

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 239

Senator Dolan

Cosponsors: Senators Lehner, Beagle

A BILL

To amend sections 102.01, 167.02, 167.04, 167.07, 1
and 2744.01 of the Revised Code to modify the 2
law concerning regional councils of governments. 3

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

Section 1. That sections 102.01, 167.02, 167.04, 167.07, 4
and 2744.01 of the Revised Code be amended to read as follows: 5

Sec. 102.01. As used in this chapter: 6

(A) "Compensation" means money, thing of value, or 7
financial benefit. "Compensation" does not include reimbursement 8
for actual and necessary expenses incurred in the performance of 9
official duties. 10

(B) "Public official or employee" means any person who is 11
elected or appointed to an office or is an employee of any 12
public agency. "Public official or employee" does not include a 13
person elected or appointed to the office of precinct, ward, or 14
district committee member under section 3517.03 of the Revised 15
Code, any presidential elector, or any delegate to a national 16
convention. "Public official or employee" does not include a 17
person who is a teacher, instructor, professor, or other kind of 18

educator whose position does not involve the performance of, or 19
authority to perform, administrative or supervisory functions. 20

(C) (1) "Public agency" means the general assembly, all 21
courts, any department, division, institution, board, 22
commission, authority, bureau or other instrumentality of the 23
state, a county, city, village, or township, the five state 24
retirement systems, or any other governmental entity. ~~"Public-~~ 25

(2) Notwithstanding any contrary provision of division (C) 26
(3)(a) of this section, "public agency" includes a regional 27
council of governments established under Chapter 167. of the 28
Revised Code. 29

(3) "Public agency" does not include a-either of the 30
following: 31

(a) A department, division, institution, board, 32
commission, authority, or other instrumentality of the state or 33
a county, municipal corporation, township, or other governmental 34
entity that functions exclusively for cultural, educational, 35
historical, humanitarian, advisory, or research purposes; that 36
does not expend more than ten thousand dollars per calendar 37
year, excluding salaries and wages of employees; and whose 38
members are uncompensated. ~~"Public agency" does not include the-~~ 39
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(b) The nonprofit corporation formed under section 187.01 41
of the Revised Code. 42

(D) "Immediate family" means a spouse residing in the 43
person's household and any dependent child. 44

(E) "Income" includes gross income as defined and used in 45
the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 46
1, as amended, interest and dividends on obligations or 47

securities of any state or of any political subdivision or 48
authority of any state or political subdivision, and interest or 49
dividends on obligations of any authority, commission, or 50
instrumentality of the United States. 51

(F) Except as otherwise provided in division (A) of 52
section 102.08 of the Revised Code, "appropriate ethics 53
commission" means: 54

(1) For matters relating to members of the general 55
assembly, employees of the general assembly, employees of the 56
legislative service commission, and candidates for the office of 57
member of the general assembly, the joint legislative ethics 58
committee; 59

(2) For matters relating to judicial officers and 60
employees, and candidates for judicial office, the board of 61
commissioners on grievances and discipline of the supreme court; 62

(3) For matters relating to all other persons, the Ohio 63
ethics commission. 64

(G) "Anything of value" has the same meaning as provided 65
in section 1.03 of the Revised Code and includes, but is not 66
limited to, a contribution as defined in section 3517.01 of the 67
Revised Code. 68

(H) "Honorarium" means any payment made in consideration 69
for any speech given, article published, or attendance at any 70
public or private conference, convention, meeting, social event, 71
meal, or similar gathering. "Honorarium" does not include 72
ceremonial gifts or awards that have insignificant monetary 73
value; unsolicited gifts of nominal value or trivial items of 74
informational value; or earned income from any person, other 75
than a legislative agent, for personal services that are 76

customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to the public official's or employee's office or position of employment.

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

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

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

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

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

(B) If the agreement establishing the council does not set forth the manner for determining representation on the council

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

(C) The names of the political subdivisions that are 118
members of a regional council of governments and the names of 119
the representatives from those political subdivisions who serve 120
on the council are public records within the meaning of section 121
149.43 of the Revised Code and are not considered to be trade 122
secrets under section 1333.61 of the Revised Code. 123

(D) The director of development services shall assist the 124
council in securing the cooperation of all appropriate agencies 125
of the state or of the United States to aid in promoting the 126
orderly growth and development of the area, solving the problems 127
of local government, and discharging the responsibilities and 128
duties of local government in the most efficient possible 129
manner. 130

~~(D)~~ (E) Any county, municipal corporation, township, 131
special district, school district, or other political 132
subdivision which has become a member of the council may 133
withdraw by formal action of its governing board and upon sixty 134
days notice to council after such action, or in the manner 135

provided in the agreement establishing the council, provided no 136
such procedure relative to withdrawals in the agreement 137
establishing the council shall require the political subdivision 138
desiring to withdraw to retain its membership in the council for 139
a period in excess of two years. 140

