

As Passed by the Senate

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

Sub. S. B. No. 106

SENATORS Hottinger, Wachtmann, Nein, Johnson

A BILL

To amend sections 723.01, 2744.01, 2744.02, 2744.03,
2744.04, 2744.05, 2744.06, 2744.07, 4582.27,
5511.01, 5591.36, and 5591.37 of the Revised Code
to include as governmental functions under the
Political Subdivision Sovereign Immunity Law the
design, construction, reconstruction, renovation,
repair, maintenance, and operation of any school
athletic facility, school auditorium, or gymnasium
and the designation, establishment, design,
construction, implementation, operation, repair, or
maintenance of railroad quiet zones; to expand the
motor vehicle operation liability of political
subdivisions to include liability for harm caused
by negligent operation other than upon public
roads; to limit a political subdivision's
obligation to defend an employee to acts or
omissions that occur while the employee is both
acting in good faith and not manifestly outside the
scope of employment or official responsibilities;
to make changes proposed by Am. Sub. H.B. 350 of
the 121st General Assembly to the Political
Subdivision Sovereign Immunity Law; and to amend
sections 2744.01 and 2744.03 of the Revised Code as
scheduled to take effect on January 1, 2002, to
continue the amendments of this act on and after

that date.

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

Section 1. That sections 723.01, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code be amended to read as follows:

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Sec. 723.01. Municipal corporations shall have special power 30
to regulate the use of the streets. Except as provided in section 31
5501.49 of the Revised Code, the legislative authority of a 32
municipal corporation shall have the care, supervision, and 33
control of the public highways, streets, avenues, alleys, 34
sidewalks, public grounds, bridges, aqueducts, and viaducts within 35
the municipal corporation, and the municipal corporation shall 36
~~cause them to be kept open, in repair, and free from nuisance. The~~ 37
~~liability or immunity from liability of a municipal corporation~~ 38
~~for injury, death, or loss to person or property allegedly caused~~ 39
~~by a failure to perform the responsibilities imposed by this~~ 40
~~section shall be determined pursuant to divisions (A) and (B)(3)~~ 41
~~of section 2744.02 of the Revised Code.~~ 42

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Sec. 2744.01. As used in this chapter:

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(A) "Emergency call" means a call to duty, including, but not 44
limited to, communications from citizens, police dispatches, and 45
personal observations by peace officers of inherently dangerous 46
situations that demand an immediate response on the part of a 47
peace officer.

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(B) "Employee" means an officer, agent, employee, or servant, 49
whether or not compensated or full-time or part-time, who is 50
authorized to act and is acting within the scope of the officer's, 51
agent's, employee's, or servant's employment for a political

subdivision. "Employee" does not include an independent contractor 53
and does not include any individual engaged by a school district 54
pursuant to section 3319.301 of the Revised Code. "Employee" 55
includes any elected or appointed official of a political 56
subdivision. "Employee" also includes a person who has been 57
convicted of or pleaded guilty to a criminal offense and who has 58
been sentenced to perform community service work in a political 59
subdivision whether pursuant to section 2951.02 of the Revised 60
Code or otherwise, and a child who is found to be a delinquent 61
child and who is ordered by a juvenile court pursuant to section 62
2151.355 of the Revised Code to perform community service or 63
community work in a political subdivision. 64

(C)(1) "Governmental function" means a function of a 65
political subdivision that is specified in division (C)(2) of this 66
section or that satisfies any of the following: 67

(a) A function that is imposed upon the state as an 68
obligation of sovereignty and that is performed by a political 69
subdivision voluntarily or pursuant to legislative requirement; 70

(b) A function that is for the common good of all citizens of 71
the state; 72

(c) A function that promotes or preserves the public peace, 73
health, safety, or welfare; that involves activities that are not 74
engaged in or not customarily engaged in by nongovernmental 75
persons; and that is not specified in division (G)(2) of this 76
section as a proprietary function. 77

(2) A "governmental function" includes, but is not limited 78
to, the following: 79

(a) The provision or nonprovision of police, fire, emergency 80
medical, ambulance, and rescue services or protection; 81

(b) The power to preserve the peace; to prevent and suppress 82
riots, disturbances, and disorderly assemblages; to prevent, 83

mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;	84 85 86
(c) The provision of a system of public education;	87
(d) The provision of a free public library system;	88
(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;	89 90 91
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	92 93
(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;	94 95 96 97
(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;	98 99 100 101
(i) The enforcement or nonperformance of any law;	102
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	103 104
(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	105 106 107 108 109 110 111 112 113

by rules adopted under section 3734.12 of the Revised Code, but	114
that is excluded from regulation as a hazardous waste by those	115
rules.	116
(l) The provision or nonprovision, planning or design,	117
construction, or reconstruction of a public improvement,	118
including, but not limited to, a sewer system;	119
(m) The operation of a job and family services department or	120
agency, including, but not limited to, the provision of assistance	121
to aged and infirm persons and to persons who are indigent;	122
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(n) The operation of a health board, department, or agency,	124
including, but not limited to, any statutorily required or	125
permissive program for the provision of immunizations or other	126
inoculations to all or some members of the public, provided that a	127
"governmental function" does not include the supply, manufacture,	128
distribution, or development of any drug or vaccine employed in	129
any such immunization or inoculation program by any supplier,	130
manufacturer, distributor, or developer of the drug or vaccine;	131
(o) The operation of mental health facilities, mental	132
retardation or developmental disabilities facilities, alcohol	133
treatment and control centers, and children's homes or agencies;	134
(p) The provision or nonprovision of inspection services of	135
all types, including, but not limited to, inspections in	136
connection with building, zoning, sanitation, fire, plumbing, and	137
electrical codes, and the taking of actions in connection with	138
those types of codes, including, but not limited to, the approval	139
of plans for the construction of buildings or structures and the	140
issuance or revocation of building permits or stop work orders in	141
connection with buildings or structures;	142
(q) Urban renewal projects and the elimination of slum	143
conditions;	144

