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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

SOVEREIGN IMMUNITY

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Number 2 — Claims, Actions and Judgments Against Public  
Entities and Public Employees

January 1963

California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California



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[For use in printed pamphlet]

LETTER OF TRANSMITTAL

January 2, 1963

To His Excellency Edmund G. Brown  
Governor of California  
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits its recommendation on one portion of this subject--claims, actions and judgments against public entities and public employees. This is one of six reports prepared for the 1963 legislative session containing the recommendations of the Commission relating to various aspects of the subject of sovereign immunity. The Commission has also published a research study relating to sovereign immunity prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

Respectfully submitted,

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October 10, 1962

RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

CLAIMS, ACTIONS AND JUDGMENTS AGAINST PUBLIC  
ENTITIES AND PUBLIC EMPLOYEESBACKGROUND

California statutes contain provisions that bar suit against public entities and public officers and employees unless a claim for damages is presented as prescribed by statute. The three general claims presentation procedures provided by California law (which are found in the Government Code) are: Sections 600 to 655 (claims against the State); Sections 700 to 730 (claims against local public entities); and Sections 800 to 803 (claims against public officers and employees). The provisions relating to claims against local public entities were enacted in 1959 upon recommendation of the California Law Revision Commission.<sup>1</sup> This

1. See Recommendation and Study relating to The Presentation of Claims Against Public Entities, 2 Cal. Law Revision Comm'n Rep., Rec. & Studies A-1 (1959). In its 1959 report to the Legislature the Commission also recommended, and the Legislature enacted, statutes that reenacted without significant substantive change the claims presentation procedures previously applicable to claims against the State and to claims against public officers and employees. The Commission did not at that time make a study of these provisions; its recommendation was designed solely to bring all claims provisions together in the Government Code. In 1961 the Commission submitted a recommendation to the Legislature that all provisions requiring the presentation of claims as a prerequisite to suit against a public officer or employee be repealed. See Recommendation and Study relating to The Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n Rep., Rec. & Studies H-1 (1961). The legislation drafted to effectuate this recommendation was not adopted by the Legislature.

recommendation of the Commission resulted in the establishment of a uniform procedure governing presentation of claims against local public entities and in the repeal of at least 174 separate claims procedures that formerly applied to various local public entities.

The Commission has concluded that the appropriate role for claims presentation procedures should be studied in connection with its study of sovereign immunity. Despite widespread publicity and efforts directed toward dissemination of information about claims presentation requirements both before and after the adoption by the 1959 Legislature of the present local public entities claims statute, noncompliance with its requirements continues to provide a technical defense against determination of tort liability on the merits. To the extent that such technical defenses are not thoroughly justified by the objectives of the claims procedure, their continued existence in the future will tend to frustrate the purposes of whatever rules are ultimately adopted providing for governmental tort liability. On the other hand, to the extent that the existing claims statutes do not effectively implement the accepted objectives of the claims procedure, they may expose public entities to the dangers of unwarranted tort liability.

#### RECOMMENDATION

##### Claims Against Public Entities

Unified statutory treatment. Where two different claims presentation procedures exist claimants, and possibly attorneys, may become confused as to which of the two claims provisions applies to a particular case. Thus, the procedure for presenting a claim to the State and to a local public

entity should be the same to the extent that this can be achieved.

The Commission, therefore, recommends that the procedure applicable to the presentation of claims against the State and against local public entities be set forth in a single statutory enactment.

Realization of basic claims statute objectives--prompt notice. In its 1959 recommendation the Commission stated:

Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

No existing claims statute adequately realizes both of these objectives.

The State claims presentation procedure, unlike the local entity claims statute, does not provide the State with an opportunity to make a prompt investigation of the facts on which a claim is based. Since there would seem to be as much need for prompt investigation and opportunity to repair or correct the condition which gave rise to the claim in the case of the State as in the case of local public entities, the Commission recommends that the present filing times under the local

- 
1. Claims against local public entities for death or physical injury to persons, personal property or growing crops must now be presented within 100 days; but similar claims against the State are considered timely under the present law if presented within two years except for certain claims arising out of the operation of motor vehicles by State personnel which must be presented within one year. All other claims against local public entities must be presented within one year; but if against the State they may be presented within two years, except, again, for motor vehicle torts where the limit is one year.

public entities claims statute be made applicable to the State.

Realization of basic claims statute objectives--opportunity to consider and settle claims. The State claims presentation procedure provides the State with an opportunity to consider a claim before suit may be brought against the State on the claim. The local public entities claims presentation statute, on the other hand, fails to provide the entity with an opportunity to settle just claims before suit is brought, for a person may file his complaint the same day he presents his claim to the public entity.

Commencement of an action on a claim before the public entity has had an opportunity to consider the claim defeats the basic policy of discouraging litigation. It may be true that the presentation of the claim gives adequate notice and opportunity for investigation, but the existing law does not provide opportunity for negotiation and settlement prior to incurring the expense of litigation. Institution of a lawsuit not only obligates the claimant for attorney's fees and costs which will probably increase his minimum settlement figure, but frequently imposes a burden of needless annoyance and inconvenience on the public employees involved and on counsel for the local public entity in preparing and filing an answer within the relatively short time allowed. Much expense and inconvenience can be avoided with no great prejudice to the claimant when rejection of the claim is required before institution of an action against the public entity. A provision to this effect-- which would continue in effect this requirement of the State claims presentation statute and change the local public entities claims statute to impose this requirement--is thus recommended.



Exclusion of motor vehicle claims. Claims arising out of the operation of motor vehicles by public personnel should not be subject to the requirements of the claims statute. Neither basic purpose of a claims statute requires that they be included. One basic purpose of the present 100-day limit in the local entities claims statute is to provide the public entity with prompt notice so that it may investigate the claim and correct or repair the condition which gave rise to it. Such notice does not appear to be necessary in automobile accident cases since the public entity can institute administrative procedures pursuant to which officers and employees are required to report such accidents promptly to their superiors. The second basic purpose of a claims statute is to afford the public entity an opportunity to consider and approve meritorious claims before commencement of litigation. However, the Commission is informed that in most cases the liability of public entities arising out of motor vehicle accidents is covered by insurance and that neither the State nor local public entities consider insured claims, but refer them automatically to the insurance carrier. Hence, in motor vehicle cases the claims procedure does not serve its second purpose. Thus, the claims presentation requirement serves no purpose so far as claims under Vehicle Code Section 17001 are concerned, and it should not be applicable thereto.

Exclusion of claims where plaintiff did not know injury caused by public entity or public employee. A claim should not be required to be presented to the public entity if the plaintiff pleads and proves that he did not know or have reason to know within the period allowed for presentation of the claim that the death or injury was caused by an act or omission of the public entity or an employee thereof, but in such case the plaintiff should be required to give notice to the public entity within a reasonable time after he acquired such knowledge. This exception is necessary to cover those cases where the circumstances do not disclose that a public employee was acting as such and the plaintiff and his attorney do not discover this fact, and could not reasonably have been expected to discover it, until the time for presenting the claim has elapsed. In cases falling within this exception, the normal statute of limitations will operate to defeat stale claims.

Relief for persons who could not reasonably have been expected to present a claim. Under the local public entities claims presentation statute, the statutory time limits (one hundred days for some claims; one year for all others) are applicable without regard for extenuating circumstances and without regard to whether the delay has frustrated the underlying purposes of the requirement, except in the relatively rare instances where the presentation of such claims has been delayed because of the minority, incapacity or death of the claimant. In these three exceptional cases, a late claim may be presented after judicial authorization upon a finding that the local public entity will not be unduly prejudiced thereby if a petition for authority to present a late claim

is filed within a reasonable time, not to exceed one year, from the time otherwise prescribed for filing the claim.

Since permission to present a late claim is required to be predicated on a finding of lack of prejudice to the entity, which finding ordinarily presupposes substantial evidence that the entity in fact had received adequate and prompt notice of the injury which forms the basis for the claim or that more prompt notice would not have improved its ability to make its defenses against the claim, no good reason is apparent why the same rule should not be made applicable to all cases in which the requirements of the claims statute have not been met. Since by hypothesis the entity will not be unduly prejudiced by late presentation where permitted, the continuation of the inflexible time limits in such cases will serve only to provide, as the Commission's research consultant's report indicates, a trap for the unwary and ignorant claimant. It is, therefore, recommended that the claimant be permitted to file his claim within one year after the cause of action on which the claim is based accrued if the claimant failed to file his claim through mistake, surprise, inadvertence or excusable neglect unless the public entity establishes that it will be unduly prejudiced by the late filing of the claim. The showing required of the claimant under

this recommendation is the same as that required under Code of Civil Procedure Section 473 for relieving a party from a default judgment.

In cases where the claimant failed to file his claim within the 100-day period because he was a minor, under a disability or died within the 100-day period, the statute should permit the claim to be presented within one year after the cause of action accrued even though the public entity may be prejudiced by the late filing of the claim. Although as a general principle the public entity should be entitled to prompt notice in order to have an opportunity to investigate the claim and correct or remedy the condition that gave rise to it, the Commission has concluded that, in these rare cases where it ordinarily would not be reasonable to expect the claimant to file a claim, the interest in requiring prompt notice should not be permitted to deprive the claimant or his personal representative of the cause of action even though the entity might be prejudiced by the late filing.

The existing procedure under the local entities claims statute requires a court proceeding to obtain leave to present a claim after the time prescribed. The Commission believes that this procedure can be avoided in many cases by requiring the claimant or his representative to make application in the first instance

to the public entity to present the late claim. The Commission is hopeful that the public entity will grant this application in the great majority of cases where the claimant meets the statutory requirements for presenting a late claim. Only if the public entity denies the application should a court proceeding be required.

The effect of the suggested changes can be summarized as follows: In any case where a claim is required to be presented within 100 days, the claimant will be entitled to apply to present the claim within one year from the date the cause of action accrued if he shows that he failed to present the claim through mistake, surprise, inadvertence or excusable neglect unless the public entity establishes that it would be unduly prejudiced by the late filing. No provision is made for extending the time for presenting claims that are required to be filed within one year from the date the cause of action accrued. In a case where the claimant dies, is a minor or is under a disability, the late claim may be presented within one year after the cause of action accrued even though the public entity may be prejudiced thereby. Thus, the maximum period in any case for filing a claim against a public entity will be one year. This should be contrasted with the present law. Claims against the State must be filed within two years except for vehicle tort claims which must be filed within one year. But, in case of disability, the time for filing a claim against the State is extended until two years after the disability ceases. In the case of local public entities, in the rare cases where a late

claim is permitted, the time limit is extended by existing law for a reasonable time not exceeding one year beyond the the time when the claim should have been filed, thus providing in some cases a maximum period of two years within which to present the claim.

Formal requisites of claim. The provision of the local public entities statute which specifies the contents of a claim should be made applicable to claims against the State in order that a claimant may determine from an examination of the statute the information he needs to set out in his claim.

The State now provides claim forms which vary in form according to the type of claim involved. This is a useful practice, particularly for large entities handling many claims; hence, all public entities should be authorized to provide claim forms that require such information as the public entity specifies. The claimant, however, should not be required to use a form provided by the entity if he presents a claim containing the information required by the statute.

