

As Introduced

**124th General Assembly
Regular Session
2001-2002**

S. B. No. 106

SENATORS Hottinger, Wachtmann, Nein, Johnson

A B I L L

To amend sections 723.01, 2744.01, 2744.02, 2744.03, 1
2744.04, 2744.05, 2744.06, 4582.27, 5591.36, and 2
5591.37 of the Revised Code to include as a 3
governmental function under the Political 4
Subdivision Sovereign Immunity Law the design, 5
construction, reconstruction, renovation, repair, 6
maintenance, and operation of any school athletic 7
facility, school auditorium, or gymnasium; to 8
re-enact changes made by Am. Sub. H.B. 350 of the 9
121st General Assembly to the Political Subdivision 10
Sovereign Immunity Law; and to amend sections 11
2744.01 and 2744.03 of the Revised Code as 12
scheduled to take effect on January 1, 2002, to 13
continue the amendments of this act on and after 14
that date. 15

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

Section 1. That sections 2744.01, 2744.03, 2744.04, 2744.05, 16
2744.06, 4582.27, and 5591.37 be amended and sections 723.01, 17
2744.02, and 5591.36 of the Revised Code be revived and amended to 18
read as follows: 19

Sec. 723.01. Municipal corporations shall have special power 20

to regulate the use of the streets. Except as provided in section 21
5501.49 of the Revised Code, the legislative authority of a 22
municipal corporation shall have the care, supervision, and 23
control of the public highways, streets, avenues, alleys, 24
sidewalks, public grounds, bridges, aqueducts, and viaducts within 25
the municipal corporation ~~The liability or immunity from liability~~ 26
~~of a municipal corporation for injury, death, or loss to person or~~ 27
~~property allegedly caused by a failure to perform the~~ 28
~~responsibilities imposed by this section shall be determined~~ 29
~~pursuant to division (A) and (B)(3) of section 2744.02 of the~~ 30
~~Revised Code., and the municipal corporation shall cause them to~~ 31
~~be kept open, in repair, and free from nuisance. The liability or~~ 32
~~immunity from liability of a municipal corporation for injury,~~ 33
~~death, or loss to person or property allegedly caused by a failure~~ 34
~~to perform the responsibilities imposed by this section shall be~~ 35
~~determined pursuant to divisions (A) and (B)(3) of section 2744.02~~ 36
~~of the Revised Code.~~ 37

Sec. 2744.01. As used in this chapter: 38

(A) "Emergency call" means a call to duty, including, but not 39
limited to, communications from citizens, police dispatches, and 40
personal observations by peace officers of inherently dangerous 41
situations that demand an immediate response on the part of a 42
peace officer. 43

(B) "Employee" means an officer, agent, employee, or servant, 44
whether or not compensated or full-time or part-time, who is 45
authorized to act and is acting within the scope of ~~his the~~ 46
~~officer's, agent's, employee's, or servant's~~ the officer's, 47
agent's, employee's, or servant's employment for a political 48
subdivision. "Employee" does not include an independent 49
contractor, ~~and~~ and does not include any individual engaged by a 50
school district pursuant to section 3319.301 of the Revised Code. 51
"Employee" includes any elected or appointed official of a 52

political subdivision. "Employee" also includes a person who has 53
been convicted of or pleaded guilty to a criminal offense and who 54
has been sentenced to perform community service work in a 55
political subdivision whether pursuant to section 2951.02 of the 56
Revised Code or otherwise, and a child who is found to be a 57
delinquent child and who is ordered by a juvenile court pursuant 58
to section 2151.355 of the Revised Code to perform community 59
service or community work in a political subdivision. 60

(C)(1) "Governmental function" means a function of a 61
political subdivision that is specified in division (C)(2) of this 62
section or that satisfies any of the following: 63

(a) A function that is imposed upon the state as an 64
obligation of sovereignty and that is performed by a political 65
subdivision voluntarily or pursuant to legislative requirement; 66

(b) A function that is for the common good of all citizens of 67
the state; 68

(c) A function that promotes or preserves the public peace, 69
health, safety, or welfare; that involves activities that are not 70
engaged in or not customarily engaged in by nongovernmental 71
persons; and that is not specified in division (G)(2) of this 72
section as a proprietary function. 73

(2) A "governmental function" includes, but is not limited 74
to, the following: 75

(a) The provision or nonprovision of police, fire, emergency 76
medical, ambulance, and rescue services or protection; 77

(b) The power to preserve the peace; to prevent and suppress 78
riots, disturbances, and disorderly assemblages; to prevent, 79
mitigate, and clean up releases of oil and hazardous and extremely 80
hazardous substances as defined in section 3750.01 of the Revised 81
Code; and to protect persons and property; 82

(c) The provision of a system of public education; 83

(d) The provision of a free public library system;	84
(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;	85 86 87
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	88 89
(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;	90 91 92 93
(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;	94 95 96 97
(i) The enforcement or nonperformance of any law;	98
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	99 100
(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.	101 102 103 104 105 106 107 108 109 110 111 112
(l) The provision or nonprovision, planning or design,	113

construction, or reconstruction of a public improvement,	114
including, but not limited to, a sewer system;	115
(m) The operation of a human services department or agency,	116
including, but not limited to, the provision of assistance to aged	117
and infirm persons and to persons who are indigent;	118
(n) The operation of a health board, department, or agency,	119
including, but not limited to, any statutorily required or	120
permissive program for the provision of immunizations or other	121
inoculations to all or some members of the public, provided that a	122
"governmental function" does not include the supply, manufacture,	123
distribution, or development of any drug or vaccine employed in	124
any such immunization or inoculation program by any supplier,	125
manufacturer, distributor, or developer of the drug or vaccine;	126
(o) The operation of mental health facilities, mental	127
retardation or developmental disabilities facilities, alcohol	128
treatment and control centers, and children's homes or agencies;	129
(p) The provision or nonprovision of inspection services of	130
all types, including, but not limited to, inspections in	131
connection with building, zoning, sanitation, fire, plumbing, and	132
electrical codes, and the taking of actions in connection with	133
those types of codes, including, but not limited to, the approval	134
of plans for the construction of buildings or structures and the	135
issuance or revocation of building permits or stop work orders in	136
connection with buildings or structures;	137
(q) Urban renewal projects and the elimination of slum	138
conditions;	139
(r) Flood control measures;	140
(s) The design, construction, reconstruction, renovation,	141
operation, care, repair, and maintenance of a township cemetery;	142
(t) The issuance of revenue obligations under section 140.06	143

