SS SCS SB 916 -- SOVEREIGN IMMUNITY

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.

The 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. 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 does 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.

The Missouri Standard Specifications for Highway Construction, or its successor, as published by the Commission, can 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.