



Ohio Revised Code

Section 153.81 Indemnity provisions in public works design contracts.

Effective: March 14, 2023

Legislation: Senate Bill 56 - 134th General Assembly

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

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

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

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



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

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

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

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

(B) Notwithstanding divisions (A)(1)(c) and (2)(c) of this section, this section does not prohibit a public authority from requiring insurance coverage, as appropriate, in a contract to meet the indemnification described in this section.

(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.

(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 2744., 4123., 4125., 4127., and 4131. of the Revised Code. Sections 4123.35 and 4123.80 of the Revised Code control over this section.

(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.

(E) As used in this section:



(1) "Injury" means all of the following:

(a) Bodily injury to a person;

(b) Sickness or disease of a person;

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

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

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

(3) "Liabilities" means claims, damages, or loss, including reasonable attorney's fees, costs, and expenses.

(4) "Professional design firm," "professional design services," and "public authority" have the same meanings as in section 153.65 of the Revised Code.

(5) "Public improvement contract" has the same meaning as in section 153.03 of the Revised Code.