

As Passed by the Senate

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Sub. S. B. No. 239

Senator Dolan

**Cosponsors: Senators Lehner, Beagle, Coley, Brown, Hackett, Hoagland,
Huffman, O'Brien, Peterson, Schiavoni, Sykes, Wilson**

A BILL

To amend sections 102.01, 167.02, 167.04, 167.07, 1
940.07, and 2744.07 of the Revised Code to 2
modify the law concerning regional councils of 3
governments. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 102.01, 167.02, 167.04, 167.07, 5
940.07, and 2744.07 of the Revised Code be amended to read as 6
follows: 7

Sec. 102.01. As used in this chapter: 8

(A) "Compensation" means money, thing of value, or 9
financial benefit. "Compensation" does not include reimbursement 10
for actual and necessary expenses incurred in the performance of 11
official duties. 12

(B) "Public official or employee" means any person who is 13
elected or appointed to an office or is an employee of any 14
public agency. "Public official or employee" does not include a 15
person elected or appointed to the office of precinct, ward, or 16
district committee member under section 3517.03 of the Revised 17

Code, any presidential elector, or any delegate to a national 18
convention. "Public official or employee" does not include a 19
person who is a teacher, instructor, professor, or other kind of 20
educator whose position does not involve the performance of, or 21
authority to perform, administrative or supervisory functions. 22

(C) (1) "Public agency" means the general assembly, all 23
courts, any department, division, institution, board, 24
commission, authority, bureau or other instrumentality of the 25
state, a county, city, village, or township, the five state 26
retirement systems, or any other governmental entity. ~~"Public-~~ 27

(2) Notwithstanding any contrary provision of division (C) 28
(3) (a) of this section, "public agency" includes a regional 29
council of governments established under Chapter 167. of the 30
Revised Code. 31

(3) "Public agency" does not include a-either of the 32
following: 33

(a) A department, division, institution, board, 34
commission, authority, or other instrumentality of the state or 35
a county, municipal corporation, township, or other governmental 36
entity that functions exclusively for cultural, educational, 37
historical, humanitarian, advisory, or research purposes; that 38
does not expend more than ten thousand dollars per calendar 39
year, excluding salaries and wages of employees; and whose 40
members are uncompensated. ~~"Public agency" does not include the-~~ 41
; 42

(b) The nonprofit corporation formed under section 187.01 43
of the Revised Code. 44

(D) "Immediate family" means a spouse residing in the 45
person's household and any dependent child. 46

(E) "Income" includes gross income as defined and used in 47
the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 48
1, as amended, interest and dividends on obligations or 49
securities of any state or of any political subdivision or 50
authority of any state or political subdivision, and interest or 51
dividends on obligations of any authority, commission, or 52
instrumentality of the United States. 53

(F) Except as otherwise provided in division (A) of 54
section 102.08 of the Revised Code, "appropriate ethics 55
commission" means: 56

(1) For matters relating to members of the general 57
assembly, employees of the general assembly, employees of the 58
legislative service commission, and candidates for the office of 59
member of the general assembly, the joint legislative ethics 60
committee; 61

(2) For matters relating to judicial officers and 62
employees, and candidates for judicial office, the board of 63
commissioners on grievances and discipline of the supreme court; 64

(3) For matters relating to all other persons, the Ohio 65
ethics commission. 66

(G) "Anything of value" has the same meaning as provided 67
in section 1.03 of the Revised Code and includes, but is not 68
limited to, a contribution as defined in section 3517.01 of the 69
Revised Code. 70

(H) "Honorarium" means any payment made in consideration 71
for any speech given, article published, or attendance at any 72
public or private conference, convention, meeting, social event, 73
meal, or similar gathering. "Honorarium" does not include 74
ceremonial gifts or awards that have insignificant monetary 75

value; unsolicited gifts of nominal value or trivial items of 76
informational value; or earned income from any person, other 77
than a legislative agent, for personal services that are 78
customarily provided in connection with the practice of a bona 79
fide business, if that business initially began before the 80
public official or employee conducting that business was elected 81
or appointed to the public official's or employee's office or 82
position of employment. 83

