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TITLE 1. GENERAL [100 - 7931.000] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 3.6. CLAIMS AND ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES [810 - 998.3] (Division 3.6 added by Stats. 1963, Ch. 1681.)

PART 2. LIABILITY OF PUBLIC ENTITIES AND PUBLIC EMPLOYEES [814 - 895.8] (Part 2 added by Stats. 1963, Ch. 1681.)

CHAPTER 8. Activities to Abate an Impending Peril [865 - 867] (Chapter 8 added by Stats. 1979, Ch. 1119.)

865. The Legislature hereby finds and declares that:

(a) The gradual movement of land, such as in prehistoric slide areas, or as a result of subsidence due to the depletion of underground or subterranean supporting substances, such as minerals, petroleum sources, water, and similar substances, can result in danger to persons or property. Although the movement is gradual and expressed in terms of numbers of inches, feet or meters per day, week or year, at some point the forces that are exerted by the movement will sever underground utilities, such as water, sewer, gas, electricity or telephone services and can cause the destruction of aboveground structures whose foundations become undermined or where support is denied altogether. Unlike an earthquake or rapid rockslide or landslide, these gradual earth movements permit possible intervention to arrest the movement and avoid harm which is posed to persons or property. If there is an adequate manifestation of the problem before actual harm to persons or property, it is possible to make some determinations as to a method of remedial action which can abate the hazard. However, any undertaking to arrest the earth movement may not be successful or may have within it the potential for hastening the movement and the damages resulting from such movement. Regardless of how slight that potential for aggravating the damages, local public entities are unwilling to undertake action to alleviate the hazard if such undertaking may invite potential liability.

(b) It is the intent of the Legislature in enacting this chapter to create an incentive for local public entities, upon learning of the particular earth movement which will result in possible damage to substantial areas of property and constitute a threat of injury to persons, to undertake remedial action to abate the earth movement or protect against the danger therefrom without fear of incurring liability as a result of undertaking such action.

(Added by Stats. 1979, Ch. 1119.)

866. (a) Subject to the provisions of subdivisions (b) and (c), in the event of public necessity and to avoid impending peril to persons or property as a result of gradual earth movement, a local public entity is not liable for damages for injury to persons or property resulting from such impending peril or from any action taken to abate such peril providing the legislative body of the local public entity has, on the basis of expert opinion or other reasonable basis, done all of the following:

- (1) On the basis of adequate evidence such as expert opinion or otherwise, found the existence of such impending peril.
- (2) Determined appropriate remedial action to halt, stabilize, or abate such impending peril.
- (3) Undertaken to implement such remedial action.

As used in this chapter, "gradual earth movements" includes, but is not limited to, perceptible changes in the earth either in a subterranean area or at the surface, or both, which if not arrested or contained will over a gradual period of time result in damage to or destruction of underground or aboveground property or harm to persons. However, "gradual earth movement" does not include movement which is caused by activity undertaken by a local public entity for purposes other than the abatement of peril caused by gradual earth movement.

As used in this chapter, "local public entity" has the meaning set forth in Section 900.4.

(b) If the local public entity is unable to complete the steps described in paragraphs (1) to (3), inclusive, of subdivision (a) because of the cessation of the hazard or because such actions cannot be completed before the occurrence of the hazard sought to be avoided,

or because such legislative body of such entity shall reasonably determine that such remedial action will not abate such danger, the immunity provided herein shall nevertheless apply to such actions by such local public entity.

(c) The immunity provided herein is in addition to any other immunity of the local public entity provided by law or statute, including this part, and any claim of liability based upon the impending peril or any action of the local public entity is subject to such immunities and any defenses that would be available to the local public entity if it were a private person.

(Added by Stats. 1979, Ch. 1119.)

867. An employee of a local public entity is not liable for damages for injury to persons or property resulting from an impending peril or from any action taken to abate such peril pursuant to Section 866.

(Added by Stats. 1979, Ch. 1119.)