

MUNICIPALITIES: Y2K IMMUNITY

House Bill 4469 as introduced First Analysis (10-19-99)

Sponsor: Rep. Eileen DeHart
Committee: Family and Civil Law

THE APPARENT PROBLEM:

The "Y2K Problem" and the "Millennium Bug" are both expressions that cover a large complex of problems associated with the fact that computer systems record the year with two numbers rather than with four numbers. Thus, computers and many electronic products would indicate the current year as "99" and not "1999". The fear is that when the year changes from 1999 to 2000, computers and computer-dependent systems will malfunction or even "crash". This could affect modern equipment from the minor (VCR programming) to the cosmic (the old Cold War hotlines between the United States and the former Soviet Union), and just about everything in between. People are concerned about the functioning of public utilities, banks, telecommunications, alarm systems, large government payment systems, police and other public safety services, heating and air conditioning, elevators, drug manufacturing, hospital operations and medical equipment, and a wide variety of business and manufacturing operations. (On the other hand, while accepting that the problem is real, some skeptics have suggested the main problems associated with Y2K could be caused by alarmism and overreaction.) Many public and private organizations have been diligently expending a large amount of money and energy and being prepared for the coming of the year 2000 in order to minimize disruptions in everyday life. An additional concern is the fear of a "litigation explosion" as a result of Y2K-related problems. The federal and state governments have been examining ways of containing such lawsuits. One method is to provide a certain amount of immunity to private and public entities.

Under the governmental immunity act, governmental agencies and their officers, employees, and volunteers are immune from tort liability when engaged in the exercise or discharge of a governmental function. Certain specific exceptions apply, including for defective highways, government owned vehicles, public buildings, and the ownership or operation of a hospital or county medical care facility. Legislation has been introduced that would provide immunity for local units of government from actions related to Y2K malfunctions.

THE CONTENT OF THE BILL:

The bill would amend the governmental immunity act to provide immunity from liability for local governments for actions resulting from a computer date failure, defined as the inability of a computer system to recognize, calculate, or otherwise properly process dates or times in the years 1999 and 2000 and beyond.

(Under the governmental immunity act, governmental agencies and their officers, employees, and volunteers are immune from tort liability when engaged in the exercise or discharge of a governmental function. Certain specific exceptions apply, including for defective highways, government owned vehicles, public buildings, and the ownership or operation of a hospital or county medical care facility.)

Under the bill, a municipal corporation (a city, village, township, or charter township) engaged in the exercise or discharge of a governmental function would be immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, and further would be immune from liability in actions resulting from a computer date failure even where exceptions to governmental immunity generally apply (e.g., defective highways, public buildings, and so forth). Further, officers, employees, volunteers, and members of boards, councils, commissions, and statutorily created task forces of municipal corporations would also be immune from liability under the same circumstances, if all of the following applied:

*the injury or damage was caused by the person while in the course of employment or service or while acting on behalf of the municipal corporation;

*the person was acting (or reasonably believed he or she was acting) within the scope of his or her authority;

*the municipal corporation was engaged in the exercise or discharge of a governmental function; and

*the person's conduct did not amount to gross negligence that is the proximate cause of the injury or

damage (“gross negligence” would be defined to mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury or substantial damage results).

The bill’s grant of immunity would not apply with respect to an action for damages in an action based upon the provision of medical care or treatment to a patient, except medical care or treatment provided in a hospital owned or operated by the Department of Community Health or the Department of Corrections.

The bill specifies that it could not be construed as modifying or restricting the immunity of a governmental agency (a term that includes the state, a political subdivision, or a municipal corporation) otherwise provided in the act. Further, it would not limit the authority of a municipal corporation to enter into an agreement to waive or limit its immunity as described in the bill, if such an agreement contained provisions that the municipal corporation found appropriate on the issue of its liability, damages, or both.

[Note: House Bill 4469 is very similar to House Bill 4588. For further information see the analysis of that bill dated 10-5-99.]

MCL 691.1401

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would ensure that the principle of governmental immunity will apply to actions based on Y2K problems for municipalities. It will guard against frivolous lawsuits and the spending of taxpayer money on litigation instead of vital public services. Otherwise, local units could face a flood of financially ruinous and paralyzing lawsuits. The bill will apply to contract litigation as well as tort litigation. It should be noted that lawsuits will still be permitted in cases of gross negligence; that is, when conduct is so reckless as to demonstrate a substantial lack of concern for whether an injury or substantial damage occurs. The granting of immunity should not be seen as weakening the incentive for municipalities to address Y2K problems.

For one thing, it is being dealt with close to the end of the year, and responsible units of government will already

have addressed (or be in the process of addressing) the issue.

Against:

It is not clear municipalities need any additional immunity in statute to protect them against Y2K malfunctions. In any case, it is especially a mistake to transfer any loss that results from Y2K problems away from the entities that could have taken adequate steps to avoid those problems. Those parties that have taken the steps needed in order to avoid Y2K problems don’t need immunity, and those who have failed to take adequate steps to avoid such problems don’t deserve immunity. By protecting governmental agencies like municipalities from lawsuits, the bill will transfer the risk to the individuals who had no opportunity to protect themselves and will leave them uncompensated for their losses.

POSITIONS:

The Michigan Townships Association supports the bill. (10-18-99)

Analyst: W. Flory

■ 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.