



**OFFICE OF THE  
CITY ATTORNEY**

SHARON SIEDORF CARDENAS  
CITY ATTORNEY

THEODORE H. KOBAY, JR.  
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:  
SAMUEL L. JACKSON  
WILLIAM P. CARNAZZO

**CITY OF SACRAMENTO  
CALIFORNIA**

921 TENTH STREET  
SUITE 700  
SACRAMENTO, CA  
95814-2717

PH. 916-449-5346  
FAX 916-449-6755

May 22, 1991

DEPUTY CITY ATTORNEYS:  
EVELYN M. MATTEUCCI  
DIANE B. BALTER  
RICHARD F. ANTOINE  
TAMARA MILLIGAN-HARMON  
RICHARD E. ARCHIBALD  
TIMOTHY N. WASHBURN  
SABRINA M. THOMPSON  
JOSEPH McINERNEY  
JOE ROBINSON  
LESLIE R. LOPEZ

Law and Legislation Committee  
Sacramento, California

**SUBJECT: SB 1249 (Robbins) Regarding Government Tort Liability**

Honorable Members in Session:

**SUMMARY**

This report recommends that the Law & Legislation Committee support SB 1249 (Robbins) which would limit combined aggregate liability of all governmental entities and public employees for damages arising from one occurrence to \$250,000.

**BACKGROUND**

Currently, maximum public liability for damages is not limited. SB 1249 would limit the damages arising from one occurrence to \$250,000, except for liability arising from a contract.

**FINANCIAL DATA**

Exhibit I, prepared by Risk Manager, shows that, if the \$250,000 limit had been in effect during Fiscal Year 82 to Fiscal Year 90, the City would have saved approximately \$1,560,107 paid out on five claims exceeding \$250,000.

**POLICY CONSIDERATIONS**

None.

**MBE/WBE**

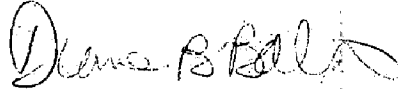
Not applicable.

**RECOMMENDATION**

It is recommended that the Law and Legislation Committee support SB 1249 (Robbins).

Respectfully submitted,

SHARON SIEDORF CARDENAS, City Attorney



DIANE B. BALTER  
Deputy City Attorney

Contact Person to  
Answer Questions:

Bill Redmond, Risk Manager  
449-5556

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Law & Legislation Committee  
AB 1312 (Chandler)  
AB 745 (Beverly)  
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**MBE/WBE**

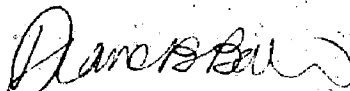
Not applicable

**RECOMMENDATION**

It is recommended that the Law & Legislation Committee support AB 1312 (Chandler) and SB 745 (Beverly) relating to public entity liability.

Respectfully submitted,

SHARON SIEDORF CARDENAS, City Attorney



DIANE B. BALTER  
Deputy City Attorney

Contact Person to  
Answer Questions:

Diane B. Balter,  
Deputy City Attorney  
449-5346

Law and Legislation  
May 30, 1991  
All Districts

**ASSEMBLY BILL**

**No. 1312**

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**Introduced by Assembly Member Chandler**

March 7, 1991

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An act to amend Section 830.6 of the Government Code, relating to public liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 1312, as introduced, Chandler. Public liability: public property.

Existing law provides that there is no liability for an injury caused by the plan or design of a construction of, or an improvement to, public property that was approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give the approval or where it is prepared in conformity with standards previously so approved, if there is any substantial evidence upon the basis of which a reasonable public employee could have adopted the plan or design or the standards therefor or a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor. Existing law also provides that notwithstanding notice that constructed or improved public property may no longer be in conformity with a plan or design or a standard which reasonably could be approved by the legislative body or other body or employee, the immunity provided by this provision shall continue for a reasonable period of time, as specified. However, existing law provides that if it is practically impossible to remedy the property, the immunity remains so long as the public entity shall reasonably attempt to provide adequate warnings of the existence of the condition.

This bill would delete the above provisions relating to

property no longer in conformity with a reasonable plan or design. It would instead provide that the reasonableness of the approval of that plan or design shall be determined as of the date it was approved. It would also provide that the immunity would continue notwithstanding changes in design standards, physical conditions, or the absence of signs, signals, markings, or, in the case of transportation facilities, other specified traffic control devices.

