



Ohio Legislative Service Commission

Bill Analysis

Laura Gengo

H.B. 357

128th General Assembly
(As Introduced)

Reps. Carney, Domenick, Lehner, Okey, Slesnick, Yuko

BILL SUMMARY

Intrastate Mutual Aid Compact (IMAC)

- Specifies that a purpose of the Intrastate Mutual Aid Compact (IMAC) is to provide mutual aid (rather than assistance) among the political subdivisions participating in it for purposes of not only responding to and recovering from a disaster, but also for purposes of preparing for incidents, exercises, training activities, planned events, or emergencies.
- Expands participation in IMAC to other political subdivisions besides counties, townships, and municipal corporations, unless such political subdivisions choose not to participate.
- Authorizes a state institution of higher education to request or provide assistance pursuant to the IMAC and specifies that such an institution must comply with the law governing the IMAC *as if* the institution were a political subdivision participating in the IMAC.
- Authorizes a participating political subdivision that is impacted by an incident, disaster, exercise, training activity, planned event, or emergency that requires additional resources to request mutual aid under the IMAC through the countywide emergency management agency, rather than the Ohio Emergency Management Agency, by doing either of the following: (1) declaring a state of emergency and issuing a request for assistance from any other participating political subdivision, or (2) issuing to another participating political subdivision a verbal or written request for assistance.
- Specifies that a private company may participate in the provision of mutual aid pursuant to the IMAC if the participating political subdivision approves the participation and the contract with the private company allows for the participation.

- Specifies that the IMAC does not prohibit employees of participating political subdivisions from responding to an incident, disaster, exercise, training activity, planned event, or emergency as part of a regional response team that is under the operational control of the incident command structure.
- Provides that personnel of a responding political subdivision under the IMAC are considered to be agents of their own political subdivision, rather than the political subdivision receiving assistance, for purposes of the Political Subdivision Sovereign Immunity (PSSI) Law.
- Provides that state institutions of higher education, other than institutions that are organized by political subdivisions (*i.e.*, community colleges, state community colleges, technical colleges, and university branches), are deemed to be performing a public duty for purposes of the State Sovereign Immunity Law and have the defenses to, and immunities from, civil liability provided in that Law, while the institutions are requesting or receiving assistance under the IMAC.
- Prohibits a responding political subdivision from being reimbursed for the first eight hours of mutual aid it provides.

Mandatory leave for certain public employees during a health exigency

- Permits the Governor, after consultation with the Director of Health, to declare the existence of a health exigency and issue orders necessary to activate plans to address the health exigency.
- Permits the appointing authority of certain public employees to require an employee who demonstrates at least one symptom included in the Governor's declaration of a health exigency to immediately leave the workplace.
- Requires the appointing authority to reinstate an employee on the employee's demonstration that the employee is asymptomatic of the illness or condition that precipitated the Governor's declaration of a health exigency.
- Permits the employee to use sick leave, vacation leave, personal leave, or compensatory time, or to take a leave of absence without pay, in order to cover the time the employee is away from work as a result of being required to leave the workplace.
- Allows the requirement for mandatory leave during a health exigency to prevail over collective bargaining agreements entered into before, on, or after the bill's effective date.

- Requires the Director of Health to supply each state agency with a web site address where information and guidelines the Department of Health has developed can be found regarding the health exigency and requires state agencies to post a link to the Department's web site on each state agency web site.

Dispensing drugs during a public health emergency

- Permits certified first responders and emergency medical technicians to dispense drugs in accordance with a physician-approved protocol during a public health emergency.

Effective date

- Declares an emergency.

TABLE OF CONTENTS

Intrastate Mutual Aid Compact.....3
 Overview3
 Purposes4
 Participants5
 Implementation6
 Requests for assistance.....7
 Conditions on the obligation to provide requested assistance8
 Effect on other duties and agreements9
 Liability10
 Reimbursement.....12
 Mandatory leave for certain public employees during a health exigency.....13
 Using leave14
 Collective bargaining.....15
 Department of Health's web site15
 Dispensing drugs during a public health emergency15
 Effective date16
 Emergency clause purpose--H1N116

CONTENT AND OPERATION

Intrastate Mutual Aid Compact

Overview

(R.C. 5502.41(A) and (B))

The Intrastate Mutual Aid Program, known as the "Intrastate Mutual Aid Compact" (IMAC), was enacted by the 124th General Assembly in 2002. Its goal is to complement existing mutual aid agreements between political subdivisions in the event of a disaster that results in a formal declaration of emergency.



