



April 26, 2017

TO: LOCSD Board of Directors

FROM: Renee Osborne, General Manager

SUBJECT: Agenda Item 11G – 5/4/2017 Board Meeting
Authorize Board President to Send Letter Opposing AB 496

President
Marshall E. Ochylski

Vice President
Jon-Erik G. Storm

Directors
Charles L. Cesena
Louis G. Tornatzky
R. Michael Wright

General Manager
Renee Osborne

District Accountant
Warmerdam CPA Group

Unit Chief
Scott M. Jalbert

Battalion Chief
Tom McEwen

DESCRIPTION

This item is requesting that your Board authorize the Board President to send a letter in opposition of Assembly Bill No. 496 relating to contract indemnity for design professional. The draft letter is attached.

STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

Motion: I move that the Board authorize President Jon-Erik Storm to send a letter, on behalf of the District, in opposition of Assembly Bill No. 496.

Attachment

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www.losososcscsd.org



May 4, 2017

The Honorable Anthony Cannella
California State Senate
State Capitol Building
Sacramento, CA 95814

RE: Senate Bill 496 (Cannella) – Oppose [As Amended April 5, 2017]

President

Jon-Erik G. Storm

Vice President

Vicki L. Milledge

Directors

Charles L. Cesena
Marshall E. Ochylski
Louis G. Tornatzky

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Dear Senator Cannella:

The Los Osos Community Services District (the "District") regrets to inform you of our opposition to SB 496, related to contract indemnity for design professionals. Our District provides numerous services that require the services of design professionals including residential and commercial water service, drainage, and parks and recreation.

SB 496 provides that engineers and architects, known as design professionals, have no duty to defend claims against public works project owners, even in cases where the design professional is at fault. Specifically, the bill eliminates the ability of a public agency to contract with design professionals for upfront legal defense costs against claims related to a project's design work. When contracting with a design professional, public agencies often place a clause in the agreement requiring the design professional to legally defend the public agency if a claim or lawsuit directly related to the design services work is filed against the agency. This current practice fosters an environment of collaboration between the public agency and the design professional who both have the same incentive to resolve the lawsuit or claim.

This bill instead prohibits a public agency from requiring the design professional to defend a claim directly connected to the work of the design professional. This forces ratepayers and taxpayers to front the legal costs for the private sector, even for claims where the design professional is ultimately deemed to be 100 percent at fault. Requiring the public agency to defend the actions of the design professional necessitates a reimbursement process that results in the public agency defending the actions of the design professional and shouldering upfront all the associated costs. The public agency would then have to seek reimbursement from the design professional, to the extent the design professional is found negligent, once a settlement is reached or the claim is fully litigated and a court or arbitrator renders a final decision. This process not only requires a public entity to front the costs for a private entity, it also creates conflict within the public-private partnership, effectually eliminating the incentive to work together towards a swift settlement.

Local government is already overburdened with unfunded mandates and insufficient revenues. We must cease being sponges for the externalities of federal, state, and private entities on the backs of our ratepayers and taxpayers.

For these reasons, the Los Osos Community Services District respectfully opposes SB 496.

Very truly yours,

Jon-Erik G. Storm, President
LOCSO Board of Directors