

H. B. No. 421  
As Introduced

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete "section" and insert "sections 2744.01, 2744.02, 2744.05, and" 1  
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In line 9 of the title, after "county" insert "and to modify the definition of "emergency call" and the defenses to a political subdivision's liability for a peace officer's negligent operation of a motor vehicle" 3  
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In line 10, delete "section" and insert "sections 2744.01, 2744.02, 2744.05, and" 7  
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After line 11, insert: 9

"Sec. 2744.01. As used in this chapter: 10

(A) "Emergency call" means a ~~call to duty, including, but not limited to, communications communication from citizens~~ a citizen, a police dispatches dispatch, and or a personal observations observation by a peace officers of officer only if that communication, dispatch, or personal peace officer observation involves or concerns an inherently dangerous situations situation that demand demands an immediate response 11  
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on the part of a peace officer. 18

(B) "Employee" means an officer, agent, employee, or 19  
servant, whether or not compensated or full-time or part-time, 20  
who is authorized to act and is acting within the scope of the 21  
officer's, agent's, employee's, or servant's employment for a 22  
political subdivision. "Employee" does not include an 23  
independent contractor and does not include any individual 24  
engaged by a school district pursuant to section 3319.301 of the 25  
Revised Code. "Employee" includes any elected or appointed 26  
official of a political subdivision. "Employee" also includes a 27  
person who has been convicted of or pleaded guilty to a criminal 28  
offense and who has been sentenced to perform community service 29  
work in a political subdivision whether pursuant to section 30  
2951.02 of the Revised Code or otherwise, and a child who is 31  
found to be a delinquent child and who is ordered by a juvenile 32  
court pursuant to section 2152.19 or 2152.20 of the Revised Code 33  
to perform community service or community work in a political 34  
subdivision. 35

(C) (1) "Governmental function" means a function of a 36  
political subdivision that is specified in division (C) (2) of 37  
this section or that satisfies any of the following: 38

(a) A function that is imposed upon the state as an 39  
obligation of sovereignty and that is performed by a political 40  
subdivision voluntarily or pursuant to legislative requirement; 41

(b) A function that is for the common good of all citizens 42  
of the state; 43

(c) A function that promotes or preserves the public 44  
peace, health, safety, or welfare; that involves activities that 45  
are not engaged in or not customarily engaged in by 46

nongovernmental persons; and that is not specified in division	47
(G) (2) of this section as a proprietary function.	48
(2) A "governmental function" includes, but is not limited	49
to, the following:	50
(a) The provision or nonprovision of police, fire,	51
emergency medical, ambulance, and rescue services or protection;	52
(b) The power to preserve the peace; to prevent and	53
suppress riots, disturbances, and disorderly assemblages; to	54
prevent, mitigate, and clean up releases of oil and hazardous	55
and extremely hazardous substances as defined in section 3750.01	56
of the Revised Code; and to protect persons and property;	57
(c) The provision of a system of public education;	58
(d) The provision of a free public library system;	59
(e) The regulation of the use of, and the maintenance and	60
repair of, roads, highways, streets, avenues, alleys, sidewalks,	61
bridges, aqueducts, viaducts, and public grounds;	62
(f) Judicial, quasi-judicial, prosecutorial, legislative,	63
and quasi-legislative functions;	64
(g) The construction, reconstruction, repair, renovation,	65
maintenance, and operation of buildings that are used in	66
connection with the performance of a governmental function,	67
including, but not limited to, office buildings and courthouses;	68
(h) The design, construction, reconstruction, renovation,	69
repair, maintenance, and operation of jails, places of juvenile	70
detention, workhouses, or any other detention facility, as	71
defined in section 2921.01 of the Revised Code;	72
(i) The enforcement or nonperformance of any law;	73

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	74 75
(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.	76 77 78 79 80 81 82 83 84 85 86 87
(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;	88 89 90
(m) The operation of a 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;	91 92 93 94
(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;	95 96 97 98 99 100 101 102 103

