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Y2K: GOVERNMENTAL IMMUNITY

House Bill 4587 (Substitute H-1)
Sponsor: Rep. Patricia Birkholz

**House Bill 4588 with committee
amendment**
Sponsor: Rep. Marc Shulman

Committee: Family and Civil Law
First Analysis (10-5-99)

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 a broad immunity for local units of government and more limited immunity for the state from actions related to Y2K malfunctions.

THE CONTENT OF THE BILL:

House Bill 4587 would create a new act to prohibit political subdivisions from charging interest, penalties, fines, fees or finance charges on an amount erroneously assessed because of a billing error or an error in the assessment of a fee or tax caused by a computer date failure. House Bill 4588 would amend the governmental immunity act (MCL 691.1401 et al.) to provide immunity from liability for the state and local governments for actions resulting from a computer date failure. The bill would grant broad immunity to local governments, and a more limited immunity (dealing only with the provision of medical care or treatment) to the state. In each bill a computer date failure would be 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. The term would include an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure. Both bills would be repealed January 1, 2003.

In each bill, the term “political subdivision” would apply to cities, villages, townships, counties, county road commissions, school districts, community college districts, port districts, metropolitan districts, transportation authorities, districts or authorities authorized by law or formed by political subdivisions, and agencies, departments, courts, boards, or councils of these entities.

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Under the bill, a political subdivision (a city, village, township, school district, authority, or an agency of one of these) 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 and commissions of political subdivisions would also be immune from liability under the same circumstances, if all of the following applied:

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

-- the political subdivision 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).

Further, under the bill, a governmental agency would be immune from liability in an action to recover damages with respect to providing medical care or treatment to a patient resulting directly or indirectly from a computer date failure. The term "governmental agency" is defined to mean the state, a political subdivision, or a municipal corporation (a city, village, township, or charter township). Further, without regard to the discretionary or ministerial nature of the conduct in question, governmental agency officers, employees, volunteers, and members of boards, commissions, and statutorily created task forces would be immune from liability in the same actions, if all of the following applied:

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

-- the political subdivision 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.

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

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:***For:***

House Bill 4588 ensures that the principle of governmental immunity applies to actions based on Y2K problems. 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. Governmental immunity for Y2K purposes will also extend to medical care and treatment. 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 governmental units 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.

For:

House Bill 4587 protects taxpayers and others from extra charges if there are errors made in billings and assessments as a result of Y2K malfunctions. People who pay late or pay less than they owe due to computer date problems should not be penalized.

Against:

It is not clear governments need any additional immunity in statute to protect them against Y2K malfunctions. In any case, it is especially a mistake to prevent lawsuits when death or injury occurs due to computer date failures. This will result in uncompensated injured parties. Currently, government immunity does not extend to government owned or

operated hospitals or county medical care facilities and the agents or employees of such facilities. It is not good public policy to grant immunity to those facilities and employees in Y2K cases.

This would also be a good time to correct a loophole in the government immunity statute that prevents lawsuits against certain university doctors working at private hospitals. A recent court decision discovered an unintentionally created immunity for such doctors in a case involving a physician who worked for a university that did not own or operate a hospital. The court concluded that since the physician was a government employee and was not subject to the hospital exemption, he was entitled to immunity from lawsuit. A bill passed the House last session (House Bill 4629) closing the loophole but was not enacted. [See the analysis of that bill dated 8-6-97 for further discussion.]

POSITIONS:

The Michigan Townships Association supports the bills. (10-4-99)

The Michigan Municipal League supports the bills. (10-4-99)

The Michigan Association of Counties supports the bills. (10-4-99)

The Michigan Trial Lawyers Association opposes the creation of new immunities ; in particular it opposes the extension of immunity for medical care or treatment in public hospitals found in House Bill 4588, and it believes the existing loophole exempting doctors at state universities when not practicing at university hospitals should be closed. (10-4-99)

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.