DETROIT
Water & Sewerage Department

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TO: The Honorable Board of Water Commissioners
City of Detroit Water and Sewerage Department

FROM: Jacob S. Bahri, Esq.
Associate General Counsel
City of Detroit Water and Sewerage Department

DATE: January 31, 2020

RE: *Policies and Processes regarding Damage Claims*

Introduction: A request for DWSD's Damage Claims Policy was made by the Board of Water Commissioners. In response to the request, the administration has summarized DWSD's procedures regarding Damage Claims and their respective Appeals.

DWSD does not currently maintain a written policy regarding the filing or processing of Damage Claims submitted by DWSD customers. Instead, the Department relies solely on the procedures spelled out in the State of Michigan statute governing this topic, as is common practice among the majority of Municipal Water Utility operators.

As a general overview, the City of Detroit and DWSD are afforded Governmental Immunity from tort claims. The exception to the Governmental Tort Liability Act ("GTLA"), which directly impacts DWSD, is for damages or physical injuries caused by a sewage disposal system event. Specifically, Act 170 of 1964 Section 691.1417 Section 17 states in pertinent part:

> (3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:
>
> (a) The governmental agency was an appropriate governmental agency.
>
> (b) The sewage disposal system had a defect.
>
> (c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.
>
> (d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.
>
> (e) The defect was a substantial proximate cause of the event and the property damage or physical injury.
>
> (4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:
>
> (a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting

the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.
(b) The claimant complied with section 19.

Section 19 of the Act spells out the procedure for filing a proper Notice of Claim and its respective requirements. For example, a claimant is not entitled to compensation unless the claimant notifies the governmental agency of a claim of damages or physical injury, in writing, within 45 days after the date the damage or injury was discovered. As such, DWSD adheres to the strict 45 day deadline from the date the damage or injury was discovered in order to consider a claim of this nature. The entire excerpt of Section 17 and 19 are attached to this Memorandum for your review, which will provide further insight on the nuances of filing and processing such claims. Also attached for your review is a sample DWSD Claim Form, which complies with all relevant State of Michigan and City of Detroit Statutes and Ordinances.

A customer may Appeal DWSD's decision to deny a claim or the amount of relief granted by filing a Notice of Appeal with DWSD's claim department within 14 days of the original determination letter. A customer may only appeal DWSD's decision if new information, proof of damages, photographs, documentation (such as invoices, receipts or estimates for repairs or replacements) are provided. A customer's right to sue the Department is not waived if a customer is denied an Appeal or loses their Appeal. Therefore, litigation is always an option for customers who experience basement backups and disagree with the Department's determination.

Opinion: It is the administration's shared opinion that a written policy regarding DWSD Damage Claims would be helpful to our Customers, and as such, the administration will be working in tandem with Baker Tilly to draft a comprehensive policy explaining the State Law and DWSD's procedure in administering such claims. Should the policy be approved by the Board of Water Commissioners, DWSD will conduct outreach to our customers in an effort to educate them on the written rules and procedures governing the filing and processing of Damage Claims stemming from sewage disposal system defects.

Sincerely,

Jacob S. Bahri, Esq.
Associate General Counsel
City of Detroit Water and Sewerage Department

Detroit Water & Sewerage Department
Maintenance & Repair Division
CLAIMS SECTION, 6425 Huber Ave, Detroit, MI 48211

Phone: (313) 267-3676
Fax: (313) 267-6284

CLAIM FORM

PLEASE PRINT OR TYPE

Sir/Madam:

FOR OFFICE USE ONLY ***DWSD Claim Number:*** _____ ***Date:*** __/__/20__

Claim is hereby made against the Detroit Water & Sewerage Department (DWSD) due to the following happening or discovered on: __/__/20__ *at* __:__ ☐ *AM* ☐ *PM*

1. ***Address of affected property including cross streets.***

2. ***Explain in detail what happened.***
   Use additional sheets if necessary.

