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BILL  ANALYSIS

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Senate Bill 1220 (as introduced 7-18-12)
Sponsor: Senator Tonya Schuitmaker
Committee: Local Government and Elections

Date Completed: 9-12-12

CONTENT

The bill would amend the governmental immunity law to revise procedures for the resolution of claims regarding sewage disposal system overflows or backups. Specifically, the bill would do the following:

- Eliminate provisions allowing a claimant to commence a civil action against a governmental agency for a sewage disposal system event.**
- Establish a hearing process for the settlement of claims, and allow any party to appeal to the circuit court.**
- Provide that the hearing process would be the sole and exclusive remedy for all claims, excluding those for noneconomic damages.**

Section 17 of the law provides that 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 and the governmental agency is an appropriate governmental agency (a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury). (Subject to specific exceptions, "sewage disposal system event" means the overflow or backup of a sewage disposal system onto real property.)

If a claimant believes that a sewage disposal system event caused property damage or physical injury, the claimant may seek compensation from a governmental agency upon showing that certain conditions existed at the time of the event. The claimant also must show compliance with Section 19 (the section the bill would amend).

Under Section 19, except as otherwise provided, a claimant is not entitled to compensation under Section 17 unless the claimant gives the governmental agency written notice of a claim of damage or physical injury within 45 days after the date the damage or injury was discovered, or in the exercise of reasonable diligence should have been discovered.

If a governmental agency and a claimant do not reach an agreement on the amount of compensation within 45 days after the agency received the notice, the claimant may institute a civil action. A civil action may not be commenced until after those 45 days. The bill would delete these provisions.

Instead, if the governmental agency and the claimant could not reach an agreement within the 45-day period, the governmental agency would have to schedule a hearing to be

commenced within 30 days before a neutral hearing officer, appointed by the agency, who was a licensed professional engineer. The governmental agency would have to give the claimant written notice of the date, time, and place of the hearing. The claimant could be represented by counsel at the hearing. The claimant and the governmental agency each could present evidence concerning the claim.

The hearing officer would have to determine whether the claim could be maintained under Section 17 and the amount of property damages and economic damages for personal injury. The hearing officer could not consider claims for noneconomic damages. The hearing officer would have to give the parties written findings of fact and conclusions of law. Any party could appeal on the record made before the officer to the circuit court.

Section 19 also provides that, if a person who owns or occupies affected property notifies a contacting agency of an event before providing a notice of a claim, the contacting agency must give the person all of the following information in writing:

- A sufficiently detailed explanation of the notice requirements to allow a claimant to comply with them.
- The name and address of the individual within the governmental agency to whom a claimant must send the notice.
- The required content of the notice.

("Contacting agency" means any of the following within a governmental agency: the clerk of the agency; if the agency has no clerk, an individual who may lawfully be served with civil process directed against the agency; or any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice.)

A claimant's failure to comply with the notice requirements does not bar the claimant from bringing a civil action against a notified governmental agency if the claimant can show that the claimant notified the contacting agency during the prescribed notice period, and that the claimant's failure to comply with the notice requirements resulted from the contacting agency's failure to comply with these procedures.

The bill provides that, except for claims to which those provisions apply and claims for noneconomic damages, a civil action could not be commenced under Section 17, and the hearing procedures prescribed in Section 19 would be the sole and exclusive remedy for all claims.

The procedures added by the bill would apply to claims for which the claimant sent notice after July 1, 2012.

MCL 691.1419

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no impact on State revenue or expenditure. The bill could have an indeterminate, although likely minimal, impact on local unit expenditures and local unit revenue, depending on the specific aspects of any claims. To the extent that a claim was resolved by a hearing officer, a local unit would likely face reduced legal expenses. However, to the extent the decisions and awards differed from what would occur under current law, a local unit could be subject to lesser or greater costs from the actual claims.

Fiscal Analyst: David Zin

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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.