of the Revised Code;	144
(u) The design, construction, reconstruction, renovation,	145
repair, maintenance, and operation of any park, playground,	146
playfield, indoor recreational facility, <u>school athletic facility,</u>	147
<u>school auditorium, gymnasium,</u> zoo, zoological park, bath, swimming	148
pool, pond, water park, wading pool, wave pool, water slide, and	149
other type of aquatic facility, or golf course;	150
(v) The provision of public defender services by a county or	151
joint county public defender's office pursuant to Chapter 120. of	152
the Revised Code;	153
(w) A function that the general assembly mandates a political	154
subdivision to perform.	155
(D) "Law" means any provision of the constitution, statutes,	156
or rules of the United States or of this state; provisions of	157
charters, ordinances, resolutions, and rules of political	158
subdivisions; and written policies adopted by boards of education.	159
When used in connection with the "common law," this definition	160
does not apply.	161
(E) "Motor vehicle" has the same meaning as in section	162
4511.01 of the Revised Code.	163
(F) "Political subdivision" or "subdivision" means a	164
municipal corporation, township, county, school district, or other	165
body corporate and politic responsible for governmental activities	166
in a geographic area smaller than that of the state. "Political	167
subdivision" includes, but is not limited to, a county hospital	168
commission appointed under section 339.14 of the Revised Code,	169
regional planning commission created pursuant to section 713.21 of	170
the Revised Code, county planning commission created pursuant to	171
section 713.22 of the Revised Code, joint planning council created	172
pursuant to section 713.231 of the Revised Code, interstate	173
regional planning commission created pursuant to section 713.30 of	174

the Revised Code, port authority created pursuant to section 175
4582.02 or 4582.26 of the Revised Code or in existence on December 176
16, 1964, regional council established by political subdivisions 177
pursuant to Chapter 167. of the Revised Code, emergency planning 178
district and joint emergency planning district designated under 179
section 3750.03 of the Revised Code, joint emergency medical 180
services district created pursuant to section 307.052 of the 181
Revised Code, fire and ambulance district created pursuant to 182
section 505.375 of the Revised Code, joint interstate emergency 183
planning district established by an agreement entered into under 184
that section, county solid waste management district and joint 185
solid waste management district established under section 343.01 186
or 343.012 of the Revised Code, and community school established 187
under Chapter 3314. of the Revised Code. 188

(G)(1) "Proprietary function" means a function of a political 189
subdivision that is specified in division (G)(2) of this section 190
or that satisfies both of the following: 191

(a) The function is not one described in division (C)(1)(a) 192
or (b) of this section and is not one specified in division (C)(2) 193
of this section; 194

(b) The function is one that promotes or preserves the public 195
peace, health, safety, or welfare and that involves activities 196
that are customarily engaged in by nongovernmental persons. 197

(2) A "proprietary function" includes, but is not limited to, 199
the following: 200

(a) The operation of a hospital by one or more political 201
subdivisions; 202

(b) The design, construction, reconstruction, renovation, 203
repair, maintenance, and operation of a public cemetery other than 204
a township cemetery; 205

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

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

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

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

Sec. 2744.02. (A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or

loss to ~~persons~~ ~~person~~ person or property allegedly caused by any 236
act or omission of the political subdivision or an employee of the 237
political subdivision in connection with a governmental or 238
proprietary function. 239

(2) Subject to statutory limitations upon their monetary 240
jurisdiction, the courts of common pleas, the municipal courts, 241
and the county courts have jurisdiction to hear and determine 242
civil actions governed by or brought pursuant to this chapter. 243

(B) Subject to sections 2744.03 and 2744.05 of the Revised 244
Code, a political subdivision is liable in damages in a civil 245
action for injury, death, or loss to ~~persons~~ ~~person~~ person or 246
property allegedly caused by an act or omission of the political 247
subdivision or of any of its employees in connection with a 248
governmental or proprietary function, as follows: 249

(1) Except as otherwise provided in this division, political 250
subdivisions are liable for injury, death, or loss to ~~persons~~ 251
~~person~~ person or property caused by the negligent operation of any 252
motor vehicle by their employees upon the public roads, ~~highways,~~ 253
~~or streets~~ when the employees are engaged within the scope of 254
their employment and authority. The following are full defenses to 255
~~such that~~ that liability: 256

(a) A member of a municipal corporation police department or 257
any other police agency was operating a motor vehicle while 258
responding to an emergency call and the operation of the vehicle 259
did not constitute willful or wanton misconduct; 260

(b) A member of a municipal corporation fire department or 261
any other firefighting agency was operating a motor vehicle while 262
engaged in duty at a fire, proceeding toward a place where a fire 263
is in progress or is believed to be in progress, or answering any 264
other emergency alarm and the operation of the vehicle did not 265
constitute willful or wanton misconduct; 266

(c) A member of an emergency medical service owned or 267
operated by a political subdivision was operating a motor vehicle 268
while responding to or completing a call for emergency medical 269
care or treatment, the member was holding a valid commercial 270
driver's license issued pursuant to Chapter 4506. or a driver's 271
license issued pursuant to Chapter 4507. of the Revised Code, the 272
operation of the vehicle did not constitute willful or wanton 273
misconduct, and the operation complies with the precautions of 274
section 4511.03 of the Revised Code. 275

(2) Except as otherwise provided in sections 3314.07 and 276
3746.24 of the Revised Code, political subdivisions are liable for 277
injury, death, or loss to ~~persons~~ ~~person~~ person or property caused 278
by the negligent performance of acts by their employees with 279
respect to proprietary functions of the political subdivisions. 280

(3) Except as otherwise provided in section 3746.24 of the 281
Revised Code, political subdivisions are liable for injury, death, 282
or loss to ~~persons~~ ~~person~~ person or property caused by their 283
~~negligent~~ negligent failure to keep public roads, ~~highways,~~ 284
~~streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts,~~ 285
~~or public grounds within the political subdivisions open, in~~ 286
~~repair and other negligent failure to remove obstructions from~~ 287
public roads, and free from nuisance and other negligent failure 288
to remove obstructions from public roads, except that it is a full 289
defense to ~~such that~~ that liability, when a bridge within a 290
municipal corporation is involved, that the municipal corporation 291
does not have the responsibility for maintaining or inspecting the 292
bridge. 293

(4) Except as otherwise provided in section 3746.24 of the 294
Revised Code, political subdivisions are liable for injury, death, 295
or loss to ~~persons~~ ~~person~~ person or property that is caused by the 296
negligence of their employees and that occurs within or on the 297
grounds of, ~~and is due to physical defects within or on the~~ 298

