John S. VanNorman *Legislative Service Commission*

Sub. H.B. 605*

124th General Assembly
(As Reported by H. State Government)

Rep. White

BILL SUMMARY

- Enacts the Intrastate Mutual Aid Compact (IMAC).
- Provides for mutual assistance among the participating political subdivisions in response to and recovery from any disaster that results in a formal declaration of emergency by a participating political subdivision.
- Provides for mutual cooperation among the participating political subdivisions in conducting disaster-related exercises, testing, or other training activities.
- Requires the formulation of specified local procedures or plans to implement the IMAC.
- Generally requires a participating political subdivision requesting assistance to reimburse a participating political subdivision rendering assistance for any loss or damage to, or expense incurred in the operation of, any equipment used in rendering the assistance; for any expense incurred in the provision of any service used in rendering the assistance; and for all other costs incurred in responding to the request.
- Declares an emergency.

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* *This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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CONTENT AND OPERATION

Overview

The bill enacts the intrastate mutual aid program, to be known as the "Intrastate Mutual Aid Compact" (IMAC). The goal of the IMAC is to complement existing mutual aid agreements in the event of a disaster that results in a formal declaration of emergency, and the IMAC, thus, must do each of the following (sec. 5502.41(B)):

- Provide for mutual assistance among the participating political subdivisions (see "***Participants***," below) in response to and recovery from any disaster that results in a formal declaration of emergency by a participating political subdivision.[1]

[1] *Existing law defines the following terms used in the bill: "response" includes all those activities that occur subsequent to any hazard and that provide emergency assistance from the effects of any hazard, reduce the probability of further injury, damage, or destruction, and are designed or undertaken to speed recovery operations; "recovery" includes all those activities required and necessary to return an area to its former condition to the extent possible following the occurrence of any hazard; "disaster" means any imminent threat or actual occurrence of widespread or severe damage to or loss of property, personal hardship or injury, or loss of life that results from any natural phenomenon or act of a human; and "emergency" means any period during which the Congress of the United States or a "chief executive" (see footnote 3) has declared or proclaimed that an emergency exists (sec. 5502.21(E), (F), (N), and (O), not in the bill).*

- Provide for mutual cooperation among the participating political subdivisions in conducting disaster-related exercises, testing, or other training activities using the services, equipment, supplies, materials, personnel, and other resources of the participating political subdivisions to simulate the provision of mutual aid.[2]

- Embody a method by which a participating political subdivision may seek assistance in the event of a formally declared emergency. This method must resolve many of the common issues facing political subdivisions at the time of a formally declared emergency and ensure, to the extent possible, eligibility for available state and federal disaster funding.

Participants

The IMAC focuses upon the interaction and cooperation of the political subdivisions in the state, which include counties, townships, and municipal corporations (sec. 5502.21(M), not in the bill). To this end, the IMAC also utilizes existing associated countywide emergency management agencies, regional authorities for emergency management, and programs for emergency management within a political subdivision (sec. 5502.41(A)(1), (3), and (4)). (See **COMMENT** 1.)

Each political subdivision is *automatically a participant* in the IMAC (referred to in the bill as a "participating political subdivision") unless it chooses not to participate by enacting, by appropriate legislation signed by its chief executive, a declaration not to participate.[3] A copy of the declaration must be provided to the Ohio Emergency Management Agency (OEMA) and to the countywide emergency management agency, regional authority for emergency management, or program for emergency management within a political subdivision, which is responsible for emergency management in that political subdivision. (Secs. 5502.21(M), not in the bill, and 5502.41(A)(2).)

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[2] *"Equipment" is defined in existing law as firefighting, first-aid, emergency medical, hospital, salvage, and rescue equipment and materials, equipment for evacuation or relocation of individuals, radiological monitoring equipment, hazardous materials response gear, communications equipment, warning equipment, and all other means, in the nature of personal property, to be used exclusively in the protection of individuals and property against the effects of any hazard (sec. 5502.21(Q), not in the bill).*

[3] *"Chief executive" is defined in existing law as the President of the United States, the Governor of Ohio, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within the state (sec. 5502.21(C), not in the bill).*

Implementation

Local procedures or plans

In the implementation of the IMAC, each countywide emergency management agency, regional authority for emergency management, and program for emergency management within a political subdivision, which is responsible for emergency management in a participating political subdivision must, as part of its program for emergency management (see **COMMENT** 1), coordinate with all departments, divisions, boards, commissions, agencies, and other instrumentalities of, and having emergency response functions within, each participating political subdivision served by that agency, authority, or program, to establish procedures or plans that, to the extent possible, accomplish both of the following (sec. 5502.41(C)(1) and (2)):

- Identify the hazards that potentially could affect the participating political subdivisions served by that agency, authority, or program.[4]

- Identify and inventory the current services, equipment, supplies, personnel, and other resources related to response and recovery activities of the participating political subdivisions served by that agency, authority, or program.

