

HB 27 – Fairness in Sovereign Immunity  
Opponent Testimony of Christopher D. Gilbert  
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 Chris Gilbert, and I am the Township Administrator for Springfield Township in Hamilton County. Unfortunately, I am unable to attend the Committee Meeting in person, but I felt compelled to provide this written testimony on behalf of Springfield Township in opposition to HB 27.

Springfield Township opposes the passage of HB 27 because HB 27's reduction in the sovereign immunity currently applied to political subdivisions will have a very real and devastating impact to political subdivisions throughout Ohio.

Ohio law currently provides immunity to political subdivisions for the actions of their police, fire and EMS personnel when they are: (1) responding to an emergency call; (2) while either fighting a fire, traveling to a fire, or responding to an emergency alarm; or (3) while either responding to or completing a call for treatment/care, respectively. Under the law as it is today, there is **no immunity** for accidents which occur while police, fire, and EMS personnel are driving government vehicles for other reasons.

HB 27 proposes to eliminate this limited immunity for all but fleeing felons being chased by police and to render political subdivisions liable for injuries and damages which result from the negligent, but good faith actions of their police, fire, and EMS personnel while driving government vehicles in all situations – even emergency responses.

Proponents of HB 27 argue that the bill merely forces police, fire, and EMS personnel to bear the same responsibility for their actions as is borne by every other operator of a motor vehicle in Ohio. If ordinary citizens and their employers are liable for their negligent actions, the argument goes, then why should Ohio political subdivisions not be held to the same standard? Why do they receive special treatment and escape responsibility for the negligent actions of their employees?

Well, the answer is simple. Ohio political subdivisions **DO NOT** currently receive special treatment for their negligent actions. Rather, police, fire, and EMS personnel **currently have the same obligations as every other operator of a motor vehicle in Ohio**. When operating a government vehicle in any non-emergency situation, police, fire and EMS personnel are required to operate their vehicles in a safe manner, and their municipality or township is held responsible for any injuries or damages which might occur if they are negligent in the operation of the vehicle. There is no difference between the liability imposed on ordinary citizens and their employers for the negligent operation of motor vehicles and that which is imposed on police, fire, and EMS personnel and their government employers for their negligent operation of a motor vehicle in non-emergency situations.

The difference lies in the fact that police, fire, and EMS personnel and their government employers are given limited immunity for injuries and damages which occur from the negligent operation of a government vehicle when they are responding to one of three emergencies specified by statute. **Ordinary operators of motor vehicles are not called upon to respond to emergencies.** They are not called upon to risk their lives to respond as quickly as is prudent to save the lives of others. Only police, fire and EMS personnel are expected to do that.

So, it is completely reasonable that *only* governmental employers have limited immunity in responding to emergency situations because only police, fire, and EMS personnel are legally authorized to respond to such situations. Other employers cannot legally expect, request, or require their employees to drive in excess of the speed limit, through an intersection with a red light or stop sign, on the shoulder of a road, in the median of a road, or in the wrong direction on a road. Not only can government employers request such actions of their police, fire, and EMS personnel, they – and every person who ever called 911 for emergency assistance – expect that these emergency responders will do all of those things – as safely and responsibly as they can, to save the lives of the people who call out for help.

Thus, there is absolutely nothing inequitable about how the law currently treats political subdivisions and ordinary operators of motor vehicles in Ohio. Where they are acting in the same manner, they are equally liable for their negligent actions. Where political subdivisions have extraordinary duties and obligations, they receive a limited immunity for the good faith, but negligent, actions of their police, fire, and EMS personnel in performing those extraordinary duties and obligations. And, this immunity is forfeit in cases where the police, fire, or EMS personnel exceed their authority or otherwise violate the trust placed upon them by acting in a willful or wanton manner.

Not only is the limited immunity currently established by law equitable, it is also absolutely necessary to ensure that political subdivisions can continue to provide emergency services to their residents. If HB 27 is enacted and the limited immunity removed, political subdivisions will be immediately subjected to significant increases in the costs to insure their police, fire, and EMS operations. In some cases, as was seen in the 1980s when sovereign immunity was removed, insurance companies will no longer offer policies or coverage to political subdivisions. Others will remain in the market, but will be forced to substantially increase their premiums to reserve for, and pay, increased defense costs, settlements, and damage awards.

As political subdivisions are not permitted by law to deficit spend, the funds to pay for increased premiums will have to come from some other service or program or by laying off employees. Some communities may choose to reduce their liability by imposing limits (or slowing down) their emergency responses. Others may choose to prohibit their police officers from pursuing all criminals. Townships and other political subdivisions which are not required by law to provide police, fire, and EMS services may be forced to disband all or some of their safety services – leaving the counties to handle all emergency responses and residents to experience delayed or no emergency responses.

For these reasons, Springfield Township asks that you maintain the current limited immunity for emergency responses.