

As Introduced

**131st General Assembly
Regular Session
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S. B. No. 304

Senator Williams

A BILL

To amend sections 940.07 and 2744.07 of the Revised Code to grant a cause of action to an employee or injured person against a political subdivision that refuses to perform its statutory duty to indemnify an employee in the amount of a judgment for certain damages if specified conditions apply.

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

Section 1. That sections 940.07 and 2744.07 of the Revised Code be amended to read as follows:

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

(1) "Judgment" includes a consent judgment.

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

(B) Except as provided in divisions (C) and (D) of this section, the provisions of Chapter 2744. of the Revised Code

apply to soil and water conservation districts as political 19
subdivisions of the state and to their supervisors and other 20
officers, employees, and agents as employees of political 21
subdivisions of the state. 22

(C) (1) The attorney general, an assistant attorney 23
general, or special counsel appointed by the attorney general 24
shall defend a soil and water conservation district in any tort 25
action that is commenced against the district as a political 26
subdivision of the state under or pursuant to Chapter 2744. of 27
the Revised Code, if a written request for the legal 28
representation is submitted to the attorney general by the Ohio 29
soil and water conservation commission. If a request is so 30
submitted, the prosecuting attorney of the county associated 31
with the district does not have legal representation duties in 32
connection with the tort action under section 940.13 of the 33
Revised Code. 34

(2) The attorney general, an assistant attorney general, 35
or special counsel appointed by the attorney general shall 36
defend a supervisor or other officer, employee, or agent of a 37
soil and water conservation district in any tort action that is 38
commenced against that person and based upon an action or 39
omission allegedly associated with that person's employment or 40
official responsibilities for the district, if both of the 41
following apply: 42

(a) At the time of the action or omission, the person was 43
not acting manifestly outside the scope of the person's 44
employment or official responsibilities for the district or 45
acting with malicious purpose, in bad faith, or in a wanton or 46
reckless manner; 47

(b) A written request for the legal representation is 48

submitted to the attorney general by the Ohio soil and water 49
conservation commission. 50

(3) If a request for legal representation is submitted to 51
the attorney general pursuant to division (C) (2) of this 52
section, divisions (A) (1) and (C) of section 2744.07 of the 53
Revised Code do not apply to the soil and water conservation 54
district and the defense of its supervisor or other officer, 55
employee, or agent. 56

(D) (1) The state shall indemnify and hold harmless a soil 57
and water conservation district as follows: 58

(a) In the amount of any judgment that is rendered against 59
the district in a tort action that is commenced under or 60
pursuant to Chapter 2744. of the Revised Code; 61

(b) In the amount of any settlement of a tort action 62
against the district as described in division (D) (1) (a) of this 63
section, or of a claim for damages for injury, death, or loss to 64
person or property that could become a basis of a tort action 65
against the district as described in division (D) (1) (a) of this 66
section. 67

(2) The state shall indemnify and hold harmless a 68
supervisor or other officer, employee, or agent of a soil and 69
water conservation district as follows: 70

(a) Subject to the limitations specified in division (D) 71
(3) of this section, in the amount of any judgment that is 72
rendered against that person in a tort action based upon an 73
action or omission allegedly associated with the person's 74
employment or official responsibilities for the district; 75

(b) Subject to the limitations specified in division (D) 76
(3) of this section, in the amount of any settlement of a tort 77

action as described in division (D) (2) (a) of this section or of 78
any settlement of a claim for damages for injury, death, or loss 79
to person or property that could become a basis of a tort action 80
as described in division (D) (2) (a) of this section. 81

(3) (a) The maximum aggregate amount of indemnification 82
paid directly from state funds to or on behalf of any supervisor 83
or other officer, employee, or agent of a soil and water 84
conservation district pursuant to divisions (D) (2) (a) and (b) of 85
this section shall be one million dollars per occurrence, 86
regardless of the number of persons who suffer injury, death, or 87
loss to person or property as a result of the action or omission 88
of that person. 89

(b) An indemnification may be made pursuant to division 90
(D) (2) (a) or (b) of this section only if, at the time of the 91
action or omission, the supervisor or other officer, employee, 92
or agent of a soil and water conservation district was not 93
acting manifestly outside the scope of the supervisor's or other 94
officer's, employee's, or agent's employment or official 95
responsibilities for the district or acting with malicious 96
purpose, in bad faith, or in a wanton or reckless manner. 97

(c) An indemnification shall not be made pursuant to 98
division (D) (2) (a) or (b) of this section for any portion of a 99
consent judgment or settlement that is unreasonable or for any 100
portion of a judgment that represents punitive or exemplary 101
damages. 102

(4) ~~Division~~ Divisions (A) (2) and (D) of section 2744.07 103
of the Revised Code ~~does do~~ not apply to a soil and water 104
conservation district, or to any of its supervisors or other 105
officers, employees, or agents, to the extent that division (D) 106
of this section requires the state to indemnify and hold 107

harmless a supervisor or other officer, employee, or agent of 108
that district. 109