(I) "Employer" means any person who, directly or 84
indirectly, engages an executive agency lobbyist or legislative 85
agent. 86

(J) "Executive agency decision," "executive agency 87
lobbyist," and "executive agency lobbying activity" have the 88
same meanings as in section 121.60 of the Revised Code. 89

(K) "Legislation," "legislative agent," "financial 90
transaction," and "actively advocate" have the same meanings as 91
in section 101.70 of the Revised Code. 92

(L) "Expenditure" has the same meaning as in section 93
101.70 of the Revised Code when used in relation to activities 94
of a legislative agent, and the same meaning as in section 95
121.60 of the Revised Code when used in relation to activities 96
of an executive agency lobbyist. 97

Sec. 167.02. (A) Membership in the regional council shall 98
be the counties, municipal corporations, townships, special 99
districts, school districts, and other political subdivisions 100
entering into the agreement establishing the council or admitted 101
to membership subsequently pursuant to the agreement 102
establishing the council or the bylaws of the council. 103
Representation on the council may be in the manner as provided 104

in the agreement establishing the council. 105

(B) If the agreement establishing the council does not set 106
forth the manner for determining representation on the council 107
such representation shall consist of one representative from 108
each county, municipal corporation, township, special district, 109
school district, or other political subdivision entering into 110
the agreement, or subsequently admitted to membership in the 111
council. The representative from each member county, municipal 112
corporation, township, special district, school district, or 113
other political subdivision shall be elected chief executive 114
thereof, or, if such county, municipal corporation, township, 115
special district, school district, or other political 116
subdivision does not have an elected chief executive, a member 117
of its governing body chosen by such body to be its 118
representative. 119

(C) Records containing the names of the political 120
subdivisions that are members of a regional council of 121
governments or the names of the representatives from those 122
political subdivisions who serve on the council are public 123
records within the meaning of section 149.43 of the Revised 124
Code, and those names are not considered to be trade secrets 125
under section 1333.61 of the Revised Code. 126

(D) The director of development services shall assist the 127
council in securing the cooperation of all appropriate agencies 128
of the state or of the United States to aid in promoting the 129
orderly growth and development of the area, solving the problems 130
of local government, and discharging the responsibilities and 131
duties of local government in the most efficient possible 132
manner. 133

~~(D)~~ (E) Any county, municipal corporation, township, 134

special district, school district, or other political 135
subdivision which has become a member of the council may 136
withdraw by formal action of its governing board and upon sixty 137
days notice to council after such action, or in the manner 138
provided in the agreement establishing the council, provided no 139
such procedure relative to withdrawals in the agreement 140
establishing the council shall require the political subdivision 141
desiring to withdraw to retain its membership in the council for 142
a period in excess of two years. 143

Sec. 167.04. (A) The regional council of governments shall 144
adopt by-laws, by a majority vote of its members, designating 145
the officers of the council and the method of their selection, 146
creating a governing board that may act for the council as 147
provided in the by-laws, and providing for the conduct of its 148
business. 149

(B) The by-laws of the regional council of governments 150
shall provide for the appointment of a fiscal officer, who may 151
hold any other office or employment with the council, and who 152
shall receive, deposit, invest, and disburse the funds of the 153
council in the manner authorized by the by-laws or action by the 154
council. 155

(C) The by-laws of a regional council of governments the 156
members of which include, under sections 167.01 and 167.02 of 157
the Revised Code, at least eight counties may include a 158
provision authorizing member attendance and voting at council 159
meetings either in person or by proxy. 160

