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Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

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House Bill 4469 (Substitute H-3 as passed by the House)  
House Bill 4587 (Substitute H-1 as passed by the House)  
House Bill 4588 (Substitute H-3 as passed by the House)  
Sponsor: Representative Eileen DeHart (House Bill 4469)  
Representative Patricia Birkholz (House Bill 4587)  
Representative Marc Shulman (House Bill 4588)  
House Committee: Family and Civil Law  
Senate Committee: Technology and Energy

Date Completed: 12-1-99

### **CONTENT**

**House Bills 4469 (H-3) and 4588 (H-3) would amend the governmental immunity law to limit the liability of municipal corporations and political subdivisions, and their employees, officers, members, and volunteers, for damages resulting from a computer date failure. House Bill 4588 (H-3) also would include immunity for governmental agencies with respect to the ownership or operation of a hospital or county medical facility. House Bill 4587 (H-1) would create a new act to prohibit political subdivisions from collecting fees or fines on billing errors caused by a computer date failure.**

The bills are all tie-barred to each other, and would be repealed on January 1, 2003.

The bills would define "computer date failure" as a malfunction, including the malfunction of an electronic or mechanical device or the inability of a computer, computer network, computer program, embedded chip, computer system, or computer software to store, process, receive, or transmit data accurately, that was caused directly or indirectly by the failure of a computer, computer network, computer program, embedded chip, a computer system, or computer software accurately or properly to recognize, calculate, display, sort, or otherwise process dates or times in the years 1999 and 2000, and beyond.

### **House Bills 4469 (H-3) & 4588 (H-3)**

#### **Immunity of Municipal Corporation or Political Subdivision**

House Bill 4469 (H-3) would apply to municipal corporations (cities, villages, townships, and charter townships). House Bill 4588 (H-3) would apply to political subdivisions other than municipal corporations (counties, county road commissions, townships, charter townships, school districts, community college districts, port districts, metropolitan districts, transportation authorities, and agencies, departments, courts, boards, and councils of political subdivisions).

Under the bills, a municipal corporation or political subdivision engaged in the exercise or discharge of a governmental function would be immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, including an action based

on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure, or an action based on Section 2, 3, 5, 6, or 7 of the governmental immunity law. (Sections 2 and 3 pertain to actions for defective highways. Sections 5 and 6 govern actions for the negligent operation of a government-owned vehicle and the dangerous or defective condition of a public building, respectively. Section 7 provides immunity for governmental agencies that are engaged in the exercise or discharge of a governmental function, and for governmental employees, officers, and board members who are acting on behalf of a governmental agency.)

### Employee Immunity

Without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a municipal corporation or political subdivision, each volunteer acting on behalf of a municipal corporation or political subdivision, and each member of a board, council, commission, or statutorily created task force of a municipal corporation or political subdivision, would be immune from liability in an action to recover damages resulting directly or indirectly from a computer date failure, including an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure, or an action based on Section 2, 3, 5, 6, or 7, if all of the following were met:

- The damage was caused by the officer, employee, or member while in the course of employment or service or by the volunteer while acting on behalf of the municipal corporation or political subdivision.
- The individual was acting or reasonably believed he or she was acting within the scope of his or her authority.
- The municipal corporation or political subdivision was engaged in the exercise or discharge of a governmental function.
- The individual's conduct did not amount to gross negligence that was the proximate cause of the injury or damage. ("Gross negligence" would mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury or substantial damage resulted.)

### Immunity for Hospitals and County Medical Facilities

Under House Bill 4588 (H-3), a governmental agency would be immune from liability in an action to recover damages with respect to the ownership or operation of a hospital or county medical facility resulting directly or indirectly from a computer date failure, including an action based on an alleged failure to detect, disclose, prevent, report on, or remediate a computer date failure, or an action based on another section of the governmental immunity law. (The law defines "governmental agency" as the State, political subdivisions, and municipal corporations.)

Without regard to the discretionary or ministerial nature of the conduct in question, each governmental agency officer and employee, each volunteer acting on behalf of a governmental agency, and each member of a governmental agency board, council, commission, or statutorily created task force would be immune from liability in an action to recover damages with respect to the ownership or operation of a hospital or county medical facility resulting directly or indirectly from a computer date failure, under the same conditions that would apply to officers and employees of a municipal corporation or political subdivision.

### Other Provisions

The bills specify that their provisions could not be construed as modifying or restricting the immunity of a governmental agency otherwise provided in the law, and would not limit either of the following:

- The authority of a municipal corporation or political subdivision to enter into an agreement that waived or limited its proposed immunity and that contained provisions the municipal corporation or political subdivision found appropriate on the issue of its liability and/or damages for computer date failure.
- The authority of a governmental agency to enter into an agreement that waived or limited its proposed immunity concerning a hospital or county medical facility, and that contained provisions the governmental agency found appropriate on the issue of its liability and/or damages for computer date failure.

The bills would not apply to an action to recover damages for a wrongful death or injury to a person resulting directly or indirectly from a computer date failure.

House Bill 4588 (H-3) specifies that, for purposes of its provisions, the terms “political subdivision” and “governmental agency” would include a municipal health facilities corporation.

#### **House Bill 4587 (H-1)**

The bill would prohibit a political subdivision from assessing, charging to, or collecting from a person interest, penalties, fines, or other fees or finance charges on the amount of an error, if a computer date failure, including a failure to detect, disclose, prevent, report on, or remediate a computer date failure, directly or indirectly resulted in a billing error by the political subdivision for goods or services, including utility service, provided to a person, or an error in the determination or assessment of a fee or tax payable by a person to the political subdivision.

“Political subdivision” would mean a municipal corporation, county, county road commission, township, charter township, school district, community college district, port district, metropolitan district, or transportation authority, or a combination of those when acting jointly; a district or authority authorized by law or formed by one or more political subdivisions; or an agency, department, court, board, or council of a political subdivision.

Proposed MCL 691.1407b (H.B. 4469)  
MCL 491.1407 et al. (H.B. 4588)

Legislative Analyst: S. Lowe

#### **FISCAL IMPACT**

#### **House Bills 4469 (H-3) & 4588 (H-3)**

The bills would have an indeterminate impact on municipal corporations, the State, and local units of government, depending on the number of actions that could arise from computer date failures. The potential savings from expanded immunity cannot be estimated.

#### **House Bill 4587 (H-1)**

The bill would have an indeterminate impact on local units of government, depending upon possible future billing errors caused by computer date failures.

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.