(r) Flood control measures;	145
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	146 147
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	148 149
(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any <u>school athletic facility, school auditorium, or gymnasium or any recreational area or facility</u> , including, but not limited to, any of the following:	150 151 152 153
(i) A park, playground, or playfield;	154
(ii) An indoor recreational facility;	155
(iii) A zoo or zoological park;	156
(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;	157 158
(v) A golf course;	159
(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;	160 161 162
(vii) A rope course or climbing walls;	163
(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.	164 165 166
(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;	167 168 169
(w)(i) <u>At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a</u>	170 171 172 173

<u>municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;</u>	174 175 176
<u>(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.</u>	177 178 179 180 181 182 183 184 185 186
<u>(x) A function that the general assembly mandates a political subdivision to perform.</u>	187 188
<u>(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.</u>	189 190 191 192 193 194
<u>(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.</u>	195 196
<u>(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</u>	197 198 199 200 201 202 203 204 205

pursuant to section 713.231 of the Revised Code, interstate	206
regional planning commission created pursuant to section 713.30 of	207
the Revised Code, port authority created pursuant to section	208
4582.02 or 4582.26 of the Revised Code or in existence on December	209
16, 1964, regional council established by political subdivisions	210
pursuant to Chapter 167. of the Revised Code, emergency planning	211
district and joint emergency planning district designated under	212
section 3750.03 of the Revised Code, joint emergency medical	213
services district created pursuant to section 307.052 of the	214
Revised Code, fire and ambulance district created pursuant to	215
section 505.375 of the Revised Code, joint interstate emergency	216
planning district established by an agreement entered into under	217
that section, county solid waste management district and joint	218
solid waste management district established under section 343.01	219
or 343.012 of the Revised Code, and community school established	220
under Chapter 3314. of the Revised Code.	221
(G)(1) "Proprietary function" means a function of a political	222
subdivision that is specified in division (G)(2) of this section	223
or that satisfies both of the following:	224
(a) The function is not one described in division (C)(1)(a)	225
or (b) of this section and is not one specified in division (C)(2)	226
of this section;	227
(b) The function is one that promotes or preserves the public	228
peace, health, safety, or welfare and that involves activities	229
that are customarily engaged in by nongovernmental persons.	230
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(2) A "proprietary function" includes, but is not limited to,	232
the following:	233
(a) The operation of a hospital by one or more political	234
subdivisions;	235
(b) The design, construction, reconstruction, renovation,	236

repair, maintenance, and operation of a public cemetery other than a township cemetery;	237 238
(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;	239 240 241 242
(d) The maintenance, destruction, operation, and upkeep of a sewer system;	243 244
(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.	245 246 247
(H) <u>"Public roads"</u> means <u>public roads, highways, streets, avenues, alleys, and bridges within a political subdivision.</u> <u>"Public roads"</u> does not include <u>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.</u>	248 249 250 251 252
(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.	253 254 255 256 257 258
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 person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary	259 260 261 262 263 264 265 266

function.	267
(2) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.	268 269 270 271
(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:	272 273 274 275 276 277
(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees upon the public roads, highways, or streets when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:	278 279 280 281 282 283
(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;	284 285 286 287
(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;	288 289 290 291 292 293
(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial	294 295 296 297

driver's license issued pursuant to Chapter 4506. or a driver's
license issued pursuant to Chapter 4507. of the Revised Code, the
operation of the vehicle did not constitute willful or wanton
misconduct, and the operation complies with the precautions of
section 4511.03 of the Revised Code. 298
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(2) Except as otherwise provided in sections 3314.07 and
3746.24 of the Revised Code, political subdivisions are liable for
injury, death, or loss to person or property caused by the
negligent performance of acts by their employees with respect to
proprietary functions of the political subdivisions. 303
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(3) Except as otherwise provided in section 3746.24 of the
Revised Code, political subdivisions are liable for injury, death,
or loss to person or property caused by their negligent failure to
keep public roads, highways, streets, avenues, alleys, sidewalks,
bridges, aqueducts, viaducts, or public grounds within the
~~political subdivisions open, in repair, and free from nuisance and~~
~~other negligent failure to remove obstructions from public roads,~~
except that it is a full defense to that liability, when a bridge
within a municipal corporation is involved, that the municipal
corporation does not have the responsibility for maintaining or
inspecting the bridge. 308
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(4) Except as otherwise provided in section 3746.24 of the
Revised Code, political subdivisions are liable for injury, death,
or loss to person or property that is caused by the negligence of
their employees and that occurs within or on the grounds of, and
is due to physical defects within or on the grounds of, buildings
that are used in connection with the performance of a governmental
function, including, but not limited to, office buildings and
courthouses, but not including jails, places of juvenile
detention, workhouses, or any other detention facility, as defined
in section 2921.01 of the Revised Code. 319
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(5) In addition to the circumstances described in divisions 329

(B)(1) to (4) of this section, a political subdivision is liable 330
for injury, death, or loss to person or property when civil 331
liability is expressly imposed upon the political subdivision by a 332
section of the Revised Code, including, but not limited to, 333
sections 2743.02 and 5591.37 of the Revised Code. Liability Civil 334
liability shall not be construed to exist under another section of 335
the Revised Code merely because that section imposes a 336
responsibility ~~is imposed~~ or mandatory duty upon a political 337
subdivision ~~or,~~ because that section provides for a criminal 338
penalty, because of a general authorization in that section that a 339
political subdivision may sue and be sued, or because that section 340
uses the term "shall" in a provision pertaining to a political 341
subdivision. 342

