

As Passed by the House

124th General Assembly

Regular Session

2001-2002

Sub. S. B. No. 24

**SENATORS Johnson, Amstutz, Blessing, Harris, Wachtmann, Armbruster,
Mead, Spada**

**REPRESENTATIVES Manning, Grendell, Seitz, Willamowski, Flowers, Hagan,
Lendrum, Evans, Gilb, Cirelli, Coates, Schmidt, Wilson, Rhine, Goodman,
Salerno, Webster, Cates, Distel, Schneider, Hollister, Barrett, Roman,
Widowfield**

A B I L L

To amend section 2744.01 of the Revised Code to 1
include as a governmental function under the 2
Political Subdivision Sovereign Immunity Law the 3
design, construction, reconstruction, renovation, 4
repair, maintenance, and operation of any 5
recreational area or facility, including a bicycle 6
motocross, bicycling, skating, skate boarding, or 7
scooter riding facility, a rope course or climbing 8
walls, or an all-purpose vehicle facility; to 9
continue the provisions of this act on and after 10
January 1, 2002, by amending the version of section 11
2744.01 of the Revised Code that takes effect on 12
that date; and to remove matter inserted by and 13
revive matter removed by Am. Sub. H.B. 350 of the 14
121st General Assembly to present in this act the 15
version of section 2744.01 of the Revised Code that 16
is currently effective. 17

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

Section 1. That section 2744.01 of the Revised Code be 18
amended to read as follows: 19

Sec. 2744.01. As used in this chapter: 20

(A) "Emergency call" means a call to duty, including, but not 21
limited to, communications from citizens, police dispatches, and 22
personal observations by peace officers of inherently dangerous 23
situations that demand an immediate response on the part of a 24
peace officer. 25

(B) "Employee" means an officer, agent, employee, or servant, 26
whether or not compensated or full-time or part-time, who is 27
authorized to act and is acting within the scope of the officer's, 28
agent's, employee's, or servant's employment for a political 29
subdivision. "Employee" does not include an independent contractor 30
and does not include any individual engaged by a school district 31
pursuant to section 3319.301 of the Revised Code. "Employee" 32
includes any elected or appointed official of a political 33
subdivision. "Employee" also includes a person who has been 34
convicted of or pleaded guilty to a criminal offense and who has 35
been sentenced to perform community service work in a political 36
subdivision whether pursuant to section 2951.02 of the Revised 37
Code or otherwise, and a child who is found to be a delinquent 38
child and who is ordered by a juvenile court pursuant to section 39
2151.355 of the Revised Code to perform community service or 40
community work in a political subdivision. 41

(C)(1) "Governmental function" means a function of a 42
political subdivision that is specified in division (C)(2) of this 43
section or that satisfies any of the following: 44

(a) A function that is imposed upon the state as an 45
obligation of sovereignty and that is performed by a political 46
subdivision voluntarily or pursuant to legislative requirement; 47

(b) A function that is for the common good of all citizens of the state;	48 49
(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.	50 51 52 53 54
(2) A "governmental function" includes, but is not limited to, the following:	55 56
(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;	57 58
(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;	59 60 61 62 63
(c) The provision of a system of public education;	64
(d) The provision of a free public library system;	65
(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;	66 67 68
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	69 70
(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;	71 72 73 74
(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined	75 76 77

in section 2921.01 of the Revised Code;	78
(i) The enforcement or nonperformance of any law;	79
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	80 81
(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.	82 83 84 85 86 87 88 89 90 91 92 93
(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;	94 95 96
(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;	97 98 99 100
(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;	101 102 103 104 105 106 107 108

(o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;	109 110 111
(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;	112 113 114 115 116 117 118 119
(q) Urban renewal projects and the elimination of slum conditions;	120 121
(r) Flood control measures;	122
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	123 124
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	125 126
(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any <u>recreational area or facility, including, but not limited to, any of the following:</u>	127 128 129
(i) <u>A park, playground, or playfield;</u>	130
(ii) <u>An indoor recreational facility;</u>	131
(iii) <u>A zoo, or zoological park;</u>	132
(iv) <u>A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, and or other type of aquatic facility,</u> or	133 134
(v) <u>A golf course;</u>	135
(vi) <u>A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate</u>	136 137

