

As Passed by the Senate

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

Sub. S. B. No. 24

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

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
operation of a bicycle motorcross, bicycling, 4
skating, skate boarding, or scooter riding facility 5
and to continue the provisions of this act on and 6
after January 1, 2002, by amending the version of 7
section 2744.01 of the Revised Code that takes 8
effect on that date. 9

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

Section 1. That section 2744.01 of the Revised Code be 10
amended to read as follows: 11

Sec. 2744.01. As used in this chapter: 12

(A) "Emergency call" means a call to duty, including, but not 13
limited to, communications from citizens, police dispatches, and 14
personal observations by peace officers of inherently dangerous 15
situations that demand an immediate response on the part of a 16
peace officer. 17

(B) "Employee" means an officer, agent, employee, or servant, 18
whether or not compensated or full-time or part-time, who is 19

authorized to act and is acting within the scope of the officer's, 20
agent's, employee's, or servant's employment for a political 21
subdivision. "Employee" does not include an independent contractor 22
and does not include any individual engaged by a school district 23
pursuant to section 3319.301 of the Revised Code. "Employee" 24
includes any elected or appointed official of a political 25
subdivision. "Employee" also includes a person who has been 26
convicted of or pleaded guilty to a criminal offense and who has 27
been sentenced to perform community service work in a political 28
subdivision whether pursuant to section 2951.02 of the Revised 29
Code or otherwise, and a child who is found to be a delinquent 30
child and who is ordered by a juvenile court pursuant to section 31
2151.355 of the Revised Code to perform community service or 32
community work in a political subdivision. 33

(C)(1) "Governmental function" means a function of a 34
political subdivision that is specified in division (C)(2) of this 35
section or that satisfies any of the following: 36

(a) A function that is imposed upon the state as an 37
obligation of sovereignty and that is performed by a political 38
subdivision voluntarily or pursuant to legislative requirement; 39

(b) A function that is for the common good of all citizens of 40
the state; 41

(c) A function that promotes or preserves the public peace, 42
health, safety, or welfare; that involves activities that are not 43
engaged in or not customarily engaged in by nongovernmental 44
persons; and that is not specified in division (G)(2) of this 45
section as a proprietary function. 46

(2) A "governmental function" includes, but is not limited 47
to, the following: 48

(a) The provision or nonprovision of police, fire, emergency 49
medical, ambulance, and rescue services or protection; 50

(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;	51 52 53 54 55
(c) The provision of a system of public education;	56
(d) The provision of a free public library system;	57
(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;	58 59 60
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	61 62
(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;	63 64 65 66
(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;	67 68 69 70
(i) The enforcement or nonperformance of any law;	71
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	72 73
(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	74 75 76 77 78 79 80

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.

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

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

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(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;

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

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(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;

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(q) Urban renewal projects and the elimination of slum conditions;	112 113
(r) Flood control measures;	114
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	115 116
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	117 118
(u) The design, construction, reconstruction, renovation, repair, maintenance, <u>use</u> , and operation of any <u>recreational area or facility, including, but not limited to, any of the following:</u>	119 120 121
(i) <u>A park, playground, or playfield;</u>	122
(ii) <u>An indoor recreational facility;</u>	123
(iii) <u>A zoo, or zoological park;</u>	124
(iv) <u>A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, and or other type of aquatic facility,</u> or	125 126
(v) <u>A golf course;</u>	127
(vi) <u>A bicycle motorcross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;</u>	128 129 130
(vii) <u>A rope course or climbing walls.</u>	131
(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;	132 133 134
(w) A function that the general assembly mandates a political subdivision to perform.	135 136
(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	137 138 139

subdivisions; and written policies adopted by boards of education. 140
When used in connection with the "common law," this definition 141
does not apply. 142

(E) "Motor vehicle" has the same meaning as in section 143
4511.01 of the Revised Code. 144

(F) "Political subdivision" or "subdivision" means a 145
municipal corporation, township, county, school district, or other 146
body corporate and politic responsible for governmental activities 147
in a geographic area smaller than that of the state. "Political 148
subdivision" includes, but is not limited to, a county hospital 149
commission appointed under section 339.14 of the Revised Code, 150
regional planning commission created pursuant to section 713.21 of 151
the Revised Code, county planning commission created pursuant to 152
section 713.22 of the Revised Code, joint planning council created 153
pursuant to section 713.231 of the Revised Code, interstate 154
regional planning commission created pursuant to section 713.30 of 155
the Revised Code, port authority created pursuant to section 156
4582.02 or 4582.26 of the Revised Code or in existence on December 157
16, 1964, regional council established by political subdivisions 158
pursuant to Chapter 167. of the Revised Code, emergency planning 159
district and joint emergency planning district designated under 160
section 3750.03 of the Revised Code, joint emergency medical 161
services district created pursuant to section 307.052 of the 162
Revised Code, fire and ambulance district created pursuant to 163
section 505.375 of the Revised Code, joint interstate emergency 164
planning district established by an agreement entered into under 165
that section, county solid waste management district and joint 166
solid waste management district established under section 343.01 167
or 343.012 of the Revised Code, and community school established 168
under Chapter 3314. of the Revised Code. 169