Purposes

(R.C. 5502.41(B))

Existing law specifies, in essence, that the IMAC has three purposes: (1) to 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 an emergency by a participating political subdivision, (2) to 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, and (3) to embody a method by which a participating political subdivision may seek assistance in the event of a formally declared emergency, which resolves many of the common issues facing political subdivisions at the time of a formally declared emergency and ensures, to the extent possible, eligibility for available state and federal disaster funding.

The bill eliminates the second purpose of the IMAC (discussed above) and makes changes to the first and third purposes. With respect to the IMAC's first purpose, the bill expands the types of events and activities that are covered by it: the IMAC is required by the bill to provide *mutual aid* (rather than assistance) among the participating political subdivisions for purposes of not only responding to and recovering from a disaster, but also for purposes of *preparing for incidents, exercises, training activities, planned events, or emergencies*,¹ in addition to disasters. Consistent with the expansion of the types of events and activities that the bill specifies are covered by the IMAC, the bill specifies that its only other purpose is *to establish* (rather than embody) a method by which a participating political subdivision may seek assistance to resolve many of the common issues facing political subdivisions *before, during, and after* an incident, exercise, training activity, planned event, or emergency (in addition to disaster) and to ensure, to the extent possible, eligibility for available state and federal *disaster assistance* (in addition to funding).

¹ The bill defines an "emergency" as any period during which Congress, 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 Ohio, or a chief executive of a participating political subdivision has declared or proclaimed that an emergency exists (R.C. 5502.41(A)(3)). The bill defines a "chief executive of a participating political subdivision" as the elected chief executive of a participating political subdivision or, if the political subdivision does not have an elected chief executive, a member of the political subdivision's governing body chosen by the body's members to be its representative for purposes of the IMAC (R.C. 5502.41(A)(1)).

Participants

Political subdivisions

(R.C. 5502.41(A)(4) and (5))

Under current law, each political subdivision (defined only as counties, townships, and municipal corporations)² is automatically a participant in the IMAC (referred to in law as a "participating political subdivision") unless it opts out by enacting, by appropriate legislation signed by its chief executive, a declaration not to participate. A copy of the legislation must be provided to the Ohio Emergency Management Agency (OEMA) and to the countywide emergency management agency,³ regional authority for emergency management,⁴ or program for emergency management within a political subdivision,⁵ which is responsible for emergency management in that political subdivision.

The bill expands the types of political subdivisions that automatically participate in IMAC to include (in addition to counties, townships, and municipal corporations) school districts and other bodies corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.⁶ It also expands the means

² R.C. 5502.21(M).

³ Current law, unchanged by the bill, defines a "countywide emergency management agency" as a countywide emergency management agency established under R.C. 5502.26 (R.C. 5502.41(A)).

⁴ Current law, unchanged by the bill, defines a "regional authority for emergency management" as a regional authority for emergency management established under R.C. 5502.27 (R.C. 5502.41(A)).

⁵ Current law, unchanged by the bill, defines a "program for emergency management within a political subdivision" as a program for emergency management created by a political subdivision under R.C. 5502.271. The bill specifies that such a program may also be referred to as a "program for emergency management." (R.C. 5502.41(A)(6).)

⁶ These other bodies corporate and politic responsible for governmental activities in a geographic area smaller than that of the state include, but are not limited to, all of the following: a county hospital commission appointed under R.C. 339.14, a board of hospital commissioners appointed for a municipal hospital under R.C. 749.04, a board of hospital trustees appointed for a municipal hospital under R.C. 749.22, a regional planning commission created pursuant to R.C. 713.21, a county planning commission created pursuant to R.C. 713.22, a joint planning council created pursuant to R.C. 713.231, an interstate regional planning commission created pursuant to R.C. 713.30, a port authority created pursuant to R.C. 4582.02 or 4582.26 or in existence on December 16, 1964, a regional council established by political subdivisions pursuant to R.C. Chapter 167., an emergency planning district and joint emergency planning district designated under R.C. 3750.03, a joint emergency medical services district created pursuant to R.C. 307.052, a fire and ambulance district created pursuant to R.C. 505.375, a joint interstate emergency planning district established by an agreement entered into under that section, a county solid waste management district and joint solid waste management district established under R.C. 343.01 or 343.012, a community school established under R.C. Chapter 3314., the county or counties served by a community-based correctional facility and program or district community-based correctional facility and

