

## **HB 4290: Government Liability for Basement Flooding FAQs**

**1) What is current law regarding local government liability?**

There are only a few exceptions to the immunity local government has from liability. Exceptions exist by action of the legislature. One exception is for basement flooding.

**2) Why was an exception created for basement flooding?**

Local government recognized there are some circumstances where its action or inaction might contribute significantly to basement backups. Local government agreed to accept that responsibility.

**3) When is local government liable for basement flooding?**

When it is 50% or more of the cause of the damages.

**4) What changes are being proposed?**

- i. Recognition that certain storms are so intense that it is clear the sheer volume of rainfall was at least 50% of the cause of flooding.
- ii. A more definitive description of local government responsibilities.

**5) Why are these changes proposed?**

Even though it is obvious that rainfall is the primary cause, lawsuits can and have been filed. Communities must then pay lawyers and engineers to defend the case and prove that the cause of the backup was the volume of rain. For example, even though a storm in August 2014 was declared a major natural disaster, numerous lawsuits are in various stages of the process. Oakland County alone has already spent nearly \$2,000,000 dollars with far more needed before some form of closure is reached.

These changes are also proposed to reinforce that local government is not retreating from accepting responsibility when it's responsible.

**6) Who is opposed and why?**

Some basement backup class-action attorneys have expressed opposition. They have expressed numerous concerns and any attempt to summarize them in short form here might be misconstrued as unfair. But, one thing is clear. The proposed changes are built on consistency with state requirements for local sewer systems. Written comments and testimony from class action lawyers have declared these requirements irrelevant.

**7) What has been done to address concerns raised?**

Meetings were held to share perspectives. Despite the major differences, we were able to revise the bill. But, we would not characterize these changes as satisfying all concerns raised by the class action lawyers.

**8) How will this legislation affect pending lawsuits? It does not.**

**9) Why does passage of HB 4290 represent improved state policy?**

Dollars spent on defending lawsuits and paying damages are passed on to taxpayers, rate payers, or both. The changes offer an opportunity to save citizen dollars the cost of defense when the volume of rainwater is the known cause. **At the same time, the right to sue for damages is preserved. And, while often lost in the policy discussion, the most common form of protecting property from losses is insurance, which is available for basement flooding.**