



# Association of Bay Area Governments

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## EARTHQUAKE HAZARDS AND LOCAL GOVERNMENT LIABILITY

### FINAL REPORT

Submitted by:

Terry Margerum  
Principal Investigator

Any opinions, findings, conclusions  
or recommendations expressed in this  
publication are those of the author(s)  
and do not necessarily reflect the views  
of the National Science Foundation.

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## CREDITS

### ABAG Staff

Terry Margerum - Principal Investigator  
Jeanne Perkins - Regional Planner  
John Evans - ABAG's Legal Counsel  
David Brinkerhoff - Planning Aide  
Don Olmstead - Manager of Information Services

### Consultants

Drossler Research Corporation - Linda Botts, President  
Gary Schwartz - Professor of Law, University of California at Los Angeles

### Review Committee

Robert Brown, Jr. - Geologist, U.S. Geological Survey  
Winfred Carter - Member, Utah Seismic Safety Advisory Council  
Henry J. Degenkolb - President, H. J. Degenkolb and Associates  
(Structural Engineering Consultant)  
Louise Giersch - Vice Chairman, California Seismic Safety Commission  
John H. Larson - County Counsel, Los Angeles County  
James E. McCarty - President, American Public Works Association  
Thomas K. McGuire - Deputy Attorney General, State of California  
Arnold Meltsner - Graduate School of Public Policy, University of California, Berkeley  
Will Perry - Director, Contra Costa County Office of Emergency Services  
H. Roger Pulley - Coordinator of Earthquake Programs, California Office of Emergency Services  
Arvo Van Alstyne - Executive Assistant to the President, University of Utah

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## I. INTRODUCTION

### A. Objectives

The project had three major objectives:

1. Clarify the nature and extent of local government's liability for property damages and personal injury resulting from failure such as these:
  - to mitigate known earthquake hazards
  - to implement adopted policies designed to mitigate earthquake hazards
  - to act or not act pursuant to an officially certified earthquake prediction or warning.
2. Assess the current and potential impact of tort liability on the willingness and ability of local governments to mitigate earthquake hazards.
3. Define alternative legislative and administrative strategies which would help local governments better deal with the potential liabilities in a manner supportive of increased seismic safety for their citizens.

### B. Project Organization

The research work was performed primarily by ABAG staff, with the aid of a legal consultant, Gary Schwartz, and a survey consultant, Drossler Research Corporation.

This work was guided and reviewed on a regular basis by a Review Committee composed of eleven people with expertise and experience in a variety of fields related to the project's mission. (See Appendix D.) The Review Committee was an integral part of the project's research plan and was involved from the beginning in defining the work to be done. All major products of the study were scheduled as inputs to specific Review Committee meetings. During the final phase the Review Committee was instrumental in formulating the policy recommendations on legislative and administrative strategies.

### C. Organization of the Final Report

The final report is organized so that major sections are similar to the project objectives. This report summarizes information in the following project publications:

1. Legal References on Earthquake Hazards and Local Government Liability
2. Experiences and Perceptions of Local Government on Earthquake Hazards and Local Government Liability

3. Will Local Government Be Liable for Earthquake Losses? -- What Cities and Counties Should Know About Earthquake Hazards and Local Government Liability

4. Attorney's Guide to Earthquake Liability

The report concludes with two additional sections:

1. Implementation and Dissemination

2. Project Evaluation and Comments on Future Research Needs

## II. NATURE AND EXTENT OF LOCAL GOVERNMENT LIABILITY FOR HAZARD REDUCTION PROGRAMS

### A. Purposes of the Legal Analysis

By clarifying local government liability, the legal analysis provides better information for government officials making decisions on actions to reduce earthquake hazards.

In addition, it provides a basis for the legislative and administrative recommendations.

### B. Procedure for Focusing the Legal Analysis

The legal analysis focused on four jurisdictions and on selected hypothetical situations. Several criteria were used to narrow the field of 50 states and the United States to a manageable number for study, including:

- o states with a variety of legal theories, structures and procedures
- o states with greater claims experience and a well-developed case law
- o states with histories of earthquakes or other natural disasters.

ABAG staff screened the states and suggested several that meet the criteria: California, Illinois, Washington, Utah, Alaska, New York, Massachusetts, Texas, Florida, Nevada, and Louisiana. The Review Committee further narrowed that list to California, Washington, and New York and added the United States. In addition, the committee members suggested that Alaska should be studied if time was available.

Three basic criteria were used in selecting the issues and hypothetical situations studied:

- o those mentioned in the proposal
- o those perceived by local governments as most needing clarification
- o those cases where local government action is a problem

ABAG staff, based on these criteria, suggested that the following general questions should be addressed fully:

- o What are the implications of prior knowledge?
- o What is the potential liability for actions taken or not taken based on inaccurate information?



- o What changes in liability occur when earthquake safety legislation converts a previously discretionary function into a mandatory duty?
- o What are the potential liabilities for failure to implement adopted policies when such failures results in death, injury or property loss?
- o What are the potential liabilities for actions taken or not taken pursuant to an officially certified earthquake prediction?

The Review Committee added the following:

- o What are the uses and limitations of the discretionary immunity?
- o What are the liabilities associated with dangerous conditions of public--as opposed to private--property?
- o What are the liabilities for inspection of private property and enforcement of building code standards, housing standards, occupancy standards and planning requirements?

ABAG staff developed several hypothetical cases to be examined. The Review Committee recommended that the selection of cases be left to the discretion of the legal consultant with the understanding that several core cases would emerge from the site visits and survey of local governments (discussed in the following section).

### C. Summary of Findings of the Legal Analysis

Historically, governmental immunity from tort liability (also known as "sovereign immunity") arises from the common law notions that the sovereign could do no wrong and could not be sued in its own courts without its consent. The jurisdictions studied (California, New York, Washington, and the United States)\* are representatives of a strong, modern trend toward greater governmental exposure to liability and have abandoned sovereign immunity while retaining some immunities in limited form, e.g., immunities relating to discretionary activity. The "discretionary immunity" is founded in part upon the doctrine of separation of powers between co-equal branches of government and generally insulates from liability the policy-level functions of government (e.g., planning, policymaking, high-level, initiative, governmental or regulatory functions) as distinct from operational functions (e.g., ministerial, mandatory, housekeeping, lower-ranking activities or activities akin to those in private enterprises). In addition to immunities from liability,

\*Alaska was also studied in lesser detail.

courts have circumscribed governmental liability in some instances where they find that the public entity owes the injured persons no "affirmative duty" (e.g., to prevent harm the public entity has not caused).

The California Tort Claims act of 1963 is the basic statutory reference in California law relating to governmental tort liability. Under the Tort Claims act, government is immune from such liability unless the act provides otherwise. There is a rule of "vicarious liability" wherein public employees and, as a result, public employers, are liable, generally speaking, in the same circumstances as private persons subject to certain limited immunities. There are instances of "direct liability", notable examples of which are governmental liability for dangerous conditions of public property and liability for failure to discharge a "mandatory duty" imposed by enactment (which may possibly include the jurisdiction's own enactments).

The Federal Tort Claims Act imposes vicarious liability on the federal government for torts of its employees and creates immunity for discretionary acts and a number of intentional torts. The State of Washington abolished sovereign immunity but has no comprehensive tort claims act. Draft legislation sponsored by Washington public entity attorneys has been introduced which would create new immunities for permit issuance, inspections, and the design of certain public facilities. Washington courts already recognize a discretionary immunity. The State of New York waived sovereign immunity in 1929 but no comprehensive tort claims act has been enacted. In 1962, Alaska waived sovereign immunity by statute. Alaska has a discretionary immunity. By amendment to the Alaska Statute in 1977 a number of specific immunities have been added to cover: inspections, failure to abate health or safety violations, permit issuance or denial, extraterritorial services, and emergency activities.

In an earthquake warning or prediction situation, potential liability could arise from negligent issuance or failure to issue the warning or negligence in gathering the information upon which the decision to warn is based. California and federal law provided immunity against liability for misrepresentation which may be helpful in such instances, but its application and efficacy in an earthquake warning situation is uncertain. Recently, the California Tort Claims Act has been amended, adding Government Code Section 955.1, an expressed discretionary immunity for the Governor as relates to his decisions to issue or withhold an earthquake warning. The new section does not appear to extend to other governmental employees or officials and may leave their activities exposed to potential liability. Further, a court might find against liability in an earthquake warning case because the public entity owed no "affirmative duty" to the injured, absent a governmental default in an aggravated factual situation where citizens have justifiably relied on governmental earthquake warnings to the point of foregoing their own self-protective efforts.

There are no cases related to governmental liability for collapse of a private building as a result of earthquakes. However, by examining the related case law respecting fire safety and building provisions, one can consider potential claims for negligent inspection, failure to inspect, failure to enforce code or safety regulations, and issuance of permits. While the courts' perception of the government's "affirmative duty" to prevent harm will vary on the facts from case to case, lack of such duty remains an initial barrier to liability. Generally, there would be little prospect of governmental liability unless a private building actually violated safety laws and the public entity itself was violating law in failing to detect or take action. Generally, liability is more likely where the public entity knows of and has negligently ignored a building hazard rather than where it has merely failed to discover the hazard.