~~grounds of,~~ and is due to physical defects within or on the 299
grounds of, buildings that are used in connection with the 300
performance of a governmental function, including, but not limited 301
to, office buildings and courthouses, but not including jails, 302
places of juvenile detention, workhouses, or any other detention 303
facility, as defined in section 2921.01 of the Revised Code. 304

(5) In addition to the circumstances described in divisions 305
(B)(1) to (4) of this section, a political subdivision is liable 306
for injury, death, or loss to ~~persons~~ ~~person~~ person or property 307
when civil liability is expressly imposed upon the political 308
subdivision by a section of the Revised Code, including, but not 309
limited to, sections 2743.02 and 5591.37 of the Revised Code. 310
Liability shall not be construed to exist under another section of 311
the Revised Code merely because ~~that section imposes~~ that section 312
imposes a responsibility ~~is imposed or mandatory duty or mandatory~~ 313
duty upon a political subdivision ~~or,~~ because of a general 314
authorization ~~in that section~~ in that section that a political 315
subdivision may sue and be sued, ~~or because that section uses the~~ 316
term "shall" in a provision pertaining to a political subdivision. 317

~~(C) An order that denies a political subdivision or an 318
employee of a political subdivision the benefit of an alleged 319
immunity from liability as provided in Chapter 2744. or any other 320
provision of the law is a final order, or because that section 321
uses the term "shall" in a provision pertaining to a political 322
subdivision. 323~~

(C) An order that denies a political subdivision or an 324
employee of a political subdivision the benefit of an alleged 325
immunity from liability as provided in Chapter 2744. or any other 326
provision of the law is a final order. 327

Sec. 2744.03. (A) In a civil action brought against a 328
political subdivision or an employee of a political subdivision to 329

recover damages for injury, death, or loss to persons or property 330
allegedly caused by any act or omission in connection with a 331
governmental or proprietary function, the following defenses or 332
immunities may be asserted to establish nonliability: 333

(1) The political subdivision is immune from liability if the 334
employee involved was engaged in the performance of a judicial, 335
quasi-judicial, prosecutorial, legislative, or quasi-legislative 336
function. 337

(2) The political subdivision is immune from liability if the 338
conduct of the employee involved, other than negligent conduct, 339
that gave rise to the claim of liability was required by law or 340
authorized by law, or if the conduct of the employee involved that 341
gave rise to the claim of liability was necessary or essential to 342
the exercise of powers of the political subdivision or employee. 343
344

(3) The political subdivision is immune from liability if the 345
action or failure to act by the employee involved that gave rise 346
to the claim of liability was within the discretion of the 347
employee with respect to policy-making, planning, or enforcement 348
powers by virtue of the duties and responsibilities of the office 349
or position of the employee. 350

(4) The political subdivision is immune from liability if the 351
action or failure to act by the political subdivision or employee 352
involved that gave rise to the claim of liability resulted in 353
injury or death to a person who had been convicted of or pleaded 354
guilty to a criminal offense and who, at the time of the injury or 355
death, was serving any portion of ~~his the person's~~ the person's 356
sentence by performing community service work for or in the 357
political subdivision whether pursuant to section 2951.02 of the 358
Revised Code or otherwise, or resulted in injury or death to a 359
child who was found to be a delinquent child and who, at the time 360
of the injury or death, was performing community service or 361

community work for or in a political subdivision in accordance 362
with the order of a juvenile court entered pursuant to section 363
2151.355 of the Revised Code, and if, at the time of ~~his~~the 364
~~person's or child's~~ the person's or child's injury or death, the 365
person or child was covered for purposes of Chapter 4123. of the 366
Revised Code in connection with the community service or community 367
work for or in the political subdivision. 368

(5) The political subdivision is immune from liability if the 369
injury, death, or loss to persons or property resulted from the 370
exercise of judgment or discretion in determining whether to 371
acquire, or how to use, equipment, supplies, materials, personnel, 372
facilities, and other resources unless the judgment or discretion 373
was exercised with malicious purpose, in bad faith, or in a wanton 374
or reckless manner. 375

(6) In addition to any immunity or defense referred to in 376
division (A)(7) of this section and in circumstances not covered 377
by that division or sections 3314.07 and 3746.24 of the Revised 378
Code, the employee is immune from liability unless one of the 379
following applies: 380

(a) ~~His~~ The employee's ~~The employee's~~ acts or omissions were 381
manifestly outside the scope of ~~his~~the employee's ~~the employee's~~ 382
employment or official responsibilities; 383

(b) ~~His~~ The employee's ~~The employee's~~ acts or omissions were 384
with malicious purpose, in bad faith, or in a wanton or reckless 385
manner; 386

(c) ~~Liability~~ Civil liability is expressly imposed upon the 387
employee by a section of the Revised Code. ~~Liability shall not be~~ 388
~~construed to exist under another section of the Revised Code~~ 389
~~merely because that section imposes a responsibility or mandatory~~ 390
~~duty upon an employee, because of a general authorization in that~~ 391
~~section that an employee may sue and be sued, or because the~~ 392
~~section uses the term "shall" in a provision pertaining to an~~ 393

~~employee. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.~~

(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in section 2744.02 of the Revised Code.

Sec. 2744.04. (A) An action against a political subdivision to recover damages for injury, death, or loss to ~~persons person~~ person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, whether brought as an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, shall be brought within two years after the cause of action ~~arose accrues~~ accrues, or within any applicable shorter period of time for bringing the action provided by the Revised Code. ~~The period of limitation contained in this division shall be tolled pursuant to section 2305.16 of the Revised Code. The period of limitation contained in this division shall be tolled pursuant to section 2305.16 of the Revised Code.~~ This division applies to actions brought against political subdivisions by all persons, governmental entities, and the state.

(B) In the complaint filed in a civil action against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to ~~persons~~ ~~person~~ person or property allegedly caused by an act or omission in connection with a governmental or proprietary function, whether filed in an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, the complainant shall include a demand for a judgment for the damages that the judge in a nonjury trial or the jury in a jury trial finds that the complainant is entitled to be awarded, but shall not specify in that demand any monetary amount for damages sought.

Sec. 2744.05. Notwithstanding any other provisions of the Revised Code or rules of a court to the contrary, in an action against a political subdivision to recover damages for injury, death, or loss to ~~persons~~ ~~person~~ person or property caused by an act or omission in connection with a governmental or proprietary function:

(A) Punitive or exemplary damages shall not be awarded~~+~~.