(G)(1) "Proprietary function" means a function of a political 170
subdivision that is specified in division (G)(2) of this section 171

or that satisfies both of the following:	172
(a) The function is not one described in division (C)(1)(a)	173
or (b) of this section and is not one specified in division (C)(2)	174
of this section;	175
(b) The function is one that promotes or preserves the public	176
peace, health, safety, or welfare and that involves activities	177
that are customarily engaged in by nongovernmental persons.	178
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(2) A "proprietary function" includes, but is not limited to,	180
the following:	181
(a) The operation of a hospital by one or more political	182
subdivisions;	183
(b) The design, construction, reconstruction, renovation,	184
repair, maintenance, and operation of a public cemetery other than	185
a township cemetery;	186
(c) The establishment, maintenance, and operation of a	187
utility, including, but not limited to, a light, gas, power, or	188
heat plant, a railroad, a busline or other transit company, an	189
airport, and a municipal corporation water supply system;	190
(d) The maintenance, destruction, operation, and upkeep of a	191
sewer system;	192
(e) The operation and control of a public stadium,	193
auditorium, civic or social center, exhibition hall, arts and	194
crafts center, band or orchestra, or off-street parking facility.	195
(H) "Public roads" means public roads, highways, streets,	196
avenues, alleys, and bridges within a political subdivision.	197
"Public roads" does not include berms, shoulders, rights-of-way,	198
or traffic control devices unless the traffic control devices are	199
mandated by the Ohio manual of uniform traffic control devices.	200
(I) "State" means the state of Ohio, including, but not	201

limited to, the general assembly, the supreme court, the offices 202
of all elected state officers, and all departments, boards, 203
offices, commissions, agencies, colleges and universities, 204
institutions, and other instrumentalities of the state of Ohio. 205
"State" does not include political subdivisions. 206

Section 2. That existing section 2744.01 of the Revised Code 207
is hereby repealed. 208

Section 3. That the version of section 2744.01 of the Revised 209
Code that is scheduled to take effect January 1, 2002, be amended 210
to read as follows: 211

Sec. 2744.01. As used in this chapter: 212

(A) "Emergency call" means a call to duty, including, but not 213
limited to, communications from citizens, police dispatches, and 214
personal observations by peace officers of inherently dangerous 215
situations that demand an immediate response on the part of a 216
peace officer. 217

(B) "Employee" means an officer, agent, employee, or servant, 218
whether or not compensated or full-time or part-time, who is 219
authorized to act and is acting within the scope of the officer's, 220
agent's, employee's, or servant's employment for a political 221
subdivision. "Employee" does not include an independent contractor 222
and does not include any individual engaged by a school district 223
pursuant to section 3319.301 of the Revised Code. "Employee" 224
includes any elected or appointed official of a political 225
subdivision. "Employee" also includes a person who has been 226
convicted of or pleaded guilty to a criminal offense and who has 227
been sentenced to perform community service work in a political 228
subdivision whether pursuant to section 2951.02 of the Revised 229
Code or otherwise, and a child who is found to be a delinquent 230

child and who is ordered by a juvenile court pursuant to section 231
2152.19 or 2152.20 of the Revised Code to perform community 232
service or community work in a political subdivision. 233

(C)(1) "Governmental function" means a function of a 234
political subdivision that is specified in division (C)(2) of this 235
section or that satisfies any of the following: 236

(a) A function that is imposed upon the state as an 237
obligation of sovereignty and that is performed by a political 238
subdivision voluntarily or pursuant to legislative requirement; 239

(b) A function that is for the common good of all citizens of 240
the state; 241

(c) A function that promotes or preserves the public peace, 242
health, safety, or welfare; that involves activities that are not 243
engaged in or not customarily engaged in by nongovernmental 244
persons; and that is not specified in division (G)(2) of this 245
section as a proprietary function. 246

(2) A "governmental function" includes, but is not limited 247
to, the following: 248

(a) The provision or nonprovision of police, fire, emergency 249
medical, ambulance, and rescue services or protection; 250

(b) The power to preserve the peace; to prevent and suppress 251
riots, disturbances, and disorderly assemblages; to prevent, 252
mitigate, and clean up releases of oil and hazardous and extremely 253
hazardous substances as defined in section 3750.01 of the Revised 254
Code; and to protect persons and property; 255

(c) The provision of a system of public education; 256

(d) The provision of a free public library system; 257

(e) The regulation of the use of, and the maintenance and 258
repair of, roads, highways, streets, avenues, alleys, sidewalks, 259
bridges, aqueducts, viaducts, and public grounds; 260

