



Mark A. Hackel
County Executive

DEPARTMENT OF ROADS

117 South Groesbeck Highway ♦ Mount Clemens, Michigan 48043

Phone: (586) 463-8671

www.MacombCountyMi.gov/roads

Bryan E. Santo, P.E.
Director of Roads

There is a State law that governs all road agencies using Act 51 funding (gas/weight tax). *Please review the attached information.* If you would like to file a damage claim, just complete the attached form and return to me by email or regular mail at the address below. At this time, we do not require photos or receipts, we only need the form to open the investigation to determine liability. If it is found we are liable, we will ask for receipts at that time. All claims are processed on an individual basis, and you will be notified of the determination in writing, normally within 30 days.

Please note that if your claim is regarding a state highway (Gratiot, Groesbeck, Hall Road/M-59, I-94, M-53, I-696, M-23, M-29), you will need to contact the Michigan Department of Transportation (MDOT) at 586.421.3920 for your claim.

Thank you.

Sue VanSteelandt
Macomb County Department of Roads
117 South Groesbeck Highway
Mt. Clemens, MI 48043
Direct Line 586.463.0344
www.macombgov.org

History: Add. 1999, Act 205, Imd. Eff. Dec. 21, 1999.

Compiler's note: Enacting section 1 of Act 205 of 1999 provides:

"Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

Popular name: Governmental Immunity Act

Popular name: 2-Inch Rule

Popular name: 2 Inch Rule

691.1403 Defective highways; knowledge of defect, repair.

Sec. 3. No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

691.1404 Notice of injury and defect in highway.

Sec. 4. (1) As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

(2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims. Filing of such notice shall constitute compliance with section 6431 of Act No. 236 of the Public Acts of 1961, being section 600.6431 of the Compiled Laws of 1948, requiring the filing of notice of intention to file a claim against the state. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, if he is physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, or the chief administrative officer, or his deputy, or a legal officer of the governmental agency as directed by the legislative body or chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury.

(3) If the injured person is under the age of 18 years at the time the injury occurred, he shall serve the notice required by subsection (1) not more than 180 days from the time the injury occurred, which notice may be filed by a parent, attorney, next friend or legally appointed guardian. If the injured person is physically or mentally incapable of giving notice, he shall serve the notice required by subsection (1) not more than 180 days after the termination of the disability. In all civil actions in which the physical or mental capability of the person is in dispute, that issue shall be determined by the trier of the facts. The provisions of this subsection shall apply to all charter provisions, statutes and ordinances which require written notices to counties or municipal corporations.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970;—Am. 1972, Act 28, Imd. Eff. Feb. 19, 1972

Constitutionality: Notice requirement provision of section held to arbitrarily split all tortfeasors into two differently treated subclasses: private tortfeasors to whom no notice of claim is required, and governmental tortfeasors to whom notice is required. Such treatment held to violate equal protection guarantee of U.S. Const., Amend. XIV, § 1, and Mich. Const., Art. I, § 2. *Reich v. State Highway Department*, 386 Mich. 617, 194 N.W.2d 700 (1972).

The 120-day notice provision contained in this section does not violate the Michigan Constitution if it is posited as having the legitimate purpose of avoiding actual prejudice to the state. *Hobbs v. Department of State Highways*, 398 Mich. 90, 247 N.W.2d 754 (1975); *Kerkstra v. Department of State Highways*, 398 Mich. 103, 247 N.W.2d 759 (1975).

Popular name: Governmental Immunity Act

691.1405 Government owned vehicles; liability for negligent operation.

Sec. 5. Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

When it comes to pothole damage, you're basically sunk



MATT HELMS

Jeff Burke of Belleville was cruising southbound on I-275, not far north of the Ann Arbor Road exit, late last month when all of a sudden: ka-thunk!

Hello, pothole.

"When I hit that chuck-hole, it blew out my tire. It broke the left front strut, and that required replacement of the strut and the stabilizer bar and the tie rod end, and, of course, the bushings," said Burke, a Ford Motor Co. retiree who drives a 2002 Mercury Sable.

"It's \$1,000 I don't have."