by which a political subdivision may opt out of participation in the IMAC by permitting a political subdivision to adopt an ordinance, resolution, rule, bylaw, or regulation (as an alternative to enacting legislation) that documents a decision not to participate. If a political subdivision adopts such an ordinance, resolution, rule, bylaw, or regulation, the bill requires that a copy of it be provided to the OEMA, the countywide emergency management agency, regional authority for emergency management, or program for emergency management in the political subdivision.

State institutions of higher education

(R.C. 3345.042)

The bill authorizes a state institution of higher education⁷ to request or provide assistance pursuant to the IMAC. An institution that requests or provides mutual aid pursuant to the IMAC is required by the bill to comply with the law governing the IMAC *as if* the institution were a participating political subdivision.

Implementation

Local procedures or plans

(R.C. 5502.41(C))

As part of its program for emergency management, each countywide emergency management agency, regional authority for emergency management, and program for emergency management within a political subdivision is required by current law to 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 two objectives:

(1) Identify the hazards that potentially could affect the participating political subdivisions served by that agency, authority, or program.

program established and operated under R.C. 2301.51 to 2301.58, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated (R.C. 2744.01(F) (not in the bill)).

⁷ The bill defines a "state institution of higher education" consistent with existing law governing state universities to mean any state university or college (as defined in R.C. 3345.12(A)(1)), community college, state community college, university branch (established under R.C. Chapter 3355.), or technical college (R.C. 3345.042(A)(5)).

(2) 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.

With respect to the second objective, the bill requires the procedures or plans that a participating political subdivision establishes to identify and inventory the current services, equipment, supplies, personnel, and other resources related to the *preparedness* (in addition to the response and recovery activities) of the participating political subdivisions served by that countywide emergency management agency, regional authority for emergency management, or program for emergency management.

Statewide resource coordination

(R.C. 5502.41(D)(1))

In addition to the local procedures and plans, current law governing the IMAC requires certain statewide resource coordination. Specifically, the OEMA's Executive Director is required to coordinate with the countywide emergency management agencies, regional authorities for emergency management, and programs for emergency management within political subdivisions in identifying and formulating appropriate procedures or plans to resolve resource shortfalls. Pursuant to current law, these procedures or plans also must be part of each entity's respective program for emergency management. The bill eliminates the reference to each entity's respective program for emergency management.

Requests for assistance

(R.C. 5502.41(E))

Under existing law, a political subdivision participating in the IMAC is permitted to request, either verbally or in writing, the assistance of other participating political subdivisions in response to and recovery from a disaster during formally declared emergencies or 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 made verbally, it must be confirmed in writing within 72 hours after it is made. In addition, requests must provide the following information: (1) a description of the disaster, (2) a description of the assistance needed, (3) an estimate of the length of time the assistance will be needed, and (4) the specific place and time for staging of the assistance and a point of contact at the location.

The bill, instead, permits a participating political subdivision that is impacted by an incident, disaster, exercise, training activity, planned event, or emergency that requires additional resources to request mutual aid by doing either of the following:

(1) Declaring a state of emergency and issuing a request for assistance from any other participating political subdivision;

(2) Issuing to another participating political subdivision a verbal or written request for assistance. If the request is made verbally, the bill requires that a written confirmation of the request be made not later than 72 hours after the verbal request is made.

The bill also requires that the request be made through the countywide emergency management agency (rather than the OEMA) or an official designated by the chief executive of the participating political subdivision from which assistance is requested. The request must include all of the elements required under current law, except that (consistent with expansion in the types of events and activities that are covered by the IMAC) the description may be of the incident, exercise, training activity, planned event, or emergency that requires additional resources.

