



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 39 and 43 (as passed by the Senate)  
Sponsor: Senator Roger Victory  
Committee: Transportation and Infrastructure

Date Completed: 8-15-22

### **RATIONALE**

In *Brown v. Manistee County Road Commission*,<sup>1</sup> the Michigan Supreme Court considered conflicting provisions of the county road law and the governmental immunity Act, specifically those concerning the amount of time in which a person claiming injury because of a defect in a roadway maintained by a county road commission has to serve notice to the county road commission. Each law requires the notice to describe the time, place, and extent of the injury, but the county road law specifies that a person seeking recovery for injuries must serve notice on the county road commission within 60 days after the injury occurred. The governmental immunity Act instead specifies that a person seeking recovery for injuries must serve notice within 120 days. The Supreme Court held that the 120-day notice provision in the governmental immunity Act applies to those lawsuits against county road commissions. Some people believe that statute should reflect the Supreme Court's conclusion in this case. Accordingly, it has been suggested that the liability of a county road commission or a county for failure to comply with road maintenance requirements and the procedure and remedies in an action against the county road commission or county be provided in the governmental immunity Act.

### **CONTENT**

**Senate Bill 39 would amend Chapter IV of Public Act 283 of 1909, the county road law, to specify that the liability of a county road commission or a county for failure to comply with the requirements to maintain roadways in its jurisdiction and the procedure and remedies in an action against a county road commission or county would be provided in Public Act 170 of 1964.**

**Senate Bill 43 would amend Public Act 170 of 1964, the governmental immunity Act, to delete a provision specifying that the liability, procedure, and remedy related to county roads under the jurisdiction of a county road commission would be provided by Public Act 283 of 1909.**

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

### **Senate Bill 39**

Chapter IV of Public Act 283 of 1909 requires a county to keep roads, bridges, and culverts that are within the county's jurisdiction, under its control, and open to public travel, in reasonable repair, so that they are reasonably safe and convenient for public travel. The Chapter specifies that the provisions of law respecting the liability of townships, cities, villages, and corporations for damages for injuries resulting from a failure in the performance of the same duty respecting roads under their control apply to counties adopting the county road system.

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<sup>1</sup> *Brown v. Manistee County Road Commission*, 452 Mich 354 (1996).

Instead, under the bill, a county road commission, or if there were no county road commission for the county, a county, would have to keep all highways that were within its jurisdiction, under its control, and open to public travel, within reasonable repair, so that they were reasonably safe and convenient for public travel.

Chapter IV specifies that an action arising from the requirement to maintain roadways as described above must be brought against the board of county road commissioners of the county and service must be made to the clerk and upon the chairperson of the board. The Chapter specifies that any judgement obtained against the board must be audited and paid for by the county road fund. However, a board of county road commissioners is not liable for damages to person or property sustained by a person upon a county road because of a defective county road, bridge, or culvert under the jurisdiction of the board of county road commissioners, unless the person serves or causes to be served within 60 days of the injury a notice in writing upon the clerk and upon the chairperson of the board. The notice must set forth the time when and place where the injury occurred, the manner in which it occurred, the known extent of it, the name of any witnesses, and that the person receiving it intends to hold the county liable for damages. The bill would delete these provisions.

Instead, the bill specifies that the liability of a county road commission or a county for failure to comply with the requirements to maintain roads as described above and the procedure and remedies in an action against the county road commission or county would be provided in Public Act 170 of 1964. (The relevant provisions of Public Act 170 of 1964 are discussed below.)

### **Senate Bill 43**

Under Public Act 170 of 1964, a governmental agency that has jurisdiction over a highway must 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 Act specifies that the liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission are provided by Chapter IV of Public Act 283 of 1909. The bill would delete this provision.

MCL 224.21 (S.B. 39)  
691.1402 (S.B. 43)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

In *Brown*, the Supreme Court held that the governmental immunity Act's 120-day notice requirements applies to lawsuits for injury against county road commissions, instead of the 60-day notice requirement of the county road law. However, in *Streng v. Board of Mackinac County Road Commissioners*, the Michigan Court of Appeals specified that "the procedures and remedies provided by [the county road law] are what apply to county road commissions",<sup>2</sup> holding in favor of the 60-day notice requirement. In 2021, the Michigan Supreme Court overruled the Court of Appeals' *Streng* decision in *Estate of Pearce v. Eaton County Road Commission*,<sup>3</sup> concluding that the Court of Appeals had erred in not abiding by the precedent set in *Brown*. The judicial confusion

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<sup>2</sup> *Streng v. Board of Mackinac County Road Commissioners*, 315 Mich 449 (2016).

<sup>3</sup> *Estate of Pearce v. Eaton County Road Commission*, 324 Mich 549 (2021).

surrounding these cases demonstrates a need to resolve the issue of the conflicting notice requirements. Statute should be amended to align clearly with the *Brown* precedent.

Legislative Analyst: Tyler P. VanHuyse

### **FISCAL IMPACT**

The bills would have an indeterminate, and likely positive, fiscal impact on counties and no fiscal impact on the State.

The bills would require potential claimants to sue counties, or county road commissions, in highway negligence cases under the governmental immunity Act. The Act requires that claimants prove the governmental entity responsible for a highway (which, under the Act includes bridges, sidewalks, culvert, etc.) had at least 30 days prior notice of the defect and did not fix it. The bill also would require, as a condition for recovery for injuries, that claimants submit a notice on the governmental entity with jurisdiction over the highway of the injury and the defect that caused it within 120 days after the date it occurred. Under current statute, the required notice period for claimants who sue counties is 60 days.

The bills likely would reduce the potential liability of counties for damages caused by highways in poor condition. The Department of Transportation, for comparison, also is subject to the governmental immunity Act, and highway negligence suits against the State are rarely successful. Over the last decade, typically one to three claims per year result in a judgment or settlement for the injured party.

Fiscal Analyst: Michael Siracuse

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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.