

IN THE SUPREME COURT OF OHIO

RICKY ALLEN BAKER & SHARON)	CASE NO. 2014-2079
MARIE BAKER, Individually and as)	
Administrators of the Estate of)	
KELLI MARIE BAKER,)	
)	
Appellees,)	
)	
vs.)	Jurisdictional Appeal from the
)	Wayne County Court of Appeals,
)	Ninth Appellate District
COUNTY OF WAYNE, et al.,)	Court of Appeals
)	Case No. 13 CA 0029
Appellants.)	

**APPENDIX TO THE
MERIT BRIEF OF APPELLANTS, COUNTY OF WAYNE,
WAYNE COUNTY BOARD OF COMMISSIONERS,
AND THEIR UNNAMED EMPLOYEES**

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the Wayne County Board of Commissioners

(and their unnamed employees)

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Appendix 1

Date-stamped Copy of Appellants' Notice of Appeal to the Ohio Supreme Court
Dated December 3, 2014

IN THE SUPREME COURT OF OHIO

RICKY ALLEN BAKER & SHARON)
MARIE BAKER, Individually and as)
Administrators of the Estate of)
KELLI MARIE BAKER,)
)
Appellees,)
)
)
vs.)
)
COUNTY OF WAYNE, et al.,)
)
Appellants.)

On Appeal from the Wayne
County Court of Appeals,
Ninth Appellate District
Court of Appeals
Case No. 13 CA 0029

**NOTICE OF APPEAL OF APPELLANTS,
COUNTY OF WAYNE, WAYNE COUNTY BOARD OF COMMISSIONERS,
AND THEIR UNNAMED EMPLOYEES**

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**NOTICE OF APPEAL OF APPELLANTS,
COUNTY OF WAYNE, WAYNE COUNTY BOARD OF COMMISSIONERS,
AND THEIR UNNAMED EMPLOYEES**

Appellants, Wayne County, the Wayne County Board of Commissioners and their unnamed employees, hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Wayne County Court of Appeals, Ninth Appellate District, entered in Court of Appeals Case No. 13 CA 0029 on August 20, 2014, and from the journal entry denying reconsideration dated October 22, 2014.

Appellants' timely motion for reconsideration, pursuant to App.R. 26(A)(1) had been filed on August 29, 2014, for purposes of Sup.Ct.Prac.R. 7.01(A)(5).

This case presents a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

s/James F. Mathews

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PROOF OF SERVICE

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Appendix 2

Ninth District Court of Appeals Decision and Journal Entry
Dated August 20, 2014

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

RICKY ALLEN BAKER & SHARON
MARIE BAKER, Individually and as
Administrators of the Estate of KELLI
MARIE BAKER

C.A. No. 13CA0029

Appellants

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 12-CV-0400

v.

COUNTY OF WAYNE, et al.

Appellees

FILED
9TH DISTRICT
COURT OF APPEALS
2014 AUG 20 AM 7 45
TIM NEAL
CLERK OF COURTS

DECISION AND JOURNAL ENTRY

Dated: August 18, 2014

BELFANCE, Presiding Judge.

{¶1} Appellants, Ricky and Sharon Baker, appeal the order of the Wayne County Court of Common Pleas that granted summary judgment to Appellee, Wayne County. This Court reverses.

I.

{¶2} Seventeen-year-old Kelli Marie Baker died as the result of a tragic single-car accident on County Road 44 in rural Wayne County. Although there were no witnesses to the early-morning accident, those who investigated surmised that Ms. Baker's right tires went off the road; that she overcorrected by turning sharply to the left; and that she then overcorrected again by turning sharply to the right, which sent the car into rotation at a high rate of speed. Her car travelled sideways across a grassy area, collided with an ornamental stone deer, then collided with a tree while retaining enough force to rotate around the tree another 180 degrees. When the

first responders arrived, Ms. Baker's car was engulfed in flames. At the time of the accident, the Wayne County Engineer was in the midst of a road maintenance project. The portion of road where the accident occurred had been "scratch paved," the day before, which raised the level of the asphalt and covered over the existing center and edge lines. The berms had not yet been banked to mitigate drop-off at the road's edge, and the lines had not yet been repainted.

{¶3} Kelli's parents, Ricky and Sharon Baker, sued Wayne County, alleging that the condition of County Road 44 contributed to the accident. Wayne County moved for summary judgment on the basis of the immunities provided in R.C. 2744.02. The trial court determined that the County was immune from suit as provided therein and granted the motion for summary judgment. The Bakers appealed.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY ENTERING SUMMARY JUDGMENT IN FAVOR OF [THE COUNTY] AND IMPROPERLY RELIED UPON *BONACE V. SPRINGFIELD TOWNSHIP*, 179 OHIO APP.3D 736, WHICH IS FACTUALLY DISTINGUISHABLE FROM THE CASE AT BAR.

{¶4} In their first assignment of error, the Bakers argue that the trial court erred by granting summary judgment to Wayne County because (1) the trial court erred by employing an incorrect legal analysis to the facts of the case; (2) under the correct legal standard, there is a genuine issue of fact with respect to whether County Road 44 was "in repair" at the time of Kelli's accident; and (3) the County created a dangerous condition by virtue of the unfinished roadwork present at the time of the accident.

{¶5} Under Civ.R. 56(C), "[s]ummary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is

entitled to judgment as a matter of law.” *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, at ¶ 10. This Court reviews an order granting summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶6} As a general rule, political subdivisions are “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.” R.C. 2744.02(A)(1). This immunity, however, is subject to the exceptions described in R.C. 2744.02(B). One of these exceptions provides that “political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.” R.C. 2744.02(B)(2). Consequently, if the basis for a claim is the performance of a governmental function, a political subdivision is immune from suit for negligence unless one of the other four exceptions described in R.C. 2744.02(B) is present. The parties do not dispute that a governmental function is at issue in this case.

{¶7} Under R.C. 2744.02(B)(3), “political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads[.]” Since 2003, R.C. 2744.01(H) has defined “[p]ublic roads” as “public roads, highways, streets, avenues, alleys, and bridges within a political subdivision[.]” but not including “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.” R.C. 2744.02(B)(3) is, by virtue of this definition, relatively narrow in scope. “R.C. 2744.03(B)(3) is a narrow exception which applies to traveled portions

of the street and which explicitly does not contemplate shoulders or berms as part of ‘public roads.’” *Ivory v. Austintown Twp.*, 7th Dist. Mahoning No. 10 MA 106, 2011-Ohio-3171, ¶ 21.

{¶8} Cases that interpret the phrases “negligent failure to keep public roads in repair” applying the current definition of “public roads” have focused on existing roads that were not subject to any ongoing maintenance projects. In *Lucchesi v. Fischer*, 179 Ohio App.3d 317, 2008-Ohio-5934 (12th Dist.), for example, the estate of a deceased vehicle passenger sued Clermont County for negligence in connection with an “edge drop” between the paved portion of a road and the unpaved berm. *Id.* at ¶ 5. The Court considered the definition of “public road” under R.C. 2744.01(H) in conjunction with the definitions of “highway” and “roadway” under R.C. 4511.01(BB), (EE)¹ and concluded:

The edge drop between the paved shoulder and the unpaved berm is clearly part of either the shoulder or the berm. However, the question of whether the edge drop is actually part of the shoulder or actually part of the berm is immaterial, since both the shoulder and the berm are expressly excluded from the definition of “public roads.” R.C. 2744.01(H). Because the General Assembly expressly excluded the terms “shoulder” and “berm” from the definitions of “public roads” and “roadway,” it is apparent that the legislature never intended for an edge drop to be considered part of the “public roads, highways, streets, avenues,” etc., *id.*, for which a political subdivision could be held liable for failing to keep “in repair.”

Id. at ¶ 45.

{¶9} The Seventh District Court of Appeals addressed a similar issue in *Bonace v. Springfield Twp.*, 179 Ohio App.3d 736, 2008-Ohio-6364 (7th Dist.). In that case, the plaintiff sued Springfield Township for negligence in connection with what she alleged to be inadequate grading between a roadway and an adjacent ditch. *Id.* at ¶ 2-3. Although the road had recently undergone construction, the project was completed. The Court summarily dismissed the idea

¹ R.C. Chapter 2744 does not expressly incorporate the definitions set forth in R.C. 4511.01(EE), nor does R.C. 4511.01 express the intention that the definitions apply beyond that Chapter. This Court takes no position on the propriety of using those definitions in this context.

that “ditches and berms” are part of the public roadway. *Id.* at ¶ 32. With respect to a claim related to “crumbling of asphalt outside and into the white edge line[.]” the Court concluded that an edge line and the asphalt to the right of an edge line are berm or shoulder instead of part of the public road and, consequently, the Court held that the exception to immunity contained in R.C. 2744.02(B)(3) did not apply. *Id.* at ¶ 33, 43-44. In that context, the Court noted:

Unfortunately, shoulder and berm are not defined in the statutes. However, the common definition of shoulder is the area adjacent to or along the edge of a more important part, or more specifically, the part of the roadway outside of the traveled way. * * * [B]erm is then defined as the shoulder of a road. The space between the lines is the traveled way.

* * *

In conclusion, if there were no edge line on the road, then the public road could be considered to reach to the edge of the pavement. If said road is missing asphalt, it could be considered a failure to keep the public road in repair. However, by painting an edge line within which the public is to travel, the political subdivision can now limit its liability and provide itself guides within which its road repairs and obstruction removals must occur.

(Internal citations omitted.) *Id.* at ¶ 41, 45. *Compare Ivory*, 2011-Ohio-3171, at ¶ 22 (reasoning that neither a catch basin nor a related pipe is a public road because neither is “part of the paved or traveled portion of the street[.]”).

{¶10} Under the analysis used in *Lucchesi* and *Bonace*, white edge lines define the boundary of a “public road” under R.C. 2744.02(B)(3). *See Lucchesi* at ¶ 44-45; *Bonace* at ¶ 43-44. According to those cases, an edge drop at the intersection of the paved and unpaved sections of a road cannot fall under the exception to immunity set forth in R.C. 2744.02(B)(3) if the drop occurs on or outside the white edge lines. *See id.* The parties in this case have urged us to adopt their respective readings of these cases in support of their position. Consequently, the Bakers have argued that County Road 44 was a road without edge lines, while the County has emphasized that edge lines existed prior to the construction project and were repainted upon its

completion. The problem is that neither *Lucchesi* nor *Baker* accounts for the situation presented by this case: a roadway that was under repair at the time the accident occurred and whose condition may have been attributable to the ongoing maintenance work. In other words, the road had no edge lines because they had recently been paved over but had not yet been repainted. The drop off at the edge of the pavement was exacerbated by the fact that the road had been scratch paved, but because the project continued day-to-day, it had not yet been mitigated at the margins.

