SECOND REGULAR SESSION

SENATE BILL NO. 950

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCHNEIDER, CASKEY, WIGGINS, KLARICH, HOUSE, CLAY, JACOB AND STEELMAN.

Read 1st time February 2, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4335S.02I

AN ACT

To repeal section 537.600, RSMo 1994, relating to civil liability, and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.600, RSMo 1994, is repealed and one new section enacted in lieu thereof, to be known as section 537.600, to read as follows:

537.600. 1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:

(1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment;

(2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that**:**

(a) The property was in dangerous condition at the time of the injury**[**,**];**

(b) That the injury directly resulted from the dangerous condition**[**,**];**

(c) That the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred**[**,**];** and

(d) That either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed. **Pursuant to the prerogative of the general assembly to declare the public policy of the state in matters concerning liability in tort for public entities, the general assembly declares that the above plain language does not include a requirement that property must have a physical defect as a necessary element for the property to be in a dangerous condition. The plain language clearly intends that government should be responsible for injuries to persons for negligently maintaining a dangerous condition in the same way as citizens are held to such standard of care. The legislature clearly did not intend that governmental agencies which create dangerous conditions or have notice of dangerous conditions may continue to maintain those dangerous conditions which cause serious injury with impunity.**

2. The express waiver of sovereign immunity in the instances specified in subdivisions (1) and (2) of subsection 1 of this section are absolute waivers of sovereign immunity in all cases within such situations whether **[**or not**]** the public entity was functioning in a governmental or proprietary capacity and whether or not the public entity is covered by a liability insurance for tort. **Pursuant to the prerogative of the general assembly to declare the public policy of the state in matters concerning liability in tort for public entities, the general assembly declares nothing in this section shall be construed to indicate any intent of the legislature to create sovereign immunity where it had not been previously recognized. It is therefore affirmed that a public entity which engages in a proprietary function, an activity in competition with private enterprise or for a special benefit or profit, is not entitled to sovereign immunity.**

3. In determining whether a public entity was engaging in such a proprietary function, the public entity's activity shall be viewed in the context of the economic and competitive conditions existing at the time of such injury. Application of this subsection acknowledges that some activities that were once viewed as proprietary, such as the providing of fire protection and the operation and maintenance of parks for public recreation without fee, have since come to be governmental functions. There is no valid reason to permit public entities which engage in activities in competition with private enterprise to escape liability for the extent of damage caused to another because of negligence, the improvidently decided case of Wollard v. City of Kansas City,

notwithstanding.

[3.**]** **4.** The term "public entity" as used in this section shall include any multi-state compact agency created by a compact formed between this state and any other state which has been approved by the Congress of the United States. Sovereign immunity, if any, is waived for the proprietary functions of such multi-state compact agencies as of the date that the Congress of the United States approved any such multi-state compact.

[4.**]** **5.** Pursuant to the prerogative of the general assembly to declare the public policy of the state in matters concerning liability in tort for public entities, the general assembly declares that prior to September 12, 1977, there was no sovereign or governmental immunity for the proprietary functions of **any public entity including** multi-state compact agencies operating pursuant to the provisions of sections 70.370 to 70.440, RSMo, and 238.030 to 238.110, RSMo, including functions such as the operation of motor vehicles and the maintenance of property, involved in the operation of a public transit or public transportation system, and that policy is hereby reaffirmed and declared to remain in effect.

[5.**]** **6.** Any court decision dated subsequent to August 13, 1978, holding to the contrary of subsection **[**4**]** **5** of this section erroneously interprets the law and the public policy of this state, and any claimant alleging tort liability under such circumstances **[**for an occurrence within five years prior to February 17, 1988,**]** shall in addition to the time allowed by the applicable statutes of limitation or limitation of appeal, have up to one year after **[**July 14, 1989,**]** **the effective date of this section** to file or refile an action against such public entity and may recover damages imposed by the common law of this state as for any other person alleged to have caused similar damages under similar circumstances.