

**As Reported by the Senate State and Local Government and
Veterans Affairs Committee**

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

Sub. 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, 2744.07, 4582.27,	2
5511.01, 5591.36, and 5591.37 of the Revised Code	3
to include as governmental functions under the	4
Political Subdivision Sovereign Immunity Law the	5
design, construction, reconstruction, renovation,	6
repair, maintenance, and operation of any school	7
athletic facility, school auditorium, or gymnasium	8
and the designation, establishment, design,	9
construction, implementation, operation, repair, or	10
maintenance of railroad quiet zones; to expand the	11
motor vehicle operation liability of political	12
subdivisions to include liability for harm caused	13
by negligent operation other than upon public	14
roads; to limit a political subdivision's	15
obligation to defend an employee to acts or	16
omissions that occur while the employee is both	17
acting in good faith and not manifestly outside the	18
scope of employment or official responsibilities;	19
to make changes proposed by Am. Sub. H.B. 350 of	20
the 121st General Assembly to the Political	21
Subdivision Sovereign Immunity Law; and to amend	22
sections 2744.01 and 2744.03 of the Revised Code as	23
scheduled to take effect on January 1, 2002, to	24

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continue the amendments of this act on and after 25
that date. 26

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

Section 1. That sections 723.01, 2744.01, 2744.02, 2744.03, 27
2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 28
5591.37 of the Revised Code be amended to read as follows: 29

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

Sec. 2744.01. As used in this chapter: 43

(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. 48

(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

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agent's, employee's, or servant's employment for a political
subdivision. "Employee" does not include an independent contractor
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
2151.355 of the Revised Code to perform community service or
community work in a political subdivision.

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(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:

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(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;

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

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(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.

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

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

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(b) The power to preserve the peace; to prevent and suppress

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riots, disturbances, and disorderly assemblages; to prevent,	83
mitigate, and clean up releases of oil and hazardous and extremely	84
hazardous substances as defined in section 3750.01 of the Revised	85
Code; and to protect persons and property;	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	89
repair of, roads, highways, streets, avenues, alleys, sidewalks,	90
bridges, aqueducts, viaducts, and public grounds;	91
(f) Judicial, quasi-judicial, prosecutorial, legislative, and	92
quasi-legislative functions;	93
(g) The construction, reconstruction, repair, renovation,	94
maintenance, and operation of buildings that are used in	95
connection with the performance of a governmental function,	96
including, but not limited to, office buildings and courthouses;	97
(h) The design, construction, reconstruction, renovation,	98
repair, maintenance, and operation of jails, places of juvenile	99
detention, workhouses, or any other detention facility, as defined	100
in section 2921.01 of the Revised Code;	101
(i) The enforcement or nonperformance of any law;	102
(j) The regulation of traffic, and the erection or	103
nonerection of traffic signs, signals, or control devices;	104
(k) The collection and disposal of solid wastes, as defined	105
in section 3734.01 of the Revised Code, including, but not limited	106
to, the operation of solid waste disposal facilities, as	107
"facilities" is defined in that section, and the collection and	108
management of hazardous waste generated by households. As used in	109
division (C)(2)(k) of this section, "hazardous waste generated by	110
households" means solid waste originally generated by individual	111
households that is listed specifically as hazardous waste in or	112

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exhibits one or more characteristics of hazardous waste as defined 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

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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</u> or facility, 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,</u>	170 171

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design, construction, implementation, operation, repair, or 172
maintenance of a public road rail crossing in a zone within a 173
municipal corporation in which, by ordinance, the legislative 174
authority of the municipal corporation regulates the sounding of 175
locomotive horns, whistles, or bells; 176

(ii) On and after the effective date of regulations 177
prescribed pursuant to 49 U.S.C.A. 20153, the designation, 178
establishment, design, construction, implementation, operation, 179
repair, or maintenance of a public road rail crossing in such a 180
zone or of a supplementary safety measure, as defined in 49 181
U.S.C.A 20153, at or for a public road rail crossing, if and to 182
the extent that the public road rail crossing is excepted, 183
pursuant to subsection (c) of that section, from the requirement 184
of the regulations prescribed under subsection (b) of that 185
section. 186

(x) A function that the general assembly mandates a political 187
subdivision to perform. 188

