Ohio Legislative Service Commission

Bill Analysis

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Sens. Hughes, Wagoner

BILL SUMMARY

Intrastate Mutual Aid Compact (IMAC)

- Specifies that a purpose of the Intrastate Mutual Aid Compact (IMAC) is to provide mutual assistance or aid 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, any of which require additional resources.

- Expands participation in IMAC to other political subdivisions besides counties, townships, and municipal corporations, including school districts and state institutions of higher education, unless such political subdivisions choose not to participate.

- 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), have the defenses to, and immunities from, civil liability provided in the State Sovereign Immunity Law, while acting under the IMAC.

- Prohibits a responding political subdivision from being reimbursed for the first eight hours of mutual assistance or aid it provides.

Other mutual aid agreements

- Authorizes counties, townships, and municipal corporations to enter into other mutual aid agreements, both within and outside the state, in case of any disaster too great to be dealt with unassisted.

- Authorizes out-of-state emergency responders to act within this state within the scope of the emergency responder's professional license, certificate, or other permit.

- Extends applicable immunity from liability to emergency responders from another state when acting under an authorized mutual aid agreement.

- Specifies that sovereign immunity applies to a political subdivision and its officials, agents, and employees conducting emergency management activities outside the boundaries of the political subdivision.

- Establishes that an emergency responder's pension, disability, workers' compensation, and other benefits extend to authorized activities outside the political subdivision boundaries.

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CONTENT AND OPERATION

Intrastate Mutual Aid Compact

Overview

The Intrastate Mutual Aid Program, known as the "Intrastate Mutual Aid Compact" (IMAC), is a program governing mutual aid between participating political subdivisions (counties, townships, and municipal corporations[1]) in the event of a disaster. As summarized in the IMAC Operations Manual produced by the Ohio Emergency Management Agency (OEMA), the compact's scope includes:

- A simple and efficient structure for requesting and receiving disaster assistance from other participating political subdivisions.
- Resolution of potential legal and administrative issues in advance of a disaster.
- A tool to strengthen mutual aid resources across Ohio by strengthening local government's capacity to manage response to a disaster.[2]

The bill generally modifies and expands the scope of the IMAC, including types of events and activities that are covered by the IMAC and also the political subdivisions that automatically participate in the IMAC.

Purposes

Under the bill, the IMAC has the following two purposes: (1) to provide mutual assistance or *aid* (italicized language indicates an addition to a current law provision) among the participating political subdivisions for purposes of responding to and recovering from a disaster, and also for purposes of *preparing for incidents, exercises, training activities, planned events, or emergencies*, any of which require additional resources, and (2) *to establish* (rather than embody) a method by which a participating political subdivision may seek assistance or aid 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), any of which requires

[1] R.C. 5502.21(M).

[2] *Ohio IMAC Operations Manual*, Version 1.3 (May 2, 2007), p. 1.

additional resources, and to ensure, to the extent possible, eligibility for available state and federal *disaster assistance* (in addition to funding).[3]

The bill defines "emergency" and "planned event." An emergency must be declared or proclaimed by any of the following: Congress, the President, the Governor of Ohio, a board of county commissioners, a board of township trustees, or a mayor or city manager, or a specified chief executive of a participating political subdivision. A "planned event" means a scheduled nonemergency activity under the national incident management system and includes a sporting event, concert, or parade.[4]

The bill eliminates the current requirement for a formal declaration of an emergency by a participating political subdivision. It also eliminates, as a separate purpose of the IMAC, providing 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.

Participants

Political subdivisions

The bill expands the types of political subdivisions that automatically participate in IMAC to include (in addition to counties, townships, and municipal corporations) "political subdivisions," as that term is defined in existing Political Subdivision Sovereign Immunity Law.[5] Notably, that definition includes school districts and other bodies corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, including specified hospitals, specified planning commissions, port authorities, regional councils, emergency and joint emergency planning districts, joint emergency medical services districts, fire and ambulance districts, joint interstate emergency planning districts, county and joint solid waste management districts, community schools, the county or counties served by a community-based or district community-based correctional facility and program, and a community-based or district community-based correctional facility and program.

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[3] R.C. 5502.41(B).

[4] R.C. 5501.21(C) and 5501.41(A).

[5] R.C. 5502.41(A)(6), referencing R.C. 2744.01, not in the bill.