(C) An order that denies a political subdivision or an 343
employee of a political subdivision the benefit of an alleged 344
immunity from liability as provided in this chapter or any other 345
provision of the law is a final order. 346

Sec. 2744.03. (A) In a civil action brought against a 347
political subdivision or an employee of a political subdivision to 348
recover damages for injury, death, or loss to persons person or 349
property allegedly caused by any act or omission in connection 350
with a governmental or proprietary function, the following 351
defenses or immunities may be asserted to establish nonliability: 352

(1) The political subdivision is immune from liability if the 353
employee involved was engaged in the performance of a judicial, 354
quasi-judicial, prosecutorial, legislative, or quasi-legislative 355
function. 356

(2) The political subdivision is immune from liability if the 357
conduct of the employee involved, other than negligent conduct, 358
that gave rise to the claim of liability was required by law or 359
authorized by law, or if the conduct of the employee involved that 360

gave rise to the claim of liability was necessary or essential to	361
the exercise of powers of the political subdivision or employee.	362
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(3) The political subdivision is immune from liability if the	364
action or failure to act by the employee involved that gave rise	365
to the claim of liability was within the discretion of the	366
employee with respect to policy-making, planning, or enforcement	367
powers by virtue of the duties and responsibilities of the office	368
or position of the employee.	369
(4) The political subdivision is immune from liability if the	370
action or failure to act by the political subdivision or employee	371
involved that gave rise to the claim of liability resulted in	372
injury or death to a person who had been convicted of or pleaded	373
guilty to a criminal offense and who, at the time of the injury or	374
death, was serving any portion of the person's sentence by	375
performing community service work for or in the political	376
subdivision whether pursuant to section 2951.02 of the Revised	377
Code or otherwise, or resulted in injury or death to a child who	378
was found to be a delinquent child and who, at the time of the	379
injury or death, was performing community service or community	380
work for or in a political subdivision in accordance with the	381
order of a juvenile court entered pursuant to section 2151.355 of	382
the Revised Code, and if, at the time of the person's or child's	383
injury or death, the person or child was covered for purposes of	384
Chapter 4123. of the Revised Code in connection with the community	385
service or community work for or in the political subdivision.	386
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(5) The political subdivision is immune from liability if the	388
injury, death, or loss to <u>persons</u> <u>person</u> or property resulted from	389
the exercise of judgment or discretion in determining whether to	390
acquire, or how to use, equipment, supplies, materials, personnel,	391
facilities, and other resources unless the judgment or discretion	392

was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.	393 394
(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:	395 396 397 398 399
(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;	400 401 402
(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;	403 404
(c) <u>Liability Civil liability</u> is expressly imposed upon the employee by a section of the Revised Code. <u>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 that section provides for a criminal penalty, 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.</u>	405 406 407 408 409 410 411 412 413
(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.	414 415 416 417 418 419
(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	420 421 422 423

section 2744.02 of the Revised Code.

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Sec. 2744.04. (A) An action against a political subdivision to recover damages for injury, death, or loss to ~~persons~~ 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~~, 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. 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 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 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.

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(B)(1) If a claimant receives or is entitled to receive 454
benefits for injuries or loss allegedly incurred from a policy or 455
policies of insurance or any other source, the benefits shall be 456
disclosed to the court, and the amount of the benefits shall be 457
deducted from any award against a political subdivision recovered 458
by that claimant. No insurer or other person is entitled to bring 459
an action under a subrogation provision in an insurance or other 460
contract against a political subdivision with respect to those 461
benefits. 462

The amount of the benefits shall be deducted from an award 463
against a political subdivision under division (B)(1) of this 464
section regardless of whether the claimant may be under an 465
obligation to pay back the benefits upon recovery, in whole or in 466
part, for the claim. A claimant whose benefits have been deducted 467
from an award under division (B)(1) of this section is not 468
considered fully compensated and shall not be required to 469
reimburse a subrogated claim for benefits deducted from an award 470
pursuant to division (B)(1) of this section. 471

(2) Nothing in this division (B)(1) of this section shall be 472
construed to do either of the following: 473

(1)(a) Limit the rights of a beneficiary under a life 474
insurance policy or the rights of sureties under fidelity or 475
surety bonds; 476

(2)(b) Prohibit the department of job and family services 477
from recovering from the political subdivision, pursuant to 478
section 5101.58 of the Revised Code, the cost of medical 479
assistance benefits provided under Chapter 5107., 5111., or 5115. 480
of the Revised Code. 481

(C)(1) There shall not be any limitation on compensatory 482
damages that represent the actual loss of the person who is 483
awarded the damages. However, except in wrongful death actions 484

brought pursuant to Chapter 2125. of the Revised Code, damages 485
that arise from the same cause of action, transaction or 486
occurrence, or series of transactions or occurrences and that do 487
not represent the actual loss of the person who is awarded the 488
damages shall not exceed two hundred fifty thousand dollars in 489
favor of any one person. The limitation on damages that do not 490
represent the actual loss of the person who is awarded the damages 491
provided in this division does not apply to court costs that are 492
awarded to a plaintiff, or to interest on a judgment rendered in 493
favor of a plaintiff, in an action against a political 494
subdivision. 495

(2) As used in this division, "the actual loss of the person 496
who is awarded the damages" includes all of the following: 497

 (a) All wages, salaries, or other compensation lost by the 498
person injured as a result of the injury, including wages, 499
salaries, or other compensation lost as of the date of a judgment 500
and future expected lost earnings of the person injured; 501

