

**HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 109**

A bill to amend 1964 PA 170, entitled

"An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts,"

(MCL 691.1401 to 691.1415) by adding sections 16, 17, 18, and 19.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1** SEC. 16. AS USED IN THIS SECTION AND SECTIONS 17 TO 19:  
**2** (A) "AFFECTED PROPERTY" MEANS REAL PROPERTY AFFECTED BY A  
**3** SEWAGE DISPOSAL SYSTEM EVENT.

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1 (B) "APPROPRIATE GOVERNMENTAL AGENCY" MEANS A GOVERNMENTAL  
2 AGENCY THAT, AT THE TIME OF A SEWAGE DISPOSAL SYSTEM EVENT, OWNED  
3 OR OPERATED, OR DIRECTLY OR INDIRECTLY DISCHARGED INTO, THE POR-  
4 TION OF THE SEWAGE DISPOSAL SYSTEM THAT ALLEGEDLY CAUSED DAMAGE  
5 OR PHYSICAL INJURY.

6 (C) "CLAIMANT" MEANS A PROPERTY OWNER THAT BELIEVES THAT A  
7 SEWAGE DISPOSAL SYSTEM EVENT CAUSED DAMAGE TO THE OWNER'S PROPER-  
8 TY, A PHYSICALLY INJURED INDIVIDUAL WHO BELIEVES THAT A SEWAGE  
9 DISPOSAL SYSTEM EVENT CAUSED THE PHYSICAL INJURY, OR A PERSON  
10 MAKING A CLAIM ON BEHALF OF A PROPERTY OWNER OR PHYSICALLY  
11 INJURED INDIVIDUAL. CLAIMANT INCLUDES A PERSON THAT IS SUBRO-  
12 GATED TO A CLAIM OF A PROPERTY OWNER OR PHYSICALLY INJURED INDI-  
13 VIDUAL DESCRIBED IN THIS SUBDIVISION.

14 (D) "CONTACTING AGENCY" MEANS ANY OF THE FOLLOWING WITHIN A  
15 GOVERNMENTAL AGENCY:

16 (i) THE CLERK OF THE GOVERNMENTAL AGENCY.

17 (ii) IF THE GOVERNMENTAL AGENCY HAS NO CLERK, AN INDIVIDUAL  
18 WHO MAY LAWFULLY BE SERVED WITH CIVIL PROCESS DIRECTED AGAINST  
19 THE GOVERNMENTAL AGENCY.

20 (iii) ANY OTHER INDIVIDUAL, AGENCY, AUTHORITY, DEPARTMENT,  
21 DISTRICT, OR OFFICE AUTHORIZED BY THE GOVERNMENTAL AGENCY TO  
22 RECEIVE NOTICE UNDER SECTION 19, INCLUDING, BUT NOT LIMITED TO,  
23 AN AGENCY, AUTHORITY, DEPARTMENT, DISTRICT, OR OFFICE RESPONSIBLE  
24 FOR THE OPERATION OF THE SEWAGE DISPOSAL SYSTEM, SUCH AS A SEWER  
25 DEPARTMENT, WATER DEPARTMENT, OR DEPARTMENT OF PUBLIC WORKS.

26 (E) "DEFECT" MEANS A CONSTRUCTION, DESIGN, MAINTENANCE,  
27 OPERATION, OR REPAIR DEFECT.

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1 (F) "NONECONOMIC DAMAGES" INCLUDES, BUT IS NOT LIMITED TO,  
2 PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGURE-  
3 MENT, MENTAL ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND  
4 COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO REPUTATION, HUMILI-  
5 ATION, AND OTHER NONPECUNIARY DAMAGES.

6 (G) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, ASSOCIATION,  
7 CORPORATION, OTHER LEGAL ENTITY, OR A POLITICAL SUBDIVISION.

8 (H) "SERIOUS IMPAIRMENT OF BODY FUNCTION" MEANS THAT TERM AS  
9 DEFINED IN SECTION 3135 OF THE INSURANCE CODE OF 1956, 1956 PA  
10 218, MCL 500.3135.

11 (I) "SERVICE LEAD" MEANS AN INSTRUMENTALITY THAT CONNECTS AN  
12 AFFECTED PROPERTY, INCLUDING A STRUCTURE, FIXTURE, OR IMPROVEMENT  
13 ON THE PROPERTY, TO THE SEWAGE DISPOSAL SYSTEM AND THAT IS NEI-  
14 THER OWNED NOR MAINTAINED BY A GOVERNMENTAL AGENCY.