~~(B)(1)~~ (1) If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to ~~such~~ those ~~those~~ benefits. ~~The amount of the benefits shall be deducted from an award against a political subdivision under division (B)(1) of this section regardless of whether the claimant may be under an obligation to pay back the benefits upon recovery, in whole or in part, for the claim. A claimant whose benefits have~~

been deducted from an award under division (B)(1) of this section 457
is not considered fully compensated and shall not be required to 458
reimburse a subrogated claim for benefits deducted from an award 459
pursuant to division (B)(1) of this section. 460

~~(2) Nothing~~ The amount of the benefits shall be deducted from 461
an award against a political subdivision under division (B)(1) of 462
this section regardless of whether the claimant may be under an 463
obligation to pay back the benefits upon recovery, in whole or in 464
part, for the claim. A claimant whose benefits have been deducted 465
from an award under division (B)(1) of this section is not 466
considered fully compensated and shall not be required to 467
reimburse a subrogated claim for benefits deducted from an award 468
pursuant to division (B)(1) of this section. 469

~~(2) Nothing~~ in this division (B)(1) of this section (B)(1) of 470
this section shall be construed to do either of the following: 471

(a) Limit the rights of a beneficiary under a life insurance 472
policy or the rights of sureties under fidelity or surety bonds; 473

(b) Prohibit the department of job and family services from 474
recovering from the political subdivision, pursuant to section 475
5101.58 of the Revised Code, the cost of medical assistance 476
benefits provided under Chapter 5107., 5111., or 5115. of the 477
Revised Code. 478

(C)(1) There shall not be any limitation on compensatory 479
damages that represent the actual loss of the person who is 480
awarded the damages. However, except in wrongful death actions 481
brought pursuant to Chapter 2125. of the Revised Code, damages 482
that arise from the same cause of action, transaction or 483
occurrence, or series of transactions or occurrences and that do 484
not represent the actual loss of the person who is awarded the 485
damages shall not exceed two hundred fifty thousand dollars in 486
favor of any one person. The limitation on damages that do not 487
represent the actual loss of the person who is awarded the damages 488

provided in this division does not apply to court costs that are 489
awarded to a plaintiff, or to interest on a judgment rendered in 490
favor of a plaintiff, in an action against a political 491
subdivision. 492

(2) As used in this division, "the actual loss of the person 493
who is awarded the damages" includes all of the following: 494

(a) All wages, salaries, or other compensation lost by the 495
person injured as a result of the injury, including wages, 496
salaries, or other compensation lost as of the date of a judgment 497
and future expected lost earnings of ~~such a the~~ the person injured 498
injured; 499

(b) All expenditures of the person injured or another person 500
on ~~his behalf of the person injured~~ of the person injured for 501
medical care or treatment, for rehabilitation services, or for 502
other care, treatment, services, products, or accommodations that 503
were necessary because of the injury; 504

(c) All expenditures to be incurred in the future, as 505
determined by the court, by the person injured or another person 506
on ~~his behalf of the person injured~~ of the person injured for 507
medical care or treatment, for rehabilitation services, or for 508
other care, treatment, services, products, or accommodations that 509
will be necessary because of the injury; 510

(d) All expenditures of a person whose property was injured 511
or destroyed or of another person on ~~his behalf of the person~~ 512
~~whose property was injured or destroyed~~ of the person whose 513
property was injured or destroyed in order to repair or replace 514
the property that was injured or destroyed; 515

(e) All expenditures of the person injured or ~~of the person~~ 516
of the person whose property was injured or destroyed or of 517
another person on ~~his behalf of the person injured or of the~~ 518
~~person whose property was injured or destroyed~~ of the person 519

injured or of the person whose property was injured or destroyed 520
in relation to the actual preparation or presentation of the 521
~~person's~~ claim ~~involved~~ involved; 522

(f) Any other expenditures of the person injured or ~~of the~~ 523
~~person~~ of the person whose property was injured or destroyed or of 524
another person on ~~his~~ behalf ~~of the person injured or of the~~ 525
~~person whose property was injured or destroyed~~ of the person 526
injured or of the person whose property was injured or destroyed 527
that the court determines represent an actual loss experienced 528
because of the personal or property injury or property loss. 529

"The actual loss of the person who is awarded the damages" 530
does not include any fees paid or owed to an attorney for any 531
services rendered in relation to a personal or property injury or 532
property loss, and does not include any damages awarded for pain 533
and suffering, for the loss of society, consortium, companionship, 534
care, assistance, attention, protection, advice, guidance, 535
counsel, instruction, training, or education of the person 536
injured, for mental anguish, or for any other intangible loss. 537

Sec. 2744.06. (A) Real or personal property, and moneys, 538
accounts, deposits, or investments of a political subdivision are 539
not subject to execution, judicial sale, garnishment, or 540
attachment to satisfy a judgment rendered against a political 541
subdivision in a civil action to recover damages for injury, 542
death, or loss to ~~persons~~ ~~person~~ person or property caused by an 543
act or omission of the political subdivision or any of its 544
employees in connection with a governmental or proprietary 545
function. ~~Such~~ ~~Those~~ Those judgments shall be paid from funds of 546
the political subdivisions that have been appropriated for that 547
purpose, but, if sufficient funds are not currently appropriated 548
for the payment of judgments, the fiscal officer of a political 549
subdivision shall certify the amount of any unpaid judgments to 550
the taxing authority of the political subdivision for inclusion in 551

the next succeeding budget and annual appropriation measure and 552
payment in the next succeeding fiscal year as provided by section 553
5705.08 of the Revised Code, unless any ~~such judgment of that~~ 554
nature of that nature is to be paid from the proceeds of bonds 555
issued pursuant to section 133.14 of the Revised Code or pursuant 556
to annual installments authorized by division (B) or (C) of this 557
section. 558

(B)(1)(a) As used in this division, "the actual loss of the 559
person who is awarded the damages" includes all of the following: 560

(i) All wages, salaries, or other compensation lost by the 561
person injured as a result of the injury, as of the date of the 562
judgment; 563

(ii) All expenditures of the person injured or of another 564
person on ~~his behalf of the person injured~~ of the person injured 565
for medical care or treatment, for rehabilitation services, or for 566
other care, treatment, services, products, or accommodations that 567
were necessary because of the injury; 568

