



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. S.B. 239

132nd General Assembly
(As Passed by the General Assembly)

Sens. Dolan, Lehner, Beagle, Coley, Brown, Hackett, Hoagland, Huffman, O'Brien, Peterson, Schiavoni, Sykes, Wilson

Reps. Hambley, Anielski, Ashford, Brenner, Carfagna, Celebrezze, Craig, Edwards, Green, Henne, Holmes, Hoops, Hughes, LaTourette, Leland, Lepore-Hagan, Miller, O'Brien, Rogers, Schaffer, Scherer, Schuring, Sheehy, Sprague, West, Wilkin, Young

Effective date: October 29, 2018

ACT SUMMARY

Regional councils of governments

- Requires the officers of a regional council of governments (COG), upon forming the COG and before taking any official action, to notify the Auditor of State of its formation.
- Voids any official action a COG takes before making that notification, including entering into any contract.
- Requires a COG to provide the Auditor with a copy of the COG's bylaws.
- Specifies that records containing the names of political subdivisions that are members of a COG or the names of the representatives from those political subdivisions who serve on the COG are public records and are not considered to be trade secrets.
- Subjects COG officials and employees to the Ethics Law.

* This version updates the effective date.

- Specifies that a COG is considered a political subdivision for purposes of the Revised Code chapter governing criminal offenses against justice and public administration.
- Provides that under certain circumstances involving violations of the Ethics Law or related criminal offenses, a COG is not required to defend or indemnify its employees in a civil lawsuit.

Miscellaneous

- Clarifies that a municipal corporation eligible to designate a tourism development district may designate more than one district.
- Specifies that the American Law Institute's approved "Restatement of the Law, Liability Insurance" does not constitute the public policy of Ohio.
- Designates three highways and authorizes the Director of Transportation to erect suitable markers along the highways.

CONTENT AND OPERATION

Regional councils of governments

The act makes several changes to the law governing regional councils of governments (COGs). Under continuing law, the governing bodies of any two or more political subdivisions may form a COG in order to perform any of a number of functions, including studying governmental problems in a region, carrying out regional development projects, and pooling government resources to provide services, such as operating a regional 9-1-1 answering point.¹

Auditor of State notification

Under the act, upon forming a COG, its officers must notify the Auditor of State of the COG's formation, provide a copy of the COG's bylaws, and provide any other information to the Auditor that the Auditor considers necessary, on a form prescribed by the Auditor. The COG may take no official action, other than formation, before notifying the Auditor of its formation. Any official action it takes before making that notification, including entering into any contract, is void.

¹ R.C. 167.01 and 167.03, not in the act.



Prior law required a COG's officers, within ten business days after forming the COG, to notify the Auditor of its formation and to provide any other information that the Auditor considered necessary on a form prescribed by the Auditor.²

Public records concerning COGs

The act specifies that records containing the names of the political subdivisions that are members of a COG or the names of the representatives from those political subdivisions who serve on the COG are public records, and those names are not considered to be trade secrets.³

Under the continuing Public Records Law, subject to certain exceptions, records kept by a public office are considered public records, and the office must make those records available to the public upon request. But, it is uncertain whether a COG is considered a public office under the Public Records Law because a COG is listed as a political subdivision for some purposes, but the statute also specifies that membership on a COG and holding an office of a COG do not constitute the holding of a public office or employment within the meaning of the Revised Code.⁴

Ethics and criminal law application to COGs

As mentioned above, under continuing law, membership on a COG and holding an office of a COG do not constitute the holding of a public office or employment within the meaning of the Revised Code. The act adds exceptions to that provision for the Ethics Law and for criminal offenses against justice and public administration.⁵

Ethics Law

The act provides that a COG is a public agency for purposes of the Ethics Law. As a result, any COG official or employee is subject to the restrictions of that law, such as the prohibition against receiving gifts of such a character as to manifest a substantial and improper influence on a person with respect to the person's duties. The act does not require COG officials or employees to file financial disclosure statements with the Ohio Ethics Commission, although continuing law allows the Commission to require any

² R.C. 167.04(D).

³ R.C. 167.02(C).

⁴ R.C. 167.07. See also R.C. 149.43 and 2744.01, not in the act.

⁵ R.C. 167.07.



class of public officials or employees under its jurisdiction to file statements if certain conditions apply.⁶

Offenses against justice and public administration

Under the act, a COG is considered a political subdivision for purposes of the Revised Code chapter governing criminal offenses against justice and public administration. As a result, an elected or appointed officer, employee, or agent of a COG is considered a public official or public servant under that chapter. This change allows a COG official or employee to be charged with criminal offenses related to the person's official duties, such as bribery, theft in office, or having an unlawful interest in a public contract.

The act also clarifies that membership on a COG and holding an office of a COG do not constitute an interest, either direct or indirect, in a contract or expenditure of money by any political subdivision *other than the COG itself*, since under prior law, a COG was not necessarily considered a political subdivision for purposes of the law against having an unlawful interest in a public contract. Therefore, for example, the act prohibits a COG officer from using the officer's position to steer the COG's money toward a family member's business. But, under continuing law, if a city that was a member of a COG awarded a contract to that business, the officer would not be considered to have an unlawful interest in that contract solely by virtue of the COG's affiliation with the city.⁷

Defense and indemnification of COG employee

The act specifies that under certain circumstances involving violations of the Ethics Law or related criminal offenses by a COG employee, the COG is not required to defend or indemnify the employee.

