

**GOVERNMENTAL IMMUNITY:
SIDEWALKS, ETC.**

**House Bill 4010 (Substitute H-2*)
First Analysis (6-2-99)**

**Sponsor: Rep. Marc Shulman
Committee: Family and Civil Law**

THE APPARENT PROBLEM:

The Governmental Immunity Act provides governmental agencies (the state, political subdivisions, and municipal corporations) with immunity from tort liability for cases where the agency is engaged in a governmental function. There are exceptions to the immunity, including an exception for personal injury and property damage resulting from the failure to maintain a highway in reasonable repair. The term "highway" is defined in the act to include bridges, sidewalks, crosswalks, and culverts on any highway. However, the statute says that the state or county road commission's liability for highways "extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel." The statute does not directly address the liability of local governments for sidewalks, etc. alongside state or county roads, but the courts have rendered decisions on the matter. The Michigan Court of Appeals imposed liability on cities for sidewalks abutting a state highway in Jones v the City of Ypsilanti (1970), and in a recent decision, Listanski v Canton Township (1996), the Michigan Supreme Court said townships are liable for injuries occurring on sidewalks abutting county roads within their boundaries. This decision overturned a court of appeals decision saying townships were not liable because they lack sufficient jurisdiction. (Townships must seek approval from the county in order to construct, repair, or maintain sidewalks along county roads.) The state supreme court said its decision, "treats townships the same as cities, and ensures that those persons injured on township sidewalks abutting a county road are not within the only class of persons without a remedy against a government agency." Legislation has been introduced to address the liability of municipalities for "installations" alongside county roads.

THE CONTENT OF THE BILL:

The bill would amend the Governmental Immunity Act to address the extent of a municipal corporation's liability for injuries arising from the use of sidewalks, trailways, crosswalks, or other installations outside of the improved portion of a county highway designed for vehicular traffic. The bill would provide the following.

** Except as otherwise provided, a municipal corporation (city, village, township, or a combination of them acting jointly) would have no duty to repair or maintain, and would not be liable for injuries arising from, a portion of county highway outside of the improved portion of the highway designed for vehicular travel, including a sidewalk, trailway, crosswalk, or other installation.

However, this would not prevent or limit a municipal corporation's liability if both of the following were true: a) at least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of a defect in a sidewalk, trailway, crosswalk, or other installation; and b) the defect was a proximate cause of the injury, death, or damage.

** A discontinuity defect of less than two inches would create a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, crosswalk, or other installation in reasonable repair.

** The bill would specify that township liability was limited by Section 81131 of the Natural Resources and Environmental Protection Act. That section provides that a municipality is immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation of an ORV [off-the-road vehicle] on maintained and unmaintained highways, shoulders, and rights-of-way. The immunity does not extend to actions that constitute gross negligence.

** The bill also would make some technical changes in definitions.

The bill contains an enacting clause specifying that the amendments apply only to a cause of action arising on or after the effective date of this amendatory act.

MCL 691.1401 and 691.1402

BACKGROUND INFORMATION:

Section 1403 of the Governmental Immunity Act states:

No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took effect.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill would provide protection to townships, cities, and villages against "slip and fall" and similar lawsuits on sidewalks, bikepaths, trailways, and similar installations along the side of county highways. It limits liability to instances in which the municipality knew or, in the exercise of reasonable diligence, should have known of a defect at least 30 days before the occurrence of an injury, death, or damage (and where the defect was a proximate cause). Also, the bill would partially restore what is commonly referred to as the "two-inch rule" (abolished by the state supreme court in 1972). It would specify that a "discontinuity defect" of less than two inches would create a rebuttable inference that the municipality maintained the sidewalk, crosswalk, etc., in reasonable repair. The bill treats townships, cities, and villages alike.

Against:

The bill, by restricting lawsuits, will result in a pool of injured people unable to get compensation for their injuries. Further, it could reduce the incentive for municipalities to engage in sidewalk repair programs or similar efforts. Some people say that when municipalities engage in such programs, they reduce the amount of negligence litigation they face. That is a better way to reduce lawsuits than by granting immunity.

POSITIONS:

The Michigan Townships Association supports the bill. (5-27-99)

The Michigan Municipal League supports the bill. (5-27-99)

The Michigan Trial Lawyers Association is opposed to the bill. (5-27-99)

Analyst: C. Couch

■ 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.