There should be no requirement that claims be verified. The State claims statute now contains a verification requirement, but the local public entities claims statute does not. Section 72 of the Penal Code provides ample protection against fraudulent claims, for it makes the presentation of a false or fraudulent claim to a public entity with intent to defraud a felony.

Time for official consideration of claim. A specific

period should be allowed for official consideration of the claim and a claim should be deemed to be rejected as a matter of law at the end of that period in the absence of prior action by the public entity. The State claims statute does not provide any limitation on the period allowed for official consideration of the claim although it prohibits suit on the claim until it has been rejected or disallowed. This seems unfair to the claimant. The local public entities claims statute, on the other hand, does not provide any period of time for official consideration of the claim; the claimant is entitled to commence his action the same day he files his claim. As previously pointed out, this may result in unnecessary litigation.

A period of 45 days is recommended as an appropriate period for official consideration of a claim. At the end of that period the claim should be deemed to have been rejected if it has not been acted upon by the public entity. The parties should have the power, though, to extend this period by written agreement. Moreover, if a claimant amends his claim, the entity should have another 45 days to act upon the claim. These provisions will provide the parties with a flexible time limit within which to negotiate or settle claims, yet the claimant will not be unduly delayed in the commencement of his action if litigation becomes necessary.

Reduction of technical difficulties and resultant expense in handling of claims. Discretionary authority should be given public entities to administratively settle and compromise tort claims even when liability is doubtful or uncertain. Present statutory law appears to authorize such compromise settlements by local public entities only by implication, and only when litigation has commenced. The proposed provision would permit public entities to use the same techniques of negotiation and compromise in doubtful cases that are utilized extensively by insurance companies in an effort to avoid litigation.

Local public entities should also be authorized to delegate permissive authority to specified officers or employees to settle administratively minor tort claims not exceeding \$1,000 or such lesser amount as the local public entity authorizes. This authorization would make available to the larger local public entities, at their option, administrative procedures comparable to those which have been employed successfully by the Federal Government under the Federal Tort Claims Act and similar legislation. Studies made of these federal administrative tort claims procedures have emphasized their speed, simplicity of operation, inexpensiveness and general fairness in results reached. One of the principal advantages of the administrative settlement of tort claims on the federal level is the very substantial reduction in litigation that has resulted therefrom.



In addition, local public entities should be authorized to create claims boards to exercise such functions of the governing body of the public entity relating to the consideration and determination of claims as the public entity authorizes. This would make available to the larger local public entities, at their option, administrative procedures comparable to those used on the State level where the State Board of Control performs the function of considering and determining claims against the State.

Summary of significant time limitations and other conditions under existing law and under the recommended legislation. The following indicates the present variance between significant time limits and other conditions for the presentation of claims against the State and local public entities as compared to the recommendation of the Commission.

	<u>Local public entities</u>	<u>State</u>	<u>Commission Recommendation</u>
Claims for death or for injury to persons or personal property	Must be filed within 100 days	Timely if filed within 2 years (except vehicle torts--one year)	Must be filed within 100 days (except vehicle torts--claim not required)
Vehicle Claims under Vehicle Code Section 17001	Must be filed within 100 days	Must be filed within 1 year	Need not be filed
All other claims	Must be filed within 1 year	Timely if filed within 2 years (except vehicle torts--1 year)	Must be filed within 1 year
Claim by person under disability	With court permission, may extend filing time up to one year after normal expiration if entity not "unduly prejudiced"	Filing period extended up to 2 years after removal of disability [which could total many years] even though entity may be prejudiced	Filing period may be extended to 1 year from date of accrual of cause of action even though entity may be prejudiced. Court permission is required only if public entity denies application to present a late claim or fails to act on such application within 35 days of presentation.
No claim filed because of mistake, surprise, inadvertence or excusable neglect	No extension of filing period	No extension of filing period	Filing period may be extended to 1 year from date of accrual of cause of action unless entity would be unduly prejudiced. Court permission to present is required if public entity denies application to present a late claim or fails to act on such application within 35 days of presentation
Prior rejection before suit	No such requirement	Required--no time limit on official consideration	Required--45 day time limit on official consideration (except where extended by act of the parties)

	<u>Local Public Entities</u>	<u>State</u>	<u>Commission Recommended</u>
Verification of claim	Not required	Required	Not Required
Waiver of insufficiency of content of claim by failure to object	Provided--must object within 50 days from presentation of claim	Not provided	Provided--must object within 20 days from presentation of claim
Time to sue after rejection	Rejection not required--normal statute of limitations applies	Within six months from rejection in all cases (except vehicle cases-- six months or normal statute of limitations, whichever is later time)	Within six months from rejection in all cases

## Actions Against Public Entities and Public Employees

Consent to suit. The report of the Commission's research consultant indicates that there is a possible doubt whether a tort action may be brought against certain local public entities. A general provision providing that suit may be brought against any public entity should be enacted to eliminate any doubt that might exist whether the rules of substantive liability that are ultimately enacted will be avoided on the technical ground that a particular local public entity is not subject to suit.

Time for commencing action on rejected claim. The Commission above recommends that the claims presentation procedures be revised so that all public entities will be given an opportunity to consider and act on a claim before a suit may be brought on the claim. In order to avoid troublesome problems as to the interrelationship between the statutes of limitation and the claims statute, a special period of limitations applicable to actions based on rejected claims should also be provided. This period should commence to run only upon actual or constructive rejection of the claim. In order to promote uniformity and avoid undue delay in a suit against a public entity, a relatively short period should be allowed for commencing suit after rejection regardless of the nature of the claim. The six-month period now provided in the State claims statute is recommended. The general statutes of limitations would thus have no application to actions against public entities upon causes of action for which claims are required to be filed.

Undertaking by plaintiff. Government Code Section 647 requires a plaintiff who brings an action against the State, except an action arising

out of the negligent operation of a motor vehicle, to post an undertaking in an amount to be determined by the court (but with a minimum amount of \$250 required). The undertaking is conditioned upon the payment of costs and reasonable counsel fees if the plaintiff fails to recover a judgment against the State. This provision thus provides a large measure of protection against spurious and unjustified actions against the State. There is no similar requirement for an undertaking in actions brought against local public entities.

The Commission has concluded that all public entities are entitled to protection against unmeritorious litigation since local public entities are as likely as the State to be subjected to such actions. At the same time, however, no unreasonable burden should be imposed upon a person who has a meritorious cause of action.

The Commission recommends, therefore, that all public entities be authorized, in their discretion, to require an undertaking for costs in any action against a public entity. There is no need to require an undertaking for counsel fees since the protection afforded public entities by an undertaking for costs is sufficient to deter litigation-prone persons from instituting unfounded litigation. Moreover, making the undertaking for costs entirely discretionary eliminates any need for an exception like that found in Section 647 for certain actions involving motor vehicles, since it is expected that the discretion vested in the public entities will be judiciously exercised. To further assure that no unreasonable burden is placed upon a meritorious litigant, the minimum amount of the undertaking should be fixed at \$100, and the public entity should have the burden of showing good cause for moving the court to fix an amount in excess of this minimum.

The Commission further recommends that the protection which would be afforded public entities under this recommendation be extended to actions brought against public employees where the public entity furnishes the defense. This will discourage a plaintiff from bringing an action against the employee alone (instead of against the public entity) merely to avoid the undertaking. Moreover, unmeritorious litigation against public employees should be discouraged to the same extent as litigation against the public entity itself is discouraged.

Actions against public employees. Sections 801 and 803 of the Government Code and various municipal charters and ordinances contain provisions that bar suit against a public officer or employee on his personal liability unless a claim for damages is presented within a relatively short time after the claimant's cause of action has accrued. These provisions are hereafter referred to as "personnel claims statutes."

The existing personnel claims statutes are ambiguous, inconsistent and overlapping.<sup>1</sup> Claimants, attorneys and courts have difficulty in determining which, if any, of the personnel claims statutes applies in a particular case. In addition, these statutes have operated as a procedural trap for unwary plaintiffs.

In 1961 the Commission submitted a recommendation to the Legislature that all personnel claims statutes be repealed.<sup>2</sup> However, the legislation drafted to effectuate this recommendation was not enacted. The Commission has reviewed its 1961 recommendation to determine whether the personnel

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1. For a detailed discussion of the defects in the personnel claims statutes, see research consultant's study, Recommendation and Study Relating to The Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n. Rep., Rec. & Studies at H-13 et seq. (1961).
  2. See Recommendation and Study Relating to The Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n Rep., Rec. & Studies, H-1 (1961).

claims statutes should be retained, revised or repealed in view of the Commission's other recommendations concerning governmental tort liability.

The traditional grounds used to justify the public entity claims statutes--that prompt notice is necessary to permit investigation of the claim and correction of the condition that gave rise to it--do not justify personnel claims statutes. As the Commission stated in its 1961 recommendation:

The recognized justification for a claims statute is that it assures reasonably prompt notice of a potential liability to a defendant whose unique situation requires this preferred treatment. Thus, a claims statute is justified as applied to a public entity which, but for such protection, might frequently find itself sued on stale claims of which it had not theretofore been aware. But the liability of public officers and employees against which the personnel claims procedure affords protection is a personal liability based on the defendant's own negligence. In many cases the injury involved arises directly out of an act or omission of the public officer and employee and he is immediately aware of it. There is no more justification in these cases for requiring a plaintiff to present a claim as a condition of bringing suit than there would be for imposing a similar requirement when a plaintiff sues any other defendant. Of course, in some instances a public officer or employee may be held liable even though he did not have immediate personal knowledge of the injury. But in such cases the public officer's liability is no greater than that of his counterpart in private employment.<sup>3</sup>

Nevertheless, in view of its other recommendations relating to governmental tort liability, the Commission has concluded that some type of personnel claims statute is needed. For example, the Commission recommends that as a general rule a public entity should be required to pay a judgment rendered against its employee for death, injury or damage resulting from an act or omission in the scope of his employment.<sup>4</sup>

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3. Recommendation and Study Relating to the Presentation of Claims Against Public Officers and Employees, 3 Cal. Law Revision Comm'n Rep., Rec. & Studies, H-5--H-6 (1961).

4. See Recommendation of California Law Revision Commission relating to Tort Liability of Public Entities and Public Officers and Employees (September 1, 1962).

If this general rule were adopted, the repeal of the personnel claims statutes would largely negate the protection provided by the public entity claims statutes; for, if an action against the public entity were barred because a claim was not presented to the public entity as required by the applicable statute, the claimant could, nevertheless, bring an action against the employee involved and recover a judgment which the public entity ordinarily would then be required to pay. A requirement that public entities assume the ultimate liability for acts or omissions of their personnel in the scope of their employment should not operate, however, to defeat the sound public policy represented in the public entity claims statutes. It is necessary, therefore, that appropriate legislation be enacted to preserve the effectiveness of the public entity claims statutes.

