

Testimony of
City of Ecorse Emergency Financial Manager Joyce A. Parker
Before The
Michigan Senate Local Government and Elections Committee

September 12, 2012 / 3 p.m. / Room 110 Farnum Building / 125 W. Allegan Street / Lansing, MI 48933

Chairman Robertson and distinguished members of the Senate Local Government and Elections Committee ...

Thank you for the opportunity to testify this afternoon in support of Senate Bill 1220, legislation to amend the *Governmental Liability for Negligence Act*.

For the record, my name is Joyce Parker. I am the Emergency Financial Manager for both the Highland Park School District and the City of Ecorse. I am joined today by Ecorse Corporate Counsel, Ms. Karen Folks, and Mr. Joe Galvin of the respected Miller Canfield Law Firm.

Before getting to the core of my brief testimony, I first want to take this opportunity to publicly thank Senator Tonya Schuitmaker (*pronounced Shoot – maker*) for sponsoring Senate Bill 1220 ... and you, Chairman Robertson, for giving this legislation a speedy hearing and vote.

Make no mistake: Senate Bill 1220, at its crux, is about fairness and protecting Michigan taxpayers' limited resources. As such, it merits swift passage and enactment into law.

Specifically, the legislation seeks to address avoidable lawsuits pertaining to basement flooding. Today, there is a disturbing trend in our state where trial lawyers – after a hard rain – aggressively seek and organize local residents for a class-action lawsuit against governmental agencies for the overflow or backup of a sewage disposal system.

Often times, the governmental agency is pressured by these lawyers to simply settle such cases, even though the governmental agency's culpability for the basement flooding may still be in doubt. ... Some governmental agencies indeed settle the claims to avoid lengthy and costly court battles in this era of constricted resources.

Locals that opt to fight such claims do so knowing that a loss in court likely will compel them to impose a special assessment or judgment levy on taxpayers to pay claimants and their lawyers.

Senate Bill 1220 seeks to insulate taxpayers from this sort of legal coercion and statutory inequity by establishing a common-sense process for settling economic claims against a governmental agency for the overflow or backup of a sewage disposal system.

Mechanically, the bill would ...

- Compel a governmental agency to schedule a hearing before a neutral hearing officer, if the governmental agency and a claimant fail to reach agreement on compensation for property damage or physical injury in an overflow or backup case;
- Require a governmental agency to appoint the hearing officer, who must be licensed as a professional engineer in Michigan;
- Mandate the governmental agency to give the claimant written notice of the date, time and place of the hearing, which would have to occur within 30 days of impasses between the parties;
- Permit a claimant to be represented by legal counsel at the hearing and both the claimant and governmental agency to present evidence;
- Empower the hearing officer to rule on the claim, including the amount of compensation – if any – for property damages and economic damages for personal injury;
- Prohibit the hearing officer from considering claims for non-economic damages;
- And permit either party to appeal the hearing officer's decision to the circuit court.

Note that the measure does not deny a claimant due-process, but, rather, augments the law with a heavy dose of fairness and pragmatism.

For this reason, I strongly encourage this committee to vote YES on Senate Bill 1220.

In closing, I would be remiss if I did not remind you of the Legislature's investment in the City of Ecorse earlier this session, when it passed Senate Bill 318 to facilitate our ability to sell financial recovery bonds. Now **Public Act 36 of 2011**, this law, too, helped Ecorse – *or more specifically its taxpayers* – avert a costly and punitive judgment levy.

Ecorse's settling or litigating a glut of basement-flooding cases, however, would nullify lawmakers' prior goodwill toward this struggling city. Senate Bill 1220 would help Ecorse avert either of those dubious options. That is why the Ecorse City Council unanimously passed a resolution to support the legislation. That resolution is included in my testimony packet, along with a copy of a correspondence from a Detroit law firm strongly encouraging me to simply settle numerous basement flooding cases to insulate the City of Ecorse from a class action lawsuit. Note, in particular, the last two pages of that correspondence, in which the law firm itemizes its success in settling such cases in other Michigan cities.

Lastly, please know that I have been the City Manager of Saginaw, Jackson and Inkster, Michigan, as well as in Elgin, Illinois. I also worked with an Emergency Manager in Flint, Michigan.

I only share my background with you to make this point: **My roughly 25 years of experience working with municipal government leaves me with no doubt that Senate Bill 1220 represents good public policy for all Michigan local units of government.**

With that, I thank committee members for your forbearance. We are happy to entertain questions.

CITY OF ECORSE: RESOLUTION TO SUPPORT SENATE BILL 1220

- Whereas** Senate Bill 1220 was introduced on July 18th, 2012, by the Honorable state Senator Tonya Schuitmaker (R-Lawton) to prescribe in Michigan law a new procedure for settling economic claims against a governmental agency for the overflow or backup of a sewage disposal system.
- Whereas** The goal of Senate Bill 1220 is to promote fairness between claimants and governmental agencies that may not be liable for the overflow or backup of a sewage disposal system, but often face pressure to settle such cases to avoid protracted and costly class-action lawsuits.
- Whereas** Local taxpayers would be the ultimate beneficiaries of Senate Bill 1220, which holds the promise of pragmatic redress in basement-flooding cases such that cash-strapped municipal governments could avoid having to impose special assessments or judgment levies on residents' and businesses' tax bills to pay for overflow or backup claims and/or lawsuits.
- Whereas** Ecorse – *a proud municipality of 9,500 residents, incorporated as a city in 1941* – faces threat of basement-flooding litigation, the likes of which has crippled the general-fund budgets of nearby municipalities. Case in point: Dearborn Heights, which is currently fighting such a class-action lawsuit and saw its legal bills grow by nearly \$200,000 from its 2009-10 fiscal year to its 2011-12 fiscal year, according to an April 4th, 2012 Detroit Free Press article.
- Whereas** The conspicuous presence of a state-appointed Emergency Manager in Ecorse since 2010 offers proof that the city remains in the throes of financial hardship and can ill-afford expensive – *and avoidable* - litigation.
- Whereas** Senate Bill 1220 would not deny claimants the opportunity for reparation in basement-flooding cases but, rather, seeks to ...
- Compel a governmental agency to schedule a hearing before a neutral hearing officer, if the governmental agency and a claimant fail to reach agreement on compensation for property damage or physical injury in an overflow or backup case.
 - Require a governmental agency to appoint the hearing officer, who must be licensed as a professional engineer in Michigan.
 - Mandate the governmental agency to give the claimant written notice of the date, time and place of the hearing, which would have to occur within 30 days of impasses between the parties.
 - Permit a claimant to be represented by legal counsel at the hearing and both the claimant and governmental agency to present evidence.
 - Empower the hearing officer to rule on the claim, including the amount, if any, of compensation for property damages and economic damages for personal injury.
 - Prohibit the hearing officer from considering claims for non-economic damages.
 - Permit either party to appeal the hearing officer's decision to the circuit court.
 - Apply the aforementioned process to all basement-flooding cases since July 1, 2011.
- Whereas** Senate Bill 1220 offers a common-sense approach to dealing with claims against a governmental agency for the overflow or backup of a sewage disposal system;

