Diana C. Talarek *Legislative Service Commission*

H.B. 69

126th General Assembly
(As Introduced)

Reps. Beatty, Key, Kearns, Hartnett, Healy, Sykes, Miller

BILL SUMMARY

- Requires the chief law enforcement officer or other chief official of certain public entities employing persons with arrest authority to require those employees to complete satisfactorily any training required under the public entity's applicable motor vehicle pursuit policy.
- Requires those chief officials to review annually their pursuit policies and revise them as needed.
- Specifies that the requirements of the bill concerning the annual review of pursuit policies and training of employees in accordance with any training requirement do not "create a private cause of action for damages" against any agency, instrumentality, political subdivision of the state or officer or person who fails to comply with the requirements.

CONTENT AND OPERATION

Under existing law, any agency, instrumentality, or political subdivision of the state that employs a person with arrest authority under the Revised Code is required to adopt a policy for the pursuit in a motor vehicle of any person who violates a state law or municipal ordinance. The chief law enforcement officer or other chief official of the governmental entity must formally advise each person with arrest authority it employs of the pursuit policy adopted.

The bill requires the chief law enforcement officer or other chief official of the governmental entity to review annually the pursuit policy and revise it as needed. In addition, the chief law enforcement officer or other chief official must require each employee with arrest authority to complete satisfactorily any training required by the pursuit policy.

The bill specifies that its provisions requiring agencies, instrumentalities, and political subdivisions (1) to annually review their pursuit policies and (2) to require officers and other employees with arrest authority to complete any required training do not "create a private cause of action for damages against" any of these entities or an officer or person who fails to comply with those provisions. The ability of a person to seek equitable relief (such as an injunction or mandamus) if the entity or employee fails to comply with (1) or (2) above is unaffected by this provision. (R.C. 2935.01.) (See **COMMENT**.)

COMMENT

The effect of this provision on political subdivision liability or immunity under the Political Subdivision Sovereign Immunity (PSSI) Law (R.C. Chapter 2744.) is uncertain. Generally, except as specifically provided in statute, a political subdivision is not liable in damages under PSSI law 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 an employee of the political subdivision in connection with a governmental or proprietary function. Subject to specific statutory defenses and immunities and to specified limitations on the damages that may be awarded, a political subdivision is liable in damages in a civil action in certain circumstances, including the operation of a motor vehicle. (R.C. 2744.02(A) and (B) and 2744.05, not in the bill.)

In regard to the operation of a motor vehicle, PSSI law provides as follows:

> [P]olitical subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees upon the public roads when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:
>
> (a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle *while responding to an emergency call* and the operation of the vehicle *did not constitute willful or wanton misconduct*….(emphasis added)

(R.C. 2744.02(B)(1).)

Additionally, political subdivision

> [l]iability shall not be construed to exist under another section of the Revised Code merely because that

> section imposes a responsibility or mandatory duty upon a political subdivision, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(R.C. 2744.02(B)(5).)

In general, the state has waived its sovereign immunity and consented to be sued in the Court of Claims. An action against the state would be governed by R.C. Chapter 2743., not in the bill.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-15-05	p. 210

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