To: John Cunningham, Lara DeLaney
From: Stephen Kowalewski
Date: 10/15/24
Subject: Proposal to Reform Joint and Several Liability as Part of Contra Costa County's 2024-2025 Legislative Platform

Introduction and Background

Contra Costa County faces significant financial exposure under California's current joint and several liability laws. These laws allow plaintiffs to recover the full amount of economic damages from any one defendant, regardless of their degree of fault. As a result, public agencies, such as Contra Costa County, may be held liable for 100% of economic damages even when they are only minimally at fault. This practice imposes disproportionate financial burdens on public entities, often diverting critical resources away from essential services and infrastructure projects.

Current California Joint and Several Liability Law

In California, joint and several liability applies only to economic damages, while non-economic damages are allocated based on each party's proportionate fault. While this is intended to ensure that victims can recover full economic damages, it places an undue burden on minimally at-fault public agencies. For example, if Contra Costa County is found to be just 1% at fault in a multi-party incident, the County could be responsible for covering the entire economic damages award if other defendants are unable to pay.

Impact on Contra Costa County

The County's exposure to disproportionate liability impacts our ability to maintain financial sustainability and to prioritize investments in community infrastructure and services. Funds that could be invested in road maintenance, active transportation improvements, and safety upgrades are instead directed to cover large settlements. This undermines our ability to enhance community safety, mobility, and resilience, ultimately detracting from the well-being of our residents.

Proposed Reforms and Comparison with Other States

Reforming joint and several liability laws would align California with other states that have adopted fairer allocation models. Examples include:

- **Pure Several Liability**: States like Alaska and Arizona limit liability strictly to a party's share of fault, which ensures no single entity pays more than their proportional share.
- **Modified Joint and Several Liability**: States like Florida and Colorado have set thresholds, applying joint liability only to parties with significant fault or only to economic damages.

- **"Fair Share" Liability**: In states like Georgia, liability is proportionate to each defendant's fault, with no requirement to cover others' shares.
- **Threshold-Based Liability**: New Jersey and Michigan limit joint and several liability to cases where a defendant is above a certain fault threshold (e.g., 50%), ensuring only major contributors bear full responsibility.

These reforms reflect a move towards fairness in liability distribution and would help alleviate the financial burden on public agencies like Contra Costa County.

Proposal for Reform in California

To address these issues, I propose advocating for a legislative change in California to reform joint and several liability laws as part of Contra Costa County's 2024-2025 Legislative Platform. Specifically, the County could seek reforms that:

1. **Introduce Proportional Liability for Economic Damages**: Each defendant would be responsible only for damages corresponding to their percentage of fault, minimizing exposure for those minimally at fault.
2. **Implement a Modified Comparative Fault System**: Bar plaintiffs from recovering damages if they are found to be 1% at fault. This would limit liability for defendants when the plaintiff's actions contribute to the harm.
3. **Set a Fault Threshold for Joint Liability**: Apply joint and several liability only to defendants found significantly at fault, such as above 50%, to ensure that only major contributors to an incident bear the risk of covering others' shares.

Benefits of Reform

Adopting these reforms would offer multiple benefits for Contra Costa County:

- **Protect Public Funds**: Reducing excessive liability exposure preserves taxpayer dollars for essential community investments rather than settlements.
- **Enhance Financial Sustainability**: With less financial risk, the County can better allocate resources for long-term infrastructure improvements and service enhancements.
- **Promote Fairness**: Limiting liability to proportionate fault ensures that public agencies and other defendants are treated equitably, without shouldering undue financial responsibility.

Conclusion

To preserve resources for the benefit of Contra Costa County residents and to ensure fair treatment under the law, I recommend adding joint and several liability reform to our 2024-2025 Legislative Platform. This change would help protect public funds, enhance our capacity for infrastructure investment, and foster a fairer legal landscape for public agencies in California.

Please consider this proposal as part of our review of the County's upcoming legislative priorities. By advocating for these reforms, Contra Costa County can lead the charge towards a more balanced and sustainable approach to liability in California.

Attachments:

1. Impact of Joint and Several Liability on Contra Costa County's Road Budget

Attachment 1

Joint and Several Liability – Impact to County Road Budgets

Joint and several liability is a legal principle that allows a plaintiff to recover the full amount of compensation due from any defendant regardless of their proportion of fault. This principle significantly influences insurance premiums, particularly in the context of counties that maintain self-insurance funds for liability coverage. The impact on insurance premiums and the allocation of funds from sources such as gas taxes to cover these premiums, especially when counties are found to be only marginally at fault, can be profound and multifaceted.

