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133rd General Assembly
Regular Session
2019-2020

Sub. H. B. No. 159

A BILL

To enact section 153.81 of the Revised Code to
regulate the use of indemnity provisions in
professional design contracts related to public
improvements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 153.81 of the Revised Code be
enacted to read as follows:

Sec. 153.81. (A) (1) (a) If a professional design firm provides work, services, studies, planning, surveys, or preparatory work in connection with a public improvement, a public authority may require, via a provision in a public improvement contract or subcontract, that the professional design firm indemnify the public authority and its officers and employees for liabilities the public authority, officer, or employee incurs for the death of or injury to a third party that is proximately caused by the provision of the work, services, studies, planning, surveys, or preparatory work.

(b) The indemnification shall only be for the liabilities



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incurred from the proportionate share of the tortious conduct, 18
as determined pursuant to section 2307.23 of the Revised Code, 19
of the professional design firm or any consultant, 20
subcontractor, or other entity used by the professional design 21
firm, in performing under the public improvement contract. 22

(c) A public authority shall not require, via a provision 23
in a public improvement contract or subcontract, that a 24
professional design firm indemnify the public authority except 25
as described in divisions (A)(1)(a) and (b) of this section. 26

(2)(a) A professional design services subcontract entered 27
into in connection with a public improvement may include a 28
provision that requires any subcontracted professional design 29
firm to indemnify the public authority and the professional 30
design firm who executed the subcontract, and their respective 31
owners, officers, and employees, for liabilities the public 32
authority, professional design firm, owner, officer, or employee 33
incurs for the death of or injury to a third party that is 34
proximately caused by the subcontractor's performance under the 35
subcontract. 36

(b) The indemnification shall only be for the liabilities 37
incurred from the proportionate share of the tortious conduct, 38
as determined pursuant to section 2307.23 of the Revised Code, 39
of the subcontracted professional design firm or any entity used 40
by the subcontracted professional design firm, in performing 41
under the subcontract. 42

(c) No professional design firm may require, via a 43
provision in a subcontract entered into in connection with a 44
public improvement, that a subcontracted professional design 45
firm indemnify the professional design firm or the public 46
authority except as described in divisions (A)(2)(a) and (b) of 47

this section. 48

(3) Division (A) of this section does not prohibit either 49
of the following: 50

(a) A public authority from commencing a civil action for 51
damages against a professional design firm for breach of the 52
public improvement contract or for breach of the professional 53
standard of care; 54

(b) A professional design firm from commencing a civil 55
action for damages against a subcontracted professional design 56
firm for breach of the professional design services subcontract 57
or for breach of the professional standard of care. 58

(B) Notwithstanding divisions (A) (1) (c) and (2) (c) of this 59
section, this section does not prohibit a public authority from 60
requiring insurance coverage in a contract to meet the 61
indemnification described in this section, including the 62
designation of either of the following provided in connection 63
with a professional services contract or design contract: 64

(1) A person as an additional insured on a general 65
liability insurance policy; 66

(2) A designated insured on an automobile insurance policy 67
provided in connection with a professional design services 68
contract or subcontract. 69

(C) If any provision of this section conflicts with any 70
provisions of a contract between a public authority and the 71
federal government, the provision of this section shall not 72
apply to the extent to which it is in conflict with such a 73
contract. All other provisions of this section that are not in 74
conflict shall apply. 75

(D) (1) Any public improvement contract or subcontract that 76
includes an indemnification provision as described in division 77
(A) of this section shall not waive, and shall not be construed 78
as waiving, any immunity or limitation of liability as 79
prescribed in Chapters 2744., 4123., 4125., 4127., and 4131. of 80
the Revised Code. Sections 4123.35 and 4123.80 of the Revised 81
Code control over this section. 82

(2) Any indemnification provided under this section shall 83
not extend to liabilities that would otherwise be barred under 84
sections 2305.06, 2305.09, or 2305.131 of the Revised Code or 85
under any other general statute of limitation or statute of 86
repose. 87

(E) As used in this section: 88

(1) "Automobile insurance policy" has the same meaning as 89
in section 3937.30 of the Revised Code. 90

(2) "Injury" means all of the following: 91

(a) Bodily injury to a person; 92

(b) Sickness or disease of a person; 93

(c) Injury to or destruction of tangible property of a 94
third party to the public improvement; 95

(d) Injury, claims, damages, or loss arising from or 96
related to the infringement of intellectual property. 97

(3) "Intellectual property" means any invention, 98
discovery, work of authorship, creative work, or architectural 99
work that may be subject to protection under federal or state 100
patent, copyright, trademark, or trade secret laws. 101

(4) "Liabilities" means claims, damages, or loss, 102

including reasonable attorney's fees, costs, and expenses. 103

(5) "Professional design firm," "professional design services," and "public authority" have the same meanings as in section 153.65 of the Revised Code. 104
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(6) "Public improvement contract" has the same meaning as in section 153.03 of the Revised Code. 107
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