Accordingly, the Commission recommends:

1. An action against a public employee for death, injury or damage resulting from an act or omission in the scope of his employment should be barred if an action based on the same act or omission against the employing public entity would be barred because the requirements of the public entity claims statute had not been met.
2. A cause of action against a public employee should not be barred, however, if the plaintiff pleads and proves that he did not know or have reason to know within the period allowed for presentation of the claim to the employing public entity that the injury was caused by an act or omission of a public employee. This exception is necessary to cover those cases where the circumstances do not disclose that the public employee was acting as such and the plaintiff and his attorney



do not discover this fact, and could not reasonably have been expected to discover it, until the time for presenting the claim to the public entity has elapsed. In order that the entire burden of liability may not fall on the public employee under these circumstances, it is necessary to provide that no claim need be presented against the public entity if such a showing is made.

3. The statutory protection recommended above should supersede any charter, ordinance or regulation of a local public entity which requires the presentation of a claim as a prerequisite to the maintenance of an action against a public employee to enforce his personal liability.

Venue in tort actions against the State. Venue in tort actions against the State is now determined by Section 651 of the Government Code and Section 401 of the Code of Civil Procedure. The effect of these sections is that tort actions against the State may now be tried in any city or county in which the Attorney General has an office.

Legislation should be enacted to provide that the place of trial for a tort action against the State is a court of competent jurisdiction in the county in which the injury occurs. The court should be authorized, however, to change the place of trial in the same manner and under the same circumstances as the place of trial may be changed where the action is between private persons.

The proposed legislation would be fair to both parties. In most cases, the witnesses will reside in the vicinity of the place where the injury occurred. On the other hand, if the present venue provisions are retained, it will often be necessary--as in the case of a tort action involving an injury in a state institution--to transport numerous

witnesses to either Sacramento, San Francisco or Los Angeles, the places where the Attorney General presently maintains offices. Moreover, the recommended legislation will prevent the plaintiff from shopping for a forum in an attempt to find a jurisdiction noted for liberal jury verdicts.

Requiring that a tort action against the State ordinarily be tried in the county where the injury occurred will not prove unduly burdensome to either party since the place of the trial could be changed upon the same showing that would be required if the action were one between private persons.

Payment of claims and judgments

Compromise of claims and actions. [This portion of the recommendation will be written when the Commission has determined the substance of the statutory provisions that will be recommended for enactment.]

Payment of tort judgments by local public entities. Existing statutes do not always ensure that local public entities have the authority and the duty to pay tort judgments for which they are liable. In addition, the plaintiff in some cases has no means whereby he can enforce a tort judgment against a local public entity. As a result, some local public entities enjoy a form of practical immunity from tort liability even though they otherwise would be liable under the rules governing their substantive tort liability.

To ensure that local public entities have both the duty and the capacity to pay tort judgments for which they are liable and, at the same time, to protect public entities against the disruptive financial consequences of large tort judgments, the Commission recommends:

1. All local public entities should have a statutory duty to pay tort judgments for which they are liable. Judgments against public entities, unlike those against private persons, ordinarily cannot be satisfied by execution or other legal process against the assets of the judgment debtor, for public property and funds are generally exempt from execution. However, when a statutory duty is imposed upon public entities to pay tort judgments, it will be clear not only that such entities have authority to pay such judgments, but that the judgment creditor may obtain a writ of mandate to compel the public entity to pay the judgment.

2. All local public entities should be authorized to pay a tort judgment in installments over a term not exceeding 10 years when necessary to prevent undue hardship to the public entity. Cities, counties, school districts and county water districts already have authority to

spread the payment of judgments over a period of years.<sup>1</sup>

Accordingly, a local public entity liable for a tort judgment should be required to pay the judgment to the extent funds are available in the fiscal year in which the judgment becomes final. If the judgment cannot be paid in full in such fiscal year, the public entity should be required to pay the balance of the judgment in the ensuing fiscal year unless this would result in undue hardship to the entity. In case of undue hardship, the public entity should be authorized to spread the payment of the balance of the judgment over a period not to exceed 10 years.

The delay in receiving payment where the public entity determines to pay the judgment in installments would not unduly harm the judgment creditor. In the first place, since tort judgments will bear interest at the legal rate of seven percent, public entities will be motivated to spread the payment of tort judgments over a period of less than 10 years and to prepay any one or more installments whenever this is possible. Moreover, in most cases there will be an available market for the sale or discount of tort judgments that are to be paid in installments. However, to provide additional assurance that such judgments will be marketable, they should be made legal investments for trust funds, banks and insurance companies and for certain public funds and should be

1. Cal. Govt. Code §§ 50170-50175, Cal. Water Code §§ 31091-31096 (cities, counties and county water districts authorized to spread the payment of judgments over a period not exceeding 10 years); Cal. Educ. Code § 904 (school districts authorized to spread the payment of judgments over a period not exceeding three years).

permitted to be used as security under certain circumstances.

The authority to pay tort judgments over a period not exceeding 10 years should be in addition to and not in lieu of established procedures presently permitting extended payment of judgments. To avoid unnecessary conflict, however, and to stimulate a ready market for such judgments, Education Code Section 904 should be amended to permit payment of judgments over a period not exceeding 10 years and to remove the four percent limit on the rate of interest now provided. It may be noted that the four percent limit is probably unconstitutional.<sup>2</sup>

3. A few types of public entities appear to be independent for functional purposes but are nevertheless financially dependent upon some other public entity from whom they derive all or part of their funds. The limited ability of such dependent entities to raise their own funds by the exercise of the taxing power should not be permitted to shield them in fact from tort liability where, under applicable rules determining substantive liability, they would otherwise be liable. Accordingly, the contributing entity should be required to include in its appropriations of funds to the dependent entity sufficient moneys to bear its pro rata share of the tort judgments for which the dependent public entity is liable. In the absence of such a provision, a plaintiff might not be able to secure payment of his judgment.

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2. See *Welch v. Dunsmuir Joint Union H.S. Dist.*, 326 P.2d 633 (Cal. App. 1958) (holding the 4 percent interest rate unconstitutional in light of Section 22 of Article 20 of the State Constitution which sets the minimum interest rate on judgments at seven percent), vacated without opinion upon hearing granted by the California Supreme Court.

4. The statutory restrictions upon the incurring of debts or liabilities and the statutory limitations upon the maximum permissible rate of property taxation by local public entities should not operate to confer for practical purposes an immunity from tort liability. Accordingly, an express statutory provision should be enacted to make it clear that these limitations do not apply to tort judgments. Such a provision should not impose undue hardship upon local public entities in view of other recommendations of the Commission. For example, installment payments over a period of 10 years will, in most cases, mitigate the fiscal impact of the requirement that tort judgments be paid. Other recommendations of the Commission will also permit local public entities to mitigate the adverse financial consequences of unanticipated tort judgments. For example, one of the recommendations made by the Commission to the 1963 legislative session is that public entities be authorized to purchase insurance.<sup>3</sup> This will permit the substitution of a known annual payment for potential tort liability. Moreover, the Commission's recommendation relating to the issuance of bonds to pay tort judgments<sup>4</sup> will have the effect of permitting payment of such judgments to be spread over a period of many years.

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3. See Recommendation relating to Insurance Coverage for Public Entities and Public Employees, 4 Cal. Law Revision Comm'n Rep. Rec. & Studies \*\*\* (1963)

4. See pages \*\*-\*\* infra.

Funding judgments against local public entities with bonds. The expansion of tort liability of governmental entities makes it imperative to provide governmental entities with means to minimize the disruptive effect of unexpectedly large judgments. Certain governmental entities in California have long been authorized to issue bonds to raise funds to pay tort judgments. The City of Los Angeles issued bonds to fund a liability of almost six million dollars incurred in the St. Francis Dam disaster of the late 1920's. The City of Long Beach issued bonds to obtain funds to pay judgments in excess of \$370,000 that resulted when a platform leading to the entrance to the municipal auditorium collapsed under the weight of a crowd of people in 1914. That these cities were able to fund their tort liabilities with bonds enabled them to meet these obligations without seriously disrupting their financial structures.

Similar authority should be extended to all other public entities that levy taxes or assessments and thus have the power to raise the revenues to discharge a bonded indebtedness. Inasmuch as the exercise of this power may result in the imposition of taxes to discharge the bonded indebtedness the power should be exercised only when two-thirds of the voters, voting at an election called for that purpose, authorize the public entity to issue the bonds. The legislation recommended by the Commission is not limited by its terms to judgments arising out of "tort" actions; it permits the issuance of bonds to pay any judgment. To limit the authorization to "tort" judgments would probably result in litigation brought solely to determine whether particular judgments were "tort" judgments. Since the bonds may be issued only after authorization by two-thirds of the voters, there is ample protection against abuse of the authority that would be granted by recommended legislation.

Amendments and repeals

Division 3.5 (commencing with Section 600) of Title 1 of the Government Code should be repealed. This division is the existing statute relating to claims and actions against the State and local public entities and their employees. It will be entirely superseded by the proposed legislation. Appendix A, page \*\*\*, is a disposition table showing where the subject matter of the repealed sections in Division 3.5 is covered in the legislation recommended by the Commission or the reason why the subject matter of those sections is not included in the recommended legislation.

A large number of statutes contain references to Division 3.5 or a portion of that division. Since Division 3.5 will be repealed, it is necessary to delete these references and to replace them with appropriate references to the pertinent provisions of the recommended legislation.

Effective date of proposed legislation

The proposed legislation takes effect on July 1, 1964. This deferred effective date will provide time for persons to become familiar with the proposed legislation prior to its effective date.



Part 3

SECTION 1. Part 3 (commencing with Section 900) is added to Division 3.6 of Title 1 of the Government Code as enacted by Senate Bill No. \*\*\* of the 1963 Regular Session,<sup>1</sup> to read:

PART 3. CLAIMS AGAINST PUBLIC ENTITIES

Chapter 1. General

Article 1. Definitions

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1. Senate Bill No. \*\*\* will be the bill introduced to effectuate the Commission's recommendation relating to tort liability of public entities and public employees. See Recommendation of California Law Revision Commission relating to Tort Liability of Public Entities and Public Officers and Employees (September 1, 1962).

900. As used in this part, unless the provision or context otherwise requires, "board" means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the State, the State Board of Control.

Note: This definition is new. It facilitates the drafting of provisions that apply both to the State and to local public entities.

The definitions contained in Part 1 of Division 3.6 will, of course, apply to this part. Part 1 contains the following provisions:

810. Unless the provision or context otherwise requires, the definitions contained in this part govern the construction of this division.

810.2. "Employee" includes an officer, agent or employee.

810.4. "Employment" includes office, agency or employment.

810.6. "Enactment" means a constitutional provision, statute, charter provision, ordinance or regulation.

810.8. "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, character, feelings or estate of such nature that it would be actionable if negligently or wrongfully inflicted by a private person.

811. "Local public entity" includes any county or city and any district, local authority or other political subdivision of the State, but does not include the State or any office, officer, department, division, bureau, board, commission or agency of the State claims against which are paid by warrants drawn by the Controller.

811.2. "Public employee" means an employee of a public entity.

811.4. "Public entity" includes the State and any local public entity.