An individual who has sustained property damage or has been injured as a result of a sewage disposal system event must provide written notice of the event within 45 days after the date the damage or injury was, or in the exercise of reasonable diligence should have been discovered. Failure to provide proper notice may bar your claim.

3. ***Description of Claim. List in detail the damages, and provide a dollar value next to each item.***
   Use additional sheets if necessary.

4. ***Total amount of claim:*** $

   Note: Please provide legible copies of receipts for items damaged, copies of at least two estimates for repair or replacement of items damaged, clear pictures of property damage, and copies of any receipts for expenses related to the incident such as cleanup costs, plumber's services, etc.

5. ***Answer the following if this claim involves flooding of your home or business.***

   Do you have a basement? ☐ *Yes* ☐ *No*

   If you had water in the basement, what was average depth? _____ *feet* _____ *inches*

   If you had flooding from a sewer backup, did it rain that day? ☐ *Yes* ☐ *No*

   If you had flooding for reason other than a sewer backup, explain:

   _____

   _____

   Did you contact DWSD about the incident? ☐ *Yes* ☐ *No*

   If "Yes," give date, time, and phone number you called: _____

   Did someone from DWSD respond to the call(s)? ☐ *Yes* ☐ *No*

   If "Yes," what did they do? _____

PLEASE TURN OVER & COMPLETE BOTH SIDES OF FORM

6. ***List the full names of all individuals living in this dwelling.*** *Use additional sheets if necessary.*

(First name)	(Initial)	(Last name)	(Relationship)	(Age)
1.				
2.				
3.				
4.				
5.				

7. ***Own/buying the home?*** ☐ *Yes* ☐ *No If "Yes," Year of purchase* _____ *and Purchase price $*_____

8. ***Do you rent the home?*** ☐ *Yes* ☐ *No If "Yes," for how long?* _____ *Years,* _____ *Months and*

Landlord's Name:

Landlord's Address:

9. ***List all known witnesses of incident.*** *Use additional sheets if necessary.*

(Name)	(Address)	(Daytime Phone No.)
1.		
2.		
3.		
4.		

10. ***Name of your Insurance Company and Details:***

Name: *Policy Number:*

Address:

Name of agent:

Phone number:

Type of coverage:

Amount of deductible: $

Have you filed a claim with your insurance company for damages? ☐ *Yes* ☐ *No*

If "No," give reason:

If "Yes," has the insurance company paid any portion of the damage? ☐ *Yes* ☐ *No*

If "Yes," indicate the amount the insurance company paid: $

What is the insurance claim number?

If "No," what reason did they give for turning down your claim?

11. ***Did you take photos of the damage?*** ☐ *Yes* ☐ *No,* ***If "Yes," please forward them***

12. ***Submitted by:***

I hereby certify that the information provided on this form is true and accurate to the best of my knowledge.

Claimant's Signature

__ / __ / 20 __

Date

(First name) *(Initial)* *(Last name)* *(Age)*

(Spouse's first name) *(Initial)* *(Last name)* *(Age)*

(Street address) *(City)* *(State)* *(Zip code)*

(Home phone number) *(Daytime phone number)*

Please mail completed form to:

Detroit Water and Sewerage Department
Claims Section
6425 Huber, Detroit, MI 48211-1677

Property Damage Check List:

To assist DWSD in expediting the investigation of your claim, please provide the item(s) indicated or **legible copies** of the following item(s)

- ☐ Declaration Page of the Homeowner's Insurance Policy **(showing your deductible)**
- ☐ Clear Pictures of property damages **(original photos)**
- ☐ Two **(2)** estimates for repairs needed
- ☐ Claim amount
- ☐ Receipts for damaged items/repairs made
- ☐ Itemized list of damages
- ☐ Proof of submission to insurance company **(payment/denial correspondence)**

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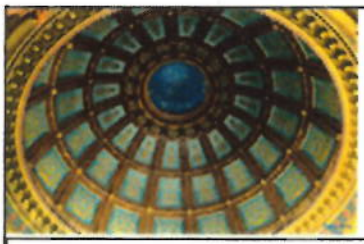

MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 178 of 2019
House: Adjourned until Tuesday, February 4, 2020 1:30:00 PM

Section 691.1417

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GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)
Act 170 of 1964

691.1417 Damages or physical injuries caused by sewage disposal system event; compliance of claimant and governmental agency with relief provisions.