{¶11} Given this important distinction, this case does not fit squarely within the framework set forth in *Lucchesi* and *Bonace*, and this Court is left to apply the language of R.C. 2744.03(B)(3) to this situation as a matter of first impression. In the context of a road that is subject to a repair or maintenance project that extends from day-to-day in various stages of completion, such as the one at issue in this case, we believe that the better analysis is to consider a “public road” to be the area under the control of the political subdivision, subject to the ongoing repair work, and open to travel by the public. *Compare Shope v. Portsmouth*, 4th Dist. Scioto App. No. 11CA3459, 2012-Ohio-1605, ¶ 17 (concluding that the definition of “public road” did not apply to the unimproved grassy area at the end of a street because “R.C. 2744.02(B)(3) cannot apply to an area that the traveling public has no right to drive upon.”) Within this framework, an exception to immunity under R.C. 2744.02(B)(3) may exist if, in the course of the ongoing construction project, a political subdivision negligently failed to keep a public road “in repair.” Because the parties’ arguments are limited and this question is dispositive of this appeal, our discussion is confined to the question of whether County Road 44 was “in repair” without considering whether the County may have negligently failed to remove an obstruction.

{¶12} The phrase “in repair” has not been defined by statute, but courts have considered its application in the context of maintenance of the condition of public roads once constructed. See *Sanderbeck v. Medina*, 9th Dist. Medina No. 09CA0051-M, 2010-Ohio-3659, ¶ 7. Applying this framework, courts have concluded that failure to keep a public road “in repair” includes, for example, failure to repair potholes caused by road deterioration, *Todd v. Cleveland*, 8th Dist. Cuyahoga No. 98333, 2011-Ohio-101, ¶ 15; failure to remedy heavy brush alongside a road or “a strip of mud and debris along the curb[.]” *Crabtree v. Cook*, 196 Ohio App.3d 546, 2013-Ohio-5612, ¶ 27-28 (10th Dist.); and unrepaired bridge collapse, *Huffman v. Bd. of Cty. Commrs.*, 7th Dist. Columbiana No. 05 CO 71, 2006-Ohio-3479, ¶ 53. In addition, although we have concluded that *Bonace* is not on point with this case with respect to the definition of a “public road,” the Seventh District Court of Appeals’ dicta in that case regarding what could constitute failure to keep a public road in repair is instructive:

In conclusion, if there were no edge line on the road, then the public road could be considered to reach to the edge of the pavement. *If said road is missing asphalt, it could be considered a failure to keep the public road in repair.* However, by painting an edge line within which the public is to travel, the political subdivision can now limit its liability and provide itself guides within which its road repairs and obstruction removals must occur.

(Emphasis added.) *Bonace*, 179 Ohio App.3d at 736, 2008-Ohio-6364, at ¶ 45.

{¶13} When Kelli Baker’s accident occurred, County Road 44 was subject to a scratch paving project that continued from day-to-day, but had not yet been completed. In the course of that project, the County Engineer paved over the white edge lines and added an additional layer of asphalt that resulted in an edge drop of approximately 4 1/2 or 5 inches. In the context of the ongoing construction project, the County could be liable for negligent failure to keep County Road 44 in repair under R.C. 2744.02(B)(3). The trial court, therefore, incorrectly determined that the County was immune under the analysis set forth in *Bonace* and did not consider whether

County Road 44 was "in repair" for purposes of R.C. 2744.02(B)(3). The Bakers' assignment of error is sustained on this basis, and we need not address their remaining arguments.

III.

{¶14} The Bakers' assignment of error is sustained. The judgment of the Wayne County Court of Common Pleas is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

Judgment reversed
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.



EVE V. BELFANCE
FOR THE COURT

CARR, J.
HENSAL, J.
CONCUR.

APPEARANCES:

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JAMES F. MATHEWS, Attorney at Law, for Appellees.

Appendix 3

Ninth District Court of Appeals Journal Entry Denying Motion for Reconsideration
Dated October 22, 2014

STATE OF OHIO) FILED
) 88TH DISTRICT
COUNTY OF WAYNE) COURT OF APPEALS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

2014 OCT 22 PM 8 32
RICKY ALLEN BAKER AND
SHARON MARIE BAKER

C.A. No. 13CA0029

Appellants

TIM NEAL
CLERK OF COURTS

v.

COUNTY OF WAYNE, et al.

Appellees

JOURNAL ENTRY

Appellees have moved this Court to reconsider its August 18, 2014, decision that reversed the judgment of the Wayne County Court of Common Pleas. Appellants have responded in opposition.

In determining whether to grant a motion for reconsideration, a court of appeals must review the motion to see if it calls to the attention of the court an obvious error in its decision or if it raises issues not considered properly by the court. *Garfield Hts. City School Dist. v. State Bd. of Edn.*, 85 Ohio App.3d 117, 127 (1992). "An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court." *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

Appellees have argued that this Court did not consider the issues before it properly because, in addressing a question of first impression, we determined that the analysis of R.C. 2744.01(H) set forth in *Lucchesi v. Fisher*, 179 Ohio App.3d 317, 2008-Ohio-5934 (12th Dist.) did not apply in this case. As we emphasized in our decision, R.C. 2744.02(B)(3) and R.C. 2744.01(H) have never been considered in the context of an ongoing, uncompleted road maintenance project. While appellees may

disagree with our resolution of the narrow issue involved in this case, their disagreement does not indicate that there is an issue that this Court failed to consider properly or an obvious error in its opinion.

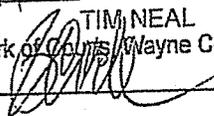
The motion for reconsideration is denied.



Judge

Concur:
Carr, J.
Hensal, J.

I hereby certify that this is a true copy of
the original on file.
WITNESS my hand and seal of the 9th District
Court of Appeals This 22 day of Oct
20 14

TIM NEAL
Clerk of Courts, Wayne County, Ohio
By: 

Appendix 4

Wayne County Common Pleas Court Judgment Entry
Dated June 4, 2013

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

FILED
COMMON PLEAS COURT
13 JUN -4 AM 10:36
TIM NEAL
CLERK OF COURTS

RICKY ALLEN BAKER & WHARON
MARIE BAKER, Individually and as
Administrators of the Estate of KELLI
MARIE BAKER,
Plaintiffs

v.

Case No. 12-CV-0400

JUDGMENT ENTRY

COUNTY OF WAYNE, et al.,
Defendants

This matter is before the court on defendants' motion for summary judgment. The court has reviewed the briefs of the parties, the exhibits and the relevant case law. There is no genuine issue of material fact and defendants are entitled to judgment as a matter of law. The court finds the decision in *Bonace v. Springfield Township*, 179 Ohio App. 3d 736 to be persuasive and grants defendants' motion for summary judgment as plaintiffs' claims are barred on the grounds of governmental immunity.

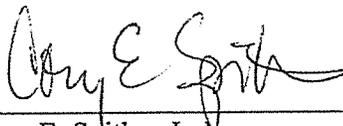
Case is dismissed at plaintiffs' costs.

IT IS SO ORDERED.

JOURNALIZED

JUN 04 2013

TIM NEAL, CLERK
WAYNE COUNTY, OHIO



Corey E. Spittler, Judge
June 3, 2013

Appendix 5

Ohio Manual of Uniform Traffic Control Devices (2012) (Excerpt)

M. Yellow—warning

Section 1A.13 Definitions of Headings, Words and Phrases in This Manual**Standard:**

01 When used in this Manual, the text headings of Standard, Guidance, Option, and Support shall be defined as follows:

- A. **Standard**—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All Standard statements are labeled, and the text appears in bold type. The verb “shall” is typically used. The verbs “should” and “may” are not used in Standard statements. Standard statements are sometimes modified by Options. Standard statements shall not be modified or compromised based on engineering judgment or engineering study.
- B. **Guidance**—a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements are labeled, and the text appears in unbold type. The verb “should” is typically used. The verbs “shall” and “may” are not used in Guidance statements. Guidance statements are sometimes modified by Options.
- C. **Option**—a statement of practice that is a permissive condition and carries no requirement or recommendation. Option statements contain allowable modifications to a Standard or Guidance statement. All Option statements are labeled, and the text appears in unbold type. The verb “may” is typically used. The verbs “shall” and “should” are not used in Option statements.
- D. **Support**—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled, and the text appears in unbold type. The verbs “shall,” “should,” and “may” are not used in Support statements.

02 Unless otherwise defined in this Section, or in other Parts of this Manual, words or phrases shall have the meaning(s) as defined in the most recent editions of the “AASHTO Transportation Glossary (Highway Definitions),” and other publications mentioned in Section 1A.11.

03 The following words and phrases, when used in this Manual, shall have the following meanings:

1. **Accessible Pedestrian Signal**—a device that communicates information about pedestrian signal timing in non-visual format such as audible tones, speech messages, and/or vibrating surfaces.
2. **Accessible Pedestrian Signal Detector**—a device designated to assist the pedestrian who has visual or physical disabilities in activating the pedestrian phase.
3. **Active Grade Crossing Warning System**—the flashing-light signals, with or without warning gates, together with the necessary control equipment used to inform road users of the approach or presence of rail traffic at grade crossings.
4. **Actuated Operation**—a type of traffic control signal operation in which some or all signal phases are operated on the basis of actuation.
5. **Actuation**—initiation of a change in or extension of a traffic signal phase through the operation of any type of detector.
6. **Advance Preemption**—the notification of approaching rail traffic that is forwarded to the highway traffic signal controller unit or assembly by the railroad or light rail transit equipment in advance of the activation of the railroad or light rail transit warning devices.
7. **Advance Preemption Time**—the period of time that is the difference between the required maximum highway traffic signal preemption time and the activation of the railroad or light rail transit warning devices.
8. **Advisory Speed**—a recommended speed for all vehicles operating on a section of highway and based on the highway design, operating characteristics, and conditions.
9. **Alley**—“a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic, and includes any street or highway that has been declared an “alley” by the legislative authority of the municipal corporation in which such street or highway is located.” [4511.01(XX), ORC]

Section 6F.40 Signs for Blasting Areas**Support:**

- 01 Radio-Frequency (RF) energy can cause the premature firing of electric detonators (blasting caps) used in TTC zones.

Standard:

- 02 Road users shall be warned to turn off mobile radio transmitters and cellular telephones where blasting operations occur. A sequence of signs shall be prominently displayed to direct operators of mobile radio equipment, including cellular telephones, to turn off transmitters in a blasting area. These signs shall be covered or removed when there are no explosives in the area or the area is otherwise secured.

Section 6F.41 BLASTING ZONE AHEAD Sign (W22-1)**Standard:**

- 01 The BLASTING ZONE AHEAD (W22-1) sign (see Figure 6F-4) shall be used in advance of any TTC zone where explosives are being used. The TURN OFF 2-WAY RADIO AND CELL PHONE and END BLASTING ZONE signs shall be used in sequence with this sign.

Section 6F.42 TURN OFF 2-WAY RADIO AND CELL PHONE Sign (W22-2)**Standard:**

- 01 The TURN OFF 2-WAY RADIO AND CELL PHONE (W22-2) sign (see Figure 6F-4) shall follow the BLASTING ZONE AHEAD sign and shall be placed at least 1,000 feet before the beginning of the blasting zone.

Section 6F.43 END BLASTING ZONE Sign (W22-3)**Standard:**

- 01 The END BLASTING ZONE (W22-3) sign (see Figure 6F-4) shall be placed a minimum of 300 m (1,000 ft) past the blasting zone.

