



COUNTY ADVISORY BULLETIN

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Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

BULLETIN 2012-03

March, 2012

NEW LEGISLATION ON SHARED SERVICES ENACTED AND AMENDED

APPLICABLE LEGISLATION: Am. Sub. HB 153; Am. Sub. HB 225

REVISED CODE SECTIONS: Enacted and Amended ORC Section 9.482

SPONSORS: Peterson and Landis

Reps. J. Adams, R. Adams, Amstutz, Anielski, Antonio, Baker, Balderson, Barnes, Batchelder, Beck, Blair, Blessing, Boose, Brenner, Bubp, Buchy, Carey, Carney, Damschroder, DeGeeter, Derickson, Dovilla, Duffey, Foley, Goodwin, Grossman, Hackett, Hall, Hayes, Henne, Hollington, Huffman, Letson, Maag, Mallory, McClain, McKenney, Milkovich, Newbold, O'Brien, Pillich, Ramos, Ruhl, Sears, Schuring, Slaby, Sprague, Stebelton, Stinziano, Szollosi, Thompson, Uecker, Weddington, Yuko

Sens. Coley, Daniels, Eklund, Hite, LaRose, Lehner, Niehaus, Seitz

EFFECTIVE DATE: March 22, 2012

INTRODUCTION

Hardly a day goes by in local government these days where there is not talk about shared services. And it is not only in Ohio. The Kasich Administration is in the forefront by encouraging political subdivisions to embrace shared services and to look for opportunities for cooperation and collaboration.

The establishment of the Ohio Local Government Innovation Fund is an example of how all local governments are being challenged to find better ways to deliver services through collaborative and shared service arrangements. Through this program, the Ohio Department of Development seeks to promote efficiency, collaboration, merger, and shared services among local governments. The LGIF website may be found at: <http://www.development.ohio.gov/Urban/LGIF.htm>. In addition, the Administration has conducted a local government shared services survey and is looking at the concept of Regional Shared Services Centers.

Likewise, State Auditor Dave Yost has actively promoted shared services and more efficient delivery of services. His office has two web sites that contain valuable information. The first is the “skinnyOhio.org” website (<http://www.auditor.state.oh.us/sharedservices/default.htm>) that serves as a resource for local governments committed to delivering smarter, streamlined government services.

In addition, the Shared Services Idea Center (<http://www.auditor.state.oh.us/sharedservices/default.htm>) is the Auditor of State’s searchable database displaying many of the most effective public partnerships in Ohio.

BACKGROUND

During last year’s state budget process, the Administration proposed the enactment of ORC Section 9.482 to ensure that all local governments had the authority to enter into contracts for the joint provision of services. See Exhibit 1 for a copy of the law as enacted by H.B. 153, the state budget bill.

From the perspective of CCAO, most of the authority granted under this new section of law already existed in ORC Section 307.15. See Exhibit 2 for a copy of this section of the Ohio Revised Code. One of the primary differences between these two sections of Ohio law is that under ORC Section 9.482 the county was authorized to enter into contracts with a broader range of governments than was authorized under ORC Section 307.15.

CHANGES ENACTED IN H.B. 225

H.B. 225 amended the shared services contracting authority enacted by H.B. 153, the state biennial budget bill for FY 2012-2013. H.B. 153 provided broad intergovernmental agreement authority in ORC Section 9.482, which would enable a legislative authority to contract with another jurisdiction for services. Such language was similar to prior (and still existing) intergovernmental agreement authority for counties in ORC Sections 307.14 - 307.19.

Specifically, this section of law provides that the board of county commissioners may “enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render.”

After its enactment, various county elected officials expressed concern that ORC Section 9.482 might authorize a board of county commissioners to impose responsibilities or remove existing statutory responsibilities from a county elected official without their consent. The amendment in H.B. 225 would prohibit this from occurring without the county elected officer’s written consent.

The new language in H.B. 225 provides that “no county elected officer may be required to exercise any power, perform any function, or render any service under an agreement entered into under this section without the written consent of the county elected officer. No county may enter into an agreement under this section for the exercise, performance, or rendering of any statutory powers, functions, or services of any county elected officer without written consent of the county elected officer.” See Exhibit 3 for a copy of ORC Section 9.482 as amended.

It should be noted that the change in H.B. 225 did not amend any of the provisions of ORC Sections 307.14 - 307.19. Therefore, any of the powers under these sections remain unchanged.

EXHIBIT 1

OHIO REVISED CODE SECTION 9.482

AS ENACTED BY AM. SUB. H.B. 153 OF THE 129TH GENERAL ASSEMBLY

EFFECTIVE SEPTBMBER 29, 2011

Sec. 9.482. (A) As used in this section, "political subdivision" has the meaning defined in section 2744.01 of the Revised Code.

(B) When authorized by their respective legislative authorities, a political subdivision may enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render.

In the absence in the agreement of provisions determining by what officer, office, department, agency, or other authority the powers and duties of a contracting political subdivision shall be exercised or performed, the legislative authority of the contracting political subdivision shall determine and assign the powers and duties.

An agreement shall not suspend the possession by a contracting recipient political subdivision of any power or function that is exercised or performed on its behalf by another contracting political subdivision under the agreement.

A political subdivision shall not enter into an agreement to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment function, or render any investment service on behalf of a contracting subdivision. Nothing in this paragraph prohibits a political subdivision from entering into an agreement to collect, administer, or enforce any tax on behalf of another political subdivision or to limit the authority of political subdivisions to create and operate joint economic development zones or joint economic development districts as provided in sections 715.69 to 715.83 of the Revised Code.