(D) "Law" means any provision of the constitution, statutes, 189
or rules of the United States or of this state; provisions of 190
charters, ordinances, resolutions, and rules of political 191
subdivisions; and written policies adopted by boards of education. 192
When used in connection with the "common law," this definition 193
does not apply. 194

(E) "Motor vehicle" has the same meaning as in section 195
4511.01 of the Revised Code. 196

(F) "Political subdivision" or "subdivision" means a 197
municipal corporation, township, county, school district, or other 198
body corporate and politic responsible for governmental activities 199
in a geographic area smaller than that of the state. "Political 200
subdivision" includes, but is not limited to, a county hospital 201
commission appointed under section 339.14 of the Revised Code, 202
regional planning commission created pursuant to section 713.21 of 203

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the Revised Code, county planning commission created pursuant to 204
section 713.22 of the Revised Code, joint planning council created 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, repair, maintenance, and operation of a public cemetery other than a township cemetery;	236 237 238
(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" 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.</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	259 260 261 262 263 264

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of the political subdivision or an employee of the political 265
subdivision in connection with a governmental or proprietary 266
function. 267

(2) Subject to statutory limitations upon their monetary 268
jurisdiction, the courts of common pleas, the municipal courts, 269
and the county courts have jurisdiction to hear and determine 270
civil actions governed by or brought pursuant to this chapter. 271

(B) Subject to sections 2744.03 and 2744.05 of the Revised 272
Code, a political subdivision is liable in damages in a civil 273
action for injury, death, or loss to person or property allegedly 274
caused by an act or omission of the political subdivision or of 275
any of its employees in connection with a governmental or 276
proprietary function, as follows: 277

(1) Except as otherwise provided in this division, political 278
subdivisions are liable for injury, death, or loss to person or 279
property caused by the negligent operation of any motor vehicle by 280
their employees ~~upon the public roads, highways, or streets~~ when 281
the employees are engaged within the scope of their employment and 282
authority. The following are full defenses to that liability: 283

(a) A member of a municipal corporation police department or 284
any other police agency was operating a motor vehicle while 285
responding to an emergency call and the operation of the vehicle 286
did not constitute willful or wanton misconduct; 287

(b) A member of a municipal corporation fire department or 288
any other firefighting agency was operating a motor vehicle while 289
engaged in duty at a fire, proceeding toward a place where a fire 290
is in progress or is believed to be in progress, or answering any 291
other emergency alarm and the operation of the vehicle did not 292
constitute willful or wanton misconduct; 293

(c) A member of an emergency medical service owned or 294
operated by a political subdivision was operating a motor vehicle 295

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while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial 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.

(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.

(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.

(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

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in section 2921.01 of the Revised Code. 328

(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

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that gave rise to the claim of liability was required by law or
authorized by law, or if the conduct of the employee involved that
gave rise to the claim of liability was necessary or essential to
the exercise of powers of the political subdivision or employee.

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

(4) The political subdivision is immune from liability if the
action or failure to act by the political subdivision or employee
involved that gave rise to the claim of liability resulted in
injury or death to a person who had been convicted of or pleaded
guilty to a criminal offense and who, at the time of the injury or
death, was serving any portion of the person's sentence by
performing community service work for or in the political
subdivision whether pursuant to section 2951.02 of the Revised
Code or otherwise, or resulted in injury or death to a child who
was found to be a delinquent child and who, at the time of the
injury or death, was performing community service or community
work for or in a political subdivision in accordance with the
order of a juvenile court entered pursuant to section 2151.355 of
the Revised Code, and if, at the time of the person's or child's
injury or death, the person or child was covered for purposes of
Chapter 4123. of the Revised Code in connection with the community
service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the
injury, death, or loss to ~~persons~~ person or property resulted from
the exercise of judgment or discretion in determining whether to

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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 393
or reckless manner. 394

(6) In addition to any immunity or defense referred to in 395
division (A)(7) of this section and in circumstances not covered 396
by that division or sections 3314.07 and 3746.24 of the Revised 397
Code, the employee is immune from liability unless one of the 398
following applies: 399

(a) The employee's acts or omissions were manifestly outside 400
the scope of the employee's employment or official 401
responsibilities; 402

(b) The employee's acts or omissions were with malicious 403
purpose, in bad faith, or in a wanton or reckless manner; 404

