

#52

2/2/65

Memorandum 65-8

Subject: Study No. 52(L) - Sovereign Immunity

Attached are three bills designed to carry out the decisions made at the January 1965 meeting. The green bill is the one containing the changes of major importance. The pink bill contains other changes relating to liability; the yellow bill contains other changes relating to claims and actions.

It is unlikely that we will have these bills available in printed form prior to the February meeting. We have sent the bills to Assemblyman Song who is having them reviewed by the Legislative Counsel. The bills will be introduced by Mr. Song as soon as this review is completed. (Senator Cobey suggested that Mr. Song introduce the bills if he wished to do so.)

In the First Supplement to this memorandum, we will provide you with the remaining material that will be included in our report to the Legislature on this subject. This material will include the letter of transmittal, the general recommendation, and the comments to the individual sections.

In connection with the attached bills, the following matters should be noted:

Green Bill

Section 825. You will note that we have incorporated by reference the provisions of Section 996.4 which indicate when a public entity is required to pay the attorneys fees and other costs of defense when it has refused to provide such defense upon request. This permits the detail of time limits, requirement of request, form of request, circumstances when defense not required, etc., to be covered in one series of sections rather than attempting to duplicate such material in Section 825.

Under Section 825, the public entity is not required to pay a judgment where it refused to defend an employee and it establishes in the action to require it to pay the judgment that the employee was guilty of actual fraud, corruption or actual malice. Thus, the plaintiff if he wishes to recover from the public entity in this type of case must join the public entity as a party and obtain a judgment against the public entity. This changes the existing law, for under the existing law the public entity apparently is required to pay the judgment against its employee even where it declined to defend on the ground that the employee was guilty of actual fraud, corruption, or actual malice. This change is not of great consequence. Note that the protection afforded the plaintiff under Section 825 is incomplete; the protection is entirely dependent upon the action of the defendant public employee, for it exists only if the public employee requests a defense at public expense.

In subdivision (f) of Section 825, the words "of this division" should be inserted after "Section 900)".

Section 825.2. In subdivision (c), the words "of this division" should be inserted after "Section 900)".

Section 995. The word "counterclaim," should be deleted.

Sections 995.1 and 996.4. Consideration should be given to deleting the word "substantially" before "prejudice" in Section 995.1(b) and 996.4(b)(3).

Pink Bill

Section 845.8. This amendment was not approved by the Commission. We have, however, included it in the bill on the assumption that the Commission will want this section to be consistent with the approved amendment to Section 856.2.

Note how we have phrased the last sentence in Sections 845.8 and 856.2. We believe that this is the best way to express the idea that the employee is liable for his act but not for merely an omission.

Yellow Bill

Title. Section 960.4 should be listed as an amended, rather than as an added, section. Section "83051" should be Section "53051."

Respectfully submitted,

John H. DeMouilly
Executive Secretary

An act to amend Sections 815.2, 825, 825.2, 825.6, 995, and 996.4 of the Government Code, Section 1095 of the Code of Civil Procedure, and Sections 17000, 17001, and 17004 of the Vehicle Code, to repeal Section 17002 of the Vehicle Code, and to add Section 995.1 to the Government Code and Section 17002 to the Vehicle Code, relating to the liability of public entities and public officers, servants, and employees.

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

SECTION 1. Section 815.2 of the Government Code is amended to read:

815.2. (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) ~~Except-as-otherwise-provided-by-statute,~~ A public entity is not liable under this section for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

SEC. 2 . Section 825 of the Government Code is amended to read:

825. (a) If an employee or former employee of a public entity requests the public entity to defend him against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment as an employee of the public entity and such request is made in writing not less than 10 days before the day of trial and the public entity fails to provide for the defense of such claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed if it is established that the employee or former employee is entitled under Section 996.4 to recover from the public entity such reasonable attorney's fees, costs and expenses as are necessarily incurred by him in defending the action.