Statewide "resource" coordination

In addition to those local procedures or plans, the IMAC requires certain statewide "resource" coordination. Within one year after the bill's effective date, the OEMA's Executive Director must coordinate with the emergency management agencies, regional authorities, and programs responsible for emergency management in participating political subdivisions, in identifying and formulating appropriate procedures or plans to resolve *resource shortfalls*. These procedures or plans also must be part of each entity's respective program for emergency management. (Sec. 5502.41(D)(1).)

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[4] *"Hazard" is defined in existing law as any actual or imminent threat to the survival or overall health, safety, or welfare of the civilian population that is caused by any natural, human-made, or technological event (sec. 5502.21(I), not in the bill). Examples are attacks, disasters, and emergencies. "Attacks" is defined by existing law as any actual or imminent attack by an actual or potential enemy of the United States or by a foreign nation upon the United States that causes or may cause substantial damage to or destruction of life, property, or the environment in the United States or that is designed to injure the nation's military or economic strength (sec. 5502.21(B), not in the bill).*

Ongoing consolation and coordination

During and after the formulation of the resource shortfall procedures or plans, ongoing consolation and coordination must take place among the OEMA's Executive Director; the emergency management agencies, regional authorities, and programs responsible for emergency management in participating political subdivisions; and all instrumentalities of, and having emergency response functions within, each participating political subdivision, regarding (1) the IMAC, (2) local procedures and plans, and (3) the resolution of resource shortfalls (sec. 5502.41(D)(2)).

Requests for assistance

Under the IMAC, a participating political subdivision may request, either verbally or in writing, the assistance of other participating political subdivisions (1) in response to and recovery from a disaster during formally declared emergencies or (2) in disaster-related exercises, testing, or other training activities. Requests must be made through either the OEMA or an official designated by the chief executive of the participating political subdivision from which assistance is requested. If the request is verbal, it must be confirmed in writing within 72 hours after it is made. (Sec. 5502.41(E).)

Requests must provide the following information (sec. 5502.41(E)(1) to (4)):

- A description of the disaster.
- A description of the assistance needed.
- An estimate of the length of time the assistance will be needed.
- The specific place and time for staging of the assistance and a point of contact at that location.

Conditions to obligation to provide requested assistance

A participating political subdivision's obligation to provide assistance under the IMAC is subject to the following conditions (sec. 5502.41(F)):

- The political subdivision requesting assistance must have declared a state of emergency by resolution of its chief executive or scheduled disaster-related exercises, testing, or other training activities.
- The responding political subdivision may withhold resources necessary to provide for its own protection.

- Responding political subdivision personnel continue to be under their local command and control structure, but will be under the operational control of the appropriate officials within the incident management system of the political subdivision receiving assistance. (See **COMMENT** 2.)

Licenses, certificates, and permits

If a person holds a license, certificate, or other permit issued by a participating political subdivision evidencing qualification in a professional, mechanical, or other skill, and if that person's assistance is requested by a political subdivision receiving assistance under the IMAC, that person is deemed to be licensed or certified in, or permitted by, that political subdivision to render the requested assistance. The person, however, will be subject to any limitation and conditions the chief executive of the political subdivision receiving assistance prescribes by executive order or otherwise. (Sec. 5502.41(I).)

Liability

Actions taken by participating political subdivisions under the IMAC fall within the scope of the Political Subdivision Sovereign Immunity (PSSI) Law. Specifically, when (1) a responding political subdivision and its personnel are rendering assistance, or in route to or from rendering assistance, in another political subdivision under the IMAC, and (2) a political subdivision and its personnel are requesting or receiving assistance from a responding political subdivision under the IMAC, the political subdivisions and their personnel are deemed to be exercising governmental functions under the PSSI Law, have that Law's defenses and immunities, and are entitled to that Law's limitations on damages (e.g., no punitive damages awards). (Sec. 5502.41(H)(3)(a) and (b).) (See **COMMENT** 3, 4, and 5.)