Option:

- 02 The END BLASTING ZONE sign may be placed either with or preceding the END ROAD WORK sign.

Section 6F.44 Shoulder Signs and Plaque (W8-4, W8-9, W8-17, W8-17P)**Option:**

- 01 The SOFT SHOULDER (W8-4) sign (see Figure 6F-4) may be used to warn of a soft shoulder condition.
- 02 The LOW SHOULDER (W8-9) sign (see Figure 6F-4) may be used to warn of a shoulder condition where there is an elevation difference of 3 inches or less between the shoulder and the travel lane.

Guidance:

- 03 *The Shoulder Drop-Off (W8-17) sign (see Figure 6F-4) should be used when a shoulder drop-off, adjacent to the travel lane, exceeds 3 inches in depth for a continuous length along the roadway, based on engineering judgment.*

Option:

- 04 A SHOULDER DROP-OFF (W8-17P) supplemental plaque (see Figure 6F-4) may be mounted below the W8-17 sign.

Section 6F.45 UNEVEN LANES Sign (W8-11)**Guidance:**

- 01 *The UNEVEN LANES (W8-11) sign (see Figure 6F-4) should be used during operations that create a difference in elevation between adjacent lanes that are open to travel.*

Section 6F.46 STEEL PLATE AHEAD Sign (W8-24)**Option:**

- 01 A STEEL PLATE AHEAD (W8-24) sign (see Figure 6F-4) may be used to warn road users that the presence of a temporary steel plate(s) might make the road surface uneven and might create slippery conditions during wet weather.

Section 6F.47 NO CENTER LINE and NO EDGE LINE Signs (W8-12, W8-H12a)**Guidance:**

- 01 The NO CENTER LINE (W8-12) sign (see Figure 6F-4) or the NO EDGE LINE sign (W8-H12a) sign (see Appendix C) should be used as appropriate when the work obliterates the center or edge line pavement markings. The sign should be placed at the beginning of the TTC zone and repeated at 2-mile intervals in long TTC zones.

Support:

- 02 Section 6F.78 contains information regarding temporary markings.

Section 6F.48 Reverse Curve Signs (W1-4 Series)**Guidance:**

- 01 In order to give road users advance notice of a lane shift, a Reverse Curve (W1-4, W1-4b, or W1-4c) sign (see Figure 6F-4) should be used when a lane (or lanes) is being shifted to the left or right. If the design speed of the curves is 30 mph or less, a Reverse Turn (W1-3) sign should be used.

Standard:

- 02 If a Reverse Curve (or Turn) sign is used, the direction of the reverse curve (or turn) shall be appropriately illustrated. Except as provided in Paragraph 3, the number of lanes illustrated on the sign shall be the same as the number of through lanes available to road users.

Option:

- 03 Where two or more lanes are being shifted, a W1-4 (or W1-3) sign with an ALL LANES (W24-1cP) plaque (see Figure 6F-4) may be used instead of a sign that illustrates the number of lanes.
- 04 Where more than three lanes are being shifted, the Reverse Curve (or Turn) sign may be rectangular.

Section 6F.49 Double Reverse Curve Signs (W24-1 Series)**Option:**

- 01 The Double Reverse Curve (W24-1, W24-1a, or W24-1b) sign (see Figure 6F-4) may be used when the tangent distance between two reverse curves is less than 600 feet thus making it difficult for a second Reverse Curve (W1-4 Series) sign to be placed between the curves. If the design speed of the curves is 30 mph or less, Double Reverse Turn signs should be used.

Standard:

- 02 If a Double Reverse Curve (or Turn) sign is used, the direction of the double reverse curve (or turn) shall be appropriately illustrated. Except as provided in Paragraph 3, the number of lanes illustrated on the sign shall be the same as the number of through lanes available to road users.

Option:

- 03 Where two or more lanes are being shifted, a W24-1 (or Double Reverse Turn sign showing one lane) sign with an ALL LANES (W24-1cP) plaque (see Figure 6F-4) may be used instead of a sign that illustrates the number of lanes.
- 04 Where more than three lanes are being shifted, the Double Reverse Curve (or Turn) sign may be rectangular.

Section 6F.50 Other Warning Signs**Option:**

- 01 Advance warning signs may be used by themselves or with other advance warning signs.

of the island should not be dislodged to the extent that they could penetrate the occupant compartment or involve other vehicles.

Standard:

- 08 At pedestrian crossing locations, temporary raised islands shall have an opening or be shortened to provide at least a 60 inch wide pathway for the crossing pedestrian.

Section 6F.76 Opposing Traffic Lane Divider and Sign (W6-4)

Support:

- 01 Opposing traffic lane dividers are delineation devices used as center lane dividers to separate opposing vehicular traffic on a two-lane, two-way operation.

Standard:

- 02 Opposing traffic lane dividers shall not be placed across pedestrian crossings.

- 03 The Opposing Traffic Lane Divider (W6-4) sign (see Figure 6F-4) shall be an upright, retroreflective orange-colored sign placed on a flexible support and sized at least 12 inches wide by 18 inches high.

- 04 Separation of opposing traffic lanes by use of this device shall be limited to locations where speeds are 40 mph or less.

Section 6F.77 Pavement Markings

Support:

- 01 Pavement markings are installed or existing markings are maintained or enhanced in TTC zones to provide road users with a clearly defined path for travel through the TTC zone in day, night, and twilight periods under both wet and dry pavement conditions.

Guidance:

- 02 *The work should be planned and staged to provide for the placement and removal of the pavement markings in a way that minimizes the disruption to traffic flow approaching and through the TTC zone during the placement and removal process.*

Standard:

- 03 Existing pavement markings shall be maintained in all long-term stationary (see Section 6G.02) TTC zones in accordance with Chapters 3A and 3B, except as otherwise provided for temporary pavement markings in Section 6F.78. Pavement markings shall match the alignment of the markings in place at both ends of the TTC zone. Pavement markings shall be placed along the entire length of any paved detour or temporary roadway prior to the detour or roadway being opened to road users.

- 04 For long-term stationary operations, pavement markings in the temporary traveled way that are no longer applicable shall be removed or obliterated as soon as practical. Pavement marking obliteration shall remove the non-applicable pavement marking material, and the obliteration method shall minimize pavement scarring. Painting over existing pavement markings with black paint or spraying with asphalt shall not be accepted as a substitute for removal or obliteration.

Option:

- 05 Removable, nonreflective, preformed tape that is approximately the same color as the pavement surface may be used where markings need to be covered temporarily.

Section 6F.78 Temporary Markings

Support:

- 01 Temporary markings are those pavement markings or devices that are placed within TTC zones to provide road users with a clearly defined path of travel through the TTC zone when the permanent markings are either removed or obliterated during the work activities. Temporary markings are typically needed during the reconstruction of a road while it is open to traffic, such as overlays or surface treatments or where lanes are temporarily shifted on pavement that is to remain in place. See Section 6F.47 for information on use of the NO CENTER LINE (W8-12) sign and the NO EDGE LINE (W8-H12a) sign.

Guidance:

- 02 *Unless justified based on engineering judgment, Temporary pavement markings should not remain in place for more than 14 days after the application of the pavement surface treatment or the construction of the final pavement surface on new roadways or over existing pavements.*
- 03 *The temporary use of edge lines, channelizing lines, lane reduction transitions, gore markings, and other longitudinal markings, and the various non-longitudinal markings (such as stop lines, railroad crossings, crosswalks, words, symbols, or arrows) should be in accordance with the highway agency's policy.*

Standard:

- 04 **Warning signs, channelizing devices, and delineation shall be used to indicate required road user paths in TTC zones where it is not possible to provide a clear path by pavement markings.**
- 05 **Except as otherwise provided in this Section, all temporary pavement markings for no-passing zones shall comply with the requirements of Chapters 3A and 3B. All temporary broken-line pavement markings shall use the same cycle length as permanent markings and shall have line segments that are at least 2 feet long.**

Guidance:

- 06 *All pavement markings and devices used to delineate road user paths should be reviewed during daytime and nighttime periods.*

Option:

- 07 Half-cycle lengths with a minimum of 2 feet stripes may be used on roadways with severe curvature (see Section 3A.06) for broken line center lines in passing zones and for lane lines.
- 08 For temporary situations of 14 calendar days or less, for a two- or three-lane road, no-passing zones may be identified by using DO NOT PASS (R4-1), PASS WITH CARE (R4-2), and NO PASSING ZONE (W14-3) signs (see Sections 2B.28, 2B.29, and 2C.45) rather than pavement markings. Also, DO NOT PASS, PASS WITH CARE, and NO PASSING ZONE signs may be used instead of pavement markings on roads with low volumes for longer periods in accordance with the highway agency's policy.

Guidance:

- 09 *If used, the DO NOT PASS, PASS WITH CARE, and NO PASSING ZONE signs should be placed in accordance with Sections 2B.28, 2B.29, and 2C.45.*
- 10 *If used, the NO CENTER LINE sign should be placed in accordance with Section 6F.47.*

Support:

- 11 The ODOT "Traffic Engineering Manual" (see Section 1A.11) includes additional information about the Ohio Department of Transportation's policy regarding temporary pavement marking on ODOT-maintained highways.

Section 6F.79 Temporary Raised Pavement Markers**Option:**

- 01 Retroreflective or internally illuminated raised pavement markers, or non-retroreflective raised pavement markers supplemented by retroreflective or internally illuminated markers, may be substituted for markings of other types in TTC zones.

Standard:

- 02 **If used, the color and pattern of the raised pavement markers shall simulate the color and pattern of the markings for which they substitute.**
- 03 **If temporary raised pavement markers are used to substitute for broken line segments, a group of at least three retroreflective markers shall be equally spaced at no greater than N/8 (see Section 3B.11). The value of N for a broken or dotted line shall equal the length of one line segment plus one gap.**
- 04 **If temporary raised pavement markers are used to substitute for solid lines, the markers shall be equally spaced at no greater than N/4, with retroreflective or internally illuminated units at a spacing no greater than N/2. The value of N referenced for solid lines shall equal the N for the broken or dotted lines that might be adjacent to or might extend the solid lines (see Section 3B.11).**

06 Channelizing lines at entrance ramps as shown in Figures 3B-9 and 3B-10 promote orderly and efficient merging with the through traffic.

Standard:

07 For all exit ramps and for entrance ramps with parallel acceleration lanes, channelizing lines shall be placed on both sides of the neutral area (see Figures 3B-8 and 3B-10 and Drawing A of Figure 3B-9).

08 For entrance ramps with tapered acceleration lanes, channelizing lines shall be placed along both sides of the neutral area to a point at least one-half of the distance to the theoretical gore (see Drawing C of Figure 3B-9).

Option:

09 For entrance ramps with tapered acceleration lanes, the channelizing lines may extend to the theoretical gore as shown in Drawing B of Figure 3B-9.

10 White chevron crosshatch markings (see Section 3B.24) may be placed in the neutral area of exit ramp and entrance ramp gores for special emphasis as shown in Figure 3B-8 and 3B-10 and Drawing A of Figure 3B-9. The channelizing lines and the optional chevron crosshatch markings at exit ramp and entrance ramp gores may be supplemented with white retroreflective or internally illuminated raised pavement markers (see Sections 3B.11 and 3B.13) for enhanced nighttime visibility.