(o) The operation of mental health facilities,	104
developmental disabilities facilities, alcohol treatment and	105
control centers, and children's homes or agencies;	106
(p) The provision or nonprovision of inspection services	107
of all types, including, but not limited to, inspections in	108
connection with building, zoning, sanitation, fire, plumbing,	109
and electrical codes, and the taking of actions in connection	110
with those types of codes, including, but not limited to, the	111
approval of plans for the construction of buildings or	112
structures and the issuance or revocation of building permits or	113
stop work orders in connection with buildings or structures;	114
(q) Urban renewal projects and the elimination of slum	115
conditions, including the performance of any activity that a	116
county land reutilization corporation is authorized to perform	117
under Chapter 1724. or 5722. of the Revised Code;	118
(r) Flood control measures;	119
(s) The design, construction, reconstruction, renovation,	120
operation, care, repair, and maintenance of a township cemetery;	121
(t) The issuance of revenue obligations under section	122
140.06 of the Revised Code;	123
(u) The design, construction, reconstruction, renovation,	124
repair, maintenance, and operation of any school athletic	125
facility, school auditorium, or gymnasium or any recreational	126
area or facility, including, but not limited to, any of the	127
following:	128
(i) A park, playground, or playfield;	129
(ii) An indoor recreational facility;	130
(iii) A zoo or zoological park;	131

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;	132 133
(v) A golf course;	134
(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;	135 136 137
(vii) A rope course or climbing walls;	138
(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.	139 140 141 142
(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) (i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;	146 147 148 149 150 151 152
(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted,	153 154 155 156 157 158 159

pursuant to subsection (c) of that section, from the requirement 160  
of the regulations prescribed under subsection (b) of that 161  
section. 162

(x) A function that the general assembly mandates a 163  
political subdivision to perform. 164

(D) "Law" means any provision of the constitution, 165  
statutes, or rules of the United States or of this state; 166  
provisions of charters, ordinances, resolutions, and rules of 167  
political subdivisions; and written policies adopted by boards 168  
of education. When used in connection with the "common law," 169  
this definition does not apply. 170

(E) "Motor vehicle" has the same meaning as in section 171  
4511.01 of the Revised Code. 172

(F) "Political subdivision" or "subdivision" means a 173  
municipal corporation, township, county, school district, or 174  
other body corporate and politic responsible for governmental 175  
activities in a geographic area smaller than that of the state. 176  
"Political subdivision" includes, but is not limited to, a 177  
county hospital commission appointed under section 339.14 of the 178  
Revised Code, board of hospital commissioners appointed for a 179  
municipal hospital under section 749.04 of the Revised Code, 180  
board of hospital trustees appointed for a municipal hospital 181  
under section 749.22 of the Revised Code, regional planning 182  
commission created pursuant to section 713.21 of the Revised 183  
Code, county planning commission created pursuant to section 184  
713.22 of the Revised Code, joint planning council created 185  
pursuant to section 713.231 of the Revised Code, interstate 186  
regional planning commission created pursuant to section 713.30 187  
of the Revised Code, port authority created pursuant to section 188  
4582.02 or 4582.26 of the Revised Code or in existence on 189

December 16, 1964, regional council established by political 190  
subdivisions pursuant to Chapter 167. of the Revised Code, 191  
emergency planning district and joint emergency planning 192  
district designated under section 3750.03 of the Revised Code, 193  
joint emergency medical services district created pursuant to 194  
section 307.052 of the Revised Code, fire and ambulance district 195  
created pursuant to section 505.375 of the Revised Code, joint 196  
interstate emergency planning district established by an 197  
agreement entered into under that section, county solid waste 198  
management district and joint solid waste management district 199  
established under section 343.01 or 343.012 of the Revised Code, 200  
community school established under Chapter 3314. of the Revised 201  
Code, county land reutilization corporation organized under 202  
Chapter 1724. of the Revised Code, the county or counties served 203  
by a community-based correctional facility and program or 204  
district community-based correctional facility and program 205  
established and operated under sections 2301.51 to 2301.58 of 206  
the Revised Code, a community-based correctional facility and 207  
program or district community-based correctional facility and 208  
program that is so established and operated, and the facility 209  
governing board of a community-based correctional facility and 210  
program or district community-based correctional facility and 211  
program that is so established and operated. 212