Sec. 17.

(1) To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in sections 18 and 19.

(2) A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.

(3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:

(a) The governmental agency was an appropriate governmental agency.

(b) The sewage disposal system had a defect.

(c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.

(d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.

(e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

(4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:

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(a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.
(b) The claimant complied with section 19.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002
Popular Name: Governmental Immunity Act

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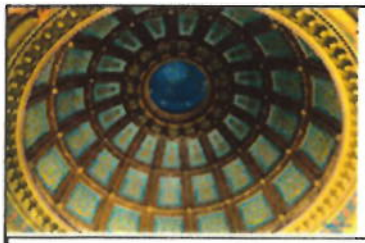

MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 178 of 2019
House: Adjourned until Tuesday, February 4, 2020 1:30:00 PM

Section 691.1419

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GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)
Act 170 of 1964

***** 691.1419 THIS SECTION DOES NOT APPLY TO NONECONOMIC DAMAGES MADE UNDER SECTION 17: See subsection (7) *****

691.1419 Notice of claim; requirements.

Sec. 19.

(1) Except as provided in subsections (3) and (7), a claimant is not entitled to compensation under section 17 unless the claimant notifies the governmental agency of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice under this subsection shall contain the content required by subsection (2)(c) and shall be sent to the individual within the governmental agency designated in subsection (2)(b). To facilitate compliance with this section, a governmental agency owning or operating a sewage disposal system shall make available public information about the provision of notice under this section.

(2) If a person who owns or occupies affected property notifies a contacting agency orally or in writing of an event before providing a notice of a claim that complies with subsection (1), the contacting agency shall provide the person with all of the following information in writing:

(a) A sufficiently detailed explanation of the notice requirements of subsection (1) to allow a claimant to comply with the requirements.

(b) The name and address of the individual within the governmental agency to whom a claimant must send written notice under subsection (1).

(c) The required content of the written notice under subsection (1), which is limited to the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

(3) A claimant's failure to comply with the notice requirements of subsection (1) does not bar the claimant from bringing a civil action under section 17 against a governmental agency notified under subsection (2) if the claimant can show both of the following:

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mcl 691 1417
mcl 691 1418
mcl 691 1417

(a) The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1).

(b) The claimant's failure to comply with the notice requirements of subsection (1) resulted from the contacting agency's failure to comply with subsection (2).

(4) If a governmental agency that is notified of a claim under subsection (1) believes that a different or additional governmental agency may be responsible for the claimed property damages or physical injuries, the governmental agency shall notify the contacting agency of each additional or different governmental agency of that fact, in writing, within 15 business days after the date the governmental agency receives the claimant's notice under subsection (1). This subsection is intended to allow a different or additional governmental agency to inspect a claimant's property or investigate a claimant's physical injury before litigation. Failure by a governmental agency to provide notice under this subsection to a different or additional governmental agency does not bar a civil action by the governmental agency against the different or additional governmental agency.

(5) If a governmental agency receives a notice from a claimant or a different or additional governmental agency that complies with this section, the governmental agency receiving notice may inspect the damaged property or investigate the physical injury. A claimant or the owner or occupant of affected property shall not unreasonably refuse to allow a governmental agency subject to a claim to inspect damaged property or investigate a physical injury. This subsection does not prohibit a governmental agency from subsequently inspecting damaged property or investigating a physical injury during a civil action brought under section 17.

(6) If a governmental agency notified of a claim under subsection (1) and a claimant do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the receipt of notice under this section, the claimant may institute a civil action. A civil action shall not be commenced under section 17 until after that 45 days.

(7) This section does not apply to claims for noneconomic damages made under section 17.

History: Add. 2001, Act 222, Imd. Eff. Jan. 2, 2002
Popular Name: Governmental Immunity Act

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