(b) Except as provided in subdivision (c), if the public entity ~~conducts~~ provides for the defense of an employee or former employee against any claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed; ~~but~~

(c) Where the public entity conducted such provides for the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise or settlement until it is established that the injury arose out of an act or omission occurring within the

scope of his employment as an employee of the public entity, the public entity is required to pay the judgment, compromise or settlement only if ~~it is established~~ the fact that the injury arose out of an act or omission occurring in the scope of his employment as an employee of the public entity:

(1) Was established in the action or proceeding against the employee or former employee; or

(2) Is established in an action or proceeding against the public entity.

(d) Nothing in subdivision (a) or (c) precludes the board (as defined in Section 940.2) from paying the judgment, compromise or settlement if the fact that the injury arose out of an act or omission occurring within the scope of the employment of the employee or former employee as an employee of the public entity is established to the satisfaction of the board.

(e) Nothing in this section authorizes or requires a public entity to pay such part of a claim or judgment as is for punitive or exemplary damages.

(f) The presentation of a claim pursuant to Part 3 (commencing with Section 900) is not a prerequisite to enforcement of the duty of a public entity under this section to pay a judgment, compromise or settlement.

SEC. 3. Section 825.2 of the Government Code is amended to read:

825.2. (a) Subject to subdivision (b), if an employee or former employee of a public entity pays any claim or judgment against him, or any portion thereof, that the public entity is required to pay under Section 825, he is entitled to recover the amount of such payment from the public entity.

~~(b) If the public entity did not conduct his defense against the action or claim, or if the public entity conducted such defense pursuant to an agreement with him reserving the rights of the public entity against him, an employee or former employee of a public entity may recover from the public entity under subdivision (a) only if he establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment as an employee of the public entity and the public entity fails to establish that he acted or failed to act because of actual fraud, corruption or actual malice.~~ Where an employee or former employee brings an action or proceeding against the public entity to recover the amount to which he is entitled under this section and the duty of the public entity to pay him such amount arises under subdivision (c) of Section 825, the employee or former employee is not entitled to recover such amount from the public entity if the public entity establishes in such action or proceeding that the employee or former employee acted or failed to act because of actual fraud, corruption or actual malice.

(c) The presentation of a claim pursuant to Part 3
(commencing with Section 900) is not a prerequisite to the
enforcement of the liability of a public entity under this
section.

SEC. 4. Section 825.6 of the Government Code is amended to read:

825.6. (a) If a public entity pays any claim or judgment, or any portion thereof, either against itself or against an employee or former employee of the public entity, for an injury arising out of an act or omission of the employee or former employee of the public entity, the public entity may recover from the employee or former employee the amount of such payment if he acted or failed to act because of actual fraud, corruption or actual malice. Except as provided in subdivision (b), a public entity may not recover any payments made upon a judgment or claim against an employee or former employee if the public entity conducted his defense against the action or claim.

(b) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his act or omission, and if the public entity conducted his defense against the claim or action pursuant to an agreement with him reserving the rights of the public entity against him, the public entity may recover the amount of such payment from him unless he establishes , or it was previously established either in the action against him or in an action against the public entity, that the act or omission upon which the claim or judgment is based occurred within the scope of his employment as an employee of the public entity and the public entity fails to establish that he acted or failed to act because of actual fraud, corruption or actual malice.

SEC.5. Section 995 of the Government Code is amended to read:
995. Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity if the employee or former employee presents such request in writing to the public entity substantially in the manner provided in Sections 915 and 915.2 not later than 30 days after service upon him of the complaint, counterclaim, cross-complaint or other pleading against him.

For the purposes of this chapter, a cross-action, counterclaim or cross-complaint against an employee or former employee shall be deemed to be a civil action or proceeding brought against him.

SEC. 6. Section 995.1 is added to the Government Code, to read:

995.1. (a) Except as provided in subdivision (b) and in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of any act or omission in the scope of his employment as an employee of the public entity if the employee or former employee presents such request in writing to the public entity substantially in the manner provided in Sections 915 and 915.2 not less than 10 days before the day of trial.

(b) The public entity is not required to defend the action or proceeding under this section if the ability of the public entity to provide an effective defense was substantially prejudiced by the failure of the employee or former employee to request a defense at a time earlier than the time at which the request was in fact made.

