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BILL ANALYSIS

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House Bill 4589 (Substitute S-1 as reported)
Sponsor: Representative Pat Somerville
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

The bill would amend provisions of the governmental immunity law that address the liability of a municipality for defects in a sidewalk, to create a presumption that a municipality maintained a sidewalk it had a duty to maintain in reasonable repair; and allow the presumption to be rebutted only by evidence that a proximate cause of an injury was a vertical discontinuity defect of two inches or more or a dangerous condition in the sidewalk itself, or both.

Currently, except as otherwise provided, a municipal corporation (a city, village, or township) does not have a duty to repair or maintain a portion of a county highway outside of the improved portion of the highway designed for vehicular travel, including a sidewalk, trailway, crosswalk, or other installation. In addition, the law states that a discontinuity defect of less than two inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, crosswalk, or other installation in reasonable repair. (According to a Michigan Supreme Court decision, this "two-inch rule" applies only to sidewalks adjacent to *county* highways.)

Under the bill, a municipal corporation would have no duty to repair or maintain, and would not be liable for injuries or damages arising from, a portion of a county or state highway. A municipal corporation in which a sidewalk was installed adjacent to a municipal, county, or State highway, would have to maintain the sidewalk in reasonable repair. In a civil action, a municipal corporation that had a duty to maintain a sidewalk would be presumed to have maintained the sidewalk in reasonable repair. The presumption could be rebutted only by evidence of facts showing that a proximate cause of the injury was one or both of the following:

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

MCL 691.1401 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would result in indeterminate savings to local units of government related to future liability claims.

Date Completed: 1-31-12

Fiscal Analyst: David Zin