

RESOLUTION NO. 2016-71

REPEALING CHAPTER 629, "INDEMNIFICATION POLICIES AND PROCEDURES," OF THE CODIFIED RULES AND REGULATIONS OF THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

WHEREAS, pursuant to Resolution No. 1989-176, the Board of Trustees of the Authority codified the resolutions establishing its policies and procedures; and

WHEREAS, over the years, many of the resolutions have been amended; and

WHEREAS, at the present time, the Authority deems it necessary to review, revise and update the codified rules and regulations; and

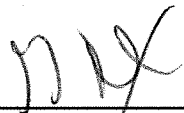
WHEREAS, the Authority has reviewed Chapter 629, "Indemnification Policies and Procedures[,]" and determined that this chapter should be repealed because it is duplicative of Chapter 654 which requires the Authority to indemnify employees in accordance with Ohio Revised Code Chapter 2744.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That Chapter 629, "Indemnification Policies and Procedures," is hereby repealed in its entirety.

Section 2. That this resolution shall become effective immediately upon its adoption.

Adopted: August 16, 2016



President

Attest: 

CEO, General Manager/Secretary-Treasurer



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| TITLE/DESCRIPTION: REPEALING CHAPTER 629, "INDEMNIFICATION POLICIES AND PROCEDURES," OF THE CODIFIED RULES AND REGULATIONS OF THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY | Resolution No.: 2016-71 |
| | Date: August 11, 2016 |
| | Initiator: Legal |
| ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____ | |

- 1.0 PURPOSE/SCOPE: This resolution will repeal Chapter 629 of the Codified Rules and Regulations ("Code") of the Greater Cleveland Regional Transit Authority.
- 2.0 DESCRIPTION/JUSTIFICATION: The Policies and Procedures of the Board of Trustees were codified in 1989, pursuant to Resolution 1989-176. The code book has been updated periodically. It is now time for a comprehensive review and update so that the updated Code will conform to the current structure and operations of the Authority.
- 3.0 Chapter 629 is being repealed because it is duplicative of Chapter 654 which requires the Authority to indemnify employees in accordance with Ohio Revised Code Chapter 2744.
- 4.0 PROCUREMENT BACKGROUND: Does not apply.
- 5.0 AFFIRMATIVE ACTION/DBE BACKGROUND: Does not apply.
- 6.0 POLICY IMPACT: Adoption of the resolution will result in a clear, accurate and current policy.
- 7.0 ECONOMIC IMPACT: Does not apply.
- 8.0 ALTERNATIVES: Not adopting this resolution. Not adopting this resolution would result in Chapter 629 being duplicative with Chapter 654.
- 9.0 RECOMMENDATION: It is recommended that this resolution be adopted.
- 10.0 ATTACHMENTS: Redline copy of Chapter 629.

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.



 CEO, General Manager/Secretary-Treasurer

CHAPTER 629
Indemnification Policies and Procedures

Editor's Note: This chapter was repealed by resolution 2016-XXX.

- 629.01 Application of chapter.
629.02 Authority of General Manager/Secretary-Treasurer.
629.03 Nature of claims.
629.04 Application by claimant.
629.05 Eligibility for consideration.
629.06 Investigation and review of the claim with legal standards for indemnification.
629.07 General Manager/Secretary-Treasurer's review, report and recommendation.
629.08 The Board of Trustees' determination of claim.

CROSS REFERENCES

- Employment generally—see Bylaws Art. VIII, Sec. 2
Indemnification—see Bylaws Art. IX, Sec. 4
Collective bargaining agreements; conditions of employment—see
PERS. Ch. 624
General personnel policies and procedures—see PERS. Ch. 640 et seq.

~~629.01 APPLICATION OF CHAPTER.~~

~~This chapter shall govern all indemnification claims submitted under the present Bylaws of the Authority (Article IX, Section 4), as well as its predecessors, or as the Bylaws may be amended from time to time. (Res. 1991-151. Passed 7-23-91.)~~

~~629.02 AUTHORITY OF GENERAL MANAGER/SECRETARY-TREASURER.~~

~~(a) The General Manager/Secretary-Treasurer is authorized by Resolution of the Board of Trustees to prepare and to implement indemnification policies and procedures for the Authority in conformity with the Bylaws and to make such changes thereafter as may be necessary from time to time to conform to the policies and programs of the Board of Trustees.~~