NOW THEREFORE BE IT RESOLVED

That this Honorable Ecorse City Council supports and approves Senate Bill 1220; and be it further

RESOLVED That the Honorable Ecorse City Council respectfully asks the Michigan Legislature to do all things necessary to pass Senate Bill 1220 and further requesting Governor Rick Snyder to sign said Bill into law; and Be It Finally

RESOLVED That a copy of this Resolution be sent to Governor Snyder, members of the Michigan Senate Local Government and Elections Committee, the Michigan House Local, Intergovernmental and Regional Affairs Committee, State Senator Hoon Yung Hopgood and state Representative Paul Clemente.

By my signature below entered on this date of Tuesday, September 11, 2012 as Mayor of the City of Ecorse know that the above resolution was considered, discussed and expressly **APPROVED** by the City Council of the City of Ecorse at a Special Meeting, properly noticed and subsequently held on this date, Tuesday, September 11, 2012:



DARCEL BROWN, MAYOR of CITY OF ECORSE

9/11/12

Date

SENATE BILL 1220 (BASEMENT FLOODING) TALKING POINTS

- Senate Bill 1220 would amend Michigan law – the Governmental Liability for Negligence Act (*Public Act 170 of 1964*) – to prescribe in statute a procedure for settling economic claims against a governmental agency for the overflow or backup of a sewage disposal system.
- The legislation would compel a governmental agency to schedule a hearing before a neutral hearing officer, if the governmental agency and a claimant fail to reach agreement on compensation for property damage or physical injury in an overflow or backup case.
- The governmental agency would appoint the hearing officer, who must be licensed as a professional engineer.
- The governmental agency would be compelled to give the claimant written notice of the date, time and place of the hearing, which would have to take place within 30 days of impasse between the parties.
- A claimant could be represented by legal counsel at the hearing, and both the claimant and the governmental agency may present evidence at the proceedings.
- The hearing officer would “determine whether the claim may be maintained under” *PA 170 of 1964*, as well as “the amount of property damages and economic damages for personal injury.”
- The hearing officer would be prohibited from considering claims for non-economic damages and would have to “provide the parties with written findings of fact and conclusions of law.”
- Either party could appeal the hearing officer’s ruling to the circuit court.
- The prospective law would apply to all such cases initiated after July 1, 2011.
- SB 1220 aims to promote fairness between claimants and governmental agencies, which may not be liable for the overflow or backup but often face pressure to settle such class action lawsuits rather than engage in protracted – *and costly* – court battles.
- Senate Bill 1220 also could protect local taxpayers from prospective judgment levies, to which cash-strapped governmental agencies often resort to pay overflow or backup claims and/or lawsuits.

MACUGA, LIDDLE & DUBIN, P.C.

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February 8, 2012

Joyce A. Parker
Ecorse Emergency Financial Manager
3869 W. Jefferson Ave.
Ecorse, MI 48229

Re: Sewage Backups in the City of Ecorse

Dear Ms. Parker:

As you may know, on or about July 27-28, 2011 and August 8-9, 2011, numerous homes in the City of Ecorse suffered damages as a result of a sewage backup. Enclosed is a Complaint this office plans to file related to these events. We currently have been contacted by 101 addresses seeking representation as a result of these events. To date, 66 of these addresses have provided completed Damage Claim forms (see attached which is 1 completed Damage Claim Form).

This office has successfully represented tens of thousands of individuals claiming damages arising from sewage backups. ~~Additionally, we have been extremely successful in obtaining class certification in such cases.~~ Despite our experience in these matters, we are aware of the current financial situation of the City of Ecorse and therefore are engaged in the unusual task of submitting this letter. ~~Due to the City of Ecorse's current financial situation, we would be willing to discuss settlement pre-litigation.~~ We would also be willing to discuss alternative dispute resolution such as arbitration or facilitation. As we are aware of the Defendant's financial situation, we would be willing to compromise our claims if such compromise occurred without the delay and expense of prolonged litigation. I cannot over-emphasize the point that ~~we have never submitted such a letter~~ in a case where there are numerous victims and there is likely a large class of potential Plaintiffs. In such instances, we have always filed litigation. Further, to my knowledge, of the tens of thousands of cases this office has handled involving claims of sewage backup, we have only lost one or two cases.¹ |

¹ Here, the Defendant frankly admits on its web site that "there are numerous... sewer backups that can be expected because of the system's age." Clearly this supports a finding of negligence. Further, we believe that Defendant operates a separated sewer system such that rainwater should not enter the sanitary sewage pipes and does so only due to improper maintenance of the system.

say this not to boast but to convey that this offer to discuss pre-suit litigation is based entirely upon the financial situation of the City of Ecorse as opposed to a concern over the merits of Plaintiffs' case.

If you desire to discuss this matter further, please contact me on or before March 2, 2012. If we do not hear from you by that time, we will file the attached lawsuit.

Respectfully,

MACUGA, LIDDLE & DUBIN, P.C.