 (b) All expenditures of the person injured or another person 502
on behalf of the person injured for medical care or treatment, for 503
rehabilitation services, or for other care, treatment, services, 504
products, or accommodations that were necessary because of the 505
injury; 506

 (c) All expenditures to be incurred in the future, as 507
determined by the court, by the person injured or another person 508
on behalf of the person injured for medical care or treatment, for 509
rehabilitation services, or for other care, treatment, services, 510
products, or accommodations that will be necessary because of the 511
injury; 512

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

the property that was injured or destroyed;	516
(e) All expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed in relation to the actual preparation or presentation of the claim involved;	517 518 519 520 521
(f) Any other expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed that the court determines represent an actual loss experienced because of the personal or property injury or property loss.	522 523 524 525 526 527
"The actual loss of the person who is awarded the damages" does not include any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss, and does not include any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.	528 529 530 531 532 533 534 535
Sec. 2744.06. (A) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to person or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. <u>Such Those</u> judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the	536 537 538 539 540 541 542 543 544 545 546

fiscal officer of a political subdivision shall certify the amount 547
of any unpaid judgments to the taxing authority of the political 548
subdivision for inclusion in the next succeeding budget and annual 549
appropriation measure and payment in the next succeeding fiscal 550
year as provided by section 5705.08 of the Revised Code, unless 551
any such judgment is to be paid from the proceeds of bonds issued 552
pursuant to section 133.14 of the Revised Code or pursuant to 553
annual installments authorized by division (B) or (C) of this 554
section. 555

(B)(1)(a) As used in this division, "the actual loss of the 556
person who is awarded the damages" includes all of the following: 557

 (i) All wages, salaries, or other compensation lost by the 558
 person injured as a result of the injury, as of the date of the 559
 judgment; 560

 (ii) All expenditures of the person injured or of another 561
 person on behalf of the person injured for medical care or 562
 treatment, for rehabilitation services, or for other care, 563
 treatment, services, products, or accommodations that were 564
 necessary because of the injury; 565

 (iii) All expenditures of a person whose property was injured 566
 or destroyed or of another person on behalf of the person whose 567
 property was injured or destroyed in order to repair or replace 568
 the property that was injured or destroyed; 569

 (iv) All expenditures of the person injured or whose property 570
 was injured or destroyed or of another person on behalf of the 571
 person injured or whose property was injured or destroyed in 572
 relation to the actual preparation or presentation of the person's 573
 claim; 574

 (v) Any other expenditures of the person injured or whose 575
 property was injured or destroyed or of another person on behalf 576
 of the person injured or whose property was injured or destroyed 577

that the court determines represent an actual loss experienced because of the personal or property injury or property loss.	578 579
(b) As used in this division, "the actual loss of the person who is awarded the damages" does not include any of the following:	580 581
(i) Wages, salaries, or other compensation lost by the person injured as a result of the injury, that are future expected earnings of such a <u>that</u> person;	582 583 584
(ii) Expenditures to be incurred in the future, as determined by the court, by the person injured or by another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;	585 586 587 588 589 590
(iii) Any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss;	591 592 593
(iv) Any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.	594 595 596 597 598
(2) Except as specifically provided to the contrary in this division, a court that renders a judgment against a political subdivision as described in division (A) of this section and that is not in favor of the state may authorize the political subdivision, upon the motion of the political subdivision, to pay the judgment or a specified portion of the judgment in annual installments over a period not to exceed ten years, subject to the payment of interest at the rate specified in <u>division (A) of</u> section 1343.03 of the Revised Code. A court shall not authorize the payment in installments under this division of any portion of	599 600 601 602 603 604 605 606 607 608

a judgment or entire judgment that represents the actual loss of 609
the person who is awarded the damages. 610

Additionally, a court shall not authorize the payment in 611
installments under this division of any portion of a judgment or 612
entire judgment that does not represent the actual loss of the 613
person who is awarded the damages unless the court, after 614
balancing the interests of the political subdivision and of the 615
person in whose favor the judgment was rendered, determines that 616
installment payments would be appropriate under the circumstances 617
and would not be unjust to the person in whose favor the judgment 618
was rendered. If a court makes ~~such a~~ that determination, it shall 619
fix the amount of the installment payments in ~~such~~ a manner ~~as to~~ 620
~~achieve~~ that achieves for the person in whose favor the judgment 621
was rendered, the same economic result over the period as that 622
person would have received if the judgment or portion of the 623
judgment subject to the installment payments had been paid in a 624
lump sum payment. 625

(C) At the option of a political subdivision, a judgment as 626
described in division (A) of this section and that is rendered in 627
favor of the state may be paid in equal annual installments over a 628
period not to exceed ten years, without the payment of interest. 629

Sec. 2744.07. (A)(1) Except as otherwise provided in this 630
division, a political subdivision shall provide for the defense of 631
an employee, in any state or federal court, in any civil action or 632
proceeding to recover damages for injury, death, or loss to 633
~~persons~~ person or property allegedly caused by an act or omission 634
of the employee in connection with a governmental or proprietary 635
function if the act or omission occurred ~~or is alleged to have~~ 636
~~occurred~~ while the employee was acting both in good faith and not 637
manifestly outside the scope of ~~his~~ employment or official 638
responsibilities. Amounts expended by a political subdivision in 639
the defense of its employees shall be from funds appropriated for 640

this purpose or from proceeds of insurance. The duty to provide
for the defense of an employee specified in this division does not
apply in a civil action or proceeding that is commenced by or on
behalf of a political subdivision.

(2) Except as otherwise provided in this division, a
political subdivision shall indemnify and hold harmless an
employee in the amount of any judgment, other than a judgment for
punitive or exemplary damages, that is obtained against the
employee in a state or federal court or as a result of a law of a
foreign jurisdiction and that is for damages for injury, death, or
loss to persons person or property caused by an act or omission in
connection with a governmental or proprietary function, if at the
time of the act or omission the employee was acting in good faith
and within the scope of his employment or official
responsibilities.