The California Tort Claims Act provides a number of immunities applicable in the situation involving collapse of a private structure. With respect to permits, licenses, and the like, Government Code §818.4 immunizes local government against liability caused by issuance, denial, suspension or revocation, or failure or refusal to issue, deny, etc. §§818.6 and 818.2 immunize against negligent inspection or failure to inspect and failure to enforce a law, respectively. However, since the court's decision in Morris v. Marin County, these immunities have been considerably narrowed. After Morris, where the public entity is under "mandatory duty" to take certain actions (e.g., to enforce the building code), this may override immunities under §§818.2 and 818.4, leaving an exposure to potential liability. In light of Morris, one can review various state enactments: the Riley Act, the State Housing Act, the Alquist-Priolo Act, and hospital and dam safety legislation--and conclude that some may impose "mandatory duties" on local governments.

Generally, a public entity may be liable for injuries caused by a dangerous condition of public property. The condition must have been caused by the negligence of a public employee or the public entity must have actual notice or constructive notice (i.e., the condition should have been discovered by the public entity) of the condition's existence. The public entity may avoid liability by establishing that either the creation of the dangerous condition or its failure to maintain or repair the condition is "reasonable" when considered in light of the practicability and cost of alternative measures not taken as against the probability and gravity of injury.

Where the dangerous condition is allegedly created by the plan or design of the public structure, the "design immunity" may protect against liability. For this immunity the plan or design must have been approved at a discretionary level and supported by substantial evidence that it was a reasonable decision. In Cameron v. State, the California Supreme Court held that the particular design feature in question must have been actually and explicitly

considered in making the design decision. Further, the public entity must not be negligent in failing to give a reasonable warning to the public of the dangerous condition. In Baldwin v. State the court held that "changed conditions" subsequent to the original approval of the design or plan demonstrating a substantial danger in the design may render the "design immunity" inapplicable. One result of these cases may be claims against a public entity for injuries sustained in a public structure that failed in an earthquake where the public entity failed to alter or modify the structure after receiving post-design approval and pre-quake knowledge of changed conditions rendering the building vulnerable in a seismic event. To what extent the budgetary constraints of the public entity will mitigate its liability in light of inaction in a "changed circumstances" case is uncertain.

By court decisions, New York has established "design immunity" rules similar to those in California. In Washington and Federal cases a central issue to liability for dangerous conditions of public property concerns the discretionary nature of the allegedly negligent governmental conduct.

While local governments in California have a mandatory duty to adopt Seismic Safety Elements for their General Plans, failure to adopt such an Element will probably not result in tort liability in the event of an earthquake because of the difficulty of showing that the failure was a legal cause of injury. However, where a public entity has adopted a Seismic Safety Element and fails to implement mandatory portions of it, the Morris caseholding may negate any claim of immunity based on §818.2 for failure to adopt or enforce the law. There are a variety of "immunities" for various functions performed in a declared emergency.

More detailed information is contained in the reports Legal References on Earthquake Hazards and Local Government Liability and the Attorney's Guide to Earthquake Liability. The former report gives a general explanation of governmental tort liability and immunity rules (with special attention to discretionary immunities) for the jurisdictions studied. The report considers the potential for governmental tort liability from injuries arising in several different ways: earthquake prediction/warning; collapse or failure of private structures; and collapse or failure of public buildings. The Attorney's Guide supplements this information with a technical discussion of legal strategies to deal with existing law.

#### D. Major Conclusions

1. Uncertainty in tort law is real and widespread. It has risen out of the desire to allow the law to be able to respond to varying circumstances.
2. There are three significant disincentives to earthquake hazard reduction in the current law:

- o actual notice or knowlege rules--While it makes sense not to hold government liable for a hazard of which it is unaware, the unintended effect of this rule is to discourage local governments from aggressively seeking information through regular inspection programs or surveys of hazardous buildings.
  - o mandatory (or obligatory) duty rules--Local enactments may impose obligatory duties, for which noncompliance could result in liability. This fact gives local government an incentive to avoid adopting such ordinances or to word them so as to avoid creating a mandatory duty.
  - o affirmative duty/undertaking rules--If a jurisdiction voluntarily undertakes to provide a certain service, it may increase its potential liability if it performs that service negligently or--having caused people to rely on the service--fails to perform at all.
3. There are legal and administrative strategies by which local government can minimize liability independent of what they are doing about hazards.

### III. ASSESSMENT OF CURRENT AND POTENTIAL IMPACTS OF TORT LIABILITY ON LOCAL HAZARD REDUCTION PROGRAMS

#### A. Purposes of Gathering Information on Perceptions of Liability

A better understanding of the impact of tort liability rules on local governments' decisions regarding earthquake hazards can only be achieved by analyzing the experiences and perception of local government. Together with the legal analysis, it forms the basis for the recommendations in the next section.

#### B. Procedure for Gathering Information on the Perceptions of Liability

Information was collected through a combination of personnel interviews in six jurisdictions (five of them sites of recent earthquakes), and a mail survey of 88 local governments in Alaska, California, Utah and Washington.

Initially, site visits were planned only for places that had experienced a recent earthquake since officials in such places would be most likely to be aware of earthquake issues. The areas of Anchorage (Alaska), Puget Sound-Seattle (Washington), Santa Rosa (California), San Fernando (California), and Oroville (California) were chosen by the project's Review Committee. In addition, at the suggestion of that Committee, Ventura (California) was added because of the controversy over a proposed designation of an Alquist-Priolo Special Studies Zone on the Ventura fault. At each site, individual interviews were held with key officials of the current administration and those in office at the time of the earthquake, if appropriate. Such officials included, at a minimum, an elected official, the chief administrative officer, the planning director, the chief building inspector, the director of emergency services and the legal counsel. (See Table 1, below.)

ABAG staff, working with its survey consultant, Drossler Research Corporation in San Francisco, surveyed up to five officials (chief elected official, chief administrative officer, legal counsel, chief building inspector, and planning director) in each of the 88 jurisdictions. Drossler Research selected the sample designed to include a range of size as well as level of relative seismic risk.\* (See Table 2, below.) Drossler Research collected the questionnaires and coded the answers.

The questions in the survey varied slightly, depending on the type of official. In general, it was divided into a preliminary information section on the official and three substantive sections. Section I dealt with an overview of earthquake hazards and programs in the officials' jurisdictions. Section II dealt with the officials' attitudes toward tort liability, and Section III dealt with insurance and risk management. The responses to the questions are discussed in the following sections under the findings and conclusions which they support.

\*The zone was assigned by staff from a map compiled by the Applied Technology Council from a study funded by NSF.

**TABLE 1  
PEOPLE INTERVIEWED ON SITE VISITS**

**ANCHORAGE, ALASKA**

Anchorage

George Sullivan, Mayor  
Arliss Sturgulewski, Municipal Assembly Member  
Douglas Weiford, Municipal Manager  
Mike Meehan, Planning Director  
Jim Swing, Director of Public Works  
E. Odin Strandberg, Building Official  
Ed Hite, Risk Manager  
Bruce Staser, Civil Defense Director

Others

Nancy Gross, Barb Hill, and Ray Pierce, Planning Commissioners  
Bill Pyle (geologist) and John Aho (structural engineer), Geotechnical Commissioners  
Jim Rooney (geotechnical consultant), Gordon Union, (civil engineer), and Tony Burns, (planning staff)  
Larry Makinson, Reporter and Producer for Channel 7 KAKM, the local public T.V. station

**OROVILLE, CALIFORNIA\***

City of Oroville

David Jenkins, City Administrator  
Bill Harrelson, Director of Public Works  
Eugene Ludwig, Fire Chief and Disaster Coordinator  
George Barr, Building Inspector  
Eugene Sylva, Mayor  
C. Keith Lyde, City Attorney

Butte County

Bob Winston, Chairman of the Board of Supervisors (former Mayor of Oroville)

Others

John Nolan, currently City Manager of Piedmont and former City Administrator of Oroville

**SAN FERNANDO, CALIFORNIA**

City of San Fernando

Joseph Comstock, City Administrative Officer  
Lawrence Dick, Mayor  
Rudy Gunnarson, Director of Building and Planning  
Pat Coughlan, City Attorney  
Neville Lewis, former City Attorney

City of Los Angeles

Dr. Irwin Piper, City Administrative Officer  
Mike Regan, Disaster Coordinator  
Jack Pratt, Head of the Building and Inspection Department, and two of his staff, John Roth and Earl Schwartz  
John Neville, Senior Assistant City Attorney (in charge of liability administration)  
William Burge, Assistant City Attorney (in charge of land use, building and safety)

County of Los Angeles

Robert Neiman, Disaster Coordinator  
Robert Lynch, Deputy County Counsel  
Baxter Ward, Supervisor  
Coleman Jenkins, Assistant Chief Deputy County Engineer  
Harvey Brandt, former Los Angeles County Engineer

**SANTA ROSA, CALIFORNIA\*\***

City of Santa Rosa

Ken Blackman, City Manager  
Jim Burns, Director of Community Development  
Michael Turnick, Fire Chief and Disaster Coordinator  
Dan Morton, Building Officer  
C. R. Guggiana, Mayor  
Derek Simmons, City Attorney  
Jack Ryerson, former Mayor  
John Flitner, former City Attorney

