

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

H. B. No. 159

**Representative Blessing
Cosponsor: Representative Seitz**

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 proportionate share of the tortious conduct, as determined

pursuant to section 2307.23 of the Revised Code, of the 19
professional design firm or any consultant, subcontractor, or 20
other entity used by the professional design firm, in performing 21
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 37
proportionate share of the tortious conduct, as determined 38
pursuant to section 2307.23 of the Revised Code, of the 39
subcontracted professional design firm or any entity used by the 40
subcontracted professional design firm, in performing under the 41
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

(B) Notwithstanding divisions (A) (1) (c) and (2) (c) of this section, this section does not prohibit a public authority from requiring insurance coverage in a contract to meet the indemnification described in this section, including the designation of either of the following provided in connection with a professional services contract or design contract: 49 50 51 52 53 54

(1) A person as an additional insured on a general liability insurance policy; 55 56

(2) A designated insured on an automobile insurance policy provided in connection with a professional design services contract or subcontract. 57 58 59

(C) If any provision of this section conflicts with any provisions of a contract between a public authority and the federal government, the provision of this section shall not apply to the extent to which it is in conflict with such a contract. All other provisions of this section that are not in conflict shall apply. 60 61 62 63 64 65

(D) (1) Any public improvement contract or subcontract that includes an indemnification provision as described in division (A) of this section shall not waive, and shall not be construed as waiving, any immunity or limitation of liability as prescribed in Chapters 4123., 4125., 4127., and 4131. of the Revised Code. Sections 4123.35 and 4123.80 of the Revised Code control over this section. 66 67 68 69 70 71 72

(2) Any indemnification provided under this section shall not extend to liabilities that would otherwise be barred under sections 2305.06, 2305.09, or 2305.131 of the Revised Code or under any other general statute of limitation or statute of repose. 73 74 75 76 77

<u>(E) As used in this section:</u>	78
<u>(1) "Automobile insurance policy" has the same meaning as in section 3937.30 of the Revised Code.</u>	79 80
<u>(2) "Injury" means all of the following:</u>	81
<u>(a) Bodily injury to a person;</u>	82
<u>(b) Sickness or disease of a person;</u>	83
<u>(c) Injury to or destruction of tangible property, other than the work itself, of a third party.</u>	84 85
<u>(3) "Liabilities" means claims, damages, or loss, including reasonable costs and expenses.</u>	86 87
<u>(4) "Professional design firm," "professional design services," and "public authority" have the same meanings as in section 153.65 of the Revised Code.</u>	88 89 90
<u>(5) "Public improvement contract" has the same meaning as in section 153.03 of the Revised Code.</u>	91 92