(iii) All expenditures of a person whose property was injured 569
or destroyed or of another person on ~~his behalf of the person~~ 570
~~whose property was injured or destroyed~~ of the person whose 571
property was injured or destroyed in order to repair or replace 572
the property that was injured or destroyed; 573

(iv) All expenditures of the person injured or whose property 574
was injured or destroyed or of another person on ~~his behalf of the~~ 575
~~person injured or whose property was injured or destroyed~~ of the 576
person injured or whose property was injured or destroyed in 577
relation to the actual preparation or presentation of the ~~person's~~ 578
claim ~~involved~~ involved; 579

(v) Any other expenditures of the person injured or ~~of the~~ 580
~~person~~ whose property was injured or destroyed or of another 581
person on ~~his behalf of the person injured or whose property was~~ 582

~~injured or destroyed~~ of the person injured or whose property was 583
injured or destroyed that the court determines represent an actual 584
loss experienced because of the personal or property injury or 585
property loss. 586

(b) As used in this division, "the actual loss of the person 587
who is awarded the damages" does not include any of the following: 588

(i) Wages, salaries, or other compensation lost by the person 589
injured as a result of the injury, that are future expected 590
earnings of ~~such a that~~ that person; 591

(ii) Expenditures to be incurred in the future, as determined 592
by the court, by the person injured or by another person on ~~his~~ 593
~~behalf of the person injured~~ of the person injured for medical 594
care or treatment, for rehabilitation services, or for other care, 595
treatment, services, products, or accommodations that will be 596
necessary because of the injury; 597

(iii) Any fees paid or owed to an attorney for any services 598
rendered in relation to a personal or property injury or property 599
loss; 600

(iv) Any damages awarded for pain and suffering, for the loss 601
of society, consortium, companionship, care, assistance, 602
attention, protection, advice, guidance, counsel, instruction, 603
training, or education of the person injured, for mental anguish, 604
or for any other intangible loss. 605

(2) Except as specifically provided to the contrary in this 606
division, a court that renders a judgment against a political 607
subdivision as described in division (A) of this section and that 608
is not in favor of the state may authorize the political 609
subdivision, upon the motion of the political subdivision, to pay 610
the judgment or a specified portion of the judgment in annual 611
installments over a period not to exceed ten years, subject to the 612
payment of interest at the rate specified in ~~division (A) of~~ 613

division (A) of section 1343.03 of the Revised Code. A court shall 614
not authorize the payment in installments under this division of 615
any portion of a judgment or entire judgment that represents the 616
actual loss of the person who is awarded the damages. 617

618
Additionally, a court shall not authorize the payment in 619
installments under this division of any portion of a judgment or 620
entire judgment that does not represent the actual loss of the 621
person who is awarded the damages unless the court, after 622
balancing the interests of the political subdivision and of the 623
person in whose favor the judgment was rendered, determines that 624
installment payments would be appropriate under the circumstances 625
and would not be unjust to the person in whose favor the judgment 626
was rendered. If a court makes ~~such~~ a determination ~~of that nature~~ 627
of that nature, it shall fix the amount of the installment 628
payments in ~~such~~ a manner ~~as to achieve that achieves~~ that 629
achieves for the person in whose favor the judgment was rendered, 630
the same economic result over the period as ~~he that person that~~ 631
person would have received if the judgment or portion of the 632
judgment subject to the installment payments had been paid in a 633
lump sum payment. 634

(C) At the option of a political subdivision, a judgment as 635
described in division (A) of this section and that is rendered in 636
favor of the state may be paid in equal annual installments over a 637
period not to exceed ten years, without the payment of interest. 638

Sec. 4582.27. ~~(A)~~ A port authority created in accordance with 639
section 4582.22 of the Revised Code shall be governed by a board 640
of directors. Members of a board of directors of a port authority 641
created by the exclusive action of a municipal corporation shall 642
consist of the number of members it considers necessary and shall 643
be appointed by the mayor with the advice and consent of the 644
council. Members of a board of directors of a port authority 645

created by the exclusive action of a township shall consist of 646
such members as it considers necessary and shall be appointed by 647
the township trustees of the township. Members of a board of 648
directors of a port authority created by the exclusive action of a 649
county shall consist of such members as it considers necessary and 650
shall be appointed by the board of county commissioners of the 651
county. Members of a board of directors of a port authority 652
created by a combination of political subdivisions shall be 653
divided among the political subdivisions in such proportions as 654
the political subdivisions may agree and shall be appointed by the 655
participating political subdivisions in the same manner as this 656
section provides for the appointment of members by a political 657
subdivision creating its own port authority. If a participating 658
political subdivision is not authorized by section 4582.22 of the 659
Revised Code to create its own port authority, the political 660
subdivision's elected legislative body, if the political 661
subdivision has an elected legislative body, or the political 662
subdivision's elected official or officials who appoint the 663
legislative body of the political subdivision shall appoint the 664
members of a board of directors of a port authority that are to be 665
appointed by that political subdivision. If the electors of a 666
participating political subdivision do not elect either the 667
legislative body of the political subdivision or the official or 668
officials who appoint the legislative body of the political 669
subdivision, the participating political subdivision may not 670
appoint any member of a board of directors of a port authority. 671
When a port authority is created by a combination of political 672
subdivisions, the number of directors comprising the board shall 673
be determined by agreement between the political subdivisions, 674
which number may be changed from time to time by amendment of the 675
agreement. The appointing body may at any time remove a director 676
appointed by it for misfeasance, nonfeasance, or malfeasance in 677
office. 678

A majority of the directors shall have been qualified 679
electors of, or shall have had their businesses or places of 680
employment in, one or more political subdivisions within the area 681
of the jurisdiction of the port authority, for a period of at 682
least three years next preceding their appointment. 683

The directors of any port authority first appointed shall 684
serve staggered terms. Thereafter each successor shall serve for a 685
term of four years, except that any person appointed to fill a 686
vacancy shall be appointed to only the unexpired term and any 687
director is eligible for reappointment. 688

The board of directors by rule may provide for the removal of 689
a director who fails to attend three consecutive regular meetings 690
of the board. If a director is so removed, a successor shall be 691
appointed for the remaining term of the removed director in the 692
same manner provided for the original appointment. 693

The directors shall elect one of their membership as 694
chairperson and another as vice-chairperson, and shall designate 695
their terms of office, and shall appoint a secretary who need not 696
be a director. A majority of the board of directors shall 697
constitute a quorum, the affirmative vote of which shall be 698
necessary for any action taken by the port authority. No vacancy 699
in the membership of the board shall impair the rights of a quorum 700
to exercise all the rights and perform all the duties of the port 701
authority. 702

