

AMENDED IN ASSEMBLY MARCH 23, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2023

Introduced by Assembly Member Gallegos
(Principal coauthor: Assembly Member Margett)

February 18, 1998

An act to amend Section 831.8 of the Government Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 2023, as amended, Gallegos. Flood control and water conservation: liability.

Existing law provides that, except as specified, neither an irrigation district nor an employee thereof nor the state nor a state employee is liable ~~under this chapter~~ for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

This bill would provide that neither a public agency that operates flood control and water conservation activities, as specified, nor its employees shall be liable for an injury caused by the condition of streambeds or adjacent groundwater recharge spreading grounds under prescribed conditions.

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 831.8 of the Government Code~~
2 ~~is amended to read:~~
3 ~~831.8. (a) Subject to subdivisions (d) and (e), neither~~
4 ~~a public entity nor a public employee is liable under this~~
5 ~~chapter for an injury caused by the condition of a~~
6 ~~reservoir if at the time of the injury the person injured~~
7 ~~was using the property for any purpose other than that for~~
8 ~~which the public entity intended or permitted the~~
9 ~~property to be used.~~

10 ~~(b) Subject to subdivisions (d) and (e), neither an~~
11 ~~irrigation district nor an employee thereof nor the state~~
12 ~~nor a state employee is liable under this chapter for an~~
13 ~~injury caused by the condition of canals, conduits, or~~
14 ~~drains used for the distribution of water, if at the time of~~
15 ~~the injury the person injured was using the property for~~
16 ~~any purpose other than that for which the district or state~~
17 ~~intended it to be used.~~

18 ~~(c) Subject to subdivisions (d) and (e), neither a~~
19 ~~public agency operating flood control and water~~
20 ~~conservation facilities nor its employees are liable under~~
21 ~~this chapter for an injury caused by the condition of~~
22 ~~streambeds or adjacent groundwater recharge spreading~~
23 ~~grounds if, at the time of the injury, the person injured~~
24 ~~was using the property for any purpose other than that for~~
25 ~~which the public entity intended it to be used, and, if all~~
26 ~~of the following conditions are met:~~

27 ~~(1) The public agency operates and maintains dams,~~
28 ~~pipes, channels, and appurtenant facilities to provide~~
29 ~~flood control protection and water conservation for a~~
30 ~~county whose population exceeds nine million residents.~~

31 ~~(2) The public agency operates facilities to recharge a~~
32 ~~groundwater basin system which is the primary water~~
33 ~~supply for more than one million residents.~~

34 ~~(3) The groundwater supply is dependent on~~
35 ~~imported water recharge which must be conducted in~~
36 ~~accordance with court imposed basin management~~
37 ~~restrictions.~~



1 ~~(4) The basin recharge activities allow the~~
2 ~~conservation and storage of both local and imported~~
3 ~~water supplies when these waters are available.~~

4 ~~(d) Nothing in this section exonerates a public entity~~
5 ~~or a public employee from liability for injury proximately~~
6 ~~caused by a dangerous condition of property if all of the~~
7 ~~following occur:~~

8 ~~(1) The injured person was not guilty of a criminal~~
9 ~~offense under Article 1 (commencing with Section 552)~~
10 ~~of Chapter 12 of Title 13 of Part 1 of the Penal Code in~~
11 ~~entering on or using the property.~~

12 ~~(2) The condition created a substantial and~~
13 ~~unreasonable risk of death or serious bodily harm when~~
14 ~~such property or adjacent property was used with due~~
15 ~~care in a manner in which it was reasonably foreseeable~~
16 ~~that it would be used.~~

17 ~~(3) The dangerous character of the condition was not~~
18 ~~reasonably apparent to, and would not have been~~
19 ~~anticipated by, a mature, reasonable person using the~~
20 ~~property with due care.~~

21 ~~(4) The public entity or the public employee had~~
22 ~~actual knowledge of the condition and knew or should~~
23 ~~have known of its dangerous character a sufficient time~~
24 ~~prior to the injury to have taken measures to protect~~
25 ~~against the condition.~~

26 ~~(e) Nothing in this section exonerates a public entity~~
27 ~~or a public employee from liability for injury proximately~~
28 ~~caused by a dangerous condition of property if all of the~~
29 ~~following occur:~~

