

## Memorandum 74-42

Subject: Study 65.90 - Inverse Condemnation (Payment of Judgments Against Local Public Entities)

Background

In February 1974, the Commission approved for distribution a tentative recommendation relating to payment of judgments against local public entities. In substance, the tentative recommendation makes the statutory provisions relating to payment of tort judgments applicable to payment of inverse condemnation judgments. These provisions require the local public entity to pay tort judgments and permit payment of a tort judgment in one year, two years, or in installments for not more than 10 years, depending on the fiscal problem created by the judgment. For further discussion, see the attached tentative recommendation.

We did not receive much in the way of comments. The problem appears to be one that does not cause a public entity concern until a catastrophe type of judgment is obtained against the public entity. The comments from the various cities generally approved the tentative recommendation.

Senate Bill 90

The City Attorney of Beverly Hills raises the problem of what effect Senate Bill 90 has on the payment of tort and inverse condemnation judgments. It is clear, we believe, that the tax limits of Senate Bill 90 do not limit a tax levy to pay a tort or inverse condemnation judgment. Revenue and Taxation Code Section 2205 provides:

2205. "Costs mandated by the courts" means any increased costs incurred by a local agency in order to comply with a final court order issued after January 1, 1973. "Costs mandated by the courts" do not include (i) costs incurred as a result of a judgment in an eminent domain or condemnation proceeding, or (ii) costs incurred in order to comply with a final court order mandating the specific performance, or awarding damages as a result of nonperformance, of any contract or agreement entered into after January 1, 1973.

Revenue and Taxation Code Section 2271 provides:

2271. A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts which are not funded by federal or state government.

The Controller may audit any rate imposed under this section and any data related to the establishment thereof. If the Controller determines that such rate exceeds a rate which would be necessary to meet the federally mandated or court mandated costs, or if the Controller determines that such rate has been levied to pay any cost mandated by a court which has resulted from litigation entered into in order to avoid the property tax rate limits established by this chapter, he shall request the Attorney General to bring an action under Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to force a reduction in the rate.

How does the Commission wish to deal with the interrelationship of the payment of judgment provisions and the Senate Bill 90 provisions:

- (1) Ignore this matter in the recommendation to the Legislature. The tentative recommendation does not mention the matter.
- (2) Indicate in the recommendation and in one of the Comments that levies for tort and inverse condemnation judgments are not limited by Senate Bill 90. If this alternative is selected, we could revise footnote 3 on page 2 of the attached tentative recommendation to read:

3. Statutory restrictions upon incurring debts or liabilities and statutory limitations upon the maximum permissible rate of property taxation by local public entities do not apply to tort judgments. Govt. Code § 971. The maximum property tax rates for local agencies established by Sections 2201-2326 of the Revenue and Taxation Code do not limit a tax levy to pay a tort judgment. See Rev. & Tax. Code §§ 2271 and 2205. A tort judgment against a local public entity is an authorized legal investment for trust funds, banks, and insurance companies to the same extent as the bonds of such local public entity. Govt. Code § 971.2.

Also, we could add the following at the end of the first paragraph of the Comment to Section 970 (page 4 of the tentative recommendation):

The maximum property tax limits for local agencies established by Sections 2201-2326 of the Revenue and Taxation Code do not limit

a tax levy to pay a tort or inverse condemnation judgment. See Rev. & Tax Code §§ 2271 and 2205. See also Govt. Code § 971 (inapplicability of limitations on amount of taxes, assessments or rates and charges, amount of appropriations and payments, and amount of liability or indebtedness).

(3) Deal with the matter specifically in the statute. See Exhibit VI attached for a suggested draft of an amendment to Section 971 to make clear that Senate Bill 90 does not apply to tax levies to pay tort or inverse condemnation judgments.

#### Breach of Contract Judgments

The County Counsel of Placer County suggests that the recommended legislation is too narrow because it does not include judgments arising out of breach of contract. You will recall that the Commission decided not to cover contract cases because it felt that to do so might provide a means for avoiding property tax limitations. The staff has since discovered the Senate Bill 90 provision (quoted above) which provides specifically that the tax limits established by that legislation do apply to liabilities arising out of contract. Hence, we believe that the tentative recommendation should not be expanded to cover contract claims and that to do so would be inconsistent with the Senate Bill 90 scheme.