Sec. 167.04. (A) The regional council of governments shall 141
adopt by-laws, by a majority vote of its members, designating 142
the officers of the council and the method of their selection, 143
creating a governing board that may act for the council as 144
provided in the by-laws, and providing for the conduct of its 145
business. 146

(B) The by-laws of the regional council of governments 147
shall provide for the appointment of a fiscal officer, who may 148
hold any other office or employment with the council, and who 149
shall receive, deposit, invest, and disburse the funds of the 150
council in the manner authorized by the by-laws or action by the 151
council. 152

(C) The by-laws of a regional council of governments the 153
members of which include, under sections 167.01 and 167.02 of 154
the Revised Code, at least eight counties may include a 155
provision authorizing member attendance and voting at council 156
meetings either in person or by proxy. 157

(D) ~~(1) Within ten business days after forming a regional-~~ 158
~~council of governments, the~~ The officers of the council shall 159
notify the auditor of state of the regional council's formation, 160
provide a copy of the council's by-laws, and ~~shall~~ provide on a 161
form prescribed by the auditor of state ~~the any other~~ 162
information regarding the regional council that the auditor of 163
state considers necessary. 164

~~(2) As used in this division, "business day" means a day of the week, excluding Saturday, Sunday, or a legal holiday as defined in section 1.14 of the Revised Code. The council shall take no official action, other than formation, before notifying the auditor of state of its formation in accordance with this section. Any official action the council takes before making that notification, including entering into any contract, is void.~~ 165
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Sec. 167.07. Membership ~~(A) (1) Except as otherwise provided in division (A) (2) of this section, membership on the a regional council of governments and holding an office of the council does not constitute the holding of a public office or employment within the meaning of any section of the Revised Code. Membership~~ 173
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(2) A regional council of governments is considered a public agency for purposes of Chapter 102. and is considered a political subdivision for purposes of Chapter 2921. of the Revised Code. 179
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(B) Membership on the council and holding an office of the council shall not constitute an interest, either direct or indirect, in a contract or expenditure of money by any municipal corporation, township, special district, school district, county, or other political subdivision other than the council itself. No 183
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(C) No member or officer of the council shall be disqualified from holding any public office or employment, nor shall such member or officer forfeit any such office or employment, by reason of his position serving as an officer or member of the council, notwithstanding any law to the contrary. 189
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| Sec. 2744.01. As used in this chapter: | 194 |
| (A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer. | 195 196 197 198 199 |
| (B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision. | 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 |
| (C) (1) "Governmental function" means a function of a political subdivision that is specified in division (C) (2) of this section or that satisfies any of the following: | 217 218 219 |
| (a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement; | 220 221 222 |

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| (b) A function that is for the common good of all citizens | 223 |
| of the state; | 224 |
| (c) A function that promotes or preserves the public | 225 |
| peace, health, safety, or welfare; that involves activities that | 226 |
| are not engaged in or not customarily engaged in by | 227 |
| nongovernmental persons; and that is not specified in division | 228 |
| (G) (2) of this section as a proprietary function. | 229 |
| (2) A "governmental function" includes, but is not limited | 230 |
| to, the following: | 231 |
| (a) The provision or nonprovision of police, fire, | 232 |
| emergency medical, ambulance, and rescue services or protection; | 233 |
| (b) The power to preserve the peace; to prevent and | 234 |
| suppress riots, disturbances, and disorderly assemblages; to | 235 |
| prevent, mitigate, and clean up releases of oil and hazardous | 236 |
| and extremely hazardous substances as defined in section 3750.01 | 237 |
| of the Revised Code; and to protect persons and property; | 238 |
| (c) The provision of a system of public education; | 239 |
| (d) The provision of a free public library system; | 240 |
| (e) The regulation of the use of, and the maintenance and | 241 |
| repair of, roads, highways, streets, avenues, alleys, sidewalks, | 242 |
| bridges, aqueducts, viaducts, and public grounds; | 243 |
| (f) Judicial, quasi-judicial, prosecutorial, legislative, | 244 |
| and quasi-legislative functions; | 245 |
| (g) The construction, reconstruction, repair, renovation, | 246 |
| maintenance, and operation of buildings that are used in | 247 |
| connection with the performance of a governmental function, | 248 |
| including, but not limited to, office buildings and courthouses; | 249 |

