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Bill Analysis
Legislative Service Commission

H.B. 205

123rd General Assembly
(As Introduced)

Rep. Corbin

BILL SUMMARY

- Expands the definition of "governmental function" in the Political Subdivision Sovereign Immunity Law to include the design, construction, reconstruction, renovation, repair, maintenance, and operation of a water park, wading pool, wave pool, water slide, and other type of aquatic facility and the design, construction, reconstruction, renovation, repair, and maintenance of a golf course.
- Declares the General Assembly's intent in expanding the definition of "governmental function," in part, to supersede the effect of the holding in *Garrett v. Sandusky* (1994), 68 Ohio St.3d 139.

CONTENT AND OPERATION

Background law

For the purposes of Chapter 2744. of the Revised Code, the Political Subdivision Sovereign Immunity (PSSI) Law, the functions of political subdivisions are classified as governmental functions and proprietary functions. Generally, except as specifically provided in statute (see next sentence) 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 of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. However, subject to specific statutory defenses and immunities and to specified limitations on the damages that may be awarded, a political subdivision is liable in damages in a civil action as follows (secs. 2744.02(B), 2744.03, and 2744.05--not in the bill):

(1) Generally and subject to specified defenses, if the injury, death, or loss to person or property is caused by the negligent operation of any motor vehicle by

employees of the political subdivision upon the public roads when the employees are engaged within the scope of their employment and authority;

(2) Generally, if the injury, death, or loss to person or property is caused by the negligent performance of acts by employees of the political subdivision with respect to *proprietary functions* of the political subdivision;

(3) Generally and subject to a specified defense, if the injury, death, or loss to person or property is caused by the negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads;

(4) Generally, if the injury, death, or loss to person or property is caused by the negligence of the political subdivision's employees and 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;

(5) If liability is expressly imposed upon the political subdivision by a section of the Revised Code. Liability is not construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

Definition of "governmental function"

Existing law

For purposes of the PSSI Law, "governmental function" means a function of a political subdivision that is specified in that Law or that is any of the following (sec. 2744.01(C)(1)):

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

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

(3) 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 the PSSI Law as a proprietary function.

A "governmental function" includes, but is not limited to, several types of functions or activities that are specified in existing law (sec. 2744.01(C)(2)). (See

COMMENT 1.) Among the list of these functions are the design, construction, reconstruction, renovation, repair, maintenance, and operation of any park, playground, playfield, indoor recreational facility, zoo, zoological park, bath, or *swimming pool* or pond, and the operation and *control* of any golf course (sec. 2744.01(C)(2)(u)).

Operation of the bill

The bill adds to the specifically designated governmental functions specified in existing law the design, construction, reconstruction, renovation, repair, maintenance, and operation of a *water park, wading pool, wave pool, water slide, and other type of aquatic facility*. The bill also includes as specifically designated governmental functions the design, construction, reconstruction, renovation, repair, and maintenance, in addition to the *operation* (as in existing law), of a golf course, and eliminates as a specifically designated governmental function "control" (in existing law) of a golf course. (Sec. 2744.01(C)(2)(u).) The effect of the bill's expansion of the definition of "governmental function" is to make a political subdivision *generally immune* from liability in damages in a civil action for injury, death, or loss to person or property that allegedly is caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with the design, construction, reconstruction, renovation, repair, maintenance, and operation of a water park, wading pool, wave pool, water slide, and other type of aquatic facility, or a golf course. (Sec. 2744.02--not in the bill, see paragraph (2) under "**Background law**," above.) (See **COMMENT 2.**)

Uncodified law

The bill declares in uncodified law that it is the intent of the General Assembly in expanding the definition of "governmental function," in part, to supersede the effect of the holding of the Ohio Supreme Court in *Garrett v. Sandusky* (1994), 68 Ohio St.3d 139, that a wave pool is not a "swimming pool" within governmental functions for which a city enjoys tort immunity (Section 3). (See **COMMENT 3.**)

COMMENT

1. Examples of specified governmental functions in the PSSI Law are: police, fire, emergency medical, ambulance, and rescue services or protection; power to preserve the peace, to prevent and suppress riots, disturbances, and disorderly assemblages, and to protect persons and property; and to prevent, mitigate, and clean up oil and hazardous substances; provision of a system of public education and a free public library system; regulation of the use of and the

maintenance and repair of roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds; judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions; construction, reconstruction, repair, renovation, maintenance, and operation of buildings used in connection with the performance of a governmental function; design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or other detention facilities; enforcement or nonperformance of any law; regulation of traffic and erection or nonerection of traffic signs, signals, or control devices; collection and disposal of solid wastes; planning or design, construction, or reconstruction of a public improvement including, but not limited to, a sewer system; operation of a human services department or agency, a health board, department, or agency, mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies; inspection services of all types; urban renewal projects and the elimination of slum conditions; flood control measures; design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery; issuance of certain revenue obligations; public defender services by a county or joint county public defender's office; and any function that the General Assembly mandates a political subdivision to perform (sec. 2744.01(C)(2)(a) to (w)).

2. The *general immunity* of a political subdivision in the exercise of a governmental or proprietary function is available to an *employee* of a political subdivision, except in any of the following circumstances (sec. 2744.03(A)(6)--not in the bill):

(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 is expressly imposed upon the employee by a section of the Revised Code. Liability is not construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, 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.

3. In *Garrett v. Sandusky, supra*, the Supreme Court noted that the wave activation device at the aquatic center operated by the city materially transformed the pool from a placid body of water, commonly known as a swimming pool, to a

potentially hazardous body of churning water, and a wave pool is more akin to an amusement ride which is not an immunized municipal function. (At p. 140.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-99	p. 225

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