(D) ~~(1) Within ten business days after forming a regional~~ 161
~~council of governments, the~~ The officers of the council shall 162
notify the auditor of state of the regional council's formation, 163
provide a copy of the council's by-laws, and ~~shall~~ provide on a 164

form prescribed by the auditor of state ~~the any other~~ 165
information regarding the regional council that the auditor of 166
state considers necessary. 167

~~(2) As used in this division, "business day" means a day~~ 168
~~of the week, excluding Saturday, Sunday, or a legal holiday as~~ 169
~~defined in section 1.14 of the Revised Code.~~ 170

The council shall take no official action, other than 171
formation, before notifying the auditor of state of its 172
formation in accordance with this section. Any official action 173
the council takes before making that notification, including 174
entering into any contract, is void. 175

Sec. 167.07. Membership ~~(A) (1) Except as otherwise~~ 176
provided in division (A) (2) of this section, membership on the a 177
regional council of governments and holding an office of the 178
council does not constitute the holding of a public office or 179
employment within the meaning of any section of the Revised 180
Code. ~~Membership~~ 181

(2) A regional council of governments is considered a 182
public agency for purposes of Chapter 102. and is considered a 183
political subdivision for purposes of Chapter 2921. of the 184
Revised Code. 185

(B) Membership on the council and holding an office of the 186
council shall not constitute an interest, either direct or 187
indirect, in a contract or expenditure of money by any municipal 188
corporation, township, special district, school district, 189
county, or other political subdivision other than the council 190
itself. ~~No~~ 191

(C) No member or officer of the council shall be 192
disqualified from holding any public office or employment, nor 193

shall such member or officer forfeit any such office or 194
employment, by reason of ~~his position~~ serving as an officer or 195
member of the council, notwithstanding any law to the contrary. 196

Sec. 940.07. (A) As used in this section: 197

(1) "Judgment" includes a consent judgment. 198

(2) "Tort action" means a civil action for damages for 199
injury, death, or loss to person or property, other than a civil 200
action for damages for a breach of contract or another agreement 201
between persons. 202

(B) Except as provided in divisions (C) and (D) of this 203
section, the provisions of Chapter 2744. of the Revised Code 204
apply to soil and water conservation districts as political 205
subdivisions of the state and to their supervisors and other 206
officers, employees, and agents as employees of political 207
subdivisions of the state. 208

(C) (1) The attorney general, an assistant attorney 209
general, or special counsel appointed by the attorney general 210
shall defend a soil and water conservation district in any tort 211
action that is commenced against the district as a political 212
subdivision of the state under or pursuant to Chapter 2744. of 213
the Revised Code, if a written request for the legal 214
representation is submitted to the attorney general by the Ohio 215
soil and water conservation commission. If a request is so 216
submitted, the prosecuting attorney of the county associated 217
with the district does not have legal representation duties in 218
connection with the tort action under section 940.13 of the 219
Revised Code. 220

(2) The attorney general, an assistant attorney general, 221
or special counsel appointed by the attorney general shall 222

defend a supervisor or other officer, employee, or agent of a 223
soil and water conservation district in any tort action that is 224
commenced against that person and based upon an action or 225
omission allegedly associated with that person's employment or 226
official responsibilities for the district, if both of the 227
following apply: 228

(a) At the time of the action or omission, the person was 229
not acting manifestly outside the scope of the person's 230
employment or official responsibilities for the district or 231
acting with malicious purpose, in bad faith, or in a wanton or 232
reckless manner; 233

(b) A written request for the legal representation is 234
submitted to the attorney general by the Ohio soil and water 235
conservation commission. 236

(3) If a request for legal representation is submitted to 237
the attorney general pursuant to division (C) (2) of this 238
section, divisions (A) ~~(1)~~ and ~~(C)~~ (D) of section 2744.07 of the 239
Revised Code do not apply to the soil and water conservation 240
district and the defense of its supervisor or other officer, 241
employee, or agent. 242

(D) (1) The state shall indemnify and hold harmless a soil 243
and water conservation district as follows: 244

