

**BILL:** SENATE BILL 885

**AUTHOR:** SENATOR LOIS WOLK  
(D-DAVIS)

**SUBJECT:** CONSTRUCTION CONTRACTS: INDEMNITY

**STATUS:** PENDING SECOND READING FILE

**ACTION:** OPPOSE

**RECOMMENDATION**

Staff recommends that the Board adopt a OPPOSE position on Senate Bill 885 (Wolk) as amended on April 18, 2016.

**ISSUE**

Senator Lois Wolk has recently amended SB 885, a bill that would limit the liability of a design professional in construction contracts.

SB 885 would:

- Provide that a design professional would not have a duty to defend claims or lawsuits against any other person or entity arising from a construction project, except that person or entity's reasonable defense costs arising out of the design professional's degree of fault.

**DISCUSSION**

SB 885 would modify the way in which Metro would be indemnified in design contracts and fundamentally shift the responsibilities and risks in litigation. SB 885 places most of the responsibility and risk on the contracting entity and substantially limits the risks and responsibilities of the design professional. This could result in significant costs to the agency and substantially increase our risks especially as we embark upon a major public works expansion program.

The provisions of the measure create major changes in the way in which contracts are structured between design professionals and public and private entities. The bill is supported by a number of private sector design firms and is opposed by a number of public sector agencies.

Staff is recommending that the Board of Directors adopt an OPPOSE position on the measure SB 885 (Wolk).

**DETERMINATION OF SAFETY IMPACT**

Staff has determined that there is no direct impact to safety as a result of this proposal.

### **FINANCIAL IMPACT**

Staff has determined that there are potential negative impacts to the agency as the result of the provisions outlined in this bill.

### **ALTERNATIVES CONSIDERED**

The Board of Directors could consider adopting a NEUTRAL position on this legislation; however, this would not allow us to defend the agency's potential concerns with the provisions of the bill and to speak against an issue that negatively impacts the agency and affects the public contracting process.

### **NEXT STEPS**

Should the Board decide to adopt an OPPOSE position on SB 885 (Wolk), staff will communicate the Board's position and concerns with the bill to the author. Staff will continue to keep the Board informed as this issue is addressed throughout the legislative session.