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Bill Analysis
Legislative Service Commission

H.B. 655

124th General Assembly
(As Introduced)

Reps. Faber, McGregor, Seitz, Setzer

BILL SUMMARY

- Confers immunity from civil liability upon school districts, community schools, nonpublic schools, and school employees for an alleged injury to a student caused by school discipline, provided that the discipline does not result in child endangerment.

CONTENT AND OPERATION

Operation of the bill

A city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic school or an employee (see "**Definitions**," below) of any such entity is not liable in damages in a civil action to a student or any other person for injury, death, or loss to person or property that the student or other person allegedly sustains as a result of an employee's discipline of a student. This immunity does not apply if the discipline used by the employee results in child endangerment (see "**Definitions**," below). (R.C. 3313.473 (B).)

The bill's grant of immunity educational entities and their employees does not eliminate, limit, or reduce any other immunity or defense that a school district or school district employee may be entitled to under the Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.) or any other provision of the Revised Code or under the common law of this state (R.C. 3313.473 (C)).

Background

Political subdivision and employee defenses and immunities

In a civil action brought against a political subdivision or a political subdivision employee to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission *in connection with a*

governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability (R.C. 2744.03):

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved that gave rise to the claim of liability: (a) was not negligent conduct and was required or authorized by law, or (b) was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the employee's discretion with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the employee's office or position.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense or was found to be a delinquent child and who, at the time of the injury or death, was performing, in specified circumstances, community service work.

(5) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to in paragraph (7), below, and in circumstances not covered by that provision or other specified Revised Code provisions, the employee is immune from liability unless one of the following applies: (a) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (b) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (c) liability is expressly imposed upon the employee by a section of the Revised Code.

The bill adds the immunity it creates to the list of specified R.C. provisions to which the above immunity is in addition. (R.C. 2744.03(A)(6).)

(7) The political subdivision, and a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of an Ohio court is entitled

to any defense or immunity available at common law or established by the Revised Code.

The immunities and defenses of an employee referred to in paragraphs (6) and (7), above, do not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in other Revised Code sections.

Definitions

The bill defines the following terms for use with its grant of immunity (R.C. 3313.473(A)):

Child Endangerment

"Child endangerment" means any of the following:

(1) The abuse of a child;

(2) The administration of corporal punishment, or other physical disciplinary measure, or physical restraint of a child in a cruel manner or for a prolonged period, which punishment, disciplinary measure, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(3) The repeated administration of unwarranted disciplinary measures to a child, where there is a substantial risk that such measures, if continued, will seriously impair or retard the child's mental health or development.

Employee

"Employee" means any person, whether or not compensated and whether full-time or part-time, who is authorized to act and is acting within the scope of employment for a city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic school.

HISTORY

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