(G) (1) "Proprietary function" means a function of a 213  
political subdivision that is specified in division (G) (2) of 214  
this section or that satisfies both of the following: 215

(a) The function is not one described in division (C) (1) 216  
(a) or (b) of this section and is not one specified in division 217  
(C) (2) of this section; 218

(b) The function is one that promotes or preserves the 219



public peace, health, safety, or welfare and that involves	220
activities that are customarily engaged in by nongovernmental	221
persons.	222
(2) A "proprietary function" includes, but is not limited	223
to, the following:	224
(a) The operation of a hospital by one or more political	225
subdivisions;	226
(b) The design, construction, reconstruction, renovation,	227
repair, maintenance, and operation of a public cemetery other	228
than a township cemetery;	229
(c) The establishment, maintenance, and operation of a	230
utility, including, but not limited to, a light, gas, power, or	231
heat plant, a railroad, a busline or other transit company, an	232
airport, and a municipal corporation water supply system;	233
(d) The maintenance, destruction, operation, and upkeep of	234
a sewer system;	235
(e) The operation and control of a public stadium,	236
auditorium, civic or social center, exhibition hall, arts and	237
crafts center, band or orchestra, or off-street parking	238
facility.	239
(H) "Public roads" means public roads, highways, streets,	240
avenues, alleys, and bridges within a political subdivision.	241
"Public roads" does not include berms, shoulders, rights-of-way,	242
or traffic control devices unless the traffic control devices	243
are mandated by the Ohio manual of uniform traffic control	244
devices.	245
(I) "State" means the state of Ohio, including, but not	246
limited to, the general assembly, the supreme court, the offices	247

of all elected state officers, and all departments, boards, 248  
offices, commissions, agencies, colleges and universities, 249  
institutions, and other instrumentalities of the state of Ohio. 250  
"State" does not include political subdivisions. 251

**Sec. 2744.02.** (A) (1) For the purposes of this chapter, 252  
the functions of political subdivisions are hereby classified as 253  
governmental functions and proprietary functions. Except as 254  
provided in division (B) of this section, a political 255  
subdivision is not liable in damages in a civil action for 256  
injury, death, or loss to person or property allegedly caused by 257  
any act or omission of the political subdivision or an employee 258  
of the political subdivision in connection with a governmental 259  
or proprietary function. 260

(2) The defenses and immunities conferred under this 261  
chapter apply in connection with all governmental and 262  
proprietary functions performed by a political subdivision and 263  
its employees, whether performed on behalf of that political 264  
subdivision or on behalf of another political subdivision. 265

(3) Subject to statutory limitations upon their monetary 266  
jurisdiction, the courts of common pleas, the municipal courts, 267  
and the county courts have jurisdiction to hear and determine 268  
civil actions governed by or brought pursuant to this chapter. 269

(B) Subject to sections 2744.03 and 2744.05 of the Revised 270  
Code, a political subdivision is liable in damages in a civil 271  
action for injury, death, or loss to person or property 272  
allegedly caused by an act or omission of the political 273  
subdivision or of any of its employees in connection with a 274  
governmental or proprietary function, as follows: 275

(1) Except as otherwise provided in this division, 276

political subdivisions are liable for injury, death, or loss to 277  
person or property caused by the negligent operation of any 278  
motor vehicle by their employees when the employees are engaged 279  
within the scope of their employment and authority. The 280  
following are full defenses to that liability: 281

(a) A member of a municipal corporation police department 282  
or any other police agency was operating a motor vehicle while 283  
responding to an emergency call and the operation of the vehicle 284  
did not constitute willful or wanton misconduct; 285

(b) A member of a municipal corporation fire department or 286  
any other firefighting agency was operating a motor vehicle 287  
while engaged in duty at a fire, proceeding toward a place where 288  
a fire is in progress or is believed to be in progress, or 289  
answering any other emergency alarm and the operation of the 290  
vehicle did not constitute willful or wanton misconduct; 291