Conditions on the obligation to provide requested assistance

(R.C. 5502.41(F))

Current law specifies that a participating political subdivision's obligation to provide assistance under the IMAC is subject to the following conditions:

(1) 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;

(2) The responding political subdivision may withhold resources necessary to provide for its own protection;

(3) Responding political subdivision personnel continue to be under their local command and control structure, but are under the operational control of the appropriate officials within the incident management system⁸ of the participating political subdivision receiving assistance;

(4) Responding law enforcement officers acting pursuant to the authority to cooperate under the IMAC have the same authority to enforce the law as when acting within the territory of their regular employment.

⁸ According to the Department of Public Safety, the meaning of the term, "incident management system" varies among political subdivisions. However, it is generally related to the chain-of-command that is established to manage the response to an emergency. (LSC bill analysis for Sub. H.B. 605 of the 124th General Assembly.)

The bill eliminates the first condition and instead requires the responding political subdivision to provide assistance to a participating political subdivision that is impacted by, or subject to, an incident, disaster, exercise, training activity, planned event, or emergency.

Effect on other duties and agreements

(R.C. 5502.41(G))

Current law governing the IMAC specifies that it does not do any of the following:

- (1) Alter the duties and responsibilities of emergency response personnel;
- (2) Preclude a participating political subdivision from entering into a mutual aid or other agreement with another political subdivision;
- (3) Affect either (a) any other agreement to which a participating political subdivision may be a party under another Ohio statute, or (b) any request for assistance that may be made under another Ohio statute.

In addition to the provisions described above pertaining to the effect of the laws governing the IMAC, the bill does all of the following:

--Aid from private companies: The bill specifies that the laws governing the IMAC do not prohibit a private company from participating in the provision of mutual aid pursuant to the IMAC if the participating political subdivision approves the participation and the contract with the private company allows for the participation.

--Regional response teams: The bill specifies that the laws governing the IMAC do not prohibit employees of participating political subdivisions from responding to an incident, disaster, exercise, training activity, planned event, or emergency as part of a regional response team⁹ that is under the operational control of the incident command structure.

⁹ The bill defines a "regional response team" as a group of persons from participating political subdivisions who provide mutual aid in preparation for, response to, or recovery from an incident, disaster, exercise, training activity, planned event, or emergency. A regional response team includes, but is not limited to, an incident management team, hazardous materials response team, water rescue team, bomb team, or search and rescue team (R.C. 5502.41(A)(8)).

--**Campus law enforcement services:** The bill clarifies that the IMAC does not affect any agreement for law enforcement services between universities and colleges and political subdivisions pursuant to current law.¹⁰

Liability

Political subdivisions

(R.C. 5502.41(H))

Under the Political Subdivision Sovereign Immunity (PSSI) Law (R.C. Chapter 2744.), the functions of political subdivisions are classified as "governmental functions"¹¹ or "proprietary functions."¹² Generally, except as specifically provided for 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 governmental or proprietary functions.

Existing law specifies that actions taken by participating political subdivisions under the IMAC are governmental functions. Consequently, a political subdivision and its personnel have the PSSI Law's defenses and immunities and are entitled to that Law's limitations on recoverable damages (*e.g.*, no punitive damage awards) when (1) the responding political subdivision and its personnel are rendering assistance or are in route to or from rendering assistance in another participating political subdivision, or (2) a political subdivision and its personnel are requesting or receiving assistance from a responding political subdivision under the IMAC.

¹⁰ See R.C. 3345.041 and 3345.21 (not in the bill).

¹¹ "Governmental functions" are functions of a political subdivision that are (1) functions imposed on the state as obligations of sovereignty and are performed by political subdivisions voluntarily or pursuant to legislative requirement, (2) functions that are for the common good of all citizens of the state, or (3) functions that promote or preserve the public peace, health, safety, or welfare; that involve activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that are not specified in the PSSI Law as proprietary functions. Examples include (a) police, fire, emergency medical, ambulance, and rescue services or protection, and (b) the 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. (R.C. 2744.01(C).)

¹² "Proprietary functions" are functions of a political subdivision (other than its governmental functions) that (1) promote or preserve the public peace, health, safety, or welfare and that (2) involve activities that are customarily engaged in by nongovernmental persons. Examples include (a) the operation of a hospital by one or more political subdivisions, (b) activities involving a public cemetery (other than a township cemetery), and (c) operation of a utility, transit company, airport, municipal corporation water supply system, or sewer system. (R.C. 2744.01(G).)

