

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 66 (Boerner Horvath)  
Version: May 24, 2021  
Hearing Date: July 6, 2021  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Coastal resources: research: landslides and erosion: early warning system: County of San Diego

**DIGEST**

This bill, for harm arising from research and a report related to coastal cliff landslide and erosion, provides immunity to the University of California (UC), San Diego, and its employees, for anything other than willful or wanton misconduct, as specified.

**EXECUTIVE SUMMARY**

As sea levels rise due to climate change, California's coastal cliffs have become more vulnerable to erosion. Along California's coasts, cliff retreat has accelerated, sometimes in massive, sudden collapses with tragic consequences. In August 2019, a bluff collapse in an area of Encinitas killed three women – all members of the same family – who were sitting on the beach below the bluff.

This bill, upon appropriation, requires the Scripps Institution of Oceanography, a research institute at UC San Diego, to conduct research on coastal cliff landslides and erosion in the County of San Diego and to provide a report to the Legislature in 2025. The bill provides that the Regents of the UC and its employees are not civilly liable for any harm resulting from measurements, predictions, or warnings regarding bluff failure, cliff landslides, or erosion contained in the research or report. However, the bill also provides that this immunity does not absolve the Regents of the UC and its employees from liability under existing law for damages as a result of willful or wanton misconduct. The bill is author-sponsored and supported by local governments and other organizations, including the Sierra Club and the Surfrider Foundation. Proponents argue that "AB 66 will lead to further understanding of the processes that cause cliff failures, triggering mechanisms, magnitude of erosion, and timing of collapse. This research and work is essential for coastal management and public safety." The bill passed the Senate Education Committee by a vote of 7-0. Amendments are described on page 5.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Under the California Constitution, establishes the UC as a public trust to be administered by the Regents of the UC with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university, and such competitive bidding procedures as may be made applicable to the university for construction contracts, selling real property, and purchasing materials, goods and services. (Cal. Const. art. IX, § 9.)
- 2) Provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 3) Establishes the Government Claims Act (Gov. Code § 810 et seq.), which provides that a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (Gov. Code § 815(a).) However, a public entity is liable for injury proximately caused by:
  - a. an act or omission of an employee of the public entity within the scope of their employment if the act or omission would have given rise to a cause of action against that employee or their personal representative (Gov. Code § 815.2(a)); or
  - b. a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person (Gov. Code § 815.4).

This bill:

- 1) Upon appropriation, requires the Scripps Institution of Oceanography at the University of California, San Diego, to conduct research on coastal cliff landslides and erosion in the County of San Diego involving the development of a bluff failure databases, as specified, and measurements of land deformation to analyze conditions that precede catastrophic bluff failure at two specified sites.
- 2) Requires the research to be completed no later than January 1, 2025. No later than March 15, 2025, requires the Scripps Institution of Oceanography to provide a report to the Legislature with recommendations for developing a coastal cliff landslide and erosion early warning system based on available research.
- 3) Provides that the Regents of the University of California and its employees are not civilly liable for any harm resulting from measurements, predictions, or warnings

regarding bluff failure, cliff landslides, or erosion contained in the report or recommendations described above. Provides, however, that this immunity does not absolve the Regents of the University of California and its employees from liability under existing law for damages as a result of willful or wanton conduct.

### COMMENTS

1. Author's statement

The author writes:

It is critical that we develop the science on when and under what circumstances bluff collapses happen so that we can prevent the tragedy that happened in 2019 in Leucadia, where three valued members of the community lost their lives. With this information, we would be able to inform marine safety personnel, residents, and visitors of the danger of vulnerable bluffs and potential collapses. Once the research is completed, an early warning system for bluff collapse can be developed to keep our beaches and beach-goers safe.

2. Comment submitted by the Senate Natural Resources and Water Committee

The Senate Natural Resources and Water Committee writes:

The Senate Natural Resources and Water Committee has jurisdiction over coastal resources. The state's coastline is always changing. Recent estimates suggest that 80% of the state's coastline is eroding due to naturally occurring geologic processes. The sudden collapse of coastal bluffs can place public safety at risk. For example, in August 2019, a sudden bluff collapse in Encinitas killed three people, and a collapse near San Francisco killed another person in February of that year. In addition, rail tracks in San Diego County are in the process of being moved inland due to bluff collapse. Climate change will affect coastal processes. There are ongoing efforts to understand, plan, and mitigate for sea level rise along the state's coastline in order to provide for coastal resiliency. Of particular note, a recent set of principles adopted by multiple state agencies to address sea level rise relevant here include, among others, addressing local conditions and priorities, regularly collecting and sharing information related to sea level rise, and the development and use of the best available science to inform resilience.