#### Objections Raised by Bruce Cornblum

Bruce Cornblum, writing in the California Trial Lawyers Association Journal (see Exhibit IV attached), objects to the tentative recommendation on two grounds:

(1) There is no need to permit payment of an inverse judgment in installments (but see Exhibit V reporting that aircraft noise liability may cost the City of Los Angeles as much as \$8 billion and that other municipal governments, including San Jose and San Diego, stand to lose lesser but

significant amounts if the court of appeal decision on aircraft noise liability is upheld on appeal to the California Supreme Court).

(2) The recommended legislation is not needed because local public entities can insure against inverse liability (a claim that simply is not true).

We suggest that the following be a footnote to the first sentence of the last paragraph on page 2 of the tentative recommendation:

It is reported, for example, that aircraft noise liability may cost the City of Los Angeles as much as \$8 billion and that other municipal governments, including San Jose and San Diego, face potential liability in significant amounts for aircraft noise. [Los Angeles Daily Journal, July 15, 1974.]

#### Approval for Printing

The staff believes that the tentative recommendation is a sound and needed reform. None of the objections we received from persons who commented on the tentative recommendation change this belief. Accordingly, we suggest that the Commission approve the attached tentative recommendation for printing as a recommendation to the 1975 session with an appropriate revision to deal with the Senate Bill 90 problem and that the recommended legislation be introduced at the 1975 session. Please mark any suggested editorial changes on the attached copy of the recommendation and return it to the staff at the meeting.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

Memorandum 74-42

EXHIBIT I

ROBERT S. TRAZI  
CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO  
**JOHN W. WITT**  
CITY ATTORNEY

CITY ADMINISTRATION BUILDING  
SAN DIEGO, CALIFORNIA 92101  
(714) 236-6220

March 12, 1974

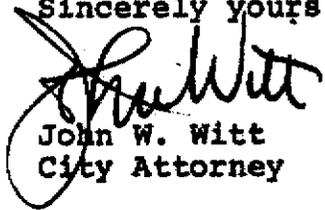
Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision  
Commission  
School of Law  
Stanford University  
Stanford, CA 94305

Dear John:

Payment of Inverse Condemnation Judgments

My office has reviewed the tentative recommendations re spreading the payment of inverse condemnation judgments in the same manner as we are allowed to do in the case of a tort judgment, and we heartily support the proposed recommendation.

Sincerely yours,

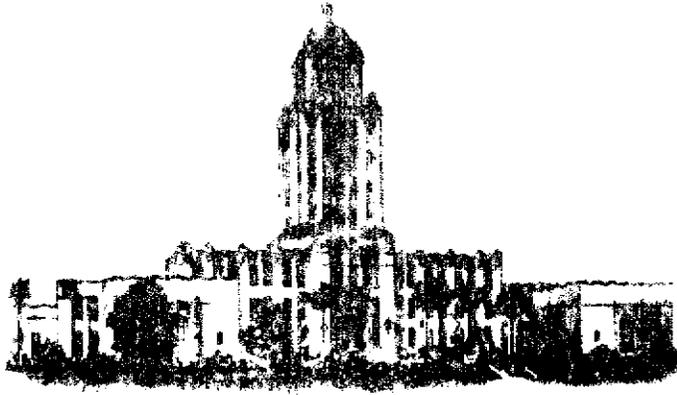
  
John W. Witt  
City Attorney

JWW:RLJ:clh  
cc William H. Keiser  
Assistant Legal Counsel  
League of California Cities



ALLEN GRIMES  
CITY ATTORNEY

JACK ALLEN  
SR. ASS'T. CITY ATTORNEY  
MITCHEL B. KAHN  
ASS'T. CITY ATTORNEY



CITY OF BEVERLY HILLS  
CALIFORNIA

450 NORTH CRESCENT DRIVE

CRESTVIEW 6-6161 • BRADSHAW 7-2113

March 4, 1974

California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California 94305

Re: Tentative Recommendation Relating  
to Inverse Condemnation

Gentlemen:

We have received your tentative recommendation for legislation on the above subject. We note your admonition that local public agencies should increase their ad valorem property taxes to pay any judgment rendered against them.

