

Legislative Update

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Court of Appeals Considers MISS DIG and SDSE Exceptions to Governmental Immunity

In Michigan, the Governmental Tort Liability Act (“GTLA”) generally provides government agencies with immunity from tort liability, with certain exceptions. The Michigan Court of Appeals recently considered the scope of two of the GTLA’s exceptions to governmental immunity in *ZeZula v. Brown*.

Prior to completing electrical line work, an excavating company subcontracted by DTE claimed that it requested the township to mark its facilities. The township responded that there was “no conflict” and did not mark any facilities. During the work, the excavating company drilled through an underground sewer lead for a neighboring property, causing sewage to flood into the neighboring property’s basement drainage pipes.

The neighboring property owner filed a negligence suit and eventually added the township as a defendant in the action, claiming exceptions to governmental immunity under: (1) the MISS DIG Act exception; and (2) the Sewage Disposal System Event Exception (PA 222 claim).

MISS DIG Act Exception

To determine whether the township’s alleged MISS DIG Act violations were exempt from governmental immunity, the Court considered the plain language of the GTLA, which includes a broad exception to governmental immunity for violations of the MISS DIG Act.

The Court also considered the language of the MISS DIG Act itself, which specifically provides that (with limited exceptions) the application of the GTLA is not impacted by the MISS DIG Act. The Court noted that the MISS DIG Act provides additional avenues for the Michigan Public Service Commission to impose fines for violations, but these fines do not limit a property owner’s ability to file suit for a violation of the Act.

Based on the language of both statutes, the Court held that the township was **not** entitled to immunity for the alleged violation of the MISS DIG Act.

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Sewage Disposal System Event Exception (PA 222 Claim)

To determine whether a claim under the Sewage Disposal System Event Exception to government immunity was appropriate, the Court reviewed the 5 elements required for the exception to apply:

1. The governmental agency was an appropriate governmental agency;
2. The sewage disposal system had a defect;

3. The governmental agency knew or should have known about the defect
4. The governmental agency failed to take reasonable steps to correct the defect; and
5. The defect was a substantial proximate cause of the event and the property damage or injury.

While the Court did not decide whether the elements for the exception were met in this case, it held that there were questions of fact sufficient to allow the claim and remanded to the lower court for further consideration.

In the Spotlight...

Spotlight on Representative Bill Schuette for Michigan's 95th District

Representative Schuette began his career by obtaining both a bachelor's degree and a master's degree with honors from Georgetown University's School of Foreign Service. Prior to his election, Representative Schuette served as an Intelligence Officer for the Defense Intelligence Agency and later worked on Dow Inc.'s Public Policy team.

Representative Schuette was elected to the Michigan House of Representatives in the 2022 election and was re-elected in 2024. He represents the 95th House District, including Midland County and Beaverton, Billings, and Tobacco Townships in Gladwin County. Representative Schuette currently serves as Chair of the Rules Committee and the Select Committee on Protecting Michigan Employees and Small Businesses and is a member of the Finance, Insurance, and Judiciary Committees. He is also one of six representatives serving on the Michigan Legislative Council.

During his time in office, Representative Schuette has advocated for funding for dam restoration and secured flood reduction plan funding following the Four Lakes flooding in 2020. Representative Schuette is the sponsor for House Bill 4118, which proposes to amend the Drain Code to allow the assessment of MDNR properties and is supported by MACDC. He is also a Trustee for the Rollin M. Gerstacker Foundation, as well as a member of the Michigan Farm Bureau and the Midland Business Alliance.



Legislation of Interest

The following bills and public acts of interest to Drain Commissioners and Associate Members are currently pending before or were recently passed by the Legislature. Full text and up-to-date action for each bill and public act can be found online on the Legislature's website at www.legislature.mi.gov.

PA 1 of 2025 (formerly SB 8)

Public Act 1 of 2025 was signed by the governor with immediate effect on February 25, 2025. The Act increases the minimum hourly wage rate to \$12.48 in 2025, \$13.73 in 2026, and \$15.00 in 2027, with certain exceptions. The Act also provides for annual increases in the minimum wage rate based on inflation in the years following 2027.

PA 2 of 2025 (formerly HB 4002)

Public Act 2 of 2025 was signed by the governor with immediate effect on February 25, 2025. The Act updates the Earned Sick Time Act requirements regarding the accrual and use of sick time. The Act applies to all Michigan employees (regardless of the size) but contains certain differences for small businesses.

