

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject

Legislative Policy: Public Entity Tort Liability

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Purpose

To establish the Board of Supervisors' legislative policy regarding governmental public liability, and to provide guidance to the County's legislative representatives when advocating the County's interests to legislators, other elected officials and policy makers.

Background

In 1986, California's voters approved the Fair Responsibility Act of 1985 (Proposition 51) by a wide margin. This initiative, sponsored by a coalition of government entities (including the County Supervisors Association of California, now known as the California State Association of Counties) and professional organizations and business groups -- the Proposition 51 Tort Reform Coalition - eliminated the application of joint and several liability with respect to "non-economic" damages in certain civil actions. The sponsoring groups presented this initiative as the first step toward resolving the liability crisis in California after several years of legislative effort had failed, court decisions had eroded public entity liability, and the cost of liability insurance had increased to such an extent that the public's access to some services was denied for lack of insurance coverage.

Statewide fiscal crises beginning in the mid-2000s prompt the need for renewed efforts to identify additional areas where public entities face additional liability risks or have become the favorite target of plaintiffs under new or expanded theories of liability.

The California State Association of Counties and the National Association of Counties have consistently supported legislative efforts to lessen the exposure of public entities to public liability claims and expenditures.

Policy

The legislative policy of the Board of Supervisors regarding public entity liability is to:

1. Support legislation that would make changes to personal injury tort law, including capping pain and suffering awards, making economic losses several and not joint in actions against public entities, limiting attorneys contingency fees, and eliminating double recovery for economic losses.

2. Oppose legislation that would weaken public entity immunity to state and local government agencies for damages arising from the condition of public improvements which were safe at the time they were designed and constructed.

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3. Oppose legislation that would weaken public entity immunity from damages occurring as a result of natural conditions on public property.

4. Support legislation that would prohibit the filing of claims or lawsuits by persons convicted of misdemeanors and felonies for injuries sustained during the commission of the crimes or criminal activity, without regard for whether criminal charges are still pending.

5. Support legislation that would make further changes in the legal principal of joint and several liability (specifically to Civil Code section 1431.2, so that economic damages awarded against a public entity are several and not joint), to protect, ensure and otherwise provide that the County will not be a 'deep pocket' liability target.

6. Support legislation that would develop statutory provisions calling for the reimbursement of all public entity attorney's fees, defense costs and expenditures incurred in the successful defense of lawsuits in order to discourage frivolous and spurious claims and lawsuits.

7. Oppose legislation that would remove or weaken any statutory time limits as to the filing and serving of claims and lawsuits and motions intended to defeat liability.

8. Support legislation that would restore the scheduling of summary judgment motions to comport with federal summary judgment motion rules.

9. Oppose legislation that would expose public entities or further expose public employees to liability for punitive or exemplary damages.

10. Oppose legislation that would weaken the Medical Injury Compensation Reform Act (MICRA), and support legislation that would continue to limit excessive litigation and medical malpractice insurance premiums.

11. Support legislation that would repeal or modify federal and State statutes governing the award of attorneys' fees in actions against public entities so as to limit the exposure of the public entity.

12. Support legislation that would include volunteers as co-employees for purposes of workers' compensation exclusivity.

13. Support legislation that would extend to a public entity the right to reimbursement for damages as provided in the Vehicle Code from negligent non-permissive users.

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14. Support legislation that would restore absolute immunity to social workers and other County employees who are involved in the initial investigation and prosecution of juvenile dependency cases.

15. Support legislation that would enable the Sheriff to operate the jail system and the Chief Probation Officer to operate juvenile detention facilities in a manner that would survive a constitutional “conditions” challenge.

Responsible Departments

Chief Administrative Office

Office of Strategy and Intergovernmental Affairs

Sunset Date

This policy will be reviewed for continuance by 12-31-19.

References

Board Action 6-27-79 (9)

Board Action 12-11-84 (34)

Board Action 2-10-87 (75)

Board Action 8-8-89 (34)

Board Action 10-31-06 (14)

Board Action 12-09-08 (33)

Board Action 10-30-12 (18)

California Government Code (California Tort Claims Act of 1963)