(c) ~~Liability~~ Civil liability is expressly imposed upon the 405
employee by a section of the Revised Code. Civil liability shall 406
not be construed to exist under another section of the Revised 407
Code merely because that section imposes a responsibility or 408
mandatory duty upon an employee, because that section provides for 409
a criminal penalty, because of a general authorization in that 410
section that an employee may sue and be sued, or because the 411
section uses the term "shall" in a provision pertaining to an 412
employee. 413

(7) The political subdivision, and an employee who is a 414
county prosecuting attorney, city director of law, village 415
solicitor, or similar chief legal officer of a political 416
subdivision, an assistant of any such person, or a judge of a 417
court of this state is entitled to any defense or immunity 418
available at common law or established by the Revised Code. 419

(B) Any immunity or defense conferred upon, or referred to in 420
connection with, an employee by division (A)(6) or (7) of this 421

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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 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:

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(A) Punitive or exemplary damages shall not be awarded. 453

(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

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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

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property was injured or destroyed in order to repair or replace
the property that was injured or destroyed;

(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;

(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.

"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.

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. ~~Such~~ Those judgments
shall be paid from funds of the political subdivisions that have
been appropriated for that purpose, but, if sufficient funds are

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not currently appropriated for the payment of judgments, the 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

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of the person injured or whose property was injured or destroyed 577
that the court determines represent an actual loss experienced 578
because of the personal or property injury or property loss. 579

(b) As used in this division, "the actual loss of the person 580
who is awarded the damages" does not include any of the following: 581

(i) Wages, salaries, or other compensation lost by the person 582
injured as a result of the injury, that are future expected 583
earnings of ~~such a~~ that person; 584

(ii) Expenditures to be incurred in the future, as determined 585
by the court, by the person injured or by another person on behalf 586
of the person injured for medical care or treatment, for 587
rehabilitation services, or for other care, treatment, services, 588
products, or accommodations that will be necessary because of the 589
injury; 590

(iii) Any fees paid or owed to an attorney for any services 591
rendered in relation to a personal or property injury or property 592
loss; 593

(iv) Any damages awarded for pain and suffering, for the loss 594
of society, consortium, companionship, care, assistance, 595
attention, protection, advice, guidance, counsel, instruction, 596
training, or education of the person injured, for mental anguish, 597
or for any other intangible loss. 598

(2) Except as specifically provided to the contrary in this 599
division, a court that renders a judgment against a political 600
subdivision as described in division (A) of this section and that 601
is not in favor of the state may authorize the political 602
subdivision, upon the motion of the political subdivision, to pay 603
the judgment or a specified portion of the judgment in annual 604
installments over a period not to exceed ten years, subject to the 605
payment of interest at the rate specified in division (A) of 606
section 1343.03 of the Revised Code. A court shall not authorize 607

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the payment in installments under this division of any portion of 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

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the defense of its employees shall be from funds appropriated for 640
this purpose or from proceeds of insurance. The duty to provide 641
for the defense of an employee specified in this division does not 642
apply in a civil action or proceeding that is commenced by or on 643
behalf of a political subdivision. 644

(2) Except as otherwise provided in this division, a 645
political subdivision shall indemnify and hold harmless an 646
employee in the amount of any judgment, other than a judgment for 647
punitive or exemplary damages, that is obtained against the 648
employee in a state or federal court or as a result of a law of a 649
foreign jurisdiction and that is for damages for injury, death, or 650
loss to ~~persons~~ person or property caused by an act or omission in 651
connection with a governmental or proprietary function, if at the 652
time of the act or omission the employee was acting in good faith 653
and within the scope of ~~his~~ employment or official 654
responsibilities. 655

(B)(1) A political subdivision may enter into a consent 656
judgment or settlement and may secure releases from liability for 657
itself or an employee, with respect to any claim for injury, 658
death, or loss to ~~persons~~ person or property caused by an act or 659
omission in connection with a governmental or proprietary 660
function. 661

(2) No action or appeal of any kind shall be brought by any 662
person, including any employee or a taxpayer, with respect to the 663
decision of a political subdivision pursuant to division (B)(1) of 664
this section whether to enter into a consent judgment or 665
settlement or to secure releases, or concerning the amount and 666
circumstances of a consent judgment or settlement. Amounts 667
expended for any settlement shall be from funds appropriated for 668
this purpose. 669

(C) If a political subdivision refuses to provide an employee 670
with a defense in a civil action or proceeding as described in 671

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division (A)(1) of this section, the employee may file, in the
 court of common pleas of the county in which the political
 subdivision is located, an action seeking a determination as to
 the appropriateness of the refusal of the political subdivision to
 provide ~~him~~ the employee with a defense under that division. The
court shall determine a refusal to be appropriate unless it finds
there was an abuse of discretion on the part of the political
subdivision in acting under that division.