(C) No power shall be exercised, no function shall be performed, and no service shall be rendered by a contracting political subdivision pursuant to an agreement entered into under this section within a political subdivision that is not a party to the agreement, without first obtaining the written consent of the political subdivision that is not a party to the agreement and within which the power is to be exercised, a function is to be performed, or a service is to be rendered.

(D) Chapter 2744. of the Revised Code, insofar as it applies to the operation of a political subdivision, applies to the political subdivisions that are parties to an agreement and to their employees when they are rendering a service outside the boundaries of their employing political subdivision under the agreement. Employees acting outside the boundaries of their employing political subdivision while providing a service under an agreement may participate in any pension or indemnity fund established by the political subdivision to the same extent as while they are acting within the boundaries of the political subdivision, and are entitled to all the rights and benefits of Chapter 4123. of the Revised Code to the same extent as while they are performing a service within the boundaries of the political subdivision.

EXHIBIT 2

OHIO REVISED CODE SECTION 307.15

(A)(1) Subject to division (C) of this section, the board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board of county commissioners, whereby the board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render; or whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board of county commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform, or render. The board of county commissioners may enter into an agreement with the board of township trustees of any township within the county, whereby the board of county commissioners or any county official designated by the board, purchases at the request of the township any materials for the construction, maintenance, or repair of any township road or for the maintenance or repair of any township building, and sells the materials to the township at the cost to the county, which cost shall include the purchase price and any expenses incurred in such purchase, providing the amount involved does not exceed one thousand dollars.

(2) Upon the execution of an agreement described in division (A)(1) of this section, and within the limitations prescribed by the agreement, the board of county commissioners may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly; and the legislative authority of any municipal corporation may exercise the same powers as the county possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the county directly. In the absence in the agreement of provisions determining by what officer, office, department, agency, or authority, the powers and duties of the board shall be exercised or performed, the board shall determine and assign such powers and duties. In the absence in the agreement of provisions determining by what officer, office, department, agency, or authority, the powers and duties of the legislative authority of the municipal corporation shall be exercised or performed, such legislative authority shall determine and assign such powers and duties. Sections 307.14 to 307.19 of the Revised Code, or any agreement authorized by those sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board, or the possession by a county of any power or function exercised or performed by the contracting municipal corporation, in pursuance of the agreement. Nor shall the board, by virtue of any agreement entered into under this section, acquire any power to levy taxes within, and on behalf of, a contracting subdivision unless approved by a majority of the electors of the contracting subdivision.

(B) Subject to division (C) of this section, the boards of county commissioners of any two or more counties may contract with each other or by contract create any joint agency to exercise any power, perform any function, or render any service which any board of county commissioners may exercise, perform, or render.

(C) No board of county commissioners shall enter into any agreement pursuant to division (A) of this section or form a joint agency pursuant to division (B) of this section to exercise, with regard to public moneys, any investment powers, perform any investment function, or render any investment service on behalf of a contracting subdivision or its legislative authority, or, with respect to a joint agency, another board of county commissioners.

EXHIBIT 3

OHIO REVISED CODE SECTION 9.482

AS AMENDED BY AM. SUB. H. B. 225 OF THE 129TH GENERAL ASSEMBLY

EFFECTIVE MARCH 22, 2012

Sec. 9.482. (A) As used in this section, "political subdivision" has the meaning defined in section 2744.01 of the Revised Code.

(B) When authorized by their respective legislative authorities, a political subdivision may enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render.

In the absence in the agreement of provisions determining by what officer, office, department, agency, or other authority the powers and duties of a contracting political subdivision shall be exercised or performed, the legislative authority of the contracting political subdivision shall determine and assign the powers and duties.

An agreement shall not suspend the possession by a contracting recipient political subdivision of any power or function that is exercised or performed on its behalf by another contracting political subdivision under the agreement.

A political subdivision shall not enter into an agreement to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment function, or render any investment service on behalf of a contracting subdivision. Nothing in this paragraph prohibits a political subdivision from entering into an agreement to collect, administer, or enforce any tax on behalf of another political subdivision or to limit the authority of political subdivisions to create and operate joint economic development zones or joint economic development districts as provided in sections 715.69 to 715.83 of the Revised Code.

(C) No county elected officer may be required to exercise any power, perform any function, or render any service under an agreement entered into under this section without the written consent of the county elected officer. No county may enter into an agreement under this section for the exercise, performance, or rendering of any statutory powers, functions, or services of any county elected officer without the written consent of the county elected officer.

(D) No power shall be exercised, no function shall be performed, and no service shall be rendered by a contracting political subdivision pursuant to an agreement entered into under this section within a political subdivision that is not a party to the agreement, without first obtaining the written consent of the political subdivision that is not a party to the agreement and within which the power is to be exercised, a function is to be performed, or a service is to be rendered.

~~(D)~~(E) Chapter 2744. of the Revised Code, insofar as it applies to the operation of a political subdivision, applies to the political subdivisions that are parties to an agreement and to their employees when they are rendering a service outside the boundaries of their employing political subdivision under the agreement. Employees acting outside the boundaries of their employing political subdivision while providing a service under an agreement may participate in any pension or indemnity fund established by the political subdivision to the same extent as while they are acting within the boundaries of the political subdivision, and are entitled to all the rights and benefits of Chapter 4123. of the Revised Code to the same extent as while they are performing a service within the boundaries of the political subdivision.