SBs 1 & 2

Senate Bills 1 and 2 were introduced by Senators Moss and McBroom, respectively, on January 8, 2025. If enacted, the bills would amend the FOIA to apply to the Executive Office of the Governor or Lieutenant Governor and the state legislature, and would provide additional FOIA exemptions for each. Both bills were passed by the Senate and referred to the House Committee on Government Operations.

SB 10

Senate Bill 10 was introduced by Senator Bellino on January 8, 2025. If enacted, the bill would generally prohibit a foreign government or state-sponsored enterprise, or an individual operating on behalf of a foreign government or state-sponsored enterprise, from acquiring farmland in the state of Michigan. SB 10 is currently before the Senate Committee on Government Operations.

SB 15

Senate Bill 15 was introduced by Senator Singh on January 8, 2025. If enacted, the bill would make updates to the Earned Sick Time Act for both small businesses and other employers. A substitute for SB 15 was referred to the Senate Committee of the Whole.

SB 23 & HB 4081

Senate Bill 23 was introduced by Senator Hertel on January 22, 2025, and House Bill 4081 was introduced by Representative DeBoyer on February 12, 2025. If enacted, the bills would amend the Land Division Act (LDA) to increase the number of parcel splits allowed for the first 10 acres of a parent parcel or tract. The bills would also allow a municipality, or in certain cases, a county, to authorize additional splits by ordinance. SB 23 would also create an alternative method for implementing parcel splits. A substitute for SB 23 was passed by the Senate and referred to the House Committee on Regulatory Reform, and a substitute for HB 4081 was passed by the House and referred to the Senate Committee on Local Government.

HBs 4027 & 4028

House Bills 4027 and 4028 were introduced by Representative Alexander on January 28, 2025. If enacted, the bills would repeal the energy siting legislation that went into effect as Part 8 of the Clean and Renewable Energy and Energy Waste Reduction Act in November of 2024. Both bills were reported with recommendation and referred to a second reading.

HB 4035

House Bill 4035 was introduced by Representative Wozniak on January 28, 2025. If enacted, the bill would require a county with a population over 1,000,000 to submit a discharge reduction plan to EGLE following a discharge by the county in violation of Part 31. HB 4035 was referred to the House Committee on Natural Resources and Tourism.

HBs 4079 & 4080

House Bills 4079 and 4080 were introduced by Representatives Schuette and Hoadley, respectively, on February 12, 2025. If enacted, the bills would allow the deferral of special assessments for senior citizens and those who are totally or permanently disabled and are under a certain income threshold. Substitutes for both bills were reported with recommendation and referred to a second reading.

HBs 4098 & 4099

House Bills 4098 and 4099 were introduced by Representatives Outman and Frisbie, respectively, on February 20, 2025. If enacted, the bills would amend the Tax Tribunal Act and the Open Meetings Act to allow the Michigan Tax Tribunal to hold hearings by telephone, by video conferencing, or in-person. Upon the request of one of the parties, the bills would also allow an in-person hearing to take place at a mutually agreed upon location. HBs 4098 and 4099 were passed by the House and referred to the Senate Committee on Finance, Insurance, and Consumer Protection.

SB 109

Senate Bill 109 was introduced by Representative McCann on February 26, 2025. If enacted, the bill would amend the Emergency Management Act to provide additional funding for disasters, emergencies, and hazard mitigation through the Disaster Emergency Contingency Fund and the creation of a State Hazard Mitigation Fund. SB 109 was referred to the Senate Committee on Appropriations.

SB 129

Senate Bill 129 was introduced by Senator McCann on March 6, 2025. If enacted, the bill would amend the Open Meetings Act to allow an appointed member of a public body who has a disability to participate in a public meeting electronically/remotely. SB 129 was passed by the Senate and referred to the House Committee on Government Operations.

HB 4118

House Bill 4118 was introduced by Representative Schuette on February 25, 2025. If enacted, the bill would amend the Drain Code to allow assessment of MDNR lands. A substitute for HB 4118 was reported with recommendation and referred to a second reading.



Cole Hedrick (left) and Joe Bush (right) provided testimony regarding House Bill 4118 to the House Committee on Government Operations.

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