(c) A member of an emergency medical service owned or 292  
operated by a political subdivision was operating a motor 293  
vehicle while responding to or completing a call for emergency 294  
medical care or treatment, the member was holding a valid 295  
commercial driver's license issued pursuant to Chapter 4506. or 296  
a driver's license issued pursuant to Chapter 4507. of the 297  
Revised Code, the operation of the vehicle did not constitute 298  
willful or wanton misconduct, and the operation complies with 299  
the precautions of section 4511.03 of the Revised Code. 300

(d) A peace officer of a political subdivision negligently 301  
operated a motor vehicle and the plaintiff, at the time of the 302  
alleged negligence, was attempting to flee from that officer or 303  
another peace officer so as to avoid apprehension for a criminal 304  
offense. 305

(2) Except as otherwise provided in sections 3314.07 and 306  
3746.24 of the Revised Code, political subdivisions are liable 307  
for injury, death, or loss to person or property caused by the 308  
negligent performance of acts by their employees with respect to 309  
proprietary functions of the political subdivisions. 310

(3) Except as otherwise provided in section 3746.24 of the 311  
Revised Code, political subdivisions are liable for injury, 312  
death, or loss to person or property caused by their negligent 313  
failure to keep public roads in repair and other negligent 314  
failure to remove obstructions from public roads, except that it 315  
is a full defense to that liability, when a bridge within a 316  
municipal corporation is involved, that the municipal 317  
corporation does not have the responsibility for maintaining or 318  
inspecting the bridge. 319

(4) Except as otherwise provided in section 3746.24 of the 320  
Revised Code, political subdivisions are liable for injury, 321  
death, or loss to person or property that is caused by the 322  
negligence of their employees and that occurs within or on the 323  
grounds of, and is due to physical defects within or on the 324  
grounds of, buildings that are used in connection with the 325  
performance of a governmental function, including, but not 326  
limited to, office buildings and courthouses, but not including 327  
jails, places of juvenile detention, workhouses, or any other 328  
detention facility, as defined in section 2921.01 of the Revised 329  
Code. 330

(5) In addition to the circumstances described in 331  
divisions (B) (1) to (4) of this section, a political subdivision 332  
is liable for injury, death, or loss to person or property when 333  
civil liability is expressly imposed upon the political 334  
subdivision by a section of the Revised Code, including, but not 335

limited to, sections 2743.02 and 5591.37 of the Revised Code. 336  
Civil liability shall not be construed to exist under another 337  
section of the Revised Code merely because that section imposes 338  
a responsibility or mandatory duty upon a political subdivision, 339  
because that section provides for a criminal penalty, because of 340  
a general authorization in that section that a political 341  
subdivision may sue and be sued, or because that section uses 342  
the term "shall" in a provision pertaining to a political 343  
subdivision. 344

(C) An order that denies a political subdivision or an 345  
employee of a political subdivision the benefit of an alleged 346  
immunity from liability as provided in this chapter or any other 347  
provision of the law is a final order. 348

**Sec. 2744.05.** Notwithstanding any other provisions of the 349  
Revised Code or rules of a court to the contrary, in an action 350  
against a political subdivision to recover damages for injury, 351  
death, or loss to person or property caused by an act or 352  
omission in connection with a governmental or proprietary 353  
function: 354

(A) Punitive or exemplary damages shall not be awarded. 355

(B) (1) If a claimant receives or is entitled to receive 356  
benefits for injuries or loss allegedly incurred from a policy 357  
or policies of insurance or any other source, the benefits shall 358  
be disclosed to the court, and the amount of the benefits shall 359  
be deducted from any award against a political subdivision 360  
recovered by that claimant. No insurer or other person is 361  
entitled to bring an action under a subrogation provision in an 362  
insurance or other contract against a political subdivision with 363  
respect to those benefits. 364

The amount of the benefits shall be deducted from an award 365  
against a political subdivision under division (B) (1) of this 366  
section regardless of whether the claimant may be under an 367  
obligation to pay back the benefits upon recovery, in whole or 368  
in part, for the claim. A claimant whose benefits have been 369  
deducted from an award under division (B) (1) of this section is 370  
not considered fully compensated and shall not be required to 371  
reimburse a subrogated claim for benefits deducted from an award 372  
pursuant to division (B) (1) of this section. 373