In addition, for purposes of tort liability and immunity from tort liability, current law specifies that 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.

The bill does not eliminate the applicability of the PSSI Law to actions taken by participating political subdivisions under the IMAC. It does, however, specify that for purposes of tort liability and immunity from tort liability, personnel of a responding political subdivision under the IMAC are considered, while rendering assistance in another participating political subdivision, to be agents of *their own* political subdivision, rather than the political subdivision receiving assistance.

State institutions of higher education organized by political subdivisions

(R.C. 3345.042(C))

Community colleges, state community colleges, technical colleges, and university branches are organized by community college districts, state community college districts, technical college districts, and university branch districts, respectively. These districts are, by definition, political subdivisions and are subject to the PSSI Law, discussed above.¹³ Therefore, under the bill, a community college, state community college, technical college, or university branch and the personnel of such institutions have the PSSI Law's defenses and immunities and are entitled to that Law's limitations on recoverable damages (*e.g.*, no punitive damage awards) when (1) the responding institution and its personnel are rendering assistance or are in route to or from rendering assistance in another participating political subdivision, or (2) the institution and its personnel are requesting or receiving assistance from a responding political subdivision under the IMAC.

State institutions of higher education not organized by political subdivisions

(R.C. 3345.042(C))

Under the State Sovereign Immunity Law (R.C. Chapter 2743.), the state and its officers and employees are generally immune from liability in any civil action or proceeding involving the performance or nonperformance of a "public duty," including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.¹⁴ A

¹³ See R.C. 3354.01(A), 3358.01(A), 3357.01(B), and 3355.01(A) (all not in the bill), respectively, which define community college districts, state community college districts, technical college districts, and university branch districts as political subdivisions.

¹⁴ An officer or employee of the state is not immune from liability, however, if the officer's or employee's actions were manifestly outside the scope of the officer's or employee's employment or official

public duty for purposes of the State Sovereign Immunity Law includes, but is not limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following: (1) permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity, or (2) supervising, rehabilitating, or liquidating corporations or other business entities.¹⁵ A public duty does not include any action of the state under circumstances in which a special relationship can be established between the state and an injured party.¹⁶

The bill specifies that state institutions of higher education,¹⁷ other than institutions that are organized by political subdivisions (*i.e.*, community colleges, state community colleges, technical colleges, and university branches), are deemed to be performing a public duty for purposes of the State Sovereign Immunity Law and have the defenses to, and immunities from, civil liability provided in that Law, while the institutions are requesting or providing assistance pursuant to the IMAC.

Reimbursement

(R.C. 5502.41(J) and (K))

Current law specifies that a political subdivision rendering assistance under the IMAC in another participating political subdivision generally must be reimbursed by the political subdivision for all of the following:

- (1) Any loss or damage to, or expense incurred in the operation of, any equipment used in rendering the assistance;
- (2) Any expense incurred in the provision of any service used in rendering the assistance;
- (3) All other costs incurred in responding to the request for assistance.

There are several exceptions or 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

responsibilities, or if the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner (R.C. 2743.02).

¹⁵ R.C. 2743.01 (not in the bill).

¹⁶ *Id.*

¹⁷ See definition of "state institution of higher education" in footnote 7, above.

different allocation of losses, damages, expenses, or costs among themselves. Third, expenses incurred under the Workers' Compensation Law (R.C. Chapters 4121. and 4123.) 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.

The bill adds another exception to the reimbursement provisions: a participating political subdivision rendering assistance to another participating political subdivision cannot be reimbursed for the first eight hours of mutual aid it provides. The bill also eliminates the provision specifying that 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.

Mandatory leave for certain public employees during a health exigency

(R.C. 124.394(A) and (B) and 124.395(A) and (E) to (H))

The bill permits the Governor, after consultation with the Director of Health, to declare the existence of a health exigency and issue orders necessary to activate plans to address the health exigency. The bill defines "health exigency" as the occurrence or imminent threat of an illness or health condition that, because of its scale, timing, or unpredictability, poses a substantial risk to the health of persons in Ohio, including an epidemic, pandemic, or incident that precipitates the issuance of an order for quarantine or isolation.¹⁸ The Governor's declaration must (1) include a list of symptoms that are consistent with the illness or health condition precipitating the declaration, and (2) state the date, or describe a time or event, at which the declaration expires.