901. For the purpose of computing the time limits prescribed by Sections 911.2, 911.4 and 912, the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a public entity.

Note: Proposed Section 901 is based on the second paragraph of Government Code Section 715, which applies to claims against local public entities. There is no existing comparable statutory provision that applies to claims against the State.

## Article 2. General Provisions

905. Except as provided in Section 905.4, there shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public officers and employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or a department or agency thereof or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 of Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1720).

(l) Claims governed by the Pedestrian Mall Law of 1960, Division 13 (commencing with Section 11000) of the Streets and Highways Code.

Note: Proposed Section 905 is the same in substance as Government Code Section 703. See proposed Section 935 infra for procedure for claims excepted from Chapters 1 and 2.

905.2. Except as provided in Section 905.4, there shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the State:

- (a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by law.
- (b) For which the appropriation made or fund designated is exhausted.
- (c) For money or damages (1) on express contract, (2) for a negligent or wrongful act or omission for which the State is otherwise made liable by statute or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution.
- (d) For which settlement is not otherwise provided for by law.

Note: Proposed Section 905.2 restates the substance of portions of Government Code Sections 620, 621 and 641. Proposed Section 905.2 is patterned after Section 630 (Title 2 of the Calif. Adminis. Code) of the Rules of the State Board of Control.

905.4. A claim need not be presented to a public entity  
on:

(a) Any cause of action arising under Vehicle Code Section 17001  
or 17002; or

(b) Any cause of action for injury caused by a negligent or wrongful  
act or omission if the plaintiff pleads and proves that he did not know  
or have reason to know, within the period prescribed for the presentation  
of a claim to the public entity, that the injury was caused by an  
act or omission of the public entity or an employee thereof and that he  
gave notice to the public entity within a reasonable time after he  
acquired such knowledge.

Note: Proposed Section 905.4 is a new provision. It makes it  
unnecessary to present a claim where the injury results from the  
operation of a motor vehicle by a public employee or where the plaintiff  
did not know or have reason to know within the period prescribed for  
presenting a claim that the injury was caused by a public entity or  
public employee. See proposed Section 950.4 infra (relating to claims  
against public employees).

905.6. Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part shall not be construed to be an exclusive means for presenting claims to the Legislature nor as preventing the Legislature from making such appropriations as it deems proper for the payment of claims against the State which have not been submitted to the board or recommended for payment by it pursuant to Chapters 1 and 2 of this part.

Note: Proposed Section 905.6 is the same in substance as Government Code Section 625.



905.8. Nothing in this part imposes liability

upon a public entity unless such liability otherwise exists.

Note: Proposed Section 905.8 is new. It makes clear that the claims presentation provisions do not impose substantive liability.

Chapter 2. Presentation and Consideration of Claims

Article 1. General

910. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

- (a) The name and post office address of the claimant;
- (b) The post office address to which the person presenting the claim desires notices to be sent;
- (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and
- (e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

Note: Proposed Section 910 is the same as the first paragraph of Government Code Section 711 which applies to local public entities. Government Code Section 621 which applies to the State requires that "any person having a claim against the State . . . shall present it to the board . . . , accompanied by a statement showing the facts constituting the claim, . . ." Proposed Section 910 will substitute a more specific statement of the contents of a claim for the very general statement found in Government Code section 621.

910.2. The claim shall be signed by the claimant or by some person on his behalf. Claims against local public entities for supplies, materials, equipment or services need not be signed by the claimant or on his behalf if presented on a billhead or invoice regularly used in the conduct of the business of the claimant.

Note: Proposed Section 910.2 is the same as the second paragraph of Government Code Section 711 which applies to local public entities. Proposed Section 910.2 will eliminate the requirement of Government Code Section 621 that claims against the State be "verified in the same manner as complaints in civil actions " Claims against local public entities are not required by existing law to be verified.

910.4. The board may provide forms specifying the information to be contained in claims against the public entity. If the board provides forms pursuant to this section, the person presenting a claim need not use such form if he presents his claim in conformity with Sections 910 and 910.2. If he uses the form provided pursuant to this section and complies substantially with its requirements, he shall be deemed to have complied with Sections 910 and 910.2.

Note: Proposed Section 910.4 is new. It permits public entities to provide claims forms that may be used by the claimant in lieu of submitting a claim containing the information specified in proposed Section 910.

910.6. A claim may be amended at any time before the expiration of the period designated in Section 911.2 or before final action thereon is taken by the board, whichever is later, if the claim as amended relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

Note: Existing law applying to local public entities (Government Code Section 771) provides that "a claim may be amended at any time, and the amendment shall be considered a part of the original claim for all purposes." Proposed Section 910.6 provides a time limit on amending claims. There is no existing statutory provision relating to amendment of claims against the State.

910.8. (a) If in the opinion of the board a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein.

(b) Such notice may be given personally to the person presenting the claim or by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim.

(c) The board may not take action on the claim for a period of 15 days after such notice is given. A failure or refusal to amend the claim shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Sections 910 and 910.2 or a form provided under Section 910.4.

Note: Proposed Section 910.8 is the same as Government Code Section 712 which applies to local public entities except that (1) Section 712 provides for notice of insufficiency within 50 days instead of within 20 days and (2) Section 712 prohibits board action on the claim for a period of 20 days instead of 15 days. The shorter time limits under proposed Section 910.8 are necessary because the proposed legislation is designed to give the board an opportunity to consider the claim before court action may be commenced. There is no similar provision under existing law that provides for notice of insufficiency of claims against the State.

A board of a local public entity may delegate the functions of ruling on the insufficiency of claims and giving notice of insufficiency to an officer of the entity if it deems it more convenient to do so than to perform these functions itself. See proposed Section 935.4.

911. Any defense based upon a defect or omission in a claim as presented is waived by failure of the board to give notice of insufficiency with respect to such defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

Note: Proposed Section 911 is the same as Government Code Section 713 which applies to local public entities. No comparable statutory provision now exists with respect to claims against the State.

911.2. A claim relating to a cause of action for death or for injury to persons or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the one hundredth day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action.

Note: Proposed Section 911.2 is substantially the same as the first paragraph of Government Code Section 715 which applies to local public entities. Proposed Section 911.2 will provide a shorter period of time for presenting a claim against the State than the existing law (Government Code Section 644) which provides that a claim not arising under Sections 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the board within two years after the claim first arose or accrued.



911.4. When a claim that is required by Section 911.2 to be presented not later than the one hundredth day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim. The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) of this chapter within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

Note: Proposed Sections 911.4 to 911.8 are new. These sections will make a court proceeding to obtain leave to file a late claim necessary only in those cases where the public entity does not grant the application made pursuant to Section 911.4. Under existing law applicable to local public entities a court proceeding is necessary in every case before a late claim may be filed. See also note to proposed Section 912.

911.6. (a) The board shall grant or deny the application within 35 days after it is presented to the board. If the board does not act upon the application within 35 days after the application is presented, the application shall be deemed to have been denied on the thirty-fifth day.

(b) The board shall grant the application where:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not unduly prejudiced by the failure to present the claim within the time specified in Section 911.2; or

(2) The claimant was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of such time.

Note: See notes to proposed Sections 911.4 and 912.

911.8. Written notice of the board's action upon the application shall be given to the claimant personally or by mailing it to the address, if any, stated in the proposed claim as the address to which the person making the application desires notices to be sent. If no such address is stated in the claim, the notice shall be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the proposed claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

Note: See note to proposed Section 911.4.

912. (a) As used in this section "superior court" means:

(1) In the case of a claim against a local public entity, the superior court of the county in which the local public entity has its principal office.

(2) In the case of a claim against the State, the superior court of any county in which the Attorney General has an office.

(b) The superior court shall grant leave to present a claim after the expiration of the time specified in Section 911.2 where the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after the accrual of the cause of action and:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity against which the claim is made establishes that it would be unduly prejudiced if leave to present the claim were granted; or

(2) The claimant was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of such time.

(c) Application to the superior court for leave to present a claim under this section must be made by a petition showing (1) that application was made to the board under Section 911.4 and was denied and (2) the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within 20 days after the application to the board is denied or deemed denied

pursuant to Section 911.6.

(d) A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served (1) on the clerk or secretary or board of the local public entity if the claim is against a local public entity, or (2) on the State Board of Control or its secretary if the claim is against the State, not less than 10 days before the hearing. The application shall be determined upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at such hearing.

Note: Proposed Section 912 is based on Government Code Section 716 which relates to local public entities. The grounds for granting leave to present a late claim have been liberalized to cover cases where the claimant could not reasonably have been expected to file a claim. The requirement of Government Code Section 716 that the petition be verified has been eliminated. There is no similar existing statutory proceeding for petitioning a court for leave to file a late claim against the State. However, Government Code Section 646 permits the presentation of claims against the State by certain persons under disability within two years after the disability ceases.

912.2. If an application for leave to present a claim is granted by the board pursuant to Section 911.6, or if a petition for leave to present a claim is granted by the court pursuant to Section 912, the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.

Note: Proposed Section 912.2 is new. It is necessary in order to fix the date from which to compute the time within which the board must act on the claim under proposed Section 912.4 infra.

912.4. The board shall act on a claim in the manner provided in Section 912.6 or 912.8 within 45 days after the claim has been presented. If a claim is amended, the board shall act on the amended claim within 45 days after the amended claim is presented. The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made before or after the expiration of such period. If the board fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been rejected by the board on the last day of the period within which the board was required to act upon the claim. If the period within which the board is required to act is extended by agreement, whether made before or after the expiration of such period, the last day of the period within which the board is required to act shall be the last day of the period specified in such agreement.

Note: Proposed Section 912.4 is new. Under existing law, an action may not be brought against the State until the claim is rejected or disallowed and no time is prescribed within which the State Board of Control must act on the claim. On the other hand, under existing law an action may be brought against a local public entity as soon as the claim has been presented.

Although proposed Section 912.4 provides that a claim is deemed to be rejected if the board does not act within 45 days, proposed Section 960.2 authorizes reconsideration and settlement of claims within the period allowed for commencing an action. Settlement or compromise of pending litigation is covered by proposed Sections 960.6 (State) and 960.8 (local public entities).

912.6. (a) In the case of a claim against a local public entity the board shall act on a claim in one of the following ways:

(1) If the board finds the claim is not a proper charge against the public entity, it shall reject the claim.

(2) If the board finds the claim is a proper charge against the public entity and is for an amount justly due, it shall allow the claim.

(3) If the board finds the claim is a proper charge against the public entity but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance.

(4) If legal liability of the public entity or the amount justly due is disputed, the board may reject the claim or may compromise the claim.

(b) In the case of a claim against a local public entity, if the board allows the claim in whole or in part or compromises the claim, it may require the claimant, if he accepts the amount allowed or offered to settle the claim, to accept it in settlement of the entire claim.

Note: Proposed Section 912.6 is based on Government Code Section 717. Proposed Section 912.6(a)(4), authorizing compromise of claims, is new.