(2) Nothing in division (B) (1) of this section shall be 374  
construed to do either of the following: 375

(a) Limit the rights of a beneficiary under a life 376  
insurance policy or the rights of sureties under fidelity or 377  
surety bonds; 378

(b) Prohibit the department of medicaid from recovering 379  
from the political subdivision, pursuant to section 5160.37 of 380  
the Revised Code, the cost of medical assistance provided under 381  
a medical assistance program. 382

(C) (1) There shall not be any limitation on compensatory 383  
damages that represent the actual loss of the person who is 384  
awarded the damages. However, except in wrongful death actions 385  
brought pursuant to Chapter 2125. of the Revised Code, damages 386  
that arise from the same cause of action, transaction or 387  
occurrence, or series of transactions or occurrences and that do 388  
not represent the actual loss of the person who is awarded the 389  
damages shall not exceed two hundred fifty thousand dollars in 390  
favor of any one person. The limitation on damages that do not 391  
represent the actual loss of the person who is awarded the 392  
damages provided in this division does not apply to court costs 393  
that are awarded to a plaintiff, or to interest on a judgment 394

rendered in favor of a plaintiff, in an action against a political subdivision. 395  
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(2) Any compensatory damages recoverable against a political subdivision for an employee's negligent operation of a motor vehicle shall be reduced by the percentage of contributory fault attributable to the plaintiff or any other parties, subject to sections 2307.22, 2307.23, and 2315.32 to 2315.36 of the Revised Code. 397  
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(3) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following: 403  
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(a) All wages, salaries, or other compensation lost by the person injured as a result of the injury, including wages, salaries, or other compensation lost as of the date of a judgment and future expected lost earnings of the person injured; 406  
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(b) All expenditures of the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury; 411  
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(c) All expenditures to be incurred in the future, as determined by the court, by the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury; 416  
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(d) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the 422  
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person whose property was injured or destroyed in order to 424  
repair or replace the property that was injured or destroyed; 425

(e) All expenditures of the person injured or of the 426  
person whose property was injured or destroyed or of another 427  
person on behalf of the person injured or of the person whose 428  
property was injured or destroyed in relation to the actual 429  
preparation or presentation of the claim involved; 430

(f) Any other expenditures of the person injured or of the 431  
person whose property was injured or destroyed or of another 432  
person on behalf of the person injured or of the person whose 433  
property was injured or destroyed that the court determines 434  
represent an actual loss experienced because of the personal or 435  
property injury or property loss. 436

"The actual loss of the person who is awarded the damages" 437  
does not include any fees paid or owed to an attorney for any 438  
services rendered in relation to a personal or property injury 439  
or property loss, and does not include any damages awarded for 440  
pain and suffering, for the loss of society, consortium, 441  
companionship, care, assistance, attention, protection, advice, 442  
guidance, counsel, instruction, training, or education of the 443  
person injured, for mental anguish, or for any other intangible 444  
loss." 445

In line 347, delete "section" and insert "sections 2744.01, 2744.02, 446  
2744.05, and" 447

In line 348, delete "is" and insert "are" 448

The motion was \_\_\_\_\_ agreed to.



SYNOPSIS

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**Political subdivision liability for employee's  
negligent vehicle operation**

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**R.C. 2744.01, 2744.02, and 2744.05**

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Modifies the definition of "emergency call" in the  
Political Subdivision Sovereign Immunity Law; provides as a  
defense to the liability of a political subdivision if a peace  
officer of the subdivision negligently operated a motor vehicle  
and the plaintiff, at the time of the negligence, was attempting  
to flee from that or another officer so as to avoid apprehension  
for an offense; repeals existing provisions specifying the  
qualified defenses to a political subdivision's liability for  
the negligent operation of a motor vehicle by a member of a  
municipal corporation's firefighting agency or emergency medical  
service while responding to an emergency; and requires that  
compensatory damages recoverable against a political subdivision  
be reduced by the percentage of contributory fault attributable  
to the plaintiff or other parties subject to specified laws.

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