

## **CRA Proposed Legislative Priority, with MCRC SIP Changes in Bold:**

### **Governmental Tort Liability Act and County Road Law Clarifications**

The Governmental Tort Liability Act requires that an injured person give notice to the governmental agency within a relatively short time so that the road agency may investigate the location before significant passage of time. Under GTLA, notice must be submitted to road agencies within 120 days from the event, except in the case of road commissions where the GTLA references the County Road law, which requires that the notice must be submitted in 60 days.

In 1996 the Michigan ruled that the 60-day notice requirement was unconstitutional and held that the 120-day notice requirement in GTLA applied to all road agencies. However, in 2016, a Court of Appeals ruling said the Supreme Court had not invalidated that specific section of law maintaining the lower 60-day notice as prescribed in the County Road Law.

GTLA and the County Road Law also differ in the specificity required in reporting an injury, with the former requiring “exact” information and the latter requiring “substantially” correct details.

The CRA supports **amending current law so that notice of a highway defect claim be provided as described in MCL 691.1404. This means deleting the notice requirement parts of MCL 224.21 (the County Road Law) and amending it to reference MCL 691.1404 (the GTLA); and deleting the reference to MCL 224.21 in 691.1402. These changes will allow the law to provide consistency in the specificity when reporting accidents and the timeframe for doing so.**

## **Confidential Attorney/Client Memo**

To: MCRCSIP Board  
From: Bill Henn and Andrea Nester  
Date: May 30, 2017  
Re: Amendments to MCL 224.21 and MCL 691.1402 Summary

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### **Summary**

In *Streng v Mackinac County Road Commission*, the Court of Appeals essentially overruled decades of Michigan law regarding the notice plaintiffs must provide to road commissions as a condition precedent to asserting a highway defect claim. Specifically, the Court of Appeals held that the notice provision of the Governmental Tort Liability Act (GTLA), MCL 691.1404, does not apply to highway defect claims brought against county road commissions. Instead, the Court applied the much older notice provision of the County Road Law, MCL 224.21. Accordingly, the protocol for road commissions regarding notice of a highway defect claim must be reevaluated according to the requirements found in MCL 224.21. While MCL 224.21 provides claimants with a shorter notice period (60 days), the content requirements for the notice are substantially more relaxed, meaning that a plaintiff must provide less detail to a road commission. As such, the Pool should consider advocating for amendments to MCL 224.21 and MCL 691.1404 that direct claimants to follow the notice protocol as provided for in MCL 691.1404.

### **Recommendation**

Specifically, to address the abovementioned developments, the Pool should advocate deleting the second sentence of MCL 224.21(2), and, most importantly, by adding the following language to MCL 224.21(3) (and deleting the remainder of the paragraph):

(3) An action arising under subsection (2) shall be brought against the board of county road commissioners of the county and service shall be made upon the clerk **of the board** and upon the chairperson of the board. **Notice shall be given as provided in MCL 691.1404.**

Tied to the amendment of MCL 224.21, the Pool should likewise advocate an amendment to MCL 691.1402(1) by deleting the third sentence, which references MCL 224.21, presently providing that “[t]he liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21.”