



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536



**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 677 (as introduced 11-12-13)  
Sponsor: Senator Tonya Schuitmaker  
Committee: Judiciary

Date Completed: 1-23-14

### **CONTENT**

**The bill would amend provisions of the governmental immunity law that limit the liability of governmental agencies for sewage disposal system overflows or backups, to do the following:**

- **Provide that a governmental agency would remain immune from liability, despite provisions under which it could be held liable, if an overflow or backup occurred at the same time as, or within 24 hours after, an "extreme weather event".**
- **Allow a governmental agency to adopt an ordinance providing for the administrative adjudication of sewage disposal overflow or backup claims before a neutral hearing officer.**
- **Provide that, if a governmental agency adopted such an ordinance, administrative adjudication would be the exclusive remedy for a claim, except as otherwise provided.**
- **Require a hearing officer to be a licensed professional engineer appointed by the agency.**
- **Provide that a hearing officer could not consider claims for noneconomic damages.**
- **Allow a party to appeal a hearing officer's decision to the circuit court.**
- **Limit a governmental agency's liability for a defect to a maintenance, operation, or repair defect (excluding a construction or design defect).**

### **Current Law; Definitions**

A governmental agency (the State or a political subdivision) is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a "sewage disposal system event" and the governmental agency is an "appropriate governmental agency" (that is, at the time of an event, the governmental agency owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury).

"Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property. (The bill would refer to real property owned or occupied by a claimant.) An overflow or backup is not an event if any of the following was a substantial (more than 50%) proximate cause of the overflow or backup:

- An obstruction in a service lead that was not caused by a governmental agency.
- A connection to the sewage disposal system on the affected property, including a sump system, building drain, surface drain, gutter, or downspout.

- An act of war or terrorism.

In order to seek compensation from a governmental agency for property damage or physical injury caused by a sewage system disposal event, a claimant must show that all of the following existed at the time of the event:

- The governmental agency was an appropriate governmental agency.
- The sewage disposal system had a defect.
- The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.
- The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.
- The defect was a substantial proximate cause of the event and the property damage or physical injury.

The law defines "defect" as a construction, design, maintenance, operation, or repair defect. The bill would define the term as a maintenance, operation, or repair defect only.

A "claimant" is a property owner who believes that a sewage disposal system event caused damage to the owner's property, a physically injured individual who believes that an event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual.

As a rule, economic damages are the only compensation available for a claim for a sewage disposal system event. Noneconomic damages may be recovered only for death, serious impairment of body function, or permanent serious disfigurement.

"Noneconomic damages" include pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, and other nonpecuniary damages. The bill would delete "inconvenience".

#### Extreme Weather Event Immunity

Under the bill, notwithstanding provisions under which a governmental agency may be liable for a sewage disposal system event, a governmental agency would remain immune from liability if it proved that the event affecting the claimant's property occurred contemporaneously with, or within 24 hours after, an extreme weather event.

"Extreme weather event" would mean rainfall amounting to 1.4 inches or more in any one hour or 2.9 inches or more in any 24 hours, as measured by a rain gauge maintained by an appropriate governmental agency.

#### Notice Requirements

Currently, a claimant is not entitled to compensation for a sewage disposal system event unless the claimant gives written notice to the governmental agency of a claim for damage or physical injury, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The bill would require a claimant to give written notice to *each* governmental agency against which the claimant intended to file a claim.

If a governmental agency that is notified of a claim believes that a different or additional governmental agency may be responsible for the claimed property damage or physical injury, the governmental agency must notify each additional or different governmental agency of that fact. Under the bill, giving this notice would be permissive.

### Administrative Adjudication

The bill would permit a governmental agency to adopt an ordinance providing for the administrative adjudication of sewage disposal event claims before a neutral hearing officer who was a licensed professional engineer under Article 20 of the Occupational Code. If a governmental agency adopted such an ordinance, administrative adjudication would be the exclusive remedy available for a sewage disposal system event claim, except as provided below.

If a governmental agency had adopted an ordinance providing for the administrative adjudication of sewage disposal system event claims, a claimant and the governmental agency did not reach an agreement on the amount of compensation for property damage or physical injury within 45 days after the agency received notice of the claim, and the claimant requested an administrative hearing within 21 days after the 45 days, the governmental agency would have to schedule a hearing to be commenced within 120 days before a neutral hearing officer appointed by the agency. A claimant who failed to request a hearing within this time frame would not be entitled to compensation.

The governmental agency would have to give the claimant written notice of the date, time, and place of the hearing. At the hearing, the claimant and the agency could be represented by counsel and could present evidence concerning the claim. The hearing officer could not consider claims for noneconomic damages.

The hearing officer would have to determine whether the claimant was entitled to relief and the amount of property damage and economic damages, if any. The hearing officer would have to give the parties a written opinion containing his or her findings of fact on which the opinion was based. The hearing officer's decision would be final, although a party could appeal the decision to the circuit court on the record made before the officer.

Currently, if a claimant and a governmental agency notified of a claim do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the agency received the notice, the claimant may bring a civil action. Under the bill, if a governmental agency had not adopted an ordinance providing for administrative adjudication of event claims, a claimant could institute a civil action as currently allowed. The action could not be commenced until 45 days after the governmental agency received notice of the claimant's intent to file a claim.

Except for claims for noneconomic damages, claims for which a hearing would not be allowed under the provisions for administrative adjudication, and claims that are not barred despite a claimant's failure to comply with notice requirements, a claimant would be prohibited from commencing a civil action for a sewage disposal system event and the procedures described above would be the sole and exclusive remedy for all claims against a governmental agency for an event.

### Application of Amendments

The bill's amendments would apply only to claims for which the first notice to a governmental agency of a claimant's intent to file a claim, was sent after July 1, 2014.

MCL 691.1416-691.1419

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would have no impact on State revenue or expenditure, but could reduce local unit expenses by an unknown amount. The bill could reduce expenses by lowering awards in cases affected by the changes and/or by eliminating certain claims.

Fiscal Analyst: David Zin

S1314\sb677sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.