In view of the provisions of SB 90 etc., we recommend that your proposed legislation include an amendment to Section 2166 of the Revenue and Taxation Code to exempt the payment of judgments against a local public agency from the local property tax limitation.

Sincerely,

ALLEN GRIMES  
City Attorney

AG/bb

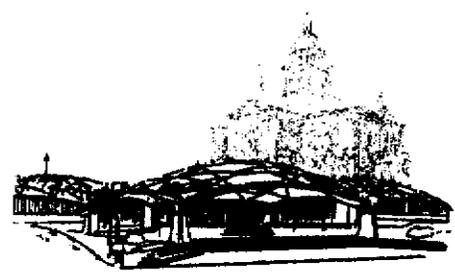
cc: Richard Carpenter, League of Calif. Cities  
Assemblyman Alan Sieroty  
Senator Beilenson

\* and related sections.

*Placer County Counsel*

175 FULWEILER AVENUE — COUNTY ADMINISTRATIVE CENTER

AUBURN, CALIFORNIA 95603 • (916) 823-4781



March 5, 1974

California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California 94305

Re: Payment of Judgments Against Local Public  
Entities

Gentlemen:

Thank you for forwarding your tentative recommendation concerning the above, for our review.

Government Code 970(c) presently defines tort judgment as any judgment for death or injury to person or property caused by a wrongful act or omission. It seems to me that "wrongful act" would encompass acts resulting in liability for inverse condemnation, and, probably, breach of contract.

By deleting this definition, and defining "judgment" as any judgment founded upon tort or inverse condemnation, it would seem that a public entity would be precluded from levying taxes to pay a judgment for breach of contract.

I do, however, believe the present definition of "tort judgment" may be too restrictive, since it would not seem to include a judgment for damages such as compensation due under a contract.

I would suggest that you delete all reference to tort judgments, and also delete the proposed definition of "judgment", since, it would seem, there should be some method of paying any judgment.

Again, thank you for your cooperation in this matter.

Very truly yours,

L. J. DEWALD, COUNTY COUNSEL

BY:   
REGINALD LITRELL, CHIEF DEPUTY


[California Trial Lawyers Association Journal]

CTLJ, Summer, 1974

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**CALIFORNIA LAW REVISION COMMISSION PROPOSES THAT  
LOCAL ENTITIES HAVE ABILITY TO PAY JUDGMENTS IN  
INVERSE CONDEMNATION CASES ON A PIECEMEAL  
OR DELAYED BASIS**

**BRUCE CORNBLUM, Esq.  
Sunnyvale**

In February of 1974 the California Law Revision Commission made public its tentative recommendation relating to *inverse condemnation*, "Payment of Judgments Against Local Public Entities". (On background of California Law Revision Commission in the State of California see Cornblum, "California Law Revision Commission Studies and Reports" Journal, California Trial Lawyers, Fall, 1973 Page 117; Cornblum, "CTLA Law Revision Commission Committee", Journal, California Trial Lawyers, Winter 1973-74, Page 99).

Preliminarily, in concept, an "inverse condemnation action" arises where private property has been taken or damaged by a government entity without a condemnation proceeding having been instituted. Basically then, the plaintiff in the action is the property owner rather than the condemnor. In general see 3 *Witkin*, Summary of California Law, *Constitutional Law*, Sec. 223; 18 Cal. Jur. 2d Revised, *Eminent Domain* Sec. 306-314.