~~(b) The General Manager/Secretary-Treasurer is authorized by Resolution of the Board of Trustees to conduct an investigation and review of each indemnification claim submitted to the Authority and to communicate with the Board of Trustees or issue such report and make such recommendations to the Board of Trustees as may be necessary for its action.~~

~~(c) The Board of Trustees shall make the final determination of all indemnification claims submitted to the Authority.
(Res. 1991 151. Passed 7-23-91.)~~

~~629.03 — NATURE OF CLAIMS.~~

~~The indemnification policies and procedures shall apply to all claims presented to the Authority under Article IX, Section 4, of the Bylaws, or as the Bylaws may be amended from time to time, whether in the nature of:~~

- ~~(a) The entry of a defense in any pending litigation, action, suit or proceeding; or~~
- ~~(b) The indemnification reimbursement or payment of reasonable expenses actually incurred in the defense of any litigation, action, suit or proceeding for which indemnification is permitted.~~

~~(Res. 1991 151. Passed 7-23-91.)~~

~~629.04 — APPLICATION BY CLAIMANT.~~

~~(a) Any person claiming indemnification shall, upon written request to the General Manager/Secretary-Treasurer or his or her designee, be provided with a copy of the Bylaws and the indemnification policies and procedures of the Authority.~~

~~(b) The claimant must complete a written request under oath for indemnification on an application form approved by the General Manager/Secretary-Treasurer.~~

~~(c) In the event that the General Manager/Secretary-Treasurer is a claimant for indemnification, the General Manager/Secretary-Treasurer shall complete the application form and advise the Board of Trustees of the submission of the claim, but shall not otherwise act upon the claim. The Board of Trustees shall designate one of its members or a special representative of the Board to act in the capacity of the General Manager/Secretary-Treasurer on all matters authorized and delegated to the General Manager/Secretary-Treasurer under the indemnification policies and procedures of the Authority, in order that the claim of the General Manager/Secretary-Treasurer may be so determined by the Board of Trustees.~~

~~(d) Failure of a claimant to submit the application in a complete manner or in a truthful manner shall be sufficient grounds for the Authority to deny the claim at any time. Any application which is believed to be false or fraudulent in any way may be referred to appropriate authorities for investigation and possible prosecution.~~

~~(e) The application form approved by the General Manager/Secretary-Treasurer should request the following information in writing, under oath, from the claimant:~~

- ~~(1) Identification of the claimant:-
 - ~~A. Name;~~
 - ~~B. Address and telephone number;~~
 - ~~C. Social Security number;~~
 - ~~D. GCRTA employee identification number;~~
 - ~~E. GCRTA job or position at the time of the acts for which indemnification is claimed;~~
 - ~~F. Dates of employment; and~~~~

~~G. Attorney identification, if any, and address and telephonenumber. indemnification;~~

- ~~(2) Statement describing the nature of the claim;~~
- ~~(3) Statement in support of claimed eligibility for consideration of~~
- ~~(4) Statement in support of claimed indemnification;~~
- ~~(5) Identification of supporting information, persons, documents,~~

~~materials and other things; and~~

- ~~(6) Authorization, consent, release and understanding—
(Res. 1991 151. Passed 7-23-91.)~~

~~629.05 ELIGIBILITY FOR CONSIDERATION.~~

~~(a) Eligibility for consideration of indemnification shall be first and separately reviewed by the General Manager/Secretary-Treasurer, but shall be determined by the Board of Trustees.~~

~~(b) (EDITOR'S NOTE: Subsection (b) hereof was repealed by implication by Resolution 1993 58, passed March 16, 1993. See Article IX, Sec. 4, of the Bylaws of the Authority.)~~

~~(c) The initial determination of eligibility shall be as follows:~~

~~(1) The General Manager/Secretary-Treasurer shall conduct an initial investigation and review of whether the claimant is eligible for consideration of indemnification. The General Manager/Secretary-Treasurer shall conduct the initial investigation in an expeditious manner.~~

~~(2) Should the General Manager/Secretary-Treasurer find on initial review that the claimant is eligible for consideration of indemnification, that finding shall be preliminary and non-final and shall be made a part of the General Manager/Secretary-Treasurer's written report with recommendation to the Board of Trustees. The General Manager/Secretary-Treasurer shall then proceed to review the next stage of the claim for either:~~

