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# Bill Analysis

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**Version:** As Reported by House Civil Justice

**Primary Sponsor:** Sen. Blessing

Aida S. Montano, Research Analyst

## SUMMARY

### Public improvement contracts – indemnification by professional design firm

- Authorizes a public authority to include, in a public improvement contract, a requirement that a professional design firm providing professional design services indemnify the public authority and its officers and employees with regard to liability to a third party stemming from those services.
- Authorizes a public authority and professional design firm to include, in a public improvement subcontract, a requirement that a professional design subcontractor providing professional design services indemnify the public authority and professional design firm with regard to liability stemming from those services.
- Stipulates that such a requirement of indemnity is to take no form other than what is prescribed in the bill.
- Provides that the indemnification provisions do not prohibit either of the following:
  - A public authority from bringing a damages action against a professional design firm for breach of the public improvement contract or of the professional standard of care;
  - A professional design firm from bringing a damages action against a subcontracted design firm for breach of the subcontract or of the professional standard of care.
- Authorizes a public improvement contract to require an insurance policy as a form of indemnification.
- Stipulates that the inclusion of such a requirement to indemnify is not to be construed as a waiver of immunity from liability under the Political Subdivision Tort Immunity Law or the Workers' Compensation Law.

- Stipulates that such indemnification does not extend to liabilities that would otherwise be barred for timeliness.
- Specifies that a provision in a contract between a public authority and the federal government prevails over a conflicting provision in the bill to the extent of such conflict and that all other provisions of the bill not in conflict apply.
- Expands the definition of "injury" to include injury, claims, damages, or loss arising from or related to the infringement of intellectual property.

## Political subdivision tort liability

- Modifies the definition of "emergency call" as used in the Political Subdivision Tort Liability Law.
- Requires the reduction of compensatory damages recoverable against a political subdivision for an employee's negligent operation of a motor vehicle by continuing law's allocation of damages according to the court's judgment.

## Immunity for acts of hospital police officers

- Grants a municipal corporation in which a hospital is located or, if the hospital is located in an unincorporated area of a county, a county immunity from civil or criminal liability in an action brought under Ohio law if all of the following apply:
  - The action arises out of the actions of a duly appointed hospital police officer.
  - The actions of the hospital police officer are directly in the discharge of the person's duties as a police officer for the hospital.
  - The actions of the hospital police officer occur on the premises of the hospital or its affiliates or subsidiaries that are within the territory of the municipal corporation or the unincorporated area of the county or elsewhere within the territory of that municipal corporation or within the unincorporated area of that county.
- Provides that the grant of immunity is not to be construed as granting civil or criminal immunity to specified police officers or hospitals under certain circumstances for actions occurring on the premises of a hospital operated by a public hospital agency or nonprofit hospital agency.
- Specifies that a court's finding of tort liability of a public hospital agency or nonprofit hospital agency for any actions of a police officer appointed for the applicable hospital agency is not subject to apportionment of liability with the municipal corporation or the county in which a written agreement is in effect.

# DETAILED ANALYSIS

## Public improvement contracts

The bill authorizes a "public authority" to include, in a "public improvement contract," a requirement that a "professional design firm" providing "professional design services"

indemnify the public authority with regard to liability for injury or death to a third party proximately caused by those services. The indemnity would apply to any work, services, studies, planning, surveys, or preparatory work completed by the professional design firm in question. In addition, the officers and employees of the public authority would be indemnified under the bill. As used in the bill, "public authority" includes the state, a state institution of higher education, a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision.[1] (See "**Definitions**.")

The bill specifies that such indemnity would only apply insofar as the professional design firm or any consultant, subcontractor, or other entity used by the firm was found to be liable pursuant to a lawsuit only for the proportionate share of the tortious conduct.[2] In other words, if a person was injured in relation to a public improvement, that person sued the public authority that owned the improvement, and the professional design firm was found to be 10% at fault, then the design firm would be required to indemnify the public authority in question for 10% of the damages.

