

# HOUSE BILL No. 4589

April 27, 2011, Introduced by Reps. Somerville, Opsommer, Walsh, Shirkey and Muxlow  
and referred to the Committee on Judiciary.

A bill to amend 1964 PA 170, entitled

"An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers, employees, and volunteers and for paying damages sought or awarded against them; to provide for the legal defense of public officers, employees, and volunteers; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal acts and parts of acts,"

by amending sections 1, 2, and 2a (MCL 691.1401, 691.1402, and 691.1402a), section 1 as amended by 2001 PA 131 and section 2 as amended and section 2a as added by 1999 PA 205.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. As used in this act:

2       (A) "GOVERNMENTAL AGENCY" MEANS THIS STATE OR A POLITICAL  
3       SUBDIVISION.

4       (B) "GOVERNMENTAL FUNCTION" MEANS AN ACTIVITY THAT IS  
5       EXPRESSLY OR IMPLIEDLY MANDATED OR AUTHORIZED BY CONSTITUTION,  
6       STATUTE, LOCAL CHARTER OR ORDINANCE, OR OTHER LAW. GOVERNMENTAL  
7       FUNCTION INCLUDES AN ACTIVITY PERFORMED ON PUBLIC OR PRIVATE  
8       PROPERTY BY A SWORN LAW ENFORCEMENT OFFICER WITHIN THE SCOPE OF THE  
9       LAW ENFORCEMENT OFFICER'S AUTHORITY, AS DIRECTED OR ASSIGNED BY HIS  
10      OR HER PUBLIC EMPLOYER FOR THE PURPOSE OF PUBLIC SAFETY.

11      (C) "HIGHWAY" MEANS A PUBLIC HIGHWAY, ROAD, OR STREET THAT IS  
12      OPEN FOR PUBLIC TRAVEL. HIGHWAY INCLUDES A BRIDGE, SIDEWALK, OR  
13      CROSSWALK ON THE HIGHWAY. HIGHWAY DOES NOT INCLUDE AN ALLEY, TREE,  
14      OR UTILITY POLE OR AN APPURTENANCE.

15      (D) ~~(a)~~—"Municipal corporation" means a city, village, or  
16      township or a combination of 2 or more of these when acting  
17      jointly.

18      (E) ~~(b)~~—"Political subdivision" means a municipal corporation,  
19      county, county road commission, school district, community college  
20      district, port district, metropolitan district, or transportation  
21      authority or a combination of 2 or more of these when acting  
22      jointly; a district or authority authorized by law or formed by 1  
23      or more political subdivisions; or an agency, department, court,  
24      board, or council of a political subdivision.

25      (F) "SIDEWALK", EXCEPT AS USED IN SUBDIVISION (C), MEANS A  
26      PAVED PUBLIC SIDEWALK INTENDED FOR PEDESTRIAN USE SITUATED OUTSIDE  
27      OF AND ADJACENT TO THE IMPROVED PORTION OF A HIGHWAY DESIGNED FOR

1 **VEHICULAR TRAVEL.**

2 (G) ~~(e)~~ "State" means ~~the~~ **THIS** state of ~~Michigan~~ and its  
3 agencies, departments, commissions, courts, boards, councils, and  
4 statutorily created task forces. ~~and~~ **STATE** includes ~~every~~ **A** public  
5 university ~~and~~ **OR** college of ~~the~~ **THIS** state, whether established as  
6 a constitutional corporation or otherwise.

7 ~~—— (d) "Governmental agency" means the state or a political~~  
8 ~~subdivision.~~

9 ~~—— (e) "Highway" means a public highway, road, or street that is~~  
10 ~~open for public travel and includes bridges, sidewalks, trailways,~~  
11 ~~crosswalks, and culverts on the highway. The term highway does not~~  
12 ~~include alleys, trees, and utility poles.~~

13 ~~—— (f) "Governmental function" is an activity that is expressly~~  
14 ~~or impliedly mandated or authorized by constitution, statute, local~~  
15 ~~charter or ordinance, or other law. Governmental function includes~~  
16 ~~an activity, as directed or assigned by his or her public employer~~  
17 ~~for the purpose of public safety, performed on public or private~~  
18 ~~property by a sworn law enforcement officer within the scope of the~~  
19 ~~law enforcement officer's authority.~~

20 (H) ~~(g)~~ "Township" ~~includes~~ **MEANS A GENERAL LAW TOWNSHIP OR A**  
21 charter township.

22 (I) ~~(h)~~ "Volunteer" means an individual who is specifically  
23 designated as a volunteer and who is acting solely on behalf of a  
24 governmental agency.