State institutions of higher education

For the purposes of participating in the IMAC, the bill specifies that a state institution of higher education is considered to be a participating political subdivision, thus making the institutions subject to the bill's IMAC provisions that apply to participating political subdivisions.[6]

Opt out

The bill expands the means by which a participating 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 within the political subdivision.[7]

The bill permits a state institution of higher education to elect not to participate in the IMAC by enacting or adopting an appropriate resolution, rule, bylaw, or regulation to that effect. The institution must provide a copy of the resolution, rule, bylaw, or regulation to the OEMA and to the countywide emergency management agency, regional authority for emergency management, or program for emergency management within a political subdivision, whichever is responsible for emergency management at the institution.[8]

Requests for assistance or aid

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

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

(2) Issuing to another participating political subdivision a verbal or written request for assistance or aid. If the request is made verbally, the bill requires that a

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[6] R.C. 3345.042.

[7] R.C. 5502.41(A)(4).

[8] R.C. 3345.042(B)(2).

written confirmation of the request be made not later than 72 hours after the verbal request is made (current law).

The bill also requires that the request be made through an emergency management agency of a participating political subdivision (rather than the OEMA) or an official designated by the chief executive of the participating political subdivision from which assistance or aid is requested. As under current law, the request 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. However, 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.[9]

Conditions on the obligation to provide requested assistance or aid

Under the bill, a participating political subdivision is obligated to provide assistance or aid to another participating political subdivision that is impacted by an incident, disaster, exercise, training activity, planned event, or emergency, any of which requires additional resources. As under existing law, the obligation to provide aid is subject to the following conditions:

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

(2) 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 system of the participating political subdivision receiving assistance or aid; and

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

However, the bill eliminates a condition of existing law requiring the political subdivision requesting assistance to have declared a state of emergency by resolution of its chief executive or scheduled disaster-related exercises, testing, or other training activities.[10]

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[9] R.C. 5502.41(E).

[10] R.C. 5502.41(F).

Effect on other duties and agreements

The bill addresses the effect of IMAC on all of the following:

--Aid from private companies: A private company may participate in mutual assistance or 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: Employees of participating political subdivisions may respond to a request for mutual assistance or aid as part of a regional response team (a group of persons from participating political subdivisions, including an incident management team, hazardous materials response team, water rescue team, bomb team, or search and rescue team[11]) that is under the operational control of the incident command structure.

--Response without request: Employees of participating political subdivisions may not respond without a request from a participating political subdivision.

--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.

These provisions are in addition to current law governing the IMAC, which 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.[12]

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[11] R.C. 5502.41(A).

[12] R.C. 5502.41(G).

Liability

Political subdivisions

Under the Political Subdivision Sovereign Immunity (PSSI) Law,[13] the functions of political subdivisions are classified as "governmental functions" or "proprietary functions." 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 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.

The bill retains 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 or aid in another participating political subdivision, to be agents of *their own* political subdivision, rather than the political subdivision receiving assistance or aid as under current law.[14]

State institutions of higher education

Community colleges, state community colleges, technical colleges, and university branches are organized by districts that, by definition, are political subdivisions subject to the PSSI Law and therefore, under the bill, the institutions 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 when requesting or providing assistance or aid pursuant to the IMAC. State institutions of higher education that are not organized by political subdivisions are deemed to be performing a public duty for purposes of the

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[13] R.C. Chapter 2744.

[14] R.C. 5502.41(H).

State Sovereign Immunity Law and have the defenses to, and immunities from, civil liability provided in that Law, when the institutions are acting under the IMAC.[15]

Reimbursement

A political subdivision rendering assistance under the IMAC in another participating political subdivision generally must be reimbursed by the receiving political subdivision for specified losses, damages, expenses, and costs incurred in rendering the assistance; the bill establishes, however, that a participating political subdivision cannot be reimbursed for the first eight hours of mutual assistance or aid it provides. Under current law, retained by the bill, expenses incurred under the Workers' Compensation Law[16] relative to the personnel of the political subdivision rendering assistance are not reimbursable, and insurance proceeds covering 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.[17]

Procedures or plans

The bill revises the requirement for each countywide emergency management agency, regional authority for emergency management, and program for emergency management within a political subdivision to coordinate procedures or plans that identify and inventory resources related to response and recovery activities of the participating political subdivisions served by that agency, authority, or program. Under the bill, a participating political subdivision must establish procedures or plans that 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.[18]

In addition to the local procedures and plans, current law governing the IMAC required certain statewide resource coordination by the OEMA's Executive Director by December 23, 2003. The bill requires such statewide coordination for the expanded list of political subdivisions and does not establish a time for accomplishing the

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[15] R.C. 3345.042(C).

[16] R.C. Chapters 4121. and 4123.

[17] R.C. 5502.41(J) and (K).