912.8. In the case of claims against the State, the board shall examine and adjust claims in accordance with such procedure as the board, by rule, may prescribe. It may hear evidence for and against them and, with the approval of the Governor, report to the Legislature such facts and recommendations concerning them as it deems proper. In making recommendations the board may state and use any official or personal knowledge which any member may have touching any claim.

Note: Proposed Section 912.8 is based on Government Code Sections 620 (second paragraph) and 622 which apply to the State. Proposed Section 912.8 authorizes the Board of Control to prescribe, by rule, the procedure for consideration of claims. This permits elimination of the provisions of Section 621 relating to notice of time and place of hearing on the claim. See proposed Section 965 infra which provides for payment of allowed claims when a sufficient appropriation for payment exists.

913. If the State elects to insure its liability, the board may automatically deny any claim covered by insurance.

Note: Proposed Section 913 is the same as Government Code Section 624.

913.2. Written notice of any action taken under Section 912.6 or 912.8 rejecting a claim in whole or in part shall be given to the person who presented the claim. Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

Note: Proposed Section 913.2 is based on the second paragraph of Government Code Section 717 which applies to local public entities. There is no similar statutory provision relating to claims against the State.

Article 2. Delivery of Claims, Applications, Notices, Etc. 915

915. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

- (1) Delivering it to the clerk, secretary or auditor thereof; or
- (2) Mailing it to such clerk, secretary or auditor or to the governing body at its principal office.

(b) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the State by:

- (1) Delivering it to an office of the State Board of Control; or
- (2) Mailing it to the State Board of Control at its principal office.

(c) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed for presentation thereof.

Note: Proposed Section 915 is based on Government Code Section 714 which applies to local public entities. There is no similar statutory provision relating to claims against the State.

915.2. If a claim, amendment to a claim or application to a public entity for leave to present a late claim is presented by mail under this article, or if any notice under this article is given by mail, the claim, amendment, application or notice shall be served in the manner prescribed by Section 1013 of the Code of Civil Procedure. Proof of service by mail may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure.

Note: Proposed Section 915.2 is new. It is patterned after Business and Professions Code Section 25760.

Chapter 3. Proceedings to Determine Constitutionality  
of Claims Against the State

**Note:** This chapter is the same as Article 3 (commencing with Section 630) of Chapter 1 of Division 3.5 of Title 1 of the Government Code and will supersede that article.

920. As used in this chapter, "omnibus claim appropriation" means an act of appropriation, or an item of appropriation in a budget act, by which the Legislature appropriates a lump sum to pay the claim of the State Board of Control or its secretary against the State in an amount which the Legislature has determined is properly chargeable to the State.

920.2. Promptly following the effective date of an omnibus claim appropriation, the board or its secretary shall submit to the Controller a claim covering the full amount of the appropriation made in the omnibus claim appropriation. Any such claim is exempt from the provisions of Chapter 4 (commencing with Section 925) of this part, and the board shall have those powers necessary to administer and disburse the omnibus claim appropriation.

920.4. If the Controller believes or has reason to believe that the payment of any portion of the omnibus claim appropriation may violate the provisions of the Constitution, he shall withhold payment of the questioned portion and shall issue his warrant for the remainder of the appropriation. The secretary, subject to the board's approval, shall promptly disburse the undisputed portion of the omnibus claim

appropriation and shall promptly give notice to the Joint Legislative Budget Committee of the Controller's action concerning the withheld portion.

920.6. Unless the Joint Legislative Budget Committee within 60 days after receipt of such notice advises the board in writing that the Legislature desires to reconsider any part of the withheld portion, the board shall institute proceedings to compel the Controller to issue his warrant for the balance of the omnibus claim appropriation. The board shall prosecute any such proceeding to final determination and shall disburse the funds finally paid over to it. Funds subject to such proceedings shall continue to be available until the end of the fiscal year in which final determination of the proceeding occurs.

920.8. If the Joint Legislative Budget Committee advises the board that the Legislature desires to reconsider any part of the omnibus claim appropriation withheld by the Controller, no further action shall be taken with respect to that part and the money appropriated therefor shall revert to funds from which they were appropriated, pending further legislative action. The board, however, shall institute proceedings as provided in Section 920.6 to compel payment of the remainder of the omnibus claim appropriation withheld by the Controller.

Chapter 4. Presentation of Claims to State Controller

Note: This chapter is the same as Article 1 (commencing with Section 600) of Chapter 1 of Division 3.5 of Title 1 of the Government Code and will supersede that article.

925. As used in this chapter, "board" means the State Board of Control.

925.2. Claims for expenses of either house of the Legislature or members or committees thereof, and claims for official salaries fixed by statute, are exempt from this chapter and Section 13920.

925.4. Any person having a claim against the State for which appropriations have been made, or for which state funds are available, may present it to the Controller in the form and manner prescribed by the general rules and regulations adopted by the board for the presentation and audit of claims.

925.6. The Controller shall not draw his warrant for any claim until it has been audited by him in conformity with law and the general rules and regulations adopted by the board, governing the presentation and audit of claims. Whenever the Controller is directed by law to draw his warrant for any purpose, the direction is subject to this section, unless it is accompanied by a special provision exempting it from this section.

925.8. If the Controller approves a claim he shall draw his warrant for the amount approved in favor of the claimant.

926. If he disapproves a claim, the Controller shall file it and a statement of his disapproval and his reasons with the board as prescribed in the rules and regulations of the board.



926.2. The Controller shall not entertain for a second time a claim against the State once rejected by him or by the Legislature unless such facts are subsequently presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial.

926.4. Any person who is aggrieved by the disapproval of a claim by the Controller, may appeal to the board. If the board finds that facts are presented justifying such action, the Controller shall reconsider his rejection of the claim.

926.6. After final rejection of a claim by the Controller following reconsideration, any person interested may appeal to the Legislature by filing with the board a notice of appeal. Upon receipt of such notice the board shall transmit to the Legislature the rejected claim, all papers accompanying it, and a statement of the evidence taken before the board.

926.8. Whenever a governmental agency of the United States, in the collection of taxes or amounts owing to it, is authorized by federal law to levy administratively on credits owing to a debtor, it may avail itself of the provisions of this section and claim credits owing by the State to such debtor, in manner as follows:

It shall file a certification of the facts with the state department, board, office or commission owing the credit to the debtor prior to the time the state agency presents the claims of the debtor therefor to the State Controller or to the State Personnel Board. The state agency in presenting the claim of the debtor shall note thereon the fact of the filing of the certificate and shall also note any amounts owed by the debtor to the State by reason of advances or for any other purpose.

Subject to the provisions of Sections 12419.4 and 12419.5, the State Controller shall issue his warrant payable to the United States Treasurer for the net amount due the debtor, after offsetting for any amounts advanced to the debtor or by him owing to the State, or as much thereof as will satisfy in full the amount owing by the debtor to the United States as so certified; any balance shall be paid to the debtor.

Chapter 5. Claims Procedures Established by Agreement

930. The State Board of Control may, by rule, authorize any state agency to include in any written agreement to which the agency is a party, provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of claims than the time provided in Section 911.2, and that Sections 911.4 to 912.2, inclusive, are applicable to all such claims.

Note: Proposed Section 930 is new. It is based on existing Government Code Section 705 which applies to local public entities. See proposed Section 930.2 infra.

930.2. The governing body of a local public entity may include in any written agreement to which the entity, its governing body, or any board or employee thereof in an official capacity is a party, provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. The written agreement may incorporate by reference claim provisions set forth in a specifically identified ordinance or resolution theretofore adopted by the governing body. A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of claims than the time provided in Section 911.2, and that Sections 911.4 to 912.2, inclusive, are applicable to all such claims.

Note: Proposed Section 930.2 is the same in substance as Government Code Section 705.

Chapter 6. Claims Procedures Established by Local Public Entities

935. Claims against a local public entity for money or damages which are excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity. The procedure so prescribed may include a requirement that a claim be presented and acted upon as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 911.2 nor provide a longer time for action upon any claim than the time provided in Section 912.4, and Sections 911.4 to 912.2, inclusive, are applicable to all claims governed thereby.

Note: Proposed Section 935 is the same as Government Code Section 730 except that Section 935 provides that the procedure prescribed pursuant to Section 935 may include a requirement that the claim be acted upon as a prerequisite to suit thereon. This change conforms to proposed Section 945.4 which bars suit until claim is rejected or deemed to be rejected.

935.2. A local public entity may establish a claims board of not less than three members to perform such functions of the governing body of the public entity under this part as are prescribed by the local public entity. The local public entity may provide that, upon written order of the claims board, the auditor or other fiscal officer of the local public entity shall cause a warrant to be drawn upon the treasury of the local public entity in the amount for which a claim has been allowed or compromised or settled.

Note: Proposed Section 935.2 is new. It authorizes a local public entity to establish a claims board to exercise such functions relating to claims as the local public entity designates.

935.4. A local public entity may authorize an employee of the local public entity to perform such functions of the governing body of the public entity under this part as are prescribed by the local public entity, but may not authorize such employee to allow, compromise or settle a claim against the local public entity if the amount to be paid pursuant to such allowance, compromise or settlement exceeds \$1,000. Upon the written order of such employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.

Note: Proposed Section 935.4 is new. It authorizes a local public entity to designate an employee who has authority to exercise such functions relating to claims as the local public entity designates, but such employee may be delegated the authority to settle finally only claims where the amount to be paid does not exceed \$1,000.

Part 4

SEC. 2. Part 4 (commencing with Section 940) is added to Division 3.6 of Title 1 of the Government Code as enacted by Senate Bill No. \*\*\* of the 1963 Regular Session,<sup>1</sup> to read:

PART 4. ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC  
EMPLOYEES

Chapter 1. General

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<sup>1</sup>Senate Bill No. \*\*\* will be the bill introduced to effectuate the Commission's recommendation relating to tort liability of public entities and public employees. See Recommendation of California Law Revision Commission relating to Tort Liability of Public Entities and Public Officers and Employees (September 1, 1962).



940. As used in this part, unless the provision or context otherwise requires, "board" means:

- (a) In the case of a local public entity, the governing body of the local public entity.
- (b) In the case of the State, the State Board of Control.

Note: This definition facilitates the drafting of provisions that apply both to the State and to local public entities. The definitions contained in Part 1 of Division 3.6 will, of course, apply to this part. Those definitions are set forth in the note to proposed Section 900 supra.

941. Nothing in this part imposes liability upon a public entity unless such liability otherwise exists.

Note: Proposed Section 941 is new. It makes clear that this part does not impose substantive liability; some other statute must be found that imposes such liability.

942. Nothing in this division shall be construed to deprive a claimant of the right to resort to writ of mandamus or other proceeding against the public entity or the board or any employee of the public entity to compel it or him to pay the claim when and to the extent that it has been allowed.

Note: Proposed Section 942 is the same in substance as the second paragraph of Government Code Section 718 which applies to claims against local public entities. In some circumstances, a claimant might be able to compel payment of a claim allowed by the State Board of Control. See Government Code Section 623, now proposed Section 965. See also Government Code Sections 653 and 654, now proposed Section 965.2.

