



March 17, 2019

H.B. 27

Civil Justice

Chair: Stephen D. Hambley

Date for Opponent's Testimony: Tuesday, March 19, 2019

Time: 3:00 pm

Room: 113

Written Opponents Testimony of Garry E. Hunter, General Counsel, and Local Government Fellow, on behalf of the Ohio Municipal League.

H.B. 27 proposes to remove the liability defense of Ohio Revised Code Section 2744.02 (B) (1) (a) for a police department, (b) for a fire department and (c) for an emergency medical services vehicle responding on an emergency basis and replace with the following: "A political subdivision is not liable in damages for injury, death, or loss to person or property caused by an employee's negligent operation of a motor vehicle if the Plaintiff, at the time of the alleged negligence, was attempting to flee from a law enforcement officer so as to avoid apprehension for a criminal offense."

An emergency is a situation requiring immediate action. Immediate action by trained professionals such as police, fire, and medical services is necessary because there are barriers precluding the average citizen from acting in an emergency. These barriers include, 1) being uncertain that an emergency actually exists; 2) being afraid of giving the wrong care, or inadvertently causing the person more harm; 3) assuming that the situation is already under control; 4) finding unpleasant the sights, sounds or smells of an emergency situation; 5) fear of catching a disease; and 6) fear of being sued. One through five above are removed by response by trained police, fire, and emergency medical services, but only if they can respond immediately. Six, the fear of being sued, is currently not an issue pursuant to Ohio Revised Code Section 2744.02 because of immunity. The current proposed amendment of Ohio Revised Code Section 2744.02 will remove immunity and replace it with the fear of being sued. The chilling effect will cost citizens the effectiveness of immediate response as police, fire, and emergency medical services struggle with negligence issues if they exceed the posted speed limit, pass vehicles on crowded streets, enter intersections against stop signs and red lights, etc. Obviously increases in litigation will cost citizens money, not for the delivery of the emergency services, but to pay claims. The current balance of public good vs private rights balanced by the requirement of lights, sirens, and common-sense driving, will be gutted in favor of private rights. Immunity is the current balance that recognized that in emergency situations, private rights must give way to the common good. H.B. 27 deletes immunity and places private rights ahead of the common good. Private rights at the expense of the common good is not good democracy and not the way to run a government.

Pursuant to Ohio Revised Code Section 2743.02 (A) (3) (a), the state recognizes that immunity applies to the performance of a public duty:

(3)

(a) Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of **a public duty**, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.

(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;

(iii) Some form of direct contact between the state's agents and the injured party;

(iv) The injured party's justifiable reliance on the state's affirmative undertaking. (Emphasis supplied).

Public duty is defined in Ohio Revised Code Section 2743.01 (E)(1) as

(E)

(1) "Public duty" includes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following:

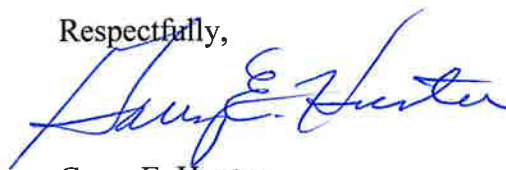
(a) Permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, **or emergency response** activity;

(b) Supervising, rehabilitating, or liquidating corporations or other business entities.

(2) "Public duty" does not include any action of the state under circumstances in which a special relationship can be established between the state and an injured party as provided in division (A)(3) of section 2743.02 of the Revised Code. (Emphasis supplied).

Since the State is preserving immunity for emergency response as being in the state's best interest, there is no good reason to eliminate local government emergency response from immunity.

Respectfully,



Garry E. Hunter
Legal Counsel,
and Local Government Fellow
Ohio Municipal League

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: 3/19/19

Name: Garry Hunter

Are you representing: Yourself _____ Organization

Organization (If Applicable): Ohio Municipal League

Position/Title: Legal Counsel

Address: 175 South 3rd St. Suite # 510

City: Columbus State: Oh. Zip: 43215

Best Contact Telephone: 614-221-4349 Email: Ghunter@oml.org

Do you wish to be added to the committee notice email distribution list? Yes _____ No

Business before the committee

Legislation (Bill/Resolution Number): AB 27

Specific Issue: _____

Are you testifying as a: Proponent _____ Opponent Interested Party _____

Will you have a written statement, visual aids, or other material to distribute? Yes _____ No

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

How much time will your testimony require? None - Written Only

Please provide a brief statement on your position:

We are opposed to the legislation.

Please be advised that this form and any materials (written or otherwise) submitted or presented to this committee are records that may be requested by the public and may be published online.