### 3. Civil liability and immunity

This bill, upon appropriation,<sup>1</sup> requires the Scripps Institution of Oceanography at the University of California, San Diego, to conduct research on coastal cliff landslides and erosion in the County of San Diego and to provide a report to the Legislature in 2025 with recommendations for developing a coastal cliff landslide and erosion early warning system based on available research. The bill provides that the Regents of the University of California and its employees are not civilly liable for any harm resulting from measurements, predictions, or warnings regarding bluff failure, cliff landslides, or erosion contained in the report or its recommendations. However, the bill provides that this immunity does not absolve the Regents of the University of California and its employees from liability under existing law for damages as a result of willful or wanton conduct.

Under the Government Claims Act (Gov. Code § 810 et seq.), there is no common law tort liability for public entities.<sup>2</sup> Tort liability may be imposed against a public entity only pursuant to statute. (Gov. Code § 815(a); *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.) “A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” (Gov. Code § 815(a).) “In California, a public entity and its employees are not liable for an injury unless there is a statute declaring them to be liable.” (*Grosz v. Lassen Cmty. Coll. Dist.* 572 (2008) F.Supp.2d 1199, 1212.) However, “[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of [their] employment if the act or omission would ...have given rise to a cause of action against that employee” unless “the employee is immune from liability.” (Gov. Code § 815.2(a), (b).)

Turning to the language of the bill, “[a]ll human conduct fits along a continuum which passes from totally innocent conduct through slight negligence, negligence, gross negligence, willful and wanton or reckless conduct, and finally to intentional misconduct. [Citation.]” (*American Employer’s Ins. Co. v. Smith* (1980) 105 Cal.App.3d 94, 100.) Thus, because the bill grants immunity except for willful or wanton misconduct, it follows by implication that the bill immunizes negligence and gross negligence, which requires a showing of a “want of even scant care” or “an extreme departure from the ordinary standard of conduct.” (See *Christian v. Bolls* (1970) 7 Cal.App.3d 408, 418 [citations and nested quotations omitted].)

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of

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<sup>1</sup> The Budget Act of 2021 (AB 128 (Ting) Ch. 21, Stats. 2021) appropriates \$2,500,000 on a one-time basis to support cliff erosion research at the University of California, San Diego.

<sup>2</sup> “Public entity” includes the state, the Regents of the University of California, the Trustees of the California State University and the California State University, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. (Gov. Code § 811.2.)

ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, they are relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); use of opiate overdose treatment (Civ. Code § 1714.22); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

In view of these issues, the author has agreed to amend the bill to exclude gross negligence from the scope of conduct the bill immunizes. The amendment is as follows:

Amendment<sup>3</sup>

(c) The Regents of the University of California and its employees *acting in good faith* shall not be civilly liable for any harm resulting from measurements, predictions, or warnings regarding bluff failure, cliff landslides, or erosion contained in the report or from the research described in subdivision (a) or related to the recommendations described in subdivision (b). This subdivision does not absolve the Regents of the University of California and its employees

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<sup>3</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel as well as the addition of co-authors.

from liability under existing law for damages as a result of *acts or omissions constituting gross negligence or willful or wanton misconduct*.

#### 4. Support

A coalition of supporters writes:

AB 66 will allow researchers to better understand erosion and landslides in California. These geological processes affect public safety, beach width and development patterns at many of the state's beaches; including in Southern Orange County and Northern San Diego County where eroding bluffs cover approximately 80% of the coastline.

This bill allows for real-time measurements of bluff conditions at Beacon's Beach and beaches in the City of Del Mar. Surfrider is involved in sea level rise advocacy in both areas and recognizes the urgent need to monitor and better understand local coastal dynamics in these zones. The popular coastal access trail at Beacons is considered in danger of imminent collapse, and 60 passenger trains a day travel on the Amtrak across Del Mar's crumbling coastal bluff.

California's dynamic coastline has been steadily eroding for centuries but sea level rise will drastically accelerate this process. [...]

Sierra Club California writes: "AB 66 will lead to further understanding of the processes that cause cliff failures, triggering mechanisms, magnitude of erosion, and timing of collapse. This research and work is essential for coastal management and public safety."

#### SUPPORT

City of Carlsbad  
City of Encinitas  
City of Oceanside  
Eco San Diego  
Hammond Solutions  
Inland Boatsman Union  
Port of San Diego  
San Diego Association of Governments  
San Diego Coastkeeper  
San Diego Gas & Electric Company  
San Diego Unified Port District  
Sempra Energy Utilities  
Sierra Club California  
Surfrider Foundation

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: SB 1090 (Bates, 2021) makes changes related to judicial review of local government and Coastal Commission decisions on an application for a permit to construct a shoreline protective device. The bill is pending in the Senate Committee on Natural Resources and Water.

Prior Legislation: AB 2081 (Boerner Horvath, 2020) was substantially similar to this bill, although it would have conferred blanket immunity. The bill died in the Assembly Committee on Natural Resources.

**PRIOR VOTES:**

Senate Education Committee (Ayes 7, Noes 0)  
Assembly Floor (Ayes 70, Noes 3)  
Assembly Appropriations Committee (Ayes 13, Noes 3)  
Assembly Natural Resources Committee (Ayes 8, Noes 1)

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