Section 3B.06 Edge Line Pavement Markings

Standard:

01 If used, edge line pavement markings shall delineate the right or left edges of a roadway.

02 Except for dotted edge line extensions (see Section 3B.08), edge line markings shall not be continued through intersections or major driveways.

03 If used on the roadways of divided highways or one-way streets, or on any ramp in the direction of travel, left edge line pavement markings shall consist of a normal solid yellow line to delineate the left-hand edge of a roadway or to indicate driving or passing restrictions left of these markings.

04 If used, right edge line pavement markings shall consist of a normal solid white line to delineate the right-hand edge of the roadway.

Guidance:

05 *Edge line markings should not be broken for minor driveways.* Support:

06 Edge line markings have unique value as visual references to guide road users during adverse weather and visibility conditions.

Option:

07 Wide solid edge line markings may be used for greater emphasis.

Section 3B.07 Warrants for Use of Edge Lines

Standard:

01 Edge line markings shall be placed on paved streets or highways with the following characteristics:

- A. Freeways,
- B. Expressways, and
- C. Rural arterials with a traveled way of 20 feet or more in width and an ADT of 6,000 vehicles per day or greater.

Guidance:

02 Edge line markings should be placed on paved streets or highways with the following characteristics:

- A. Rural arterials and collectors with a traveled way of 20 feet or more in width and an ADT of 3,000 vehicles per day or greater.
- B. On other paved streets and highways where an engineering study indicates a need for edge line markings.

- 03 Edge line markings should not be placed where an engineering study or engineering judgment indicates that providing them is likely to decrease safety.

Option:

- 04 Edge line markings may be placed on streets and highways with or without center line markings.
- 05 Edge line markings may be excluded, based on engineering judgment, for reasons such as if the traveled way edges are delineated by curbs, parking, or other markings.
- 06 If a bicycle lane is marked on the outside portion of the traveled way, the edge line that would mark the outside edge of the bicycle lane may be omitted.
- 07 Edge line markings may be used where edge delineation is desirable to minimize unnecessary driving on paved shoulders or on refuge areas that have lesser structural pavement strength than the adjacent roadway.

Section 3B.08 Extensions Through Intersections or Interchanges

Standard:

- 01 Except as provided in Paragraph 2, pavement markings extended into or continued through an intersection or interchange area shall be the same color and at least the same width as the line markings they extend (see Figure 3B-13).

Option:

- 02 A normal line may be used to extend a wide line through an intersection.

Guidance:

- 03 *Where highway design or reduced visibility conditions make it desirable to provide control or to guide vehicles through an intersection or interchange, such as at offset, skewed, complex, or multi-legged intersections, on curved roadways, where multiple turn lanes are used, or where offset left turn lanes might cause driver confusion, dotted line extension markings consisting of 2-foot line segments and 2- to 6-foot gaps should be used to extend longitudinal line markings through an intersection or interchange area.*

Option:

- 04 Dotted edge line extensions may be placed through intersections or major driveways.

Guidance:

- 05 *Where greater restriction is required, solid lane lines or channelizing lines should be extended into or continued through intersections or major driveways.*

Standard:

- 06 **Solid lines shall not be used to extend edge lines into or through intersections or major driveways.**

Guidance:

- 07 *Where a double line is extended through an intersection, a single line of equal width to one of the lines of the double line should be used.*
- 08 *To the extent possible, pavement marking extensions through intersections should be designed in a manner that minimizes potential confusion for drivers in adjacent or opposing lanes.*

Section 3B.09 Lane-Reduction Transition Markings

Support:

- 01 Lane-reduction transition markings are used where the number of through lanes is reduced because of narrowing of the roadway or because of a section of on-street parking in what would otherwise be a through lane. Lane-reduction transition markings are not used for lane drops.

Standard:

- 02 Except as provided in Paragraph 3, where pavement markings are used, lane reduction transition markings shall be used to guide traffic through transition areas where the number of through lanes is reduced, as shown in Figure 3B-14. On two-way roadways, no-passing zone markings shall be used to prohibit passing in the direction of the convergence, and shall continue through the transition area.

CHAPTER 5E. MARKINGS

Section 5E.01 Introduction

Support:

- 01 The purpose of markings on highways is to provide guidance and information for road users regarding roadway conditions and restrictions.
- 02 The provisions for markings and delineators, in general, are contained in Part 3 and in other Sections of this Manual. Provisions for markings that are specific to low-volume roads are contained in this Chapter.

Section 5E.02 Center Line Markings

Standard:

- 01 Where center line markings are installed, no-passing zone markings in compliance with Section 3B.02 shall also be installed.

Guidance:

- 02 *Center line markings should be used on paved low-volume roads consistent with the principles of this Manual and with the policies and practices of the road agency and on the basis of either an engineering study or the application of engineering judgment.*

Option:

- 03 Center line markings may be placed on highways with or without edge line markings.

Section 5E.03 Edge Line Markings

Support:

- 01 The purpose of edge line markings is to delineate the left-hand or right-hand edge of the roadway.

Guidance:

- 02 *Edge line markings should be considered for use on paved low-volume roads based on engineering judgment or an engineering study.*

Option:

- 03 Edge line markings may be placed on highways with or without center line markings.
- 04 Edge line markings may be placed on paved low-volume roads for roadway features such as horizontal curves, narrow bridges, pavement width transitions, curvilinear alignment, and at other locations based on engineering judgment or an engineering study.

Section 5E.04 Delineators

Support:

- 01 The purpose of delineators is to enhance driver safety where it is desirable to call attention to a changed or changing condition such as abrupt roadway narrowing or curvature.

Option:

- 02 Delineators may be used on low-volume roads based on engineering judgment, such as for curves, T-intersections, and abrupt changes in the roadway width. In addition, they may be used to mark the location of driveways or other minor roads entering the low-volume road.

Section 5E.05 Other Markings

Standard:

- 01 Other markings, such as stop lines, crosswalks, pavement legends, channelizing devices, and islands, used on low-volume roads shall comply with the provisions contained in this Manual.

Appendix 6

Ohio Manual of Uniform Traffic Control Devices (2005) (Excerpt)

Section 6F.39 BLASTING ZONE AHEAD Sign (W22-1)**Standard:**

The BLASTING ZONE AHEAD (W22-1) sign (see Figure 6F-4, Sheet 4 of 4) shall be used in advance of any TTC zone where explosives are being used. The TURN OFF 2-WAY RADIO AND CELL PHONE and END BLASTING ZONE signs shall be used in sequence with this sign.

Section 6F.40 TURN OFF 2-WAY RADIO AND CELL PHONE Sign (W22-2)**Standard:**

The TURN OFF 2-WAY RADIO AND CELL PHONE (W22-2) sign (see Figure 6F-4, Sheet 4 of 4) shall follow the BLASTING ZONE AHEAD sign and shall be placed at least 300 m (1,000 ft) before the beginning of the blasting zone.

Section 6F.41 END BLASTING ZONE Sign (W22-3)**Standard:**

The END BLASTING ZONE (W22-3) sign (see Figure 6F-4, Sheet 4 of 4) shall be placed a minimum of 300 m (1,000 ft) past the blasting zone.

Option:

The END BLASTING ZONE sign may be placed either with or preceding the END ROAD WORK sign.

Section 6F.42 Shoulder Signs (W8-4, W8-9, W8-9a)**Option:**

The SOFT SHOULDER (W8-4) sign (see Figure 6F-4, Sheet 2 of 4) may be used to warn of a soft shoulder condition.

The LOW SHOULDER (W8-9) sign (see Figure 6F-4, Sheet 2 of 4) may be used to warn of a shoulder condition where there is an elevation difference of less than 75 mm (3 in) between the shoulder and the travel lane.

Guidance:

The SHOULDER DROP OFF (W8-9a) sign (see Figure 6F-4, Sheet 2 of 4) should be used when a shoulder drop-off, adjacent to the travel lane, exceeds 75 mm (3 in) in depth for a continuous length along the roadway, based on engineering judgment.

Section 6F.43 UNEVEN LANES Sign (W8-11)**Guidance:**

The UNEVEN LANES (W8-11) sign (see Figure 6F-4, Sheet 2 of 4) should be used during operations that create a difference in elevation between adjacent lanes that are open to travel.

Section 6F.44 NO CENTER LINE and NO EDGE LINE Signs (W8-H12, W8-H12a)**Guidance:**

The NO CENTER LINE (W8-H12) sign (see Figure 6F-4, Sheet 2 of 4) or the NO EDGE LINE sign (W8-H12a) sign (see Appendix C) should be used as appropriate when the work obliterates the center or edge line pavement markings. The sign should be placed at the beginning of the TTC zone and repeated at 3.2 km (2 mi) intervals in long TTC zones.

Support:

See Section 6F.72 for information on temporary pavement markings.

Section 3B.07 Warrants for Use of Edge Lines

Standard:

Edge line markings shall be placed on paved streets or highways with the following characteristics:

- A. Freeways;
- B. Expressways; and
- C. Rural arterials with a traveled way of 6.1 m (20 ft) or more in width and an ADT of 6,000 vehicles per day or greater.

Guidance:

Edge line markings should be placed on paved streets or highways with the following characteristics:

- A. Rural arterials and collectors with a traveled way of 6.1 m (20 ft) or more in width and an ADT of 3,000 vehicles per day or greater.
- B. At other paved streets and highways where an engineering study indicates a need for edge line markings.

Edge line markings should not be placed where an engineering study or engineering judgment indicates that providing them is likely to decrease safety.

Option:

Edge line markings may be placed on streets and highways with or without centerline markings.

Edge line markings may be excluded, based on engineering judgment, for reasons such as if the traveled way edges are delineated by curbs, parking, bicycle lanes, or other markings.

Edge line markings may be used where edge delineation is desirable to minimize unnecessary driving on paved shoulders or on refuge areas that have lesser structural pavement strength than the adjacent roadway.

Section 3B.08 Extensions Through Intersections or Interchanges

Standard:

Pavement markings extended into or continued through an intersection or interchange area shall be the same color and at least the same width as the line markings they extend (see Figure 3B-11).

Option:

A normal line may be used to extend a wide line through an intersection.

Guidance:

Where highway design or reduced visibility conditions make it desirable to provide control or to guide vehicles through an intersection or interchange, such as at offset, skewed, complex, or multilegged intersections, on curved roadways, or where multiple turn lanes are used, dotted line markings should be used to extend longitudinal line markings through an intersection or interchange area.

Option:

Dotted edge line extensions may be placed through intersections or major driveways.

CHAPTER 5E. MARKINGS

Section 5E.01 Introduction

Support:

The purpose of markings on highways is to provide guidance and information for road users regarding roadway conditions and restrictions.

The criteria for markings, delineators, and object markers, in general, are contained in Part 3 and in other Sections of this Manual. Criteria for markings that are specific to low-volume roads are contained in this Chapter.

Section 5E.02 Centerline Markings

Standard:

Where centerline markings are installed, no-passing zone markings in conformance with Section 3B.02 shall also be installed.

