



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

The state transportation department commonly contracts with local units of government to maintain state highways. Traditionally, the question of who is liable for tort actions arising from that work has been addressed by the state agreeing to "hold harmless" the local unit of government. However, it appears that the attorney general has recently questioned the legality of such agreements, saying that they pledge the full faith and credit of the state in violation of the state constitution. Although under case law, liability nonetheless may lie with the state, local units of government find themselves having to defend against suits that attempt to hold them liable. Legislation has been proposed to place in statute provisions that echo the state of the common law regarding relative state and local liability for locally-performed maintenance of state highways.

THE CONTENT OF THE BILL:

The bill would amend the governmental immunity act to state where liability lies when the state transportation department contracts with another governmental agency to perform work on a state trunkline highway. Under the bill, a tort liability action arising out of the performance of that work could 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 department would have the same defenses to the suit as it would have had if the work had been performed by its own employees. An action that could be maintained against the transportation department could not be maintained against the governmental agency that performed the work. That governmental agency also would have the same defenses available to the transportation department had the action been brought against the state.

The bill would provide that when a governmental agency contracted with the transportation department to maintain a state trunkline highway, that contract would confer rights only on the transportation department; it would not confer third party beneficiary or other contractual rights in any other person to recover damages from the governmental agency. However, this provision would not relieve the state transportation department of any liability it might have for that highway under the bill.

MCL 691.1402

FISCAL IMPLICATIONS:

Fiscal information is not available. (3-14-90)

ARGUMENTS:

For:

Local units of government that maintain state highways under state contract sometimes find themselves defendants in lawsuits that are brought following accidents on those

LOCAL WORK ON STATE HIGHWAY: LIABILITY

House Bill 5011 (Substitute H-1)

First Analysis (3-14-90)

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Sponsor: Rep. Perry Bullard
Committee: Judiciary

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highways; this happens even under circumstances where it is the state, not the local unit, that is the liable party. By basically restating case law in statute, the bill should help to relieve local units of government of the expenses of defending against ill-advised lawsuits that wrongly attempted to extract damages from the local units.

POSITIONS:

The Department of Transportation has no formal position on the bill. (3-13-90)

A representative of the Michigan Municipal League testified in support of the bill. (3-13-90)

A representative of the County Road Association of Michigan testified in support of the bill. (3-13-90)

H.B. 5011 (3-14-90)