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

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

(C) If a political subdivision refuses to provide an employee
with a defense in a civil action or proceeding as described in
division (A)(1) of this section, the employee may file, in the

court of common pleas of the county in which the political 673
subdivision is located, an action seeking a determination as to 674
the appropriateness of the refusal of the political subdivision to 675
provide him the employee with a defense under that division. The 676
court shall determine a refusal to be appropriate unless it finds 677
there was an abuse of discretion on the part of the political 678
subdivision in acting under that division. 679

680

Sec. 4582.27. (A) A port authority created in accordance with 681
section 4582.22 of the Revised Code shall be governed by a board 682
of directors. Members of a board of directors of a port authority 683
created by the exclusive action of a municipal corporation shall 684
consist of the number of members it considers necessary and shall 685
be appointed by the mayor with the advice and consent of the 686
council. Members of a board of directors of a port authority 687
created by the exclusive action of a township shall consist of 688
such members as it considers necessary and shall be appointed by 689
the township trustees of the township. Members of a board of 690
directors of a port authority created by the exclusive action of a 691
county shall consist of such members as it considers necessary and 692
shall be appointed by the board of county commissioners of the 693
county. Members of a board of directors of a port authority 694
created by a combination of political subdivisions shall be 695
divided among the political subdivisions in such proportions as 696
the political subdivisions may agree and shall be appointed by the 697
participating political subdivisions in the same manner as this 698
section provides for the appointment of members by a political 699
subdivision creating its own port authority. If a participating 700
political subdivision is not authorized by section 4582.22 of the 701
Revised Code to create its own port authority, the political 702
subdivision's elected legislative body, if the political 703
subdivision has an elected legislative body, or the political 704

subdivision's elected official or officials who appoint the 705
legislative body of the political subdivision shall appoint the 706
members of a board of directors of a port authority that are to be 707
appointed by that political subdivision. If the electors of a 708
participating political subdivision do not elect either the 709
legislative body of the political subdivision or the official or 710
officials who appoint the legislative body of the political 711
subdivision, the participating political subdivision may not 712
appoint any member of a board of directors of a port authority. 713
When a port authority is created by a combination of political 714
subdivisions, the number of directors comprising the board shall 715
be determined by agreement between the political subdivisions, 716
which number may be changed from time to time by amendment of the 717
agreement. The appointing body may at any time remove a director 718
appointed by it for misfeasance, nonfeasance, or malfeasance in 719
office. 720

A majority of the directors shall have been qualified 721
electors of, or shall have had their businesses or places of 722
employment in, one or more political subdivisions within the area 723
of the jurisdiction of the port authority, for a period of at 724
least three years next preceding their appointment. 725

The directors of any port authority first appointed shall 726
serve staggered terms. Thereafter each successor shall serve for a 727
term of four years, except that any person appointed to fill a 728
vacancy shall be appointed to only the unexpired term and any 729
director is eligible for reappointment. 730

The board of directors by rule may provide for the removal of 731
a director who fails to attend three consecutive regular meetings 732
of the board. If a director is so removed, a successor shall be 733
appointed for the remaining term of the removed director in the 734
same manner provided for the original appointment. 735

The directors shall elect one of their membership as 736

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

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

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

~~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.~~

(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.

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

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

(b) When the director, officer, or employee acts manifestly
outside the scope of his employment or official responsibilities,
with malicious purpose, in bad faith, or in a wanton or reckless
manner;

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

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

(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.

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

(a) Any defense that would otherwise be available in an action alleging personal liability of a director, officer, or employee;	800 801 802
(b) The operation of section 9.83 of the Revised Code.	803
 Sec. 5511.01. All state highways established by law shall continue to be known as state highways, and the state highway system established by law shall continue to be known as the state highway system.	804 805 806 807
Before establishing any additional highways as part of the state highway system, or making any significant changes in existing highways comprising the system, the director of transportation shall notify the general community of the project and offer an opportunity for appropriate public involvement in the project process.	808 809 810 811 812 813
The opportunity for public involvement shall satisfy the requirements of the "National Environmental Policy Act of 1969," 83 Stat. 852, 42 U.S.C.A. 4321 et seq., as amended, and may consist of activities including public meetings or hearings, small group meetings with local officials, individual meetings, news releases, public notices, workshops, newsletters, electronic communications, radio announcements, mail notification, and other activities considered appropriate for the exchange of information. The director or the director's designee shall provide the public involvement activities in each of the counties in which the highway proposed to be established is to be located or in which it is proposed to make <u>such those</u> changes.	814 815 816 817 818 819 820 821 822 823 824 825
Any changes made in existing highways by the director or any additional highways established by the director following the public involvement activities shall be certified to the following authorities interested <u>therein in them</u> : the legislative authority of municipalities, <u>the</u> board of county commissioners, <u>the</u> board of	826 827 828 829 830