Guidance:

Centerline markings should be used on paved low-volume roads where engineering judgment or an engineering study indicates a need for them.

Section 5E.03 Edge Line Markings

Support:

The purpose of edge line markings is to delineate the left or right edge of the roadway.

Guidance:

Edge line markings should be considered for use on paved low-volume roads based on engineering judgment or an engineering study.

Option:

Edge line markings may be placed on highways with or without centerline markings.

Edge line markings may be placed on paved low-volume roads for roadway features such as horizontal curves, narrow bridges, pavement width transitions, curvilinear alignment, and at other locations based on engineering judgment or an engineering study.

Section 5E.04 Delineators

Support:

The purpose of delineators is to enhance driver safety where it is desirable to call attention to a changed or changing condition such as abrupt roadway narrowing or curvature.

Option:

Delineators may be used on low-volume roads based on engineering judgment, such as for curves, T-intersections, and abrupt changes in the roadway width. In addition, they may be used to mark the location of driveways or other minor roads entering the low-volume road.

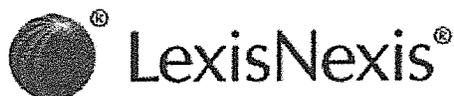
Section 5E.05 Object Markers

Support:

The purpose of object markers is to mark obstructions located within or adjacent to the roadway, such as bridge abutments, drainage structures, and other physical objects.

Appendix 7

R.C. 2744.01



1 of 1 DOCUMENT

Page's Ohio Revised Code Annotated
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*** Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file
 6 (SB 38) ***

Title 27: Courts -- General Provisions -- Special Remedies
 Chapter 2744: Political Subdivision Tort Liability

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ORC Ann. 2744.01 (2015)

§ 2744.01 Definitions.

As used in this chapter:

(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.

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

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

(a) A function 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;

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

(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;

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- (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;
- (j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;
- (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.
- (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 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;
- (q) Urban renewal projects and the elimination of slum conditions, including the performance of any activity that a county land reutilization corporation is authorized to perform under Chapter 1724. or 5722. of the Revised Code;
- (r) Flood control measures;
- (s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;
- (t) The issuance of revenue obligations under *section 140.06 of the Revised Code*;
- (u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

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- (i) A park, playground, or playfield;
- (ii) An indoor recreational facility;
- (iii) A zoo or zoological park;
- (iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;
- (v) A golf course;
- (vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;
- (vii) A rope course or climbing walls;
- (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) (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;

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

(x) 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*, board of hospital commissioners appointed for a municipal hospital under *section 749.04 of the Revised Code*, board of hospital trustees appointed for a municipal hospital under *section 749.22 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 *section 3750.03 of the Revised Code*, joint emergency medical services district created pursuant to *section 307.052 of the Revised Code*, fire and ambulance district created pursuant to *section 505.375 of the Revised Code*, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under *section 343.01 or 343.012 of the Revised Code*, community school established under Chapter 3314. of the Revised Code, county land reutilization corporation organized under Chapter 1724. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under *sections 2301.51 to 2301.58 of the Revised Code*, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

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

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

(b) 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.

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

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(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;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(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.

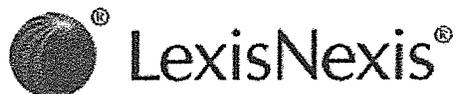
(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(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.

HISTORY: 141 v H 176 (Eff 11-20-85); 141 v H 205, § 1 (Eff 6-7-86); 141 v H 205, § 3 (Eff 1-1-87); 142 v H 295 (Eff 6-10-87); 142 v H 815 (Eff 12-12-88); 142 v S 367 (Eff 12-14-88); 143 v H 656 (Eff 4-18-90); 144 v H 210 (Eff 5-1-92); 144 v H 723 (Eff 4-16-93); 145 v H 152 (Eff 7-1-93); 145 v H 384 (Eff 11-11-94); 146 v H 192 (Eff 11-21-95); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 148 v H 205 (Eff 9-24-99); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 24, § 1 (Eff 10-26-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 108, § 2.03 (Eff 1-1-2002); 149 v S 24, § 3 (Eff 1-1-2002); 149 v S 106, Eff 4-9-2003; 150 v S 222, § 1, eff. 4-27-05; 151 v H 162, § 1, eff. 10-12-06; 2014 SB 172, § 1, eff. Sept. 4, 2014.

Appendix 8

R.C. 2744.02



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*** Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file
6 (SB 38) ***

Title 27: Courts -- General Provisions -- Special Remedies
Chapter 2744: Political Subdivision Tort Liability

Go to the Ohio Code Archive Directory

ORC Ann. 2744.02 (2015)

§ 2744.02 Classification of functions of political subdivisions; liability; exceptions.

(A) (1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, 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.

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

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

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

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

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

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

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to

Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of *section 4511.03 of the Revised Code*.

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

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

(4) Except as otherwise provided in *section 3746.24 of the Revised Code*, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that 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, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in *section 2921.01 of the Revised Code*.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, *sections 2743.02 and 5591.37 of the Revised Code*. Civil liability shall not be 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 that section provides for a criminal penalty, 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.

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

HISTORY: 141 v H 176 (Eff 11-20-85); 143 v H 381 (Eff 7-1-89); 145 v S 221 (Eff 9-28-94); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 106. Eff 4-9-2003; 152 v H 119, § 101.01, eff. 9-29-07.

Appendix 9

R.C. 2744.03



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*** Current through Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 6 (SB 38) ***

Title 27: Courts -- General Provisions -- Special Remedies
Chapter 2744: Political Subdivision Tort Liability

Go to the Ohio Code Archive Directory

ORC Ann. 2744.03 (2015)

§ 2744.03 Defenses or immunities of subdivision and employee.

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person 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:

- (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, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability 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 discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.
- (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 and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to *section 2951.02 of the Revised Code* or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to *section 2152.19 or 2152.20 of the Revised Code*, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.
- (5) The political subdivision is immune from liability if the injury, death, or loss to person 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.

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(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or *sections 3314.07 and 3746.24 of the Revised Code*, 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;

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, 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 an employee who is 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 a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in *section 2744.02 of the Revised Code*.

HISTORY: 141 v H 176 (Eff 11-20-85); 141 v S 297 (Eff 4-30-86); 145 v S 221 (Eff 9-28-94); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 108, § 2.03 (Eff 1-1-2002); 149 v S 106. Eff 4-9-2003.

Appendix 10

2001 Ohio Senate Bill No. 106
Effective April 9, 2003



OHIO ADVANCE LEGISLATIVE SERVICE
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OHIO 124TH GENERAL ASSEMBLY -- 2001-02 REGULAR SESSION

SENATE BILL NO. 106

2001 Ohio SB 106

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend *sections 723.01, 1533.18, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code* to include as governmental functions under the Political Subdivision Sovereign Immunity Law the design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium and the designation, establishment, design, construction, implementation, operation, repair, or maintenance of railroad quiet zones; to expand the motor vehicle operation liability of political subdivisions to include liability for harm caused by negligent operation other than upon public roads; to provide a procedure to determine when a political subdivision is obliged to defend an employee during a civil action; to make changes proposed by Am. Sub. H. B. 350 of the 121st General Assembly to the Political Subdivision Sovereign Immunity Law; and to specify that the operation of a snowmobile or all-purpose vehicle is a recreational activity subject to a landowner's immunity from liability for a recreational user's injuries.

NOTICE: [A] UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A>
[D] Text within these symbols is deleted <D>

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

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

[*1] Section 1. That *sections 723.01, 1533.18, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code* be amended to read as follows:

Sec. 723.01. Municipal corporations shall have special power to regulate the use of the streets. Except as provided in *section 5501.49 of the Revised Code*, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation [D], and the municipal corporation shall cause them to be kept open, in repair, and free from nuisance <D>. [A] THE LIABILITY OR IMMUNITY FROM LIABILITY OF A MUNICIPAL CORPORATION FOR INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY ALLEGEDLY CAUSED BY A FAILURE TO PERFORM THE RESPONSIBILITIES IMPOSED BY THIS SECTION SHALL BE DETERMINED PURSUANT TO DIVISIONS (A) AND (B)(3) OF SECTION 2744.02 OF THE REVISED CODE. <A>

Sec. 1533.18. As used in *sections 1533.18 and 1533.181 of the Revised Code*:

(A) "Premises" means all privately-owned lands, ways, [A] AND <A> waters, and any buildings and structures thereon, and all state-owned lands, ways, and waters leased to a private person, firm, [A] OR <A> organization, [D] or corporation, <D> including any buildings and structures thereon.

2001 Ohio SB 106, *

(B) "Recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency [D] thereof <D] [A] OF THE STATE <A], to enter upon premises to hunt, fish, trap, camp, hike, swim, [A] OPERATE A SNOWMOBILE OR ALL-PURPOSE VEHICLE, <A] or engage in other recreational pursuits.

[A] (C) "ALL-PURPOSE VEHICLE" HAS THE SAME MEANING AS IN SECTION 4519.01 OF THE REVISED CODE. <A]

Sec. 2744.01. As used in this chapter:

(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.

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

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

(a) A function 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;

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

(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;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(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

2001 Ohio SB 106, *

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.

(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 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;

(q) Urban renewal projects and the elimination of slum conditions;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under *section 140.06 of the Revised Code*;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any [A> SCHOOL ATHLETIC FACILITY, SCHOOL AUDITORIUM, OR GYMNASIUM OR ANY <A] recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(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> (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; <A]

[A> (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, PURSUANT TO SUBSECTION (C) OF THAT SECTION, FROM THE REQUIREMENT OF THE REGULATIONS PRESCRIBED UNDER SUBSECTION (B) OF THAT SECTION. <A]

[A> (X) <A] 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 *section 3750.03 of the Revised Code*, joint emergency medical services district created pursuant to *section 307.052 of the Revised Code*, fire and ambulance district created pursuant to *section 505.375 of the Revised Code*, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under *section 343.01 or 343.012 of the Revised Code*, and community school established under Chapter 3314. of the Revised Code.

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

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

(b) 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.

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

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(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;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(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.

(H) [A> "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. <A]

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[A> (I) <A] "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.

Sec. 2744.02. (A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, 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.

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

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

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees [D> upon the public roads, highways, or streets <D] when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

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

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

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

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

(3) Except as otherwise provided in *section 3746.24 of the Revised Code*, political subdivisions are liable for injury, death, or loss to person or property caused by their [A> NEGLIGENT <A] failure to keep public roads [D> , highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, <D] in repair [D> , and free from nuisance <D] [A> AND OTHER NEGLIGENT FAILURE TO REMOVE OBSTRUCTIONS FROM PUBLIC ROADS <A] , except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in *section 3746.24 of the Revised Code*, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of [A> , AND IS DUE TO PHYSICAL DEFECTS WITHIN OR ON THE GROUNDS OF, <A] buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in *section 2921.01 of the Revised Code*.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when [A> CIVIL <A] liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, *sections 2743.02 and 5591.37 of the Revised Code*. [D> Liability <D] [A> CIVIL LIABILITY <A] shall not be construed to exist under another section of

the Revised Code merely because [A] THAT SECTION IMPOSES [D] a responsibility [D] is imposed [D] [A] OR MANDATORY DUTY [A] upon a political subdivision [D] or [D] [A] , BECAUSE THAT SECTION PROVIDES FOR A CRIMINAL PENALTY, [A] because of a general authorization [A] IN THAT SECTION [A] that a political subdivision may sue and be sued [A] , OR BECAUSE THAT SECTION USES THE TERM "SHALL" IN A PROVISION PERTAINING TO A POLITICAL SUBDIVISION [A] .

