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Senate Bill 1475 (as introduced 9-7-10)
Sponsor: Senator Wayne Kuipers
Committee: Judiciary

Date Completed: 11-2-10

CONTENT

The bill would amend provisions of the governmental immunity law that address the liability of a municipality for defects in a sidewalk, to apply the two-inch rule (a rebuttable inference of reasonable repair if a defect is less than two inches deep) to sidewalks adjacent to municipal and State highways, in addition to sidewalks adjacent to county highways.

Subject to various exceptions, a governmental agency is immune from civil liability if it is engaged in a governmental function, as defined in the law. One of the exceptions imposes liability with respect to highways. Under Section 2(1), all governmental agencies, including the State, counties, and municipal corporations (cities, villages, and townships), have a duty to maintain highways under their jurisdiction in reasonable repair. The duty of the State and counties is limited to "the improved portion of the highway designed for vehicular travel", and specifically does not include sidewalks. That exception for sidewalks does not apply to municipalities.

Under Section 2a, except as otherwise provided, a municipal corporation does not have a duty to repair or maintain a portion of a county highway outside of the improved portion of the highway, including a sidewalk, trailway, or crosswalk. This does not limit liability if the municipality knew or should have known of a defect at least 30 days before the relevant injury, death, or damage, and the defect was a proximate cause of the injury, death, or damage.

In addition, a discontinuity defect of less than two inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, or crosswalk in reasonable repair. (According to a decision of the Michigan Supreme Court, discussed below, this inference--known as the two-inch rule--applies only to sidewalks adjacent to *county* highways.)

Under the bill, a municipal corporation would not have a duty to repair or maintain a county highway, except as otherwise provided. A municipal corporation would have to maintain a sidewalk adjacent to a municipal, county, or State highway pursuant to Section 2a and Section 2(1). A discontinuity defect of less than two inches would create a rebuttable inference that a municipal corporation maintained a sidewalk in reasonable repair.

The bill would define "sidewalk" as a public sidewalk, trailway, crosswalk, or other public installation intended for pedestrian, bicycle, or other nonmotorized transportation use, situated outside of the improved portion of a highway designed for vehicular travel.

MCL 691.1401 et al.

BACKGROUND

In *Robinson v City of Lansing*, the Michigan Supreme Court addressed the two-inch rule in the governmental immunity law (486 Mich 1, decided on 4-8-10). The plaintiff in that case was injured when walking along a sidewalk adjacent to Michigan Avenue in Lansing. Michigan Avenue is a State highway maintained by the City of Lansing. The injury involved a depressed area of the sidewalk that was less than two inches.

The defendant raised the two-inch rule as an affirmative defense and claimed that the plaintiff had not rebutted the inference that the city had maintained the sidewalk in reasonable repair. The plaintiff claimed that the rule applied only to sidewalks adjacent to county highways. The trial court agreed with the plaintiff and denied the defendant's motion for summary disposition. The Michigan Court of Appeals reversed, but the Michigan Supreme Court agreed with the trial court.

According to the Supreme Court, the two-inch rule originally was a common law rule, and had been described by the Court in 1962 as meaning: "a depression in a walk which does not exceed 2 inches in depth will not render a municipality liable for damages incident to an accident caused by such depression." That is, defects of two inches or less constituted "reasonable repair" as a matter of law. The Court abolished the rule in 1972 but the Legislature codified it in 1999 when Section 2a was enacted.

The Court in *Robinson* analyzed the language of Section 2a, which begins by providing that a municipality is not liable for a portion of a *county* highway, including a sidewalk, unless certain criteria are met. The Court found that subsequent references to "the" highway in that section mean a county highway. The Court reached this conclusion for several reasons, including syntax, context, and a belief that "the Legislature is not required to be overly repetitive in its choice of language".

The Court also examined the rule and Section 2a in the context of the governmental immunity law as a whole. Under Section 3, a governmental agency is not liable for injuries or damages caused by a defective highway unless the governmental agency knew or should have known of a defect, and had a reasonable opportunity to repair it, at least 30 days before an injury occurred. Section 2 imposes liability if a person sustains injury or damage "by reason of failure" of a governmental agency to maintain a highway in reasonable repair, and the Court previously held that proof of causation requires proof of proximate cause. Since those provisions existed before Section 2a was enacted and apply to all highways, the Court found that the significance of Section 2a is its limitation to *county* highways.

The Court concluded, "[T]he two-inch rule...does not apply to sidewalks adjacent to state highways; it only applies to sidewalks adjacent to county highways."

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would result in indeterminate savings to local units of government related to future liability claims.

Fiscal Analyst: Bill 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.