

Legislative Analysis



GOVERNMENTAL IMMUNITY: TWO-INCH RULE

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House Bill 4589

Sponsor: Rep. Pat Somerville

Committee: Judiciary

Complete to 5-11-11

A SUMMARY OF HOUSE BILL 4589 AS INTRODUCED 4-27-11

The bill would amend provisions of the Governmental Immunity Law that address the liability of a municipality for defects in a sidewalk to apply the two-inch rule to sidewalks adjacent to municipal and state highways, in addition to sidewalks adjacent to county highways.

Under Section 2a of the law, except as otherwise provided, a municipal corporation (a city, village, or township) does not have a duty to repair or maintain a portion of a county highway outside of the improved portion of the highway, including a sidewalk, railway, crosswalk, or other installation. This does not limit liability if the municipality knew or should have known of a defect at least 30 days before the relevant injury, death, or damage, and the defect was a proximate cause of the injury, death, or damage. In addition, a discontinuity defect of less than two inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, railway, crosswalk, or other installation outside of the improved portion of the highway, in reasonable repair.

House Bill 4589 would amend Public Act 170 of 1964, the governmental immunity law, to instead require that a municipal corporation maintain a sidewalk adjacent to a municipal, county, or state highway pursuant to Section 2(1) – the section imposing on all governmental agencies a duty to maintain highways under their jurisdiction in reasonable repair. "Sidewalk," except for how the term is used in the definition of "highway," would mean a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designed for vehicular travel.

In a civil action, a municipal corporation would be presumed to have maintained a sidewalk that it has a duty to maintain in reasonable repair. This presumption could only be rebutted by evidence of specific facts showing that the proximate cause of the injury was one of the following:

- A vertical discontinuity of two inches or more in the sidewalk.
- A dangerous condition in the sidewalk itself of a particular character other than a discontinuity.

Whether a presumption under the above has been rebutted would be a question of law for the court.

In addition, Section 2(1) provides that the duty of the state and county road commissions to repair and maintain highways extends only to the improved portion of the highway designed for vehicular travel, "and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel." The bill would delete the language in quotations.

The bill would also revise the act's definition for "highway." Currently, the term means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, crosswalks, trailways, and culverts on the highway and does not include an alley, tree, or utility pole. The bill would delete the reference to "trailways" and "culverts" and add "an appurtenance" to the list of things that "highway" does not include.

FISCAL IMPACT:

House Bill 4589 would result in an indeterminate amount of savings to local units of government as a result of mitigated future liability claims.

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