

EXTEND GOVERNMENTAL IMMUNITY

House Bill 5672 as passed by the House Second Analysis (6-28-00)

**Sponsor: Rep. Andrew Richner
Committee: Family and Civil Law**

THE APPARENT PROBLEM:

It has become customary for private and for-profit entertainment venues to reimburse local governments for the police services that local communities provide when the events sponsored by those private venues require extraordinary police presence in order to preserve the peace and safety of the public who attend the events.

There is a question as to whether on-duty police personnel continue to have the protection of governmental immunity when they provide their services in circumstances where a portion of their salary is privately paid. The question has been raised because of a court case involving off-duty county deputies who provided services to Pine Knob. That case, *Pardon v Finkel*, found the sheriff's deputies did not have governmental immunity when the deputies were sued by a Detroit police officer (also an off-duty police officer who was a patron at the venue) for grossly negligent acts and intentional misconduct that allegedly involved racist remarks and behavior. (See *BACKGROUND INFORMATION*, below.)

The case has caused uncertainty about the manner in which governmental immunity applies to on-duty police officers whose salaries are reimbursed by private entities (despite the fact that the particular case involved off-duty police officers). To clarify the status of on-duty police personnel, legislation has been proposed.

THE CONTENT OF THE BILL:

In general, the governmental tort liability act, Public Act 170 of 1964, gives governmental agencies (and their officers, employees, and volunteers) immunity from tort liability when the agency (officer, employee, volunteer) is engaged in the exercise or discharge of a governmental function (or acting on behalf of the

agency within the scope of its authority). The bill would extend immunity to on-duty police officers when their salaries are reimbursed by private entities, under certain circumstances.

House Bill 5672 specifies that an on-duty police officer while in the course of employment and while acting within the scope of his or her authority, the governmental agency of which the police officer is an officer or employee, and the governmental agency which is responsible for providing the funding for the salary or wages of the police officer, would have the same general immunity as provided by the act for the performance of an act or service that is a governmental function, even if a private entity reimbursed the governmental agency for the expense of performing the act or service.

In determining whether an activity was a governmental function, a court would have to consider only the direct acts or direct services provided by the governmental agency or on-duty police officer, and would have to consider the private activity that was the reason for the governmental acts or services as separate from those acts or services.

House Bill 5672 also specifies that this provision would not apply if an agreement between a private entity and a police officer or governmental agency included a provision that indemnified or otherwise held harmless the private entity for an act or omission of the officer or agency. Further, the bill also specifies that the provision would not apply if the private activity was a labor dispute, or if the acts or services performed constituted a proprietary function. However, this exception would not alter a governmental agency's or on-duty police officer's immunity from liability that is otherwise provided by law.

MCL 691.1407c

BACKGROUND INFORMATION:

According to the House Majority Counsel Office and committee testimony, *Pardon v Finkel*, 213 Mich App 643 (1995), *Iv denied*, 453 Mich 904 (1996), concerned a civil action brought against Pine Knob, the Oakland County Sheriff's Department, and individual off-duty deputies, as the result of an incident in 1987. That year an off-duty Detroit police officer, and two friends (a Detroit firefighter, and a college student) were arrested when the Detroit police officer was asked to relinquish her weapon while she was in attendance at a concert. Since Detroit police officers are required to carry their weapons 24-hours a day, she asked that a receipt be provided for her service revolver, before giving it over to the off-duty county deputies for safe-keeping. They refused to issue a receipt, and subsequently charged the Detroit police officer and her friends with misdemeanors. Those charged alleged that racist remarks were made by the off-duty sheriff's deputies. The Detroit police officer and her friends were cleared of all charges by a jury.

The Detroit police officer and her friends later filed a civil action against the off-duty deputies. However, the trial court dismissed most of the counts in the civil action, ruling that the county was engaged in a governmental function. (Key facts in the case were that Pine Knob and Oakland county had a contract that allowed the entertainment venue to hire deputy sheriffs to provide security at Pine Knob, for which Pine Knob paid the overtime portion of the off-duty deputies' salaries. Under that agreement, the county was to be responsible for the acts and omissions of its deputies, although the deputies were declared to be 'independent contractors' and not employees or agents of Pine Knob.) One count in the Detroit police officer's suit was not dismissed: that was an allegation that an Oakland deputy was grossly negligent or engaged in intentional misconduct.

The Court of Appeals reversed the trial court's summary disposition. The court held that the deputies were essentially acting as private security guards and were not engaged in a governmental function. Because the contract allowed either party to opt out, the appeals court was persuaded that the general activity being engaged in by the deputies was crowd control for a private entity, and not a function under "any public duty doctrine".

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that to the extent that the bill prevented lawsuits against the Department of

State Police and local law enforcement agencies, there would be an indeterminate reduction in costs associated with legal judgments against and legal settlements by the department and local agencies. (5-23-00)

ARGUMENTS:

For:

Local governments enter into contracts with private companies to the mutual benefit of both. An enhanced police presence to maintain order--an order that arguably can only be maintained by well-trained police--is to everyone's interest. If a police agency must provide extra police protection at times when large crowds gather, the expense of that extra protection is clearly borne by taxpayers, and the function is clearly governmental and would be protected by governmental immunity. When a private organization behaves as a good corporate citizen and offers to share those costs for extra protection with fellow taxpayers, the police officers who provide the services should not be denied the protection of governmental immunity.

Against:

Governmental immunity too often denies victims of negligence the opportunity to collect compensation for their injuries. Governmental immunity effectively creates a separate class of government officials who are unaccountable to the public they serve. This legislation would expand that already ill-conceived concept even further, and should be opposed. Especially in the instance where a private entity is in partnership with government, immunity should not be extended to government officials when their salaries are fully or partially reimbursed by corporations in the private sector.

Against:

Labor organizations are concerned that this bill will result in more private companies hiring local police to essentially serve as private security guards, and engage in strike- and union-busting activities. For example, during the 1995 Detroit newspaper strike, the newspaper agency reimbursed the city of Sterling Heights for police costs, and strikers were injured by police acting on behalf of the newspapers.

Response:

The legislation was amended in committee to specify that it would not apply if the private activity that was the reason for the governmental agency's, or the on-duty police officer's, acts or services was a labor dispute.

POSITIONS:

The Oakland County sheriff supports the bill. (6-28-00)

The Michigan Fraternal Order of Police supports the bill. (6-21-00)

The Michigan Trial Lawyers Association opposes the bill. (6-22-00)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.