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 830.6 of the Government Code  
2 is amended to read:  
3 830.6. (a) Neither a public entity nor a public  
4 employee is liable under this chapter for an injury caused  
5 by the plan or design of a construction of, or an  
6 improvement to, public property where ~~such~~ the plan or  
7 design has been approved in advance of the construction  
8 or improvement by the legislative body of the public  
9 entity or by some other body or employee exercising  
10 discretionary authority to give ~~such~~ that approval or  
11 where ~~such~~ the plan or design is prepared in conformity  
12 with standards previously so approved, if the trial or  
13 appellate court determines that there is any substantial  
14 evidence upon the basis of which ~~(a)~~ (1) a reasonable  
15 public employee could have adopted the plan or design  
16 or the standards therefor, or ~~(b)~~ (2) a reasonable  
17 legislative body or other body or employee could have  
18 approved the plan or design or the standards therefor.  
19 ~~Notwithstanding notice that constructed or improved~~  
20 ~~public property may no longer be in conformity with a~~  
21 ~~plan or design or a standard which reasonably could be~~  
22 ~~approved by the legislative body or other body or~~  
23 ~~employee, the immunity provided by this section shall~~  
24 ~~continue for a reasonable period of time sufficient to~~  
25 ~~permit the public entity to obtain funds for and carry out~~  
26 ~~remedial work necessary to allow such public property to~~  
27 ~~be in conformity with a plan or design approved by the~~

1 legislative body of the public entity or other body or  
2 employee, or with a plan or design in conformity with a  
3 standard previously approved by such legislative body or  
4 other body or employee. In the event that the public  
5 entity is unable to remedy such public property because  
6 of practical impossibility or lack of sufficient funds, the  
7 immunity provided by this section shall remain so long as  
8 such public entity shall reasonably attempt to provide  
9 adequate warnings of the existence of the condition not  
10 conforming to the approved plan or design or to the  
11 approved standard. However, where a person fails to  
12 heed such warning or occupies public property despite  
13 such warning, such failure or occupation shall not in itself  
14 constitute an assumption of the risk of the danger  
15 indicated by the warning.

16 (b) *The reasonableness of the approval of that plan or*  
17 *design shall be determined as of the date it was approved.*

18 (c) *The immunity provided by this section shall*  
19 *continue notwithstanding (1) changes in design*  
20 *standards, (2) changes in physical conditions of the*  
21 *public property including, but not limited to, in the case*  
22 *of transportation facilities, increases in traffic volume, or*  
23 *(3) the absence of signs, signals, markings, or in the case*  
24 *of transportation facilities, other traffic control devices*  
25 *warning of a condition that endangers the safe*  
26 *movement of traffic and that would not be reasonably*  
27 *apparent to, or would not have been anticipated by, a*  
28 *person exercising due care.*

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Introduced by Senator Beverly

March 6, 1991

An act to amend Section 830.5 of the Government Code, relating to civil liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 745, as introduced, Beverly. Dangerous conditions of public property: evidence.

Under existing law, public entities are liable for certain dangerous conditions of public property. Existing law specifies that the happening of the accident which results in injury is not itself evidence of a dangerous condition of public property, except under the application of the doctrine of res ipsa loquitor. Additionally, under existing law, evidence that action was taken after an accident to protect against a condition of public property is not evidence that the public property was in a dangerous condition.

This bill would specify that the occurrence of other accidents are not evidence of a dangerous condition of public property or a proper basis for opinion evidence of a dangerous condition of public property, unless the other accidents are substantially similar to the accident in issue.

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 830.5 of the Government Code
- 2 is amended to read:
- 3 830.5. (a) Except where the doctrine of res ipsa
- 4 loquitor is applicable, the happening of the accident
- 5 which results in the injury is not in and of itself evidence
- 6 that public property was in a dangerous condition.

1 (b) The fact that action was taken after an injury  
2 occurred to protect against a condition of public property  
3 is not evidence that the public property was in a  
4 dangerous condition at the time of the injury.

5 (c) *In an action involving an alleged dangerous*  
6 *condition of public property, the occurrence of other*  
7 *accidents under circumstances which are not*  
8 *substantially similar to the accident involved in the action*  
9 *(1) is not evidence that the public property was in a*  
10 *dangerous condition and (2) is not a proper basis for*  
11 *expert testimony or other opinion evidence that the*  
12 *public property was in a dangerous condition.*

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