

GOVERNMENTAL AGENCY TORT LIABILITY FOR SEWAGE DISPOSAL SYSTEM EVENTS

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House Bill 4290 as introduced
Sponsor: Rep. Michael Webber
Committee: Local Government
Complete to 9-5-17

SUMMARY:

House Bill 4290 would amend the Governmental Immunity Act (Public Act 170 of 1964), which addresses governmental liability for negligence. It would amend the definition for a **sewage disposal system event**, and clarify the identification of a design or construction defect in a sewage disposal system. Combined, the bill would provide governmental agencies with expanded immunity in tort liability arising from the overflow or backup of a sewage disposal system.

Sewage Disposal System Event

Currently, a **sewage disposal system event** occurs when a sewage disposal system overflows or backs up onto real property, unless one of the following instances was a substantial proximate cause (more than 50%) of the overflow or backup: (1) an obstruction in a service lead that was not caused by a governmental agency; (2) a connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout; or (3) an act of war, whether the war is declared or undeclared, or an act of terrorism.

The bill would retain those provisions, and also provide that a sewage disposal system event does not exist if the rainfall at or near the affected area or within the sewage disposal system service area is 1.7 inches or more in any one-hour period or 3.3 inches in any continuous 24-hour period.

Governmental Liability

According to Section 17 of the act, 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, as described above, and the governmental agency was an "appropriate governmental agency" (defined as the agency that owned, operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage during the sewage disposal system event.)

House Bill 4290 would retain those requirements and state that in order to obtain compensation, a claimant must also show: (1) the governmental agency was an appropriate governmental agency, (2) the sewage disposal system had a "defect" (see below), (3) the governmental agency knew or should have known about the defect and did not take reasonable steps to correct it, (4) the defect was a substantial proximate cause of the event and damage, and (5) proof that the claimant owned the property that was damaged.

Currently, a "defect" is defined as a construction, design, maintenance, operation, or repair defect. The bill would add that a part of a sewage system does not have a design or construction defect if it was designed and constructed according to applicable state standards or requirements in place when the part was constructed or improved.

Notice Requirements

Finally, the bill renames "contacting agency"—primarily used in the context of notice requirements—as "governmental agency contact." The entity's definition and the notice requirements for a person seeking to file a claim against a governmental agency remain unchanged.

This bill would take effect 90 days after enactment.

MCL 691.1416, 691.1417, and 691.1419

BACKGROUND INFORMATION:

This bill is understood to build on Public Act 222 of 2001, which limited liability arising from damages caused by a sewage disposal system event for governmental agencies. PA 222 was initiated because of extreme flooding in Dearborn Heights in September of 2000.

According to committee testimony for House Bill 5282 during the 2015-2016 legislative session, following that event, the main two insurers in the area capped liability at \$500,000, which meant that the city was responsible for paying claims over and above that amount. Those costs were devastating to city finances, and led to efforts to limit a municipality's liability for flooding events.

House Bill 4290 would amend PA 222 in response to an extensive flooding event in southeast Michigan in August of 2014. According to committee testimony in 2016, over the course of 24 hours, up to seven inches of rain fell, overloading the sewer systems and causing flooding in many homes. Reportedly, Oakland County suffered more than \$330 million in flooding damage, and the city of Warren suffered property losses estimated at \$1.2 billion.

FISCAL IMPACT:

House Bill 4290 would reduce costs for local units of government and government agencies on a case by case basis by expanding governmental immunity as described above.

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