OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 239
(L_132_1873-1)

132nd General Assembly
(As Pending in S. Gov't Oversight & Reform)

Sens. Dolan, Lehner, Beagle

BILL SUMMARY

- 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 and provide the Auditor with a copy of the COG's bylaws and any other information the Auditor considers necessary.
- Voids any official action a COG takes before making that notification, including entering into any contract.
- Specifies that the names of the political subdivisions that are members of a COG and 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.
- Makes COG officials and employees subject to the Ethics Law.
- Specifies that an elected or appointed officer, employee, or agent of a COG is considered a public official or public servant 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 and its officer, agent, or employee are not covered by sovereign immunity.

CONTENT AND OPERATION

The bill 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 bill, 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 the COG takes before making that notification, including entering into any contract, is void.

Existing law requires 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 to the Auditor that the Auditor considers necessary on a form prescribed by the Auditor.[2]

Public records concerning COGs

The bill specifies that the names of the political subdivisions that are members of a COG and 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.[3]

Under the continuing Public Records Law, subject to certain exceptions, records kept by any public office are considered public records, and the office must make those records available to the public upon request. But, it is not explicitly clear whether a COG currently 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

[1] R.C. 167.01 and 167.03, not in the bill.

[2] R.C. 167.04(D).

[3] R.C. 167.02(C).

holding of a public office or employment within the meaning of any section of the Revised Code.[4]

Ethics and criminal law application to COGs

As is 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 any section of the Revised Code. The bill adds exceptions to that provision for the Ethics Law and for criminal offenses against justice and public administration.[5]

Ethics Law

The bill provides that a COG is a public agency for purposes of the Ethics Law. As a result, any official or employee of a COG 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 bill 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 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 bill, 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 bill 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 existing law, a COG is not necessarily considered a political subdivision for purposes of the law against having an unlawful interest in a public contract. Therefore, for example, the bill prohibits a COG officer from using the officer's position to steer the COG's money

[4] R.C. 167.07 and 2744.01. See also R.C. 149.43, not in the bill.

[5] R.C. 167.07.

[6] R.C. 102.01 and 167.07. See also R.C. 102.02, not in the bill.

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]

Sovereign immunity

Finally, the bill specifies that under certain circumstances involving violations of the Ethics Law or related criminal offenses, a COG and its officer, agent, or employee are not covered by sovereign immunity.

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 as the employee was acting in good faith and not manifestly outside the scope of the person'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 bill, if a COG's officer, staff member, or independent contractor causes injury, death, or loss to person or property in connection with a governmental or proprietary function, sovereign immunity does not cover the COG or the officer, staff member, or independent contractor, and the COG is not required to defend or indemnify the officer, staff member, or independent contractor, if both of the following apply:

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[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 bill.

[8] R.C. 2744.01. See also R.C. 2744.02, 2744.03, and 2744.07, not in the bill.

- The officer, staff member, or independent contractor is not also an officer, employee, agent, or servant of a political subdivision that is a member of the COG.

- The officer, staff member, or independent contractor'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 bill permits the member political subdivisions to sue both the COG and the employee to recover the funds, and the COG is not required to defend or indemnify the employee, even if a court found that the employee had acted in good faith and within the scope of the person's employment.[9]

HISTORY

ACTION	DATE
Introduced	12-05-17

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[9] R.C. 2744.01.