15 (J) "SEWAGE DISPOSAL SYSTEM" MEANS ALL INTERCEPTOR SEWERS,  
16 STORM SEWERS, SANITARY SEWERS, COMBINED SANITARY AND STORM  
17 SEWERS, SEWAGE TREATMENT PLANTS, AND ALL OTHER PLANTS, WORKS,  
18 INSTRUMENTALITIES, AND PROPERTIES USED OR USEFUL IN CONNECTION  
19 WITH THE COLLECTION, TREATMENT, AND DISPOSAL OF SEWAGE AND INDUS-  
20 TRIAL WASTES, AND INCLUDES A STORM WATER DRAIN SYSTEM UNDER THE  
21 JURISDICTION AND CONTROL OF A GOVERNMENTAL AGENCY.

22 (K) "SEWAGE DISPOSAL SYSTEM EVENT" OR "EVENT" MEANS THE  
23 OVERFLOW OR BACKUP OF A SEWAGE DISPOSAL SYSTEM ONTO REAL  
24 PROPERTY. AN OVERFLOW OR BACKUP IS NOT A SEWAGE DISPOSAL SYSTEM  
25 EVENT IF ANY OF THE FOLLOWING WAS A SUBSTANTIAL PROXIMATE CAUSE  
26 OF THE OVERFLOW OR BACKUP:

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1           (i) AN OBSTRUCTION IN A SERVICE LEAD THAT WAS NOT CAUSED BY  
2 A GOVERNMENTAL AGENCY.

3           (ii) A CONNECTION TO THE SEWAGE DISPOSAL SYSTEM ON THE  
4 AFFECTED PROPERTY, INCLUDING, BUT NOT LIMITED TO, A SUMP SYSTEM,  
5 BUILDING DRAIN, SURFACE DRAIN, GUTTER, OR DOWNSPOUT.

6           (iii) AN ACT OF WAR, WHETHER THE WAR IS DECLARED OR UNDE-  
7 CLARED, OR AN ACT OF TERRORISM.

8           (l) "SUBSTANTIAL PROXIMATE CAUSE" MEANS A PROXIMATE CAUSE  
9 THAT WAS 50% OR MORE OF THE CAUSE OF THE EVENT AND THE PROPERTY  
10 DAMAGE OR PHYSICAL INJURY.

11           SEC. 17. (1) TO AFFORD PROPERTY OWNERS, INDIVIDUALS, AND  
12 GOVERNMENTAL AGENCIES GREATER EFFICIENCY, CERTAINTY, AND CONSIS-  
13 TENCY IN THE PROVISION OF RELIEF FOR DAMAGES OR PHYSICAL INJURIES  
14 CAUSED BY A SEWAGE DISPOSAL SYSTEM EVENT, A CLAIMANT AND A GOV-  
15 ERNMENTAL AGENCY SUBJECT TO A CLAIM SHALL COMPLY WITH THIS SEC-  
16 TION AND THE PROCEDURES IN SECTIONS 18 AND 19.

17           (2) A GOVERNMENTAL AGENCY IS IMMUNE FROM TORT LIABILITY FOR  
18 THE OVERFLOW OR BACKUP OF A SEWAGE DISPOSAL SYSTEM UNLESS THE  
19 OVERFLOW OR BACKUP IS A SEWAGE DISPOSAL SYSTEM EVENT AND THE GOV-  
20 ERNMENTAL AGENCY IS AN APPROPRIATE GOVERNMENTAL AGENCY. SECTIONS  
21 16 TO 19 ABROGATE COMMON LAW EXCEPTIONS, IF ANY, TO IMMUNITY FOR  
22 THE OVERFLOW OR BACKUP OF A SEWAGE DISPOSAL SYSTEM AND PROVIDE  
23 THE SOLE REMEDY FOR OBTAINING ANY FORM OF RELIEF FOR DAMAGES OR  
24 PHYSICAL INJURIES CAUSED BY A SEWAGE DISPOSAL SYSTEM EVENT  
25 REGARDLESS OF THE LEGAL THEORY.

