

## GOVERNMENTAL AGENCY TORT LIABILITY

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5282 (proposed substitute H-1)**

**Sponsor: Rep. Michael Webber**

**Committee: Local Government**

**Complete to 5-17-16**

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

### 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.

#### **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). Notice given by one governmental agency to another does not meet the notice requirement which the claimant must fulfill.

This bill would take effect 90 days after enactment.

MCL 691.1416, 691.1417, and 691.1419

**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.

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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.