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Senate Bill 201 (Substitute S-1)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 6-13-11

CONTENT

The bill would amend provisions of the governmental immunity law 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 the proximate cause of an injury was a vertical discontinuity defect of two inches or more, or a dangerous condition in the sidewalk itself.

Subject to various exceptions, a governmental agency is immune from civil liability if it is engaged in a governmental function, as defined in the law. One of the exceptions imposes liability with respect to highways. Under Section 2(1), all governmental agencies, including the State, counties, and municipal corporations (cities, villages, and townships), have a duty to maintain highways under their jurisdiction in reasonable repair. The duty of the State and counties is limited to "the improved portion of the highway designed for vehicular travel", and specifically does not include sidewalks. That exception for sidewalks does not apply to municipalities.

Under Section 2a, except as otherwise provided, a municipal corporation does not have a duty to repair or maintain a portion of a county highway outside of the improved portion of the highway, including a sidewalk, trailway, or crosswalk. This does not limit liability if the municipality knew or should have known of a defect at least 30 days before the relevant injury, death, or damage, and the defect was a proximate cause of the injury, death, or damage.

In addition, Section 2a states that a discontinuity defect of less than two inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, or crosswalk in reasonable repair. (According to a decision of the Michigan Supreme Court, discussed below, this inference--known as the two-inch rule--applies only to sidewalks adjacent to *county* highways.)

The bill would rewrite Section 2a to state that, except as provided in this section, a municipal corporation would have no duty to repair or maintain a county or State highway. A municipal corporation would have to maintain a sidewalk adjacent to a municipal, county, or State highway pursuant to Section 2(1). In a civil action, a municipal corporation would be presumed to have maintained a sidewalk that it had a duty to maintain in reasonable repair. The presumption could be rebutted only by evidence of specific facts showing that the proximate cause of the injury was one 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 a discontinuity.

Whether the presumption had been rebutted would be a question of law for the court.

Section 2(1) provides that the duty of the State and county road commissions to repair and maintain highways extends only to the improved portion of the highway designed for vehicular travel, "and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel". The bill would delete the language in quotations.

Currently, "highway" means a public highway, road, or street that is open for public travel. The term includes bridges, sidewalks, trailways, crosswalks, and culverts, and does not include alleys, trees, or utility poles. Under the bill, the term would include a bridge, sidewalk, or crosswalk on the highway, and would not include an alley, tree, or utility pole, or an appurtenance.

The bill would define "sidewalk", except as used in the definition of "highway", as a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designed for vehicular travel.

MCL 691.1401 et al.

BACKGROUND

In *Robinson v City of Lansing*, the Michigan Supreme Court addressed the two-inch rule in the governmental immunity law (486 Mich 1, decided on 4-8-10). The plaintiff in that case was injured when walking along a sidewalk adjacent to Michigan Avenue in Lansing. Michigan Avenue is a State highway maintained by the City of Lansing. The injury involved a depressed area of the sidewalk that was less than two inches.

The defendant raised the two-inch rule as an affirmative defense and claimed that the plaintiff had not rebutted the inference that the city had maintained the sidewalk in reasonable repair. The plaintiff claimed that the rule applied only to sidewalks adjacent to county highways. The trial court agreed with the plaintiff and denied the defendant's motion for summary disposition. The Michigan Court of Appeals reversed, but the Michigan Supreme Court agreed with the trial court.

According to the Supreme Court, the two-inch rule originally was a common law rule. The Court abolished the rule in 1972 but the Legislature codified it in 1999 when Section 2a was enacted.

The Court in *Robinson* analyzed the language of Section 2a, which begins by providing that a municipality is not liable for a portion of a *county* highway, including a sidewalk, unless certain criteria are met. The Court found that subsequent references to "the" highway in that section mean a county highway. The Court reached this conclusion for several reasons.

In addition to examining the language of Section 2a itself, the Court analyzed the rule and Section 2a in the context of the governmental immunity law as a whole. The Court pointed out that other sections of the law require proof of proximate cause, and provide that a governmental agency is not liable for an injury caused by a defective highway unless the agency knew or should have known of the defect and had a reasonable opportunity to repair it. Since these provisions existed before Section 2a was enacted and apply to all highways, the Court found that the significance of Section 2a is its limitation to *county* highways.

The Court concluded, "[T]he two-inch rule...does not apply to sidewalks adjacent to state highways; it only applies to sidewalks adjacent to county highways."

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: David Zin