

**As Passed by the Senate**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. S. B. No. 239**

**Senator Dolan**

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

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**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  
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(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~~ servng 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 section. 252  
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(2) The state shall indemnify and hold harmless a supervisor or other officer, employee, or agent of a soil and water conservation district as follows: 254  
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(a) Subject to the limitations specified in division (D) (3) of this section, in the amount of any judgment that is rendered against that person in a tort action based upon an action or omission allegedly associated with the person's employment or official responsibilities for the district; 257  
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(b) Subject to the limitations specified in division (D) (3) of this section, in the amount of any settlement of a tort action as described in division (D) (2) (a) of this section or of any settlement of a claim for damages for injury, death, or loss to person or property that could become a basis of a tort action as described in division (D) (2) (a) of this section. 262  
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(3) (a) The maximum aggregate amount of indemnification paid directly from state funds to or on behalf of any supervisor or other officer, employee, or agent of a soil and water conservation district pursuant to divisions (D) (2) (a) and (b) of this section shall be one million dollars per occurrence, regardless of the number of persons who suffer injury, death, or loss to person or property as a result of the action or omission of that person. 268  
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(b) An indemnification may be made pursuant to division (D) (2) (a) or (b) of this section only if, at the time of the action or omission, the supervisor or other officer, employee, or agent of a soil and water conservation district was not acting manifestly outside the scope of the supervisor's or other 276  
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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 368  
employee with a defense in a civil action or proceeding as 369  
described in division (A) ~~(1)~~ of this section, upon the motion of 370  
the political subdivision, the court shall conduct a hearing 371  
regarding the political subdivision's duty to defend the 372  
employee in that civil action. The political subdivision shall 373  
file the motion within thirty days of the close of discovery in 374  
the action. After the motion is filed, the employee shall have 375  
not less than thirty days to respond to the motion. 376

At the request of the political subdivision or the 377  
employee, the court shall order the motion to be heard at an 378  
oral hearing. At the hearing on the motion, the court shall 379  
consider all evidence and arguments submitted by the parties. ~~In~~ 380  
~~determining whether a political subdivision has a duty to defend~~ 381  
~~the employee in the action, the~~ The court shall determine 382  
whether the ~~employee was acting both in good faith and not~~ 383  
~~manifestly outside the scope of employment or official~~ 384  
~~responsibilities~~ political subdivision has the duty to defend 385  
the employee under division (A) of this section. The pleadings 386  
shall not be determinative of whether the employee acted in good 387  
faith or was manifestly outside the scope of employment or 388  
official responsibilities. 389

If the court determines that the ~~employee was acting both~~ 390  
~~in good faith and not manifestly outside the scope of employment~~ 391  
~~or official responsibilities~~ political subdivision has the duty 392  
to defend the employee under division (A) of this section, the 393  
court shall order the political subdivision to defend the 394  
employee in the action. 395

**Section 2.** That existing sections 102.01, 167.02, 167.04, 396  
167.07, 940.07, and 2744.07 of the Revised Code are hereby 397

repealed.

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