<u>boarding, or scooter riding is engaged;</u>	138
<u>(vii) A rope course or climbing walls;</u>	139
<u>(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.</u>	140 141 142
(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;	143 144 145
(w) A function that the general assembly mandates a political subdivision to perform.	146 147
(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.	148 149 150 151 152 153
(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.	154 155
(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December	156 157 158 159 160 161 162 163 164 165 166 167 168

16, 1964, regional council established by political subdivisions 169
pursuant to Chapter 167. of the Revised Code, emergency planning 170
district and joint emergency planning district designated under 171
section 3750.03 of the Revised Code, joint emergency medical 172
services district created pursuant to section 307.052 of the 173
Revised Code, fire and ambulance district created pursuant to 174
section 505.375 of the Revised Code, joint interstate emergency 175
planning district established by an agreement entered into under 176
that section, county solid waste management district and joint 177
solid waste management district established under section 343.01 178
or 343.012 of the Revised Code, and community school established 179
under Chapter 3314. of the Revised Code. 180

(G)(1) "Proprietary function" means a function of a political 181
subdivision that is specified in division (G)(2) of this section 182
or that satisfies both of the following: 183

(a) The function is not one described in division (C)(1)(a) 184
or (b) of this section and is not one specified in division (C)(2) 185
of this section; 186

(b) The function is one that promotes or preserves the public 187
peace, health, safety, or welfare and that involves activities 188
that are customarily engaged in by nongovernmental persons. 189
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(2) A "proprietary function" includes, but is not limited to, 191
the following: 192

(a) The operation of a hospital by one or more political 193
subdivisions; 194

(b) The design, construction, reconstruction, renovation, 195
repair, maintenance, and operation of a public cemetery other than 196
a township cemetery; 197

(c) The establishment, maintenance, and operation of a 198
utility, including, but not limited to, a light, gas, power, or 199

heat plant, a railroad, a busline or other transit company, an	200
airport, and a municipal corporation water supply system;	201
(d) The maintenance, destruction, operation, and upkeep of a	202
sewer system;	203
(e) The operation and control of a public stadium,	204
auditorium, civic or social center, exhibition hall, arts and	205
crafts center, band or orchestra, or off-street parking facility.	206
(H) "Public roads" means public roads, highways, streets,	207
avenues, alleys, and bridges within a political subdivision.	208
"Public roads" does not include berms, shoulders, rights-of-way,	209
or traffic control devices unless the traffic control devices are	210
mandated by the Ohio manual of uniform traffic control devices.	211
(I) "State" means the state of Ohio, including, but not	212
limited to, the general assembly, the supreme court, the offices	213
of all elected state officers, and all departments, boards,	214
offices, commissions, agencies, colleges and universities,	215
institutions, and other instrumentalities of the state of Ohio.	216
"State" does not include political subdivisions.	217
Section 2. That existing section 2744.01 of the Revised Code	218
is hereby repealed.	219
Section 3. That the version of section 2744.01 of the Revised	220
Code that is scheduled to take effect January 1, 2002, be amended	221
to read as follows:	222
Sec. 2744.01. As used in this chapter:	223
(A) "Emergency call" means a call to duty, including, but not	224
limited to, communications from citizens, police dispatches, and	225
personal observations by peace officers of inherently dangerous	226
situations that demand an immediate response on the part of a	227

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 pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

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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

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to, the following:	259
(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;	260 261
(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;	262 263 264 265 266
(c) The provision of a system of public education;	267
(d) The provision of a free public library system;	268
(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;	269 270 271
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	272 273
(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;	274 275 276 277
(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;	278 279 280 281
(i) The enforcement or nonperformance of any law;	282
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	283 284
(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	285 286 287