SEC. 7 . Section 996.4 of the Government Code is amended to read:

996.4. (a) If after a request is made in compliance with Section 995, a public entity fails or refuses to provide an employee or former employee with a defense against a civil action or proceeding brought against him and the employee retains his own counsel to defend the action or proceeding, he is entitled to recover from the public entity such reasonable attorney's fees, costs and expenses as are necessarily incurred by him in defending the action or proceeding if he establishes or the public entity concedes that the action or proceeding arose out of an act or omission in the scope of his employment as an employee of the public entity, but he is not entitled to such reimbursement if the public entity establishes:

(a) (1) That he acted or failed to act because of actual fraud, corruption or actual malice; ; or

(b) (2) That the action or proceeding is one described in Section 995.4.

(b) If after a request is made in compliance with Section 995.1, a public entity fails or refuses to provide an employee or former employee with a defense against a civil action or proceeding brought against him and the employee retains his own counsel to defend the action or proceeding, he is entitled to recover from the public entity such reasonable attorney's fees, costs and expenses as are necessarily incurred by him in defending the action or proceeding if he establishes or the public entity concedes that the action or proceeding arose out of an act or

omission in the scope of his employment as an employee of the public entity, but he is not entitled to such reimbursement if the public entity establishes:

(1) That he acted or failed to act because of actual fraud, corruption or actual malice; or

(2) That the action or proceeding is one described in Section 995.4; or

(3) That its ability to provide an effective defense was substantially prejudiced by the failure of the employee or former employee to request a defense at a time earlier than the time at which the request was in fact made.

(c) Nothing in this section shall be construed to deprive an employee or former employee of the right to petition for a writ of mandate to compel the public entity or the governing body or an employee thereof to perform the duties imposed by this chapter.

SEC. 8. Section 1095 of the Code of Civil Procedure is amended to read:

1095. (a) If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay; provided, however, that in all cases where the respondent is an officer of a public entity, all damages and costs, or either, which may be recovered or awarded, shall be recovered and awarded against the public entity represented by such officer and not against such officer so appearing in said proceeding, and the same shall be a proper claim against the public entity for which such officer shall have appeared, and shall be paid as other claims against the public entity are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in such proceeding in good faith.

(b) Recovery or award of damages pursuant to this section is not limited or precluded by the provisions of Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except that punitive or exemplary damages may not be recovered or awarded against the public entity. Nothing in this section prevents the public entity from recovering any damages paid pursuant to this section from the officer under Section 825.6 if the public entity establishes that the officer acted or failed to act because of actual fraud, corruption or actual malice.

(c) The presentation of a claim against the public entity pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the

Government Code is not a prerequisite to recovery or award of damages pursuant to this section.

(d) For the purpose of this section, "public entity" includes the State, a county, city, district or other public agency or public corporation.

(e) For the purpose of this section, "officer" includes officer, agent or employee.

SEC. 9. Section 17000 of the Vehicle Code is amended to read:

17000. As used in this chapter:

~~,"public-agency"-means-the-State,-any-county,-municipal-corporation,
district-and-political-subdivision-of-the-State,-or-the-State-Compensation
Insurance-Fund.~~

(a) "Employee" includes an officer, employee, or servant, whether
or not compensated, but does not include an independent contractor.

(b) "Employment" includes office or employment.

(c) "Public entity" includes the State, the Regents of the University
of California, a county, city, district, public authority, public agency,
and any other political subdivision or public corporation in the State.

SEC. 10. Section 17001 of the Vehicle Code is amended to read:

~~17001. Any public agency owning any motor vehicle is responsible to every person who sustains any damage by reason of death, or injury to person or property as the result of the negligent operation of the motor vehicle by an officer, agent, or employee or as the result of the negligent operation of any other motor vehicle by any officer, agent, or employee when acting within the scope of his office, agency, or employment.--The injured person may sue the public agency in any court of competent jurisdiction in this State in the manner directed by law.~~

A public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment.