Steven D. Liddle

SDL:md
Encl.

cc: Karen Folks
3869 W. Jefferson Ave.
Ecorse, Mi 48229

4. Did someone personally witness the sewage/water as it first began to enter your basement/home? Yes No
If Yes, please state:

A. The exact time that person witnessed the sewage/water first entered your basement/home:

Date: 8-29/11 Time: 8⁰⁰ am pm

B. The name and address of the person who witnessed it: _____

5. What time did you first discover the sewage/water? Day: Mon/Tue Date: 8/29/11 Time: 8 am pm

6. Describe how the sewage/water came into your basement/home:

- Bubbled in slowly Came in like a geyser Came in steadily
 Did not witness Other (describe): _____

7. Please describe what the sewage/water in your home looked like:

- Clear Water Gray Water Water with Debris/Fecal Matter
 Water with Black Silt Other (describe): _____

8. How long did the sewage/water remain in your home? 1 1/2 Days; _____ Hours; _____ Min.

9. Describe how the sewage/water drained from your home?

- Slowly Steadily Fast (as though sucked down)
 Did not drain, I pumped out Other (describe): _____

10. Did the sewage/water have a foul smell? Yes No
If Yes, please describe the odor.

11. Did anyone videotape or take photographs of the flood? Yes No
(Please attach copies & print your name and address on the back of each photograph/videotape)

12. Are you aware of neighbors who also experience flooding at their home on the same date? Yes No
If Yes, please state the names and addresses of those neighbors that you know flooded:

Name	Address

ASSISTANCE PROGRAMS

1. Did you file a claim with the Federal Emergency Management Agency (FEMA) for this flood? Yes No
2. Please state the amount of the grant you received from FEMA: \$ _____
3. Did you file a claim with the Small Business Administration (SBA) for this flood? Yes No
4. Please state the amount of the loan you received from SBA: \$ _____
5. Did you file a claim or receive assistance with any other city, county, state, federal or charitable (i.e., Red Cross) program for this flood? Yes No
 If Yes, please state.

Agency Name	Amount Received	Other Nonmonetary Assistance Provided	Are you required to reimburse the agency?
	\$		Yes / No
	\$		Yes / No

GOVERNMENT CONTACT

1. Did you have any contact or have any conversations with the city, police/fire departments, local health department, or other governmental agencies regarding the flood? Yes No
 If Yes, please describe:
went down to City Hall
2. Did you request any services from the city, police/fire departments, or other governmental agencies? Yes No
 If Yes, please state:
 A. What services did you request?
 B. Did the government provide the requested services? Yes No
3. Did you file a written Notice of Claim with any state/local government agency for the flood damage? Yes No
 A. If Yes, please state the date and the name of the governmental agency with which you filed the written notice:
 Date: _____ Agency: _____
 B. Please attach a copy of the written Notice of Claim.

PRIOR FLOODING EVENTS

1. Have you experienced any other sewage backup and/or flooding events prior to this flood? Yes No
 If Yes, please list the dates of all other sewage backups or flooding events:

Month	Date	Year
<i>July</i>	<i>27, 28</i>	<i>2011</i>

BUSINESS LOSSES

1. Do you have a business office in your basement/home? Yes No

2. Did you suffer any business losses as a result of the flood? Yes No
If Yes, please state:

A. Describe your business losses _____

B. Attach all documents supporting your business losses.

MISC. INFORMATION

1. Is there any other information concerning the flood that you wish to provide? Yes No
If Yes, please describe:

I swear that the answers in this Survey are true and accurate to the best of my knowledge.

D.

(Your signature)

(Your spouse's signature)

Date: 10-11-11

I. NATURE OF THE ACTION

1. ~~On or about July 27-28, 2011 and/or August 8-9, 2011,~~ Plaintiffs' homes were unreasonably interfered with, resulting from the flooding and invasion of Plaintiffs' properties by sewage, pollutants, water, feces, dirt, debris, and noxious odors, thereby causing material injury to Plaintiffs' properties.

2. Plaintiffs brings this action on behalf of themselves and all other City of Ecorse residents who have similarly suffered from flooding and physical invasion of their property by sewage, pollutants, water, feces, dirt, debris, and noxious odors, thereby causing material injury to their properties. The reason for not joining all potential class members as Plaintiffs is that they are so numerous as to make it impractical to bring them before the Court.

3. There are many persons who have been similarly affected and the question to be determined is one of common and general interest to many persons constituting the class to which Plaintiffs belong, and is so numerous as to make it impracticable to bring them all before the Court, for which reason Plaintiffs initiates this litigation for all persons similarly situated pursuant to Michigan Court Rules of 1985, 3.501.

4. Issues and questions of law and fact common to the members of the Class predominate over questions affecting individual members and the claims of the Plaintiffs, John Fritz, Richard Demske and Michelle Demske are typical of the claims of the Class.

5. The maintenance of this litigation as a Class Action will be superior to other methods of adjudication in promoting the convenient administration of justice.

6. Plaintiffs, John Fritz, Richard Demske, Michelle Demske and the law firm of Macuga, Liddle & Dubin, P.C., will fairly and adequately assert and protect the interests of the Class.

7. Specifically, Plaintiffs' attorneys, Macuga, Liddle & Dubin, P.C., have served as certified class counsel for numerous Class Actions, wherein the plaintiffs ~~alleged damages arising from governmental construction, operation and/or maintenance of a sewer system which sewer system caused residential properties to be invaded by untreated sewage.~~

II. JURISDICTION

8. The Defendant, City of Ecorse, is located in the County of Wayne, State of Michigan and upon information and belief, is a municipality incorporated pursuant to Chapter 117 of the Michigan Compiled Laws of the State of Michigan.

9. At all times relevant hereto, the Plaintiff, John Fritz has owned and/or resided at 4001 13th St., in the City of Ecorse, County of Wayne, State of Michigan.

10. At all times relevant hereto, the Plaintiffs, Richard Demske and Michelle Demske have owned and/or resided at 40 East Glenwood Ave, in the City of Ecorse, County of Wayne, State of Michigan

III. VENUE

11. Venue is proper in this Court pursuant to MCL 600.1615.

IV. GENERAL ALLEGATIONS

12. On or about July 27-28, 2011 and/or August 8-9, 2011, Plaintiffs' basements were flooded and physically invaded by water and sewage.

13. The water, dirt and other materials which flooded and settled on Plaintiffs'

6. Plaintiffs, John Fritz, Richard Demske, Michelle Demske and the law firm of Macuga, Liddle & Dubin, P.C., will fairly and adequately assert and protect the interests of the Class.