30 ~~(1) The person injured was less than 12 years of age.~~

31 ~~(2) The dangerous condition created a substantial and~~
32 ~~unreasonable risk of death or serious bodily harm to~~
33 ~~children under 12 years of age using the property or~~
34 ~~adjacent property with due care in a manner in which it~~
35 ~~was reasonably foreseeable that it would be used.~~

36 ~~(3) The person injured, because of his or her~~
37 ~~immaturity, did not discover the condition or did not~~
38 ~~appreciate its dangerous character.~~

39 ~~(4) The public entity or the public employee had~~
40 ~~actual knowledge of the condition and knew or should~~



1 ~~have known of its dangerous character a sufficient time~~
2 ~~prior to the injury to have taken measures to protect~~
3 ~~against the condition.~~

4 *SECTION 1. Section 831.8 of the Government Code*
5 *is amended to read:*

6 831.8. (a) Subject to subdivisions ~~(e)~~ (d) and ~~(d)~~ (e),
7 neither a public entity nor a public employee is liable
8 under this chapter for an injury caused by the condition
9 of a reservoir if at the time of the injury the person injured
10 was using the property for any purpose other than that for
11 which the public entity intended or permitted the
12 property to be used.

13 (b) Subject to subdivisions ~~(e)~~ (d) and ~~(d)~~ (e),
14 neither an irrigation district nor an employee thereof nor
15 the ~~State~~ state nor a state employee is liable under this
16 chapter for an injury caused by the condition of canals,
17 conduits or drains used for the distribution of water if at
18 the time of the injury the person injured was using the
19 property for any purpose other than that for which the
20 district or ~~State~~ state intended it to be used.

21 (c) *Subject to subdivisions (d) and (e), neither a*
22 *public agency operating flood control and water*
23 *conservation facilities nor its employees are liable under*
24 *this chapter for an injury caused by the condition of*
25 *streambeds or adjacent groundwater recharge spreading*
26 *grounds if, at the time of the injury, the person injured*
27 *was using the property for any purpose other than that for*
28 *which the public entity intended it to be used, and, if all*
29 *of the following conditions are met:*

30 (1) *The public agency operates and maintains dams,*
31 *pipes, channels, and appurtenant facilities to provide*
32 *flood control protection and water conservation for a*
33 *county whose population exceeds nine million residents.*

34 (2) *The public agency operates facilities to recharge a*
35 *groundwater basin system which is the primary water*
36 *supply for more than one million residents.*

37 (3) *The groundwater supply is dependent on*
38 *imported water recharge which must be conducted in*
39 *accordance with court-imposed basin management*
40 *restrictions.*



1 (4) *The basin recharge activities allow the*
2 *conservation and storage of both local and imported*
3 *water supplies when these waters are available.*

4 (d) Nothing in this section exonerates a public entity
5 or a public employee from liability for injury proximately
6 caused by a dangerous condition of property if *all of the*
7 *following occur:*

8 (1) The injured person was not guilty of a criminal
9 offense under Article 1 (commencing with Section 552)
10 of Chapter 12 of Title 13 of Part 1 of the Penal Code in
11 entering on or using the property;

12 (2) The condition created a substantial and
13 unreasonable risk of death or serious bodily harm when
14 such property or adjacent property was used with due
15 care in a manner in which it was reasonably foreseeable
16 that it would be used;

17 (3) The dangerous character of the condition was not
18 reasonably apparent to, and would not have been
19 anticipated by, a mature, reasonable person using the
20 property with due care; ~~and.~~

21 (4) The public entity or the public employee had
22 actual knowledge of the condition and knew or should
23 have known of its dangerous character a sufficient time
24 prior to the injury to have taken measures to protect
25 against the condition.

26 ~~(d)~~

27 (e) Nothing in this section exonerates a public entity
28 or a public employee from liability for injury proximately
29 caused by a dangerous condition of property if *all of the*
30 *following occur:*

31 (1) The person injured was less than 12 years of age;

32 (2) The dangerous condition created a substantial and
33 unreasonable risk of death or serious bodily harm to
34 children under 12 years of age using the property or
35 adjacent property with due care in a manner in which it
36 was reasonably—~~foreseeable~~ *foreseeable* that it would be
37 used;

38 (3) The person injured, because of his *or her*
39 immaturity, did not discover the condition or did not
40 appreciate its dangerous character; ~~and.~~



1 (4) The public entity or the public employee had
2 actual knowledge of the condition and knew or should
3 have known of its dangerous character a sufficient time
4 prior to the injury to have taken measures to protect
5 against the condition.

O