Sonoma County

James Botz, County Counsel

**SEATTLE, WASHINGTON**

City of Seattle

William Justin, Superintendent of Buildings  
Paul Hanson, Manager of Field Inspection, Building Department  
Don Swenson, Supervisor of Plan Check Section, Building Inspection Department  
Phil Sherborn, Planning Director  
Sam Smith, City Councilman  
Douglas Jewitt, City Attorney  
Jerry Wetsel, Deputy City Attorney, Chief of Torts Section  
Diane Priest, Legal Assistant, City Attorney's Office

King County

John D. Spellman, County Executive  
Mike Duggan, Deputy Attorney, King County Prosecuting Attorney's Office  
Joe Gady, King County Risk Manager  
Karen Rahm, Manager of Planning  
Charles Fulmer, Earth Scientist and Geologist  
Dave Peterson, King County Building Supervisor  
Bill Ammons, Chief of Building and Lands Department  
Bruce Olsen, Private Consultant - Architect  
Robert R. Grieve, King County Councilman

Seattle Public Schools

Gary Little, General Counsel

**VENTURA, CALIFORNIA**

City of Buenaventura

Ed McCombs, City Manager  
Paul Berlant, Planning Director  
Jack DeJong, Supervisor of Building and Safety and his assistant, Mark Kluver  
David Gardner of Geotechnical Consultants, Inc., a consulting firm working for the City  
Donald Greenberg, City Attorney

Ventura County

Blase Cilweck, County Geologist  
Dorothy Schechter, County Counsel, and Jack Butt, Chief Deputy in Charge of Tort Liabilities  
Robert E. Stine, County Risk Manager

Others

George Pope, Chief of Codes and Inspection for the City of Berkeley and Building Inspector for Ventura from 1969 to 1970

\*All people interviewed were in Oroville at the time of the earthquake except for Mr. Jenkins.

\*\*With the exceptions of Messrs. Burns and Simmons, all parties were present in Santa Rosa during the earthquakes. Most were in positions similar to their present ones.

TABLE 2  
SIZES AND SEISMIC RISKS ASSIGNED JURISDICTIONS SURVEYED

Jurisdiction	Size	Seismic Risk	Jurisdiction	Size	Seismic Risk	Jurisdiction	Size	Seismic Risk
<b>CALIFORNIA CITIES</b>								
Beumont	A	7	Amador	B	4	<b>WASHINGTON CITIES</b>		
Buena Park	B	7	Imperial	B	7	Bellvue	B	5
Carmel By The Sea	A	7	Merced	C	7	Buckley	A	5
Carpinteria	A	7	Sacramento	D	5	Camus	A	3
Coachella	A	7	San Diego	D	7	Chelan	A	5
Coalinga	A	7	San Mateo	D	7	Des Moines	A	5
Corona	B	7	Santa Clara	D	7	Ellensburg	A	5
Cupertino	B	7	Santa Cruz	C	7	Kent	A	5
Dixon	A	7	Solano	C	7	Moses Lake	A	3
Fresno	C	7	Sonoma	C	7	Richland	B	2
Gonzales	A	7	<b>ALASKA CITIES</b>			Spokane	C	2
Grover City	A	7	Fairbanks	B	6	Sunnyside	A	5
Healdsburg	A	7	Juneau	A	6	Tocoma	C	5
Hermosa Beach	B	7	Ketchikan	A	7	Toppenish	A	3
Irvine	B	7	<b>ALASKA BOROUGHS</b>			<b>WASHINGTON COUNTIES</b>		
La Puente	B	7	Fairbanks	B	6	Clallam	B	5
Loma Linda	A	7	North Star	B	7	Grays Harbor	B	3
McFarland	A	7	Kenai Peninsula	B	7	Kitsap	C	5
Milpitas	B	7	Ketchikan Gateway	B	7	Okanogan	B	5
Montebello	B	7	Kodiak Island	A	7	Thurston	B	5
Morgan Hill	A	7	Matanuska-Susitna	B	7			
Oakland	D	7	North Slope	B	1			
Pacifica	B	7	Sitka	A	7			
Palmdale	C	7	<b>UTAH CITIES</b>					
Pasadena	B	3	American Fork	A	5			
Redding	B	7	Logan	A	5			
Redondo Beach	B	7	North Ogden	A	5			
San Bernardino	C	7	Salt Lake City	C	5			
San Diego	D	7	South Jordan	A	5			
San Francisco	D	7	Spanish Fork	A	5			
San Jose	D	7	<b>UTAH COUNTIES</b>					
San Rafael	B	7	Davis	C	5			
Saratoga	B	7	Garfield	A	3			
Tehachapi	A	7	Sevier	B	5			
Temple City	B	7	Weber	C	5			
Whittier	B	7						
Antioch	B	7						
Fremont	C	7						
Napa	B	7						
Sacramento	C	7						

EXPLANATION

Size Codes

- A - 2,500-10,000
- B - 10,000 - 100,000
- C - 100,000 - 300,000
- D - 300,000 or more

Relative Seismic Risk Codes

- 1 - Extremely Low
- 2 - Low
- 3 - Moderately Low
- 4 - Moderate
- 5 - Moderately High
- 6 - High
- 7 - Extremely High



C. Summary of Findings on Perceptions of Liability

Only a few local officials have observed concern about liability for earthquake hazards. However, more officials have observed concern in areas of greater seismic risk or in areas that have had recent earthquakes.

An uncertainty and a lack of understanding of liability outcomes is present in all states studied and all types of officials surveyed. The uncertainty was indicated by two separate sources:

- o mixed responses to questions about whether there would be liability in a series of hypothetical cases
- o the widely held response that tort law can be so unpredictable that it is difficult to know the liability implications of a decision.

Self-insurance and risk management systems are increasing local officials awareness of liability as a factor in decision-making.

Most officials questioned do not favor changing tort rules to encourage local government action. Of those suggesting such changes, more favor clarifying the law and guaranteeing more immunity for certain actions.

More detailed information is contained in the report on Perceptions and Experiences of Local Government.

D. Major Conclusions on the Impact of Tort Law on Local Government Behavior

1. Potential liability for earthquake hazards is not yet a major concern of most local governments. Therefore, its current impact is negligible.
2. Nearly all jurisdictions with recent earthquake experience have thought about their potential liability and in some cases this has influenced their behavior.
3. The uncertainty of tort law inhibits its effectiveness and distorts its impact on local government decisions. The result is that liability rules are having a mixed impact, sometimes acting as an incentive to hazard reduction and sometimes having the opposite effect.
4. Without significant changes in tort law, liability considerations will rarely be the most important factor in decisions about earthquake hazards.
5. Liability probably will become a more important factor in seismic safety decisions in the future due to:

- o more local governments becoming self-insured and instituting risk management programs
  - o increasing frequency and visibility of liability suits
  - o the belief among attorneys that liability is a major factor in decisions about other hazards
  - o increasing public and media awareness of earthquake hazards.
6. Potential liability could become a significant incentive to reduction of earthquake hazards associated with property owned by local governments.
  7. Many local government officials believe the current law is a disincentive to hazard reduction.

#### IV. RECOMMENDATIONS FOR POSSIBLE ADMINISTRATIVE AND LEGISLATIVE CHANGES

##### A. How Local Government Can Best Cope With Its Potential Liability Related to Earthquake Hazard Reduction

1. Educational materials and presentations should be organized to give local governmental officials a continuing exposure to concepts of liability law.
2. Liability suits pending against the local government should be the subject of regular review and discussion among elected officials and staff.
3. Local governments should ascertain duties imposed upon them and should fulfill them.
4. Care should be exercised by local governments in the creation of duties. Duties that cannot or will not be fulfilled should not be imposed upon the local government by itself (or by the State government).
5. Local governments should take care in assuming affirmative duties. Where a local government has no duty to aid or rescue others from peril or risk of harm, it should recognize that the giving of such aid or rescue, if not carefully carried out, may be the basis of negligence liability.
6. Sensitive earthquake hazard decisions that may entail creating or continuing a risk of injury to others should be made by elected or high level administrative officials in the exercise of their (general policy) discretionary functions.
7. To be protected by the discretionary immunity, the local government decisionmaker must consider the risks that could lead to injury and assume them in order to gain other policy objectives or benefits.
8. Local government should be familiar with the design immunity rule and its limitations.
9. Local governments should institute and operate a reasonable inspection system designed to inform them whether their public properties are safe.
10. Local governments should be aware that public property may be considered dangerous if a condition on adjacent private property (e.g., parapets, cornices, or collapsing structures) exposes those using the public property to substantial risk of injury.
11. Local governments should establish a risk management system.
12. Local governments should investigate pooling arrangements for liability insurance against earthquake hazards.

13. Local governments that know or suspect significant earthquake hazards within their jurisdictions and feel they have insufficient resources for mitigating them should examine or re-examine the wisdom of self-insurance.

B. Recommended Changes in State Policies

**RECOMMENDATION I**

Legislation should be enacted clarifying local government's potential liabilities arising from earthquakes and reducing tort law disincentives to reduction of earthquake hazards. Major components of this legislation are described below.

A. DANGEROUS CONDITIONS OF PUBLIC PROPERTY

- 1) The legislation would require the State, within a specified period, to notify local governments (general purpose and other local public entities) whether they are located wholly or partly in an area of significant seismic risk.\* Prior to such notification, local governments would be immune from liability for personal injuries, death or property damages caused in an earthquake due to dangerous conditions of public property. After such notifications:

local governments NOT in a seismically hazardous area would retain this immunity;

local governments which ARE in a seismically hazardous area could retain this immunity if they met the following requirements:

- a) Within one year inspect all their publicly-owned properties included in an area of seismic risk for the purpose of determining whether any of such properties pose a potential hazard to life or privately owned property as a result of an earthquake;
- b) Within one year after completing the inspection of public properties, the local governments adopt a plan to mitigate the hazards identified in the inspection program. Specific mitigation measures and their timing would be established by the local governments; and
- c) Thereafter, the local governments must be in reasonable compliance with their adopted mitigation plans.