Burke told me he will go after the Michigan Department of Transportation for reimbursement. Good luck.

It's notoriously difficult to win pothole claims because governmental immunity laws assume state and local road agencies do their best keeping up with damaged roads and shouldn't be penalized for sudden conditions they can't repair immediately.

David Worthams, a legislative associate and transportation specialist for the Michigan Municipal League, said legal rulings dating to the 1930s gener-

Where to make a pothole claim

■ Michigan Department of Transportation: 517-373-2090 or www.michigan.gov/mdot.

■ Detroit: Call 311.

■ Wayne County Roads: 888-762-3273 or www.waynecounty.com/dps_roads.

■ Road Commission for Oakland County: 877-858-4804 or www.rcocweb.org.

■ Road Commission of Macomb County: 586-463-8671 or www.rcmcweb.org.

It's notoriously difficult to win pothole claims because of governmental immunity laws.

ally protect governments from paying damages when roads and other infrastructure fall short.

"Most of the cases basically have said as long as there's been a good-faith effort by the governmental unit ... then they are immune from actions from the infrastructure failing," Worthams said.

By law, governments are required to keep roads and sidewalks, for example, in usable condition, Worthams said, but not perfect shape — an unrealistic goal even in good economic times.

"We are doing the best that we can" with road upkeep, Worthams said. "But smaller potholes are going to be less of a priori-

ty because we don't have the money to go out there and tackle everything."

MDOT warns that drivers making damage claims must prove that "the highway authority knew of the condition and had an opportunity to repair, or the condition existed for more than 30 days." What's more, MDOT said, it will pay only damages not covered by a driver's insurance company.

The barriers amount to proving negligence, said Craig Bryson, spokesman for the Road Commission for Oakland County.

"The assumption behind the law is we're doing as much as we can with the resources available to patch potholes as quickly as we can," Bryson said. "Potholes can pop up overnight, literally, and we can't possibly know about them the minute they occur."

That's particularly true this time of year, with temperatures now going

from single digits with snowstorms one day to sunny and in the 30s and 40s a few days later.

When it's snowing, the top priority is snow removal and patching dangerous potholes, making routine pothole patching a secondary concern, Bryson said.

Oakland County's numbers illustrate the challenges for drivers seeking reimbursement.

The road commission received 456 damage claims in 2008. Bryson said a large number were generated by deterioration on Orchard Lake Road between 14 Mile and Maple in West Bloomfield, which led the commission to do pavement repair beyond simple pothole patching.

The road commission paid 31 of the claims. For drivers who were reimbursed, "it's because of a pothole we didn't repair within 30 days, for whatever reason," and the inaction was documented.

That means, for the Oakland road commission at least, that less than 7% of people who went to the trouble of filing damage claims actually made a case that withstood legal restrictions.

Those are pretty long odds for a fairly routine occurrence.

Contact **MATT HELMS** at 313-222-1450 or driving@freepress.com.

Damage caused by potholes

If your vehicle has incurred damage due to a defect on a county road, you may submit a letter or a Damage Claim Form (which can be found on our website or requested by phone). A paid receipt must be included in order for the Macomb County Department of Roads to consider reimbursement of the damage. Please provide all details of the incident, including exact location, date and time, and damage incurred. All claims submitted in writing are subject to a full investigation in cooperation with our legal, maintenance and traffic departments, which normally takes approximately 14 business days. If the incident occurred on a state trunkline (any highway with an I, M, or US in front of it, such as I-94, M-53, etc.), then you should contact the Michigan Department of Transportation by phone at 586-978-1935 or through their website at www.michigan.gov/mdot.

Before submitting a claim, please take a moment to read this information on the eligibility of damages to be reimbursed by the Road Commission.

There is a state law (MCL 691.1402 and 1403) which provides for governmental immunity for defective highways in certain cases. You may review these laws online at www.michiganlegislature.org.

During a damage claim investigation, we review information provided and internal records. Among the issues reviewed is whether the Road Commission knew or in the exercise of reasonable diligence should have known of the existence of the pothole and whether the Macomb County Department of Roads had a reasonable time to repair the pothole before the damage occurred.