Finally, the bill prohibits a public authority from requiring indemnification in any manner other than what is prescribed under the bill.[3]

## Subcontracts

The bill extends the authority for public authorities and professional design firms to require indemnification to subcontractors providing professional design services. This authority functions with regard to subcontractors in the same manner as it does to primary professional design firms.[4]

## Civil actions for damages not prohibited

The above indemnification provisions do not prohibit either of the following:[5]

- A public authority from commencing a civil action for damages against a professional design firm for breach of the public improvement contract or for breach of the professional standard of care;
- A professional design firm from commencing a civil action for damages against a subcontracted professional design firm for breach of the professional design services subcontract or for breach of the professional standard of care.

[1] R.C. 153.81(A)(1)(a) and (E)(5) and R.C. 153.65, not in the bill.

[2] R.C. 153.81(A)(1)(b) and R.C. 2307.23, not in the bill.

[3] R.C. 153.81(A)(1)(c).

[4] R.C. 153.81(A)(2).

[5] R.C. 153.81(A)(3).

## Policy of insurance

The bill allows the public authority to require that the indemnification take the form of an insurance policy, as appropriate.[6]

## Waiver of immunity

The bill stipulates that exercising the authority granted under the bill is not to be construed as waiving the immunity provided under the Political Subdivision Tort Immunity Law and the Workers' Compensation Law.

The bill also stipulates that two Workers' Compensation Law provisions, R.C. 4123.80 and 4123.35, control over the bill's provisions. R.C. 4123.80 stipulates that an agreement entered into by an employee cannot waive that employee's rights to workers' compensation, except in certain situations. The reference to R.C. 4123.80 appears to be a drafting error and should be a reference to R.C. 4123.82, which generally voids contracts that undertake to indemnify an employer against loss or liability for the payment of workers' compensation. R.C. 4123.35(O) cross-references to R.C. 4123.82.[7]

## Barred claims

The bill stipulates that the indemnification provided for under the bill does not apply to claims that would otherwise be barred under various statutes of limitation or repose. In other words, a professional design services firm would not be liable for claims for damages made after the appropriate window for making such claims had expired.[8]

## Conflicts with federal contracts

The bill specifies that any provision of the bill that is found to be in conflict with any provision of a contract between a public authority and the federal government, then the provision of the bill is not to apply insofar as it is in conflict. In such a scenario, all other provisions of the bill would apply.[9]

## Definitions

The bill makes the following definitions:[10]

"**Injury**" means all of the following:

- Bodily injury to a person;
- Sickness or disease of a person;

[6] R.C. 153.81(B).

[7] R.C. 153.81(D)(1) and R.C. 4123.35 and 4123.80, not in the bill.

[8] R.C. 153.81(D)(2).

[9] R.C. 153.81(C).

[10] R.C. 153.81(E) and R.C. 153.03 and 153.65, not in the bill.

- Injury to or destruction of tangible property of a third party to the public improvement;
- Injury, claims, damages, or loss arising from or related to the infringement of "intellectual property."

"**Intellectual property**" means any invention, discovery, work of authorship, creative work, or architectural work that may be subject to protection under federal or state patent, copyright, trademark, or trade secret laws.

"**Liabilities**" means claims, damages, or loss, including reasonable attorney's fees, costs, and expenses.

"**Professional design firm**" means any person legally engaged in rendering professional design services.

"**Professional design services**" means services within the scope of practice of a registered architect, landscape architect, or professional engineer or surveyor.

"**Public improvement contract**" means any contract that is financed in whole or in part with money appropriated by the General Assembly, or that is financed in any manner by a contracting authority, and that is awarded by a contracting authority for the construction, alteration, or repair of any public building, public highway, or other public improvement.

