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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

H.B. 159
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 159's Bill Analysis](#)

Version: As Passed by the House

Primary Sponsor: Rep. Blessing

Local Impact Statement Procedure Required: No

Tom Wert, Senior Budget Analyst

Highlights

- If a public authority includes in its contracts a provision limiting indemnification only to a professional design firm's proportionate share of tortious conduct, then the public authority could be exposed to liability for losses it would otherwise be indemnified against absent the limitation.

Detailed Analysis

The form of indemnification clauses in contracts for professional design services allowed under the bill could expose public authorities to liability and costs they currently do not bear. The bill authorizes a public authority to include a provision in a public improvement contract with a professional design firm indemnifying the public authority for liabilities the public authority incurs for the death of or injury to a third party resulting from the actions of the professional design firm. However, the indemnification may only be for the professional design firm's proportionate share of the tortious conduct. Additionally, the bill extends the statutory authority to require indemnification to subcontractors providing professional design services under the contract.

Currently, contracts between public authorities and professional design firms often, if not always, include indemnification clauses. Unless expressly limited under the contract, the extent of the indemnification required by the professional design firm under those indemnification provisions could be interpreted as requiring the professional design firm to hold the public authority harmless for any tort liability that arises from the contract, regardless of the proportion of fault assigned to the professional design firm.

Based on a review of the sample State of Ohio Professional Services Agreements for Public Facility Construction available on the Ohio Facilities Construction Commission (OFCC) website, it appears that limitation of indemnity may not be expressly provided for in many

public improvement contracts in the state. Consequently, limiting indemnification to only the professional design firm's proportionate share of tortious conduct may expose public authorities to liability for death, injury, or property loss during or after work on the project that they would otherwise be indemnified against under a professional design contract. Under these circumstances, public authorities could incur new costs, perhaps significant, to pay claims arising from death, injury, and property loss.