\*All of California should be considered an area of significant seismic risk.

**Intended Impact -- reduce uncertainties about potential liability;**

**encourage local governments to discover and mitigate earthquake hazards on public property.**

A possible alternative to RECOMMENDATION A-1, which merits further study, would be legislation requiring the State to establish a voluntary earthquake liability insurance program. The insurance would be available at no cost to any local government which met the hazard mitigation conditions described above.

- 2) The legislation would provide that where a local government is held liable for injury or damage sustained in an earthquake due to a dangerous condition of public property caused by the condition of adjacent private property (e.g., a private parapet falling on a public sidewalk), the local government's liability would be limited in direct proportion to its share of the negligence causing the loss.

**Note: In legal terms this would mean abandonment of the rule of joint and several liability among concurrent tortfeasors in favor of a rule of several liability as to local defendants in such cases.**

**B. HAZARDOUS PRIVATE PROPERTY**

- 1) To encourage the voluntary rehabilitation and improvement of older buildings, the legislation would provide that a local government may adopt an "earthquake life-safety standard" less rigorous than the currently applicable building code. Its purpose would be to reduce the chances of personal injury in such buildings, not to minimize property damage. A local government would have no liability for personal injuries, death or property damages sustained as a result of an earthquake in or because of such rehabilitated buildings by reason of the local government's adoption and enforcement of such life-safety standards.

**Note: The specific minimum standards for such a life-safety code will be those recommended by the California Seismic Safety Commission.**

**Intended Impact -- encourage reduction of earthquake hazards in older, marginally economic buildings.**

- 2) The legislation would provide that actual or constructive notice of dangerous condition of private property cannot be a source of local government liability for injuries or loss caused by an earthquake unless:

- a) the injury was caused by a failure of the local government to comply with a statutory or mandatory duty; or
- b) the injury occurred on public property which was dangerous because of a known dangerous condition of private property, e.g., private parapet falling on a public sidewalk.

**Intended Impact -- reduce uncertainties regarding potential liability;**

**reduce disincentives to local government discovery of earthquake hazards on private property.**

- 3) The legislation would provide that where a local government is held liable for injury or damages sustained in an earthquake on private property, the local government's liability would be limited in direct proportion to its share of the negligence in causing the loss.

**Note:** In legal terms this would mean abandonment of the rule of joint and several liability among concurrent tortfeasors in favor of a rule of several liability as to local defendants in such cases.

**Intended Impact -- reduce disincentives by discouraging irresponsible claims against the "deep pocket" of local government.**

#### C. EARTHQUAKE PREDICTION AND WARNING

- 1) The legislation would provide that the State\* and its agencies would be immune from liability for personal injuries, death or property damages including injuries to commercial and business interests caused by the issuance or non-issuance of an earthquake warning or prediction; or any acts of omissions in the fact-gathering, evaluation and other activities leading up to issuance or non-issuance of such a warning or prediction.
- 2) The legislation would make it clear that a "state emergency" can be declared by authorized State or local officials based on a credible earthquake prediction or warning. Furthermore, such a declaration would provide State and local governments with the immunities provided in the California Emergency Services Act.\*\*

\*In California this would mean the Governor and all members of the California Earthquake Prediction Evaluation Council.

\*\*California Government Code Section 8550 et seq, Civil Code 1714.5. (A copy is in the Legal References on Earthquake Hazards and Local Government Liability).

**Intended Impact -- reduce uncertainties about potential liability;**

**reduce potential liability of local government;**

**reduce disincentives to a prompt and effective government performance in response to an earthquake prediction or warning.**

**RECOMMENDATION II**  
(California only)

- A. The State Attorney General should issue clarifying opinions on the following:
- 1) Whether or not a local government's own enactments can impose mandatory duties upon the local government and/or other public entities located within its jurisdiction.
  - 2) Whether or not new information received by a public entity about earthquake hazards to public property can constitute "changed circumstances" within the rule of Baldwin v. State (6 C3d 424; 99 Cal. Rptr. 145).

**Intended Impact -- reduce uncertainty**

**RECOMMENDATION III**

Appropriate state agencies should examine the feasibility of a long-term capital improvement program to reduce earthquake hazards in certain public structures and facilities. These would include high occupancy structures, lifelines, buildings, occupied involuntarily or by partially dependent populations (e.g., schools, hospitals, jails, courthouses), and critical or emergency facilities.

Through matching grants, the State would provide 90% of the funding necessary to reduce hazards. To provide an opportunity for identification and reduction of hazards without fear of liability, local governments would be immune for a specified period (ten years, for example) from liability for injuries or damages sustained as a result of an earthquake if the local government was making reasonable progress towards reducing earthquake hazards in such structures during the specified period.

**Intended Impact -- accelerate reduction of earthquake hazards in public structures**

## V. IMPLEMENTATION AND DISSEMINATION

### A. Introduction

The project's findings were released in two major forms: A conference held in December 8, 1978, and the publication of three reports.

### B. Conference

A conference was held in San Francisco which 225 attended. Local planners, building officials, administrators and emergency officials attended, and well as representatives of state and federal government. Most attendees were from California, but officials from Alaska, Kentucky, Nevada, Utah, Washington, and Washington, D.C. also were present.

The conference was organized into four panel discussions, two in the morning and two in the afternoon. The panels were:

- 1) Can local governments be held liable for injuries and damage caused by their failure to reduce known or suspected earthquake hazards?
- 2) How does potential liability affect local government decisions about earthquake hazards?
- 3) How can local government best cope with its potential liability related to earthquake hazards?
- 4) Recommend changes in State policies.

Summaries for the formal presentation for each panel were included in the conference agenda packet. After each formal presentation, invited comments on the talk were made by two people and questions from the audience were answered. A copy of the full agenda is included in Appendix A.

### C. Publications

The project has resulted in four major publications:

- o Legal References on Earthquake Hazards and Local Government Liability
- o Will Local Government Be Liable for Earthquake Losses?--What Cities and Counties Should Know About Earthquake Hazards and Local Government Liability
- o Attorney's Guide to Earthquake Liability
- o Executive Summary - Earthquake Hazards and Local Government Liability



TABLE 3  
DISTRIBUTION LIST FOR EARTHQUAKE LIABILITY REPORTS

SAN FRANCISCO BAY REGION

1. All Elected Officials
2. Chief Administrative Officers
3. Planning Directors
4. Persons interested in earthquake programs
5. City and County Attorneys
6. Risk Managers
7. Building Officials

REST OF CALIFORNIA

8. Chief Elected Officials
9. Chief Administrative Officers
10. City and County Attorneys
11. Risk Managers
12. California State Association of Counties
13. California League of Cities
14. California State Bar Association
15. California Councils of Government

OTHER STATES (13 most earthquake-prone)

16. Leagues of Cities
17. County Associations
18. Attorney Generals
19. State Bar Associations
20. Utah Seismic Safety Council
21. Jurisdictions surveyed in study
22. Jurisdictions interviewed in study

NATIONAL

23. National League of Cities
24. National Association of Counties
25. National Association of Regional Councils
26. National Institute of Law Officials
27. Advisory Commission of Intergovernmental Relations
28. Natural Hazards Research & Applications Info. Center
29. FDAA, Department of Housing & Urban Development
30. American Trial Lawyers Association
31. American Public Works Association
32. International City Managers Association
33. National Governors' Conference
34. Alan Cranston
35. S.I. Hayakawa
36. Insurance Services Office

EARTHQUAKE LIABILITY CONFERENCE ATTENDEES

	Local Officials Report	Executive Summary	Attorney's Guide	Legal Reference Report	Draft Legislation
	X				
1. All Elected Officials	X				
2. Chief Administrative Officers	X				
3. Planning Directors	X				
4. Persons interested in earthquake programs	X				
5. City and County Attorneys			X	X	
6. Risk Managers	X				
7. Building Officials	X				
8. Chief Elected Officials		X			
9. Chief Administrative Officers	X				
10. City and County Attorneys			X	X	
11. Risk Managers	X				
12. California State Association of Counties	X	X	X	X	X
13. California League of Cities	X	X	X	X	X
14. California State Bar Association			X		
15. California Councils of Government	X	X	X	X	X
16. Leagues of Cities	X	X	X	X	X
17. County Associations	X	X	X	X	X
18. Attorney Generals			X	X	X
19. State Bar Associations			X	X	X
20. Utah Seismic Safety Council	X	X	X	X	X
21. Jurisdictions surveyed in study	X	X	X		
22. Jurisdictions interviewed in study	X				
23. National League of Cities	X	X	X	X	X
24. National Association of Counties	X	X	X	X	X
25. National Association of Regional Councils	X	X	X	X	X
26. National Institute of Law Officials			X	X	
27. Advisory Commission of Intergovernmental Relations	X		X	X	
28. Natural Hazards Research & Applications Info. Center	X	X	X	X	X
29. FDAA, Department of Housing & Urban Development	X				
30. American Trial Lawyers Association			X	X	
31. American Public Works Association	X		X		
32. International City Managers Association	X		X	X	
33. National Governors' Conference	X	X	X		X
34. Alan Cranston	X	X	X	X	
35. S.I. Hayakawa	X	X	X	X	
36. Insurance Services Office	X		X	X	
EARTHQUAKE LIABILITY CONFERENCE ATTENDEES	X		X	X	

As mentioned in the Introduction, these reports are supplementary to this final report. In addition to the requests made by people attending the conference, these publications were automatically distributed to those officials listed in Table 3, below. A fifth report, on Experiences and Perceptions of Local Government on Earthquake Hazards and Local Government Liability, was mailed to the participants in the survey and site visits.

