

Senate Bill 106: Political Subdivision Tort Liability

By Bill Petro, Vice President - HAS Claims Services



- What: Senate Bill 106
- Why: To expand and clarify Public Entity immunities and defenses found in ORC 2744.
- Who: Passed by the Ohio Legislature and signed by the Governor.
- When: Becomes effective April 08, 2003

The Ohio Supreme Court, over the past few years, has decided a number of cases against Ohio Public Entities. The decisions have diluted or removed some immunities and defenses afforded by Ohio Revised Code (ORC) 2744. The adverse affects of those decisions continue to influence public entities' pocket books. It appears the Legislature found it necessary to pass SB 106 due to the Ohio Supreme Court's repeated reduction of public entity immunities found in ORC 2744.

The following are the key changes to ORC 2744 imposed by SB 106:

- By adding the new "Public Roads" definition and rewording exception 2744.02 (B)(3), SB 106 makes it clear that public entities *are* responsible to keep the driven portion of the highway in repair and *are not* responsible for hazards or defects in/on the berms, shoulders, or rights-of-ways.
- The Legislature, in passing SB 106, clarified the intent of exception 2744.02 (B)(4): a public entity's liability is limited to injuries associated with physical defects on public grounds. This in essence neutralizes the damaging effects of the Ohio Supreme Court's decision in *Hubbard v. Canton City Schools* in which they opined that a public entity had no immunity for any negligent act on public grounds.
- In the past public entities were liable for damages caused by the negligent operation of motor vehicles *on public roads*. SB 106 makes it clear that public entities are also responsible for negligent operation of motor vehicles *off road*. This change to 2744.02 (B)(1) does not affect the immunity firefighters, police officers or members of an EMS department have while on an emergency run.
- SB 106 added back the immediate appeal to 2744.02 (C). If a Court denies a public entity an immunity or defense, an immediate appeal can be taken. Without this, the public entity is forced to go through costly preparation and trial on liability issues in order to be able to eventually appeal the Courts' denial of immunity.
- SB 106 also makes it clear a public entity has a duty to defend an employee when there is a claim for damages and the employee was acting in good faith and not manifestly outside the scope of employment. This is a change to 2744.07.