~~A. The entry of a defense in any pending litigation, action, suit or proceeding; or~~

~~B. The indemnification reimbursement or payment of~~

~~reasonable expenses after the conclusion of any litigation, action, suit or proceeding, whichever may be applicable.~~

~~(3) Should the General Manager/Secretary-Treasurer later find or the Board of Trustees later determine at any stage of review that the preliminary, non-final determination of eligibility should be changed to a determination of non-eligibility, either shall be free to do so or to take any other appropriate action.~~

~~(4) The Board of Trustees shall make the final determination of whether a claimant is eligible for consideration of indemnification.~~

~~(d) The determination of non-eligibility shall be as follows:~~

~~(1) Should the General Manager/Secretary-Treasurer find that the claimant is non-eligible for consideration of indemnification, the General Manager/Secretary-Treasurer shall promptly communicate to the Board of Trustees in writing his or her finding of non-eligibility, together with a recommendation of non-eligibility.~~

~~(2) The Board of Trustees shall make the final determination of whether the claimant is eligible or non-eligible for consideration of indemnification.~~

~~(3) Should the Board of Trustees determine that the claimant is eligible for consideration at this stage of the review, the determination shall be preliminary and non-final and the claim shall then be returned to the General Manager/Secretary-Treasurer for further processing of the claim.~~

~~(4) Should the Board of Trustees determine that the claimant is non-eligible for consideration of indemnification, the General Manager/Secretary-Treasurer is authorized to inform the claimant of the determination of non-eligibility upon the claim.~~

~~(Res. 1991-151. Passed 7-23-91.)~~

~~629.06 — INVESTIGATION AND REVIEW OF THE CLAIM WITH LEGAL STANDARDS FOR INDEMNIFICATION.~~

~~In order to process the claim, should the claimant be eligible for consideration of indemnification, the General Manager/Secretary-Treasurer shall investigate and review the following:~~

~~(a) Whether the claimant acted in good faith;~~

~~(b) Whether the claimant's acts were conducted in the discharge of the official duties of his or her employment; and~~

~~(c) If the answers to subsections (a) and (b) hereof are in the affirmative, the amount of the indemnification reimbursement or payment of expenses actually incurred by the claimant in his or her defense, based upon the standard that the "expenses," as defined in the Bylaws, are both:~~

~~A. Reasonable; and~~

~~B. Actually incurred by the claimant in connection with the defense of the litigation, action, suit or proceeding.~~

~~(Res. 1991-151. Passed 7-23-91.)~~

~~629.07 — GENERAL MANAGER/SECRETARY-TREASURER'S REVIEW, REPORT AND RECOMMENDATION.~~

~~(a) The General Manager/Secretary-Treasurer (or his or her designee) shall~~

~~conduct an investigation and review of the claimant's application in an expeditious manner. The General Manager/Secretary Treasurer shall have the authority to act upon, investigate and review indemnification claims submitted to the Authority in such manner as he or she deems necessary or appropriate, including the use of any assistant or other person authorized by him or her and the employment or engagement of such experts, consultants, or attorneys as he deems necessary or appropriate. Any authority provided to the General Manager/Secretary Treasurer shall also be authority for acts of his or her designee.~~

~~(b) The General Manager/Secretary Treasurer shall not be bound by any formal rules of evidence or procedure. In his or her discretion, he or she may obtain and/or consider any and all matters or things which he deems relevant to the claim for indemnification, including, but not limited to:~~

~~(1) Any and all information, documents, materials or things in the possession, custody or control of the Authority;~~

~~(2) Any and all documents, materials or other things identified in the claimant's application;~~

~~(3) Any and all additional information, documents, materials or other things identified by any other persons; and~~

~~(4) Any and all other information, documents, materials, or things of any nature which may come into his or her possession or into the possession of the Authority or which may reach the attention of the Authority.~~

~~(c) The General Manager/Secretary Treasurer, in his or her discretion, may conduct interviews and/or obtain statements from persons, including, but not limited to, persons identified in the claimant's application, or any other person(s) who may come to the attention of the General Manager/Secretary Treasurer.~~

~~(d) In investigating and reviewing whether the claimant acted in "good faith," the General Manager/Secretary Treasurer may consider some or all the following factors:~~