Formal presentations have been made to the following groups:

- o California Earthquake Prediction Evaluation Council
- o County Supervisors Association of California -  
Legislative Committee
- o Berkeley Council of Neighborhood Associations
- o Federal Discussion Group on Disaster Mitigation

A magazine article appeared in the February 1979 issue of Western City, published by the California League of Cities, and an article is scheduled for the June issue of the California Journal.

Over fifty newspaper articles have been written on the project's findings. The principal investigator was interviewed by the local ABC television station and appeared on prime time news the evening of the conference. The principal investigator also was the guest on an UHF channel 26 half-hour program, Today/Tomorrow, which was shown at 8 p.m. on April 23, 1979, and at 2 p.m. on April 28th.

A letter requesting the California Attorney General's opinions has been sent and an unofficial reply received. A second letter was sent by the California Office of Emergency Services. The reply is enclosed as Appendix B.

The proposed legislative changes for California have been drafted into AB 785. The Joint Committee on Tort Liability of the California Legislature was involved in that work. Assemblyman Knox has introduced the legislation. (See Appendix C.)

## VI. PROJECT EVALUATION AND COMMENTS ON FUTURE RESEARCH NEEDS

ABAG staff and the Review Committee believe that the project has satisfied the work objectives stated in the proposal for the work.

In addition, the research confirmed the three major concerns of ABAG's member governments that led ABAG to undertake this study, that is:

- 1) the uncertainty and unpredictability of tort liability rules;
- 2) the legal disincentives to discovering and reducing hazards;
- 3) the fear that local government was unaware of the issue of liability related to earthquakes because they hadn't thought how recent public liability trends could be relevant to earthquake hazard reduction.

During the research, the relationship between liability and local government earthquake liability insurance surfaced several times. Further research is needed on liability insurance as well as on legislation requiring the State to establish a voluntary earthquake insurance program.

In addition, some members of the California Seismic Safety Commission were concerned about parallel liability questions in the private sector. Although many of the incentives and disincentives of current law may be similar to that for local public entities, further research is needed to provide the technical basis for possible institutional and legal recommendations.

A G E N D A

**EARTHQUAKE HAZARDS AND LOCAL GOVERNMENT LIABILITY**

Friday, December 8, 1978  
Colonial Room, St. Francis Hotel, San Francisco

**8:45 a.m.** REGISTRATION (Coffee will be served)

**9:15** WELCOMING REMARKS

**Revan A. F. Tranter**, ABAG Executive Director

**9:25** **KEYNOTE SPEAKER**

State Assemblyman **John Knox**, Richmond, California  
Chairman of the Joint Legislative Committee  
on Tort Liability

**9:45** WHAT TO EXPECT TODAY

**Terry Margerum**, ABAG Project Director

**10:00** **PRESENTATION AND DISCUSSION OF MAJOR FINDINGS:**

to  
**NOON**

Discussion Moderator:  
Professor **Arnold Meltsner**, University of California, Berkeley  
Chairman, Project Advisory Committee

**10:00-** **Panel #1 - Can Local Governments Be Held Liable For Injuries And**  
**11:00** **Damage Caused By Their Failure To Reduce Known Or Suspected**  
**Earthquake Hazards?**

Presentation: Professor **Arvo Van Alstyne**, University of Utah  
Former consultant to the California Law  
Revision Commission

Comment: **Douglas Jewett**, City Attorney  
Seattle, Washington  
**John Larson**, County Counsel  
Los Angeles, California

**11:00-** **Panel #2 - How Does Potential Liability Affect Local Government**  
**NOON** **Decisions About Earthquake Hazards?**

Presentation: **Terry Margerum**, ABAG Project Director

Comment: **Ken Blackman**, City Manager,  
Santa Rosa, California  
**Earl Schwartz**, Chief, Earthquake Safety Division  
City of Los Angeles

-- Agenda continued on next page --

A G E N D A  
(continued)

**NOON** NO HOST COCKTAILS AND LUNCH (in the California West Room)

**1:15 p. m.** **LUNCHEON SPEAKER**

Dean Allen Smith  
School of Law, University of Missouri

Topic: **Should Tort Law Be Changed To Encourage Greater  
Local Government Efforts To Reduce Earthquake Hazards?**

1:45- Questions and Discussion  
2:10

**2:15** **PRESENTATION AND DISCUSSION OF POLICY RECOMMENDATIONS**

**to**  
**4:15**

Discussion Moderator:  
Professor Arnold Meltsner

2:15- Panel #3 - How Can Local Government Best Cope With Its  
3:15 Potential Liability Related to Earthquake Hazard Reduction?

Presentation: **John Evans**, ABAG Legal Counsel

Comment: Professor **Arvo Van Alstyne**  
University of Utah Law School  
Professor **Gary Schwartz**  
UCLA Law School

3:15- Panel #4 - Recommended Changes in State Policies  
4:15

Presentation: **Terry Margerum**, ABAG Project Director

Comment: **Bill George**, Chief Consultant to the  
Joint Committee on Tort Liability  
(California Legislature)  
**Tom McGuire**, Deputy Attorney General  
State of California



## Association of Bay Area Governments

Hotel Claremont • Berkeley, California 94705 • (415) 841-9730

January 10, 1979

Honorable George Deukmejian  
Attorney General, State of California  
555 Capitol Mall  
Sacramento, CA 95814

Dear Sir:

At the request of its member governments, ABAG spent much of last year examining the extent to which local governments could be held liable for injury or loss caused (or made more likely) by their failure to mitigate known or suspected earthquake hazards. One of your deputies, Thomas K. McGuire, was a member of the study's expert Advisory Committee which also included Arvo Van Alstyne and John Larson. Summary and background materials about the project are enclosed.

One of the project's major policy recommendations (endorsed by ABAG's Legislation and Governmental Organization Committee on December 21, 1978) was that the Attorney General's Office be formally asked to issue clarifying opinions on two specific matters:

- 1). *Can a local government's own enactments impose mandatory duties upon the local government and/or other public entities located within its jurisdiction?*

Two cases in particular prompt this question.

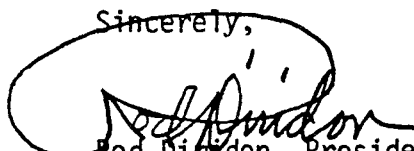
- o Morris v. Marin County, 18 C3d 901, 559 P2d 606, 136 Cal. Rptr. 251 (1977), and
  - o Elson v. Public Utilities Commission, 51 CA3d 577, 124 Cal. Rptr. 305 (1975).
- 2). *Can new information received by a public entity about earthquake hazards to public property constitute "changed circumstances" within the rule of Baldwin v. State (6 C 3d 424; 99 Cal. Rptr. 145)?*

Greater certainty about these questions will help local governments more accurately assess their potential liability with regard to earthquake hazards. Tort rules cannot deter negligence or promote safety if their application is too uncertain and unpredictable to guide behavior.

Honorable George Deukmejian  
January 10, 1979  
Page 2.

Therefore ABAG urgently requests that your office issue clarifying opinions on the above issues. If you have any questions about this request or the enclosed materials, please contact ABAG's Associate Legal Counsel, John Evans (phone: 415-848-0630).

Sincerely,



Rod Diridon, President  
Supervisor, Santa Clara County

RD/TM/db

Enclosures

cc: Tom McGuire  
John Knox

GEORGE DEUKMEJIAN  
(Pronounced Duke-n-jin)  
ATTORNEY GENERAL



OFFICE OF THE ATTORNEY GENERAL

**Department of Justice**

555 CAPITOL MALL, SUITE 350  
SACRAMENTO 95814  
(916) 445-9555

February 20, 1979

Mr. Rod Diridon, President  
Association of Bay Area Governments  
Hotel Claremont  
Berkeley, California 94705

Dear Mr. Diridon:

You have requested an Attorney General opinion on the following two questions:

"1). Can a local government's own enactments impose mandatory duties upon the local government and/or other public entities located within its jurisdiction?"

"2). Can new information received by a public entity about earthquake hazards to public property constitute 'changed circumstances' within the rule of Baldwin v. State (6 Cal.3d 424; 99 Cal. Rptr. 145)?"

As you know, it is the policy of the Attorney General to only furnish opinions to those officials listed in Government Code section 12519. However, since our office participated in discussions concerning liability of local governments in the event of an earthquake, we are happy to furnish you with our informal views regarding the two questions which you ask.

In answer to your question No. 1, it would appear that a local government's enactments could impose mandatory duties upon itself. The case of Elson v. Public Utilities Commission (1975) 51 Cal.App.3d 577 appears to be in point on the matter. In that case the PUC had adopted regulations imposing a mandatory duty upon itself. The PUC failed to carry out those mandatory duties and the court held that the plaintiff's damages could be attributable to the PUC for such failure. It would therefore appear that a local government can impose mandatory duties upon itself.

