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S.B. 56
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsor: Sen. Blessing

Local Impact Statement Procedure Required: No

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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.
- The bill may reduce the number of actions brought against certain municipal corporations due to the hospital police officer immunity provisions. It could also result in some savings for local courts if cases are dismissed more quickly or not brought forward at all.

Detailed Analysis

The bill generally deals with indemnity and liability of various public entities including the state, hospitals, and political subdivisions under certain circumstances. More precisely, the bill limits indemnification under professional design contracts between professional design firms and public authorities, provides immunity provisions for hospital police officers, and modifies the definition of an emergency call in relation to the operation of a motor vehicle by a peace officer, fire fighter or an ambulance services. A discussion of the potential fiscal effects is provided under the headings on the following pages.

Indemnification in public contracts for professional design services

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.

Hospital-related provisions

The bill 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 any action brought under Ohio law if all of the following apply: (1) the action arises out of the actions of a duly appointed hospital police officer, (2) the actions of the hospital police officer are directly in the discharge of the person's duties as a police officer for the hospital, and (3) 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, whichever is applicable, or anywhere else within the territory of that municipal corporation or within the unincorporated area of that county.

The bill specifies that nothing in the above-mentioned provisions is to be construed as granting immunity for actions occurring on a hospital's premises to any of the following: (1) a police officer appointed by the Secretary of State, (2) a hospital that applied for such appointment of a police officer, (3) any other police or security officer providing services to the hospital, or (4) any entity that provides the services of police or security officers to a hospital.

The bill also provides that a court finding of tort liability of any public hospital agency or nonprofit hospital agency for actions of the hospital agency's police officer is not subject to apportionment with the municipal corporation or the county with which the hospital agency has a written agreement under current law's apportionment of tort liability provisions. This provision appears to eliminate costs that a municipal corporation or county otherwise may have incurred in certain circumstances under current law.

The bill may reduce the filing of actions alleging damages, or if filed, such actions might be more promptly adjudicated than might otherwise have been the case under current law and

practice. This could reduce administrative and legal costs for municipal corporations described above. In addition, this may also generate savings for the various involved courts resulting from a decrease in judicial dockets and the related workload of other court personnel.

Political subdivisions

The bill specifies that compensatory damages recoverable against a political subdivision for a peace officer's, fire fighter'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 continuing tort liability law. However, the bill also modifies the definition of emergency call. As a result of these changes, future liability cases brought against a political subdivision may be impacted if those cases meet the criteria of circumstances set forth in the bill.