~~(1) Were the acts for which indemnification is claimed the kind of acts that the claimant was hired to perform or part of an actual duty connected with his or her performance?~~

~~(2) Were the acts done within the time and space limits of his or her employment?~~

~~(3) Did the claimant have the express or implied authority of the Authority to act in the circumstances which gave rise to the litigation, action, suit or proceeding?~~

~~(4) Did the acts further the Authority's interests, as opposed to the claimant's own private interests?~~

~~(5) Did the claimant gain any personal profit or advantage?~~

~~(6) Was the claimant charged in pending litigation, or was he or she found liable in completed litigation, with acts in dereliction in the performance of his or her duties?~~

~~(e) The General Manager/Secretary Treasurer need not conduct any evidentiary hearing or adversarial proceeding.~~

~~The claimant need not be present at any stage of the proceedings.~~

~~The General Manager/Secretary Treasurer shall not be bound by any formal rules of evidence or procedure, but may receive or consider all information of any nature, or any statements, documents, materials or other things which may come into the possession of the Authority or which may reach the attention of the Authority.~~

~~The claimant need not be given the opportunity for oral presentation or an opportunity to present witnesses or to cross-examine witnesses.~~

~~The claimant need not be given the opportunity to appear before the General Manager/Secretary Treasurer or the Board of Trustees.~~

~~(f) Should the General Manager/Secretary Treasurer find that the claimant acted in good faith and that his or her acts were conducted in the discharge of the official duties of his or her employment, the General Manager/Secretary Treasurer must then investigate and review the amount of the "expenses" sought to be indemnified by reimbursement or payment based upon a standard of "reasonableness" as defined in the Bylaws.~~

~~"Expenses" shall be those defined in the Bylaws, as they may be amended from time to time. "Expenses" under the Bylaws, as amended to February 16, 1988, "shall be deemed to mean and to include, but not be limited to, fines and penalties imposed on such member or officer; amounts paid upon a plea of nolo contendere or similar plea; amounts paid in compromise or settlement of the litigation; amounts paid in satisfaction of any judgment; costs of investigation; reasonable attorney's fees incurred in the defense of such litigation and costs of attachment on similar bonds."~~

~~The standard of "reasonableness" is a two-part test requiring that the "expenses" be both reasonable, and "actually incurred in the defense of the litigation, action, suit or proceeding for which indemnification is claimed."~~

~~(g) Should the General Manager/Secretary Treasurer determine that the claimant is eligible for indemnification reimbursement or payment, he or she shall promptly issue a written report to the Board of Trustees which shall contain a recommendation as to what amount, if any, should be considered for payment to the claimant. The General Manager/Secretary Treasurer's report should include his or her finding of whether:~~

~~(1) The claimant is eligible or non-eligible for consideration of indemnification as a member of the Board of Trustees or an officer of the Authority at the time of the acts for which indemnification is claimed;~~

~~(2) The claimant was made a party to the litigation, action, suit or proceeding by reason of his or her being or having been a member of the Board of Trustees or an officer of the Authority;~~

~~(3) The claimant acted in good faith;~~

~~(4) The claimant's acts were conducted in the discharge of his or her official duties; and~~

~~(5) The "expenses," as defined in the Bylaws, are reasonable and were actually incurred by the claimant in connection with the defense of the litigation, action, suit or proceeding.~~

~~(h) Upon submission of the written report to the Board of Trustees, the General Manager/Secretary Treasurer shall provide notice to the claimant and/or to his or her attorney that:~~

~~(1) The claimant may receive a copy of the report upon written request;~~

~~(2) The claimant may submit a written response statement to the Board of Trustees in response to the report, within such prompt and reasonable time and upon such terms and conditions as the General Manager/Secretary Treasurer may determine; and~~

~~(3) Any written response statement should be limited to matters addressed in the General Manager/Secretary Treasurer's report and should not include any new matter or issues not specifically raised by the claimant in his or her application.~~

~~The General Manager/Secretary Treasurer may submit a supplemental report, with a recommendation if he or she deems it necessary or appropriate, to the Board of Trustees in reply to the claimant's written response statement, within such prompt and reasonable time as the General Manager/Secretary Treasurer may require.~~

~~The claimant shall not be permitted to respond to the General Manager/Secretary Treasurer's supplemental report, but he or she may receive a copy of the supplemental report upon written request.~~