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Sec. 4582.27. (A) A port authority created in accordance with
 section 4582.22 of the Revised Code shall be governed by a board
 of directors. Members of a board of directors of a port authority
 created by the exclusive action of a municipal corporation shall
 consist of the number of members it considers necessary and shall
 be appointed by the mayor with the advice and consent of the
 council. Members of a board of directors of a port authority
 created by the exclusive action of a township shall consist of
 such members as it considers necessary and shall be appointed by
 the township trustees of the township. Members of a board of
 directors of a port authority created by the exclusive action of a
 county shall consist of such members as it considers necessary and
 shall be appointed by the board of county commissioners of the
 county. Members of a board of directors of a port authority
 created by a combination of political subdivisions shall be
 divided among the political subdivisions in such proportions as
 the political subdivisions may agree and shall be appointed by the
 participating political subdivisions in the same manner as this
 section provides for the appointment of members by a political
 subdivision creating its own port authority. If a participating
 political subdivision is not authorized by section 4582.22 of the
 Revised Code to create its own port authority, the political
 subdivision's elected legislative body, if the political

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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

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The directors shall elect one of their membership as 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~~

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~~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.~~

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~~(4) This section does not affect either of the following:~~ 799

~~(a) Any defense that would otherwise be available in an
action alleging personal liability of a director, officer, or
employee;~~ 800
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~~(b) The operation of section 9.83 of the Revised Code.~~ 803

Sec. 5511.01. All state highways established by law shall 804
continue to be known as state highways, and the state highway 805
system established by law shall continue to be known as the state 806
highway system. 807

Before establishing any additional highways as part of the 808
state highway system, or making any significant changes in 809
existing highways comprising the system, the director of 810
transportation shall notify the general community of the project 811
and offer an opportunity for appropriate public involvement in the 812
project process. 813

The opportunity for public involvement shall satisfy the 814
requirements of the "National Environmental Policy Act of 1969," 815
83 Stat. 852, 42 U.S.C.A. 4321 et seq., as amended, and may 816
consist of activities including public meetings or hearings, small 817
group meetings with local officials, individual meetings, news 818
releases, public notices, workshops, newsletters, electronic 819
communications, radio announcements, mail notification, and other 820
activities considered appropriate for the exchange of information. 821
The director or the director's designee shall provide the public 822
involvement activities in each of the counties in which the 823
highway proposed to be established is to be located or in which it 824
is proposed to make ~~such~~ those changes. 825

Any changes made in existing highways by the director or any 826
additional highways established by the director following the 827
public involvement activities shall be certified to the following 828

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authorities interested ~~therein~~ in them: the legislative authority 829
of municipalities, the board of county commissioners, the board of 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

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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

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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

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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

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the director need not obtain the consent of the municipal corporation if the existing highway being changed or the location of an additional highway being established was not within the corporate limits of the municipal corporation at the time ~~such~~ the establishment or change is approved by the director, or if the director is acting pursuant to section 5501.49 of the Revised Code.

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

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

Nothing in this section shall be construed to require providing public involvement activities before the construction, reconstruction, maintenance, improvement, or widening of an

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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

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~~board causes to be erected and maintained a good stockproof hedge fence where a guardrail is required. Such guardrails or hedge fences shall be erected in a substantial manner, having sufficient 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.~~

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

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Section 2. That existing 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 are hereby repealed.

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

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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 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.

