

HB 27 – Fairness in Sovereign Immunity
Opponent Testimony of Michael D. Ugljesa
Before the House Civil Justice Committee
March 19, 2019

Good afternoon, Chairman Hambley, Vice Chair Patton, Ranking Member Brown and Members of the Civil Justice Committee. My name is Michael Ugljesa. I am here as a representative for the Ohio Plan Risk Management, Inc. which is a self-insurance program authorized by Ohio Revised Code Section 2744.081. The Ohio Plan currently administers the self-insurance program for 774 governmental entities, including townships, cities, counties, and villages throughout Ohio.

The Ohio Plan Risk Management opposes the passage of HB 27, on behalf of its members, because HB 27's reduction in the sovereign immunity currently applied to political subdivisions will have a very real and devastating impact on every political subdivision and every taxpayer in Ohio.

Under current law, municipalities and other public entities have limited immunity should their employees cause injury, death or property damage while operating a government vehicle. This immunity is limited to safety personnel under the following circumstances:

1. Police personnel, responding to an emergency call;
2. Fire personnel, while either fighting a fire, traveling to a fire, or responding to an emergency alarm; and
3. EMS personnel, while either responding to or completing a call for treatment/care.

These limited immunities are forfeit if the employee operates the vehicle with a willful or wanton disregard for safety. The immunities **only** apply when police, fire and EMS personnel are operating their vehicles in good faith in an emergency situation.

In this manner, current law balances the very real need of safety personnel to respond quickly to emergencies with the equally reasonable need of the public to ensure that safety personnel respond safely.

HB 27 seeks to alter this balance and impose new and wide-ranging liabilities on political subdivisions by making them liable not only for the bad acts of their employees, but also for the simple negligence of their employees, acting in good faith, during extremely stressful, fast-paced, and dangerous situations. If HB 27 is enacted, only one sliver of immunity for the operation of government vehicles will remain – a political subdivision will remain immune from liability **to fleeing suspects** for injuries caused by officers in pursuit of those suspects for purposes of apprehending them for criminal offenses. The actions of police, fire and EMS personnel in all other situations will now potentially subject their township, municipality or village to significant liability, including settlement in cases where there is a real question about whether the police, fire or EMS personnel are at fault in the accident.

This new and expansive liability will have a devastating impact on local governments in Ohio. When sovereign immunity was abolished in the 1980s, insurance costs skyrocketed and many

insurance companies stopped offering coverage to political subdivisions in Ohio, leaving those local governments vulnerable to significant and uninsured losses. This circumstance, in part, resulted in the creation of self-insurance programs like the Ohio Plan Risk Management. And, these programs, like the Ohio Plan Risk Management, do a tremendous job protecting their members at a reasonable cost – but only under the current immunity framework. Today’s insurance premiums and member contributions are determined by the exposure each political subdivision faces, in light of their individual circumstance. And, they are based on the existence of immunity for the operation of vehicles by first responders and the resulting avoidance of defense costs, settlement costs, and damage awards incurred in connection with the accidents that inevitably occur in emergency situations.

All that will change if HB 27 is enacted. HB 27’s removal of immunity will inevitably replicate the crisis experienced in the 1980’s by opening the door to significant liability claims, some of which may involve claims by truly innocent bystanders, but many of which may involve situations where the liability of fire, police and EMS personnel is highly questionable. Some insurance companies and coverage programs will cease to offer coverage to political subdivisions. Others will remain, but will be forced to immediately and significantly increase the premiums and contributions necessary to properly insure and protect political subdivisions.

And, every political subdivision in Ohio (and consequently every taxpayer in Ohio) will need to make arrangements to meet those new liabilities and increased expenses.

Our local government members, already strapped for funds, will face significant challenges in budgeting for these increases. Some will not be able to find the funds at all. Those political subdivisions, likely the smallest and most vulnerable of our communities, may have to cease funding other important programs or lay off employees to pay their increased insurance coverage costs. Others may decide to slow emergency response times to reduce their risk exposure. Still others may be forced to stop providing police, fire and EMS services altogether – leaving their residents with fewer safety services and delayed response times. Finally, some uninsured or underinsured communities could find themselves bankrupted by the need to pay damages or settlements, even if the claims are dubious.

While we understand, and are sympathetic to, the devastation and heartbreak that can occur when an innocent individual is injured or killed in an accident with a safety vehicle, we also know the devastation and heartbreak that arises when a person in need cannot be saved due to a lack of safety services or slow response time in their community. There must be a balance to protect all of Ohio’s citizens. We believe the current law, although not perfect, provides that balance.

For these reasons, the Ohio Plan Risk Management views this bill as detrimental to Ohio and asks that you not put it forward for further consideration.

Mr. Chairman, this concludes my remarks. If you or Members of the Committee have questions, I will be pleased to answer them.