[A] (C) AN ORDER THAT DENIES A POLITICAL SUBDIVISION OR AN EMPLOYEE OF A POLITICAL SUBDIVISION THE BENEFIT OF AN ALLEGED IMMUNITY FROM LIABILITY AS PROVIDED IN THIS CHAPTER OR ANY OTHER PROVISION OF THE LAW IS A FINAL ORDER. [A]

Sec. 2744.03. (A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to [D] persons [D] [A] PERSON [A] 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:

(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, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability 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 discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(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 and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to *section 2951.02 of the Revised Code* or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to *section 2152.19 or 2152.20 of the Revised Code*, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to [D] persons [D] [A] PERSON [A] 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 in division (A)(7) of this section and in circumstances not covered by that division or *sections 3314.07 and 3746.24 of the Revised Code*, 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;

(c) [D] Liability [D] [A] CIVIL LIABILITY [A] is expressly imposed upon the employee by a section of the Revised Code. [A] CIVIL LIABILITY SHALL NOT BE CONSTRUED TO EXIST UNDER ANOTHER SECTION OF THE REVISED CODE MERELY BECAUSE THAT SECTION IMPOSES A RESPONSIBILITY OR MANDATORY DUTY UPON AN EMPLOYEE, BECAUSE THAT SECTION PROVIDES FOR A CRIMINAL PENALTY, 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. [A]

(7) The political subdivision, and an employee who is 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 a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in *section 2744.02 of the Revised Code*.

Sec. 2744.04. (A) An action against a political subdivision to recover damages for injury, death, or loss to [D] persons <D> [A] PERSON <A> or property allegedly caused by any act or omission in connection with a governmental or proprietary function, whether brought as an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, shall be brought within two years after the cause of action [D] arose <D> [A] ACCRUES <A> , or within any applicable shorter period of time for bringing the action provided by the Revised Code. [A] THE PERIOD OF LIMITATION CONTAINED IN THIS DIVISION SHALL BE TOLLED PURSUANT TO *SECTION 2305.16 OF THE REVISED CODE*. <A> This division applies to actions brought against political subdivisions by all persons, governmental entities, and the state.

(B) In the complaint filed in a civil action against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to [D] persons <D> [A] PERSON <A> or property allegedly caused by an act or omission in connection with a governmental or proprietary function, whether filed in an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, the complainant shall include a demand for a judgment for the damages that the judge in a nonjury trial or the jury in a jury trial finds that the complainant is entitled to be awarded, but shall not specify in that demand any monetary amount for damages sought.

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

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

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

[A] THE AMOUNT OF THE BENEFITS SHALL BE DEDUCTED FROM AN AWARD AGAINST A POLITICAL SUBDIVISION UNDER DIVISION (B)(1) OF THIS SECTION REGARDLESS OF WHETHER THE CLAIMANT MAY BE UNDER AN OBLIGATION TO PAY BACK THE BENEFITS UPON RECOVERY, IN WHOLE OR IN PART, FOR THE CLAIM. A CLAIMANT WHOSE BENEFITS HAVE BEEN DEDUCTED FROM AN AWARD UNDER DIVISION (B)(1) OF THIS SECTION IS NOT CONSIDERED FULLY COMPENSATED AND SHALL NOT BE REQUIRED TO REIMBURSE A SUBROGATED CLAIM FOR BENEFITS DEDUCTED FROM AN AWARD PURSUANT TO DIVISION (B)(1) OF THIS SECTION. <A>

[A] (2) <A> Nothing in [D] this <D> division [A] (B)(1) OF THIS SECTION <A> shall be construed to do either of the following:

[D] (1) <D> [A] (A) <A> Limit the rights of a beneficiary under a life insurance policy or the rights of sureties under fidelity or surety bonds;

[D] (2) <D> [A] (B) <A> Prohibit the department of job and family services from recovering from the political subdivision, pursuant to *section 5101.58 of the Revised Code*, the cost of medical assistance benefits provided under Chapter 5107., 5111., or 5115. of the Revised Code.

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

(2) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(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;

(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;

(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;

(d) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property that was injured or destroyed;

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

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

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

Sec. 2744.06. (A) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to person or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. [D] Such [D] [A] THOSE [A] judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year as provided by *section 5705.08 of the Revised Code*, unless any [D] such [D] judgment is to be paid from the proceeds of bonds issued pursuant to *section 133.14 of the Revised Code* or pursuant to annual installments authorized by division (B) or (C) of this section.

(B)(1)(a) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(i) All wages, salaries, or other compensation lost by the person injured as a result of the injury, as of the date of the judgment;

(ii) All expenditures of the person injured or of 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;

(iii) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property that was injured or destroyed;

(iv) All expenditures of the person injured or whose property was injured or destroyed or of another person on behalf of the person injured or whose property was injured or destroyed in relation to the actual preparation or presentation of the person's claim;

(v) Any other expenditures of the person injured or whose property was injured or destroyed or of another person on behalf of the person injured or whose property was injured or destroyed that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

(b) As used in this division, "the actual loss of the person who is awarded the damages" does not include any of the following:

(i) Wages, salaries, or other compensation lost by the person injured as a result of the injury, that are future expected earnings of [D] such a [D] [A] THAT [A] person;

(ii) Expenditures to be incurred in the future, as determined by the court, by the person injured or by 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;

(iii) Any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss;

(iv) Any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.

(2) Except as specifically provided to the contrary in this division, a court that renders a judgment against a political subdivision as described in division (A) of this section and that is not in favor of the state may authorize the political subdivision, upon the motion of the political subdivision, to pay the judgment or a specified portion of the judgment in annual installments over a period not to exceed ten years, subject to the payment of interest at the rate specified in [A] DIVISION (A) OF [A] *section 1343.03 of the Revised Code*. A court shall not authorize the payment in installments under this division of any portion of a judgment or entire judgment that represents the actual loss of the person who is awarded the damages.

Additionally, a court shall not authorize the payment in installments under this division of any portion of a judgment or entire judgment that does not represent the actual loss of the person who is awarded the damages unless the court, after balancing the interests of the political subdivision and of the person in whose favor the judgment was rendered, determines that installment payments would be appropriate under the circumstances and would not be unjust to the person in whose favor the judgment was rendered. If a court makes [D] such a [D] [A] THAT [A] determination, it shall fix the amount of the installment payments in [D] such [D] a manner [D] as to achieve [D] [A] THAT ACHIEVES [A] for the person in whose favor the judgment was rendered, the same economic result over the period as that person would have received if the judgment or portion of the judgment subject to the installment payments had been paid in a lump sum payment.

(C) At the option of a political subdivision, a judgment as described in division (A) of this section and that is rendered in favor of the state may be paid in equal annual installments over a period not to exceed ten years, without the payment of interest.

Sec. 2744.07. (A)(1) Except as otherwise provided in this division, a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding [D] to recover [D] [A] WHICH CONTAINS AN ALLEGATION FOR [A] damages for injury, death, or loss to [D] persons [D] [A] PERSON [A] or property [D] allegedly [D] caused by an act or omission of the employee in connection with a governmental or proprietary function [A]. THE POLITICAL SUBDIVISION HAS THE DUTY TO DEFEND THE EMPLOYEE [A] if the act or omission occurred [D] or is alleged to have occurred [D] while the employee was acting [A] BOTH [A] in good faith and not manifestly outside the scope of [D] his [D] employment or official responsibilities. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or from proceeds of insurance. The duty to provide for the defense of an employee specified in this division does not apply in a civil action or proceeding that is commenced by or on behalf of a political subdivision.

(2) Except as otherwise provided in this division, a political subdivision shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee in a state or federal court or as a result of a law of a foreign jurisdiction and that is for damages for injury, death, or loss to [D] persons [D] [A] PERSON [A] or property caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of [D] his [D] employment or official responsibilities.

(B)(1) A political subdivision may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death, or loss to [D] persons [D] [A] PERSON [A] or property caused by an act or omission in connection with a governmental or proprietary function.

(2) No action or appeal of any kind shall be brought by any person, including any employee or a taxpayer, with respect to the decision of a political subdivision pursuant to division (B)(1) of this section whether to enter into a consent judgment or settlement or to secure releases, or concerning the amount and circumstances of a consent judgment or settlement. Amounts expended for any settlement shall be from funds appropriated for this purpose.

(C) If a political subdivision refuses to provide an employee with a defense in a civil action or proceeding as described in division (A)(1) of this section, [D] the employee may file, in the court of common pleas of the county in which the political subdivision is located, an action seeking a determination as to the appropriateness of the refusal of the political subdivision to provide him with a defense under that division. <D] [A] UPON THE MOTION OF THE POLITICAL SUBDIVISION, THE COURT SHALL CONDUCT A HEARING REGARDING THE POLITICAL SUBDIVISION'S DUTY TO DEFEND THE EMPLOYEE IN THAT CIVIL ACTION. THE POLITICAL SUBDIVISION SHALL FILE THE MOTION WITHIN THIRTY DAYS OF THE CLOSE OF DISCOVERY IN THE ACTION. AFTER THE MOTION IS FILED, THE EMPLOYEE SHALL HAVE NOT LESS THAN THIRTY DAYS TO RESPOND TO THE MOTION. <A]

[A] AT THE REQUEST OF THE POLITICAL SUBDIVISION OR THE EMPLOYEE, THE COURT SHALL ORDER THE MOTION TO BE HEARD AT AN ORAL HEARING. AT THE HEARING ON THE MOTION, THE COURT SHALL CONSIDER ALL EVIDENCE AND ARGUMENTS SUBMITTED BY THE PARTIES. IN DETERMINING WHETHER A POLITICAL SUBDIVISION HAS A DUTY TO DEFEND THE EMPLOYEE IN THE ACTION, THE COURT SHALL DETERMINE WHETHER THE EMPLOYEE WAS ACTING BOTH IN GOOD FAITH AND NOT MANIFESTLY OUTSIDE THE SCOPE OF EMPLOYMENT OR OFFICIAL RESPONSIBILITIES. THE PLEADINGS SHALL NOT BE DETERMINATIVE OF WHETHER THE EMPLOYEE ACTED IN GOOD FAITH OR WAS MANIFESTLY OUTSIDE THE SCOPE OF EMPLOYMENT OR OFFICIAL RESPONSIBILITIES. <A]

[A] IF THE COURT DETERMINES THAT THE EMPLOYEE WAS ACTING BOTH IN GOOD FAITH AND NOT MANIFESTLY OUTSIDE THE SCOPE OF EMPLOYMENT OR OFFICIAL RESPONSIBILITIES, THE COURT SHALL ORDER THE POLITICAL SUBDIVISION TO DEFEND THE EMPLOYEE IN THE ACTION. <A]

Sec. 4582.27. [D] (A) <D] A port authority created in accordance with *section 4582.22 of the Revised Code* shall be governed by a board of directors. Members of a board of directors of a port authority created by the exclusive action of a municipal corporation shall consist of the number of members it considers necessary and shall be appointed by the mayor with the advice and consent of the council. Members of a board of directors of a port authority created by the exclusive action of a township shall consist of such members as it considers necessary and shall be appointed by the township trustees of the township. Members of a board of directors of a port authority created by the exclusive action of a county shall consist of such members as it considers necessary and shall be appointed by the board of county commissioners of the county. Members of a board of directors of a port authority created by a combination of political subdivisions shall be divided among the political subdivisions in such proportions as the political subdivisions may agree and shall be appointed by the participating political subdivisions in the same manner as this section provides for the appointment of members by a political subdivision creating its own port authority. If a participating political subdivision is not authorized by *section 4582.22 of the Revised Code* to create its own port authority, the political subdivision's elected legislative body, if the political subdivision has an elected legislative body, or the political subdivision's elected official or officials who appoint the legislative body of the political subdivision shall appoint the members of a board of directors of a port authority that are to be appointed by that political subdivision. If the electors of a participating political subdivision do not elect either the legislative body of the political subdivision or the official or officials who appoint the legislative body of the political subdivision, the participating political subdivision may not appoint any member of a board of directors of a port authority. When a port authority is created by a combination of political subdivisions, the number of directors comprising the board shall be determined by agreement between the political subdivisions, which number may be changed from time to time by amendment of the agreement. The appointing body may at any time remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office.