"facilities" is defined in that section, and the collection and 288
management of hazardous waste generated by households. As used in 289
division (C)(2)(k) of this section, "hazardous waste generated by 290
households" means solid waste originally generated by individual 291
households that is listed specifically as hazardous waste in or 292
exhibits one or more characteristics of hazardous waste as defined 293
by rules adopted under section 3734.12 of the Revised Code, but 294
that is excluded from regulation as a hazardous waste by those 295
rules. 296

(l) The provision or nonprovision, planning or design, 297
construction, or reconstruction of a public improvement, 298
including, but not limited to, a sewer system; 299

(m) The operation of a ~~human~~ job and family services 300
department or agency, including, but not limited to, the provision 301
of assistance to aged and infirm persons and to persons who are 302
indigent; 303

(n) The operation of a health board, department, or agency, 304
including, but not limited to, any statutorily required or 305
permissive program for the provision of immunizations or other 306
inoculations to all or some members of the public, provided that a 307
"governmental function" does not include the supply, manufacture, 308
distribution, or development of any drug or vaccine employed in 309
any such immunization or inoculation program by any supplier, 310
manufacturer, distributor, or developer of the drug or vaccine; 311

(o) The operation of mental health facilities, mental 312
retardation or developmental disabilities facilities, alcohol 313
treatment and control centers, and children's homes or agencies; 314

(p) The provision or nonprovision of inspection services of 315
all types, including, but not limited to, inspections in 316
connection with building, zoning, sanitation, fire, plumbing, and 317
electrical codes, and the taking of actions in connection with 318

those types of codes, including, but not limited to, the approval	319
of plans for the construction of buildings or structures and the	320
issuance or revocation of building permits or stop work orders in	321
connection with buildings or structures;	322
(q) Urban renewal projects and the elimination of slum	323
conditions;	324
(r) Flood control measures;	325
(s) The design, construction, reconstruction, renovation,	326
operation, care, repair, and maintenance of a township cemetery;	327
(t) The issuance of revenue obligations under section 140.06	328
of the Revised Code;	329
(u) The design, construction, reconstruction, renovation,	330
repair, maintenance, and operation of any <u>recreational area or</u>	331
<u>facility, including, but not limited to, any of the following:</u>	332
(i) <u>A park, playground, or playfield;</u>	333
(ii) <u>An indoor recreational facility;</u>	334
(iii) <u>A zoo, or zoological park;</u>	335
(iv) <u>A bath, swimming pool, pond, water park, wading pool,</u>	336
<u>wave pool, water slide, and or other type of aquatic facility,</u> or;	337
(v) <u>A golf course;</u>	338
(vi) <u>A bicycle motocross facility or other type of</u>	339
<u>recreational area or facility in which bicycling, skating, skate</u>	340
<u>boarding, or scooter riding is engaged;</u>	341
(vii) <u>A rope course or climbing walls;</u>	342
(viii) <u>An all-purpose vehicle facility in which all-purpose</u>	343
<u>vehicles, as defined in section 4519.01 of the Revised Code, are</u>	344
<u>contained, maintained, or operated for recreational activities.</u>	345
(v) The provision of public defender services by a county or	346

joint county public defender's office pursuant to Chapter 120. of 347
the Revised Code; 348

(w) A function that the general assembly mandates a political 349
subdivision to perform. 350

(D) "Law" means any provision of the constitution, statutes, 351
or rules of the United States or of this state; provisions of 352
charters, ordinances, resolutions, and rules of political 353
subdivisions; and written policies adopted by boards of education. 354
When used in connection with the "common law," this definition 355
does not apply. 356

(E) "Motor vehicle" has the same meaning as in section 357
4511.01 of the Revised Code. 358