[18] R.C. 5502.41(C).

coordination. The bill also eliminates references to specific local programs for emergency management.[19]

Other mutual aid agreements

In addition to the existing IMAC, the existing Emergency Management Assistance Compact (EMAC, a national interstate compact),[20] and the ability of the governor to enter into mutual aid arrangements for reciprocal emergency management aid and assistance with other states,[21] the bill authorizes political subdivisions to enter into other mutual aid agreements, both within and outside the state.[22] Counties, townships, and municipal corporations are the only political subdivisions that may utilize these agreements.[23]

Intrastate agreements

The bill allows political subdivisions, in collaboration with public and private agencies within the state, to develop mutual aid agreements for reciprocal emergency management aid and assistance for a disaster that is too great to be dealt with unassisted. In the time of any disaster, each political subdivision may render assistance in accordance with the mutual aid agreements. The bill specifies that a mutual aid agreement does not in any manner relieve the chief executive of any political subdivision of the responsibility of providing for emergency management.[24]

Interstate agreements

The bill also allows political subdivisions, in collaboration with other public and private agencies in political subdivisions in adjacent states, to develop agreements for emergency management mutual aid and assistance in case of any disaster too great to be dealt with unassisted. The agreements may be used in situations that do not rise to the level of a local or state declaration of emergency and also in the initial stages of an event that may later result in a local or state declaration of emergency. A mutual aid agreement with political subdivisions in adjacent states must be approved by the chief elected officials of the agreeing political subdivision or their designees and must be

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[19] R.C. 5502.41(D)(1).

[20] R.C. 5502.40, not in the bill.

[21] R.C. 5502.291, not in the bill.

[22] R.C. 5502.29.

[23] R.C. 5502.21(M).

[24] R.C. 5502.29(B).

prepared in accordance with the laws, regulations, ordinances, and resolutions applicable to the agreeing political subdivisions.[25] Additionally, a private company or its employees may participate in the provision of mutual aid, if the participating political subdivision approves the participation and the contract between the political subdivision and the participating private company permits the participation.[26]

Emergency responder status

When engaged in training, stand-by, and emergency response in accordance with a mutual aid agreement, emergency responders from outside the state are permitted to provide services within this state in accordance with the bill and the terms of the mutual aid agreement.[27] "Emergency responders" includes a person who is required to possess a license, certificate, permit, or other official recognition for the person's expertise in a particular field or area of knowledge and whose assistance is desirable during an emergency. An emergency responder includes fire fighters, specialized hazardous materials, rescue, and extrication personnel, emergency medical services personnel, law enforcement officers, physicians, nurses, mental health, veterinary, or other public health practitioners, emergency management personnel, or public works personnel.[28]

The out-of-state qualifications of an emergency responder acting in this state are recognized as authorizing the emergency responder to render aid to meet the request for assistance, so long as the person is acting within the scope of the person's license, certificate, or other permit. Emergency responders from outside the state remain employees and agents of their respective employers and political subdivisions, and nothing in the bill or any mutual aid agreement entered into under the bill creates an employment relationship between the political subdivision requesting aid and the employees and agents of the political subdivision rendering aid.[29]

All pension, relief, disability, death benefits, workers' compensation, and other benefits enjoyed by emergency responders rendering interstate or intrastate mutual aid extend to the services they perform outside their respective jurisdictions to the same extent as while acting within the boundaries of the political subdivision, and they are

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[25] R.C. 5502.29(C).

[26] R.C. 5502.29(D).

[27] R.C. 5502.29(D).

[28] R.C. 5502.29(A).

[29] R.C. 5502.29(E) and (F).

entitled to workers' compensation rights and benefits to the same extent as while acting within the boundaries of the political subdivision.[30]

Immunity

The bill extends immunity from liability to emergency responders from another state providing mutual aid or while engaged in training and exercises pursuant to a written mutual aid agreement and to a political subdivision that is conducting emergency management activities and its officials, agents, and employees when rendering services outside the boundaries of the political subdivision.[31]

EMAC

For purposes of a response to a request under the national interstate compact, EMAC, the bill allows employees of political subdivisions within this state to offer their resources to the Executive Director of the OEMA. The OEMA may offer those resources to the requesting state, and, if accepted, the OEMA Executive Director may enter into an agreement with any political subdivision within the state to provide those resources to the requesting state. The OEMA must coordinate the resources and the response to the request, but the political subdivision employees must remain under the command and control of their regular employer during any deployment.[32]

HISTORY

ACTION	DATE
Introduced	10-31-11

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[30] R.C. 5502.29(I).

[31] R.C. 5502.29(G) and (H).

[32] R.C. 5502.29(J).