The Macomb County Department of Roads is a public entity with a responsibility to comply with State law and a duty to safeguard the funds provided to it ultimately by the taxpayers. Please remember that these laws are not made by the Department of Roads, but rather are enacted by the State legislature.

Please contact us with any of your road concerns:

Macomb County
Department of Roads
117 South Groesbeck Highway
Mt. Clemens, MI 48043



By phone:
586.463.8671



By email:
geninfo@rcmcweb.org

Or go to our website:
roads.macombgov.org



**Everything
you always
wanted to
know about
Potholes**



DEPARTMENT OF ROADS

The fight against potholes...

The Macomb County Department of Roads maintains more than 1,700 miles of roads, as well as over 900 traffic signals and 60,000 signs.

One function of our many responsibilities associated with the maintenance of our roads is the repair of the many potholes strewn throughout our roadways.

Despite repeated aggressive construction schedule through the County, potholes continue to be a problem on the county roads and state highways that we maintain. Due to our large number of older roads in southeast Michigan, it is impossible to get through the spring thaw season without suffering from a seemingly unending supply of these annoying holes in our roads.

The Department of Roads maintenance workers patch potholes year-round in their quest to keep our roads safe for the motorists and visitors of Macomb County. Patching is done by hand shoveling an asphalt material into cracks and potholes in the road.

When possible, workers back or drive over new patches to compress the material.

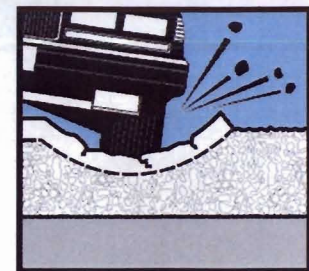
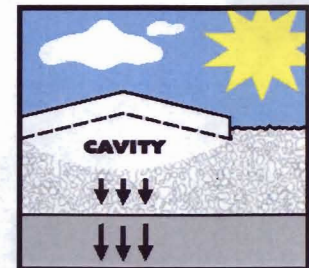
Of course, the best long-term solution to the pothole problem is to resurface the roadway. While we have completed a large amount of resurfacing projects, there are many more roads that we are unable to resurface due to time and funding restraints. With the constant increases in population and traffic in Macomb County, it is difficult to get ahead of the game when we must fight to maintain and construct roads just to keep up with past growth.

How can you help?

It's easy — just pick up the phone and call the Department of Roads at 586-463-8671, email us at geninfo@rcmcweb.org, or go to our website at roads.macombgov.org to report a pothole. We normally have a patching crew taking care of the problem within 48 hours.

The Birth of a Pothole

1. Potholes begin after snow or rain seeps into the soil below the road surface.
2. The moisture freezes when temperatures drop, causing the ground to expand and push the pavement up.
3. As the temperatures rise, the ground returns to normal level but the pavement often remains raised. This creates a gap between the pavement and the ground below it.
4. When vehicles drive over this cavity, the pavement surface cracks and falls into the hollow space leading to the birth of another pothole.



Courtesy of the Michigan Department of Transportation www.michigan.gov/mdot



Macomb County Department of Roads Property Damage Claim Report

Claimant Name _____

Address _____

City/State/ZIP _____

Phone Number _____ Email Address _____

Date of Incident _____ Time of Incident _____

Location (include road, direction traveling, and main crossroads, i.e. southbound Mound between 12 and 13 Mile)

Detailed description of incident _____

Damages _____

PLEASE READ THE INFORMATION ATTACHED. IF YOU WOULD LIKE TO FILE A CLAIM, JUST FILL OUT THIS FORM COMPLETELY AND MAIL, EMAIL OR FAX TO:

Sue VanSteelandt
Macomb County Department of Roads
117 South Groesbeck Highway, Mt. Clemens, MI 48043
Phone 586.463.8671 x1125
Fax 586.463.8682
Email svan@rcmcweb.org

All claims are replied to in writing, normally within 21 days.

This form does not provide notice of a bodily injury claim. Please consult with a legal representative of your own choosing or refer to the applicable law to file a claim for bodily injury.