SEC. 11. Section 17002 of the Vehicle Code is repealed.

~~17002. If there is recovery under this chapter against a public agency, it shall be subrogated to all the rights of the person injured against the officer, agent, or employee and may recover from the officer, agent, or employee the total amount of any judgment and costs recovered against the public agency, together with costs therein.~~

SEC.12. Section 17002 is added to the Vehicle Code, to read:

17002. (a) A public entity is liable for death or injury to person or property to the same extent as a private person under the provisions of Article 2 (commencing with Section 17150) of this chapter.

(b) Nothing in this section makes Article 3 (commencing with Section 825) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code inapplicable in any case where that article is otherwise applicable and that article shall be applicable in such cases.

SEC.13. Section 1700⁴ of the Vehicle Code is amended to read:

~~1700⁴. No member of any police or fire department maintained by a county, city, or district, and no member of the California Highway Patrol or employee of the Division of Forestry, is~~ A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or other emergency call.

An act to amend Sections 820, 821, 830.4, 830.8, 831, 831.8, 835.4, 844, 844.6, 845.4, 845.6, 845.8, 846, 850.2, 850.4, 850.6, 850.8, 854.2, 854.4, 854.8, 855.2, 856.2, 860, 860.2, 860.4, 895.2, 40813, and 41006 of the Government Code and to add Sections 800, 835.6, and 854.6 to the Government Code, relating to the liability of public entities and public officers, servants, and employees.

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

SECTION 1. The heading of Part 1 of Division 3.6 of Title 1
of the Government Code is amended to read:

PART 1. SHORT TITLE AND DEFINITIONS

SEC. 2. Section 800 is added to Part 1 of Division 3.6 of Title 1 of the Government Code, to read:

800. This division shall be known and may be cited as the Governmental Liability Act.

SEC. 3.. Section 820 of the Government Code is amended to read:

820. (a) Except as otherwise provided by statute (including Section 820.2 and Section 820.8), a public employee is liable for injury caused by his act or omission to the same extent as a private person.

(b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person.

SEC. 4. Section 821 of the Government Code is amended to read:

821. A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment any law.

SEC. 5. Section 830.4 of the Government Code is amended to read:

830.4. A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control ~~signals~~ devices, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.

SEC. 6. Section 830.8 of the Government Code is amended to read:

830.8. Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide ~~traffic~~ warning signals, signs, markings or other devices described referred to in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or other device (~~other than one described in Section 830.4~~) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.

SEC. 7. Section 831 of the Government Code is amended to read:

831. Neither a public entity nor a public employee is liable for an injury caused by the effect on the use of streets, ~~and~~ highways, alleys, sidewalks or other public ways of weather conditions as such. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care. For the purpose of this section, the effect on the use of streets, ~~and highways,~~ alleys, sidewalks or other public ways of weather conditions includes the effect of fog, wind, rain, flood, ice or snow but does not include physical damage to or deterioration of streets, ~~and highways,~~ alleys sidewalks or other public ways resulting from weather conditions.

SEC. 8. Section 831.8 of the Government Code is amended to read:

831.8. (a) Subject to subdivisions (c) and (d), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.

(b) Subject to subdivisions (c) and (d), neither an irrigation district nor an employee thereof nor the State nor a state employee is liable under this chapter for an injury caused by the condition of a canals, conduits or drains used for the collection, distribution or discharge of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or State intended or permitted it to be used.

(c) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if:

(1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property;

(2) The condition created a substantial and unreasonable risk of death or serious bodily harm when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used;

(3) The dangerous character of the condition was not reasonably

apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care; and

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if:

(1) The person injured was less than 12 years of age;

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used;

(3) The person injured, because of his immaturity, did not discover the condition or did not appreciate its dangerous character; and

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

SEC. 9. Section 835.4 of the Government Code is amended to read:

835.4. (a) A public entity is not liable under subdivision (a) of Section 835 for injury caused by a dangerous condition of its property if the public entity establishes that the act or omission that created the condition was reasonable. The reasonableness of the act or omission that created the condition shall be determined by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or ~~ef-protecting~~ would protect against the risk of injury.