township trustees, the municipal, county, and regional planning 831
commissions, and the municipal, township, or county officer 832
authorized to issue land use or building permits. Before any 833
zoning change or subdivision plat is approved and before any 834
permit for land use or the erection, alteration, or moving of a 835
building is granted affecting any land within three hundred feet 836
of the center line of a proposed new highway or highway for which 837
changes are proposed, as described in the certification by the 838
director, or within a radius of five hundred feet from the point 839
of intersection of that center line with any public road or 840
highway, the authority authorized to approve the zoning change or 841
subdivision plat or the authority authorized to grant the permit 842
for land use or the erection, alteration, or moving of the 843
building shall give notice, by certified mail, to the director, 844
and shall not approve a zoning change or subdivision plat or grant 845
a permit for land use or the erection, alteration, or moving of a 846
building for one hundred twenty days from date notice is received 847
by the director. During the one hundred twenty-day period and any 848
extension of it as may be agreed to between the director and any 849
property owner, notice of which has been given to the authority to 850
which the application has been made, the director shall proceed to 851
acquire any land needed by purchase or gift, or by initiating 852
proceedings to appropriate, or make a finding that acquisition at 853
such time is not in the public interest. Upon purchase, initiation 854
of appropriation proceedings, or a finding that acquisition is not 855
in the public interest, the director shall notify the authority 856
from which notice was received of that action. Upon being notified 857
that the director has purchased or initiated proceedings to 858
appropriate the land that authority shall refuse to rezone land or 859
to approve any subdivision plat that includes the land which the 860
director has purchased or has initiated proceedings to 861
appropriate, and that authority shall refuse to grant a permit for 862
land use or the erection, alteration, or moving of a building on 863

the land which the director has purchased or initiated proceedings 864
to appropriate. Upon notification that the director has found 865
acquisition at that time not to be in the public interest, or upon 866
the expiration of the one hundred twenty-day period or any 867
extension thereof of it, if no notice has been received from the 868
director, that authority shall proceed in accordance with law. 869
870

A report of the change or addition shall be filed in the 871
office of the director, and the report of the director making the 872
change or establishing the highway shall be placed on file in the 873
office of the department of transportation. 874

In no event shall the total mileage of the state highway 875
system be increased under this section to exceed two hundred miles 876
in one year. 877

The director, upon petition of the boards of the counties 878
traversed thereby by a highway or of citizens of such those 879
counties, may officially assign to a highway of the state highway 880
system a distinctive name, commemorative of a historical event or 881
personage, or officially assign thereto to a highway of the state 882
highway system a commonly accepted and appropriate name by which 883
the highway is known. 884

The director may, upon giving appropriate notice and offering 885
the opportunity for public involvement and comment, abandon a 886
highway on the state highway system or part thereof of such a 887
highway which the director determines is of minor importance or 888
which traverses territory adequately served by another state 889
highway, and the abandoned highway shall revert to a county or 890
township road or municipal street. A report covering such that 891
action shall be filed in the office of the director, and the 892
director shall certify the action to the board of the county in 893
which the highway or portion thereof of the highway so abandoned 894
is situated. 895

The director shall make a map showing ~~thereon~~, by appropriate 896
numbering or other designation, all the state highways. The map 897
shall be kept on file in the director's office, and the director 898
shall cause the ~~same map~~ to be corrected and revised to show all 899
changes and additions to the date of ~~such the~~ correction. A copy 900
of the map, certified by the director as a correct copy of the map 901
on file in the director's office, shall be admissible as evidence 902
in any court to prove the existence and location of the several 903
highways and roads of the state highway system. 904

The state highway routes into or through municipal 905
corporations, as designated or indicated by state highway route 906
markers erected ~~thereon on the routes~~, are state highways and a 907
part of the state highway system. The director may erect state 908
highway route markers and ~~such~~ other signs directing traffic as 909
the director thinks proper upon those portions of the state 910
highway system lying within municipal corporations, and the 911
consent of the municipal corporations to ~~such that~~ erection and 912
marking shall not be necessary. However, the director may erect 913
traffic signs in villages in accordance with section 5521.01 of 914
the Revised Code. No change in the route of any highway through a 915
municipal corporation shall be made except after providing public 916
involvement activities. 917

Except as provided in sections 5501.49 and 5517.04 of the 918
Revised Code, no duty of constructing, reconstructing, 919
maintaining, and repairing such state highways within municipal 920
corporations shall attach to or rest upon the director. The 921
director may enter upon such state highways within any municipal 922
corporation and construct, reconstruct, widen, improve, maintain, 923
and repair them, provided the municipal corporation first consents 924
~~thereto~~ by resolution of its legislative authority, except that 925
the director need not obtain the consent of the municipal 926
corporation if the existing highway being changed or the location 927

of an additional highway being established was not within the 928
corporate limits of the municipal corporation at the time such the 929
establishment or change is approved by the director, or if the 930
director is acting pursuant to section 5501.49 of the Revised 931
Code. 932

The director shall place in the files of the department a 933
record of the routes of all such state highways within municipal 934
corporations, and shall cause them to be corrected and revised to 935
show all changes and additions to the date of the correction. A 936
copy of the record or any pertinent part thereof of it, certified 937
by the director to be a true and correct copy, shall be admissible 938
in evidence in any court of the state for the purpose of proving 939
the existence and location of any state highway within a municipal 940
corporation. 941

When the director proposes to change an existing state 942
highway and there exists upon the highway a separated railroad 943
crossing, the director shall mail to the interested railroad 944
company a copy of the notice, which shall be mailed by first-class 945
mail, postage prepaid, and certified with return receipt 946
requested, at least two weeks before the time fixed for any public 947
involvement activity. When the director proposes to change an 948
existing state highway within a municipal corporation, the 949
director shall mail to the mayor or other chief executive officer 950
of the municipal corporation a copy of the notice, which shall be 951
mailed by first-class mail, postage prepaid, and certified with 952
return receipt requested, at least two weeks before the time fixed 953
for any public involvement activity. 954

Nothing in this section shall be construed to require 955
providing public involvement activities before the construction, 956
reconstruction, maintenance, improvement, or widening of an 957
existing highway where no relocation is involved. 958