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	261 262
(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;	263 264 265 266
(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;	267 268 269 270
(i) The enforcement or nonperformance of any law;	271
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	272 273
(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.	274 275 276 277 278 279 280 281 282 283 284 285
(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;	286 287 288
(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	289 290 291

indigent;	292
(n) The operation of a health board, department, or agency,	293
including, but not limited to, any statutorily required or	294
permissive program for the provision of immunizations or other	295
inoculations to all or some members of the public, provided that a	296
"governmental function" does not include the supply, manufacture,	297
distribution, or development of any drug or vaccine employed in	298
any such immunization or inoculation program by any supplier,	299
manufacturer, distributor, or developer of the drug or vaccine;	300
(o) The operation of mental health facilities, mental	301
retardation or developmental disabilities facilities, alcohol	302
treatment and control centers, and children's homes or agencies;	303
(p) The provision or nonprovision of inspection services of	304
all types, including, but not limited to, inspections in	305
connection with building, zoning, sanitation, fire, plumbing, and	306
electrical codes, and the taking of actions in connection with	307
those types of codes, including, but not limited to, the approval	308
of plans for the construction of buildings or structures and the	309
issuance or revocation of building permits or stop work orders in	310
connection with buildings or structures;	311
(q) Urban renewal projects and the elimination of slum	312
conditions;	313
(r) Flood control measures;	314
(s) The design, construction, reconstruction, renovation,	315
operation, care, repair, and maintenance of a township cemetery;	316
(t) The issuance of revenue obligations under section 140.06	317
of the Revised Code;	318
(u) The design, construction, reconstruction, renovation,	319
repair, maintenance, <u>use</u> , and operation of any <u>recreational area</u>	320
<u>or facility, including, but not limited to, any of the following:</u>	321

<u>(i) A park, playground, or playfield;</u>	322
<u>(ii) An indoor recreational facility;</u>	323
<u>(iii) A zoo, or zoological park;</u>	324
<u>(iv) A bath, swimming pool, pond, water park, wading pool,</u> wave pool, water slide, and or <u>other type of aquatic facility,</u> or;	325 326
<u>(v) A golf course;</u>	327
<u>(vi) A bicycle motorcross facility or other type of</u> <u>recreational area or facility in which bicycling, skating, skate</u> <u>boarding, or scooter riding is engaged;</u>	328 329 330
<u>(vii) A rope course or climbing walls.</u>	331
(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;	332 333 334
(w) A function that the general assembly mandates a political subdivision to perform.	335 336
(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.	337 338 339 340 341 342
(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.	343 344
(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,	345 346 347 348 349 350

regional planning commission created pursuant to section 713.21 of 351
the Revised Code, county planning commission created pursuant to 352
section 713.22 of the Revised Code, joint planning council created 353
pursuant to section 713.231 of the Revised Code, interstate 354
regional planning commission created pursuant to section 713.30 of 355
the Revised Code, port authority created pursuant to section 356
4582.02 or 4582.26 of the Revised Code or in existence on December 357
16, 1964, regional council established by political subdivisions 358
pursuant to Chapter 167. of the Revised Code, emergency planning 359
district and joint emergency planning district designated under 360
section 3750.03 of the Revised Code, joint emergency medical 361
services district created pursuant to section 307.052 of the 362
Revised Code, fire and ambulance district created pursuant to 363
section 505.375 of the Revised Code, joint interstate emergency 364
planning district established by an agreement entered into under 365
that section, county solid waste management district and joint 366
solid waste management district established under section 343.01 367
or 343.012 of the Revised Code, and community school established 368
under Chapter 3314. of the Revised Code. 369

(G)(1) "Proprietary function" means a function of a political 370
subdivision that is specified in division (G)(2) of this section 371
or that satisfies both of the following: 372

(a) The function is not one described in division (C)(1)(a) 373
or (b) of this section and is not one specified in division (C)(2) 374
of this section; 375

(b) The function is one that promotes or preserves the public 376
peace, health, safety, or welfare and that involves activities 377
that are customarily engaged in by nongovernmental persons. 378

(2) A "proprietary function" includes, but is not limited to, 379
the following: 380
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(a) The operation of a hospital by one or more political subdivisions;	382 383
(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;	384 385 386
(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;	387 388 389 390
(d) The maintenance, destruction, operation, and upkeep of a sewer system;	391 392
(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.	393 394 395
(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.	396 397 398 399 400
(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.	401 402 403 404 405 406
Section 4. That the version of existing section 2744.01 of the Revised Code that is scheduled to take effect January 1, 2002, is hereby repealed.	407 408 409
Section 5. That Sections 3 and 4 of this act shall take	410

effect on January 1, 2002.

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