions that are dismissed as frivolous.

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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.