(a) In the amount of any judgment that is rendered against 245
the district in a tort action that is commenced under or 246
pursuant to Chapter 2744. of the Revised Code; 247

(b) In the amount of any settlement of a tort action 248
against the district as described in division (D) (1) (a) of this 249
section, or of a claim for damages for injury, death, or loss to 250
person or property that could become a basis of a tort action 251

against the district as described in division (D) (1) (a) of this 252
section. 253

(2) The state shall indemnify and hold harmless a 254
supervisor or other officer, employee, or agent of a soil and 255
water conservation district as follows: 256

(a) Subject to the limitations specified in division (D) 257
(3) of this section, in the amount of any judgment that is 258
rendered against that person in a tort action based upon an 259
action or omission allegedly associated with the person's 260
employment or official responsibilities for the district; 261

(b) Subject to the limitations specified in division (D) 262
(3) of this section, in the amount of any settlement of a tort 263
action as described in division (D) (2) (a) of this section or of 264
any settlement of a claim for damages for injury, death, or loss 265
to person or property that could become a basis of a tort action 266
as described in division (D) (2) (a) of this section. 267

(3) (a) The maximum aggregate amount of indemnification 268
paid directly from state funds to or on behalf of any supervisor 269
or other officer, employee, or agent of a soil and water 270
conservation district pursuant to divisions (D) (2) (a) and (b) of 271
this section shall be one million dollars per occurrence, 272
regardless of the number of persons who suffer injury, death, or 273
loss to person or property as a result of the action or omission 274
of that person. 275

(b) An indemnification may be made pursuant to division 276
(D) (2) (a) or (b) of this section only if, at the time of the 277
action or omission, the supervisor or other officer, employee, 278
or agent of a soil and water conservation district was not 279
acting manifestly outside the scope of the supervisor's or other 280

officer's, employee's, or agent's employment or official 281
responsibilities for the district or acting with malicious 282
purpose, in bad faith, or in a wanton or reckless manner. 283

(c) An indemnification shall not be made pursuant to 284
division (D) (2) (a) or (b) of this section for any portion of a 285
consent judgment or settlement that is unreasonable or for any 286
portion of a judgment that represents punitive or exemplary 287
damages. 288

(4) Division ~~(A) (2)~~ (B) of section 2744.07 of the Revised 289
Code does not apply to a soil and water conservation district, 290
or to any of its supervisors or other officers, employees, or 291
agents, to the extent that division (D) of this section requires 292
the state to indemnify and hold harmless a supervisor or other 293
officer, employee, or agent of that district. 294

Sec. 2744.07. (A) (1) Except as otherwise provided in ~~this~~ 295
division (A) (2) of this section, a political subdivision shall 296
provide for the defense of an employee, in any state or federal 297
court, in any civil action or proceeding which contains an 298
allegation for damages for injury, death, or loss to person or 299
property caused by an act or omission of the employee in 300
connection with a governmental or proprietary function. ~~The~~ 301
~~political subdivision has the duty to defend the employee if the~~ 302
~~act or omission occurred while the employee was acting both in~~ 303
~~good faith and not manifestly outside the scope of employment or~~ 304
~~official responsibilities.~~ Amounts expended by a political 305
subdivision in the defense of its employees shall be from funds 306
appropriated for this purpose or from proceeds of insurance. ~~The~~ 307
~~duty to provide for the defense of an employee specified in this~~ 308
~~division does not apply in a civil action or proceeding that is~~ 309
~~commenced by or on behalf of a political subdivision.~~ 310

(2) A political subdivision does not have the duty to 311
provide for the defense of an employee under division (A) (1) of 312
this section if any of the following apply: 313

(a) The act or omission occurred while the employee was 314
not acting in good faith. 315

(b) The act or omission occurred while the employee was 316
acting manifestly outside the scope of the employee's employment 317
or official responsibilities. 318