(b) A public entity is not liable under subdivision (b) of Section 835 for injury caused by a dangerous condition of its property if the public entity establishes that the action it took to protect against the risk of injury created by the condition or its failure to take such action was reasonable. The reasonableness of the action or inaction of the public entity shall be determined by taking into consideration the time and opportunity it had to take action and by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of protecting against the risk of such injury.

SEC. 10. Section 835.6 is added to Article 2 (commencing with Section 835) of Chapter 2 of Part 2 of Division 3.6 of Title 1 of the Government Code, to read:

835.6. The immunity provided by Section 818.2 is not a defense to liability under this article where the conditions for liability otherwise exist under this article.

SEC. 11. Section 844 of the Government Code is amended to read:

844. As used in this chapter, "prisoner" includes an inmate of a prison, jail or penal or correctional facility, except that a person within the jurisdiction of the juvenile court is a "prisoner" only if he is an inmate pursuant to:

(a) A previous adjudication, whether final or not, declaring him to be a ward of the juvenile court under Section 602 of the Welfare and Institutions Code; or

(b) A finding under Section 707 of the Welfare and Institutions Code that he is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law .

SEC. 12. Section 844.6 of the Government Code is amended to read:

844.6. (a) Notwithstanding any other provisions of law this part, except as provided in subdivisions ~~(b), (c), and (d)~~ of this section, a public entity is not liable for:

- (1) An injury proximately caused by any prisoner.
- (2) An injury to any prisoner.

(b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.

(c) Nothing in this section prevents a person, other than a prisoner, from recovering from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.

(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is licensed, certificated or registered in one of the healing arts under Division 2 (commencing with Section 500) of the Business and Professions Code any statute of this State, or against a public employee who, although not so licensed, certificated or registered, is

engaged as a public employee in the lawful practice of one of the healing arts, for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action based on such malpractice to which the public entity has agreed.

(e) Nothing in this section prevents or limits the application of Article 1 (commencing with Section 814) of Chapter 1 of this part.

(f) Nothing in this section affects the liability of a public entity under Section 845.4 or 845.6.

SEC. 13. Section 845.4 of the Government Code is amended
to read:

845.4. Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury ~~may-be-commenced~~ shall be deemed to accrue until it has first been determined that the confinement was illegal.

SEC. 14. Section 845.6 of the Government Code is amended

to read:

845.6. Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee who is licensed, certificated or registered in one of the healing arts under Division 2 (commencing with Section 500) of the Business and Professions Code any statute of this State, or a public employee who, although not so licensed, certificated or registered, is engaged as a public employee in the lawful practice of one of the healing arts, from liability for injury proximately caused by malpractice or exonerates the public entity from liability for injury proximately caused by such malpractice.

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SEC. 15. Section 845.8 of the Government Code is amended to read:

845.8. Neither a public entity nor a public employee is liable for:

(a) Any injury resulting from determining whether to parole or release a prisoner or from determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release.

(b) Any injury caused by or to an escaping or escaped prisoner.
Nothing in this subdivision exonerates a public employee from liability for his own wilful misconduct.

SEC. 16. Section 846 of the Government Code is amended to read:

846. Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody. Nothing in this section affects liability imposed by statute for escape or rescue of a person arrested in a civil action.

SEC. 17. Section 850.2 of the Government Code is amended to read:

850.2. Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from failure to suppress or contain a fire where such failure or inability results from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.

SEC. 18. Section 850.4 of the Government Code is amended to read:

850.4. (a) Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from failure to suppress or contain a fire where such failure or inability results from the condition of fire protection or firefighting equipment or facilities ~~or, .~~

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury caused in-fighting-fires by an act or omission of a public employee while engaged in fighting a fire.