Chapter 2. Actions Against Public Entities

945. A public entity may sue and be sued.

Note: Proposed Section 945 is new. This section will eliminate any doubt that might otherwise exist whether a tort action might be defeated on the technical ground that a particular local public entity is not subject to suit. The proposed section will not, however, impose substantive liability; some other statute must be found that imposes such liability. See proposed Section 941 supra.

945.2 Except as otherwise provided by law, the rules of practice in civil actions apply to actions brought against public entities.

Note: Proposed Section 945.2 is based on Government Code Section 642 which applies to actions against the State based on express contract, negligence or inverse condemnation.

945.4 No suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

Note: Proposed Section 945.4 prevents a claimant from bringing an action against a public entity until his claim has been acted upon or is deemed to have been rejected. The proposed section is designed to provide the public entity with a short period of time (45 days) to consider the claim. See proposed Section 912.4 supra.

Under Government Code Section 641, an action may not be brought against the State until the claim is rejected or disallowed and no time is prescribed within which the State Board of Control must act on the claim. On the other hand, under Government Code Section 710, an action may be brought against a local public entity as soon as the claim is presented.

Proposed Section 945.4 applies only to claims that are required to be presented in accordance with Chapters 1 and 2 of Part 3. See proposed Sections 905 to 905.4 supra.

945.6. Any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

Note: Proposed Section 945.6 requires that an action must be commenced within six months after the claim is acted upon or is deemed to be rejected. The normal statute of limitations will not apply. Proposed Section 945.6 applies only to claims that are required to be presented in accordance with Chapters 1 and 2 of Part 3. See proposed Sections 905 to 905.4 supra.

Proposed Section 945.6 is based upon Government Code Sections 643 and 644 which apply to claims against the State. Government Code Section 719, which applies to actions on claims against local public entities, requires that an action be commenced within the period of time prescribed by the applicable statute of limitations. The recommended legislation prevents the commencing of an action until the claim is rejected or deemed to be rejected. This is designed to provide the public entity with an opportunity to consider the claim and makes it necessary to provide for a special statute of limitations that commences to run when the entity has acted on the claim.

945.8. Except as otherwise provided by statute, an action against a public entity upon a cause of action for which a claim is not required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within the time prescribed by the statute of limitations that would be applicable if the action were brought against a defendant other than a public entity.

Note: Proposed Section 945.8 makes the ordinary statute of limitations applicable to causes of action not within the scope of proposed Section 945.6. Section 945.8 is based on Government Code Section 719.



946. Where a claim that is required to be presented to a public entity in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division is so presented and action thereon is taken by the board:

(a) If the claim is allowed in full and the claimant accepts the amount allowed, no suit may be maintained on any part of the cause of action to which the claim relates.

(b) If the claim is allowed in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim.

(c) If the claim is allowed in part, no suit may be maintained on any portion of the cause of action where, pursuant to a requirement of the board to such effect, the claimant has accepted the amount allowed in settlement of the entire claim.

Note: Proposed Section 946 is the same in substance as the first paragraph of Government Code Section 718 which applies to claims against local public entities. Government Code Section 645, which applies to claims against the State, contains somewhat comparable provisions.

947. At any time after the filing of the complaint in any action against a public entity, the public entity may file and serve a demand for a written undertaking on the part of each plaintiff as security for the allowable costs which may be awarded against such plaintiff. The undertaking shall be in the amount of \$100, or such greater sum as the court shall fix upon good cause shown, with at least two sufficient sureties, to be approved by the court. Unless the plaintiff files such undertaking within 20 days after service of a demand therefor, his action shall be dismissed.

Note: Proposed Section 947 is new. A somewhat comparable provision applying only to certain actions against the State is contained in Government Code Section 647. Under Section 647, actions arising out of the operation of motor vehicles by public employees are excluded, the minimum undertaking is \$250, and the unsuccessful plaintiff is required to pay a reasonable counsel fee to the State. No similar provision is found in existing statutes relating to actions against local public entities.

947.2. If judgment is rendered for the public entity in any action against it, allowable costs incurred by the public entity in the action, but in no event less than \$50, shall be awarded against each plaintiff.

Note: Proposed Section 947.2 provides that a public entity is entitled to receive at least \$50 as allowable costs when a plaintiff fails to recover a judgment against the public entity.

Chapter 3. Actions Against Public Employees

950. Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the maintenance of an action against a public employee to enforce his personal liability.

Note: Proposed Sections 950-950.8 cover all employees (officers, agents and employees) and both negligent and intentional torts.

The provisions of these sections make it unnecessary to present a claim against a public employee. The proposed sections will, however, bar an action against an employee if the action against the public entity is barred.

Proposed Sections 950-950.8 are based on Section 803 of the Government Code. In 1951 the Legislature enacted Section 2003 (now Section 803) of the Government Code in an attempt to accomplish the result achieved under proposed Sections 950-950.8. The attempt was not completely successful, however, for Section 803 does not apply to State personnel, nor to officers (as distinguished from "employees") of other entities. Moreover, since Section 803 applies only to actions based on "negligence," it appears that a plaintiff at times would be able to evade the public policy expressed in Section 803 by framing his complaint on a theory other than that of negligence. Somewhat overlapping provisions of the Government Code (Sections 801 and 802) require that a claim be filed with the employee as a condition to bringing an action against him.

950.2. Except as provided in Section 950.4, a cause of action against a public employee for injury resulting from a negligent or wrongful act or omission in the scope of his employment is barred if an action against the employing public entity for such injury is barred under Section 946 or is barred because of the failure (a) to present a written claim to the public entity or (b) to commence the action within the time specified in Section 945.6.

Note: See note to proposed Section 950 supra.

950.4. A cause of action against a public employee for injury caused by a negligent or wrongful act or omission is not barred by Section 950.2 if the plaintiff pleads and proves that he did not know or have reason to know, within the period prescribed for the presentation of a claim to the employing public entity as a condition to maintaining an action for such injury against the employing public entity, that the injury was caused by an act or omission of the public entity or an employee thereof and that he gave notice to the public entity within a reasonable time after he acquired such knowledge.

Note: Proposed Section 950.4 makes it unnecessary to present a claim where the plaintiff does not know the injury was caused by a public employee. There is no similar provision in existing law. See proposed Section 905.4 (b) supra for a similar provision applicable to public entities.

950.6. When a written claim for money or damages for injury has been presented to the employing public entity, a cause of action for such injury may not be maintained against the public employee whose negligent or wrongful act or omission caused such injury until the claim has been rejected, or has been deemed to have been rejected, in whole or in part by the public entity.

Note: See note to proposed Section 950. See proposed Section 945.4 supra for a similar provision applicable to actions against public entities.

950.8. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity which requires the presentation of a claim as a prerequisite to the maintenance of an action against a public employee to enforce his personal liability is invalid.

Note: Proposed section 950.8 is new. It makes clear that local provisions cannot replace the provisions of proposed Chapter 3.



951. At any time after the filing of the complaint in any action against a public employee, if a public entity undertakes to provide for the defense of the action, the attorney for the public employee may file and serve a demand for a written undertaking on the part of each plaintiff as security for allowable costs which may be awarded against such plaintiff. The undertaking shall be in the amount of \$100, or such greater sum as the court shall fix upon good cause shown, with at least two sufficient sureties, to be approved by the court. Unless the plaintiff files such undertaking within 20 days after service of the demand therefor, his action shall be dismissed.

Note: Proposed Sections 951 and 951.2 are new. See proposed Sections 947 and 947.2 for similar provisions applicable to actions against public entities.

951.2. If judgment is rendered for the public employee in any action where a public entity is not a party to the action but undertakes to provide for the defense of the action, allowable costs incurred in defending the action, but in no event less than \$50, shall be awarded against the plaintiff.

Note: See note to proposed Section 951.

Chapter 4. Special Provisions Relating to ActionsAgainst the State

955. The proper court for trial of actions against the State for the taking or damaging of private property for public use is a court of competent jurisdiction in the county in which the property is situate.

Except as provided in Section 955.2, upon written demand of the Attorney General made on or before answering, the place of trial in other actions shall be changed to Sacramento County.

Note: Proposed Section 955 is the same in substance as Government Code Section 651, except that Section 651 is not qualified by a provision similar to proposed Section 955.2.

955.2. Notwithstanding any other provision of law, in any action or proceeding where the State is named as a defendant for injury or death resulting from a negligent or wrongful act or omission and the injury or the injury causing death occurred within this State, the proper court for the trial of the action is a court of competent jurisdiction in the county where the injury occurred or where the injury causing death occurred. The court may, on motion, change the place of the trial in the same manner and under the same circumstances as the place of trial may be changed where the action is between private parties.

Note: Proposed Section 955.2 is new. Under the proposed section, tort actions against the State will be tried in the county where the injury occurred. Under Government Code Section 651 and Code of Civil Procedure Section 401, tort actions against the State may now be tried in any city or county in which the Attorney General has an office.

955.4. Except as provided in Sections 955.6 and 955.8:

(a) Service of summons in all actions on claims against the State shall be made on the Governor and Attorney General.

(b) The Attorney General shall defend all actions on claims against the State.

Note: Proposed Section 955.4 is the same in substance as Government Code Section 649.

955.6. In actions for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution on claims arising out of work done by the Department of Public Works:

(a) Service of summons shall be made on the Director of Public Works.

(b) The defense shall be conducted by the attorney for the department.

Note: Proposed Section 955.6 is the same as Government Code Section 648.

955.8. In actions for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution on claims arising out of work done by the Department of Water Resources:

(a) Service of summons shall be made on the Director of Water Resources and the Attorney General.

(b) The defense shall be conducted by the legal counsel of the department, if authorized by the Attorney General pursuant to Section 127 of the Water Code; otherwise the defense shall be conducted by the Attorney General.

Note: Proposed Section 955.8 is the same in substance as Government Code Section 650.

SEC. 3. Part 5 (commencing with Section 960) is added to Division 3.6 of Title 1 of the Government Code as enacted by Senate Bill No.\*\*\* of the 1963 Regular Session,<sup>1</sup> to read:

PART 5. PAYMENT OF CLAIMS AND JUDGMENTS

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<sup>1</sup>Senate Bill No. \*\*\* will be the bill introduced to effectuate the Commission's recommendation relating to tort liability of public entities and public employees. See Recommendation of California Law Revision Commission relating to Tort Liability of Public Entities and Public Officers and Employees (September 1, 1962)



960. As used in this part, unless the provision or context otherwise requires, "board" means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the State, the State Board of Control.

Note: This definition facilitates the drafting of provisions that apply both to the State and to local public entities: The definitions contained in Part 1 of Division 3.6 will, of course, apply to this part. Those definitions are set forth in the note to proposed Section 900 supra.

960.2. The board may, in its discretion, within the time prescribed by Section 945.6 for commencing an action on the claim, reexamine a previously rejected claim in order to consider a settlement of the claim.

Note: Proposed Section 960.2 authorizes the board to reexamine a previously rejected claim in order to consider its settlement. No comparable provision is found in the existing statutes.