(c) The civil action or proceeding is commenced by or on 319
behalf of a political subdivision. 320

(d) The employee is an employee of a regional council of 321
governments established under Chapter 167. of the Revised Code 322
and both of the following apply: 323

(i) The employee is not also an employee of a political 324
subdivision that is a member of the council. 325

(ii) The act or omission, if proven, would constitute a 326
violation of Chapter 102. or Chapter 2921. of the Revised Code. 327

(B) (1) Except as otherwise provided in ~~this division~~ (B) 328
(2) of this section, a political subdivision shall indemnify and 329
hold harmless an employee in the amount of any judgment, other 330
than a judgment for punitive or exemplary damages, that is 331
obtained against the employee in a state or federal court or as 332
a result of a law of a foreign jurisdiction and that is for 333
damages for injury, death, or loss to person or property caused 334
by an act or omission in connection with a governmental or 335
proprietary function, ~~if at the time of the act or omission the~~ 336
~~employee was acting in good faith and within the scope of~~ 337
~~employment or official responsibilities.~~ 338

(2) A political subdivision is not required to indemnify 339
and hold harmless an employee under division (B) (1) of this 340
section if any of the following apply: 341

(a) At the time of the act or omission, the employee was 342
not acting in good faith. 343

(b) At the time of the act or omission, the employee was 344
not acting within the scope of the employee's employment or 345
official responsibilities. 346

(c) The employee is an employee of a regional council of 347
governments established under Chapter 167. of the Revised Code 348
and both of the following apply: 349

(i) The employee is not also an employee of a political 350
subdivision that is a member of the council. 351

(ii) The act or omission constitutes a violation of 352
Chapter 102. or Chapter 2921. of the Revised Code. 353

~~(B)~~ (C) (1) A political subdivision may enter into a consent 354
judgment or settlement and may secure releases from liability 355
for itself or an employee, with respect to any claim for injury, 356
death, or loss to person or property caused by an act or 357
omission in connection with a governmental or proprietary 358
function. 359

(2) No action or appeal of any kind shall be brought by 360
any person, including any employee or a taxpayer, with respect 361
to the decision of a political subdivision pursuant to division 362
~~(B)~~ (C) (1) of this section whether to enter into a consent 363
judgment or settlement or to secure releases, or concerning the 364
amount and circumstances of a consent judgment or settlement. 365
Amounts expended for any settlement shall be from funds 366
appropriated for this purpose. 367

~~(C)~~ (D) If a political subdivision refuses to provide an
employee with a defense in a civil action or proceeding as
described in division (A) ~~(1)~~ of this section, upon the motion of
the political subdivision, the court shall conduct a hearing
regarding the political subdivision's duty to defend the
employee in that civil action. The political subdivision shall
file the motion within thirty days of the close of discovery in
the action. After the motion is filed, the employee shall have
not less than thirty days to respond to the motion.

At the request of the political subdivision or the
employee, the court shall order the motion to be heard at an
oral hearing. At the hearing on the motion, the court shall
consider all evidence and arguments submitted by the parties. ~~In~~
~~determining whether a political subdivision has a duty to defend~~
~~the employee in the action, the~~ The court shall determine
whether the ~~employee was acting both in good faith and not~~
~~manifestly outside the scope of employment or official~~
~~responsibilities~~ political subdivision has the duty to defend
the employee under division (A) of this section. The pleadings
shall not be determinative of whether the employee acted in good
faith or was manifestly outside the scope of employment or
official responsibilities.

If the court determines that the ~~employee was acting both~~
~~in good faith and not manifestly outside the scope of employment~~
~~or official responsibilities~~ political subdivision has the duty
to defend the employee under division (A) of this section, the
court shall order the political subdivision to defend the
employee in the action.

Section 2. That existing sections 102.01, 167.02, 167.04,
167.07, 940.07, and 2744.07 of the Revised Code are hereby

repealed.

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