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BILL ANALYSIS



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Senate Bill 353 (Substitute S-2 as reported by the Committee of the Whole)

Sponsor: Senator Leon Stille

Committee: Judiciary

### **CONTENT**

The bill would amend the governmental immunity Act to limit a governmental agency's liability in an action for failure to maintain and repair a highway. If the action were based on a person's death or loss of a vital bodily function, the verdict recoverable from all governmental agencies for noneconomic loss could not exceed \$500,000. For other claims by an individual for bodily injury or for damage to property, the limit on noneconomic damages would be \$280,000. If the person who was injured or killed, or who sustained property damage, were required at the time of the occurrence to procure automobile insurance and failed to do so, the verdict recoverable from all governmental agencies could not include damages for noneconomic loss, and economic damages would be limited to \$300,000. On the bill's effective date, the State Treasurer would have to adjust the limitations so that they were equal to the medical malpractice liability caps under the Revised Judicature Act (RJA); the bill's limitations would have to be adjusted annually to correspond with the malpractice limits.

A limitation on a verdict under the bill would not apply separately to each person claiming noneconomic damages, but would apply to the aggregated amount of noneconomic damage claims by an individual or his or her estate plus noneconomic damage claims by other persons arising out of the same injury or damage. Liability of all governmental agencies for damages for medical services would be limited to those damages that were objectively verifiable. A governmental agency would be entitled to a reduction in damages based on a payment from a collateral source, as provided in the RJA, including benefits paid or payable under the Insurance Code.

Before applying a limitation under the bill, the trier of fact would have to consider the claimant's negligence and reduce the plaintiff's verdict in proportion to the amount of his or her negligence. It would be an absolute defense that the person upon whose death, injury, or property damage the action was based had an impaired ability to function due to intoxicating liquor or a controlled substance and, as a result of that impairment, the individual was 50% or more the cause of the event that resulted in death, injury, or property damage. If the person were less than 50% the cause of the event, an award of damages would have to be reduced by that percentage.

The governmental immunity Act specifies that the duty of the State and the 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, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. The bill provides, instead, that the duty would extend only to the improved portion of the highway designed for vehicular travel, and would require that the improved portion of the highway designed for vehicular travel be reasonably safe and fit for travel.

The bill would define "improved portion of the highway designed for vehicular travel" as "the physical structure of the traveled portion, paved or unpaved, of the roadbed actually designed for

public vehicular travel". The bill specifies that the improved portion would include a traffic control signal or warning signs and signals that required a change in speed or direction by the driver. The bill also provides, as an illustration, and not a limitation, that "improved portion of the highway designed for vehicular travel" would not include "a shoulder, curb, tree or other vegetation, utility pole, median, sidewalk, crosswalk, culvert, guardrail, or barrier; lighting; or another installation or condition located beyond the traveled portion of the roadbed".

The Act specifies that, as a condition to any recovery for injuries due to a defective highway, the injured person, within 120 days after the injury occurred, must serve a notice on the governmental agency of the occurrence of the injury and the defect. The Act allows 180 days for notice if the injured person is under 18 years old at the time of the injury. The bill would delete that provision and, instead, require notice within 120 days regardless of the age of the injured person. The bill would retain a provision that, if the injured person is physically or mentally incapable of giving notice, he or she must serve notice not more than 180 days after the termination of the disability. Failure to provide notice within a prescribed time limit would be an absolute bar to recovery.

In addition, governmental agencies are liable, under certain conditions, for bodily injury and property damage resulting from a dangerous or defective condition of a public building; the bill would add death to the events for which a government agency is liable. The Act requires a claimant to serve notice within 120 days; if the person were physically or mentally incapable of giving the notice, the bill would allow notice within 180 days after the termination of the disability. Failure to provide notice within a prescribed time limit would be an absolute bar to recovery.

MCL 691.1401 et al.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate impact on the State and local units of government depending on the number of claims in the future that would be limited by the bill.

The State of Michigan has paid the following amounts in highway negligence payments over the last 10 years: 1983-84, \$14.9 million; 1984-85, \$8.5 million; 1985-86, \$7.5 million; 1986-87, \$26.7 million; 1987-88, \$16.1 million; 1988-89, \$15.0 million; 1989-90, \$17.4 million; 1990-91, \$20.3 million; 1991-92, \$12.6 million; 1992-93, \$20.3 million; 1993-94, \$12.6 million; and 1994-95, \$9.9 million; for a total of \$181.8 million.

In FY 1994-95, the State paid \$9,882,411.71 in judgments and settlements for 47 highway negligence cases. Six were for payments of over \$300,000 (three of which exceeded \$1,000,000).

Date Completed: 9-26-96

Fiscal Analyst: B. Bowerman

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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.