Wendy H. Gridley *Legislative Service Commission*

Sub. H.B. 315

123rd General Assembly
(As Passed by the General Assembly)

Reps. **Haines, Carey, Netzley, Calvert, Allen, Hartnett, Padgett, Sulzer, Willamowski, Taylor, Schuler, Maier, Clancy, Bender, Schuring, Britton, Distel, Evans, O'Brien, Vesper, Ferderber, Barrett, Grendell, Terwilleger, Hollister, Verich, Young, Olman, Harris, Metzger, Mottley, Buehrer, Tiberi, Core, Opfer, Ogg, Myers, Winkler, Buchy, Krebs, Corbin, Amstutz, Salerno, Jolivette, Austria**

Sens. **Blessing, Mumper, Kearns**

Effective date: *

ACT SUMMARY

- Authorizes certain political subdivisions to enter into agreements with one or more political subdivisions to obtain or provide road or street construction, reconstruction, resurfacing, improvement, maintenance, or repair services in nonemergency situations.

- Authorizes certain political subdivisions to provide emergency road or street repair and maintenance assistance under a resolution or ordinance of willingness to participate in providing that assistance within Ohio.

- Specifies that the tort liability and immunity from tort liability provisions of the Political Subdivision Sovereign Immunity Law apply to a political subdivision, and to its employees performing services outside the political subdivision under an agreement in nonemergency situations or providing assistance outside the political subdivision under a resolution or ordinance of willingness to participate in providing emergency assistance, in the same manner as the provisions apply when the

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

employees are performing similar services within the political subdivision.

- Allows those employees of a political subdivision who are providing services outside the political subdivision under an agreement in nonemergency situations or providing assistance outside the political subdivision under a resolution or ordinance of willingness to participate in providing emergency assistance, to participate in any pension or indemnity fund, and to have all workers' compensation rights and benefits, to the same extent as when performing similar services within the political subdivision.

- Requires that the township law director of a limited home rule township, rather than the prosecuting attorney, approve specifications for the purchase or other acquisition of fire-fighting equipment.

- Authorizes a board of township trustees to appropriate township funds to a 501(c)(3) organization that serves a community purpose.

CONTENT AND OPERATION

Road or street repair, maintenance, and other work

Background law

Continuing law requires the state, each county, and each township to maintain the roads within its jurisdiction as designated by law, and authorizes a county and a township, by agreement, to contribute to the repair and maintenance of the roads under the other's control. In addition, the state, a county, or a township, or any two or more of them, may expend, by agreement, any funds available for road construction, improvement, or repair upon roads inside a village. And, a village may expend any funds available for street improvement upon roads outside of and leading to the village. (Sec. 5535.08.)

Numerous provisions of ongoing law, generally found in Title 55 of the Revised Code, contain specific requirements for road repair and maintenance that are applicable to various political subdivisions or the state (for example, see Chapters 5571., 5573., and 5575. for townships; Chapters 5543., 5553., 5555., 5559., 5561., and 5591. for counties; Chapters 5517., 5521., 5523., and 5529. for the state; Chapter 5540. for transportation improvement districts; and Chapter 5557. for municipal corporations). Municipal corporations also have a statutory

duty to maintain their streets by causing them to be kept open, in repair, and free from nuisance (sec. 723.01, not in the act).

Changes made by the act

The act authorizes any political subdivision having authority to repair and maintain roads or streets (1) to provide emergency road or street repair and maintenance assistance to another political subdivision and (2) to obtain from or provide to another political subdivision nonemergency road or street repair or maintenance services.[1] In order to provide *emergency* assistance, a political subdivision must adopt a resolution or ordinance stating that it will participate in providing emergency road or street repair and maintenance assistance within Ohio, on a case by case basis, whenever it is possible to do so. The resolution or ordinance must identify any employees authorized to provide that assistance outside the boundaries of the political subdivision. In order to obtain or provide road or street repair or maintenance services in *nonemergency* situations, political subdivisions may enter into agreements with other political subdivisions having authority to obtain or provide those services. The act provides that the cost, if any, of services obtained under such an agreement may be paid from general fund moneys of the political subdivision receiving the services or from any other funds available for the repair and maintenance of roads or streets within that political subdivision. (Sec. 5535.08(B)(1) and (C)(1).)