RECEIVED

FEB 23 1979

ASSOCIATION OF  
BAY AREA GOVERNMENTS



The Elson case was cited with approval in Morris v. Marin County (1977) 18 Cal.3d 901. The factual situation in the Morris case involved a mandatory duty imposed upon Marin County, not by itself, but by the State of California. The court, therefore, did not have to deal with the precise issue raised by your question.

Insofar as other public entities are concerned, whether the local government's enactments would apply to those other public entities would depend upon whether those other public entities were subject to the control of the local government. For example, a city or county by ordinance could not impose mandatory duties upon the federal government or upon the state government without its consent. The relationship between the other public entities and the local government would have to be specifically examined to determine whether or not the local government's enactments would apply to other public entities.

In response to your question No. 2, no definitive answer can be given in the abstract. The case of Baldwin v. State (1972) 6 Cal.3d 424 holds that changed physical circumstances can render a public agency liable for damages due to dangerous and defective conditions. In the Baldwin case the changed physical circumstances were found to be a heavy increase in traffic volume and a large number of traffic accidents occurring at an intersection. The court held that the failure of the state to construct a left turn zone, at a relatively minimal cost, to correct a condition caused by a changed physical circumstance prevented the state from asserting design immunity.

The Baldwin case referred to changed "physical" circumstances. It cannot be said with any certainty that the courts will continue to restrict changed circumstances to those physical in nature. However, it does not appear that they have yet extended that concept. Your question is whether new information received about earthquake hazards would constitute "changed circumstances." Without knowing exactly what the new information consisted of, it would be impossible to judge whether or not that information would constitute changed circumstances. There could certainly be different answers if the new information were to consist of knowledge of the physical deterioration of a building to the extent that it no longer met the code standards under which it was constructed or if the new information consisted of knowledge that recently developed techniques might make the building stronger. Other conditions which would affect the answer would be the extent of the increase in danger and the cost to remedy the situation. All of these

Mr. Rod Diridon

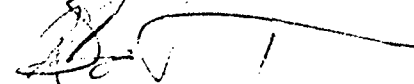
-3-

factors would have a bearing upon whether "new information" would constitute "changed circumstances." Without specific facts no answer can reasonably be given.

We hope that the foregoing views will be of help to you.

Very truly yours,

George Deukmejian  
Attorney General

A handwritten signature in dark ink, appearing to read 'JMS', with a long horizontal flourish extending to the right.

James M. Sanderson  
Assistant Attorney General

JMS:ac

## OFFICE OF EMERGENCY SERVICES

POST OFFICE BOX 9577  
SACRAMENTO, CALIFORNIA 95823  
(916) 421-4990



May 8, 1979

Mr. Terry Margerum  
Association of Bay Area Governments  
Hotel Claremont  
Berkeley, CA 94705

Dear Terry:

Enclosed is a copy of the Attorney General opinion request concerning questions of local government earthquake hazards liability.

You will note, I have made a few very minor revisions in some of the questions. Please do not anticipate a response for several months as it usually takes the Department of Justice that long to complete the research and legal review of questions of this complexity.

Please give me a call if I can provide further assistance. I will keep you posted on details as they develop.

Sincerely,



H. R. POLLEY  
Senior Planner

enclosure

cc: John G. Evans  
Benner, Harris & Evans

## OFFICE OF EMERGENCY SERVICES

POST OFFICE BOX 9577  
SACRAMENTO, CALIFORNIA 95823  
(916) 421-4990



May 3, 1979

The Honorable George Deukmejian  
Attorney General  
555 Capitol Mall  
Suite 350  
Sacramento, CA 95814

Dear Mr. Deukmejian:

One of the products of a study dealing with local government liability for earthquake hazards recently concluded by the Association of Bay Area Governments was the recommendation that an Attorney General opinion be requested on two matters. Mr. Rod Diridon, the Association's President, requested such an opinion and received, on February 20, 1979, an informal response to the questions posed.

In addition to noting the Attorney General's policy to furnish opinions only to those officials listed in Section 12519 of the Government Code, the response provided indications that specific facts would be required before a meaningful opinion could be rendered by your office. The Association has developed the additional information and has asked the Office of Emergency Services to obtain a formal Attorney General opinion on these important issues.


I am, therefore, requesting an Attorney General opinion on the following two questions:

1. Whether or not a local government's own enactments can impose mandatory duties upon the local government and/or other public entities located within its jurisdiction;
2. Whether or not new information received by a public entity about earthquake hazards to public property can constitute "changed circumstances" within the rule of Baldwin v. State where the new information is any of the following:
  - a. An active fault capable of moderate to large earthquakes which would result in surface rupture and displacement is discovered to underlay a public structure;

- b. An active fault capable of moderate to large earthquakes is discovered to be in close enough proximity to public buildings with structural deficiencies and/or soil instabilities to indicate possible poor performance in an earthquake on the fault;
- c. A public building's performance in a recent minor earthquake indicates a high probability of severe structural damage or failure in the event of a moderate to large earthquake on the same fault (assume the fault has a history of moderate to large quakes);
- d. A public building inspection reveals previously undiscovered structural inadequacies, exposing the building to a likelihood of major structural damage or failure in a moderate to large quake which may be reasonably anticipated to occur at some time on a nearby fault;
- e. What difference would any of the following conditions make in the answers to the foregoing questions:
  - 1) It is possible to carry out minor remedial measures that would significantly reduce the risk and not pose a serious financial burden on the local entity.
  - 2) Remedial measures would be expensive, time-consuming, and require a complete replacement of the public structure with attendant dislocation of the public entity functions.
  - 3) Remedial measures would be expensive and require major renovation of the public structure (50% of the total replacement value), and would cause dislocation to the public functions performed in such structure.

Thank you for your consideration in this matter. If you have any questions or require additional information, please call me or Mr. Roger Pulley of my staff. The telephone number is 421-4990, extension 285.

Sincerely,

  
ALEX R. CUNNINGHAM  
Director

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

**ASSEMBLY BILL**

**No. 785**

**Introduced by Assemblyman Knox**

March 8, 1979

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 955.1 of, and to add Article 2.5 (commencing with Section 819.1) to Chapter 1 of Part 2 of Division 3.6 of Title 1 of, the Government Code, relating to public entities and employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 785, as introduced, Knox (Jud.). Public entities and employees: earthquake hazard.

(1) Under existing law, as a general rule, a public entity or employee is liable for injury caused by a dangerous condition of the public entity's property if the property was in a dangerous condition at the time of the injury, the injury was proximately caused by the dangerous condition, the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and the public entity or employee had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have taken measures to protect against the dangerous condition, and further, in the case of an employee, that the employee had the authority and the responsibility to protect against the dangerous condition at the expense of the public entity and the means for doing so were immediately available to the employee.

This bill would enact the Local Public Entity Earthquake Hazard Liability Act which would do all of the following:

(a) Require the State Geologist, not later than January 1, 1981, to notify each local public entity whether such entity lies wholly or partially within or wholly outside an area of significant earthquake hazard, as defined, and provide that, prior to such notice, a local public entity and its employees have no liability for personal injuries, death, or property damage occurring on public properties caused by the effect of an earthquake upon such public properties or adjacent private properties.

(b) Provide that, upon receipt of such notice, a local public entity located wholly outside an area of significant earthquake hazard, and its employees, shall retain such immunity.

(c) Provide that, upon receipt of such notice, a local public entity lying wholly or partially within an area of significant earthquake hazard, and its employees, shall retain such immunity by making a specified inspection of its properties and adopting a specified plan to mitigate identified hazards, and by being in reasonable compliance thereafter with such plan.

(d) Provide that a local public entity which does not make such inspection and adopt such plan, and its employees, shall not be subject to liability on the basis of such failure or refusal to act.

(e) Provide that the liability, if any, of a local public entity for damages arising from the effect of an earthquake upon public property or upon private property shall not exceed the allocated percentage of total fault.

(f) Provide that actual or constructive notice of a hazardous condition of private property does not give rise to liability for any injury or loss resulting from an earthquake unless such injury or loss was caused by the failure of the local public entity or employee to exercise reasonable diligence to discharge a mandatory duty.

(g) Authorize the governing body of any local public entity to establish standards, by ordinance containing specified requirements, for the reconstruction of buildings constructed prior to 1961 identified by the local public entity as being hazardous to life in the event of an earthquake, with specified exceptions.

(h) Provide that a local public entity and its employees are

not liable for any injury or property damage resulting from the effect of an earthquake upon a building rehabilitated pursuant to such standards.

(i) Declare legislative intent.

(2) Under existing law, the Governor is authorized to warn the public as to the existence of an earthquake prediction determined to have scientific validity. The state and its agencies are not liable for any injury resulting from the decision to issue or not to issue such warning, and the state, its agencies, and its political subdivisions may, on the basis of such warning, take or not take actions relating thereto without incurring liability for such action or inaction.

This bill would recast such provisions, delete declarations of legislative intent, and specify that such immunity extends to acts or omissions in fact gathering, evaluation, or other activities leading up to the issuance or nonissuance of a warning, and to public employees. The bill would also provide that such warning is a sufficient basis for a proclamation of a state of emergency or local emergency, and that the state, its agencies, its political subdivisions, and public employees shall not be liable for any injury resulting from such proclamation.

