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May 22, 1991

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Law and Legislation Committee
Sacramento, California

SUBJECT: AB 883 (Boland) Regarding Public Liability

Honorable Members in Session:

SUMMARY

This report recommends that the Law and Legislation Committee express the City's opposition to AB 883 (Boland) regarding public liability.

BACKGROUND

The Government Code currently provides an immunity to governmental entities and their employees for injuries caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke a permit, license or similar authorization when the public entity or its employee is authorized to determine whether it should be issued, denied, suspended or revoked. Judicial decisions have limited this immunity to discretionary decisions.

AB 883 expands local liability.

AB 883 expresses its intent to codify one of the judicial decisions. However, it appears to go further than necessary. Moreover, the expansion of liability would apply only to local entities, not the state, even though the immunity is granted to both local and state entities. The most troubling aspect of the bill is that it provides for the local entity to pay attorney fees.

FINANCIAL DATA

It is likely that enactment of AB 883 would lead to increased litigation and settlement expenditures for cities, including Sacramento.

POLICY CONSIDERATIONS

None.

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MBE/WBE

Not Applicable

RECOMMENDATION

It is recommended that the Law & Legislation Committee express its opposition to AB 883 (Boland).

Respectfully submitted,

SHARON SIEDORF CARDENAS, City Attorney



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Law and Legislation
May 30, 1991
All Districts

AMENDED IN ASSEMBLY APRIL 2, 1991

CALIFORNIA LEGISLATURE—1991-92 REGULAR SESSION

ASSEMBLY BILL

No. 883

Introduced by Assembly Member Boland

February 28, 1991

An act to amend Sections 818.4 and 821.2 of the Government Code, relating to civil liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 883, as amended, Boland. Public liability: property development.

Existing law specifies that public entities and employees are not liable for failure to issue a permit or other authorization where the public entity or employee is authorized by enactment to determine whether the permit or other authorization should be issued.

This bill would make a *local* public entity ~~or employee~~ liable for wrongful refusal, after a proper request, to issue an authorization for development of property where issuance of the authorization is a ministerial act or mandatory duty. This liability would include liability for attorney's fees. The bill would also declare legislative intent and specify that the bill's remedy is nonexclusive.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 818.4 of the Government Code
2 is amended to read:

3 818.4. (a) A public entity is not liable for an injury
4 caused by the issuance, denial, suspension or revocation
5 of, or by the failure or refusal to issue, deny, suspend or
6 revoke, any permit, license, certificate, approval, order,
7 or similar authorization where the public entity or an
8 employee of the public entity is authorized by enactment
9 to determine whether or not such authorization should
10 be issued, denied, suspended or revoked.

11 (b) Where issuance of a permit, license, certificate,
12 approval entitlement, or other authorization for the
13 development of real property constitutes a ministerial act
14 or mandatory duty of a *local* public entity and the *local*
15 public entity wrongfully refuses to perform that
16 ministerial act or mandatory duty after a proper request
17 by the applicant, the *local* public entity shall be liable to
18 the applicant for damages, including attorney's fees,
19 caused by that refusal. This remedy is nonexclusive and
20 shall be in addition to any other available remedy, and
21 nothing in this subdivision shall be construed to limit or
22 supersede other remedies.

23 SEC. 2. Section 821.2 of the Government Code is
24 amended to read:

25 821.2. (a) A public employee is not liable for an
26 injury caused by his *or her* issuance, denial, suspension
27 or revocation of, or by his *or her* failure or refusal to issue,
28 deny, suspend or revoke, any permit, license, certificate,
29 approval, order, or similar authorization where he *or she*
30 is authorized by enactment to determine whether or not
31 such authorization should be issued, denied, suspended
32 or revoked.

33 (b) Where issuance of a permit, license, certificate,
34 approval entitlement, or other authorization for the
35 development of real property constitutes a ministerial act
36 or mandatory duty of a public employee *of a local public*
37 *entity* and the public employee wrongfully refuses to
38 perform that ministerial act or mandatory duty after a

1 proper request by the applicant, the *local* public entity
2 shall be liable to the applicant for damages, including
3 attorney's fees, caused by that refusal. This remedy is
4 nonexclusive and shall be in addition to any other
5 available remedy, and nothing in this subdivision shall be
6 construed to limit or supersede other remedies.

7 SEC. 3. The Legislature finds and declares that this
8 act is intended to codify the holding in *Ellis v. City*
9 Council, 222 Cal. App. 2d 490.