

GOVERNMENTAL AGENCY TORT LIABILITY

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House Bill 5282 (H-2) as reported from committee

Sponsor: Rep. Michael Webber

Committee: Local Government

Complete to 6-8-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5282 would amend the Governmental Immunity Act (Public Act 170 of 1964), which addresses governmental liability for negligence. It would amend the definition for a *sewage disposal system event*, clarify design and construction defects, and explain notice requirements.

FISCAL IMPACT: House Bill 5282 would reduce costs for local units of government and government agencies on a case by case basis by expanding governmental immunity as described above.

THE APPARENT PROBLEM:

Recent flooding events have left municipalities open to lawsuits arising out of damages from the floods. Affected residents allege that flooding and property damage was caused by sewer system inadequacies, failure to update systems, and failure to plan for large amounts of rainfall. House Bill 5282 would specify the point at which rainfall is extensive enough that a municipality could not be held responsible for a sewer system failure, and would define a "construction defect" with respect to governmental liability.

THE CONTENT OF THE BILL:

House Bill 5282 would amend the Governmental Immunity Act (Public Act 170 of 1964), which addresses governmental liability for negligence. It would amend the definition for a *sewage disposal system event*, clarify design and construction defects, and explain notice requirements.

Sewage Disposal System Event

Currently, a *sewage disposal system event* occurs when a sewage disposal system overflows or backs up onto real property, unless one of the following instances was a substantial proximate cause of the overflow or backup: (1) an obstruction in a service lead that was not caused by a governmental agency; (2) a connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout; or (3) an act of war, whether the war is declared or undeclared, or an act of terrorism.

The bill would retain those provisions, and also provide that a sewage disposal system event does not exist if the rainfall at or near the affected area or within the sewage disposal system service area is 1.7 inches or more in any one-hour period or 3.3 inches in any continuous 24-hour period.

Governmental Liability

According to Section 17 of the act, a governmental agency 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, as described above and the governmental agency was an appropriate governmental agency.

House Bill 5282 would retain those requirements and add that in order to obtain compensation, a claimant must also show: (1) the governmental agency was an appropriate governmental agency, (2) the sewage disposal system had a defect (see below), (3) the governmental agency knew or should have known about the defect and did not take reasonable steps to correct it, (4) the defect was a substantial proximate cause of the event and damage, and (5) proof that the claimant owned the property that was damaged.

A part of a sewage system does not have a design or construction defect if it was designed and constructed according to applicable state standards or requirements in place when the part was constructed or improved.

Notice Requirements

Finally, the bill amends the notice requirements for a person seeking to file a claim against a governmental agency. Under the bill, the notice would have to be in writing and sent to a governmental agency contact (currently, the notice must go to a "contacting agency"; the bill retains the same description, but changes the title).

This bill would take effect 90 days after enactment.

MCL 691.1416, 691.1417, and 691.1419

BACKGROUND INFORMATION:

This bill would build on Public Act 222 of 2001, which created an exception to the protections afforded to a governmental agency against liability arising from damages caused by a sewage disposal system event. PA 222 was initiated because of extreme flooding in Dearborn Heights in September of 2000. According to committee testimony, following that event, the main two insurers in the area capped liability at \$500,000, which meant that the city was responsible for paying claims over and above that amount. Those costs were devastating, and led to efforts to limit a municipality's liability for flooding events, as some floods may prove too extreme for even the most effective sewer system.

House Bill 5282 would update PA 222 in response to an extensive flooding event in southeast Michigan in August of 2014. According to committee testimony, over the course of 24 hours, up to seven inches of rain fell, overloading the sewer systems and causing flooding in many homes. Reportedly, Oakland County suffered more than \$330 million in flooding damage, and the city of Warren suffered property losses estimated at \$1.2 billion.

The bill sponsor worked with the Department of Environmental Quality to compile data on rainfall over the last 60-70 years, and to ensure that a municipality is only protected from liability for sewage system failures caused by much higher than usual rainfall.

ARGUMENTS:

For:

Proponents argued that this bill is necessary to protect municipalities from paying large amounts in damages every time a sewer system is unable to handle a large rainfall. According to testimony, the 2014 flooding was caused by a "300 year rain event" which no sewer system could accommodate. As of May 2016, at least four class action lawsuits have arisen out of the flooding—against the cities of Madison Heights, Oak Park, Royal Oak, and Clawson, as well as Oakland County. Oakland County alone is defending 18,000 individual claims. While this bill would not affect those pending cases, it would limit municipal liability for future floods.

Against:

Opponents argued that if rainfall is overloading sewer systems and resulting in flooding approximately every five years (as seems to be the case), either the sewer systems should be upgraded to accommodate the needs, or the affected residents should be able to seek damages from the municipalities in control of those sewer systems.

POSITIONS:

Representatives of the following organizations testified in support of the bill

Michigan Association of Counties (5-18-16)

Oakland County (5-18-16)

The following organizations support the bill

Detroit Water and Sewerage Department (5-18-16)

Conference of Western Wayne (5-18-16)

Wayne County (5-18-16)

Michigan Municipal League (5-18-16)

Michigan Townships Association (5-18-16)

Michigan Association of County Drain Commissioners (5-18-16)

Great Lakes Water Authority (5-18-16)

City of Dearborn (5-18-16)

Michigan Coalition to Protect Public Rights-of-Way (PROTEC) (5-18-16)

Oakland County Water Resources Commissioner (5-25-16)

Representatives of the following organizations testified in opposition to the bill

Liddle & Dubin, P.C. (5-18-16)

Michigan Association for Justice (5-18-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.