By way of background, under the Government Code as enacted in 1963, there are specific statutes setting forth the manner in which a local public entity can pay a *tort judgment*. Very few lawyers may know this but a government entity does not necessarily under all circumstances have to pay a judgment immediately after the judgment has been rendered in favor of the plaintiff. Depending upon the financial condition of the local public entity, said entity can comply with the duty to pay a tort judgment by:

(1) paying the judgment in the fiscal year in which it becomes final (Government Code Sec. 970.4);

(2) paying the judgment in the *next fiscal year* (Government Code Sec. 970.6);

(3) paying the judgment in not more than *ten annual installments* (Government Code Sec. 970.8); or

(4) paying the judgment with the proceeds of a bond issue as authorized by Sec. 975-978.8 of the Government Code.

See California Law Revision Commission "Tentative Recommendation Relating to Inverse Condemnation (February, 1974), Pages 1-2. The California Law Revision Commission points out in its "Tentative Recommendation", *supra*, that "in some instances, liability cannot be established on a tort theory, and only inverse condemnation liability will exist. In other cases, however, damages may be recoverable on a tort theory as well as on an inverse condemnation theory". ("Tentative Study", *supra*, Page 2).

The California Law Revision Commission thus wants to equate the manner of payment of judgments under inverse condemnation actions to the manner of payment of tort judgments.

The rationale and reason for this as set forth by the California Law Revision Commission is as follows:

The expansion of the scope of inverse condemnation liability during recent years makes imperative that it be made clear that local government entities have the means to minimize the disruptive effect of unexpectedly large inverse condemnation judgments. Accordingly, the Commission recommends that Sections 970-971.2 be made clearly applicable to inverse condemnation judgments. This will make clear that local public entities have a duty to pay inverse condemnation judgments and will make applicable to such judgments the provisions relating to the manner of paying tort judgments, including provisions permitting the payment of such judgments in not more than ten annual installments.

The California Law Revision Commission in its tentative study does point out that by virtue of the 1971 Amendment to Government Code Sec. 11007.4, a government entity has the authority "to insure against all inverse condemnation liabilities". In general see 10 *California Law Revision Commission Reports* (1971) Page 1051.

#### COMMENT ON THE ABOVE RECOMMENDATION

The California Law Revision Commission desires to make this amendment to make "inverse condemnation cases" conform to "payment of tort judgments" so that "local government entities have

the means to minimize the disruptive effect of unexpectedly large inverse condemnation judgments''. In effect it desires to allow the government entity to have the means to "delay payment" to the property owner who was damaged by government action. However the tentative study does not cite any instances in which local government entities have either been forced to raise a bond issue to pay a judgment or to seek court relief to prevent insolvency or bankruptcy. A review of the annotations under Government Code Sec. 970 et seq. are completely absent of any litigation over this problem.

The Legislature, by amending Government Code Sec. 990, and 11007.4, giving the authority to the government entity to insure against "tort or inverse condemnation liability" has provided a sound, practical vehicle for government entities to protect against liabilities which they themselves cause. The Law Revision Commission cites no illustrations or examples to demonstrate that premium payments for insurance coverage under these Code Sections impairs the government's ability to govern itself. The question is therefore whether there is a "need to conform" or a "need to potentially allow the government to have the ability to delay" where otherwise constitutionally the plaintiff is entitled to a recovery. There may or may not be a need to have such enactments. However, in the absence of any evidence supporting such a need to have potential piecemeal payments of judgments these recommended enactments may be premature. It would be interesting for the California Law Revision Commission to include in its study just how many public entities in fact insure against tort liability and/or inverse condemnation liability. If, as suspected, all government entities buy public liability insurance in accordance with Government Code Sec. 990, 11007.4, then in that event the need for the public to present claims as a condition precedent to suits in tort will become meaningless and irrelevant. After all, the only constitutional justification for the requirement of presenting claims against a government entity is to "give a public entity timely notice of the nature of claims against it so that it may *investigate* and settle those of merit without litigation". See *Dias v. Eden Township Hospital District* (1962) 57 C2d 502, 20 CR 630, 631.

Should anyone desire to receive a copy of the Tentative Recommendation referred to above, or to offer any comment to the above recommendation said individual need only write to the California Law Revision Commission, School of Law, Stanford University, Stanford, California 94305. Attn.: John DeMouly, Executive Secretary. Comments should be sent to the Commission not later than July 1, 1974 with regards to the above study.