26           (3) IF A CLAIMANT, INCLUDING A CLAIMANT SEEKING NONECONOMIC  
27 DAMAGES, BELIEVES THAT AN EVENT CAUSED PROPERTY DAMAGE OR

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1 PHYSICAL INJURY, THE CLAIMANT MAY SEEK COMPENSATION FOR THE  
2 PROPERTY DAMAGE OR PHYSICAL INJURY FROM A GOVERNMENTAL AGENCY IF  
3 THE CLAIMANT SHOWS THAT ALL OF THE FOLLOWING EXISTED AT THE TIME  
4 OF THE EVENT:

5 (A) THE GOVERNMENTAL AGENCY WAS AN APPROPRIATE GOVERNMENTAL  
6 AGENCY.

7 (B) THE SEWAGE DISPOSAL SYSTEM HAD A DEFECT.

8 (C) THE GOVERNMENTAL AGENCY KNEW, OR IN THE EXERCISE OF REA-  
9 SONABLE DILIGENCE SHOULD HAVE KNOWN, ABOUT THE DEFECT.

10 (D) THE GOVERNMENTAL AGENCY, HAVING THE LEGAL AUTHORITY TO  
11 DO SO, FAILED TO TAKE REASONABLE STEPS IN A REASONABLE AMOUNT OF  
12 TIME TO REPAIR, CORRECT, OR REMEDY THE DEFECT.

13 (E) THE DEFECT WAS A SUBSTANTIAL PROXIMATE CAUSE OF THE  
14 EVENT AND THE PROPERTY DAMAGE OR PHYSICAL INJURY.

15 (4) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (3), TO  
16 OBTAIN COMPENSATION FOR PROPERTY DAMAGE OR PHYSICAL INJURY FROM A  
17 GOVERNMENTAL AGENCY, A CLAIMANT MUST SHOW BOTH OF THE FOLLOWING:

18 (A) IF ANY OF THE DAMAGED PROPERTY IS PERSONAL PROPERTY,  
19 REASONABLE PROOF OF OWNERSHIP AND THE VALUE OF THE DAMAGED PER-  
20 SONAL PROPERTY. REASONABLE PROOF MAY INCLUDE TESTIMONY OR  
21 RECORDS DOCUMENTING THE OWNERSHIP, PURCHASE PRICE, OR VALUE OF  
22 THE PROPERTY, OR PHOTOGRAPHIC OR SIMILAR EVIDENCE SHOWING THE  
23 VALUE OF THE PROPERTY.

24 (B) THE CLAIMANT COMPLIED WITH SECTION 19.

25 SEC. 18. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ECONOMIC  
26 DAMAGES ARE THE ONLY COMPENSATION FOR A CLAIM UNDER SECTION 17.  
27 EXCEPT AS PROVIDED IN SUBSECTION (2), A COURT SHALL NOT AWARD AND

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1 A GOVERNMENTAL AGENCY SHALL NOT PAY NONECONOMIC DAMAGES AS  
2 COMPENSATION FOR AN EVENT.

3 (2) A GOVERNMENTAL AGENCY REMAINS SUBJECT TO TORT LIABILITY  
4 FOR NONECONOMIC DAMAGES CAUSED BY AN EVENT ONLY IF THE CLAIMANT  
5 OR THE INDIVIDUAL ON WHOSE BEHALF THE CLAIMANT IS MAKING THE  
6 CLAIM HAS SUFFERED DEATH, SERIOUS IMPAIRMENT OF BODY FUNCTION, OR  
7 PERMANENT SERIOUS DISFIGUREMENT.

8 (3) IN AN ACTION FOR NONECONOMIC DAMAGES UNDER SECTION 17,  
9 THE ISSUES OF WHETHER A CLAIMANT OR THE INDIVIDUAL ON WHOSE  
10 BEHALF THE CLAIMANT IS MAKING THE CLAIM HAS SUFFERED SERIOUS  
11 IMPAIRMENT OF BODY FUNCTION OR PERMANENT SERIOUS DISFIGUREMENT  
12 ARE QUESTIONS OF LAW FOR THE COURT IF THE COURT FINDS EITHER OF  
13 THE FOLLOWING:

14 (A) THERE IS NO FACTUAL DISPUTE CONCERNING THE NATURE AND  
15 EXTENT OF THE CLAIMANT'S OR THE INDIVIDUAL'S INJURIES.