960.4. The State Board of Control, by rule, may authorize state agencies to adjust and pay claims for injuries resulting from alleged negligent or wrongful acts or omissions where the settlement does not exceed \$1,000 or such lesser amount as the board may determine and a sufficient appropriation for such payment exists. Payments shall be made only upon approval of the settlement by the board.

Note: Proposed Section 960.4 specifies the conditions under which the State Board of Control may delegate to state agencies the authority to adjust and pay tort claims. No comparable provision is found in the existing statutes.

960.6. The head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the State, may settle, adjust or compromise any pending action where a sufficient appropriation for the payment thereof exists. Where no funds or insufficient funds for such payment exist, the head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the State, may settle, adjust or compromise any pending action with the approval of the Department of Finance.

Note: Proposed Section 960.6 specifies the conditions under which a pending action against the State may be settled or compromised. There is no comparable provision in the existing statutes.

960.8 The governing body of a local public entity may compromise, or may delegate the authority to its attorney or an employee to compromise, any suit based on a cause of action for which Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division requires a claim to be presented.

NOTE: Proposed Section 960.8 is based on Government Code Section 720. Section 720, however, confers the authority to compromise only by implication and does not expressly authorize such authority to be delegated. Proposed Section 960.8 should be compared with proposed Section 935.4. Under these two sections, claims settlement authority can be delegated only so far as small claims are concerned until suit is filed. Thereafter, there is no limit on the authority to delegate claims settlement authority.

Chapter 2. Payment of Claims and JudgmentsAgainst the State

965. Upon the allowance by the State Board of Control of all or part of a claim for which a sufficient appropriation exists, and the execution and presentation of such documents as the board may require which discharge the State of all liability under the claim, the board shall designate the fund from which the claim is to be paid and the state agency concerned shall pay the claim from such fund. Where no sufficient appropriation for such payment is available, the board shall report to the Legislature in accordance with Section 912.8.

Note: Proposed Section 965 is based on Government Code Section 623 which applies to the State. Government Code Section 623 is limited to payment of claims arising under Section 17000 to 17003, inclusive, of the Vehicle Code.

965.2. The Controller shall draw his warrant for the payment of any final judgment or settlement against the State whenever a sufficient appropriation for such payment exists. Claims upon such judgments and settlements are exempt from Section 925.6.

Note: Proposed Section 965.2 is based on Government Code Sections 653 and 654. The existing statutes, however, apply only to judgments and do not include settlements.

965.4. The Governor shall report to the Legislature, at each session, all judgments or settlements against the State not theretofore reported.

Note: Proposed Section 965.4 is based on Government Code Section 655. Section 655 does not, however, require that judgments based on injuries arising out of operation of motor vehicles by state employees be reported nor does the section require that settlements be reported.



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Chapter 3. Payment of Tort Judgments Against Local

Public Entities

Article 1. General

970. As used in this article:

(a) "Fiscal year" means a year beginning on July 1 and ending on June 30 unless the local public entity has adopted a different fiscal year as authorized by law, in which case "fiscal year" means the fiscal year adopted by such local public entity.

(b) "Tort judgment" means a final judgment which is founded upon death or injury to persons or property proximately caused by a negligent or wrongful act or omission and for which a local public entity is liable.

Note: This section defines terms used in this article.

970.2. A local public entity shall pay any tort judgment in the manner provided in this article. A writ of mandate is an appropriate remedy to compel a local public entity to perform any act required by this article.

Note: This section imposes a duty upon local public entities to pay tort judgments in the manner provided in this article and gives the judgment creditor the right to obtain a writ of mandate to enforce this duty. Depending upon the financial condition of the public entity, it can comply with the duty to pay a tort judgment by: (1) paying the judgment in the fiscal year in which it becomes final; (2) paying the judgment in the next fiscal year; (3) paying the judgment in not more than 10 annual instalments; or (4) paying the judgment with the proceeds of a bond issue as authorized by Article 2 (commencing with Section 975) of this chapter.

970.4. The governing body of a local public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any tort judgment out of any funds to the credit of the local public entity that are:

(a) Unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes; or

(b) Appropriated for the current fiscal year for the payment of tort judgments and not previously encumbered.

Note: Sections 970.4 and 970.6 provide the procedure by which local public entities must pay tort judgments. The judgment must be paid to the extent funds are available in the fiscal year in which it becomes final. If the judgment cannot be paid in full in such fiscal year, the public entity must pay the balance of the judgment in the ensuing fiscal year unless this would result in undue hardship to the entity. In case of undue hardship, the public entity is authorized to spread the payment of the balance of the judgment over a period not to exceed 10 years. The procedure provided by Sections 970.4 and 970.6 is based on Government Code Sections 50170-50175 (cities and counties), Water Code Sections 31091-31096 (county water districts) and Education Code Section 904 (school districts).

970.6. (a) If a local public entity does not pay a tort judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the tort judgment is not too great to be paid out of revenues for the ensuing fiscal year, the governing body shall pay the judgment during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.

(b) If a local public entity does not pay a tort judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the tort judgment is so great that undue hardship will arise if the entire amount is paid out of the revenues for the ensuing fiscal year, the governing body shall pay the judgment, with interest thereon, in not exceeding ten annual instalments. Each payment shall be of an equal portion of the principal of the tort judgment. The local public entity, in its discretion, may prepay any one or more instalments.

(c) The authority to pay a tort judgment in instalments as provided in this section is in addition to and not in lieu of any other law permitting local public entities to pay tort judgments in instalments.

Note: See note to Section 970.4.

970.8. (a) Each local public entity that derives revenue for its maintenance and operation from taxes or assessments or from rates and charges made for services or facilities provided by the local public entity shall in each fiscal year levy taxes or assessments or make rates and charges or both in an amount sufficient to pay all tort judgments in accordance with this article.

(b) If all or any portion of the revenue used for the maintenance and operation of a local public entity liable for a tort judgment is derived from appropriations of another local public entity, such other local public entity shall in each fiscal year appropriate funds equal to its pro rata share of an amount sufficient to permit the local public entity liable for the tort judgment to pay the judgment in accordance with this article. Such amount shall be paid to the local public entity liable for the tort judgment and shall be used by such entity to satisfy the tort judgment. The pro rata share of such other local public entity for each tort judgment is an amount bearing the same proportion to the total amount of the tort judgment as the revenue derived from such other local public entity for maintenance and operation during the fiscal year in which the cause of action on such judgment accrued bears to the total revenues used for maintenance and operation during such fiscal year of the local public entity liable for the tort judgment. For this purpose, such other local public entity shall levy taxes or assessments, make rates and charges, or otherwise provide funds, sufficient in amount to raise the amount of the appropriation and payment required by this section.

Note: This section is necessary to insure payment of a tort judgment against a public entity that is financially dependent upon some other public entity.

971. Any limitation on the amount of taxes, assessments or rates and charges that may be levied or collected by a local public entity, and any limitation on the amount of appropriations and payments that may be made by a local public entity, and any limitation on the amount of liability or indebtedness that may be incurred by a local public entity, contained in any other statute or in any charter or ordinance is inapplicable to the taxes, assessments, rates and charges or appropriations levied, collected or made pursuant to this article.

Note: This section makes clear that the statutory restrictions upon the incurring of debts or liabilities and the statutory limitations upon the maximum permissible rate of property taxation by local public entities do not apply to tort judgments. The section is necessary to insure that these restrictions and limitations do not operate to confer for practical purposes an immunity from tort liability.

971.2. (a) All tort judgments for which a local public entity is liable are legal investments for all trust funds, and for the funds of all insurance companies, banks (both commercial and savings) and trust companies, and for every other local public entity within this State, to the same extent as bonds of the local public entity liable for the tort judgment.

(b) Whenever any money or funds may by law be invested in or loaned upon the security of bonds of a local public entity, such money or funds may be invested in or loaned upon the security of a tort judgment for which such local public entity is liable; and whenever bonds of a local public entity may be used as security for the faithful performance or execution of any court or private trust or of any other act, a tort judgment for which such local public entity is liable may be so used.

(c) All tort judgments for which a local public entity is liable, to the same extent as bonds of such local public entity, are legal for use by any state or national bank or banks in the State as security for the deposit of funds of any local public entity within this State.

Note: This section makes a tort judgment against a local public entity an authorized legal investment for trust funds, banks and insurance companies, to the same extent as the bonds of such local public entity. It also provides that a tort judgment against a local public entity may be used as security in certain circumstances to the same extent as bonds of such entity. The section is necessary to provide assurance that tort judgments against local public entities will be marketable.



SEC. 7. Section 904 of the Education Code is amended to read:

904. The governing board of any school district shall pay any judgment for debts, liabilities, or damages out of the school funds to the credit of the district, subject to the limitation on the use of the funds provided in the Constitution. If any judgment is not paid during the tax year in which it was recovered:

(a) And if, in the opinion of the board, the amount is not too great to be paid out of taxes for the ensuring tax year, the board shall include in its budget for the ensuing tax year a provision to pay the judgment, and shall pay it immediately upon the obtaining of sufficient funds for that purpose.

(b) If, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding [~~three~~] ten annual installments with interest thereon [~~at a rate not exceeding 4 percent per annum~~] up to the date of each payment, and shall include provision for the payment in each budget for not exceeding [~~three~~] ten consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of the judgment, except that the board, in its discretion, may provide for the prepayment of any one or more installments.

Note: The amendments to this section make it consistent with proposed Section 970.6. The four percent limit in Section 904 is probably unconstitutional.

## Article 2. Funding Judgments with Bonds

975. As used in this article:

(a) "Board" means the governing body of a local taxing entity.

(b) "Local taxing entity" means a local public entity that has the power to levy ad valorem taxes or assessments upon property within the territory of the entity.

Note: This section defines certain terms used in this article. The definition of "local taxing entity" is based in part on Government Code Section 5401 which defines "bonds" as "bonds or other evidences of indebtedness the principal and interest of which are payable or may be paid from ad valorem taxes or assessments levied by or on behalf of a public body."

975.2. Whenever the board deems it necessary for the local taxing entity to incur a bonded indebtedness to fund all or any portion of an outstanding judgment against the entity, it shall by resolution state:

- (a) The necessity for the indebtedness.
- (b) The purpose for which the proposed debt is to be incurred.
- (c) The amount of the proposed debt.
- (d) The time and place for a hearing by the board on the question

whether the local taxing entity should incur a bonded indebtedness to fund all or any portion of an outstanding judgment against the entity.

Note: This article authorizes all local public entities that levy taxes or assessments--and thus have the power to raise the revenues to discharge a bonded indebtedness--to issue bonds to obtain funds to pay judgments. This authority will permit these public entities to fund their tort liabilities with bonds so that they may meet such obligations without seriously disrupting their financial structure. Not all of these public entities have such authority under existing law. Inasmuch as the exercise of this power may result in the imposition of taxes to discharge the bonded indebtedness, the power may be exercised only when two-thirds of the voters, voting at an election called for that purpose, authorize the public entity to issue the bonds.

This article is based for the most part on the bond authorization provisions of the Community Services District Law--Government Code Sections 61650-61673.