A majority of the directors shall have been qualified electors of, or shall have had their businesses or places of employment in, one or more political subdivisions within the area of the jurisdiction of the port authority, for a period of at least three years next preceding their appointment.

The directors of any port authority first appointed shall serve staggered terms. Thereafter each successor shall serve for a term of four years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term and any director is eligible for reappointment.

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The board of directors by rule may provide for the removal of a director who fails to attend three consecutive regular meetings of the board. If a director is so removed, a successor shall be appointed for the remaining term of the removed director in the same manner provided for the original appointment.

The directors shall elect one of their membership as chairperson and another as vice-chairperson, and shall designate their terms of office, and shall appoint a secretary who need not be a director. A majority of the board of directors shall constitute a quorum, the affirmative vote of which shall be necessary for any action taken by the port authority. No vacancy in the membership of the board shall impair the rights of a quorum to exercise all the rights and perform all the duties of the port authority.

Each member of the board of directors of a port authority shall be entitled to receive from the port authority such sum of money as the board of directors may determine as compensation for services as director and reimbursement for reasonable expenses in the performance of official duties.

[D] (B) Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the port authority is the plaintiff, no director, officer, or employee of a port authority shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the director's, officer's, or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the director, officer, or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. <D]

[D] This division does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon a director, officer, or employee by any other provision of the Revised Code or by case law. <D]

[D] (C)(1) A port authority shall, except as provided in division (B) of this section, indemnify a director, officer, or employee from liability incurred in the performance of his duties by paying any judgment in, or amount negotiated in settlement of, any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction. The reasonableness of the amount of any consent judgment or settlement is subject to the review and approval of the board of the port authority. The maximum aggregate amount of indemnification paid directly from funds to or on behalf of any director, officer or employee pursuant to this division shall be one million dollars per occurrence, regardless of the number of persons who suffer damage, injury, or death as a result of the occurrence. <D]

[D] (2) A port authority shall not indemnify a director, officer, or employee under any of the following circumstances: <D]

[D] (a) To the extent the director, officer, or employee is covered by a policy of insurance for civil liability purchased by the port authority; <D]

[D] (b) When the director, officer, or employee acts manifestly outside the scope of his employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner; <D]

[D] (c) For any portion of a judgment that represents punitive or exemplary damages; <D]

[D] (d) For any portion of a consent judgment or settlement that is unreasonable. <D]

[D] (3) The port authority may purchase a policy or policies of insurance on behalf of directors, officers, and employees of the port authority from an insurer or insurers licensed to do business in this state providing coverage for damages in connection with any civil action, demand, or claim against the director, officer, or employee by reason of an act or omission by the director, officer, or employee occurring in the performance of his duties and not coming within the terms of division (C)(2)(b) of this section. <D]

[D] (4) This section does not affect either of the following: <D]

[D] (a) Any defense that would otherwise be available in an action alleging personal liability of a director, officer, or employee; <D]

[D] (b) The operation of *section 9.83 of the Revised Code*. <D]

Sec. 5511.01. All state highways established by law shall continue to be known as state highways, and the state highway system established by law shall continue to be known as the state highway system.

Before establishing any additional highways as part of the state highway system, or making any significant changes in existing highways comprising the system, the director of transportation shall notify the general community of the project and offer an opportunity for appropriate public involvement in the project process.

The opportunity for public involvement shall satisfy the requirements of the "National Environmental Policy Act of 1969," 83 Stat. 852, 42 U. S. C. A. 4321 et seq., as amended, and may consist of activities including public meetings or hearings, small group meetings with local officials, individual meetings, news releases, public notices, workshops, newsletters, electronic communications, radio announcements, mail notification, and other activities considered appropriate for the exchange of information. The director or the director's designee shall provide the public involvement activities in each of the counties in which the highway proposed to be established is to be located or in which it is proposed to make [D] such [D] [A] THOSE [A] changes.

Any changes made in existing highways by the director or any additional highways established by the director following the public involvement activities shall be certified to the following authorities interested [D] therein [D] [A] IN THEM [A]: the legislative authority of municipalities, [A] THE [A] board of county commissioners, [A] THE [A] board of township trustees, [A] THE [A] municipal, county, and regional planning commissions, and the municipal, township, or county officer authorized to issue land use or building permits. Before any zoning change or subdivision plat is approved and before any permit for land use or the erection, alteration, or moving of a building is granted affecting any land within three hundred feet of the center line of a proposed new highway or highway for which changes are proposed, as described in the certification by the director, or within a radius of five hundred feet from the point of intersection of that center line with any public road or highway, the authority authorized to approve the zoning change or subdivision plat or the authority authorized to grant the permit for land use or the erection, alteration, or moving of the building shall give notice, by certified mail, to the director, and shall not approve a zoning change or subdivision plat or grant a permit for land use or the erection, alteration, or moving of a building for one hundred twenty days from date notice is received by the director. During the one hundred twenty [A] - [A] day period and any extension of it as may be agreed to between the director and any property owner, notice of which has been given to the authority to which the application has been made, the director shall proceed to acquire any land needed by purchase or gift, or by initiating proceedings to appropriate, or make a finding that acquisition at such time is not in the public interest. Upon purchase, initiation of appropriation proceedings, or a finding that acquisition is not in the public interest, the director shall notify the authority from which notice was received of that action. Upon being notified that the director has purchased or initiated proceedings to appropriate the land that authority shall refuse to rezone land or to approve any subdivision plat that includes the land which the director has purchased or has initiated proceedings to appropriate, and that authority shall refuse to grant a permit for land use or the erection, alteration, or moving of a building on the land which the director has purchased or initiated proceedings to appropriate. Upon notification that the director has found acquisition at that time not to be in the public interest, or upon the expiration of the one hundred twenty [A] - [A] day period or any extension [D] thereof [D] [A] OF IT [A], if no notice has been received from the director, that authority shall proceed in accordance with law.

A report of the change or addition shall be filed in the office of the director, and the report of the director making the change or establishing the highway shall be placed on file in the office of the department of transportation.

In no event shall the total mileage of the state highway system be increased under this section to exceed two hundred miles in one year.

The director, upon petition of the boards of the counties traversed [D] thereby [D] [A] BY A HIGHWAY [A] or of citizens of [D] such [D] [A] THOSE [A] counties, may officially assign to a highway of the state highway system a distinctive name [D], [D] commemorative of a historical event or personage, or officially assign [D] thereto [D] [A] TO A HIGHWAY OF THE STATE HIGHWAY SYSTEM [A] a commonly accepted and appropriate name by which the highway is known.

The director may, upon giving appropriate notice and offering the opportunity for public involvement and comment, abandon a highway on the state highway system or part [D] thereof [D] [A] OF SUCH A HIGHWAY [A] which the director determines is of minor importance or which traverses territory adequately served by another state highway, and the abandoned highway shall revert to a county or township road or municipal street. A report covering [D] such [D] [A] THAT [A] action shall be filed in the office of the director, and the director shall certify the action to the board of the county in which the highway or portion [D] thereof [D] [A] OF THE HIGHWAY [A] so abandoned is situated.

The director shall make a map showing [D] thereon [D], by appropriate numbering or other designation, all the state highways. The map shall be kept on file in the director's office [A], [A] and the director shall cause the [D] same [D] [A] MAP [A] to be corrected and revised to show all changes and additions to the date of [D] such [D] [A] THE [A] correction. A copy of the map, certified by the director as a correct copy of the map on file in the director's office, shall be admissible as evidence in any court to prove the existence and location of the several highways and roads of the state highway system.

The state highway routes into or through municipal corporations, as designated or indicated by state highway route markers erected [D] thereon <D> [A] ON THE ROUTES <A> , are state highways and a part of the state highway system. The director may erect state highway route markers and [D] such <D> other signs directing traffic as the director thinks proper upon those portions of the state highway system lying within municipal corporations, and the consent of the municipal corporations to [D] such <D> [A] THAT <A> erection and marking shall not be necessary. However, the director may erect traffic signs in villages in accordance with *section 5521.01 of the Revised Code*. No change in the route of any highway through a municipal corporation shall be made except after providing public involvement activities.

Except as provided in *sections 5501.49 and 5517.04 of the Revised Code*, no duty of constructing, reconstructing, maintaining, and repairing such state highways within municipal corporations shall attach to or rest upon the director. The director may enter upon such state highways within any municipal corporation and construct, reconstruct, widen, improve, maintain, and repair them, provided the municipal corporation first consents [D] thereto <D> by resolution of its legislative authority, except that the director need not obtain the consent of the municipal corporation if the existing highway being changed or the location of an additional highway being established was not within the corporate limits of the municipal corporation at the time [D] such <D> [A] THE <A> establishment or change is approved by the director, or if the director is acting pursuant to *section 5501.49 of the Revised Code*.

The director shall place in the files of the department a record of the routes of all such state highways within municipal corporations, and shall cause them to be corrected and revised to show all changes and additions to the date of the correction. A copy of the record or any pertinent part [D] thereof <D> [A] OF IT <A> , certified by the director to be a true and correct copy, shall be admissible in evidence in any court of the state for the purpose of proving the existence and location of any state highway within a municipal corporation.

When the director proposes to change an existing state highway and there exists upon the highway a separated railroad crossing, the director shall mail to the interested railroad company a copy of the notice [A] , <A> which shall be mailed by first-class mail, postage prepaid, and certified with return receipt requested, at least two weeks before the time fixed for any public involvement activity. When the director proposes to change an existing state highway within a municipal corporation, the director shall mail to the mayor or other chief executive officer of the municipal corporation a copy of the notice [A] , <A> which shall be mailed by first-class mail, postage prepaid, and certified with return receipt requested, at least two weeks before the time fixed for any public involvement activity.