While the declaration of a health exigency remains in effect, the bill permits an appointing authority¹⁹ of certain public employees to require an employee who

¹⁸ The bill specifies that a health exigency is not the equivalent of any of the following (although any of the following may be in effect concurrently with the declaration of a health exigency): (1) a major disaster or emergency declaration by the President of the United States, the determination of a public health emergency by the United States Secretary of Health and Human Services, or any other emergency declaration authorized by federal law or regulation, (2) a public health emergency declared by the Governor, an emergency measure declared by the board of health of a city or general health district, or any other emergency declaration authorized by the Revised Code or rules adopted under it, or (3) an emergency declaration that a collective bargaining agreement has taken into account (R.C. 124.394(C)).

¹⁹ Under current law, "appointing authority" means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution. "Commission" means the municipal civil service commission of any city, or civil service

demonstrates at least one symptom included in the Governor's declaration to immediately leave the workplace.²⁰ The appointing authority is required to reinstate the employee on the employee's demonstration that the employee is asymptomatic of the illness or condition that precipitated the Governor's declaration of a health exigency.

Under the bill, the fact that an employee has been required to leave the workplace is not grounds for a disciplinary action initiated by the appointing authority against the employee. Further, the mandatory leave for a health exigency is not subject to appeal to the State Personnel Board of Review.

The bill permits the Director of Administrative Services to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the bill's provisions regarding mandatory leave.

Using leave

(R.C. 124.395(B) to (D))

To cover the time the public employee is away from work as a result of being required to leave the workplace, the bill permits the employee to choose the type of leave to be used from among the following: (1) accrued and available sick leave, vacation leave, or personal leave, (2) leave resulting from compensatory time, or (3) a leave of absence without pay. The bill requires the employee to designate the order in which the types of leave are to be used and further requires the appointing authority to approve the leave requests. The bill allows the employee to receive donated leave pursuant to a leave donation program established by the Director of Administrative Services under current law. An employee who does not elect to use the types of accrued and available leave is to be placed on a leave of absence without pay.

If the employee elects to take or is placed on a leave of absence without pay, the bill provides that the employee will continue to accrue leave, longevity, service credit, and retention points consistent with how the employee accrued such benefits, if any, prior to the leave of absence as long as the employee returns to work with the appointing authority when authorized to do so. The employee on a leave of absence

commission that serves a city school district. "Employee" means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer. (R.C. 124.01(D) to (F).)

²⁰ The bill does not expressly specify which employees are subject to this provision; however, there may be a presumption that the provision applies to public employees subject to the Civil Service Law (R.C. Chapter 124.) because the provision is placed within that law and uses terms that are defined and in common to that law. The employees subject to the Civil Service Law include all offices and positions of trust or employment in the service of (1) the state and (2) the counties, cities, city health districts, general health districts, and city school districts of the state (R.C. 124.01(A)). An amendment may be necessary to clarify the applicability of the mandatory leave provision.

without pay is responsible for paying the employee's share, and the employer is responsible for paying the employer's share, of premiums for all health insurance programs in which the employee is enrolled at the time the employee begins the leave of absence without pay.

Collective bargaining

(R.C. 124.395(G) and 4117.10; Section 3)

The bill allows the requirement for mandatory leave during a health exigency to prevail over collective bargaining agreements entered into before, on, or after the bill's effective date (see **COMMENT**). The bill also specifies that its requirement for mandatory leave during a health exigency does not impair the authority of an employee or exclusive representative to file a grievance based on a collective bargaining agreement.

Department of Health's web site

(R.C. 121.25 and 3701.147)

On the Governor's declaration of a health exigency, the bill requires the Director of Health to supply each state agency²¹ with a web site address where information and guidelines the Department of Health has developed can be found on the subject of how businesses, governmental entities, schools, and private residences can most appropriately respond to the health exigency. The director or chief administrative officer of each state agency must then post a link to the Department's web site address on the web site the state agency maintains as soon as practicable after being supplied the address by the Director of Health. The bill requires the person in charge of each building or facility where state agency employees regularly work to promptly review the information and guidelines and update the building's or facility's internal policies to ensure that the policies are consistent with the information and guidelines.

