

**As Reported by the House Civil and Commercial Law Committee**

**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**

---

**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 48  
the state; 49

## As Reported by the House Civil and Commercial Law Committee

(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.

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

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

(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;

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

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

(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;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(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;

(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;

(i) The enforcement or nonperformance of any law;

## As Reported by the House Civil and Commercial Law Committee

(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 <del>human</del> <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	109 110

treatment and control centers, and children's homes or agencies;	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> <del>or;</del>	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 boarding, or scooter riding is engaged;</u>	136 137 138
(vii) <u>A rope course or climbing walls;</u>	139

(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.

(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;

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

(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.

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

(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 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning

district and joint emergency planning district designated under 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  
190

(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 sewer system; 202  
203

(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. 204  
205  
206

~~(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.~~ 207  
208  
209  
210  
211

~~(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.~~ 212  
213  
214  
215  
216  
217

**Section 2.** That existing section 2744.01 of the Revised Code is hereby repealed. 218  
219

**Section 3.** That the version of section 2744.01 of the Revised Code that is scheduled to take effect January 1, 2002, be amended to read as follows: 220  
221  
222

**Sec. 2744.01.** As used in this chapter: 223

(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. 224  
225  
226  
227  
228

(B) "Employee" means an officer, agent, employee, or servant, 229



whether or not compensated or full-time or part-time, who is 230  
authorized to act and is acting within the scope of the officer's, 231  
agent's, employee's, or servant's employment for a political 232  
subdivision. "Employee" does not include an independent contractor 233  
and does not include any individual engaged by a school district 234  
pursuant to section 3319.301 of the Revised Code. "Employee" 235  
includes any elected or appointed official of a political 236  
subdivision. "Employee" also includes a person who has been 237  
convicted of or pleaded guilty to a criminal offense and who has 238  
been sentenced to perform community service work in a political 239  
subdivision whether pursuant to section 2951.02 of the Revised 240  
Code or otherwise, and a child who is found to be a delinquent 241  
child and who is ordered by a juvenile court pursuant to section 242  
2152.19 or 2152.20 of the Revised Code to perform community 243  
service or community work in a political subdivision. 244

(C)(1) "Governmental function" means a function of a 245  
political subdivision that is specified in division (C)(2) of this 246  
section or that satisfies any of the following: 247

(a) A function that is imposed upon the state as an 248  
obligation of sovereignty and that is performed by a political 249  
subdivision voluntarily or pursuant to legislative requirement; 250

(b) A function that is for the common good of all citizens of 251  
the state; 252

(c) A function that promotes or preserves the public peace, 253  
health, safety, or welfare; that involves activities that are not 254  
engaged in or not customarily engaged in by nongovernmental 255  
persons; and that is not specified in division (G)(2) of this 256  
section as a proprietary function. 257

(2) A "governmental function" includes, but is not limited 258  
to, the following: 259

(a) The provision or nonprovision of police, fire, emergency 260

medical, ambulance, and rescue services or protection;	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 "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	285 286 287 288 289 290

## As Reported by the House Civil and Commercial Law Committee

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.

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

(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;

(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;

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

(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;	322
(q) Urban renewal projects and the elimination of slum conditions;	323 324
(r) Flood control measures;	325
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	326 327
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	328 329
(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>	330 331 332
(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, wave pool, water slide, and or other type of aquatic facility,</u> <del>or;</del>	336 337
(v) <u>A golf course;</u>	338
(vi) <u>A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;</u>	339 340 341
(vii) <u>A rope course or climbing walls;</u>	342
(viii) <u>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>	343 344 345
(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;	346 347 348
(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  
393

(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,  
or traffic control devices unless the traffic control devices are  
mandated by the Ohio manual of uniform traffic control devices.~~

(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.

**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.

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

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