Each member of the board of directors of a port authority 703
shall be entitled to receive from the port authority such sum of 704
money as the board of directors may determine as compensation for 705
services as director and reimbursement for reasonable expenses in 706
the performance of official duties. 707

~~(B) Except for civil actions that arise out of the operation 708
of a motor vehicle and civil actions in which the port authority 709~~

~~is the plaintiff, no director, officer, or employee of a port authority shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the director's, officer's, or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the director, officer, or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.~~

710
711
712
713
714
715
716
717

~~This division does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon a director, officer, or employee by any other provision of the Revised Code or by case law.~~

718
719
720
721

~~(C)(1) A port authority shall, except as provided in division (B) of this section, indemnify a director, officer, or employee from liability incurred in the performance of his duties by paying any judgment in, or amount negotiated in settlement of, any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction. The reasonableness of the amount of any consent judgment or settlement is subject to the review and approval of the board of the port authority. The maximum aggregate amount of indemnification paid directly from funds to or on behalf of any director, officer or employee pursuant to this division shall be one million dollars per occurrence, regardless of the number of persons who suffer damage, injury, or death as a result of the occurrence.~~

722
723
724
725
726
727
728
729
730
731
732
733
734

~~(2) A port authority shall not indemnify a director, officer, or employee under any of the following circumstances:~~

735
736

~~(a) To the extent the director, officer, or employee is covered by a policy of insurance for civil liability purchased by the port authority;~~

737
738
739

~~(b) When the director, officer, or employee acts manifestly~~

740

~~outside the scope of his employment or official responsibilities,
with malicious purpose, in bad faith, or in a wanton or reckless
manner;~~ 741
742
743

~~(c) For any portion of a judgment that represents punitive or
exemplary damages;~~ 744
745

~~(d) For any portion of a consent judgment or settlement that
is unreasonable.~~ 746
747

~~(3) The port authority may purchase a policy or policies of
insurance on behalf of directors, officers, and employees of the
port authority from an insurer or insurers licensed to do business
in this state providing coverage for damages in connection with
any civil action, demand, or claim against the director, officer,
or employee by reason of an act or omission by the director,
officer, or employee occurring in the performance of his duties
and not coming within the terms of division (C)(2)(b) of this
section.~~ 748
749
750
751
752
753
754
755
756

~~(4) This section does not affect either of the following:~~ 757

~~(a) Any defense that would otherwise be available in an
action alleging personal liability of a director, officer, or
employee;~~ 758
759
760

~~(b) The operation of section 9.83 of the Revised Code.~~ 761

Sec. 5591.36. ~~The On county roads, the On county roads, the~~ 762
board of county commissioners shall erect and maintain, where not 763
already done, one or more guardrails on each end of a county 764
bridge, viaduct, or culvert more than five feet high ~~and on each~~ 765
~~side of every approach to a county bridge, viaduct, or culvert, if~~ 766
~~the approach or embankment is more than six feet high. The board~~ 767
~~also also shall also protect, by suitable guardrails, all~~ 768
~~perpendicular wash banks more than eight feet in height~~ 769
~~embankments with a rise of more than eight feet in height and with~~ 770

~~a downward slope of greater than seventy degrees embankments with~~ 771
~~a rise of more than eight feet in height and with a downward slope~~ 772
~~of greater than seventy degrees, where such banks the embankments~~ 773
~~the embankments~~ have an immediate connection with a ~~public highway~~ 774
~~other than state highways, or are adjacent thereto in an~~ 775
~~unprotected condition county road~~ county road. 776

~~It shall be a sufficient compliance with this section, if the~~ 777
~~board causes to be erected and maintained a good stockproof hedge~~ 778
~~fence where a guardrail is required. Such guardrails or hedge~~ 779
~~fences shall be erected in a substantial manner, having sufficient~~ 780
~~strength to protect life and property, the~~ The ~~The~~ expense thereof 781
~~to for a guardrail required under this section shall~~ for a 782
guardrail required under this section shall be paid out of the 783
county bridge fund. 784

Sec. 5591.37. ~~Failure Negligent failure~~ Negligent failure to 785
comply with section 5591.36 of the Revised Code shall render the 786
county liable for all accidents or damages as a result of ~~such~~ 787
~~that~~ that failure. 788

Section 2. That existing sections 2744.01, 2744.03, 2744.04, 789
2744.05, 2744.06, 4582.27, and 5591.37, and all existing versions 790
of sections 723.01, 2744.02, and 5591.36 of the Revised Code in 791
effect before, on, or after the effective date of Am. Sub. H.B. 792
350 of the 121st General Assembly, January 27, 1997, are hereby 793
repealed. 794

Section 3. That sections 2744.01 and 2744.03 of the Revised 795
Code as scheduled to take effect on January 1, 2002, be amended to 796
read as follows: 797

Sec. 2744.01. As used in this chapter: 798

(A) "Emergency call" means a call to duty, including, but not 799

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.

(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 ~~his~~the
~~officer's, agent's, employee's, or servant's~~ the officer's,
agent's, employee's, or servant's employment for a political
subdivision. "Employee" does not include an independent
contractor, ~~and~~ 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.

(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:

(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;

(b) A function that is for the common good of all citizens of
the state;

(c) A function that promotes or preserves the public peace,
health, safety, or welfare; that involves activities that are not

800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830

engaged in or not customarily engaged in by nongovernmental	831
persons; and that is not specified in division (G)(2) of this	832
section as a proprietary function.	833
(2) A "governmental function" includes, but is not limited	834
to, the following:	835
(a) The provision or nonprovision of police, fire, emergency	836
medical, ambulance, and rescue services or protection;	837
(b) The power to preserve the peace; to prevent and suppress	838
riots, disturbances, and disorderly assemblages; to prevent,	839
mitigate, and clean up releases of oil and hazardous and extremely	840
hazardous substances as defined in section 3750.01 of the Revised	841
Code; and to protect persons and property;	842
(c) The provision of a system of public education;	843
(d) The provision of a free public library system;	844
(e) The regulation of the use of, and the maintenance and	845
repair of, roads, highways, streets, avenues, alleys, sidewalks,	846
bridges, aqueducts, viaducts, and public grounds;	847
(f) Judicial, quasi-judicial, prosecutorial, legislative, and	848
quasi-legislative functions;	849
(g) The construction, reconstruction, repair, renovation,	850
maintenance, and operation of buildings that are used in	851
connection with the performance of a governmental function,	852
including, but not limited to, office buildings and courthouses;	853
(h) The design, construction, reconstruction, renovation,	854
repair, maintenance, and operation of jails, places of juvenile	855
detention, workhouses, or any other detention facility, as defined	856
in section 2921.01 of the Revised Code;	857
(i) The enforcement or nonperformance of any law;	858
(j) The regulation of traffic, and the erection or	859