Additionally, for the purposes of tort liability and immunity from tort liability under Ohio law, personnel of a responding political subdivision under the IMAC are considered, while rendering assistance in another participating political subdivision, to be agents of the other political subdivision (sec. 5502.41(H)(2)).

Workers' compensation benefits

Personnel of a responding political subdivision under the IMAC who suffer injury or death in the course of, and arising out of, their employment while rendering assistance to another participating political subdivision are entitled to all applicable benefits under the Workers' Compensation Law (sec. 5502.41(H)(1)).

Reimbursement

A political subdivision rendering assistance under the IMAC in another participating political subdivision generally must be reimbursed by the other political subdivision for each of the following (sec. 5502.41(J)):

- Any loss or damage to, or expense incurred in the operation of, any equipment used in rendering the assistance.

- Any expense incurred in the provision of any service used in rendering the assistance.

- All other costs incurred in responding to the request for assistance.

There are several exceptions/limitations to these reimbursement provisions. First, a political subdivision rendering assistance may assume in whole or in part the loss, damage, expense, or costs, or may loan the equipment or donate the service to the political subdivision receiving assistance without charge or cost. Second, any two or more participating political subdivisions may enter into agreements establishing a different allocation of loss, damage, expense, or costs among themselves. Third, expenses incurred under the Workers' Compensation Law relative to the personnel of the political subdivision rendering assistance are not reimbursable. Finally, to avoid duplication of payments, insurance proceeds available to cover any loss or damage to equipment of the political subdivision rendering assistance are to be considered in the reimbursement by the political subdivision receiving assistance. (Sec. 5502.41(J).)

Effect upon other duties and agreements

The IMAC does not alter the duties and responsibilities of emergency response personnel (sec. 5502.41(G)(1)). (See **COMMENT** 6.) It also does not preclude a participating political subdivision from entering into a mutual aid or other agreement with another political subdivision. Finally, it does not affect any other agreement to which a participating political subdivision may be a party, or any request for assistance that may be made, under any other Ohio statute, including, but not limited to, the following (sec. 5502.41(G)(2)):

- Any other mutual aid arrangement under the Emergency Management Law.

- Any fire protection or emergency medical services contract between firefighting agencies, private fire companies, or emergency medical service organizations, and any governmental entity (sec. 9.60, not in the bill).

- Sheriffs' requests for assistance to preserve the public peace and protect persons and property (sec. 311.07(B), not in the bill).

- Agreements for mutual aid in police protection that municipal corporations may enter into with other political subdivisions (sec. 737.04, not in the bill).

- Mutual aid agreements among emergency planning districts for hazardous substances or chemicals (secs. 3750.02 and 3750.03, not in the bill).

COMMENT

1. Under existing law, the board of county commissioners of a county and the chief executive of all or a majority of the other political subdivisions within that county may establish a "countywide emergency management agency." This agency is responsible for creating a program for emergency management that addresses the various aspects of emergency management in those political subdivisions represented by the agency, including emergency preparedness and civil defense activities and measures that are designed or undertaken to minimize hazard effects on the civilian population and that are necessary to address mitigation, emergency preparedness, response, and recovery. (Secs. 5502.21(G) and 5502.26(A), not in the bill.)

In lieu of creating a countywide emergency management agency, the boards of county commissioners of two or more counties, with the consent of the chief executives of a majority of the political subdivisions in those counties, instead may establish a "regional authority for emergency management." As with the agencies, an authority is responsible for creating a program for emergency management that addresses the various aspects of emergency management in those political subdivisions represented by it. (Secs. 5502.21(G) and 5502.27(A), not in the bill.)

Finally, if a political subdivision has not entered into an agreement establishing either a countywide emergency management agency or a regional authority for emergency management, it must establish a "program for emergency management within a political subdivision." As with the agencies and authorities, a program is responsible for creating a program for emergency management that addresses the various aspects of emergency management in the particular political subdivision. (Secs. 5502.21(G) and 5502.271(A), not in the bill.)

2. According to the Department of Public Safety, the precise meaning of the term "incident management system" varies among political subdivisions.

However, it generally is related to the chain-of-command that is established to manage the response to an emergency.