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

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

1 SECTION 1. Article 2.5 (commencing with Section  
2 819.1) is added to Chapter 1 of Part 2 of Division 3.6 of  
3 Title 1 of the Government Code, to read:

4 Article 2.5. Earthquake Hazard Liability

5  
6  
7 819.1. This act shall be known and may be cited as the  
8 Local Public Entity Earthquake Hazard Liability Act.

9 819.2. (a) The Legislature hereby finds and declares  
10 that because California will experience moderate to great  
11 earthquakes in the foreseeable future, efforts to discover  
12 and reduce earthquake hazards to life and property  
13 should be encouraged.

14 (b) The Legislature further finds that:

1 (1) Certain statutes and their judicial interpretation  
 2 have created uncertainty among representatives of local  
 3 public entities whether such entities or their employees  
 4 may through constructive or actual notice be liable for  
 5 injuries arising from the condition of public properties or  
 6 private properties adjacent to public property as a result  
 7 of an earthquake.

8 (2) Local public entities wish to protect persons from  
 9 injuries caused by the condition of public or private  
 10 properties in the event of an earthquake, but fear that the  
 11 inspection of properties and planning to mitigate  
 12 earthquake hazards on them may give rise to actual or  
 13 constructive notice upon which liability for injury may be  
 14 based.

15 (3) The identification of potentially hazardous public  
 16 and private properties and the establishment and  
 17 implementation of a practical plan for modification of  
 18 such properties to reduce potential injury and damage  
 19 during earthquakes would greatly benefit the people of  
 20 the State of California.

21 (4) Greater safety to life is the primary goal of building  
 22 rehabilitation and reconstruction to reduce earthquake  
 23 hazards.

24 (5) Imposition of currently applicable new building  
 25 code standards for rehabilitating certain hazardous older  
 26 structures may economically preclude such rehabilitation  
 27 and safety improvements, whereas the application of  
 28 lesser building code standards directed to a slightly  
 29 higher risk level would permit unused or under-used real  
 30 property to be put to a more beneficial use and greatly  
 31 increased public safety through an economically feasible  
 32 rehabilitation.

33 (6) A local public entity may bear most or all of the  
 34 damages for court judgments in multiple defendant cases  
 35 even where such entity's percent of fault is equal to or  
 36 less than other defendants if such other defendants are  
 37 without funds sufficient to satisfy their responsibility  
 38 according to their fault.

39 (7) In those situations where a private property owner  
 40 fails to remedy a hazardous property defect required to

1 be abated by local law, the local public entity  
 2 nevertheless may be exposed to a disproportionate share  
 3 of potential liability for injuries resulting from such  
 4 defect.

5 819.3. Not later than January 1, 1981, the State  
 6 Geologist shall notify each local public entity whether  
 7 such entity lies wholly or partially within or wholly  
 8 outside an area of significant earthquake hazard. Areas of  
 9 significant earthquake hazard include those that  
 10 historically have been subject to prolonged or strong  
 11 ground motion, those areas that are within or near active  
 12 fault zones, those areas that are subject to ground failure  
 13 by earthquake-induced landslides or soil liquefaction, and  
 14 those areas that are exposed to tsunamis, to seiches, or to  
 15 other kinds of flooding caused by earthquake.

16 819.4. Prior to the notice required by Section 819.3, a  
 17 local public entity and its employees shall have no  
 18 liability for personal injuries, death, or property damage  
 19 occurring on public properties caused by the effect of an  
 20 earthquake upon such public properties or adjacent  
 21 private properties.

22 819.5. Upon receipt of the notice required by Section  
 23 819.3:

24 (a) A local public entity located wholly outside an area  
 25 of significant earthquake hazard, and its employees, shall  
 26 retain the immunity from liability provided by Section  
 27 819.4.

28 (b) A local public entity lying wholly or partially  
 29 within an area of significant earthquake hazard, and its  
 30 employees, shall retain the immunity from liability  
 31 provided by Section 819.4 by making the inspection and  
 32 adopting the plan authorized by subdivisions (a) and (b)  
 33 of Section 819.6 within the specified periods, and by being  
 34 in reasonable compliance thereafter with such plan as  
 35 required by subdivision (c) of Section 819.6.

36 819.6. (a) Within one year after the notification  
 37 required by Section 819.3, the local public entity lying  
 38 wholly or partially within an area of significant  
 39 earthquake hazard may inspect all its properties which  
 40 lie within such area for the purpose of determining



1 whether any of such public properties may endanger life  
2 or property during an earthquake.

3 (b) Within one year of completion of the inspection  
4 authorized by subdivision (a), the local public entity may  
5 adopt a plan to mitigate the identified hazards. Such plan  
6 shall set forth specific mitigation measures, their  
7 financing, and a statement of a reasonable time within  
8 which such measures are expected to be substantially  
9 completed.

10 (c) The local public entity shall be in reasonable  
11 compliance with its plan.

12 (d) A local public entity which does not make the  
13 inspection authorized by subdivision (a) and adopt the  
14 plan authorized by subdivision (b), and its employees,  
15 shall not be subject to liability on the basis of such failure  
16 or refusal to act.

17 819.7. Liability, if any, of a local public entity for  
18 damages arising from the effect of an earthquake upon  
19 public property or upon private property shall not  
20 exceed the percentage of total fault allocated to such local  
21 public entity by the trier of fact in response to  
22 interrogatories to the jury or as determined by the court  
23 sitting as the trier of fact and law.

24 819.8. Actual or constructive notice of a hazardous  
25 condition of private property does not give rise to liability  
26 for any injury or loss resulting from an earthquake unless  
27 such injury or loss was caused by the failure of the local  
28 public entity or employee to exercise reasonable  
29 diligence to discharge a mandatory duty.

30 819.9. Excepting those structures or buildings which  
31 are needed for emergency purposes after an earthquake  
32 in order to preserve the peace, health, and safety of the  
33 general public, including, but not limited to, hospitals and  
34 other medical facilities having surgery or emergency  
35 treatment areas, fire and police stations, local  
36 government disaster operation centers, and public utility  
37 and communication buildings deemed vital in  
38 emergencies, and notwithstanding the provisions of  
39 Sections 19100 or 19150 of the Health and Safety Code or  
40 any other provision of law, the governing body of any

1 local public entity may, by ordinance, establish standards  
2 for the reconstruction of buildings constructed prior to  
3 1961 identified by the local public entity as being  
4 hazardous to life in the event of an earthquake. The  
5 identification of any building as being potentially  
6 hazardous to life in the event of an earthquake shall be  
7 made by a certified architect or registered civil or  
8 structural engineer as defined by Chapter 3  
9 (commencing with Section 5500) or Chapter 7  
10 (commencing with Section 6700) of Division 3 of the  
11 Business and Professions Code.

12 819.10. Any local ordinance adopted pursuant to  
13 Section 819.9 shall require that the reconstruction of any  
14 building identified as being hazardous to life in the event  
15 of an earthquake shall provide for the reasonable  
16 adequacy of all of the following:

17 (a) Unreinforced masonry walls to resist normal and  
18 inplane seismic forces.

19 (b) The anchorage and stability of exterior parapets  
20 and ornamentation.

21 (c) The anchorage of unreinforced masonry walls to  
22 the floors and roofs.

23 (d) Floor and roof diaphragms.

24 (e) The development of a complete bracing system to  
25 resist earthquake forces.

26 819.11. A local public entity and its employees are not  
27 liable for any injury or property damage resulting from  
28 the effect of an earthquake upon a building rehabilitated  
29 pursuant to seismic building reconstruction standards  
30 promulgated pursuant to Sections 819.9 and 819.10.

31 SEC. 2. Section 955.1 of the Government Code is  
32 amended to read:

33 955.1. (a) The science of earthquake prediction is  
34 developing rapidly and, although still largely in a  
35 research stage, such predictions are now being initiated  
36 and are certain to continue into the future.  
37 Administrative procedures exist within the Office of  
38 Emergency Services to advise the Governor on the  
39 validity of earthquake predictions. Numerous important  
40 actions can be taken by state and local governments and

1 liable for any injuries caused thereby.  
 2 (d) An earthquake warning issued by the Governor  
 3 pursuant to subdivision (b) is a sufficient basis for a  
 4 proclamation of a state of emergency or local emergency,  
 5 as defined by Section 8558. The state, its agencies, its  
 6 political subdivisions, and public employees shall not be  
 7 liable for any injury resulting from such proclamation.

O

1 special districts to protect life and property in response  
 2 to earthquake predictions and associated warnings. It is  
 3 the intent of this legislation to insure that appropriate  
 4 such actions are taken in the public interest by  
 5 government agencies acting in a responsible manner  
 6 without fear of consequent financial liabilities when  
 7 acting in a responsible manner under such circumstances  
 8 to assure public safety. This legislation is not intended to  
 9 provide immunity for government officials and other  
 10 government employees acting in a nondiscretionary  
 11 capacity from liability for injuries arising out of ordinary  
 12 negligence. It is also the intent of this legislation that  
 13 actions taken by state and local agencies pursuant to the  
 14 authorized dissemination of an earthquake prediction  
 15 may be taken under conditions other than a declared  
 16 state of emergency.

