

As Introduced

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

S. B. No. 24

SENATOR Johnson

A BILL

To amend section 2744.01 of the Revised Code to
include as a governmental function under the
Political Subdivision Sovereign Immunity Law the
operation of a bicycle motorcross, bicycling,
skating, skate boarding, or scooter riding
facility.

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

Section 1. That section 2744.01 of the Revised Code be
amended to read as follows:

Sec. 2744.01. As used in this chapter:

(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.

(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

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 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

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Code; and to protect persons and property;	52
(c) The provision of a system of public education;	53
(d) The provision of a free public library system;	54
(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;	55 56 57
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	58 59
(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;	60 61 62 63
(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;	64 65 66 67
(i) The enforcement or nonperformance of any law;	68
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	69 70
(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	71 72 73 74 75 76 77 78 79 80 81

rules.	82
(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;	83 84 85
(m) The operation of a human <u>job and family</u> services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;	86 87 88 89
(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;	90 91 92 93 94 95 96 97
(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;	98 99 100
(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;	101 102 103 104 105 106 107 108
(q) Urban renewal projects and the elimination of slum conditions;	109 110
(r) Flood control measures;	111

(s) The design, construction, reconstruction, renovation, 112
operation, care, repair, and maintenance of a township cemetery; 113

(t) The issuance of revenue obligations under section 140.06 114
of the Revised Code; 115

(u) The design, construction, reconstruction, renovation, 116
repair, maintenance, use, and operation of any recreational area 117
or facility, including, but not limited to, a park, playground, 118
playfield, indoor recreational facility, zoo, zoological park, 119
bath, swimming pool, pond, water park, wading pool, wave pool, 120
water slide, ~~and~~ other type of aquatic facility, ~~or~~ golf course, 121
bicycle motorcross facility, or other type of recreational area or 122
facility where bicycling, skating, skate boarding, or scooter 123
riding is engaged in; 124

(v) The provision of public defender services by a county or 125
joint county public defender's office pursuant to Chapter 120. of 126
the Revised Code; 127

(w) A function that the general assembly mandates a political 128
subdivision to perform. 129

(D) "Law" means any provision of the constitution, statutes, 130
or rules of the United States or of this state; provisions of 131
charters, ordinances, resolutions, and rules of political 132
subdivisions; and written policies adopted by boards of education. 133
When used in connection with the "common law," this definition 134
does not apply. 135

(E) "Motor vehicle" has the same meaning as in section 136
4511.01 of the Revised Code. 137

(F) "Political subdivision" or "subdivision" means a 138
municipal corporation, township, county, school district, or other 139
body corporate and politic responsible for governmental activities 140
in a geographic area smaller than that of the state. "Political 141
subdivision" includes, but is not limited to, a county hospital 142

commission appointed under section 339.14 of the Revised Code, 143
regional planning commission created pursuant to section 713.21 of 144
the Revised Code, county planning commission created pursuant to 145
section 713.22 of the Revised Code, joint planning council created 146
pursuant to section 713.231 of the Revised Code, interstate 147
regional planning commission created pursuant to section 713.30 of 148
the Revised Code, port authority created pursuant to section 149
4582.02 or 4582.26 of the Revised Code or in existence on December 150
16, 1964, regional council established by political subdivisions 151
pursuant to Chapter 167. of the Revised Code, emergency planning 152
district and joint emergency planning district designated under 153
section 3750.03 of the Revised Code, joint emergency medical 154
services district created pursuant to section 307.052 of the 155
Revised Code, fire and ambulance district created pursuant to 156
section 505.375 of the Revised Code, joint interstate emergency 157
planning district established by an agreement entered into under 158
that section, county solid waste management district and joint 159
solid waste management district established under section 343.01 160
or 343.012 of the Revised Code, and community school established 161
under Chapter 3314. of the Revised Code. 162

(G)(1) "Proprietary function" means a function of a political 163
subdivision that is specified in division (G)(2) of this section 164
or that satisfies both of the following: 165

(a) The function is not one described in division (C)(1)(a) 166
or (b) of this section and is not one specified in division (C)(2) 167
of this section; 168

(b) The function is one that promotes or preserves the public 169
peace, health, safety, or welfare and that involves activities 170
that are customarily engaged in by nongovernmental persons. 171

(2) A "proprietary function" includes, but is not limited to, 173
the following: 174

(a) The operation of a hospital by one or more political subdivisions; 175
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(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery; 177
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(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; 180
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(d) The maintenance, destruction, operation, and upkeep of a sewer system; 184
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(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. 186
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(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. 189
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"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. 191
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(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. 194
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"State" does not include political subdivisions. 199

Section 2. That existing section 2744.01 of the Revised Code is hereby repealed. 200
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