16 (B) THERE IS A FACTUAL DISPUTE CONCERNING THE NATURE AND  
17 EXTENT OF THE CLAIMANT'S OR THE INDIVIDUAL'S INJURIES, BUT THE  
18 DISPUTE IS NOT MATERIAL TO DETERMINING WHETHER THE CLAIMANT OR  
19 THE INDIVIDUAL HAS SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION  
20 OR PERMANENT SERIOUS DISFIGUREMENT.

21 (4) UNLESS THIS ACT PROVIDES OTHERWISE, A PARTY TO A CIVIL  
22 ACTION BROUGHT UNDER SECTION 17 HAS ALL APPLICABLE COMMON LAW AND  
23 STATUTORY DEFENSES ORDINARILY AVAILABLE IN CIVIL ACTIONS, AND IS  
24 ENTITLED TO ALL RIGHTS AND PROCEDURES AVAILABLE UNDER THE  
25 MICHIGAN COURT RULES.

26 SEC. 19. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (7),  
27 A CLAIMANT IS NOT ENTITLED TO COMPENSATION UNDER SECTION 17

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1 UNLESS THE CLAIMANT NOTIFIES THE GOVERNMENTAL AGENCY OF A CLAIM  
2 OF DAMAGE OR PHYSICAL INJURY, IN WRITING, WITHIN 45 DAYS AFTER  
3 THE DATE THE DAMAGE OR PHYSICAL INJURY WAS DISCOVERED, OR IN THE  
4 EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE BEEN DISCOVERED.  
5 THE WRITTEN NOTICE UNDER THIS SUBSECTION SHALL CONTAIN THE CON-  
6 TENT REQUIRED BY SUBSECTION (2)(C) AND SHALL BE SENT TO THE INDI-  
7 VIDUAL WITHIN THE GOVERNMENTAL AGENCY DESIGNATED IN SUBSECTION  
8 (2)(B). TO FACILITATE COMPLIANCE WITH THIS SECTION, A GOVERNMEN-  
9 TAL AGENCY OWNING OR OPERATING A SEWAGE DISPOSAL SYSTEM SHALL  
10 MAKE AVAILABLE PUBLIC INFORMATION ABOUT THE PROVISION OF NOTICE  
11 UNDER THIS SECTION.

12 (2) IF A PERSON WHO OWNS OR OCCUPIES AFFECTED PROPERTY NOTI-  
13 FIES A CONTACTING AGENCY ORALLY OR IN WRITING OF AN EVENT BEFORE  
14 PROVIDING A NOTICE OF A CLAIM THAT COMPLIES WITH SUBSECTION (1),  
15 THE CONTACTING AGENCY SHALL PROVIDE THE PERSON WITH ALL OF THE  
16 FOLLOWING INFORMATION IN WRITING:

17 (A) A SUFFICIENTLY DETAILED EXPLANATION OF THE NOTICE  
18 REQUIREMENTS OF SUBSECTION (1) TO ALLOW A CLAIMANT TO COMPLY WITH  
19 THE REQUIREMENTS.

20 (B) THE NAME AND ADDRESS OF THE INDIVIDUAL WITHIN THE GOV-  
21 ERNMENTAL AGENCY TO WHOM A CLAIMANT MUST SEND WRITTEN NOTICE  
22 UNDER SUBSECTION (1).

23 (C) THE REQUIRED CONTENT OF THE WRITTEN NOTICE UNDER SUBSEC-  
24 TION (1), WHICH IS LIMITED TO THE CLAIMANT'S NAME, ADDRESS, AND  
25 TELEPHONE NUMBER, THE ADDRESS OF THE AFFECTED PROPERTY, THE DATE  
26 OF DISCOVERY OF ANY PROPERTY DAMAGES OR PHYSICAL INJURIES, AND A  
27 BRIEF DESCRIPTION OF THE CLAIM.

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1           (3) A CLAIMANT'S FAILURE TO COMPLY WITH THE NOTICE  
2 REQUIREMENTS OF SUBSECTION (1) DOES NOT BAR THE CLAIMANT FROM  
3 BRINGING A CIVIL ACTION UNDER SECTION 17 AGAINST A GOVERNMENTAL  
4 AGENCY NOTIFIED UNDER SUBSECTION (2) IF THE CLAIMANT CAN SHOW  
5 BOTH OF THE FOLLOWING:

6           (A) THE CLAIMANT NOTIFIED THE CONTACTING AGENCY UNDER SUB-  
7 SECTION (2) DURING THE PERIOD FOR GIVING NOTICE UNDER  
8 SUBSECTION (1).