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IV. GENERAL ALLEGATIONS

12. On or about July 27-28, 2011 and/or August 8-9, 2011, Plaintiffs' basements were flooded and physically invaded by water and sewage.

13. The water, dirt and other materials which flooded and settled on Plaintiffs'

properties contained an extremely offensive odor.

14. Plaintiffs have complied with the notice requirements of MCL 691.1416 et seq.

15. More than forty-five (45) days have elapsed since Plaintiffs provided notice to the Defendant regarding their claim of damage, and the Defendant, despite the fact that they have investigated Plaintiffs' claims of damages, has made no effort to satisfy Plaintiffs' claims.

16. It is Plaintiffs' information and belief that the Defendant either constructed and/or maintained and/or designed and/or operated the sewer system which flooded Plaintiffs' properties.

17. On or before July 27-28, 2011 and/or August 8-9, 2011, the Defendant improperly constructed and/or maintained and/or designed and/or operated the sewer system causing significant damage by flooding into Plaintiffs' house and onto Plaintiffs' real property.

18. As a direct and proximate result of the Defendant's negligence in constructing and/or maintaining and/or designing and/or operating the sewer system, the Plaintiffs' property on or about July 27-28, 2011 and/or August 8-9, 2011, flooded with water, dirt and other materials.

19. The flooding of Plaintiffs' residences by the water controlled by Defendant has caused Plaintiffs' damages including but not limited to the following:

- A. Structural damage to Plaintiffs' real property;
- B. Destruction of personal property;
- C. Plaintiffs have, or will, spend a great amount of time, effort and money

to sanitize and clean their residence due to the bacteria and other unsanitary conditions caused by the flooding of their residences by untreated sewage;

D. Diminution in market value of Plaintiffs' properties; and

E. Loss of use and enjoyment of Plaintiffs' properties.

20. Plaintiffs' claims are not barred by Governmental Immunity pursuant to MCL 691.1416 et seq.

COUNT I

**CLAIM FOR A SEWAGE DISPOSAL SYSTEM EVENT
PURSUANT TO MCL 691.1416 ET SEQ.**

21. The allegations contained in Paragraphs 1-20 are realleged and incorporated as if referenced herein.

22. Plaintiffs suffered from a sewage disposal system event.

23. Plaintiffs' properties were flooded and/or physically invaded by the contents of a sewage disposal system owned or operated by the Defendant.

24. Plaintiffs' properties were flooded and/or physically invaded by the contents of a sewage disposal system into which the Defendant either directly or indirectly discharges.

25. The Defendant is the appropriate governmental agency in that at the time Plaintiffs' properties were flooded by water and sewage, ~~the Defendant owned or operated or directly or indirectly discharged into the portion of the sewage disposal system that caused damage or physical injury to Plaintiffs' properties.~~

26. The sewage disposal system that serviced Plaintiffs' properties had a construction, design, maintenance, operation or repair defect which the Defendant

knew, or in the exercise of reasonable diligence, should have known about.

27. The Defendant had the legal authority to repair, correct or remedy the defect.

28. The Defendant failed to take reasonable steps in a reasonable amount of time to repair, correct or remedy the defect, which defect was a substantial proximate cause of the flooding and damage of Plaintiffs' properties by sewage, pollutants, water, feces, dirt, debris, and noxious odors.

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court:

A. Declare the Defendant liable to Plaintiffs in an amount in excess of \$25,000.00 for causing water, dirt, debris and other unknown materials to enter and settle upon Plaintiffs' properties.

B. Order the Defendant liable to Plaintiffs for an award of exemplary damages.

C. Award Plaintiffs all costs and attorney fees which resulted from the initiation of this litigation.

D. Award Plaintiffs such other relief as this Court deems just and equitable under the circumstances.

Respectfully submitted,

MACUGA, LIDDLE & DUBIN, P.C.

By:

STEVEN D. LIDDLE (P45110)
Attorneys for Plaintiffs
975 E. Jefferson Ave.
Detroit, MI 48207
(313) 392-0015

Dated: February 8, 2012

Settled Class Action Sewage Invasion Cases

Lessard, et al v Allen Park, et al	3,195 Residences	\$12,750,000.00	\$3,990.61
Etheridge, et al v City of Detroit and City of Grosse Pointe Park	250 Residences	\$3,800,000.00*	\$15,200.00
Vangoss, et al v City of Dearborn Heights	156 Residences	\$3,250,000.00	\$20,833.33
Liberman v Highland	416 Residences	\$1,950,000.00	\$4,802.96
Grabowski, et al v City of Warren	175 Residences	\$1,575,000.00	\$ 9,000.00
Meister, et al v City of Garden City	98 Residences	\$1,390,000.00	\$14,183.67
Pohutski, et al v City of Allen Park	83 Residences	\$1,200,000.00	\$14,457.83
Gage, et al v City of Lansing	114 Residences	\$1,050,000.00	\$ 9,210.53
Kalajian, et al v City of Grosse Pointe Woods	34 Residences	\$1,000,000.00	\$29,411.76
Pierson, et al v City of Taylor	113 Residences	\$ 992,000.00	\$ 8,778.76
Shadoian, et al v City of Birmingham	104 Residences	\$ 858,000.00	\$ 8,250.00
Allen, et al v Lanzo	118 Residences	\$ 840,000.00	\$ 7,118.64
Demeter, et al v City of Inkster	103 Residences	\$ 835,000.00	\$ 8,106.79
Dobbs, et al v Melvindale	75 Residences	\$ 800,000.00	\$10,666.66
Englebert, et al v Ann Arbor	88 Residences	\$ 800,000.00	\$ 9,090.90
Sickles, et al v City of Beverly Hills	82 Residences	\$ 725,400.00	\$ 8,846.34
Elder, et al v City of Dearborn	39 Residences	\$ 600,000.00	\$15,384.62
Poulos, et al v City of Lorain	115 Residences	\$ 562,500.00	\$ 4,891.30
Velzen, et al v City of Grandville, et al	23 Residences	\$ 550,000.00	\$23,913.04
Kwaitkowski, et al v City of Grosse Pointe Woods	54 Residences	\$ 550,000.00	\$10,185.19
Biechler, et al v City of Eastpointe	121 Residences	\$ 550,000.00	\$ 4,545.46
Rizzo, et al v City of Detroit and Macomb Township	45 Residences	\$ 500,000.00	\$11,111.11

