



**House
Legislative
Analysis
Section**

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AS ENROLLED

AMEND GOVERNMENTAL IMMUNITY

**House Bill 4744 (Substitute H-1)
First Analysis (11-8-95)**

**Sponsor: Rep. James McNutt
Committee: Conservation, Environment
and Great Lakes**

THE APPARENT PROBLEM:

Last year amendments were made to the laws which regulate the uses of both off-road vehicles and snowmobiles. These amendments included changes which limited the liability of county road commissioners, county boards of commissioners, and counties to lawsuits for injuries or damages arising out of most incidents involving snowmobiles or off-road vehicles which occurred on highways under their jurisdiction. Unfortunately, the provisions limiting the liability of the governmental units are not mentioned in the governmental immunity act. Legislation is needed to reconcile these provisions with the governmental immunity act.

THE CONTENT OF THE BILL:

Under the governmental immunity act, all governmental agencies are immune from tort liability in most cases, subject to certain specific exceptions listed in the act. One of these exceptions is what is commonly known as the "highway exception." The highway exception provides that governmental agencies with jurisdiction over any highway (defined as any highway, road, or street which is open for public travel) are required to maintain that highway in a manner that makes it reasonably safe and convenient for public travel. The highway exception allows someone who is injured because of a governmental agency's failure to properly maintain a highway under its jurisdiction to sue in tort and recover damages for his or her injuries from the responsible governmental agency.

The bill would require that the responsibility of a governmental agency to keep highways under its jurisdiction in good repair be limited by the terms of the provisions of the Natural Resources and Environmental Protection Act (NREPA) concerning snowmobiles and off-road vehicles, which were amended last year to limit the liability of governmental agencies in cases involving ORVs and snowmobiles. These provisions now provide that a county board of road commissioners, a county board of commissioners, and/or a county have no duty to maintain a highway

under their respective jurisdictions in a condition which makes it reasonably safe and convenient for the operation of an off-road vehicle or for a snowmobile. The provisions also provide that a county board of road commissioners, county board of commissioners, and/or a county are immune from tort liability for injuries or damages which arise from the operation of an ORV or snowmobile on maintained or unmaintained highways, shoulders, and rights-of-way over which the board or county has jurisdiction. However, these provisions do not apply to ORVs that are registered as motor vehicles under the Michigan Vehicle Code, or to ORVs that are allowed to be operated by permanently disabled persons in a city, village, or township through an ordinance of that local unit. The provisions which grant immunity to the governmental agencies do not apply if the actions of the agency's actions amounted to gross negligence, defined as conduct so reckless as to demonstrate a substantial lack of concern for whether injury results.

Thus, the bill would incorporate the 1994 amendments to the snowmobile and off-road vehicle provisions of the NREPA into the highway exception of the governmental immunity act. The bill would also delete language from the governmental immunity act specifying that only injuries arising from incidents which occurred on or after July 1, 1965 are actionable.

MCL 691.1402

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local government. (11-6-95)

ARGUMENTS:

For:

The snowmobile and ORV provisions of the NREPA provide an extension of governmental immunity beyond the immunity already provided through the

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governmental immunity act. As a result, it is possible that the courts could find the provisions to be in conflict with one another and thereby unenforceable. The bill is necessary to reconcile the provisions of the governmental immunity act with the snowmobile and ORV provisions, so that any potential ambiguity in the intent of the law will be alleviated.

POSITIONS:

There are no positions on the bill.