SS SCS SB 916 -- SOVEREIGN IMMUNITY

SPONSOR: Burger

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Commerce by a vote of 9 to 0. Voted "Do Pass" by the Standing Committee on Rules-Administrative by a vote of 11 to 0.

This bill modifies provisions relating to sovereign immunity.

Currently, public entities are immune from liability for compensatory damages resulting from negligence, except as expressly waived in law. This bill modifies the express waivers to include injuries directly resulting from negligence caused by an agent of the Missouri Department of Transportation (MODOT) arising out of the operation of motor vehicles within the course of their employment and for injuries caused by the condition of the public entity's property if the negligence of an agent of MODOT created the dangerous condition or had actual or constructive notice of the dangerous condition in order to take measures to protect against the dangerous condition.

Furthermore, this bill creates a statutory cause of action for damages against an agent of MODOT for claims arising from the design, condition, or maintenance of a MODOT project and abrogates any other common law claims against a private contractor, subcontractor, or engineer, or employee thereof, for such claims. The cause of action is established when the damages occur after execution of a contract to perform work but prior to the commencement of construction activities on the project site and for when construction activities on the project site are approved and accepted by MODOT. The MODOT will be solely liable for personal injury or death arising out of instances during such periods of time.

The immunity provided by this statutory cause of action must not apply when:

(1) The work is so defective that it creates an imminent danger to third parties;

(2) A defect in the work was concealed and not discoverable by a reasonable inspection by the State Highways and Transportation Commission (Commission);

(3) The agent knew of the dangerous condition and did not disclose it to the Commission; or

(4) The plans or specifications followed were so imperfect or improper that the agent should have known the work to be done would result in an unsafe condition.

Furthermore, the Missouri Standard Specifications for Highway Construction, or its successor, as published by the Commission will not include provisions requiring a contractor to indemnify or defend the State, the Commission, or employees or agents of MODOT. No contractor of the Commission will be required to agree to an indemnification or a duty to defend provision as a condition of any agreement to perform work for the Commission.

As it relates to political subdivisions purchasing liability insurance for tort claims made against the political subdivision, this bill defines the term "purchase" to refer only to the direct acquisition of insurance coverage by a governing body and not any indirect action by contract or otherwise.

PROPONENTS: Supporters say that this bill protects subcontractors working for MODOT from being sued for project design. This bill will place responsibility onto MODOT instead of the subcontractors for lawsuits that occur before or after a project is completed. The bill may lower insurance costs for subcontractors as they will not be liable for project design, thus lowering their risk of being sued.

Testifying in person for the bill were Senator Burger; Associated Industries of Missouri; Shawn D; Dale Williams, Missouri Asphalt Association; SITE Improvement Association; Chip Jones, Emery Sapp & Sons; Municipal League of St Louis; Rich Aubuchon; Missouri Chamber of Commerce & Industry; Missouri Municipal League; and Municipal League of Metro St. Louis.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say this bill may open MODOT and the State to more lawsuits that happen during construction while a subcontractor is working on a project.

Testifying in person on the bill was Eric Schroeter, Modot.

Written testimony has been submitted for this bill. The full written testimony and witnesses testifying online can be found under Testimony on the bill page on the House website.