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(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 the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district

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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 1020
been sentenced to perform community service work in a political 1021
subdivision whether pursuant to section 2951.02 of the Revised 1022
Code or otherwise, and a child who is found to be a delinquent 1023
child and who is ordered by a juvenile court pursuant to section 1024
2152.19 or 2152.20 of the Revised Code to perform community 1025
service or community work in a political subdivision. 1026

(C)(1) "Governmental function" means a function of a 1027
political subdivision that is specified in division (C)(2) of this 1028
section or that satisfies any of the following: 1029

(a) A function that is imposed upon the state as an 1030
obligation of sovereignty and that is performed by a political 1031
subdivision voluntarily or pursuant to legislative requirement; 1032

(b) A function that is for the common good of all citizens of 1033
the state; 1034

(c) A function that promotes or preserves the public peace, 1035
health, safety, or welfare; that involves activities that are not 1036
engaged in or not customarily engaged in by nongovernmental 1037
persons; and that is not specified in division (G)(2) of this 1038
section as a proprietary function. 1039

(2) A "governmental function" includes, but is not limited 1040
to, the following: 1041

(a) The provision or nonprovision of police, fire, emergency 1042
medical, ambulance, and rescue services or protection; 1043

(b) The power to preserve the peace; to prevent and suppress 1044
riots, disturbances, and disorderly assemblages; to prevent, 1045
mitigate, and clean up releases of oil and hazardous and extremely 1046
hazardous substances as defined in section 3750.01 of the Revised 1047

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Code; and to protect persons and property;	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	1051
repair of, roads, highways, streets, avenues, alleys, sidewalks,	1052
bridges, aqueducts, viaducts, and public grounds;	1053
(f) Judicial, quasi-judicial, prosecutorial, legislative, and	1054
quasi-legislative functions;	1055
(g) The construction, reconstruction, repair, renovation,	1056
maintenance, and operation of buildings that are used in	1057
connection with the performance of a governmental function,	1058
including, but not limited to, office buildings and courthouses;	1059
(h) The design, construction, reconstruction, renovation,	1060
repair, maintenance, and operation of jails, places of juvenile	1061
detention, workhouses, or any other detention facility, as defined	1062
in section 2921.01 of the Revised Code;	1063
(i) The enforcement or nonperformance of any law;	1064
(j) The regulation of traffic, and the erection or	1065
nonerection of traffic signs, signals, or control devices;	1066
(k) The collection and disposal of solid wastes, as defined	1067
in section 3734.01 of the Revised Code, including, but not limited	1068
to, the operation of solid waste disposal facilities, as	1069
"facilities" is defined in that section, and the collection and	1070
management of hazardous waste generated by households. As used in	1071
division (C)(2)(k) of this section, "hazardous waste generated by	1072
households" means solid waste originally generated by individual	1073
households that is listed specifically as hazardous waste in or	1074
exhibits one or more characteristics of hazardous waste as defined	1075
by rules adopted under section 3734.12 of the Revised Code, but	1076
that is excluded from regulation as a hazardous waste by those	1077

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rules.	1078
(l) The provision or nonprovision, planning or design,	1079
construction, or reconstruction of a public improvement,	1080
including, but not limited to, a sewer system;	1081
(m) The operation of a job and family services department or	1082
agency, including, but not limited to, the provision of assistance	1083
to aged and infirm persons and to persons who are indigent;	1084
	1085
(n) The operation of a health board, department, or agency,	1086
including, but not limited to, any statutorily required or	1087
permissive program for the provision of immunizations or other	1088
inoculations to all or some members of the public, provided that a	1089
"governmental function" does not include the supply, manufacture,	1090
distribution, or development of any drug or vaccine employed in	1091
any such immunization or inoculation program by any supplier,	1092
manufacturer, distributor, or developer of the drug or vaccine;	1093
(o) The operation of mental health facilities, mental	1094
retardation or developmental disabilities facilities, alcohol	1095
treatment and control centers, and children's homes or agencies;	1096
(p) The provision or nonprovision of inspection services of	1097
all types, including, but not limited to, inspections in	1098
connection with building, zoning, sanitation, fire, plumbing, and	1099
electrical codes, and the taking of actions in connection with	1100
those types of codes, including, but not limited to, the approval	1101
of plans for the construction of buildings or structures and the	1102
issuance or revocation of building permits or stop work orders in	1103
connection with buildings or structures;	1104
(q) Urban renewal projects and the elimination of slum	1105
conditions;	1106
(r) Flood control measures;	1107