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| (h) The design, construction, reconstruction, renovation, | 250 |
| repair, maintenance, and operation of jails, places of juvenile | 251 |
| detention, workhouses, or any other detention facility, as | 252 |
| defined in section 2921.01 of the Revised Code; | 253 |
| (i) The enforcement or nonperformance of any law; | 254 |
| (j) The regulation of traffic, and the erection or | 255 |
| nonerection of traffic signs, signals, or control devices; | 256 |
| (k) The collection and disposal of solid wastes, as | 257 |
| defined in section 3734.01 of the Revised Code, including, but | 258 |
| not limited to, the operation of solid waste disposal | 259 |
| facilities, as "facilities" is defined in that section, and the | 260 |
| collection and management of hazardous waste generated by | 261 |
| households. As used in division (C) (2) (k) of this section, | 262 |
| "hazardous waste generated by households" means solid waste | 263 |
| originally generated by individual households that is listed | 264 |
| specifically as hazardous waste in or exhibits one or more | 265 |
| characteristics of hazardous waste as defined by rules adopted | 266 |
| under section 3734.12 of the Revised Code, but that is excluded | 267 |
| from regulation as a hazardous waste by those rules. | 268 |
| (l) The provision or nonprovision, planning or design, | 269 |
| construction, or reconstruction of a public improvement, | 270 |
| including, but not limited to, a sewer system; | 271 |
| (m) The operation of a job and family services department | 272 |
| or agency, including, but not limited to, the provision of | 273 |
| assistance to aged and infirm persons and to persons who are | 274 |
| indigent; | 275 |
| (n) The operation of a health board, department, or | 276 |
| agency, including, but not limited to, any statutorily required | 277 |
| or permissive program for the provision of immunizations or | 278 |

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| other inoculations to all or some members of the public, | 279 |
| provided that a "governmental function" does not include the | 280 |
| supply, manufacture, distribution, or development of any drug or | 281 |
| vaccine employed in any such immunization or inoculation program | 282 |
| by any supplier, manufacturer, distributor, or developer of the | 283 |
| drug or vaccine; | 284 |
| (o) The operation of mental health facilities, | 285 |
| developmental disabilities facilities, alcohol treatment and | 286 |
| control centers, and children's homes or agencies; | 287 |
| (p) The provision or nonprovision of inspection services | 288 |
| of all types, including, but not limited to, inspections in | 289 |
| connection with building, zoning, sanitation, fire, plumbing, | 290 |
| and electrical codes, and the taking of actions in connection | 291 |
| with those types of codes, including, but not limited to, the | 292 |
| approval of plans for the construction of buildings or | 293 |
| structures and the issuance or revocation of building permits or | 294 |
| stop work orders in connection with buildings or structures; | 295 |
| (q) Urban renewal projects and the elimination of slum | 296 |
| conditions, including the performance of any activity that a | 297 |
| county land reutilization corporation is authorized to perform | 298 |
| under Chapter 1724. or 5722. of the Revised Code; | 299 |
| (r) Flood control measures; | 300 |
| (s) The design, construction, reconstruction, renovation, | 301 |
| operation, care, repair, and maintenance of a township cemetery; | 302 |
| (t) The issuance of revenue obligations under section | 303 |
| 140.06 of the Revised Code; | 304 |
| (u) The design, construction, reconstruction, renovation, | 305 |
| repair, maintenance, and operation of any school athletic | 306 |
| facility, school auditorium, or gymnasium or any recreational | 307 |

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| area or facility, including, but not limited to, any of the | 308 |
| following: | 309 |
| (i) A park, playground, or playfield; | 310 |
| (ii) An indoor recreational facility; | 311 |
| (iii) A zoo or zoological park; | 312 |
| (iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility; | 313 314 |
| (v) A golf course; | 315 |
| (vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged; | 316 317 318 |
| (vii) A rope course or climbing walls; | 319 |
| (viii) An all-purpose vehicle facility in which all- purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities. | 320 321 322 323 |
| (v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code; | 324 325 326 |
| (w) (i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells; | 327 328 329 330 331 332 333 |
| (ii) On and after the effective date of regulations | 334 |

prescribed pursuant to 49 U.S.C.A. 20153, the designation, 335
establishment, design, construction, implementation, operation, 336
repair, or maintenance of a public road rail crossing in such a 337
zone or of a supplementary safety measure, as defined in 49 338
U.S.C.A 20153, at or for a public road rail crossing, if and to 339
the extent that the public road rail crossing is excepted, 340
pursuant to subsection (c) of that section, from the requirement 341
of the regulations prescribed under subsection (b) of that 342
section. 343

(x) Participation in a regional council of governments 344
established under Chapter 167. of the Revised Code; 345

(y) A function that the general assembly mandates a 346
political subdivision to perform. 347

