



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 353 (as introduced 2-13-96)
Sponsor: Senator Leon Stille
Committee: Judiciary

Date Completed: 9-9-96

CONTENT

The bill would amend the governmental immunity Act to do all of the following:

- Limit a governmental agency's liability to \$300,000 or less, depending on the situation, in an action for failure to keep a highway in reasonable repair and in a condition reasonably safe and fit for travel, and require that before the court applied a liability cap, the verdict be reduced in proportion to the plaintiff's negligence.
- Specify that the duty of the State and the county road commissions to repair and maintain highways would require only that the highway be reasonably safe and fit for public vehicular travel.
- Prohibit a person from maintaining a separate action against an employee or agent of a governmental agency when that person sought to recover damages from the governmental agency for an injury resulting from failure to maintain or repair a highway, and specify that only the agency that had jurisdiction over a highway at the time of an injury would be liable.
- Increase the time period for serving a government agency with notice of an injury and highway defect, and provide that the time limit would be an absolute bar to recovery of damages.
- Revise certain definitions relative to actions alleging failure to maintain or repair a highway.

Liability Caps

In an action for failure to maintain and repair a highway, the "verdict" amount recoverable from all governmental agencies could not exceed \$300,000 for all claims by an individual, or his or her estate, for bodily injury or for damage to the individual's property and any other claims by other persons arising out of the same injury or property damage. ("Verdict" would mean the total of damages; interest; fees, including, but not limited to, attorney and expert fees; costs; and an uncollectible amount reallocated under the Revised Judicature Act.)

The liability limit would be \$200,000 if, at the time of the occurrence that resulted in the injury or property damage, the individual upon whose injury or damage the claims were based were 16 years of age or older, the driver or a front-seat passenger of the vehicle, and not wearing a safety belt. The limitation would apply regardless of whether the failure to wear a safety belt was a proximate cause of the injury.

The liability limit would be \$100,000 if the driver of the vehicle at the time of the occurrence were under the influence of intoxicating liquor and/or a controlled substance, were impaired, or had a blood alcohol content of 0.07% or more by weight of alcohol. The limitation would apply regardless of whether the driver's condition was a proximate cause of the injury.

In an action alleging failure to maintain or repair a highway, a limitation under the bill would apply to the aggregate amount of claims by an individual or the individual's estate for bodily injury or for damage to the individual's property and claims by other persons arising out of the same injury or property damage. A limitation would not apply separately to each person claiming damages.

The court or counsel for a party in an action for failure to maintain or repair a highway could not advise the jury of the bill's liability limits. If a limitation applied, the court would have to set aside the amount of the verdict that was in excess of the limitation. The limitations would have to be adjusted at the end of each calendar year by an amount that reflected the cumulative annual percentage change in the consumer price index.

Cap Reductions

Before a court applied the bill's liability caps to a verdict, the trier of fact would have to consider the plaintiff's negligence at the time of the occurrence that resulted in the injury and reduce the plaintiff's verdict in proportion to the amount that the plaintiff's negligence was a proximate cause of the injury. A plaintiff's negligence would include, but would not be limited to, a finding that one or both of the following were true at the time of the occurrence that resulted in the injury:

- The plaintiff was not wearing a safety belt.
- The plaintiff or, if the plaintiff were a passenger in a vehicle, the driver of the vehicle was under the influence of intoxicating liquor and/or a controlled substance, was impaired, or had a blood alcohol content of 0.07% or more by weight of alcohol.

Duty to Repair and Maintain

The Act specifies that the duty of the State and the county road commissions to repair and maintain highways, and the liability for that duty, 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 require only that it be reasonably safe and fit for public vehicular 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 also specifies that, as an illustration, and not a limitation, "improved portion of the highway designed for vehicular travel" would not include "shoulders, curbs, vegetation, trees, utility poles, medians, sidewalks, crosswalks, culverts, guardrails, barriers, traffic control devices, signs, lighting, or other installation or condition located outside of the improved portion of the highway designed for vehicular travel".

Notification Period

The Act specifies that, as a condition to any recovery for injuries sustained by reason of 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 180 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.

Under the bill, a notification time limit would be an absolute bar to recovery regardless of whether the governmental agency was prejudiced by the failure of timely notification.

Definitions

In addition to defining “verdict” and “improved portion of the highway designed for vehicular travel” as discussed above, the bill would add parking lots and roadside rest areas to the Act’s exclusions from the definition of “highway”. “Highway” means a public highway, road, or street open for public travel and includes bridges, sidewalks, crosswalks, and culverts on the highway. “Highway” does not include alleys, trees, or utility poles.

“Jurisdiction” would mean inclusion of a highway in a governmental agency system under Sections 1 to 9 of the Michigan Transportation Fund law (MCL 247.651-247.659).

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:

| <u>Fiscal Year</u> | <u>Payments (millions)</u> |
|--------------------|--------------------------------|
| 1983-84 | \$ 14.9 |
| 1984-85 | 8.5 |
| 1985-86 | 7.5 |
| 1986-87 | 26.7 |
| 1987-88 | 16.1 |
| 1988-89 | 15.0 |
| 1989-90 | 17.4 |
| 1990-91 | 20.3 |
| 1991-92 | 12.6 |
| 1992-93 | 20.3 |
| 1993-94 | 12.6 |
| 1994-95 | 9.9 |
| TOTAL: | \$181.8 |

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).

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.