Mashni, et al v Charter Township of Redford	36 Residences	\$ 500,000.00	\$13,888.88
Manska et al v City of River Rouge	96 Residences	\$ 404,000.00	\$ 4,208.33
Jacobs, et al v City of Flint	60 Residences	\$ 300,000.00	\$ 5,000.00
Upshaw, et al v City of Mt. Clemens	36 Residences	\$ 280,000.00	\$ 7,777.77
Coddington, et al v Harrison Township and Anliker, et al v Harrison Township	32 Residences	\$ 262,500.00	\$ 8,203.13
Storgoff, et al v Charter Township of Redford	18 Residences	\$ 252,000.00	\$14,000.00
Hamilton, et al v Clinton Township	23 Residences	\$ 212,300.00	\$ 9,230.43
Burton v Cauflow Environmental Services	34 Residences	\$ 190,000.00*	\$5,588.24
Monroe, et al v City of Detroit	14 Residences	\$ 110,000.00	\$ 7,800.00
Posywak. Et al v Charter Township of Redford	6 Residences	\$ 85,000.00	\$14,166.66

*Includes injunctive relief

GOVERNMENTAL LIABILITY FOR NEGLIGENCE
Act 170 of 1964

AN ACT to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers, employees, and volunteers and for paying damages sought or awarded against them; to provide for the legal defense of public officers, employees, and volunteers; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal acts and parts of acts.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970;—Am. 1978, Act 141, Imd. Eff. May 11, 1978;—Am. 1986, Act 175, Imd. Eff. July 7, 1986;—Am. 2002, Act 400, Imd. Eff. May 30, 2002.

Compiler's note: In *Hyde v. University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular name: Governmental Immunity Act

The People of the State of Michigan enact:

691.1401 Definitions.

Sec. 1. As used in this act:

(a) "Governmental agency" means this state or a political subdivision.

(b) "Governmental function" means an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority, as directed or assigned by his or her public employer for the purpose of public safety.

(c) "Highway" means a public highway, road, or street that is open for public travel. Highway includes a bridge, sidewalk, trailway, crosswalk, or culvert on the highway. Highway does not include an alley, tree, or utility pole.

(d) "Municipal corporation" means a city, village, or township or a combination of 2 or more of these when acting jointly.

(e) "Political subdivision" means a municipal corporation, county, county road commission, school district, community college district, port district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, department, court, board, or council of a political subdivision.

(f) "Sidewalk", except as used in subdivision (c), means a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designed for vehicular travel.

(g) "State" means this state and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces. State includes a public university or college of this state, whether established as a constitutional corporation or otherwise.

(h) "Township" means a general law township or a charter township.

(i) "Volunteer" means an individual who is specifically designated as a volunteer and who is acting solely on behalf of a governmental agency.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1986, Act 175, Imd. Eff. July 7, 1986;—Am. 1999, Act 205, Imd. Eff. Dec. 21, 1999;—Am. 2001, Act 131, Imd. Eff. Oct. 15, 2001;—Am. 2012, Act 50, Imd. Eff. Mar. 13, 2012.

Compiler's note: Section 3 of Act 175 of 1986 provides:

"(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

"(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986."

In *Hyde v. University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Enacting section 1 of Act 205 of 1999 provides:

"Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

Enacting section 1 of Act 131 of 2001 provides:

"Enacting section 1. The provisions of this amendatory act do not limit or reduce the scope of a governmental function as defined by statute or common law."

Popular name: Governmental Immunity Act

691.1402 Repairing and maintaining highways; damages for bodily injury or damage to property; liability, procedure, and remedy as to county roads; judgment against state; payment of judgment; liability of municipal corporation; effect of contractual undertaking to perform work on state trunk line highway; limitations on duties of governmental agency; limitation.

Sec. 2. (1) Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. Except as provided in section 2a, the duty of a governmental agency 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, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer.

(2) A municipal corporation has no duty to repair or maintain, and is not liable for injuries or damages arising from, a portion of a county or state highway.

(3) If the state transportation department contracts with another governmental agency to perform work on a state trunk line highway, an action brought under this section for tort liability arising out of the performance of that work shall be brought only against the state transportation department under the same circumstances and to the same extent as if the work had been performed by employees of the state transportation department. The state transportation department has the same defenses to the action as it would have had if the work had been performed by its own employees. If an action described in this subsection could have been maintained against the state transportation department, it shall not be maintained against the governmental agency that performed the work for the state transportation department. The governmental agency also has the same defenses that could have been asserted by the state transportation department had the action been brought against the state transportation department.

(4) The contractual undertaking of a governmental agency to maintain a state trunk line highway confers contractual rights only on the state transportation department and does not confer third party beneficiary or other contractual rights in any other person to recover damages to person or property from that governmental agency. This subsection does not relieve the state transportation department of liability it may have, under this section, regarding that highway.

(5) The duty imposed by this section on a governmental agency is limited by sections 81131 and 82124 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81131 and 324.82124.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1990, Act 278, Imd. Eff. Dec. 11, 1990;—Am. 1996, Act 150, Imd. Eff. Mar. 25, 1996;—Am. 1999, Act 205, Imd. Eff. Dec. 21, 1999;—Am. 2012, Act 50, Imd. Eff. Mar. 13, 2012.

Compiler's note: Enacting section 1 of Act 205 of 1999 provides:

"Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

Popular name: Governmental Immunity Act

691.1402a Municipal corporation; maintenance of sidewalk; liability; presumption; limitation.

Sec. 2a. (1) A municipal corporation in which a sidewalk is installed adjacent to a municipal, county, or state highway shall maintain the sidewalk in reasonable repair.

(2) A municipal corporation is not liable for breach of a duty to maintain a sidewalk unless the plaintiff proves that at least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of the defect in the sidewalk.

(3) In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) is presumed to have maintained the sidewalk in reasonable repair. This presumption may only be rebutted by evidence of facts showing that a proximate cause of the injury was 1 or both of the following:

(a) A vertical discontinuity defect of 2 inches or more in the sidewalk.

(b) A dangerous condition in the sidewalk itself of a particular character other than solely a vertical

discontinuity.