25 Sec. 2. (1) Except as otherwise provided in section 2a, each  
26 governmental agency having jurisdiction over a highway shall  
27 maintain the highway in reasonable repair so that it is reasonably

1 safe and convenient for public travel. A person who sustains bodily  
2 injury or damage to his or her property by reason of failure of a  
3 governmental agency to keep a highway under its jurisdiction in  
4 reasonable repair and in a condition reasonably safe and fit for  
5 travel may recover the damages suffered by him or her from the  
6 governmental agency. The liability, procedure, and remedy as to  
7 county roads under the jurisdiction of a county road commission  
8 shall be as provided in section 21 of chapter IV of 1909 PA 283,  
9 MCL 224.21. The duty of the state and the county road commissions  
10 to repair and maintain highways, and the liability for that duty,  
11 extends only to the improved portion of the highway designed for  
12 vehicular travel. ~~and does not include sidewalks, trailways,~~  
13 ~~crosswalks, or any other installation outside of the improved~~  
14 ~~portion of the highway designed for vehicular travel.~~ A judgment  
15 against the state based on a claim arising under this section from  
16 acts or omissions of the state transportation department is payable  
17 only from restricted funds appropriated to the state transportation  
18 department or funds provided by its insurer.

19 (2) If the state transportation department contracts with  
20 another governmental agency to perform work on a state trunk line  
21 highway, an action brought under this section for tort liability  
22 arising out of the performance of that work shall be brought only  
23 against the state transportation department under the same  
24 circumstances and to the same extent as if the work had been  
25 performed by employees of the state transportation department. The  
26 state transportation department has the same defenses to the action  
27 as it would have had if the work had been performed by its own

employees. If an action described in this subsection could have been maintained against the state transportation department, it shall not be maintained against the governmental agency that performed the work for the state transportation department. The governmental agency also has the same defenses that could have been asserted by the state transportation department had the action been brought against the state transportation department.

(3) The contractual undertaking of a governmental agency to maintain a state trunk line highway confers contractual rights only on the state transportation department and does not confer third party beneficiary or other contractual rights in any other person to recover damages to person or property from that governmental agency. This subsection does not relieve the state transportation department of liability it may have, under this section, regarding that highway.

(4) The duty imposed by this section on a governmental agency is limited by sections 81131 and 82124 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81131 and 324.82124.

Sec. 2a. (1) Except as ~~otherwise~~ provided by this section, a municipal corporation has no duty to repair or maintain, and is not liable for injuries arising from, ~~a portion of a county OR STATE highway. outside of the improved portion of the highway designed for vehicular travel, including a sidewalk, trailway, crosswalk, or other installation. This subsection does not prevent or limit a municipal corporation's liability if both of the following are true:~~ **A MUNICIPAL CORPORATION SHALL MAINTAIN A SIDEWALK ADJACENT TO**

1 A MUNICIPAL, COUNTY, OR STATE HIGHWAY PURSUANT TO THIS SECTION AND  
2 SECTION 2(1).

3 ~~—— (a) At least 30 days before the occurrence of the relevant~~  
4 ~~injury, death, or damage, the municipal corporation knew or, in the~~  
5 ~~exercise of reasonable diligence, should have known of the~~  
6 ~~existence of a defect in a sidewalk, trailway, crosswalk, or other~~  
7 ~~installation outside of the improved portion of the highway~~  
8 ~~designed for vehicular travel.~~

9 ~~—— (b) The defect described in subdivision (a) is a proximate~~  
10 ~~cause of the injury, death, or damage.~~

11 ~~—— (2) A discontinuity defect of less than 2 inches creates a~~  
12 ~~rebuttable inference that the municipal corporation maintained the~~  
13 ~~sidewalk, trailway, crosswalk, or other installation outside of the~~  
14 ~~improved portion of the highway designed for vehicular travel in~~  
15 ~~reasonable repair.~~

16 (2) IN A CIVIL ACTION, A MUNICIPAL CORPORATION IS PRESUMED TO  
17 HAVE MAINTAINED A SIDEWALK THAT IT HAS A DUTY TO MAINTAIN IN  
18 REASONABLE REPAIR. THIS PRESUMPTION MAY ONLY BE REBUTTED BY  
19 EVIDENCE OF SPECIFIC FACTS SHOWING THAT THE PROXIMATE CAUSE OF THE  
20 INJURY WAS 1 OF THE FOLLOWING:

21 (A) A VERTICAL DISCONTINUITY DEFECT OF 2 INCHES OR MORE IN THE  
22 SIDEWALK.

23 (B) A DANGEROUS CONDITION IN THE SIDEWALK ITSELF OF A  
24 PARTICULAR CHARACTER OTHER THAN A DISCONTINUITY.

25 (3) WHETHER A PRESUMPTION UNDER SUBSECTION (2) HAS BEEN  
26 REBUTTED IS A QUESTION OF LAW FOR THE COURT.

27 (4) ~~(3)~~ A municipal corporation's liability under subsection

- 1 (1) is limited by section 81131 of the natural resources and
- 2 environmental protection act, 1994 PA 451, MCL 324.81131.