nonerection of traffic signs, signals, or control devices;	860
(k) The collection and disposal of solid wastes, as defined	861
in section 3734.01 of the Revised Code, including, but not limited	862
to, the operation of solid waste disposal facilities, as	863
"facilities" is defined in that section, and the collection and	864
management of hazardous waste generated by households. As used in	865
division (C)(2)(k) of this section, "hazardous waste generated by	866
households" means solid waste originally generated by individual	867
households that is listed specifically as hazardous waste in or	868
exhibits one or more characteristics of hazardous waste as defined	869
by rules adopted under section 3734.12 of the Revised Code, but	870
that is excluded from regulation as a hazardous waste by those	871
rules.	872
(l) The provision or nonprovision, planning or design,	873
construction, or reconstruction of a public improvement,	874
including, but not limited to, a sewer system;	875
(m) The operation of a human services department or agency,	876
including, but not limited to, the provision of assistance to aged	877
and infirm persons and to persons who are indigent;	878
(n) The operation of a health board, department, or agency,	879
including, but not limited to, any statutorily required or	880
permissive program for the provision of immunizations or other	881
inoculations to all or some members of the public, provided that a	882
"governmental function" does not include the supply, manufacture,	883
distribution, or development of any drug or vaccine employed in	884
any such immunization or inoculation program by any supplier,	885
manufacturer, distributor, or developer of the drug or vaccine;	886
(o) The operation of mental health facilities, mental	887
retardation or developmental disabilities facilities, alcohol	888
treatment and control centers, and children's homes or agencies;	889
(p) The provision or nonprovision of inspection services of	890

all types, including, but not limited to, inspections in 891
connection with building, zoning, sanitation, fire, plumbing, and 892
electrical codes, and the taking of actions in connection with 893
those types of codes, including, but not limited to, the approval 894
of plans for the construction of buildings or structures and the 895
issuance or revocation of building permits or stop work orders in 896
connection with buildings or structures; 897

(q) Urban renewal projects and the elimination of slum 898
conditions; 899

(r) Flood control measures; 900

(s) The design, construction, reconstruction, renovation, 901
operation, care, repair, and maintenance of a township cemetery; 902

(t) The issuance of revenue obligations under section 140.06 903
of the Revised Code; 904

(u) The design, construction, reconstruction, renovation, 905
repair, maintenance, and operation of any park, playground, 906
playfield, indoor recreational facility, zoo, zoological park, 907
bath, swimming pool, pond, water park, wading pool, wave pool, 908
water slide, and other type of aquatic facility, or golf course; 909

(v) The provision of public defender services by a county or 910
joint county public defender's office pursuant to Chapter 120. of 911
the Revised Code; 912

(w) A function that the general assembly mandates a political 913
subdivision to perform. 914

(D) "Law" means any provision of the constitution, statutes, 915
or rules of the United States or of this state; provisions of 916
charters, ordinances, resolutions, and rules of political 917
subdivisions; and written policies adopted by boards of education. 918
When used in connection with the "common law," this definition 919
does not apply. 920

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code. 921
922

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, and community school established under Chapter 3314. of the Revised Code. 923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following: 948
949
950

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) 951
952

of this section;	953
(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.	954 955 956 957
(2) A "proprietary function" includes, but is not limited to, the following:	958 959
(a) The operation of a hospital by one or more political subdivisions;	960 961
(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;	962 963 964
(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;	965 966 967 968
(d) The maintenance, destruction, operation, and upkeep of a sewer system;	969 970
(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.	971 972 973
(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.	974 975 976 977 978
<u>(I) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are</u>	979 980 981 982

mandated by the Ohio manual of uniform traffic control devices. 983

(I) "State" means the state of Ohio, including, but not 984
limited to, the general assembly, the supreme court, the offices 985
of all elected state officers, and all departments, boards, 986
offices, commissions, agencies, colleges and universities, 987
institutions, and other instrumentalities of the state of Ohio. 988
"State" does not include political subdivisions. 989

Sec. 2744.03. (A) In a civil action brought against a 990
political subdivision or an employee of a political subdivision to 991
recover damages for injury, death, or loss to persons or property 992
allegedly caused by any act or omission in connection with a 993
governmental or proprietary function, the following defenses or 994
immunities may be asserted to establish nonliability: 995

(1) The political subdivision is immune from liability if the 996
employee involved was engaged in the performance of a judicial, 997
quasi-judicial, prosecutorial, legislative, or quasi-legislative 998
function. 999

(2) The political subdivision is immune from liability if the 1000
conduct of the employee involved, other than negligent conduct, 1001
that gave rise to the claim of liability was required by law or 1002
authorized by law, or if the conduct of the employee involved that 1003
gave rise to the claim of liability was necessary or essential to 1004
the exercise of powers of the political subdivision or employee. 1005

(3) The political subdivision is immune from liability if the 1007
action or failure to act by the employee involved that gave rise 1008
to the claim of liability was within the discretion of the 1009
employee with respect to policy-making, planning, or enforcement 1010
powers by virtue of the duties and responsibilities of the office 1011
or position of the employee. 1012

(4) The political subdivision is immune from liability if the 1013

action or failure to act by the political subdivision or employee 1014
involved that gave rise to the claim of liability resulted in 1015
injury or death to a person who had been convicted of or pleaded 1016
guilty to a criminal offense and who, at the time of the injury or 1017
death, was serving any portion of ~~the person's~~ the person's 1018
sentence by performing community service work for or in the 1019
political subdivision whether pursuant to section 2951.02 of the 1020
Revised Code or otherwise, or resulted in injury or death to a 1021
child who was found to be a delinquent child and who, at the time 1022
of the injury or death, was performing community service or 1023
community work for or in a political subdivision in accordance 1024
with the order of a juvenile court entered pursuant to section 1025
2152.19 or 2152.20 of the Revised Code, and if, at the time of ~~the~~ 1026
~~person's or child's~~ the person's or child's injury or death, the 1027
person or child was covered for purposes of Chapter 4123. of the 1028
Revised Code in connection with the community service or community 1029
work for or in the political subdivision. 1030