(F) "Political subdivision" or "subdivision" means a 359
municipal corporation, township, county, school district, or other 360
body corporate and politic responsible for governmental activities 361
in a geographic area smaller than that of the state. "Political 362
subdivision" includes, but is not limited to, a county hospital 363
commission appointed under section 339.14 of the Revised Code, 364
regional planning commission created pursuant to section 713.21 of 365
the Revised Code, county planning commission created pursuant to 366
section 713.22 of the Revised Code, joint planning council created 367
pursuant to section 713.231 of the Revised Code, interstate 368
regional planning commission created pursuant to section 713.30 of 369
the Revised Code, port authority created pursuant to section 370
4582.02 or 4582.26 of the Revised Code or in existence on December 371
16, 1964, regional council established by political subdivisions 372
pursuant to Chapter 167. of the Revised Code, emergency planning 373
district and joint emergency planning district designated under 374
section 3750.03 of the Revised Code, joint emergency medical 375
services district created pursuant to section 307.052 of the 376
Revised Code, fire and ambulance district created pursuant to 377
section 505.375 of the Revised Code, joint interstate emergency 378

planning district established by an agreement entered into under 379
that section, county solid waste management district and joint 380
solid waste management district established under section 343.01 381
or 343.012 of the Revised Code, and community school established 382
under Chapter 3314. of the Revised Code. 383

(G)(1) "Proprietary function" means a function of a political 384
subdivision that is specified in division (G)(2) of this section 385
or that satisfies both of the following: 386

(a) The function is not one described in division (C)(1)(a) 387
or (b) of this section and is not one specified in division (C)(2) 388
of this section; 389

(b) The function is one that promotes or preserves the public 390
peace, health, safety, or welfare and that involves activities 391
that are customarily engaged in by nongovernmental persons. 392

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(2) A "proprietary function" includes, but is not limited to, 394
the following: 395

(a) The operation of a hospital by one or more political 396
subdivisions; 397

(b) The design, construction, reconstruction, renovation, 398
repair, maintenance, and operation of a public cemetery other than 399
a township cemetery; 400

(c) The establishment, maintenance, and operation of a 401
utility, including, but not limited to, a light, gas, power, or 402
heat plant, a railroad, a busline or other transit company, an 403
airport, and a municipal corporation water supply system; 404

(d) The maintenance, destruction, operation, and upkeep of a 405
sewer system; 406

(e) The operation and control of a public stadium, 407
auditorium, civic or social center, exhibition hall, arts and 408

crafts center, band or orchestra, or off-street parking facility. 409

(H) ~~"Public roads" means public roads, highways, streets, 410
avenues, alleys, and bridges within a political subdivision. 411
"Public roads" does not include berms, shoulders, rights-of-way, 412
or traffic control devices unless the traffic control devices are 413
mandated by the Ohio manual of uniform traffic control devices. 414~~

(I) "State" means the state of Ohio, including, but not 415
limited to, the general assembly, the supreme court, the offices 416
of all elected state officers, and all departments, boards, 417
offices, commissions, agencies, colleges and universities, 418
institutions, and other instrumentalities of the state of Ohio. 419
"State" does not include political subdivisions. 420

Section 4. That the version of existing section 2744.01 of 421
the Revised Code that is scheduled to take effect January 1, 2002, 422
is hereby repealed. 423

Section 5. That Sections 3 and 4 of this act shall take 424
effect on January 1, 2002. 425

Section 6. Section 2744.01 of the Revised Code was amended by 426
Am. Sub. H.B. 350 of the 121st General Assembly and was amended by 427
acts subsequent to its amendment by Am. Sub. H.B. 350. This act 428
amends section 2744.01 of the Revised Code to remove substantive 429
matter inserted by, and to revive substantive matter removed by, 430
Am. Sub. H.B. 350 of the 121st General Assembly. This act retains 431
in section 2744.01 of the Revised Code amendments that were made 432
subsequent to Am. Sub. H.B. 350 of the 121st General Assembly and 433
that are independent of the purposes of Am. Sub. H.B. 350. The 434
removal, revival, or retention of that language is not intended to 435
have any substantive effect and is intended to present in Sections 436
1 and 3 of this act the version of section 2744.01 of the Revised 437

Code that is currently effective.

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