

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1120

Introduced by Senator Berryhill

February 17, 2012

An act to ~~amend Section 815 of~~ *add Section 818.3 to* the Government Code, relating to government liability, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1120, as amended, Berryhill. Government liability: *property-related service fees.*

The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a $\frac{2}{3}$ vote of the voters residing in the area affected by the fee or charge. Under existing law, a public entity is immune from liability for an injury, whether the injury arises out of an act or omission of the public entity or a public employee, or any other person, except as provided by statute.

This bill would provide that a public entity shall not be liable for an injury related to a decrease or cessation of any water, sewer, or refuse collection service in connection with a fee or charge imposed or increased pursuant to specified provisions of the California Constitution, whether the injury arises out of an act or omission of the public entity, a public employee, or any other person, if the public entity fully complies with those provisions of the California Constitution, and the affected property owners have refused to allow the imposition, extension, or increase of property-related fees and charges for the service.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law governs the tort liability and immunity of, and claims and actions against, public entities and their officers and employees. A public entity, as defined, is not liable for an injury, except as otherwise provided by statute, whether the injury arises out of an act or omission of the public entity or a public employee or any other person.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: ~~majority~~^{2/3}. 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 818.3 is added to the Government Code,*
 2 *to read:*
 3 *818.3. (a) A public entity shall not be liable for an injury*
 4 *related to a decrease or cessation of any water, sewer, or refuse*
 5 *collection service in connection with a fee or charge imposed or*
 6 *increased pursuant to Section 6 of Article XIII D of the California*
 7 *Constitution, whether the injury arises out of an act or omission*
 8 *of the public entity, a public employee, or any other person, if both*
 9 *of the following apply:*
 10 *(1) The public entity fully complies with subdivision (b) of*
 11 *Section 6 of Article XIII D of the California Constitution.*
 12 *(2) The affected property owners have refused to allow the*
 13 *imposition, extension, or increase of property-related fees or*
 14 *charges for the service.*
 15 *(b) For purposes of this section, “full compliance with*
 16 *subdivision (b) of Section 6 of Article XIII D of the California*
 17 *Constitution” means all of the following apply:*
 18 *(1) Revenues derived from the proposed fee or charge do not*
 19 *exceed the funds required to provide the property-related service.*
 20 *(2) Revenues derived from the fee or charge are not used for*
 21 *any purpose other than that for which the fee or charge was*
 22 *imposed.*
 23 *(3) The amount of the fee or charge imposed on any parcel or*
 24 *person as an incident of property ownership does not exceed the*
 25 *proportional cost of the service attributable to the parcel or person.*

1 (4) *The fee or charge is not imposed for a service unless and*
2 *until that service is actually used by, or immediately available to,*
3 *the property owner in question.*

4 (5) *The fee or charge is not imposed for general government*
5 *services where the service is available to the public at large in*
6 *substantially the same manner it is to property owners.*

7 (6) *The public entity has identified all parcels upon which the*
8 *fee or charge is proposed and calculated the amount of the fee or*
9 *charge to be imposed upon each identified parcel.*

10 (7) *The public entity has provided a written notice by mail of*
11 *the proposed fee or charge to the record owner of each identified*
12 *parcel, in conformance with subdivision (c) of Section 6 of Article*
13 *XIII D of the California Constitution, and provided for all required*
14 *hearings.*

15 *SEC. 2. This act is an urgency statute necessary for the*
16 *immediate preservation of the public peace, health, or safety within*
17 *the meaning of Article IV of the Constitution and shall go into*
18 *immediate effect. The facts constituting the necessity are:*

19 *In order to ensure the continued supply of reliable drinking*
20 *water and to prevent the cessation of services relating to water,*
21 *sewage, and garbage, it is necessary that this act take effect*
22 *immediately.*

23 ~~SECTION 1. Section 815 of the Government Code is amended~~
24 ~~to read:~~

25 ~~815. Except as otherwise provided by statute:~~

26 ~~(a) A public entity is not liable for an injury, whether the injury~~
27 ~~arises out of an act or omission of the public entity, a public~~
28 ~~employee, or any other person.~~

29 ~~(b) The liability of a public entity established by this part is~~
30 ~~subject to any immunity of the public entity provided by statute,~~
31 ~~including this part, and is subject to any defense that would be~~
32 ~~available to the public entity if it were a private person.~~