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(s) The design, construction, reconstruction, renovation,	1108
operation, care, repair, and maintenance of a township cemetery;	1109
(t) The issuance of revenue obligations under section 140.06	1110
of the Revised Code;	1111
(u) The design, construction, reconstruction, renovation,	1112
repair, maintenance, and operation of any <u>school athletic</u>	1113
<u>facility, school auditorium, or gymnasium or any</u> recreational area	1114
or facility, including, but not limited to, any of the following:	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,	1119
wave pool, water slide, or other type of aquatic facility;	1120
(v) A golf course;	1121
(vi) A bicycle motocross facility or other type of	1122
recreational area or facility in which bicycling, skating, skate	1123
boarding, or scooter riding is engaged;	1124
(vii) A rope course or climbing walls;	1125
(viii) An all-purpose vehicle facility in which all-purpose	1126
vehicles, as defined in section 4519.01 of the Revised Code, are	1127
contained, maintained, or operated for recreational activities.	1128
(v) The provision of public defender services by a county or	1129
joint county public defender's office pursuant to Chapter 120. of	1130
the Revised Code;	1131
(w)(i) <u>At any time before regulations prescribed pursuant to</u>	1132
<u>49 U.S.C.A 20153 become effective, the designation, establishment,</u>	1133
<u>design, construction, implementation, operation, repair, or</u>	1134
<u>maintenance of a public road rail crossing in a zone within a</u>	1135
<u>municipal corporation in which, by ordinance, the legislative</u>	1136

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authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells; 1137
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(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. 1139
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(x) A function that the general assembly mandates a political subdivision to perform. 1149
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(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. 1151
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(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code. 1157
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(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 1159
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regional planning commission created pursuant to section 713.30 of 1169
the Revised Code, port authority created pursuant to section 1170
4582.02 or 4582.26 of the Revised Code or in existence on December 1171
16, 1964, regional council established by political subdivisions 1172
pursuant to Chapter 167. of the Revised Code, emergency planning 1173
district and joint emergency planning district designated under 1174
section 3750.03 of the Revised Code, joint emergency medical 1175
services district created pursuant to section 307.052 of the 1176
Revised Code, fire and ambulance district created pursuant to 1177
section 505.375 of the Revised Code, joint interstate emergency 1178
planning district established by an agreement entered into under 1179
that section, county solid waste management district and joint 1180
solid waste management district established under section 343.01 1181
or 343.012 of the Revised Code, and community school established 1182
under Chapter 3314. of the Revised Code. 1183

(G)(1) "Proprietary function" means a function of a political 1184
subdivision that is specified in division (G)(2) of this section 1185
or that satisfies both of the following: 1186

(a) The function is not one described in division (C)(1)(a) 1187
or (b) of this section and is not one specified in division (C)(2) 1188
of this section; 1189

(b) The function is one that promotes or preserves the public 1190
peace, health, safety, or welfare and that involves activities 1191
that are customarily engaged in by nongovernmental persons. 1192

(2) A "proprietary function" includes, but is not limited to, 1194
the following: 1195

(a) The operation of a hospital by one or more political 1196
subdivisions; 1197

(b) The design, construction, reconstruction, renovation, 1198
repair, maintenance, and operation of a public cemetery other than 1199

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a township cemetery;	1200
(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;	1201 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" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision.</u>	1210 1211
<u>"Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are</u>	1212 1213
<u>mandated by the Ohio manual of uniform traffic control devices.</u>	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.	1215 1216 1217 1218 1219
"State" does not include political subdivisions.	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 persons <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	1227 1228 1229

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function. 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
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(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

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

(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:

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

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

(c) ~~Liability~~ Civil liability is expressly imposed upon the employee by a section of the Revised Code. 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.

(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

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available at common law or established by the Revised Code.	1293
(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.	1294 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,	1320

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2002, is presented in Section 3 of this act as a composite of the 1321
section as amended by both Sub. S.B. 24 and Sub. S.B. 108 of the 1322
124th General Assembly. The General Assembly, applying the 1323
principle stated in division (B) of section 1.52 of the Revised 1324
Code that amendments are to be harmonized if reasonably capable of 1325
simultaneous operation, finds that the composite is the resulting 1326
version of the section in effect prior to the effective date of 1327
the section as presented in this act. 1328