(4) Whether a presumption under subsection (3) has been rebutted is a question of law for the court.

(5) A municipal corporation's liability under subsection (1) is limited by section 81131 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81131.

History: Add. 1999, Act 205, Imd. Eff. Dec. 21, 1999;—Am. 2012, Act 50, Imd. Eff. Mar. 13, 2012.

Compiler's note: Enacting section 1 of Act 205 of 1999 provides:

"Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

Popular name: Governmental Immunity Act

Popular name: 2-Inch Rule

Popular name: 2 Inch Rule

691.1403 Defective highways; knowledge of defect, repair.

Sec. 3. No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

691.1404 Notice of injury and defect in highway.

Sec. 4. (1) As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

(2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims. Filing of such notice shall constitute compliance with section 6431 of Act No. 236 of the Public Acts of 1961, being section 600.6431 of the Compiled Laws of 1948, requiring the filing of notice of intention to file a claim against the state. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, if he is physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, or the chief administrative officer, or his deputy, or a legal officer of the governmental agency as directed by the legislative body or chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury.

(3) If the injured person is under the age of 18 years at the time the injury occurred, he shall serve the notice required by subsection (1) not more than 180 days from the time the injury occurred, which notice may be filed by a parent, attorney, next friend or legally appointed guardian. If the injured person is physically or mentally incapable of giving notice, he shall serve the notice required by subsection (1) not more than 180 days after the termination of the disability. In all civil actions in which the physical or mental capability of the person is in dispute, that issue shall be determined by the trier of the facts. The provisions of this subsection shall apply to all charter provisions, statutes and ordinances which require written notices to counties or municipal corporations.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970;—Am. 1972, Act 28, Imd. Eff. Feb. 19, 1972

Constitutionality: Notice requirement provision of section held to arbitrarily split all tortfeasors into two differently treated subclasses: private tortfeasors to whom no notice of claim is required, and governmental tortfeasors to whom notice is required. Such treatment held to violate equal protection guarantee of US Const, am XIV, § 1, and Const 1963, art I, § 2. Reich v State Highway Department, 386 Mich 617; 194 NW2d 700 (1972).

The 120-day notice provision contained in this section does not violate the Michigan Constitution if it is posited as having the legitimate purpose of avoiding actual prejudice to the state. Hobbs v Department of State Highways, 398 Mich 90; 247 NW2d 754 (1975); Kerkstra v Department of State Highways, 398 Mich 103; 247 NW2d 759 (1975).

Popular name: Governmental Immunity Act

691.1405 Government owned vehicles; liability for negligent operation.

Sec. 5. Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

691.1406 Public buildings; dangerous condition; liability; notice, contents, service.

Sec. 6. Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place. As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, when physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, the chief administrative officer, his deputy, or a legal officer of the governmental agency, as directed by the legislative body or by the chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury. Notice to the state of Michigan shall be given as provided in section 4. No action shall be brought under the provisions of this section against any governmental agency, other than a municipal corporation, except for injury or loss suffered after July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970.

Popular name: Governmental Immunity Act

691.1406a Subrogation.

Sec. 6a. A governmental agency against whom judgment has been entered pursuant to this act may seek subrogation where it is available by law or by contract and recover contribution from each co-defendant and joint and several tortfeasor where appropriate pursuant to sections 2925a to 2925d of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.2925a to 600.2925d of the Michigan Compiled Laws.

History: Add. 1986, Act 175, Imd. Eff. July 7, 1986.

Constitutionality: In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Compiler's note: Section 3 of Act 175 of 1986 provides:

"(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

"(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986."

Popular name: Governmental Immunity Act

691.1407 Immunity from tort liability; intentional torts; immunity of judge, legislator, official, and guardian ad litem; definitions.

Sec. 7. (1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created

task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

(4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the department of community health or a hospital owned or operated by the department of corrections and except care or treatment provided by an uncompensated search and rescue operation medical assistant or tactical operation medical assistant.

(5) A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

(6) A guardian ad litem is immune from civil liability for an injury to a person or damage to property if he or she is acting within the scope of his or her authority as guardian ad litem. This subsection applies to actions filed before, on, or after May 1, 1996.

(7) As used in this section:

(a) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(b) "Search and rescue operation" means an action by a governmental agency to search for, rescue, or recover victims of a natural or manmade disaster, accident, or emergency on land or water.

(c) "Search and rescue operation medical assistant" means an individual licensed to practice 1 or more of the occupations listed in subdivision (e), acting within the scope of the license, and assisting a governmental agency in a search and rescue operation.

(d) "Tactical operation" means a coordinated, planned action by a special operations, weapons, or response team of a law enforcement agency that is 1 of the following:

(i) Taken to deal with imminent violence, a riot, an act of terrorism, or a similar civic emergency.

(ii) The entry into a building, area, watercraft, aircraft, land vehicle, or body of water to seize evidence, or to arrest an individual for a felony, under the authority of a warrant issued by a court.

(iii) Training for the team.

(e) "Tactical operation medical assistant" means an individual licensed to practice 1 or more of the following, acting within the scope of the license, and assisting law enforcement officers while they are engaged in a tactical operation:

(i) Medicine, osteopathic medicine and surgery, or as a registered professional nurse, under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) As an emergency medical technician, emergency medical technician specialist, or paramedic under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970;—Am. 1986, Act 175, Imd. Eff. July 7, 1986;—Am. 1996, Act 143, Eff. May 1, 1996;—Am. 1999, Act 241, Imd. Eff. Dec. 28, 1999;—Am. 2000, Act 318, Imd. Eff. Oct. 24, 2000;—Am. 2004, Act 428, Imd. Eff. Dec. 17, 2004;—Am. 2005, Act 318, Imd. Eff. Dec. 27, 2005.

Compiler's note: Section 3 of Act 175 of 1986 provides:

"(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

"(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986."

Enacting section 1 of Act 318 of 2000 provides:

"Enacting section 1. This amendatory act applies only to a cause of action arising on or after the effective date of this amendatory act."

Popular name: Governmental Immunity Act

691.1407a Repealed. 1999, Act 241, Eff. Jan. 1, 2003.

Compiler's note: The repealed section pertained to immunity of political subdivision and governmental agency from liability resulting from computer date failure.