3. For purposes of R.C. Chapter 2744., the PSSI Law, the functions of political subdivisions are classified as *governmental functions* and *proprietary functions* (see below). Generally, except as specifically provided in statute, a political subdivision *is not liable* in damages 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. However, subject to specific statutory defenses and immunities (see below) and to specified limitations on the damages that may be awarded, a political subdivision *is liable* in damages in a civil action in the following circumstances (secs. 2744.02(A) and (B), 2744.03, and 2744.05, not in the bill):

(a) Generally and subject to specified defenses related to police, fire department, and emergency medical service emergency responses, if the injury, death, or loss to person or property is caused by the negligent operation of any motor vehicle by an employee of the political subdivision upon the public roads, highways, or streets when the employee is engaged within the scope of the employee's employment and authority;

(b) Generally, if the injury, death, or loss to person or property is caused by the negligent performance of acts by an employee of the political subdivision with respect to proprietary functions of the political subdivision;

(c) Generally and subject to a specified defense, if the injury, death, or loss to person or property is caused by the political subdivision's failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivision open, in repair, and free from nuisance;

(d) Generally, if the injury, death, or loss to person or property is caused by the negligence of a political subdivision employee and occurs within or on the grounds of buildings that are used in connection with the performance of a governmental function, other than adult or juvenile detention facilities;

(e) If liability is expressly imposed upon the political subdivision by a section of the Revised Code. Liability is not construed to exist under another section of the Revised Code merely because that section imposes a responsibility upon a political subdivision or because of a general authorization in that section that a political subdivision may sue and be sued.

4. For purposes of the PSSI Law, "governmental function" means a function of a political subdivision that is so specified in the Law or that is any of the following (sec. 2744.01(C)(1), not in the bill):

(a) A function that is imposed upon the state as an obligation of sovereignty and is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in the PSSI Law as a proprietary function.

Examples of specified governmental functions in the PSSI Law are: police, fire, emergency medical, ambulance, and rescue services or protection; power to preserve the peace, to prevent and suppress riots, disturbances, and disorderly assemblages, to protect persons and property, and to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances; provision of a system of public education and a free public library system; regulation of the use of and the maintenance and repair of roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds; judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions; construction, reconstruction, repair, renovation, maintenance, and operation of buildings used in connection with the performance of a governmental function; design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or other detention facilities; enforcement or nonperformance of any law; regulation of traffic and erection or nonerection of traffic signs, signals, or control devices; collection and disposal of solid wastes; provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system; operation of a job and family services department or agency, a health board, department, or agency, mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies; provision or nonprovision of inspection services of all types; urban renewal projects and the elimination of slum conditions; flood control measures; design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery; issuance of certain revenue obligations; public defender services by a county or joint county public defender's office; the design, construction, reconstruction, renovation, repair, maintenance, and operation of any recreational area or facility, such as any park, playground, or playfield, an indoor recreational facility, a zoo or zoological park, a bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility, a golf

course, a bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skateboarding, or scooter riding is engaged, a rope course or climbing walls, or an all-purpose vehicle facility in which such vehicles are contained, maintained, or operated for recreational activities; and any function that the General Assembly mandates a political subdivision to perform (sec. 2744.01(C)(2)(a) to (x), not in the bill).

For purposes of the PSSI Law, "proprietary function" means a function of a political subdivision that is so specified in that Law or that satisfies both of the following (sec. 2744.01(G)(1), not in the bill):

(a) The function is not one that is imposed upon the state as an obligation of sovereignty and performed by a political subdivision voluntarily or pursuant to legislative requirement, is not one that is for the common good of all citizens of the state, and is not one specified as a "governmental function."

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

The specified proprietary functions under the PSSI Law are: the operation of a hospital; the design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery; the establishment, maintenance, and operation of a utility, including a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system; the maintenance, destruction, operation, and upkeep of a sewer system; and the operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility (sec. 2744.01(G)(2)(a) to (e), not in the bill).

5. In a civil action brought against a political subdivision or a political subdivision employee to recover damages for injury, death, or loss to person 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 (sec. 2744.03, not in the bill):

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) The political subdivision is immune from liability if the injury, death, or loss to person 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.

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

(g) 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 (f) and (g) above do not affect or limit any liability of a political subdivision for an act or omission of the employee.

6. The bill does not define the term "emergency response personnel." However, it would appear to at least include firefighters, law enforcement officers, emergency medical technicians, and other similar personnel.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-18-02	p. 1910
Reported, H. State Gov't	---	---

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