~~(Res. 1991-151. Passed 7-23-91.)~~

~~629.08 THE BOARD OF TRUSTEES' DETERMINATION OF CLAIM.~~

~~(a) The Board of Trustees, in executive session, shall determine the indemnification claim after investigation and review of the General Manager/Secretary Treasurer's report with his or her recommendation and the response statement of the claimant, if any, and the General Manager/Secretary Treasurer's supplemental report, if any. The Board of Trustees may cause and instruct the General Manager/Secretary Treasurer to further investigate and review the claim and make a second report to the Board, in which event the claimant shall be provided with a copy of the second report but shall not have any further right to respond.~~

~~(b) The claimant shall have no right to appear before the Board of Trustees or to be present before the Board of Trustees at any stage of the proceedings. The claimant shall have no right to make an oral presentation before the Board of Trustees or to present or cross-examine witnesses. The Board of Trustees shall not conduct an evidentiary hearing or adversarial proceeding.~~

~~(e) The Board of Trustees shall apply the legal standards set forth in the Bylaws of the Authority.~~

~~(d) The Board of Trustees may:~~

~~(1) Instruct the General Manager/Secretary Treasurer to conduct such further investigation and review as it may deem appropriate, or it may act upon the report with a recommendation of the General Manager/Secretary Treasurer without further review or investigation;~~

~~(2) Instruct the General Manager/Secretary Treasurer to reconsider any matters contained in the General Manager/Secretary Treasurer's report, or his or her supplemental report or raised by the response statement of the claimant, as it may deem necessary or appropriate.~~

~~(e) The General Manager/Secretary Treasurer shall promptly inform the Board of Trustees that the claimants' request for indemnification is ready for determination by the Board of Trustees.~~

~~The claim shall be considered ready for determination by the Board of Trustees following the receipt of the General Manager/Secretary Treasurer's report, the claimant's response statement, and the General Manager/Secretary Treasurer's supplemental report and/or second report, if any, subject to any extension of time required or authorized by the Board of Trustees.~~

~~The Board of Trustees shall endeavor to make the final determination of an indemnification claim within ninety days after it is ready for determination.~~

~~After final determination, the Board of Trustees shall authorize the General Manager/Secretary Treasurer to direct a written notice to the claimant of its decision on the claimant's request for indemnification, which shall be done promptly.~~

~~(f) Should the Authority authorize the entry of a defense to any pending litigation, action, suit or proceeding, such determination shall always be subject to the continuing right of the authority to suspend or terminate the defense for cause or to refuse reimbursement of any expenses incurred in the defense if the Board of Trustees or the General Manager/Secretary Treasurer later decides that its or his or her original determination should be suspended for investigation and review, changed for just cause, or terminated for one or more of the conditions set forth in the Bylaws.~~

~~(g) Should the Board of Trustees authorize the entry of a defense, such determination shall be only upon the terms and conditions in Article IX, Section 4, of the Bylaws, as the same may be amended from time to time. Any Board member or officer of the Authority shall be obligated to repay and to reimburse the Authority for all moneys advanced by or paid out as expenses, as defined in the Bylaws, which were expended or incurred by the Authority arising from any litigation, action, proceeding and appeals therefrom, namely:~~

~~(1) Those as to which he or she shall finally be adjudged in such litigation to be liable for because of a dereliction in the performance of his or her duties as a member of the Board or as an officer of the Authority;~~

~~(2) Those which have resulted in a judgment in favor of the Authority and against him or her or which are settled by any payment by him or her to the Authority; or~~

~~(3) Those as to which he or she gained any personal profit or advantage to which he or she was not legally entitled.~~

~~The General Manager/Secretary-Treasurer shall assure that the indemnitee is informed in writing and agrees to such conditions of the Bylaws, but any lack of such notice or agreement shall not impair the right of the Authority to recover or to secure reimbursement and/or repayment of any moneys erroneously advanced or paid to any claimant or indemnitee.~~

~~(h) The Authority always retains the right to recover or to secure reimbursement or repayment of any moneys erroneously advanced or paid to any claimant or indemnitee, together with the costs, expenses and attorney fees incurred in such recovery.~~

~~(i) In the event of an indemnification reimbursement or payment, the determination by the Board of Trustees shall be final and the claimant shall have no right of reconsideration or administrative appeal.~~

~~(Res. 1991-151. Passed 7-23-91.)~~