17 (b) The Governor may, at his discretion, warn the  
 18 public as to the existence of an earthquake prediction  
 19 determined to have scientific validity. The state and its  
 20 agencies and employees shall not be liable for any injury  
 21 resulting from the decision to issue or not to issue a  
 22 warning pursuant to this subdivision or for any acts or  
 23 omissions in fact gathering, evaluation, or other activities  
 24 leading up to the issuance or nonissuance of a warning.

25 (c) In addition, the state, its agencies, and its political  
 26 subdivisions may, on the basis of a warning issued  
 27 pursuant to subdivision (b), take, or fail or refuse to take,  
 28 any action with relation to the warning issued which is  
 29 otherwise authorized by law. In taking, or failing or  
 30 refusing to take such action, the state, its agencies, and its  
 31 political subdivisions shall be subject to the same  
 32 immunities as apply to such action, or failure or refusal to  
 33 take such action, when done upon any other valid basis.  
 34 The state, its agencies, its political subdivisions, and  
 35 public employees may, on the basis of a warning issued  
 36 pursuant to subdivision (b), take, or fail or refuse to take,  
 37 any action with relation to the warning which is  
 38 otherwise authorized by law. In taking, or failing or  
 39 refusing to take such action, the state, its agencies, its  
 40 political subdivisions, and public employees shall not be

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<u>Section</u>	<u>Purpose</u>
819.1	Names the Act.
819.2	Summarizes legislative findings with special emphasis on uncertainty and safety disincentives in existing law.
819.3	Defines "area of significant earthquake hazard" and authorizes State Geologist to notify local government whether or not they lie in such an area on or before January 1, 1981.
819.4	Provides immunity for local government from liability for earthquake injuries caused by dangerous conditions of public property prior to notification in 819.3.
819.5 (a)	Provides the same immunity on a <u>permanent</u> basis for local governments which are not in "areas of significant earthquake hazards".
819.5 (b)	Permits local governments which are in areas of significant earthquake hazards to retain the immunity provided in 819.4 and 819.5(a) by taking certain steps to identify and mitigate earthquake hazards on or adjacent to their public property.
819.6 (a-c)	Outlines steps needed to retain immunity.
819.6 (d)	Declares that local government cannot be liable for choosing not to take steps outlined in 819.6 (a-c).
819.7	Limits a local government's liability for earthquake injuries to its proportionate share of the negligence causing the injury. (Under existing law local governments sometimes have to pay more than their share).
819.8	Provides that a local government or its employee's knowledge of dangerous conditions of private property cannot be a source of liability unless the local government or employee failed to carry out a mandatory duty as defined by California law.
819.9	Encourages rehabilitation and reconstruction of earthquake-hazardous buildings by permitting local governments to adopt separate building standards for such reconstruction.

Section

Purpose

819.10

Outlines minimum requirements for separate building standards noted in 819.9.

819.11

Immunizes local governments from liability for earthquake injuries in buildings reconstructed according to the standards defined in 819.10.

955.1

Expands and extends immunities of State and local officials from liability for actions taken or not taken in regard to earthquake predictions and warnings; provides that earthquake predictions and warnings may be the basis for declaring a "State of Emergency" as defined in Section 8558 (California Emergency Services Act).

APPENDIX D. REVIEW COMMITTEE ROSTER

(These individuals comprise ABAG's Earthquake Liability Advisory Committee. They have served since January, 1978)

**ARVO VAN ALSTYNE** is a national authority on tort law and was the Chief Consultant to the California Law Revision Commission, the group responsible for the landmark California Tort Claims Act of 1963. His published works include "Study Relating to Sovereign Immunity", "California Government Tort Liability", "California Condemnation Law", and a law school casebook -- "State and Local Government Law". He currently holds the position of Vice President-Executive Assistant, University of Utah, and is a Professor at the University's College of Law.

He is a former Los Angeles County Deputy County Counsel and a member of the California Bar.

**ROBERT BROWN, JR.**, is a research geologist with the United States Geological Survey. Since 1965 he has studied the geology of earthquakes in the United States and abroad (e.g., Nicaragua and Iran). In 1971, Brown became Director of the San Francisco Bay Region Environmental and Resource Planning Study (the "San Francisco Bay Region Study") which pioneered in the provision of earth science information to local government decision makers.

Brown served on the Association of Bay Area Government's Ad Hoc Earthquake Preparedness Technical Committee in 1976.

**WINFRED CARTER** is a Professor of Civil and Environmental Engineering at Utah State University in Logan. He is a structural engineer with many years of experience in seismic engineering. Dr. Carter is currently serving as a member of the Utah Seismic Safety Advisory Council (established in 1977) and is Chairman of its Public Liability Task Force. He is Co-Director of a Seismic Seminar for Architects, which has been conducted in many areas of the United States over the past three years.

Dr. Carter is Chairman of the Utah Professional Practices Committee and a member of the American Society of Civil Engineers.

**HENRY J. DEGENKOLB**, President of H. J. Degenkolb and Associates, is an internationally recognized authority on earthquake engineering. He is a structural engineer with 40 years experience in earthquake design engineering. He was a member of the Advisory Group on Engineering Considerations and Earthquake Sciences to the California Joint Legislative Committee on Seismic Safety (1969-1973). The work of that Committee led to the formation of the California State Seismic Safety Commission, of which Degenkolb was a member through 1977.

Degenkolb is chairman of the San Francisco Bay Conservation and Development Commission's Engineering Criteria Review Board, a member of the California State Building Standards Commission, and a member of San Francisco's Board of Examiners. He served as a member of the review committee for a NSF-funded Post-Earthquake Land Use Planning Project and is now working with the California Coastal Commission on Liquefied Natural Gas facility siting.

**LOUISE GIERSCH** is a former Mayor and Councilmember of Antioch, California. In 1969 she sat on the Advisory Group on Governmental Organization and Performance on the California Joint Legislative Committee on Seismic Safety (1969-1973). Currently she is Vice-Chairperson of the California State Seismic Safety Commission and heads its Hazardous Buildings committee.

For many years Mrs. Giersch represented Contra Costa County cities on the Association of Bay Area Governments' Executive Board. She is the Association's representative to the Metropolitan Transportation Commission and is presently MTC's Chairperson.

**JOHN H. LARSON** has been County Counsel for the County of Los Angeles since 1973, and was Chief Deputy Counsel for six years before that. As a result of the San Fernando earthquake of 1971, and the recent flooding and landslide activity in the Southern California area, Mr. Larson has had extensive experience with damage claims and the question of public liability.

Mr. Larson serves as First Vice-President of the California County Counsel's Association, and co-authored, for the California Continuing Education of the Bar, a book entitled California Zoning Practice.

**JAMES E. McCARTY** is Director of Public Works for the City of Oakland, and is currently President of the American Public Works Association. He was a member of the Advisory Group on Disaster Preparedness to the California Joint Legislative Committee on Seismic Safety (1969-1973). McCarty is also Chairman of the American Society of Civil Engineers' Technical Council on Lifeline Earthquake Engineering.

**THOMAS K. MCGUIRE** has been a California State Deputy Attorney General since 1966. He is a specialist in torts and inverse condemnation and has had many years of experience in property damage and personal injury cases. He is currently working on the Council of State Governments' project "State Government Policy Options for the Utilization of Earthquake Prediction Techniques". He represents the State Attorney General's office on the National Association of Attorneys General subcommittee for that project.

**ARNOLD MELTSNER** is a Professor of Public Policy at the University of California (Berkeley) Graduate School of Public Policy, and has for many years been active in the study of public policy vis a vis earthquakes. He is a member of the Earthquake Engineering Research Institute, and its Social Science Committee. Meltsner also belongs to the Executive Board of the University's Earthquake Engineering Research Center, and for that group has authored "Seismic Safety of Existing Buildings and Incentives for Hazard Mitigation in San Francisco: An Exploratory Study". He is also a member of the Advisory Panel to the State Office of Emergency Services on State Government Response to Earthquake Prediction.

Previously, Dr. Meltsner was Chairman of the University's Ad Hoc Committee on Public Policy Considerations of Earthquake Hazard Mitigation and was a member of the National Academy of Sciences' Panel on the Public Policy Implications of Earthquake Predictions.

**WILL H. PERRY, JR.**, has served for 20 years as Contra Costa County's Director of Emergency Services. In 1969 he was named Chairman of the Post-Earthquake Recovery and Development Advisory Group to the California Joint Legislative Committee on Seismic Safety. He is currently a member of the California State Seismic Safety Commission.

In 1975, Perry acted as Vice-Chairman of the Association of Bay Area Governments' Civil Preparedness Technical Advisory Committee. He is also the only Technical Assistance Advisor to the United Nations for disaster preparedness planning.

**H. ROGER PULLEY** is Coordinator of Earthquake Programs for the California State Office of Emergency Services. He is the author of the State Earthquake Prediction Response Plan and serves as Principal Staff to the California Earthquake Prediction Evaluation Council and the OES Advisory Panel on State Seismic Policy and Programs and served on the Commission's Post Earthquake Studies Committee in 1976.

Previously, Mr. Pulley was a member of the Advisory Committee for the National Science Foundation's study of the Socioeconomic and Political Consequences of Earthquake Prediction. In addition he was a Consultant to the National Academy of Sciences' Panel on the Public Policy Implications of Earthquake Prediction and the National Science Foundation's Disaster Reconstruction Policy Issues Project.