



**Sub. S.B. 24\***

124th General Assembly

(As Reported by S. Judiciary--Civil Justice)

Sen. Johnson

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**BILL SUMMARY**

- Expands the definition of "governmental function" in the Political Subdivision Sovereign Immunity Law, for purposes of a political subdivision's general immunity from tort liability, to include the design, construction, reconstruction, renovation, repair, maintenance, and operation of any recreational area or facility.
- Specifies that a bicycle motorcross facility, or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged is included in the term recreational area or facility.
- Specifies that a rope course or climbing wall is included in the term recreational area or facility.

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**CONTENT AND OPERATION**

**Background law--general nonliability/liability of political subdivisions**

For the purposes of R.C. Chapter 2744., the Political Subdivision Sovereign Immunity (PSSI) Law, the functions of political subdivisions are classified as *governmental functions* and *proprietary functions* (see below). Generally, except as specifically provided in statute, 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 (see below) and to specified limitations on the damages that may be awarded, a political subdivision is liable in

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\* This analysis was prepared before the report of the Senate Judiciary--Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

damages in a civil action in the following circumstances (R.C. 2744.02(B) and 2744.05--not in the bill):

(1) Generally and subject to specified defenses related to police, fire department, and emergency medical service emergency responses, if the injury, death, or loss to person or property is caused by the negligent operation of any motor vehicle by an employee of the political subdivision upon the public roads when the employee is engaged within the scope of the employee's employment and authority;

(2) Generally, if the injury, death, or loss to person or property is caused by the negligent performance of acts by an employee 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 political subdivision's negligent failure to keep public roads in repair or by 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 a political subdivision employee 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*, other than adult or juvenile detention facilities;

(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.

**Definitions of "governmental function" and "proprietary function" for PSSI Law**

**Existing law**

For purposes of the PSSI Law, "governmental function" means a function of a political subdivision that is specified as such in that Law (see the fourth succeeding paragraph) or that is any of the following (R.C. 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 section 2744.01(C)(2). Among the list of these governmental functions are the design, construction, reconstruction, renovation, repair, maintenance, and operation of any park, playground, playfield, indoor recreational facility, zoo, zoological park, bath, swimming pool, pond, water park, wading pool, wave pool, water slide, and other type of aquatic facility, or golf course (R.C. 2744.01(C)(2)(u)). The other examples of "governmental functions" are listed in **COMMENT 1**.

For purposes of the PSSI Law, "proprietary function" means a function of a political subdivision that is specified as such in that Law (see **COMMENT 2** for a list of the specified proprietary functions) or that satisfies *both* of the following (R.C. 2744.01(G)(1)):

(1) The function is not one 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, is not one that is for the common good of all citizens of the state, and is not one specified as a "governmental function" (see the second preceding paragraph and **COMMENT 1**).

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

### **Operation of the bill**

The bill adds to the specifically designated *governmental functions* specified in existing law the design, construction, reconstruction, renovation, repair, maintenance, *use*, and operation of any *recreational area or facility, including, but not limited to, a rope course, climbing walls, bicycle motorcross facility, or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged*. The effect of the bill's expansion of the definition of "governmental function" is to provide that, regarding any 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, use, and operation of any recreational area or facility, including, but

not limited to, a rope course, climbing walls, a bicycle motorcross facility, or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged, the political subdivision generally is not liable in a civil action for damages arising from those actions. Similarly, the political subdivision is not liable for damages arising from those actions under the existing provision that generally provides for political subdivision liability for damages arising from its employees' negligent acts performed with respect to proprietary functions. (R.C. 2744.02--not in the bill, see paragraph (2) under "***Background law***," above.) Thus, generally, the political subdivision will be immune from liability in a civil action for damages arising from employee actions of that nature. (R.C. 2744.01(C)(2)(u).)

### **Political subdivision and employee defenses and immunities**

In a civil action brought against a political subdivision or a political subdivision employee to recover damages for injury, death, or loss to persons or property allegedly caused by any act or omission *in connection with a governmental or proprietary function*, the following defenses or immunities may be asserted to establish nonliability (R.C. 2744.03):

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved that gave rise to the claim of liability: (a) was not negligent conduct and was required or authorized by law, or (b) was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the employee's discretion with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the employee's office or position.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense or was found to be a delinquent child and who, at the time of the injury or death, was performing, in specified circumstances, community service work.

(5) The political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion

in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to below in paragraph (7) and in circumstances not covered by that provision or other specified provisions, the employee is immune from liability unless one of the following applies: (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, or (c) liability is expressly imposed upon the employee by a section of the Revised Code; under this provision, 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.

(7) The political subdivision, and a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of an Ohio court is entitled to any defense or immunity available at common law or established by the Revised Code.

The immunities and defenses of an employee referred to in paragraphs (6) and (7), above, do not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in R.C. 2744.02, as described above.

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## 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, 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 (R.C. 2744.01(C)(2)(a) to (t), (v), and (w)).

2. The specified proprietary functions under the PSSI Law are: the operation of a hospital; the design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery; the establishment, maintenance, and operation of a utility, including a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system; the maintenance, destruction, operation, and upkeep of a sewer system; and 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 (R.C. 2744.01(G)(2)(a) to (e)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 93
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