9           (B) THE CLAIMANT'S FAILURE TO COMPLY WITH THE NOTICE  
10 REQUIREMENTS OF SUBSECTION (1) RESULTED FROM THE CONTACTING  
11 AGENCY'S FAILURE TO COMPLY WITH SUBSECTION (2).

12           (4) IF A GOVERNMENTAL AGENCY THAT IS NOTIFIED OF A CLAIM  
13 UNDER SUBSECTION (1) BELIEVES THAT A DIFFERENT OR ADDITIONAL GOV-  
14 ERNMENTAL AGENCY MAY BE RESPONSIBLE FOR THE CLAIMED PROPERTY DAM-  
15 AGES OR PHYSICAL INJURIES, THE GOVERNMENTAL AGENCY SHALL NOTIFY  
16 THE CONTACTING AGENCY OF EACH ADDITIONAL OR DIFFERENT GOVERNMEN-  
17 TAL AGENCY OF THAT FACT, IN WRITING, WITHIN 15 BUSINESS DAYS  
18 AFTER THE DATE THE GOVERNMENTAL AGENCY RECEIVES THE CLAIMANT'S  
19 NOTICE UNDER SUBSECTION (1). THIS SUBSECTION IS INTENDED TO  
20 ALLOW A DIFFERENT OR ADDITIONAL GOVERNMENTAL AGENCY TO INSPECT A  
21 CLAIMANT'S PROPERTY OR INVESTIGATE A CLAIMANT'S PHYSICAL INJURY  
22 BEFORE LITIGATION. FAILURE BY A GOVERNMENTAL AGENCY TO PROVIDE  
23 NOTICE UNDER THIS SUBSECTION TO A DIFFERENT OR ADDITIONAL GOVERN-  
24 MENTAL AGENCY DOES NOT BAR A CIVIL ACTION BY THE GOVERNMENTAL  
25 AGENCY AGAINST THE DIFFERENT OR ADDITIONAL GOVERNMENTAL AGENCY.

26           (5) IF A GOVERNMENTAL AGENCY RECEIVES A NOTICE FROM A  
27 CLAIMANT OR A DIFFERENT OR ADDITIONAL GOVERNMENTAL AGENCY THAT



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1 COMPLIES WITH THIS SECTION, THE GOVERNMENTAL AGENCY RECEIVING  
2 NOTICE MAY INSPECT THE DAMAGED PROPERTY OR INVESTIGATE THE PHYSI-  
3 CAL INJURY. A CLAIMANT OR THE OWNER OR OCCUPANT OF AFFECTED  
4 PROPERTY SHALL NOT UNREASONABLY REFUSE TO ALLOW A GOVERNMENTAL  
5 AGENCY SUBJECT TO A CLAIM TO INSPECT DAMAGED PROPERTY OR INVESTI-  
6 GATE A PHYSICAL INJURY. THIS SUBSECTION DOES NOT PROHIBIT A GOV-  
7 ERNMENTAL AGENCY FROM SUBSEQUENTLY INSPECTING DAMAGED PROPERTY OR  
8 INVESTIGATING A PHYSICAL INJURY DURING A CIVIL ACTION BROUGHT  
9 UNDER SECTION 17.

10 (6) IF A GOVERNMENTAL AGENCY NOTIFIED OF A CLAIM UNDER SUB-  
11 SECTION (1) AND A CLAIMANT DO NOT REACH AN AGREEMENT ON THE  
12 AMOUNT OF COMPENSATION FOR THE PROPERTY DAMAGE OR PHYSICAL INJURY  
13 WITHIN 45 DAYS AFTER THE RECEIPT OF NOTICE UNDER THIS SECTION,  
14 THE CLAIMANT MAY INSTITUTE A CIVIL ACTION. A CIVIL ACTION SHALL  
15 NOT BE COMMENCED UNDER SECTION 17 UNTIL AFTER THAT 45 DAYS.

16 (7) THIS SECTION DOES NOT APPLY TO CLAIMS FOR NONECONOMIC  
17 DAMAGES MADE UNDER SECTION 17.