

Date of Hearing: April 17, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 965 (Kiley) – As Amended April 17, 2017

SUBJECT: Department of Transportation: civil liability

SUMMARY: Reduces financial exposure to California Department of Transportation (Caltrans) in civil actions brought against the department. Specifically, **this bill:**

- 1) Provides that Caltrans' liability for economic damages in any action against the department for personal injury, property damage, or wrongful death is several only and not joint.
- 2) Limits Caltrans' liability to only the amount of economic damages allocated to the department in direct proportion to its percentage of fault.
- 3) Requires Caltrans annually to identify savings as a result of limiting tort liability and requires the savings to be directed to highway maintenance, operation, rehabilitation, and improvements.

EXISTING LAW:

- 1) The Fair Responsibility Act of 1986 (known as Proposition 51), provides that, in any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, the liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault.
- 2) Defines "economic damages" to mean objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.
- 3) Defines "non-economic damages" to mean subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.

FISCAL EFFECT: Unknown

COMMENTS: Each year, Caltrans is required to pay tens of millions of dollars in damages for tort liability for alleged dangerous conditions of public property in civil actions brought against it. In a letter to the Department of Finance, dated, March 7, 2017, Caltrans reported that it experienced an increase in tort judgements this year that exceeds its current-year appropriation of \$68.5 million. The letter requests authority to redirect \$23.3 million in other appropriations within the department to pay tort obligations arising from traffic incidents.

In 1986, voters approved Proposition 51 that changed California's rules about who must pay for non-economic damages (e.g., for pain and suffering) assessed in lawsuits. Proposition 51 limited the liability of each responsible party in a lawsuit to that part of the non-economic damages that

is equal to each responsible party's share of fault. Under Proposition 51, the courts can still require one person to pay the full cost of economic damages, if the other responsible parties are not able to pay their shares.

According to the author, unlimited and disproportional liability prolongs the effects of dangerous infrastructure and deprives the citizenry of safe roads. He believes this bill will help remedy excessive tort payouts by Caltrans and allow additional transportation funds to be directed to infrastructure maintenance and rehabilitation.

Writing in opposition to this bill, the Consumer Attorneys of California argues that existing joint and several liability law ensures the victim in a tort case is wholly compensated, regardless of the ability or willingness of an individual tortfeasor to pay damages. Consequently, they oppose this bill because it would eliminate the "legal and historical pro-consumer concept of joint and several liability."

Double referral: This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file

Opposition

Consumer Attorneys of California

Analysis Prepared by: Janet Dawson / TRANS. /