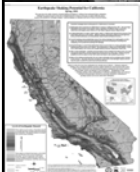


**legal issues and liabilities
associated with seismic safety**

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AB 300 identification of potentially unsafe structures

- Confirm the structure still exists
- Structural Analysis to confirm whether the structure meets the criteria used by DSA
- Identification may mean design immunity under Government Code Section 830.6 may be lost.



what is design immunity?

- Design Immunity protects the District against suits for injuries if a structure is constructed in conformance with building code/field act.
- Design Immunity continues until the District knew or has reason to know that there is an unsafe condition
 - *What is Notice*
 - Under 21 Ops.Atty.Gen. 148 (1953), the Board is presumed to have knowledge of an unsafe condition pursuant to a report from:
 - » *Architect*
 - » *Structural engineer, or*
 - » *The Division of State Architect.*



what is design immunity?

- Design Immunity continues for a reasonable time so the condition can be remedied
 - *What is a reasonable time*
 - The School District has a reasonable period of time to carry out the remedial work. Government Code Section 830.6
- Once Design Immunity is lost, the District and Board members may be sued for injuries resulting from an unsafe condition
- Duty to warn of the unsafe condition through signage or other reasonable means



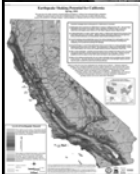
board member liability

- A Board may protect themselves by:
 - Funding repairs
 - Seeking funding for repairs and abandoning the building
 - Seeking funding for repairs and placing warning signs that the building is unsafe
 - Abandoning the building



board member liability

- Failure to undertake steps leads to liability under Government Code Section 835 if an injured party establishes
 - 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 that was incurred if:
 - *Employee acts or omissions, or;*
 - *The school district had actual or constructive notice and sufficient time to act*
- The District is not liable if the actions taken to protect against the injury was reasonable. Government Code Section 835.4(b)



board member liability

- Problematic Attorney General Opinions:
 - A Board that Disagrees
 - *Board member who takes the steps to correct an “unsafe” condition overruled by the Board may still have personal liability since the required repairs were not implemented. 24 Ops.Atty.Gen. 155 (1954)*
 - *There is a continuing mandatory duty to use these funds for the purpose identified of repairing “unsafe” conditions. 43 Ops.Atty.Gen. 209 (1954)*
 - Punitive Damage could be sought against members of a school board who failed to take necessary action in the face of knowledge of a dangerous condition and a statutory duty to act. 43 Ops.Atty.Gen. 209 (1954)
 - One Attorney General Opinion indicates that the Board may not continue to use “unsafe” structures. 24 Ops.Atty.Gen 155 (1954)



statutory indemnity

- It is mandatory that the School District indemnify a Board member or employee acting within the course and scope of their employment.
Government Code Section 825.
 - Arising from course and scope of employment
 - Acted in good faith without malice in the best interests of the school district, and;
 - Payment of the claim would be in the best interests of the District.



building examination under Education Code Section 17367

- Report on Unsafe Structure
 - Report needs to identify “safe” or “unsafe”
- Board needs to immediately prepare a cost estimate for repair
- System of priorities for repair, reconstruction or replacement of unsafe schools
- Liability of Board members abrogated if compliant with 17367.



building examination under Education Code Section 17367

- Only applies to school buildings
 - School building includes bleachers or grandstands greater than 6 Rows of seats
 - Excludes
 - *Warehouses, storage, garage, administrative offices*
 - *Buildings where students are not required to enter*
 - *Buildings used for off-campus adult education or apprentice program*
 - *Swimming pool*
 - *Light poles or flagpoles which do not exceed 35 feet in height.*



what is included in report

- AB 300 Buildings must be thoroughly evaluated
- Similar structures
- Structures within an earthquake fault zone
- Due diligence required of structural engineer
 - Investigation of structure
 - Calculations



what is included in report

- Issue with structural engineer overinclusion of structures
 - The effect on the school district of creating a report that overincludes
- Issues with deteriorating structures
 - Some deteriorating structures may be considered unsafe even though they are not on the AB 300 list
 - Repair or maintenance records are significant for design immunity notice purposes
- Failure to evaluate beyond AB 300



public relations

- What is in the report
- When to release report
- How is the report prepared and addressed during the drafting stage
- The most common and problematic questions
- Board position