

IMMUNITY OF COUNTY ROAD AGENCIES FROM LIABILITY FOR FAILURE TO MAINTAIN A HIGHWAY

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Senate Bills 39 and 43 as passed by the Senate
Sponsor: Sen. Roger Victory
House Committee: Transportation
Senate Committee: Transportation and Infrastructure
Complete to 6-14-22

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

SUMMARY:

There are currently two statutes that address the liability of county road commissions for injury caused by a failure to maintain highways under their jurisdiction to a “reasonably safe” standard. Section 21 of 1909 PA 283, known as the county road law, deals specifically with highway negligence actions against county road agencies. Section 2 of 1964 PA 170, known as the governmental immunity law, deals with highway negligence actions against “a governmental agency having jurisdiction over a highway.”

Senate Bill 39 would amend section 21 of the county road law to clarify provisions regarding the liability of counties for injuries that result from a failure by the county to maintain highways under county jurisdiction to a “reasonably safe” standard. The bill would make explicit provisions of current law that effectively make certain provisions of the governmental immunity law applicable to county road commissions. The bill also would remove provisions establishing the procedure and notice requirements for filing a claim for injury.

MCL 224.21

Senate Bill 43 would amend section 2 of the governmental immunity law to remove a reference to section 21 of the county road law.

MCL 691.1402

Neither bill would take effect unless both bills were enacted.

BRIEF DISCUSSION:

The bills would have little or no effect on the liability of county road commissions for injuries caused by failure to maintain highways under road commission jurisdiction to a “reasonably safe” standard. The primary effect of the bills relates to notice and process requirements. If the bills were enacted, the current notice and process requirements under the county road law would be repealed, and claims filed against county road commissions for injury caused by failure to maintain highways to a “reasonably safe” standard would have to follow the same notice and process requirements as under section 2 of the governmental immunity law.

The bills are offered to resolve confusion as to which statute governs the notice and process requirements for negligence actions taken against county road agencies. The question of which

statute governs was the subject of a 2021 Michigan Supreme Court opinion, *Estate of Brendon Pearce v Eaton County Road Commission*.¹

BACKGROUND:

Section 21(2) of the county road law provides that a *county* must keep in reasonable repair, so that they are reasonably safe and convenient for public travel, all roads, bridges, and culverts under county jurisdiction, under county care and control, and open to public travel. The section goes on to indicate that “provisions of law respecting the liability of townships, cities, villages, and corporations” for damages resulting from failure to maintain roads under their control to the “reasonably safe” standard also apply to counties “adopting the county road system”—effectively all 83 counties.

The phrase “provisions of law respecting liability of townships, cities, villages, and corporations” refers to the governmental immunity law and specifically to provisions in section 2 of that act regarding liability of governmental agencies for injury or damages resulting from failure to maintain a highway to a reasonably safe and fit for travel standard.²

The governmental immunity law provides a general immunity of a governmental agency from tort liability if the agency is engaged in the exercise or discharge of a governmental function. The act also provides specific exceptions from this general standard and conditions for those exceptions. Tort liability for certain highway negligence claims, under specific conditions, is one of the exceptions to the general standard of governmental immunity.

FISCAL IMPACT:

As noted above, the bills would have little or no effect on the liability of county road commissions for injuries caused by failure to maintain highways under road commission jurisdiction to a “reasonably safe” standard. The primary effect of the bills has to do with the notice and process requirements. The bills would have no fiscal impact on state government (i.e., the Michigan Department of Transportation) or on cities and villages. The liability of those road agencies for highway negligence claims is already governed by the provisions of the governmental immunity law.

Fiscal Analyst: William E. Hamilton

■ 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.

¹ https://www.courts.michigan.gov/496b22/siteassets/case-documents/uploads/opinions/final/sct/158069_74_01.pdf

² The county road law uses “county” to also mean county road commission. The section’s reference to “townships” appears to be an anachronism; townships no longer have jurisdiction over public roads. The reference to “corporations” apparently means municipal corporations, although this is not specified. The governmental immunity law defines “municipal corporation” as “a city, village, or township or a combination of two or more of these when acting jointly.”