Popular name: Governmental Immunity Act

691.1407b Repealed. 1999, Act 242, Eff. Jan. 1, 2003.

Compiler's note: The repealed section pertained to immunity of municipal corporation from liability resulting from computer data failure.

Popular name: Governmental Immunity Act

691.1407c Donated fire control or rescue equipment; liability; testing, repair, or maintenance; rights of employee or volunteer under MCL 418.101 to 418.941; "organized fire department" defined.

Sec. 7c. (1) A municipal corporation, organized fire department, or agent of a municipal corporation or organized fire department that donates fire control or rescue equipment to another municipal corporation or organized fire department is not liable for damages for personal injury, death, or property damage proximately caused after the donation by a defect in the equipment.

(2) Before using equipment donated under subsection (1), a municipal corporation or organized fire department that receives the donated equipment shall have the equipment tested, repaired, or maintained if required by state or federal law, rule, or regulation. The municipal corporation or organized fire department shall not use the donated equipment unless the use is consistent with state and federal laws, rules, and regulations. Subject to subsection (3), a municipal corporation or organized fire department that complies with this subsection is not liable for damages for personal injury, death, or property damage proximately caused by a defect in the donated equipment.

(3) The immunity from liability provided by subsection (2) does not affect the rights of an employee or volunteer of the municipal corporation or organized fire department that receives the donated equipment to benefits under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, or any similar law.

(4) As used in this section, "organized fire department" means that term as defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

History: Add. 2006, Act 244, Imd. Eff. June 30, 2006.

Popular name: Governmental Immunity Act

691.1408 Claim or civil action against officer or employee of governmental agency for injuries caused by negligence; services of attorney; payment of claim; judgment for damages; indemnification; payment or settlement of judgment; criminal action against officer or employee of governmental agency; services of attorney; reimbursement for legal expenses; liability on governmental agency not imposed.

Sec. 8. (1) Whenever a claim is made or a civil action is commenced against an officer, employee, or volunteer of a governmental agency for injuries to persons or property caused by negligence of the officer, employee, or volunteer while in the course of employment with or actions on behalf of the governmental agency and while acting within the scope of his or her authority, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer, employee, or volunteer as to the claim and to appear for and represent the officer, employee, or volunteer in the action. The governmental agency may compromise, settle, and pay the claim before or after the commencement of a civil action. Whenever a judgment for damages is awarded against an officer, employee, or volunteer of a governmental agency as a result of a civil action for personal injuries or property damage caused by the officer, employee, or volunteer while in the course of employment and while acting within the scope of his or her authority, the governmental agency may indemnify the officer, employee, or volunteer or pay, settle, or compromise the judgment.

(2) When a criminal action is commenced against an officer or employee of a governmental agency based upon the conduct of the officer or employee in the course of employment, if the employee or officer had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the action, and to appear for and represent the officer or employee in the action. An officer or employee who has incurred legal expenses after December 31, 1975 for conduct prescribed in this subsection may obtain reimbursement for those expenses under this subsection.

(3) This section does not impose liability on a governmental agency.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1978, Act 141, Imd. Eff. May 11, 1978;—Am. 2002, Act 400, Imd. Eff. May 30, 2002.

Popular name: Governmental Immunity Act

691.1409 Liability insurance; waiver of defense.

Sec. 9. (1) A governmental agency may purchase liability insurance to indemnify and protect the

governmental agency against loss or to protect the governmental agency and an agent, officer, employee, or volunteer of the governmental agency against loss on account of an adverse judgment arising from a claim for personal injury or property damage caused by the governmental agency or its agent, officer, employee, or volunteer. A governmental agency may pay premiums for the insurance authorized by this section out of current funds.

(2) The existence of an insurance policy indemnifying a governmental agency against liability for damages is not a waiver of a defense otherwise available to the governmental agency in the defense of the claim.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 2002, Act 400, Imd. Eff. May 30, 2002.

Popular name: Governmental Immunity Act

691.1410 Claims against state, political subdivision, or municipal corporation; procedure.

Sec. 10. (1) Claims against the state authorized under this act shall be brought in the manner provided in sections 6401 to 6475 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.6401 to 600.6475 of the Michigan Compiled Laws, and against any political subdivision or municipal corporation by civil action in any court having jurisdiction.

(2) Except as otherwise provided in this act, any claim that is authorized under this act shall be subject to the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1986, Act 175, Imd. Eff. July 7, 1986.

Constitutionality: In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular name: Governmental Immunity Act

691.1411 Claim against government agency; limitation of actions.

Sec. 11. (1) Every claim against any governmental agency shall be subject to the general law respecting limitations of actions except as otherwise provided in this section.

(2) The period of limitations for claims arising under section 2 of this act shall be 2 years.

(3) The period of limitations for all claims against the state, except those arising under section 2 of this act, shall be governed by chapter 64 of Act No. 236 of the Public Acts of 1961.

History: 1964, Act 170, Eff. July 1, 1965.

Constitutionality: This section does not deny the equal protection of the law. *Forest v Parmalee*, 402 Mich 348; 262 NW2d 653 (1978).

Popular name: Governmental Immunity Act

691.1412 Claims under act; defenses available.

Sec. 12. Claims under this act are subject to all of the defenses available to claims sounding in tort brought against private persons.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

691.1413 Damage arising out of performance of proprietary function.

Sec. 13. The immunity of the governmental agency shall not apply to actions to recover for bodily injury or property damage arising out of the performance of a proprietary function as defined in this section. Proprietary function shall mean any activity which is conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees. No action shall be brought against the governmental agency for injury or property damage arising out of the operation of proprietary function, except for injury or loss suffered on or after July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1986, Act 175, Imd. Eff. July 7, 1986.

Constitutionality: Section 3 of Act 175 of 1986 provides:

"(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

"(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986."

In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular name: Governmental Immunity Act

691.1414 Repeal.

Sec. 14. Chapter 22 of Act No. 283 of the Public Acts of 1909, as amended, being sections 242.1 to 242.8

of the Compiled Laws of 1948; section 2904 of Act No. 236 of the Public Acts of 1961, being section 600.2904 of the Compiled Laws of 1948; Act No. 59 of the Public Acts of 1951, as amended, being sections 124.101 to 124.103 of the Compiled Laws of 1948, are repealed.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

691.1415 Effective date of act.

Sec. 15. This act shall take effect July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

691.1416 Definitions.

Sec. 16. As used in this section and sections 17 to 19:

(a) "Affected property" means real property affected by a sewage disposal system event.

