

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 859 (Macedo)
Version: February 19, 2025
Hearing Date: June 24, 2025
Fiscal: No
Urgency: No
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SUBJECT

Civil Procedure: recovery of defense costs

DIGEST

This bill extends the statutory authorization for the recovery of defense costs for specified motions made in actions brought pursuant to the Government Claims Act to include objections by demurrer.

EXECUTIVE SUMMARY

An increase in litigation costs for local governmental entities has spurred a series of legislative measures designed to provide some measure of financial relief. This includes bills designed to provide more flexibility to local governments in paying out settlements or judgements against them, limiting the liability of certain governmental entities, and other measures designed to deter bad faith claims against local governments.

Section 1038 of the Code of Civil Procedure permits a defendant or cross-defendant, in a civil action brought pursuant to the Government Claims Act, to recoup certain costs associated with motions made therein. Specifically, if the court determines that the proceeding was not brought in good faith and with reasonable cause, the court must determine the defense costs reasonably and necessarily incurred by the party opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party. However, currently this provision only applies if the defendant or cross-defendant has made a motion for summary judgment, judgment under Section 631.8, directed verdict, or nonsuit, and the motion is granted.

This bill now adds objections by demurrer to this list.

This bill is author-sponsored. It is supported by industry groups and the California State Association of Counties. No timely opposition was received by the Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Permits a defendant or a cross-defendant in a civil proceeding under the Government Claims Act, or in any civil action for indemnity or contribution, to seek from the court, at the time of the granting of a motion for summary judgment, directed verdict, motion for judgment in a nonjury trial, or nonsuit dismissing the moving party other than the plaintiff, petitioner, cross-complainant, or intervenor, a determination as to whether the plaintiff, petitioner, cross-complainant, or intervenor brought their proceeding in good faith and with reasonable cause. If the court finds the action was not brought in good faith or with reasonable cause, it must determine and award the reasonable and necessary defense costs incurred by the party opposing the proceeding and to render judgment in favor of that party. (Code Civ. Proc. § 1038.)
- 2) Defines “defense costs” for purposes of the above to include reasonable attorney’s fees, expert witness fees, the expense of services of experts, advisers, and consultants in defense of the proceeding, and where reasonably and necessarily incurred in defending the proceeding. (Code Civ. Proc. § 1038(b).)
- 3) Provides that after a party has completed their presentation of evidence in a trial by the court, the other party, without waiving their right to offer evidence in support of their defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party, either fully or in part, in which case the court shall make a statement of decision as provided, or may decline to render any judgment until the close of all the evidence. If the motion is granted, unless the court in its order for judgment otherwise specifies, such judgment operates as an adjudication upon the merits. (Code Civ. Proc. § 631.8.)

This bill adds objections by demurrer to the list of eligible motions for seeking defense costs in Government Claims Act actions.

COMMENTS

1. Extending the allowance for recovery of defense costs

The Government Tort Claims Act (the Act) generally governs damage claims brought against public entities. (Gov. Code § 815 et seq.) In addition to any time limitations placed by other statutes on such claims, the Act requires that a claim that is brought against a public entity relating to a cause of action for death or for injury to a person be presented in writing to the public entity not later than six months after accrual of the cause or causes of action. (Gov. Code § 911.2.)

Section 1058 of the Code of Civil Procedure allows for the recovery of defense costs reasonably and necessarily incurred by a prevailing defendant in cases brought pursuant to the Act upon the granting of specified motions in the defendant's favor and where the court determines that the proceeding was not brought in good faith and with reasonable cause by the plaintiff. This currently includes motions for summary judgment, judgment under Section 631.8 of the Code of Civil Procedure, directed verdict, or nonsuit. This bill adds to this list objections by demurrer in order to allow prevailing public entity defendants or cross-defendants to recover whatever costs are incurred if litigation is brought in bad faith or without reasonable cause.

According to the author:

Local governments are grappling with budget challenges; they must use every tax dollar wisely. AB 859 helps to ensure that precious tax dollars are not wasted on frivolous lawsuits. AB 859 allows counties to recover legal expenses when a demur is granted so they can put those resources in serving our communities. This measure will cut down wasteful spending, reduce current court backlogs, and promote more efficiency in our legal system.

It should be noted that SB 577 (Laird, 2025), which makes a series of changes to relevant law to mitigate the fiscal impact of childhood sexual assault claims against public entities, including limitations on refiling actions and shortening relevant statutes of limitations, reforms to the remittitur process, and flexibility in paying judgments and issuing financing bonds, also includes the same language as this bill.

2. Stakeholder positions

Writing in support, the California Chamber of Commerce states:

Under present law, a defendant or a cross-defendant in any civil action for indemnity or contribution can seek from the court, at the time of the granting of a motion for summary judgment, directed verdict, motion for judgment in a nonjury trial, or nonsuit dismissing the moving party other than the plaintiff, to determine whether the plaintiff, petitioner, cross-complainant, or intervenor brought their proceeding in good faith and with reasonable cause. If the court determines that the proceeding was not brought in good faith or with reasonable cause, existing law requires the court to decide the reasonable and necessary defense costs incurred by party opposing the proceeding and to render judgment in favor of that party. Existing law applies these provisions only if the defendant or cross-defendant has made a motion for summary judgment, a motion for directed verdict, a motion for judgment in a nonjury trial, or nonsuit.

AB 859 would expand that list of motions that a defendant may use to recover fees against a bad-faith plaintiff to include a demurrer. Substantively, this will help disincentivize bad faith lawsuits and ensure defendants can respond to those who would abuse the legal process by recovering their costs.

SUPPORT

California Chamber of Commerce
California State Association of Counties
Civil Justice Association of California
County of Tulare

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 413 (Allen, 2025) clarifies and adds to the list of persons who may view a juvenile case file without a court order, to ensure that counsel for parties in a case filed by a minor or former minor can expeditiously view the file, including claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual assault. SB 413 is currently in the Assembly Judiciary Committee.

SB 577 (Laird, 2025) *See* Comment 1. SB 577 is currently in the Assembly Judiciary Committee.

SB 832 (Allen, 2025) responds to the same issues as SB 577 by, among other things, streamlining the judicial obligation bond process and creating a presumption of validity, extending local payment intercept mechanisms to local educational agencies, extend emergency apportionment loan payments, and changes the standard of proof in specified childhood sexual assault cases and requires, in such cases, corroborating evidence other than the victim's testimony. SB 832 is currently in this Committee.

Prior Legislation: None known.

PRIOR VOTES:

Assembly Floor (Ayes 73, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
