



Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

H.B. 434

129th General Assembly
(As Introduced)

Reps. Newbold, Hall

BILL SUMMARY

- Requires under the Political Subdivision Tort Liability Law that a political subdivision, other than a county, exhaust its own assets to satisfy a contract or tort liability before it may seek contribution out of assets of the county or counties having territory within the subdivision.
- Applies the Political Subdivision Tort Liability Law to civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability in regard to the bill's exhaustion of assets provision.

CONTENT AND OPERATION

Exhaustion of assets to satisfy liability

The bill revises the Political Subdivision Tort Liability Law¹ to require that if a political subdivision other than a county is found liable in a civil action for damages arising out of a contract, or for injury, death, or loss to person or property, the political subdivision must first exhaust all conceivable means of paying the claims against it, up to and including the sale, lease, or full liquidation of its own assets, before the political subdivision may seek contribution out of the assets of the county or counties having territory within the political subdivision.² This revision appears to be fueled by the decision of the Court of Appeals in *City of East Liverpool v. Buckeye Water District*, discussed in **COMMENT**, below.

¹ R.C. Chapter 2744.

² R.C. 2744.02(D).

Existing law mandates that the Political Subdivision Tort Liability Law does not apply to civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability. The bill provides that the Law does apply to civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability in regard to the bill's exhaustion of assets provision.³

For purposes of the bill, continuing law defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, including, but not limited to, a county hospital commission, board of hospital commissioners appointed for a municipal hospital, board of hospital trustees appointed for a municipal hospital, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority created by law or already in existence on December 16, 1964, regional council of governments, emergency planning district, joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district, county solid waste management district, joint solid waste management district, community school, the county or counties served by a community-based correctional facility and program, district community-based correctional facility and program, community-based correctional facility and program, district community-based correctional facility and program, facility governing board of a community-based correctional facility and program, and district community-based correctional facility and program.⁴

Political Subdivision Tort Liability Law, generally

In brief, the Political Subdivision Tort Liability Law provides that a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or its employees in connection with a governmental or proprietary function.⁵ But a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by (1) negligent acts of an employee when the employee is engaged within the scope of the employee's employment and authority, except where certain full defenses negate that liability, (2) the negligent performance of acts by an

³ R.C. 2744.09.

⁴ R.C. 2744.01.

⁵ Basically, a governmental function is a function that political subdivisions undertake as an obligation of sovereignty and that is for the common good of the citizens, and a proprietary function is one that involves activities customarily engaged in by nongovernmental entities, for example, operating a hospital or utility. R.C. 2744.01, not in the bill.

employee with respect to the political subdivision's proprietary functions, (3) the negligent failure to keep public roads in repair or to remove obstructions from public roads, except where a municipal corporation does not have the responsibility for maintaining or inspecting a bridge, (4) the negligence of an employee that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, or (5) civil liability that is expressly imposed upon the political subdivision by state law.⁶

COMMENT

The appellate court in *City of East Liverpool v. Buckeye Water District*⁷ held that the Buckeye Water District and the Columbiana County Board of County Commissioners breached a water service contract with East Liverpool, and awarded a judgment to East Liverpool for damages in the amount of \$4,842,752.99 (as modified by the appellate court) under the following facts:

East Liverpool and the Columbiana County Board of County Commissioners entered into a written "Water Service Agreement" on December 15, 1995. The agreement was for 30 years, terminating on December 31, 2025. The initial purpose of the agreement was to supply water to customers in Wellsville and Calcutta, Ohio. On April 29, 1996, the county commissioners assigned the performance of the agreement to the Buckeye Water District (BWD). East Liverpool was not involved in this assignment. On March 21, 2003, BWD served notice that it considered East Liverpool to be in breach of the agreement for inadequate water pressure and volume, failure to supply safe potable water, primarily due to the existence of carcinogens in the water, and failure to evenly distribute the water supply. BWD eventually stopped using any water from East Liverpool by early 2006 because it had built its own water treatment plant by that time. East Liverpool filed a breach of contract complaint in the Columbiana County Court of Common Pleas on May 19, 2005. The defendants were the Commissioners and BWD.

The appellate court held that East Liverpool was not part of the assignment to BWD for performance of the agreement, and that there did not appear to be any dispute that the county commissioners and BWD were jointly liable for any breach of the

⁶ R.C. 2744.02.

⁷ 2010 Ohio 3170, 2010 Ohio App. LEXIS 2640 (Seventh Appellate Dist. Ct. of Appeals, Columbiana Co., 2010); discretionary appeal and cross-appeal denied by the Ohio Supreme Court at 127 Ohio St.3d 1461, 2010 Ohio 6008, 938 N.E.2d 363 (2010).

agreement. The court found that East Liverpool did not breach the agreement, and thus, it was entitled to receive damages for the appellants' breach of contract.

HISTORY

ACTION	DATE
Introduced	01-31-12

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