975.4. Notice of the hearing shall be given by publication of a copy of the resolution pursuant to Section 6066 in a newspaper of general circulation circulated within the local taxing entity. If there is no such newspaper, the resolution shall be posted in three public places in the local taxing entity for two succeeding weeks. No other notice of the hearing need be given.

Note: This section is based in part on Government Code Section 61651.

975.6. The copy of the resolution published or posted shall be accompanied by a notice subscribed by the clerk or secretary of the local taxing entity that:

(a) The hearing referred to in the resolution will be had at the time and place specified in the resolution.

(b) At that time and place, any person interested, including persons owning property within the local taxing entity, will be heard upon the question stated in the resolution.

Note: This section is based on Government Code Section 61652.

975.8. At the time and place fixed for the hearing on the resolution or at any time and place to which the hearing is adjourned, the board shall proceed with the hearing. Any person interested, including persons owning property within the local taxing entity, may appear and present any matters material to the question set forth in the resolution. At the conclusion of the hearing, the board shall determine whether it is necessary to incur the bonded indebtedness. The board's determination on the question of necessity is conclusive.

Note: This section is based on Government Code Sections 61653-61658.

976. After the board has made its determination pursuant to Section 975.8, if it deems it necessary to incur the bonded indebtedness, it shall by resolution state:

- (a) That it deems it necessary to incur the bonded indebtedness.
- (b) The purpose for which the bonded indebtedness will be incurred.
- (c) The amount of the debt to be incurred, which amount may include legal and other fees incidental to or connected with the authorization, issuance and sale of the bonds, including the costs of printing the bonds.
- (d) The maximum term the bonds to be issued shall run before maturity, which term shall not exceed 40 years.
- (e) The annual rate of interest to be paid, which rate shall not exceed seven percent, payable annually or semiannually, or in part annually and in part semiannually.
- (f) The proposition to be submitted to the voters.
- (g) The date of the special election of the local taxing entity (which may be consolidated with a general election of the local taxing entity) at which such proposition shall be submitted to the voters; the manner of holding the election and the procedure for voting for or against the proposition.

Note: This section is based on Government Code Section 61659.

976.2

976.2. The resolution made pursuant to Section 976 shall constitute the notice of such election and such resolution shall be published pursuant to Section 6066 in a newspaper of general circulation circulated within the local taxing entity. If there is no such newspaper, the resolution shall be posted in three public places in the local taxing entity for two succeeding weeks. No other notice of the election need be given.

Note: This section is based on Government Code Sections 61660 and 29912.



976.4. The board shall provide for holding the election in the same manner as provided by law in respect to general elections of the ~~local~~ taxing entity so far as applicable, except as otherwise provided in this article.

Note: This section is based on Government Code Section 61661.

976.6

976.6. Every elector authorized to vote in general elections of the local taxing entity may vote on the proposition to authorize the bonds.

Note: This section specifies those persons eligible to vote in the bond election.

976.8

976.8. If two-thirds or more of the votes cast upon the proposition at the election are in favor of incurring the bonded indebtedness, the board may issue the bonds at the time or times it deems proper.

Note: This section is based on Government Code Sections 43614 and 29908.

977. The board shall prescribe the form of the bonds. The bonds may be issued in denominations not to exceed \$1,000 and not less than \$100. The board shall fix, and designate in the bonds, a time and place for payment of the bonds.

Note: This section is based on Government Code Sections 43617, 43619, 43622 and 29914.

977.2 The board may provide for the redemption of bonds issued under this article before maturity at prices determined by it. A bond shall not be subject to call or redemption prior to maturity unless it contains a recital to that effect. Notice of redemption shall be published at such time and in such manner as the board may provide in the resolution providing for the issuance of the bonds.

Note: This section is based on Government Code Section 43621.

977.4. The bonds shall be signed by the presiding officer of the board and countersigned by the clerk or secretary of the local taxing entity, and the coupons shall be signed by the clerk or secretary. All signatures except that of the clerk or secretary on the bonds may be printed, lithographed or engraved. If any officer whose signature appears on the bonds or coupons ceases to be such officer before the delivery of the bonds, his signature is as effective as if he had remained in office.

Note: This section is based on Government Code Section 61671.1.

977.6. The local taxing entity may sell the bonds at the times or in the manner the board deems to be to the public interest. The bonds shall be sold on sealed proposals to the highest bidder after advertising for bids by publication of notice of sale pursuant to Section 6061, not less than 10 days prior to the date of sale, in a newspaper of general circulation circulating in the local taxing entity. If there is no such newspaper, the notice of sale shall be posted in three places in the local public entity for two succeeding weeks ending not less than 10 days prior to the sale. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

Note: This section is based on Government Code Section 61672.

977.8

977.8. An action to determine the validity of bonds may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

Note: This section is based on Government Code Section 61671.2.



978. Any bonds issued by any local public entity under the provisions of this article have the same force, value and use as bonds issued by any municipality and are exempt from all taxation within the State.

Such bonds are legal investments for all trust funds, for the funds of all insurance companies, banks (both commercial and savings) and trust companies, for the state school funds, and for any funds which may be invested in bonds of cities, counties, school districts, or municipalities in the State.

Note: This section is based on the first two paragraphs of Government Code Section 61673.

978.2. Bonds issued under this article constitute general obligations of the local taxing entity for the payment of both principal and interest of which all property in the local taxing entity subject to taxation by the local taxing entity or subject to ad valorem assessment by the local taxing entity shall be taxed or assessed without limitation of rate or amount.

The board shall, at the time and in the manner provided by law for levying taxes or assessments, fix an ad valorem rate of tax or assessment sufficient to pay the principal of and interest on all bonds issued under this article as they become due. Such ad valorem taxes or assessments shall be in addition to all other taxes or assessments levied by the local taxing entity, and when collected shall be used for no purpose other than the payment of such bonds and the interest thereon.

Nothing in this section shall be construed to prohibit the use of other revenues of the local taxing entity for the payment of principal and interest on bonds issued under this article.

Note: This section is based on Government Code Section 61748.

978.4

978.4. The proceeds from the sale of bonds issued pursuant to this article shall not be used for any purpose other than the purpose stated in the resolution authorizing the issuance of the bonds.

Note: This section is based on Government Code Section 43628.

978.6. The board may by two-thirds vote of all its members declare that no part of a described bond issue authorized under this article which remains unsold shall be issued or sold. When the resolution takes effect, the bonds described in the resolution which remain unsold are voided.

Note: This section is based on Government Code Section 43630.

978.8. The authority provided in this article is in addition and supplementary to any other law authorizing public entities to issue bonds to fund an outstanding indebtedness.

Note: This section is included merely to make clear that this article is not intended to supersede any other law that permits a public entity to fund judgments against it with bonds.

SEC. 4. Section 342 is added to the Code of Civil Procedure,  
to read:

342. An action against a public entity upon a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code must be commenced within the time provided in Section 945.6 of the Government Code.

Division 3.5  
(repeal)

SEC. 5. Division 3.5 (commencing with Section 600) of Title 1  
of the Government Code is repealed.

Note: See Appendix A, page \*\*\* infra for a Disposition Table  
showing where the subject matter of the repealed sections of Division  
3.5 is covered in the recommended legislation or the reason why the  
subject matter of those sections is not included in the recommended  
legislation.

GC 13920.1  
(repeal)

SEC. 6. Section 13920.1 of the Government Code is repealed.

~~[13920.1.--In-adopting-such-rules-and-regulations,-the-board  
may-in-lieu-of-requiring-an-affidavit-on-any-claim-or-form-require-a  
certification-under-penalty-of-perjury-in-such-form-as-it-may-prescribe,  
and-any-individual-who-wilfully-makes-and-subscribes-such-certificate  
to-a-claim-or-form-which-he-knows-to-be-false-as-to-any-material  
matter-shall-be-guilty-of-a-felony-and-upon-conviction-thereof-shall-be  
subject-to-the-penalties-prescribed-for-perjury-by-the-Penal-Code-of  
this-State.]~~

Note: The elimination of the requirement that claims against the State be verified permits the repeal of this section. Section 72 of the Penal Code makes the presentation of a false or fraudulent claim to a public entity with intent to defraud a felony.



SEC. 7 to SEC. 154.

Note: We have found 148 sections that refer to the existing claims statute by specific reference. These sections will need to be repealed or amended to delete these references. In the interest of saving time and money, we have omitted the text of the repealed and amended sections in this draft. The sections will, however, be contained in the bill as introduced.

SEC. 155. This act takes effect on July 1, 1964.

SEC. 156. This act applies only to causes of action that accrue on or after its effective date. Causes of action that accrued prior to the effective date of this act are not affected by this act but shall continue to be governed by the law applicable thereto prior to the effective date of this act. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that was barred prior to the effective date of this act.

APPENDIX A

DISPOSITION TABLE

Showing where the subject matter of the repealed sections of Division 3.5 (commencing with Section 600) of Title 1 of the Government Code is covered in legislation recommended by Commission or the reason why the subject matter of those sections is not included in the recommended legislation.

<u>Government Code Section</u>	<u>Recommended Section or Reason Why Omitted</u>	<u>Government Code Section</u>	<u>Recommended Section or Reason Why Omitted</u>
600-609	925-926.8	644 (first sentence)	911.2
620 (first paragraph)	905.2	644 (second sentence)	945.6
620 (second paragraph)	912.8	645	946
621	905.2	646	912
	910	647	947
	910.2		947.2
	912.8		951
622	912.8		951.2
623	965	648	955.6
624	913	649	955.4
625	905.6	650	955.8
630-634	920-920.8	651	955
640	Obsolete-applies only to certain actions pending prior to September 13, 1941	652	Obsolete-In so far as Section 652 relates to interest, it is superseded by Section 3287 of the Civil Code which was amended in 1959 to make it applicable to public entities; insofar as Section 652 relates to costs, it is superseded by Section 1028 of the Code of Civil Procedure.
641	905.2		
	945.4		
642	945.2		
643 (first sentence)	905.4(a)		
643 (second sentence)	945.6	653	965.2

<u>Government Code Section</u>	<u>Recommended Section or Reason Why Omitted</u>	<u>Government Code Section</u>	<u>Recommended Section or Reason Why Omitted</u>
654	965.2	715 (second paragraph)	901
655	965.4		
700	The definition of local public entity contained in Section 700 is made applicable to the proposed legislation by a comparable definition that will be contained in Part 1 of Division 3.6 of Title 1 of the Government Code.	716	912
		717 (first paragraph)	912.6
		717 (second paragraph)	913.2
701	Obsolete-the amendment referred to in Section 701 has been adopted.	718 (first paragraph)	946
		718 (second paragraph)	942
702	Obsolete-see Section of the proposed legislation.	719	645.6
703	905	720	960.6
704	Obsolete-see Section of the proposed legislation providing that the effective date of the proposed legislation is July 1, 1964.	730	935
		800-803	950-950.8
705	930.2		
710	945.4		
711 (first paragraph)	910		
711 (second paragraph)	910.2		
711 (third paragraph)	910.6		
712	910.8		
713	911		
714	915		
715 (first paragraph)	911.2		