# Enormous Damage Suits Seen Ahead For City If Airport Case Is Upheld

By Johanna Neuman

The question of whether governmental agencies are responsible for the devaluation of property around airports because of noise could cost the city of Los Angeles as much as \$4 billion.

Other municipal governments, including San Jose and San Diego, stand in line to lose lesser but significant amounts if a case now pending before the state Supreme Court, *Inglwood Residents Protective Association v. Los Angeles*, has the same results in a victory for property owners bringing class action suits on the same question.

Already victorious, in a Second District Court of Appeal decision handed down earlier this month, are some 500 property owners living near Los Angeles International Airport.

The property owners, said the court in upholding the trial court ruling in *Aaron v. Los Angeles International Airport*.

The property owners, said the court in upholding the trial court ruling in *Aaron v. Los Angeles*, are entitled to \$20,000 in damages because the city, which owns and operates the airport, has taken away their right to enjoy their property in quiet without compensation.

Although the city attorney's office is expected to recommend to the Board of Airport Commissioners that the case be appealed, Lyle C. Ellis, one of the property owners' attorneys, feels the matter has been exhaustively and finally adjudicated.

"There would be no merit in an appeal," said Ellis, who added that he felt the appellate court's decision would be upheld by the higher courts.

But James Pearson, division chief deputy city attorney, said that "because of the nature of this decision, which is quite far-reaching, this case ought to be appealed to the highest level."

The city's main argument on appeal, an argument dismissed by both the trial and appellate courts,

is that its liability for damages should be shared with the airlines and the federal government.

In the *Aaron* case, says Pearson, the court relied heavily on a 1962 U.S. Supreme Court decision, *Bridges v. Allegheny County*, holding the operator of an airport liable for damage caused to property because of airport noise.

The city is expected to argue on appeal, however, that since the *Bridges* case, the federal government has taken on more and more of the responsibility for operating and controlling airport flights.

In the 14 years since the *Bridges* case, said Pearson, the control of airplanes and the management of airspace has been lodged in such federal agencies as the Federal Aviation Administration, and the city feels liability for property devaluation due to noise should be extended to include the federal government.

Although the appellate court dismissed that argument completely, the city may be aided in its quest for a partner in liability by the Environmental Protection Agency, which by its promulgation and enforcement of noise pollution standards may admit to the federal government's liability in such cases.

In the meantime, the city is nervously seeking some guidelines from the courts as to where its liability in these cases ends, and so far the courts have indicated that the city is wholly and independently responsible.

"We have to have an opportunity see whether, because of the changes (in the federal government's aviation role), there should be some modification to establish limits on the city's liability," said Pearson. "We need parameters, and the *Aaron* decision just doesn't give us any."

Another issue involved in the mass of litigation pending on the subject is that of class actions suits, and a favorable decision by the

state Supreme Court in *Inglwood Residents Protective Association v. Los Angeles* would further increase the city's liability.

In the cases already filed, the city has frequently cross-filed against the airlines themselves, arguing that airline companies should have to share in the cost of repaying property owners for devaluation due to noise.

"The federal government determines how planes have to land, what noise levels they emit, and it generally controls interstate air traffic," said one attorney involved in a pending case. "And it could be argued that the airlines, which are regulated by the federal government, should share some of the culpability."

The airport noise cases involve private citizens bringing inverse condemnation actions against a governmental agency.

Primarily, under both state and federal constitutional law, a governmental agency has the right of eminent domain in property for which it is willing to pay a fair market value.

Government agencies have long used condemnation procedures to seize property for which it has paid a fair market value, but in these cases private citizens are bringing inverse condemnation cases against the government for "wiping" their property by virtue of increased noise and attendant property devaluation.

"The real significance of the *Aaron* case," said James Sloan, another attorney for the plaintiffs, is that the appellate court held that jet noise constitutes a taking of property for which the government agency must provide fair compensation.

"The major point at issue has been resolved," said Sloan. "for the first and hopefully last time. It is a major breakthrough."

