

## GOVERNMENTAL AGENCY TORT LIABILITY FOR SEWAGE DISPOSAL SYSTEM EVENTS

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**House Bill 4692 as introduced**  
**Sponsor: Rep. Alex Garza**  
**Committee: Regulatory Reform**  
**Complete to 10-28-19**

### SUMMARY:

House Bill 4692 would amend 1964 PA 170, which addresses governmental liability for negligence. The bill would amend the definition of a *sewage disposal system event* and clarify the identification of a design or construction defect in a sewage disposal system. The bill would provide governmental agencies with expanded immunity in tort liability arising from the overflow or backup of a sewage disposal system.

#### Sewage Disposal System Event

Currently, a *sewage disposal system event* occurs when a sewage disposal system overflows or backs up onto real property, unless one of the following instances was a substantial proximate cause (more than 50%) of the overflow or backup:

- An obstruction in a service lead that was not caused by a governmental agency.
- A connection to the sewage disposal system on the affected property, including a sump system, building drain, surface drain, gutter, or downspout.
- An act of terrorism or an act of war, whether declared or undeclared.

The bill would retain those provisions and also provide that a sewage disposal system event does not exist if the rainfall at or near the affected area or within the sewage disposal system service area is 1.7 inches or more in any one-hour period or 3.3 inches in any continuous 24-hour period.

#### Governmental Liability

According to section 17 of the act, a governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup was a sewage disposal system event, as described above, and the governmental agency was an “appropriate governmental agency” (defined as the agency that owned, operated, or directly or indirectly discharged into the portion of the sewage disposal system that allegedly caused damage during the sewage disposal system event).

House Bill 4692 would retain those requirements and state that in order to obtain compensation, a claimant must also show all of the following:

- That the governmental agency was an appropriate governmental agency.
- That the sewage disposal system had a “defect” (see below).
- That the governmental agency knew or should have known about the defect and did not take reasonable steps to correct it.

- That the defect was a substantial proximate cause of the event and damage.
- Proof that the claimant owned the property that was damaged.

Currently, a “defect” is defined as a construction, design, maintenance, operation, or repair defect. The bill would add that a part of a sewage system does not have a design or construction defect if it was designed and constructed according to applicable state standards or requirements in place when the part was constructed or improved.

### **Draft Manual**

Within 180 days after the bill took effect, the Department of Environment, Great Lakes, and Energy (EGLE) would have to prepare, submit to specified relevant parties, and solicit comment on a draft manual that does the following:

- Describes techniques for mitigating basement flooding caused by the overflow or backup of a sewage disposal system.
- Explains the limitations of a sewage disposal system that could result in overflows or backups.
- Summarizes options for dwelling owners and renters for insurance covering overflows or backups of sewage disposal systems.

Then, within 270 days after the bill took effect, EGLE would have to consider comments received about the manual, post the manual on its website, and notify governmental agencies that owned or operated sewage disposal systems of the manual, requesting that the agencies make a link to the manual available.

Every three years after finalizing the manual, EGLE would have to update the manual as needed and publicize the updated version.

### **Notice Requirements**

Finally, the bill would rename “contacting agency”—primarily used in the context of notice requirements—as “governmental agency contact.” The entity’s definition and the notice requirements for a person seeking to file a claim against a governmental agency would remain unchanged.

MCL 691.1416, 691.1417, and 691.1419

## **BACKGROUND:**

This bill is understood to build on 2001 PA 222, which limited liability arising from damages caused by a sewage disposal system event for governmental agencies. 2001 PA 222 was initiated because of extreme flooding in Dearborn Heights in September of 2000.

According to committee testimony for House Bill 5282 during the 2015-16 legislative session, following that event, the two main insurers in the area capped liability at \$500,000, which meant that the city was responsible for paying claims over and above that amount. Those costs were devastating to city finances and led to efforts to limit a municipality’s liability for flooding events.

An extensive flooding event also occurred in southeast Michigan in August of 2014. According to House committee testimony in 2016, over the course of 24 hours, up to seven inches of rain fell, overloading the sewer systems and causing flooding in many homes. Reportedly, Oakland County suffered more than \$330 million in flooding damage, and the city of Warren suffered property losses estimated at \$1.2 billion.

**FISCAL IMPACT:**

House Bill 4692 would reduce costs for local units of government and government agencies on a case-by-case basis by expanding governmental immunity as described in the analysis above.

The bill is likely to increase costs for EGLE by requiring the department to develop and publicize a manual to help homeowners and renters effectively address sewage disposal system overflows and backups. The precise extent of this increase is difficult to determine as compilation and publication costs are presently unclear. The bill is unlikely to affect departmental revenues.

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