(5) The political subdivision is immune from liability if the 1031
injury, death, or loss to persons or property resulted from the 1032
exercise of judgment or discretion in determining whether to 1033
acquire, or how to use, equipment, supplies, materials, personnel, 1034
facilities, and other resources unless the judgment or discretion 1035
was exercised with malicious purpose, in bad faith, or in a wanton 1036
or reckless manner. 1037

(6) In addition to any immunity or defense referred to in 1038
division (A)(7) of this section and in circumstances not covered 1039
by that division or sections 3314.07 and 3746.24 of the Revised 1040
Code, the employee is immune from liability unless one of the 1041
following applies: 1042

(a) ~~His~~ ~~The employee's~~ The employee's acts or omissions were 1043
manifestly outside the scope of ~~his~~ ~~the employee's~~ the employee's 1044
employment or official responsibilities; 1045

(b) ~~His~~ ~~The employee's~~ The employee's acts or omissions were 1046
with malicious purpose, in bad faith, or in a wanton or reckless 1047
manner; 1048

(c) Liability is expressly imposed upon the employee by a 1049
section of the Revised Code. ~~Liability shall not be construed to~~ 1050
~~exist under another section of the Revised Code merely because~~ 1051
~~that section imposes a responsibility or mandatory duty upon an~~ 1052
~~employee, because of a general authorization in that section that~~ 1053
~~an employee may sue and be sued, or because the section uses the~~ 1054
~~term "shall" in a provision pertaining to an employee.~~ 1055
Liability shall not be construed to exist under another section of the 1056
Revised Code merely because that section imposes a responsibility 1057
or mandatory duty upon an employee, because of a general 1058
authorization in that section that an employee may sue and be 1059
sued, or because the section uses the term "shall" in a provision 1060
pertaining to an employee. 1061

(7) The political subdivision, and an employee who is a 1062
county prosecuting attorney, city director of law, village 1063
solicitor, or similar chief legal officer of a political 1064
subdivision, an assistant of any such person, or a judge of a 1065
court of this state is entitled to any defense or immunity 1066
available at common law or established by the Revised Code. 1067

(B) Any immunity or defense conferred upon, or referred to in 1068
connection with, an employee by division (A)(6) or (7) of this 1069
section does not affect or limit any liability of a political 1070
subdivision for an act or omission of the employee as provided in 1071
section 2744.02 of the Revised Code. 1072

Section 4. That existing sections 2744.01 and 2744.03 of the 1073
Revised Code as scheduled to take effect on January 1, 2002, are 1074
hereby repealed. 1075

Section 5. Sections 3 and 4 of this act take effect on 1076
January 1, 2002. 1077

Section 6. Sections 723.01, 2744.01, 2744.02, 2744.03, 1078
2744.04, 2744.05, 2744.06, 4582.27, 5591.36, and 5591.37 of the 1079
Revised Code, as amended by this act, apply only to causes of 1080
action that accrue on or after the effective date of this act. Any 1081
cause of action that accrues prior to the effective date of this 1082
act is governed by the law in effect when the cause of action 1083
accrued. 1084

Section 7. (A) In Section 1 of this act: 1085

(1) Sections 723.01, 2744.04, 2744.06, 5591.36, and 5591.37 1086
of the Revised Code, which have not been amended subsequent to 1087
their amendment by Am. Sub. H.B. 350 of the 121st General 1088
Assembly, are amended to re-enact the changes made to those 1089
sections by Am. Sub. H.B. 350 of the 121st General Assembly. 1090

(2) Section 2744.01 of the Revised Code, which has been 1091
amended by H.B. 205 of the 123rd General Assembly subsequent to 1092
its amendment by Am. Sub. H.B. 350 of the 121st General Assembly, 1093
is amended to re-enact the changes made to that section by Am. 1094
Sub. H.B. 350 of the 121st General Assembly. Amendments made to 1095
that section by H.B. 205 of the 123rd General Assembly are 1096
retained. 1097

(3) Sections 2744.02 and 2744.03 of the Revised Code, which 1098
have been amended by Am. Sub. H.B. 215 of the 122nd General 1099
Assembly subsequent to their amendment by Am. Sub. H.B. 350 of the 1100
121st General Assembly, are amended to re-enact the changes made 1101
to those sections by Am. Sub. H.B. 350 of the 121st General 1102
Assembly. Amendments made to those sections by Am. Sub. H.B. 215 1103
of the 122nd General Assembly are retained. 1104

(4) Section 2744.05 of the Revised Code, which has been 1105
amended by Am. Sub. H.B. 215 of the 122nd General Assembly and 1106
H.B. 471 of the 123rd General Assembly subsequent to its amendment 1107
by Am. Sub. H.B. 350 of the 121st General Assembly, is amended to 1108
re-enact the changes made to that section by Am. Sub. H.B. 350 of 1109
the 121st General Assembly. Amendments made to that section by Am. 1110
Sub. H.B. 215 of the 122nd General Assembly and H.B. 471 of the 1111
123rd General Assembly are retained. 1112

(5) Section 4582.27 of the Revised Code, which has been 1113
amended by Am. S.B. 137 of the 123rd General Assembly subsequent 1114
to its amendment by Am. Sub. H.B. 350 of the 121st General 1115
Assembly, is amended to re-enact the changes made to that section 1116
by Am. Sub. H.B. 350. Amendments made to that section by Am. S.B. 1117
137 of the 123rd General Assembly are retained. 1118

(B) In Section 3 of this act, sections 2744.01 and 2744.03 of 1119
the Revised Code are amended effective January 1, 2002, to 1120
continue the amendments made to those sections by Section 1 of 1121
this act as explained in divisions (A)(2) and (3) of this section. 1122
Sections 2744.01 and 2744.03 were amended subsequently to Am. Sub. 1123
H.B. 350 of the 121st General Assembly by Am. Sub. S.B. 179 of the 1124
123rd General Assembly, effective January 1, 2002. 1125

(C) The amendment of sections 723.01, 2744.01, 2744.02, 1126
2744.03, 2744.04, 2744.05, 2744.06, 4582.27, 5591.36, and 5591.37 1127
of the Revised Code by this act as described in divisions (A) and 1128
(B) of this section is in conformity with the Supreme Court of 1129
Ohio's decisions in *State, ex rel. Ohio Academy of Trial Lawyers* 1130
v. Sheward (1999), 86 Ohio St.3d 451, and *Stevens v. Ackman* 1131
(2001), 91 Ohio St.3d 182, and is intended to clarify the status 1132
of those sections. 1133