Nothing in this section shall be construed to require providing public involvement activities before the construction, reconstruction, maintenance, improvement, or widening of an existing highway where no relocation is involved.

With the exception of the authority conferred upon the director by this section [D] , <D> to erect state highway route markers and signs directing traffic [D] , <D> and by *section 5501.49 of the Revised Code*, Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code [D] , <D> shall not in any way modify, limit, or restrict the authority conferred by *section 723.01 of the Revised Code* upon municipal corporations to regulate the use of streets and to have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporations [D] and <D> [A] , OR THE LIABILITY IMPOSED UPON MUNICIPAL CORPORATIONS BY DIVISION (B)(3) OF SECTION 2744.02 OF THE REVISED CODE FOR NEGLIGENT FAILURE <A> to keep [D] them, subject to division (B)(3) of *section 2744.02 of the Revised Code*, open, <D> [A] PUBLIC ROADS <A> in repair [D] , <D> and [D] free from nuisance <D> [A] OTHER NEGLIGENT FAILURE TO REMOVE OBSTRUCTIONS FROM PUBLIC ROADS <A> .

Sec. 5591.36. The board of county commissioners shall erect and maintain [A] ON COUNTY ROADS <A> , where not already done, one or more guardrails on each end of a county bridge, viaduct, or culvert more than five feet high [D] and on each side of every approach to a county bridge, viaduct, or culvert, if the approach or embankment is more than six feet high <D> . The board [A] ALSO <A> shall [D] also <D> protect, by [D] suitable <D> guardrails, all [D] perpendicular wash banks <D> [A] EMBANKMENTS WITH A RISE OF <A> more than eight feet in height [A] AND WITH A DOWNWARD SLOPE OF GREATER THAN SEVENTY DEGREES <A> , where [D] such banks <D> [A] THE EMBANKMENTS <A> have an immediate connection with a [D] public highway other than state highways, or are adjacent thereto in an unprotected condition <D> [A] COUNTY ROAD <A> .

[D] It shall be a sufficient compliance with this section, if the board causes to be erected and maintained a good stockproof hedge fence where a guardrail is required. Such guardrails or hedge fences shall be erected in a substantial

manner, having sufficient strength to protect life and property, the <D> [A] THE <A> expense [D] thereof to <D> [A] FOR A GUARDRAIL REQUIRED UNDER THIS SECTION SHALL <A] be paid out of the county bridge fund.

Sec. 5591.37. [D] Failure <D> [A] NEGLIGENT FAILURE <A] to comply with *section 5591.36 of the Revised Code* shall render the county liable for all accidents or damages [D] as a result of such <D> [A] RESULTING FROM THAT <A] failure.

[*2] Section 2. That existing *sections 723.01, 1533.18, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code* are hereby repealed.

[*3] Section 3. *Sections 723.01, 1533.18, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code*, as amended by this act, apply only to causes of action that accrue on or after the effective date of this act. Any cause of action that accrues prior to the effective date of this act is governed by the law in effect when the cause of action accrued.

[*4] Section 4. *Section 2744.01 of the Revised Code* is presented in this act as a composite of the section as amended by both Sub. S. B. 24 and Sub. S. B. 108 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of *section 1.52 of the Revised Code* that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

HISTORY:

Signed by the Governor on January 8, 2003

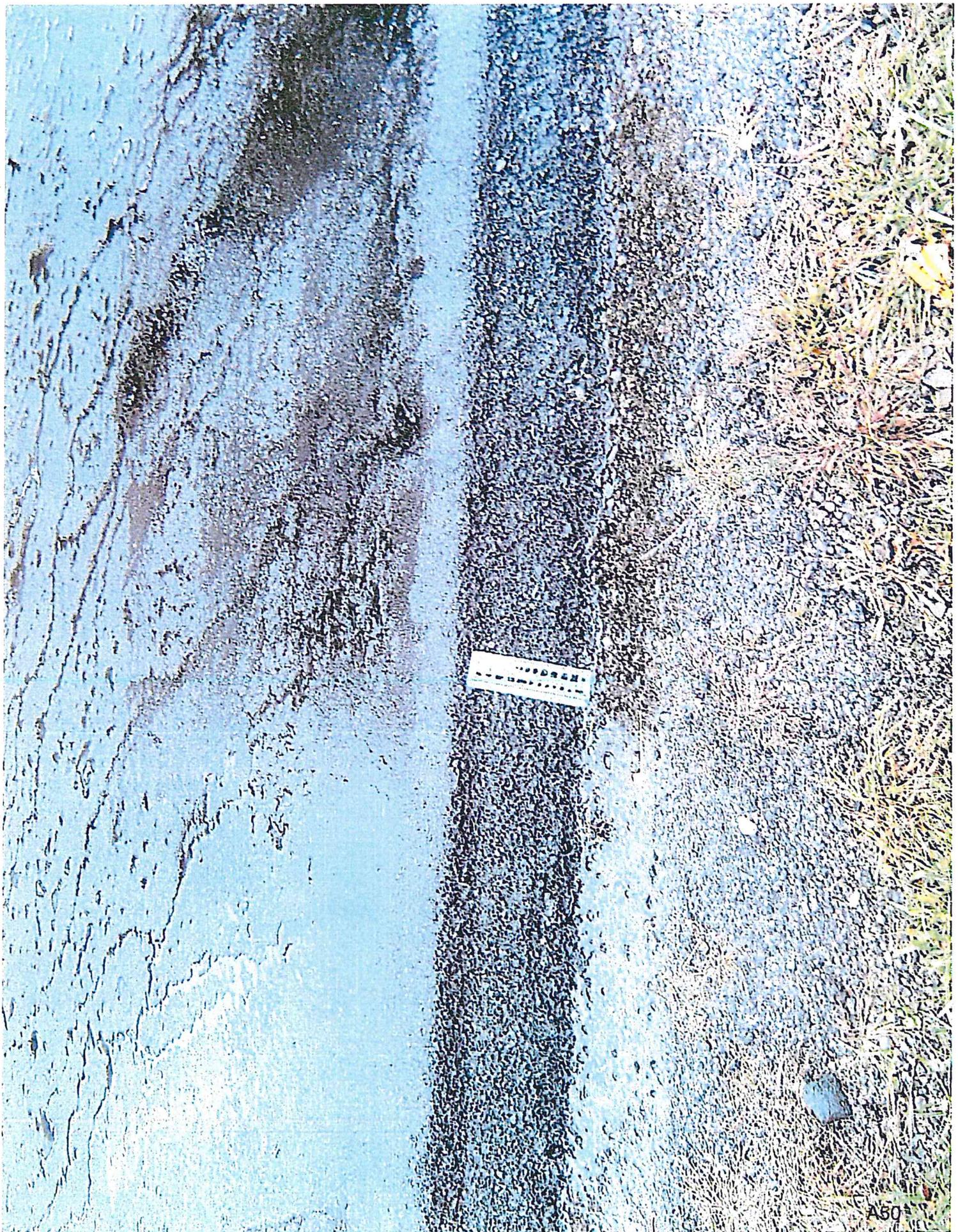
SPONSOR: Hottinger

Appendix 11

OHP Photographs of Re-paved Roadway on Date of Accident

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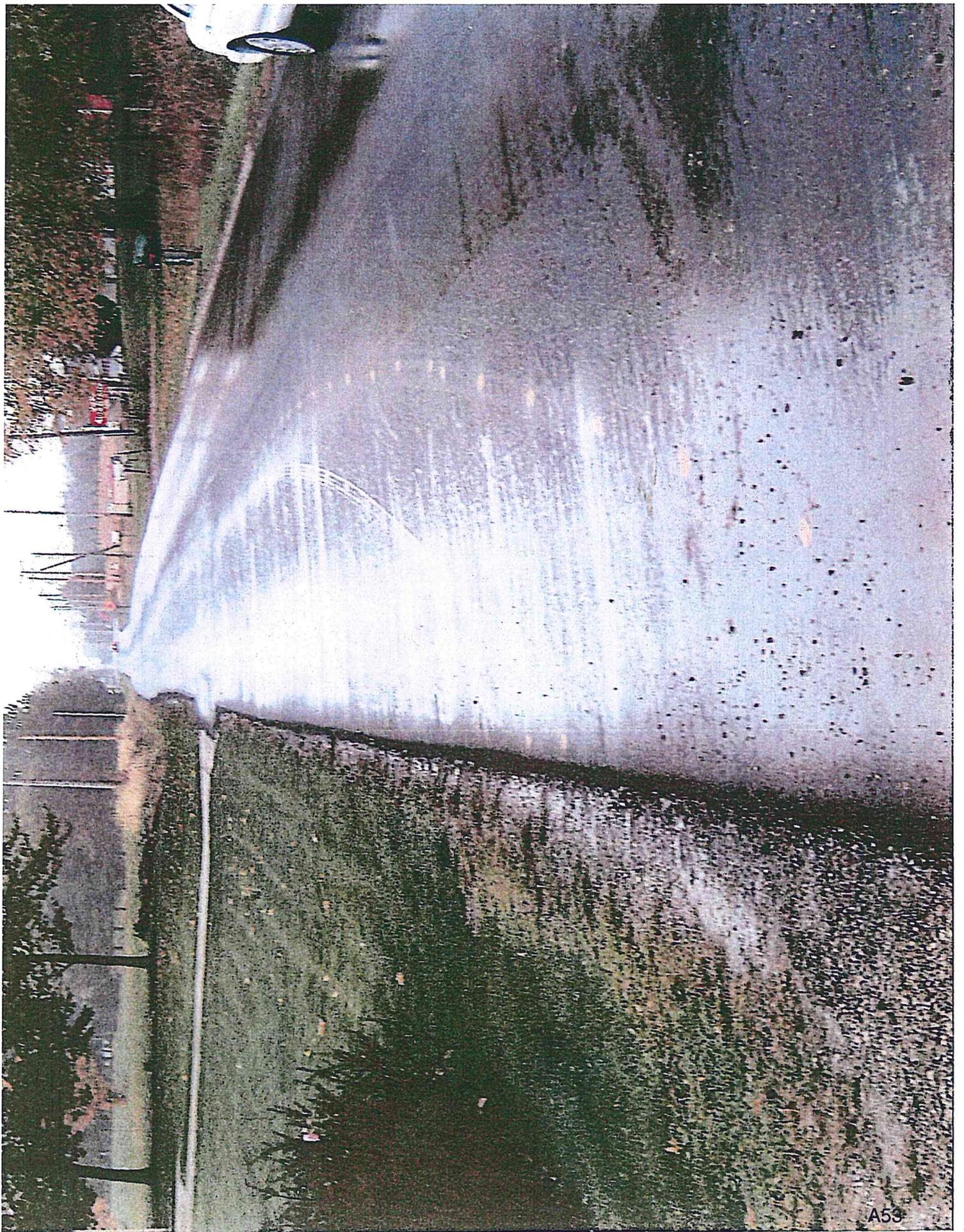


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