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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 56  
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## Final Analysis

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**Primary Sponsor:** Sen. Blessing

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### 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 to a third party stemming from those services.
- Stipulates that such a requirement of indemnity is to take no form other than what is prescribed in the act.
- 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 act to the extent of such conflict and that all other provisions of the act 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.

### **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 officer’s actions are directly in the discharge of the person’s duties as a police officer for the hospital.
  - The actions 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 hospital agency is not subject to apportionment of liability with the municipal corporation or the county in which a written agreement is in effect.

### **Uninsured motorist coverage**

- Specifies that motor vehicle insurance policies and programs of self-insurance covering motor vehicles are not to exclude persons provided immunity under the Political Subdivision Tort Immunity Law from the definition of “uninsured motorist” used in the policy or program.

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## **DETAILED ANALYSIS**

### **Public improvement contracts**

The act 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. As used in the act, “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.<sup>1</sup> (See “**Definitions.**”)

The act 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.<sup>2</sup> 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 act prohibits a public authority from requiring indemnification in any manner other than what is prescribed under the act.<sup>3</sup>

### **Subcontracts**

The act 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.<sup>4</sup>

### **Civil actions for damages not prohibited**

The above indemnification provisions do not prohibit either of the following:<sup>5</sup>

- 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.

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<sup>1</sup> R.C. 153.81(A)(1)(a) and (E)(5) and R.C. 153.65, not in the act.

<sup>2</sup> R.C. 153.81(A)(1)(b) and R.C. 2307.23, not in the act.

<sup>3</sup> R.C. 153.81(A)(1)(c).

<sup>4</sup> R.C. 153.81(A)(2).

<sup>5</sup> R.C. 153.81(A)(3).

## **Policy of insurance**

The indemnification provisions do not prohibit the public authority from requiring that the indemnification take the form of an insurance policy, as appropriate.<sup>6</sup>

## **Waiver of immunity**

The act stipulates that exercising the authority granted under it is not to be construed as waiving the immunity provided under the Political Subdivision Tort Immunity Law and the Workers' Compensation Law.<sup>7</sup>

It also stipulates that two Workers' Compensation Law provisions, R.C. 4123.80 and 4123.35, control over the act's provisions. R.C. 4123.80 provides 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.<sup>8</sup>

## **Barred claims**

Under the act, indemnification 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.<sup>9</sup>

## **Conflicts with federal contracts**

The act specifies that if any of its provisions is found to conflict with any provision of a contract between a public authority and the federal government, then the provision of the act is not to apply insofar as it is in conflict. In such a scenario, all other provisions of the act would apply.<sup>10</sup>

## **Definitions**

The act makes the following definitions:<sup>11</sup>

“**Injury**” means all of the following:

- Bodily injury to a person;

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<sup>6</sup> R.C. 153.81(B).

<sup>7</sup> R.C. 153.81(D)(1).

<sup>8</sup> R.C. 153.81(D)(1) and R.C. 4123.35 and 4123.80, not in the act.

<sup>9</sup> R.C. 153.81(D)(2).

<sup>10</sup> R.C. 153.81(C).

<sup>11</sup> R.C. 153.81(E) and R.C. 153.03 and 153.65, not in the act.

- Sickness or disease of a person;
- 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.

## **Immunity for acts of hospital police officers**

The act 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:<sup>12</sup>

- The action arises out of the actions of a duly appointed hospital police officer (see “**Appointment of hospital police officers**,” below).
- The officer’s actions 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.

Nothing in the act’s 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

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<sup>12</sup> R.C. 4973.17(D)(4).

public hospital agency or nonprofit hospital agency or on the premises of that hospital's affiliate or subsidiary to any of the following:<sup>13</sup>

- 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 act 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 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.<sup>14</sup>

## **Background on hospital police officers under continuing law**

The following topics describe the provisions of the law on commissions of special police officers as hospital police officers that are not amended by the act.

### **Appointment of hospital police officers**

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.<sup>15</sup>

### **Requirements for hospital police officers to engage in duties**

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

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<sup>13</sup> R.C. 4973.17(D)(6).

<sup>14</sup> R.C. 4973.17(D)(5).

<sup>15</sup> R.C. 4973.17(D)(1) and (3).

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.<sup>16</sup>

### **Approval from local law enforcement**

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.<sup>17</sup>

### **Written agreement with local law enforcement**

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 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.<sup>18</sup>

### **Training and certification**

A hospital police officer must successfully complete a training program approved by the Ohio Peace Officer Training Commission and 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.<sup>19</sup>

### **Authority to act as hospital police officer**

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

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<sup>16</sup> R.C. 4973.17(D)(1).

<sup>17</sup> R.C. 4973.17(D)(1)(a).

<sup>18</sup> R.C. 4973.17(D)(1)(b).

<sup>19</sup> R.C. 4973.17(D)(1)(c).

unincorporated area of the county, only 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.<sup>20</sup>

## Definitions

As used in the act:

- **“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.<sup>21</sup>
- **“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.<sup>22</sup>
- **“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.<sup>23</sup>

## Uninsured motorist coverage

The act specifies that a motor vehicle insurance policy or a program of self-insurance covering motor vehicles must not exclude a person who is provided immunity under the Political Subdivision Tort Immunity Law (R.C. Chapter 2744) from the definition of “uninsured motorist” used in the policy or program. This prohibition applies to all motor vehicle insurance policies amended, issued, or renewed, and to all programs of self-insurance in operation, on and after September 14, 2024 (six months after the act's effective date). The act provides that its amendments to the law on uninsured motorist coverage are not to be construed as affecting a motor vehicle insurance policy or a program of self-insurance covering motor vehicles except to the limited extent provided in those amendments and no other changes are to be implied.<sup>24</sup>

Under continuing law, for purposes of any uninsured motorist coverage included in a policy of insurance, an “uninsured motorist” is the owner or operator of a motor vehicle if any of specified conditions applies. One of these conditions is that the owner or operator has immunity under the Political Subdivision Tort Immunity Law.<sup>25</sup>

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<sup>20</sup> R.C. 4973.17(D)(2).

<sup>21</sup> R.C. 4973.17(D)(7)(a), by reference to R.C. 140.01(B), not in the act.

<sup>22</sup> R.C. 4973.17(D)(7)(a), by reference to R.C. 140.01(C), not in the act.

<sup>23</sup> R.C. 4973.17(D)(7)(b), and R.C. 2307.011, not in the act.

<sup>24</sup> R.C. 3937.18(B)(2)(a), (b), and (c).

<sup>25</sup> R.C. 3937.18(B)(1)(e).



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## HISTORY

Action	Date
Introduced	02-09-21
Reported, S. Judiciary	05-12-21
Passed Senate (31-0)	05-19-21
Reported, H. Civil Justice	11-17-21
Passed House (91-2)	01-26-22
Senate refused to concur in House amendments (32-0)	03-02-22
House requested conference committee	03-30-22
Senate agreed to conference report (30-0)	11-30-22
House agreed to conference report (78-4)	11-30-22

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