For purposes of its emergency assistance provisions, the act defines "emergency" as a natural disaster, or a state of emergency as declared by the governor or a county sheriff, that has occurred or been declared in the county, township, or municipal corporation receiving the emergency road or street repair and maintenance assistance. The act does not provide for payment to an assisting political subdivision by a receiving political subdivision, as it seems to contemplate voluntary assistance under emergency circumstances. (Sec. 5535.08(B)(1) and (D).)

A political subdivision providing either emergency assistance or nonemergency services under the act, and its employees, have the same potential tort liability and immunities from tort liability as if the assistance or services were performed within the political subdivision (sec. 5535.08(B)(2) and (C)(2)).[2]

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[1] *The act's nonemergency services provisions also authorize political subdivisions to obtain or provide road or street construction, reconstruction, resurfacing, or improvement services if they have authority to perform similar services with respect to roads or streets (sec. 5535.08(C)).*

[2] *The relevant tort liability and immunity from tort liability provisions are set forth in sections 2744.02 and 2744.03 (not in the act), two statutes in the Political Subdivision*

Employees also are permitted to participate in any pension or indemnity fund established by their employer, and are entitled to all rights and benefits afforded by the Workers' Compensation Law, while providing emergency assistance or performing nonemergency services outside of their political subdivision pursuant to a previously described resolution, ordinance, or agreement, to the same extent as if they were performing services within their political subdivision (sec. 5535.08(B)(3) and (C)(3)).

Township funds for 501(c)(3) organizations that serve a community purpose

The act authorizes a board of township trustees to appropriate township general revenue fund moneys that are not appropriated for any other purpose to an organization that the board determines *serves a community purpose* and that *is exempt from federal income taxation* under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code. Subsection 501(c)(3) describes corporations, and any community chest, fund, or foundation, that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes or for the prevention of cruelty to children or animals. (Sec. 505.707.)

Approval of specifications for fire-fighting equipment in limited home rule townships

Continuing law authorizes a board of township trustees to purchase or otherwise provide, with the approval of the specifications by *the prosecuting attorney*, any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that the board considers advisable. The act clarifies that, if a township has adopted limited home rule government, the approval of the specifications is to be given by *the township law director* since the township law director, instead of the

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Sovereign Immunity (PSSI) Law (R.C. Chapter 2744.). Generally, under section 2744.02, townships and other political subdivisions are immune from tort liability *unless any of five specified exceptions applies. One of those exceptions is potential tort liability for harm caused by an employee's negligent* operation of a motor vehicle *upon the public roads while engaged within the scope of the employee's employment and authority. Another exception is potential tort liability for harm caused by a political subdivision's "negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads." The* employee *immunity provision of the PSSI Law found in section 2744.03(A)(6) provides an employee with immunity from tort liability* unless *the employee's acts or omissions (a) were manifestly outside the scope of the employee's employment or official responsibilities or (b) committed or omitted with malicious purpose, in bad faith, or in a wanton or reckless manner or unless another statute expressly imposes liability upon an employee.*

prosecuting attorney, serves as the legal counsel to the limited home rule township.[3] (Sec. 505.37(A); secs. 309.09(B) and 504.15--not in the act.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-28-99	p.	490
Reported, H. Local Gov't & Townships	06-01-99	p.	735
Passed House (97-1)	06-08-99	pp.	781-782
Reported, S. State & Local Gov't & Veterans Affairs	12-07-00	p.	2347
Passed Senate (31-0)	12-07-00	p.	2352
House concurred in Senate amendments (93-0)	12-12-00	p.	2476

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[3] *The Township Limited Home Rule Government Law generally requires the board of township trustees of a limited home rule township to appoint a full-time or part-time "township law director" (sec. 504.15(A), not in the act). That individual, then, replaces the county prosecuting attorney, who generally must serve as legal counsel for townships in the county, as the limited home rule township's legal counsel (sec. 309.09(B), not in the act). However, the board of township trustees of a limited home rule township is permitted to contract with the county prosecuting attorney to have that individual serve as the "township law director" if the board of county commissioners consents (sec 504.15(B), not in the act).*