# Political Subdivision Tort Liability Law

## Background – General immunity of political subdivision

Under continuing law, a political subdivision generally is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function, as defined in the law.[11] However, a political subdivision is liable for such injury, death, or loss caused by the negligent operation of a motor vehicle by an employee who is engaged within the scope of employment and authority. The following are full defenses to that liability:[12]

1. A member of a municipal corporation police department or other police agency was operating a motor vehicle while responding to an "emergency call" and the operation of the vehicle did not constitute willful or wanton misconduct.
2. A member of a municipal corporation fire department or other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding to a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct.

[11] R.C. 2744.02(A), not in the bill.

[12] R.C. 2744.02(B)(1)(a), (b), and (c), not in the bill.

3. A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license or driver's license issued pursuant to Ohio law, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with continuing law's precautions regarding slowing down upon approaching a red signal or stop sign and proceeding cautiously.

## Definition of "emergency call"

Current law defines "emergency call" (used in (1) above) as a *call to duty, including, but not limited to*, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.[13]

The bill modifies the definition of "emergency call" to mean a communication from an individual, a police dispatch, another peace officer, or personal observation and knowledge by a peace officer *only if* that communication, dispatch, or personal peace officer observation or knowledge involves or concerns an inherently dangerous situation that demands an immediate response from a peace officer.[14]

## Recoverable damages

The bill provides that any compensatory damages recoverable against a political subdivision for a peace officer's, firefighter's, or emergency medical technician's operation of a motor vehicle must be reduced by the percentage of contributory fault attributable to the plaintiff or any other parties subject to the continuing laws dealing with the determination of joint and several liability, the determination of the percentages of tortious conduct attributable to a party, the contributory fault of the plaintiff asserted as an affirmative defense, and the corresponding allocation of damages according to the court's judgment.[15]

Current law, not modified by the bill, provides that there can be no limitation on compensatory damages that represent the "actual loss of the person who is awarded the damages," as defined. Except in wrongful death actions, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages cannot exceed $250,000 in favor of any one person.[16]

[13] R.C. 2744.01(A).

[14] R.C. 2744.01(A).

[15] R.C. 2744.05(C)(2).

[16] R.C. 2744.05(C)(1).

## Immunity for acts of hospital police officers

The bill provides that notwithstanding the Political Subdivision Tort Liability Law, a municipal corporation in which a hospital is located or, if the hospital is located in an unincorporated area of a county, a county is immune from civil or criminal liability in any action brought under Ohio law if all of the following apply:[17]

- The action arises out of the actions of a duly appointed hospital police officer (see "**Appointment of hospital police officers**," below).
- The actions of the hospital police officer are directly in the discharge of the person's duties as a police officer for the hospital.
- The actions of the hospital police officer occur on the premises of the hospital or its affiliates or subsidiaries that are within the territory of the municipal corporation served by the chief of police or the unincorporated area of the county served by the sheriff who signed the agreement (see "**Written agreement with local law enforcement**," below), whichever applies, or anywhere else within the territory of that municipal corporation or within the unincorporated area of that county.

The bill provides that nothing in the grant of immunity is to be construed as granting immunity from civil or criminal liability for any actions occurring on the premises of any hospital operated by a public hospital agency or nonprofit hospital agency or on the premises of that hospital's affiliate or subsidiary to any of the following:[18]

- Any police officer appointed as described in "**Appointment of hospital police officers**," below;
- Any hospital operated by a public hospital agency or a nonprofit hospital agency that applied for the appointment of any police officer or any affiliate or subsidiary of the hospital;
- Any other police or security officer who is employed by, or whose services are utilized by, any hospital operated by a public hospital agency or a nonprofit hospital agency, or any affiliate or subsidiary of the hospital;
- Any entity that supplies the services of police or security officers to any hospital operated by a public hospital agency or nonprofit hospital agency or any affiliate or subsidiary of the hospital.

## Tort liability

The bill provides that a court's finding of tort liability of any public hospital agency or nonprofit hospital agency for any actions of a police officer appointed for the hospital agency is

[17] R.C. 4973.17(D)(4).