EXHIBIT VI

Government Code § 971 (amended)

Sec. . Section 971 of the Government Code is amended to read:

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. For the purposes of Section 2271 of the Revenue and Taxation Code, taxes levied pursuant to this article are levied to pay costs mandated by the courts.

Comment. Section 971 is amended to make clear that "Senate Bill 90" --Revenue and Taxation Code Sections 2201-2326-- /does not limit the levy of a tax pursuant to this article to pay a tort or inverse condemnation judgment. This clarifying amendment makes no substantive change in existing law and is consistent with both the purposes of this article and Senate Bill 90. See Rev. & Tax. Code § 2205, defining "costs mandated by the courts" to mean:

any increased costs incurred by a local agency in order to comply with a final court order issued after January 1, 1973. "Costs mandated by the courts" do not include (i) costs incurred as a result of a judgment in an eminent domain or condemnation proceeding, or (ii) costs incurred in order to comply with a final court order mandating the specific performance, or awarding damages as a result of nonperformance, of any contract or agreement entered into after January 1, 1973.

The procedure provided by Sections 970-971.2 does not include judgments in an eminent domain or condemnation proceeding or judgments arising out of failure to perform a contract.

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE

RECOMMENDATION

relating to

INVERSE CONDEMNATION

Payment of Judgments Against Local  
Public Entities

February 1974

CALIFORNIA LAW REVISION COMMISSION  
School of Law  
Stanford University  
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments should be sent to the Commission not later than July 1, 1974.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the Legislature were enacted since their primary purpose is to explain the law and its effect.

TENTATIVE

## RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

## INVERSE CONDEMNATION

Payment of Judgments Against Local Public Entities

In 1963, upon recommendation of the Law Revision Commission, the Legislature enacted comprehensive legislation dealing with the liability of public entities and public employees. The comprehensive legislation included provisions recommended by the Commission relating to the payment of tort judgments against local public entities. These provisions require that local public entities pay tort judgments against them and, at the same time, are designed to protect local public entities against the disruptive financial consequences of large tort judgments.<sup>1</sup>

Depending upon the financial condition of the local public entity, it can comply with the duty to pay a tort judgment<sup>2</sup> by (1) paying the judgment in the fiscal year in which it becomes final (Govt. Code § 970.4); (2) paying the judgment in the next fiscal year (Govt. Code § 970.6); (3) paying the judgment in not more than 10 annual

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1. See Recommendation Relating to Sovereign Immunity: Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees, 4 Cal. L. Revision Comm'n Reports 1001, 1018 (1963).
  2. Section 970.2 of the Government Code imposes a duty upon local public entities to pay tort judgments and gives the judgment creditor the right to obtain a writ of mandate to enforce this duty.

installments (Govt. Code § 970.8); or (4) paying the judgment with the proceeds of a bond issue as authorized by Sections 975-978.8 of the Government Code.<sup>3</sup>

The provisions relating to payment of tort judgments are not specifically applicable to judgments based on inverse condemnation liability, and it is unclear the extent to which those provisions apply to inverse condemnation judgments.<sup>4</sup> In some instances, liability cannot be established on a tort theory, and only inverse condemnation liability will exist. In other cases, however, damages may be recoverable on a tort theory as well as on an inverse condemnation theory.

The expansion of the scope of inverse condemnation liability during recent years makes imperative that it be made clear that local governmental entities have the means to minimize the disruptive effect of unexpectedly large inverse condemnation judgments. Accordingly, the Commission recommends that Sections 970-971.2 be made clearly applicable to inverse condemnation judgments. This will make clear that local public entities have a duty to pay inverse condemnation judgments and will make applicable to such judgments the provisions relating to the manner of paying tort judgments, including the provision permitting the payment of such judgments in not more than 10 annual installments.<sup>5</sup>

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3. Statutory restrictions upon incurring debts or liabilities and statutory limitations upon the maximum permissible rate of property taxation by local public entities do not apply to tort judgments. Govt. Code § 971. A tort judgment against a local public entity is an authorized legal investment for trust funds, banks, and insurance companies to the same extent as the bonds of such local public entity. Govt. Code § 971.2.
  4. The provisions permitting payment of judgments with the proceeds of a bond issue apply to any outstanding judgment; the other provisions apply to "tort judgments." See Govt. Code § 970(c) (defining "tort judgment").
  5. This authority will supplement the authority that already exists under Government Code Sections 975-978.8 to pay an inverse condemnation judgment with the proceeds of a bond issue. See also Govt. Code §§ 990, 11007.4 (insurance against "any tort or inverse condemnation liability").