Impact on Insurance Premiums:

1. **Increased Premiums**: Under joint and several liability, a county could be held financially responsible for the entirety of a judgment or settlement even if it was only found to be 1% at fault. This heightened risk exposure leads to increased insurance premiums as insurers (or the self-insurance fund) need to account for the potential of paying out large claims for which the county is minimally responsible.
2. **Risk Assessment Challenges**: Insurers and counties face difficulties in accurately assessing risk and setting premiums because the liability is not proportionate to fault. This unpredictability can lead to more conservative risk assessments, further inflating premiums to cover potential worst-case scenarios.
3. **Impact of Large Claims on Reserves**: For counties that self-insure, a single large claim where the county is minimally at fault but liable for a significant payout can deplete reserves. This necessitates higher contributions to the self-insurance fund, effectively increasing the "premium" the county needs to allocate from its budget.

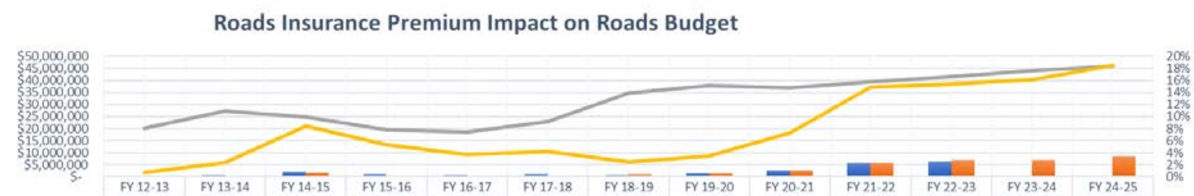
Allocation of Gas Tax Revenue:

1. **Diversion of Funds**: Counties often rely on gas tax revenues for road maintenance and infrastructure projects. However, the increased insurance premiums or contributions to self-insurance funds necessitated by joint and several liability can lead to a significant portion of these funds being diverted away from their intended purpose towards covering insurance costs.
2. **Public Policy Concerns**: The allocation of gas tax revenue to cover insurance premiums raises public policy and fairness concerns. Taxpayers may perceive that their contributions are not being used as intended, especially when the county's fault in claims is minimal. This could lead to dissatisfaction with how county funds are managed and skepticism about the fairness of joint and several liability.
3. **Strain on County Budgets**: The need to allocate a higher portion of gas tax revenue to cover inflated insurance premiums places a strain on county budgets. This can lead to difficult decisions about prioritizing spending, potentially affecting the maintenance and improvement of public infrastructure.

Conclusion:

The principle of joint and several liability significantly impacts insurance premiums for counties, leading to increased costs even when the county's fault is minimal. The allocation of gas tax revenues to cover these costs can divert funds from essential infrastructure projects, raising public policy concerns and placing additional strain on county budgets. While joint and several liability ensures that plaintiffs can recover damages, the broader financial implications for counties and their taxpayers highlight the complexity of balancing legal principles with fiscal responsibility.

Below is a summary of the impacts to Contra Costa County Roads Budget. The Budget number shown in orange in the chart are estimates provided to us by our Risk Managers (Contra Costa is a self-insured County). There has been a dramatic increase in insurance premiums where the percentage of the insurance premium has grown from 3% to 18% of our total gas tax revenues made up of HUTA and RMRA. The last estimate we received from Risk Management to include in our FY 24/25 budget was $8.5 million. This compared to an estimated $46 million in total revenue.



	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
FYTD Actual Insurance Paid	$153,096	$630,200	$2,100,455	$1,040,130	$692,596	$964,202	$871,989	$1,302,380	$2,683,171	$5,858,826	$6,424,490		
FY Budget for Ins Premium	$-	$-	$1,650,000	$500,000	$500,000	$500,000	$1,000,000	$1,300,000	$2,508,460	$5,745,227	$6,999,490	$7,100,000	$8,500,000
Gas Tax Revenue (HUTA & RMRA)	$20,032,395	$27,262,484	$24,961,630	$19,380,815	$18,739,660	$23,091,332	$34,799,946	$37,779,202	$36,865,519	$39,330,193	$41,605,175	$44,000,000	$46,000,000
% of Insurance Premium vs Total Gas Tax Revenue	1%	2%	8%	5%	4%	4%	3%	3%	7%	15%	15%	16%	18%

FYTD Actual Insurance Paid | FY Budget for Ins Premium | Gas Tax Revenue (HUTA & RMRA) | % of Insurance Premium vs Total Gas Tax Revenue