With the exception of the authority conferred upon the 959

director by this section, to erect state highway route markers and 960
signs directing traffic, and by section 5501.49 of the Revised 961
Code, Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 962
5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 963
5535. of the Revised Code, shall not in any way modify, limit, or 964
restrict the authority conferred by section 723.01 of the Revised 965
Code upon municipal corporations to regulate the use of streets 966
and to have the care, supervision, and control of the public 967
highways, streets, avenues, alleys, sidewalks, public grounds, 968
bridges, aqueducts, and viaducts within the municipal corporations 969
and, or the liability imposed upon municipal corporations by 970
division (B)(3) of section 2744.02 of the Revised Code for 971
negligent failure to keep them, subject to division (B)(3) of 972
section 2744.02 of the Revised Code, open, public roads in repair, 973
and free from nuisance other negligent failure to remove 974
obstructions from public roads. 975

Sec. 5591.36. The board of county commissioners shall erect 976
and maintain on county roads, where not already done, one or more 977
guardrails on each end of a county bridge, viaduct, or culvert 978
more than five feet high and on each side of every approach to a 979
county bridge, viaduct, or culvert, if the approach or embankment 980
is more than six feet high. The board also shall also protect, by 981
suitable guardrails, all perpendicular wash banks embankments with 982
a rise of more than eight feet in height and with a downward slope 983
of greater than seventy degrees, where such banks the embankments 984
have an immediate connection with a public highway other than 985
state highways, or are adjacent thereto in an unprotected 986
condition county road. 987

It shall be a sufficient compliance with this section, if the 988
board causes to be erected and maintained a good stockproof hedge 989
fence where a guardrail is required. Such guardrails or hedge 990
fences shall be erected in a substantial manner, having sufficient 991

~~strength to protect life and property, the The expense thereof to
for a guardrail required under this section shall be paid out of
the county bridge fund.~~ 992
993
994

Sec. 5591.37. Failure Negligent failure to comply with 995
section 5591.36 of the Revised Code shall render the county liable 996
for all accidents or damages ~~as a result of such resulting from~~ 997
that failure. 998

Section 2. That existing sections 723.01, 2744.01, 2744.02, 999
2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 1000
5591.36, and 5591.37 of the Revised Code are hereby repealed. 1001

Section 3. That sections 2744.01 and 2744.03 of the Revised 1002
Code as scheduled to take effect on January 1, 2002, be amended to 1003
read as follows: 1004

Sec. 2744.01. As used in this chapter: 1005

(A) "Emergency call" means a call to duty, including, but not 1006
limited to, communications from citizens, police dispatches, and 1007
personal observations by peace officers of inherently dangerous 1008
situations that demand an immediate response on the part of a 1009
peace officer. 1010

(B) "Employee" means an officer, agent, employee, or servant, 1011
whether or not compensated or full-time or part-time, who is 1012
authorized to act and is acting within the scope of the officer's, 1013
agent's, employee's, or servant's employment for a political 1014
subdivision. "Employee" does not include an independent contractor 1015
and does not include any individual engaged by a school district 1016
pursuant to section 3319.301 of the Revised Code. "Employee" 1017
includes any elected or appointed official of a political 1018
subdivision. "Employee" also includes a person who has been 1019

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.	1020 1021 1022 1023 1024 1025 1026
(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:	1027 1028 1029
(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;	1030 1031 1032
(b) A function that is for the common good of all citizens of the state;	1033 1034
(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.	1035 1036 1037 1038 1039
(2) A "governmental function" includes, but is not limited to, the following:	1040 1041
(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;	1042 1043
(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;	1044 1045 1046 1047 1048
(c) The provision of a system of public education;	1049

(d) The provision of a free public library system;	1050
(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;	1051 1052 1053
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	1054 1055
(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;	1056 1057 1058 1059
(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;	1060 1061 1062 1063
(i) The enforcement or nonperformance of any law;	1064
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	1065 1066
(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.	1067 1068 1069 1070 1071 1072 1073 1074 1075 1076 1077 1078
(l) The provision or nonprovision, planning or design,	1079

construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;	1080 1081
(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;	1082 1083 1084 1085
(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;	1086 1087 1088 1089 1090 1091 1092 1093
(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;	1094 1095 1096
(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;	1097 1098 1099 1100 1101 1102 1103 1104
(q) Urban renewal projects and the elimination of slum conditions;	1105 1106
(r) Flood control measures;	1107
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	1108 1109

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	1110 1111
(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any <u>school athletic</u> <u>facility, school auditorium, or gymnasium or any</u> recreational area or facility, including, but not limited to, any of the following:	1112 1113 1114 1115
(i) A park, playground, or playfield;	1116
(ii) An indoor recreational facility;	1117
(iii) A zoo or zoological park;	1118
(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;	1119 1120
(v) A golf course;	1121
(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;	1122 1123 1124
(vii) A rope course or climbing walls;	1125
(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.	1126 1127 1128
(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;	1129 1130 1131
(w)(i) <u>At any time before regulations prescribed pursuant to</u> <u>49 U.S.C.A. 20153 become effective, the designation, establishment,</u> <u>design, construction, implementation, operation, repair, or</u> <u>maintenance of a public road rail crossing in a zone within a</u> <u>municipal corporation in which, by ordinance, the legislative</u> <u>authority of the municipal corporation regulates the sounding of</u> <u>locomotive horns, whistles, or bells;</u>	1132 1133 1134 1135 1136 1137 1138

<u>(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.</u>	1139 1140 1141 1142 1143 1144 1145 1146 1147 1148
<u>(x) A function that the general assembly mandates a political subdivision to perform.</u>	1149 1150
<u>(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.</u>	1151 1152 1153 1154 1155 1156
<u>(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.</u>	1157 1158
<u>(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</u>	1159 1160 1161 1162 1163 1164 1165 1166 1167 1168 1169 1170