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The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend the heading for Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of, and to amend Sections 970, 970.2, 970.4, 970.6, 970.8, and 971.2 of, the Government Code, relating to payment of judgments against local public entities.

The people of the State of California do enact as follows:

Heading for Chapter 2 (commencing with Govt. Code § 970)(amended)

Section 1. The heading for Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of the Government Code is amended to read:

Chapter 2. Payment of ~~Tort~~ Judgments Against Local Public Entities

Comment. The heading for Chapter 2 is amended to delete "Tort" in recognition of the fact that Article 2 of the chapter applies to any judgment and Article 1 has been amended to include inverse condemnation judgments.

Government Code § 970 (amended)

Sec. 2. Section 970 of the Government Code is amended to read:

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) "Judgment" means a final judgment against a local public entity which is founded upon tort or inverse condemnation liability.

(c) (b) "Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the Regents of the University of California and 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.

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

ALL IN  
STRIKED OUT

Comment. Section 970 is amended to substitute a definition of "judgment" for the former definition of "tort judgment." The effect of this substitution is to make it clear that Article 1 (commencing with Section 970) applies to all inverse condemnation judgments. See Recommendation Relating to Inverse Condemnation: Payment of Judgments Against Local Public Entities, 12 Cal. L. Revision Comm'n Reports 000 (1974). Cf. Govt. Code §§ 990, 11007.4 (authorizing public entities to obtain insurance against "any tort or inverse condemnation liability").

The definition of "judgment" provided by subdivision (b) applies only to this article. The term "judgment" used in Article 2 (commencing with Section 975) refers to judgments generally without limitation.

Government Code § 970.2 (amended)

Sec. 3. Section 970.2 of the Government Code is amended to read:

970.2. A local public entity shall pay any ~~test~~ 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.

Comment. See Comment to Section 970.

Government Code § 970.4 (amended)

Sec. 4. Section 970.4 of the Government Code is amended to read:

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 ~~test~~ 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 ~~test~~ judgments and not previously encumbered.

Comment. See Comment to Section 970.

Government Code § 970.6 (amended)

Sec. 5. Section 970.6 of the Government Code is amended to read:

970.6. (a) If a local public entity does not pay a ~~test~~ judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the ~~test~~ 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 ~~test~~ judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the ~~test~~ 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 10 annual installments. Each payment shall be of an equal portion of the principal of the ~~test~~ judgment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

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

Comment. See Comment to Section 970.

Government Code § 970.8 (amended)

Sec. 6. Section 970.6 of the Government Code is amended to read:

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, or otherwise provide funds, in an amount sufficient to pay all ~~tax~~ 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 (other than an entity created by an agreement described in Section 895) liable for a ~~tax~~ 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 ~~tax~~ judgment to pay the judgment in accordance with this article. Such amount shall be paid to the local public entity liable for the ~~tax~~ judgment and shall be used by such entity to satisfy the ~~tax~~ judgment. The pro rata share of such other local public entity for each ~~tax~~ judgment is an amount bearing the same proportion to the total amount of the ~~tax~~ 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 ~~tax~~ 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.

Comment. See Comment to Section 970.

Government Code § 971.2 (amended)

Sec. 7. Section 971.2 of the Government Code is amended to read:

971.2. (a) All ~~tax~~ 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 ~~tax~~ 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 ~~tax~~ 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 ~~tax~~ judgment for which such local public entity is liable may be so used.

(c) All ~~tax~~ 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.

Comment. See Comment to Section 970.