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Senate Bill 733 (Substitute S-2)  
Sponsor: Senator Mike Kowall  
Committee: Local Government and Elections

Date Completed: 2-5-14

### **CONTENT**

**The bill would amend the governmental immunity law to limit the highway defect liability of a governmental agency for bodily injury to a pedestrian or other person who was not traveling in a motor vehicle on the improved portion of a highway, or for damage to the person's property, as follows:**

- **The plaintiff would have to prove that the governmental agency knew or should have known of the highway defect at least 30 days before the incident.**
- **The governmental agency would be presumed to have maintained the highway in reasonable repair.**
- **The presumption could be rebutted only by proof that a vertical discontinuity defect of two inches or more in the highway, or another dangerous condition in the highway itself of a particular character, or both, was a proximate cause of the injury or damage.**

Under Section 2 of the governmental immunity law, subject to various exceptions, a governmental agency is immune from civil liability if it is engaged in a governmental function. ("Governmental agency" means the State or a political subdivision, such as a city, village, township, county, or school district.) One of the exceptions imposes liability with respect to highways: All governmental agencies, including the State, counties, and municipalities, have a duty to maintain highways under their jurisdiction in reasonable repair. This duty is limited to "the improved portion of the highway designed for vehicular travel".

Under the bill, the liability of a governmental agency under Section 2 for bodily injury to a pedestrian or other person who was not traveling in or on a motor vehicle on the improved portion of the highway designed for vehicular travel, or for damage to the person's property, would be subject to the following provisions.

Specifically, a governmental agency would not be liable under those circumstances unless the plaintiff proved that at least 30 days before the injury, death, or damage occurred, the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect in the highway.

In addition, in a civil action against a governmental agency alleging liability under Section 2 for injury or damage described above, the governmental agency would be presumed to have maintained the highway in reasonable repair. This presumption could be rebutted only by evidence of facts showing that a proximate cause of the injury or damage was one or both of the following:

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

Whether the presumption had been rebutted would be a question of law for the court.

MCL 691.1402 et al.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have an indeterminate effect on the cost of State and local government. To the extent that the provisions of the bill would reduce State or local liability for certain pedestrian injuries, the bill would tend to reduce the potential costs of those claims.

Fiscal Analyst: Elizabeth Pratt