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.	1171 1172 1173 1174 1175 1176 1177 1178 1179 1180 1181 1182 1183
(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:	1184 1185 1186
(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) of this section;	1187 1188 1189
(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.	1190 1191 1192 1193
(2) A "proprietary function" includes, but is not limited to, the following:	1194 1195
(a) The operation of a hospital by one or more political subdivisions;	1196 1197
(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;	1198 1199 1200
(c) The establishment, maintenance, and operation of a	1201

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;	1202 1203 1204
(d) The maintenance, destruction, operation, and upkeep of a sewer system;	1205 1206
(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.	1207 1208 1209
(H) <u>"Public roads"</u> means <u>public roads, highways, streets, avenues, alleys, and bridges within a political subdivision.</u> <u>"Public roads"</u> does not include <u>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.</u>	1210 1211 1212 1213 1214
(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.	1215 1216 1217 1218 1219 1220
Sec. 2744.03. (A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to <u>persons</u> <u>person</u> or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:	1221 1222 1223 1224 1225 1226
(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.	1227 1228 1229 1230
(2) The political subdivision is immune from liability if the	1231

conduct of the employee involved, other than negligent conduct, 1232
that gave rise to the claim of liability was required by law or 1233
authorized by law, or if the conduct of the employee involved that 1234
gave rise to the claim of liability was necessary or essential to 1235
the exercise of powers of the political subdivision or employee. 1236
1237

(3) The political subdivision is immune from liability if the 1238
action or failure to act by the employee involved that gave rise 1239
to the claim of liability was within the discretion of the 1240
employee with respect to policy-making, planning, or enforcement 1241
powers by virtue of the duties and responsibilities of the office 1242
or position of the employee. 1243

(4) The political subdivision is immune from liability if the 1244
action or failure to act by the political subdivision or employee 1245
involved that gave rise to the claim of liability resulted in 1246
injury or death to a person who had been convicted of or pleaded 1247
guilty to a criminal offense and who, at the time of the injury or 1248
death, was serving any portion of the person's sentence by 1249
performing community service work for or in the political 1250
subdivision whether pursuant to section 2951.02 of the Revised 1251
Code or otherwise, or resulted in injury or death to a child who 1252
was found to be a delinquent child and who, at the time of the 1253
injury or death, was performing community service or community 1254
work for or in a political subdivision in accordance with the 1255
order of a juvenile court entered pursuant to section 2152.19 or 1256
2152.20 of the Revised Code, and if, at the time of the person's 1257
or child's injury or death, the person or child was covered for 1258
purposes of Chapter 4123. of the Revised Code in connection with 1259
the community service or community work for or in the political 1260
subdivision. 1261

(5) The political subdivision is immune from liability if the 1262
injury, death, or loss to persons person or property resulted from 1263

the exercise of judgment or discretion in determining whether to 1264
acquire, or how to use, equipment, supplies, materials, personnel, 1265
facilities, and other resources unless the judgment or discretion 1266
was exercised with malicious purpose, in bad faith, or in a wanton 1267
or reckless manner. 1268

(6) In addition to any immunity or defense referred to in 1269
division (A)(7) of this section and in circumstances not covered 1270
by that division or sections 3314.07 and 3746.24 of the Revised 1271
Code, the employee is immune from liability unless one of the 1272
following applies: 1273

(a) The employee's acts or omissions were manifestly outside 1274
the scope of the employee's employment or official 1275
responsibilities; 1276

(b) The employee's acts or omissions were with malicious 1277
purpose, in bad faith, or in a wanton or reckless manner; 1278

(c) Liability Civil liability is expressly imposed upon the 1279
employee by a section of the Revised Code. Civil liability shall 1280
not be construed to exist under another section of the Revised 1281
Code merely because that section imposes a responsibility or 1282
mandatory duty upon an employee, because that section provides for 1283
a criminal penalty, because of a general authorization in that 1284
section that an employee may sue and be sued, or because the 1285
section uses the term "shall" in a provision pertaining to an 1286
employee. 1287

(7) The political subdivision, and an employee who is a 1288
county prosecuting attorney, city director of law, village 1289
solicitor, or similar chief legal officer of a political 1290
subdivision, an assistant of any such person, or a judge of a 1291
court of this state is entitled to any defense or immunity 1292
available at common law or established by the Revised Code. 1293

(B) Any immunity or defense conferred upon, or referred to in 1294

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.	1295 1296 1297 1298
Section 4. That existing sections 2744.01 and 2744.03 of the Revised Code as scheduled to take effect on January 1, 2002, are hereby repealed.	1299 1300 1301
Section 5. Sections 3 and 4 of this act take effect on January 1, 2002.	1302 1303
Section 6. Sections 723.01, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code, as amended by this act, apply only to causes of action that accrue on or after the effective date of this act. Any cause of action that accrues prior to the effective date of this act is governed by the law in effect when the cause of action accrued.	1304 1305 1306 1307 1308 1309 1310
Section 7. (A) Section 2744.01 of the Revised Code, effective until January 1, 2002, is presented in Section 1 of this act as a composite of the section as amended by both Sub. S.B. 24 and Sub. S.B. 108 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.	1311 1312 1313 1314 1315 1316 1317 1318 1319
(B) Section 2744.01 of the Revised Code, effective January 1, 2002, is presented in Section 3 of this act as a composite of the section as amended by both Sub. S.B. 24 and Sub. S.B. 108 of the 124th General Assembly. The General Assembly, applying the	1320 1321 1322 1323

principle stated in division (B) of section 1.52 of the Revised
Code that amendments are to be harmonized if reasonably capable of
simultaneous operation, finds that the composite is the resulting
version of the section in effect prior to the effective date of
the section as presented in this act. 1324
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