Dispensing drugs during a public health emergency

(R.C. 4729.29)

Current law generally prohibits anyone who is not a pharmacist, or a pharmacy intern under the personal supervision of a pharmacist, from dispensing, compounding,

²¹ Under the bill, "state agency" means every department, bureau, board, commission, office, or other organized body established by the Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, any legislative agency, the Supreme Court, and the Court of Claims (R.C. 121.25 and 3701.147).

or selling dangerous drugs or otherwise engaging in the practice of pharmacy.²² A violation of this prohibition is a misdemeanor of the third degree, with each day's violation constituting a separate offense. If the offender previously has been convicted of or pleaded guilty to a violation of the law governing pharmacists, the violation is a misdemeanor of the second degree.²³

The bill permits certain emergency medical service (EMS) personnel to dispense drugs in accordance with a physician-approved protocol during a public health emergency. This authority is established by exempting the EMS personnel from the prohibition and associated penalties that would otherwise apply for engaging in the practice of pharmacy without a license. Specifically, the exemption is extended to the following EMS personnel certified by the State Board of Emergency Medical Services: first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics.

Effective date

Emergency clause purpose--H1N1

(Section 4)

The bill is declared to be an emergency measure and, therefore, the bill goes into immediate effect. It specifies that the emergency measure is necessary because the United States Centers for Disease Control and Prevention has stated that the novel H1N1 virus, in conjunction with regular seasonal influenza viruses, poses the potential to cause significant illness with associated hospitalizations and deaths during the current influenza season.

²² Under current law, the "practice of pharmacy" means providing pharmacist care requiring specialized knowledge, judgment, and skill derived from the principles of biological, chemical, behavioral, social, pharmaceutical, and clinical science. "Pharmacist care" includes the following: (1) interpreting prescriptions, (2) dispensing drugs and drug therapy related devices, (3) compounding drugs, (4) counseling individuals with regard to drug therapy and assisting in the selection of, and instruction in the use of, drugs and appliances for treatment of common diseases and injuries, (5) performing drug regimen reviews, (6) performing drug utilization reviews under certain circumstances, (7) advising an individual and the health care professionals treating an individual with regard to the individual's drug therapy, (8) acting pursuant to a consult agreement with a physician, and (9) engaging in the administration of immunizations to the extent authorized under current law. (R.C. 4729.01(B), not in the bill.)

²³ See R.C. 4729.28 and 4729.99 (not in the bill).

COMMENT

A constitutional issue may be raised with regard to the bill's provision specifying that the bill applies to collective bargaining agreements entered into before the bill's effective date. Both Article I, § 10 of the United States Constitution and Article II, § 28 of the Ohio Constitution prohibit the General Assembly from adopting laws that impair contractual obligations. In some cases, however, it may be possible for the state to pass a law that impairs a contract, if the impairment is not substantial and the law is passed for the protection of the public health, safety, and welfare.

The Ohio Supreme Court has held that the state prohibition on adopting laws that impair contracts is "coextensive" with the federal prohibition (*Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St.3d 216). In *Allied Structural Steel Co. v. Spannaus* (1978), 438 U.S. 234, the United States Supreme Court held that the federal contracts clause does not absolutely prevent a state, in the exercise of its police power to pass laws for the protection of public health, safety, and welfare, from abridging contractual obligations. Rather, the clause prohibits a "substantial" impairment of contractual obligations unless the impairment can be justified by an overriding public interest and is appropriately tailored to serve that interest. The more substantial the impairment, the more closely a court will scrutinize the law.²⁴

HISTORY

ACTION	DATE
Introduced	11-10-09

h0357-i-128.docx/kl

²⁴ For a discussion of the considerations and analyses that have been used by courts in examining issues involving impairment of contracts, see *City of Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, *cert. denied*, *Sticklen v. Middletown* (1987), 479 U.S. 1034 and *Energy Reserves Group, Inc. v. Kansas Power and Light Company* (1983), 459 U.S. 400, 411-12.