Sec. 2744.07. (A) (1) Except as otherwise provided in this 110
division, a political subdivision shall provide for the defense 111
of an employee, in any state or federal court, in any civil 112
action or proceeding which contains an allegation for damages 113
for injury, death, or loss to person or property caused by an 114
act or omission of the employee in connection with a 115
governmental or proprietary function. The political subdivision 116
has the duty to defend the employee if the act or omission 117
occurred while the employee was acting both in good faith and 118
not manifestly outside the scope of employment or official 119
responsibilities. Amounts expended by a political subdivision in 120
the defense of its employees shall be from funds appropriated 121
for this purpose or from proceeds of insurance. The duty to 122
provide for the defense of an employee specified in this 123
division does not apply in a civil action or proceeding that is 124
commenced by or on behalf of a political subdivision. 125

(2) Except as otherwise provided in this division, a 126
political subdivision shall indemnify and hold harmless an 127
employee in the amount of any judgment, other than a judgment 128
for punitive or exemplary damages, that is obtained against the 129
employee in a state or federal court or as a result of a law of 130
a foreign jurisdiction and that is for damages for injury, 131
death, or loss to person or property caused by an act or 132
omission in connection with a governmental or proprietary 133
function, if at the time of the act or omission the employee was 134
acting in good faith and within the scope of employment or 135
official responsibilities. Any judgment, other than a judgment 136
for punitive or exemplary damages, described in this division 137
includes a consent judgment or settlement entered into under 138

division (B) (1) of this section. 139

(B) (1) A political subdivision may enter into a consent 140
judgment or settlement and may secure releases from liability 141
for itself or an employee, with respect to any claim for injury, 142
death, or loss to person or property caused by an act or 143
omission in connection with a governmental or proprietary 144
function. 145

(2) No action or appeal of any kind shall be brought by 146
any person, including any employee or a taxpayer, with respect 147
to the decision of a political subdivision pursuant to division 148
(B) (1) of this section whether to enter into a consent judgment 149
or settlement or to secure releases, or concerning the amount 150
and circumstances of a consent judgment or settlement. Amounts 151
expended for any settlement shall be from funds appropriated for 152
this purpose. 153

(C) If a political subdivision refuses to provide an 154
employee with a defense in a civil action or proceeding as 155
described in division (A) (1) of this section, upon the motion of 156
the political subdivision, the court shall conduct a hearing 157
regarding the political subdivision's duty to defend the 158
employee in that civil action. The political subdivision shall 159
file the motion within thirty days of the close of discovery in 160
the action. After the motion is filed, the employee shall have 161
not less than thirty days to respond to the motion. 162

At the request of the political subdivision or the 163
employee, the court shall order the motion to be heard at an 164
oral hearing. At the hearing on the motion, the court shall 165
consider all evidence and arguments submitted by the parties. In 166
determining whether a political subdivision has a duty to defend 167
the employee in the action, the court shall determine whether 168

the employee was acting both in good faith and not manifestly 169
outside the scope of employment or official responsibilities. 170
The pleadings shall not be determinative of whether the employee 171
acted in good faith or was manifestly outside the scope of 172
employment or official responsibilities. 173

If the court determines that the employee was acting both 174
in good faith and not manifestly outside the scope of employment 175
or official responsibilities, the court shall order the 176
political subdivision to defend the employee in the action. 177

(D) (1) If a political subdivision refuses to indemnify and 178
hold harmless an employee in the amount of any judgment as 179
described in division (A) (2) of this section within one year 180
after the judgment becomes final, the employee or the person who 181
is awarded the damages in the judgment obtained against the 182
employee may file an action in a state court of appropriate 183
jurisdiction against the political subdivision to recover the 184
amount of the judgment that is subject to indemnification. The 185
action shall be filed not later than six years after the 186
judgment becomes final. 187

(2) The court shall schedule a hearing on the action filed 188
under division (D) (1) of this section. At the hearing, the court 189
shall consider all evidence and arguments submitted by the 190
parties. In determining whether a political subdivision has a 191
duty to indemnify the employee in the amount of any judgment as 192
described in division (A) (2) of this section, the court shall 193
determine whether the employee was acting both in good faith and 194
within the scope of employment or official responsibilities. If 195
the court determines that the employee was acting both in good 196
faith and within the scope of employment or official 197
responsibilities, the court shall adjudge the political 198

subdivision liable to indemnify the employee for the full amount 199
of the judgment if the employee is the plaintiff in the action 200
or to pay the full amount of the judgment to the person who is 201
awarded the damages in the judgment if that person is the 202
plaintiff in the action. The judgment finding the political 203
subdivision liable under this division shall additionally order 204
the political subdivision to pay for the expenses and costs, 205
including reasonable attorney's fees, of the plaintiff in the 206
action. 207

Section 2. That existing sections 940.07 and 2744.07 of 208
the Revised Code are hereby repealed. 209