(b) "Appropriate governmental agency" means a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury.

(c) "Claimant" means a property owner that believes that a sewage disposal system event caused damage to the owner's property, a physically injured individual who believes that a sewage disposal system event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual. Claimant includes a person that is subrogated to a claim of a property owner or physically injured individual described in this subdivision.

(d) "Contacting agency" means any of the following within a governmental agency:

(i) The clerk of the governmental agency.

(ii) If the governmental agency has no clerk, an individual who may lawfully be served with civil process directed against the governmental agency.

(iii) Any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice under section 19, including, but not limited to, an agency, authority, department, district, or office responsible for the operation of the sewage disposal system, such as a sewer department, water department, or department of public works.

(e) "Defect" means a construction, design, maintenance, operation, or repair defect.

(f) "Noneconomic damages" includes, but is not limited to, pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, and other nonpecuniary damages.

(g) "Person" means an individual, partnership, association, corporation, other legal entity, or a political subdivision.

(h) "Serious impairment of body function" means that term as defined in section 3135 of the insurance code of 1956, 1956 PA 218, MCL 500.3135.

(i) "Service lead" means an instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency.

(j) "Sewage disposal system" means all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of a governmental agency.

(k) "Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

(i) An obstruction in a service lead that was not caused by a governmental agency.

(ii) 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.

(iii) An act of war, whether the war is declared or undeclared, or an act of terrorism.

(l) "Substantial proximate cause" means a proximate cause that was 50% or more of the cause of the event and the property damage or physical injury.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002.

Popular name: Governmental Immunity Act

691.1417 Damages or physical injuries caused by sewage disposal system event;

compliance of claimant and governmental agency with relief provisions.

Sec. 17. (1) To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in sections 18 and 19.

(2) 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 and the governmental agency is an appropriate governmental agency. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.

(3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:

(a) The governmental agency was an appropriate governmental agency.

(b) The sewage disposal system had a defect.

(c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.

(d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.

(e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

(4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:

(a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.

(b) The claimant complied with section 19.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002.

Popular name: Governmental Immunity Act

691.1418 Economic damages; grounds for noneconomic damages; available defenses.

Sec. 18. (1) Except as provided in subsection (2), economic damages are the only compensation for a claim under section 17. Except as provided in subsection (2), a court shall not award and a governmental agency shall not pay noneconomic damages as compensation for an event.

(2) A governmental agency remains subject to tort liability for noneconomic damages caused by an event only if the claimant or the individual on whose behalf the claimant is making the claim has suffered death, serious impairment of body function, or permanent serious disfigurement.

(3) In an action for noneconomic damages under section 17, the issues of whether a claimant or the individual on whose behalf the claimant is making the claim has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(a) There is no factual dispute concerning the nature and extent of the claimant's or the individual's injuries.

(b) There is a factual dispute concerning the nature and extent of the claimant's or the individual's injuries, but the dispute is not material to determining whether the claimant or the individual has suffered a serious impairment of body function or permanent serious disfigurement.

(4) Unless this act provides otherwise, a party to a civil action brought under section 17 has all applicable common law and statutory defenses ordinarily available in civil actions, and is entitled to all rights and procedures available under the Michigan court rules.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002.

Popular name: Governmental Immunity Act

***** 691.1419 THIS SECTION DOES NOT APPLY TO NONECONOMIC DAMAGES MADE UNDER SECTION 17: See subsection (7) *****

691.1419 Notice of claim; requirements.

Sec. 19. (1) Except as provided in subsections (3) and (7), a claimant is not entitled to compensation under

section 17 unless the claimant notifies the governmental agency of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice under this subsection shall contain the content required by subsection (2)(c) and shall be sent to the individual within the governmental agency designated in subsection (2)(b). To facilitate compliance with this section, a governmental agency owning or operating a sewage disposal system shall make available public information about the provision of notice under this section.

(2) If a person who owns or occupies affected property notifies a contacting agency orally or in writing of an event before providing a notice of a claim that complies with subsection (1), the contacting agency shall provide the person with all of the following information in writing:

(a) A sufficiently detailed explanation of the notice requirements of subsection (1) to allow a claimant to comply with the requirements.

(b) The name and address of the individual within the governmental agency to whom a claimant must send written notice under subsection (1).

(c) The required content of the written notice under subsection (1), which is limited to the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

(3) A claimant's failure to comply with the notice requirements of subsection (1) does not bar the claimant from bringing a civil action under section 17 against a governmental agency notified under subsection (2) if the claimant can show both of the following:

(a) The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1).

(b) The claimant's failure to comply with the notice requirements of subsection (1) resulted from the contacting agency's failure to comply with subsection (2).

(4) If a governmental agency that is notified of a claim under subsection (1) believes that a different or additional governmental agency may be responsible for the claimed property damages or physical injuries, the governmental agency shall notify the contacting agency of each additional or different governmental agency of that fact, in writing, within 15 business days after the date the governmental agency receives the claimant's notice under subsection (1). This subsection is intended to allow a different or additional governmental agency to inspect a claimant's property or investigate a claimant's physical injury before litigation. Failure by a governmental agency to provide notice under this subsection to a different or additional governmental agency does not bar a civil action by the governmental agency against the different or additional governmental agency.

(5) If a governmental agency receives a notice from a claimant or a different or additional governmental agency that complies with this section, the governmental agency receiving notice may inspect the damaged property or investigate the physical injury. A claimant or the owner or occupant of affected property shall not unreasonably refuse to allow a governmental agency subject to a claim to inspect damaged property or investigate a physical injury. This subsection does not prohibit a governmental agency from subsequently inspecting damaged property or investigating a physical injury during a civil action brought under section 17.

(6) If a governmental agency notified of a claim under subsection (1) and a claimant do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the receipt of notice under this section, the claimant may institute a civil action. A civil action shall not be commenced under section 17 until after that 45 days.

(7) This section does not apply to claims for noneconomic damages made under section 17.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002.

Popular name: Governmental Immunity Act