(D) "Law" means any provision of the constitution, 348
statutes, or rules of the United States or of this state; 349
provisions of charters, ordinances, resolutions, and rules of 350
political subdivisions; and written policies adopted by boards 351
of education. When used in connection with the "common law," 352
this definition does not apply. 353

(E) "Motor vehicle" has the same meaning as in section 354
4511.01 of the Revised Code. 355

(F) "Political subdivision" or "subdivision" means a 356
municipal corporation, township, county, school district, or 357
other body corporate and politic responsible for governmental 358
activities in a geographic area smaller than that of the state. 359
"Political subdivision" includes, but is not limited to, a 360
county hospital commission appointed under section 339.14 of the 361
Revised Code, board of hospital commissioners appointed for a 362
municipal hospital under section 749.04 of the Revised Code, 363

board of hospital trustees appointed for a municipal hospital 364
under section 749.22 of the Revised Code, regional planning 365
commission created pursuant to section 713.21 of the Revised 366
Code, county planning commission created pursuant to section 367
713.22 of the Revised Code, joint planning council created 368
pursuant to section 713.231 of the Revised Code, interstate 369
regional planning commission created pursuant to section 713.30 370
of the Revised Code, port authority created pursuant to section 371
4582.02 or 4582.26 of the Revised Code or in existence on 372
December 16, 1964, ~~regional council established by political-~~ 373
~~subdivisions pursuant to Chapter 167. of the Revised Code,~~ 374
emergency planning district and joint emergency planning 375
district designated under section 3750.03 of the Revised Code, 376
joint emergency medical services district created pursuant to 377
section 307.052 of the Revised Code, fire and ambulance district 378
created pursuant to section 505.375 of the Revised Code, joint 379
interstate emergency planning district established by an 380
agreement entered into under that section, county solid waste 381
management district and joint solid waste management district 382
established under section 343.01 or 343.012 of the Revised Code, 383
community school established under Chapter 3314. of the Revised 384
Code, county land reutilization corporation organized under 385
Chapter 1724. of the Revised Code, the county or counties served 386
by a community-based correctional facility and program or 387
district community-based correctional facility and program 388
established and operated under sections 2301.51 to 2301.58 of 389
the Revised Code, a community-based correctional facility and 390
program or district community-based correctional facility and 391
program that is so established and operated, and the facility 392
governing board of a community-based correctional facility and 393
program or district community-based correctional facility and 394
program that is so established and operated. "Political 395

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| <u>subdivision" does not include a regional council of governments</u> | 396 |
| <u>established under Chapter 167. of the Revised Code.</u> | 397 |
| (G) (1) "Proprietary function" means a function of a | 398 |
| political subdivision that is specified in division (G) (2) of | 399 |
| this section or that satisfies both of the following: | 400 |
| (a) The function is not one described in division (C) (1) | 401 |
| (a) or (b) of this section and is not one specified in division | 402 |
| (C) (2) of this section; | 403 |
| (b) The function is one that promotes or preserves the | 404 |
| public peace, health, safety, or welfare and that involves | 405 |
| activities that are customarily engaged in by nongovernmental | 406 |
| persons. | 407 |
| (2) A "proprietary function" includes, but is not limited | 408 |
| to, the following: | 409 |
| (a) The operation of a hospital by one or more political | 410 |
| subdivisions; | 411 |
| (b) The design, construction, reconstruction, renovation, | 412 |
| repair, maintenance, and operation of a public cemetery other | 413 |
| than a township cemetery; | 414 |
| (c) The establishment, maintenance, and operation of a | 415 |
| utility, including, but not limited to, a light, gas, power, or | 416 |
| heat plant, a railroad, a busline or other transit company, an | 417 |
| airport, and a municipal corporation water supply system; | 418 |
| (d) The maintenance, destruction, operation, and upkeep of | 419 |
| a sewer system; | 420 |
| (e) The operation and control of a public stadium, | 421 |
| auditorium, civic or social center, exhibition hall, arts and | 422 |
| crafts center, band or orchestra, or off-street parking | 423 |

facility. 424

(H) "Public roads" means public roads, highways, streets, 425
avenues, alleys, and bridges within a political subdivision. 426
"Public roads" does not include berms, shoulders, rights-of-way, 427
or traffic control devices unless the traffic control devices 428
are mandated by the Ohio manual of uniform traffic control 429
devices. 430

(I) "State" means the state of Ohio, including, but not 431
limited to, the general assembly, the supreme court, the offices 432
of all elected state officers, and all departments, boards, 433
offices, commissions, agencies, colleges and universities, 434
institutions, and other instrumentalities of the state of Ohio. 435
"State" does not include political subdivisions. 436

Section 2. That existing sections 102.01, 167.02, 167.04, 437
167.07, and 2744.01 of the Revised Code are hereby repealed. 438