Background

Continuing law generally gives political subdivisions, including COGs, immunity from certain types of civil lawsuits brought on the basis that the political subdivision or its employee improperly performed a governmental or proprietary function. Further, in such a case, the employee is also personally immune from liability, and the political subdivision must defend and indemnify the employee (that is, pay for the employee's legal defense and any actual damages the employee must pay), so long

⁶ R.C. 102.01 and 167.07. See also R.C. 102.02, not in the act.

⁷ R.C. 102.01 and 167.07. See also R.C. 102.03, 2921.01, 2921.02, 2921.41, and 2921.42, not in the act.



as the employee was acting in good faith and not manifestly outside the scope of the employee's employment or official responsibilities.

For instance, if a COG operated a regional 9-1-1 answering point, an injured person might call that 9-1-1 answering point for help, and a dispatcher might accidentally send an ambulance to the wrong address, causing the person's injuries to be more severe because of delayed treatment. If the injured person tried to sue the COG and the dispatcher for the person's exacerbated injuries, the COG must defend and indemnify the dispatcher, and both the COG and the dispatcher probably would be immune from the lawsuit because providing 9-1-1 services is a governmental function and the dispatcher did not make the mistake in bad faith.⁸

Exception

Under the act, if a COG's employee causes injury, death, or loss to person or property in connection with a governmental or proprietary function, the COG is not required to defend or indemnify the employee if both:

- The employee is not also an employee of a political subdivision that is a member of the COG; and
- The employee's action or inaction that gives rise to the liability constitutes a violation of the Ethics Law or the Revised Code chapter governing criminal offenses against justice and public administration.

As an example, if a COG employed a person who was not also employed by a member political subdivision, and that employee mismanaged the COG's funds to the detriment of the member political subdivisions in a way that violated the Ethics Law or related criminal prohibitions, the COG would not be required to defend or indemnify the employee.⁹

Tourism development districts

The act clarifies that a municipal corporation that is eligible to designate a tourism development district (TDD) may designate more than one district. Under continuing law, a municipal corporation located in a county that meets certain qualifications may create a TDD. A TDD effectively enables the municipal corporation to raise revenue from activities occurring in the TDD – e.g., through sales taxes, business taxes, lodging taxes, and admissions taxes – to foster and develop tourism in

⁸ R.C. 2744.07. See also R.C. 2744.01, 2744.02, and 2744.03, not in the act.

⁹ R.C. 2744.07 and conforming change in R.C. 940.07.



the TDD and, under some circumstances, fund permanent improvements in the TDD. In particular, the municipal corporation must be located in a county with a population between 375,000 and 400,000 that levies county sales taxes, the aggregate rate of which does not exceed 0.50%. Only Stark County currently is capable of meeting both requirements.¹⁰

Restatement of the Law, Liability Insurance

The act specifies that the "Restatement of Law, Liability Insurance" that was approved at the 2018 annual meeting of the American Law Institute does not constitute the public policy of Ohio and is not an appropriate subject of notice.¹¹

Restatements of Law are nonbinding treatises on legal subjects that seek to inform judges and lawyers about general principals of common law. The American Law Institute is an organization of judges, legal academics, and practitioners that publishes the Restatements.¹²

Highway designations

The act designates the following highways and authorizes the Director of Transportation to erect suitable markets along the highways.

Designated Name	Highway	Biographical Information
"Officers Anthony Morelli and Eric Joering Memorial Highway" ¹³	The eastbound and westbound lanes of Interstate Route 270, between State Route 3 and Cleveland Avenue, in Franklin County.	Westerville police officers Anthony Morelli and Eric Joering were killed in the line of duty while responding to a 9-1-1 call on February 10, 2018. Officer Morelli was a 29-year veteran of Westerville Police Department, and Officer Joering served with the Department for 16 years.

¹⁰ R.C. 715.014.

¹¹ R.C. 3901.82.

¹² The General Assembly may set the public policy of the state while the judicial power is vested in the courts of Ohio. Ohio Const., art. IV, sec. 1.

¹³ R.C. 5534.403.



Designated Name	Highway	Biographical Information
"Steve Story Memorial Highway" ¹⁴	The southbound and northbound lanes of U.S. Route 33, between the northern border of Meigs County and State Route 681, in Meigs County.	Steven Story was an attorney in the village of Pomeroy for nearly 40 years and also served as solicitor for the Village of Middleport, Meigs County Prosecuting Attorney, and Meigs County Court Judge.
"Henry County Veteran's Highway" ¹⁵	The eastbound and westbound lanes of U.S. Route 24 between the eastern and the western borders of Henry County.	

HISTORY

ACTION	DATE
Introduced	12-05-17
Reported, S. Gov't Oversight & Reform	04-11-18
Passed Senate (33-0)	04-11-18
Reported, H. State & Local Gov't	06-27-18
Passed House (92-0)	06-27-18
Senate concurred in House amendments (30-0)	06-27-18

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¹⁴ R.C. 5534.911.

¹⁵ R.C. 5534.811.