[18] R.C. 4973.17(D)(7).

not subject to apportionment of tort liability under the apportionment of liability law with the municipal corporation or the county in which a written agreement is in effect.[19]

# Background on hospital police officers

## Appointment of hospital police officers

Under current law, upon the application of any hospital that is operated by a public hospital agency or a nonprofit hospital agency and that employs and maintains its own proprietary police department or security department, the Secretary of State may appoint and commission any persons that the hospital designates, or as many persons as the Secretary of State considers proper, to act as hospital police officers. The hospital police officers must hold office for three years, unless, for good cause shown, their commission is revoked by the Secretary of State or by the hospital.[20]

## Requirements for hospital police officers to engage in duties

Under current law, no person who is appointed as a hospital police officer can engage in any duties as a hospital police officer for the hospital or its affiliates and subsidiaries unless all of the following are true: (1) local law enforcement grants approval, (2) the hospital enters into a written agreement with local law enforcement, and (3) the hospital police officer completes training and receives certification from the Ohio Peace Officer Training Commission.[21]

### Approval from local law enforcement

Current law provides that the chief of police of the municipal corporation in which the hospital is located or, if the hospital is located in the unincorporated area of a county, the sheriff of that county must grant approval to the hospital in order for hospital police officers to engage in those duties or activities.[22]

### Written agreement with local law enforcement

Under current law, after the grant of approval described above, the hospital must enter into a written agreement with the chief of police of the municipal corporation in which the hospital is located or, if the hospital is located in an unincorporated area of a county, with the sheriff of that county, that sets forth standards and criteria governing the interaction and cooperation between hospital police officers and local law enforcement officers. These standards and criteria may include provisions governing: (1) reporting of offenses discovered by hospital police officers to the local law enforcement agency, (2) investigatory responsibilities relative to offenses committed on hospital property, and (3) processing and confinement of

[19] R.C. 4973.17(D)(6).

[20] R.C. 4973.17(D)(1) and (3).

[21] R.C. 4973.17(D)(1).

[22] R.C. 4973.17(D)(1)(a).

persons arrested for offenses committed on hospital property. The written agreement must be signed by the appointing authority of the hospital and the chief of police or sheriff.[23]

### Training and certification

Current law requires a hospital police officer to successfully complete a training program approved by the Ohio Peace Officer Training Commission and to be certified by the Commission before engaging in duties as a police officer. A hospital police officer may complete the training program and receive certification regardless of whether the requirements described above had been met.[24]

## Authority to act as hospital police officer

Under current law, if a hospital police officer has been duly appointed and the requirements described above have been met, a hospital police officer is entitled to act as a police officer both on the premises of a hospital and its affiliates and subsidiaries that are within the territory of the municipal corporation served by the chief of police, or the unincorporated area of the county served by the sheriff, who signed the agreement (see "**Written agreement with local law enforcement**," above), and elsewhere within the municipal corporation or within the unincorporated area of the county, if the person, when engaging in that activity, is directly in the discharge of the person's duties as a hospital police officer for the hospital.[25]

# Definitions

As used in the bill:[26]

- "Public hospital agency" means any county, board of county hospital trustees, county hospital commission, municipal corporation, new community authority, joint township hospital district, state or municipal university or college operating or authorized to operate a hospital facility, or the state.
- "Nonprofit hospital agency" means a not-for-profit corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, that has authority to own or operate a hospital facility or provides or is to provide services to one or more other hospital agencies.
- "Tort liability" means the liability of a party as determined by a court in a tort action defined in continuing law as a civil action for damages for injury, death, or loss to person or property.

[23] R.C. 4973.17(D)(1)(b).

[24] R.C. 4973.17(D)(1)(c).

[25] R.C. 4973.17(D)(2).

[26] R.C. 4973.17(D)(7), by reference to R.C. 140.01(B) and (C), not in the bill.

# HISTORY

| Action | Date |
|---|---|
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