SEC. 19. Section 850.6 of the Government Code is amended to read:

850.6. Whenever a public entity, pursuant to a call for assistance from another public entity, provides fire protection or firefighting service outside of the area regularly served and protected by the public entity providing such service, the public entity providing such service is liable for any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service. Notwithstanding any other law, the public entity calling for assistance is not liable for any act or omission of the public entity providing the assistance or for any act or omission of an employee of the public entity providing the assistance; but the public entity providing such service and the public entity calling for assistance may by agreement determine the extent, if any, to which the public entity calling for assistance will be required to indemnify the public entity providing the assistance. Nothing in this section exonerates the public entity calling for assistance from liability for an act or omission of itself or of one of its employees.

SEC. 20. Section 850.8 of the Government Code is amended to read:

850.8. (a) Any member-of-an-organized-fire-department,-fire protection-district,-or-other-firefighting-unit-of-either-the State-or-any-political-subdivision, ----any-employee-of-the Division-of-Forestry,-or-any-other public employee , when acting in the scope of his employment, may transport or arrange for the transportation of any person injured by a fire, or by a fire protection operation, to a physician and surgeon or hospital if the injured person does not object to such transportation.

(b) Except as provided in subdivision (c), neither a public entity nor a public employee is liable for any injury sustained by the injured person as a result of ~~or-in-connection-with-such transportation~~ any act or omission under subdivision (a) or for any medical, ambulance or hospital bills incurred by or in behalf of the injured person ~~or-for-any other-damages,-but~~ .

(c) A public employee , and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by his willful misconduct; in transporting the injured person or arranging for such transportation.

SEC. 21. Section 854.2 of the Government Code is amended to read:

854.2. As used in this chapter, "mental institution" means any medical facility , or part of any medical facility, used primarily for the care or treatment of persons committed for mental illness or addiction.

SEC. 22. Section 854.4 of the Government Code is amended to read:

854.4. As used in this chapter, "mental illness or addiction" means mental illness, mental disorder bordering on mental illness, mental deficiency, epilepsy, habit forming drug addiction, narcotic drug addiction, dipsomania or inebriety, ~~sexual-psycheopathy~~ mental disease or defect or disorder which predisposes to the commission of sexual offenses to a degree dangerous to the health and safety of others, defective or psychopathic delinquency, or such mental abnormality as to evidence utter lack of power to control sexual impulses.

SEC. 23. Section 854.6 is added to Chapter 5 (commencing with Section 854) of Part 2 of Division 3.6 of Title 1 of the Government Code, to read:

854.6. As used in this chapter, "mental patient" means a person who is committed or admitted to a mental institution.

SEC. 24. Section 854.8 of the Government Code is amended to read:

854.8. (a) Notwithstanding any other provision of law this part, except as provided in subdivisions ~~(b), (c) and (d)~~ of this section, a public entity is not liable for:

(1) An injury proximately caused by ~~any person committed or admitted to a mental institution~~ a mental patient.

(2) An injury to ~~any person committed or admitted to a mental institution~~ a mental patient.

(b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.

(c) Nothing in this section prevents a person, other than a ~~person committed or admitted to a mental institution~~ mental patient, from recovering from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.

(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment based on a claim against a public employee who is licensed, certificated or registered in one of the healing arts under ~~Division 2 (commencing with Section 500) of the Business and Professions Code~~ any statute of this State, or against a public employee who, although not so licensed, certificated or registered,

is engaged as a public employee in the lawful practice of one of the healing arts, for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action based on such malpractice to which the public entity has agreed.

(e) Nothing in this section prevents or limits the application of Article 1 (commencing with Section 814) of Chapter 1 of this part.

(f) Nothing in this section affects the liability of a public entity under Section 855.2.

SEC. 25. Section 855.2 of the Government Code is amended to read:

855.2. Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of an inmate of a medical facility operated or maintained by a public entity to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury may be commenced shall be deemed to accrue until it has first been determined that the confinement was illegal.

SEC. 26. Section 856.2 of the Government Code is amended to read:

856.2. Neither a public entity nor a public employee is liable for an injury caused by or to an escaping or escaped person ~~who has been committed for mental illness or addiction~~ mental patient. Nothing in this section exonerates a public employee from liability for his own wilful misconduct.

SEC. 27. Section 860 of the Government Code is amended to read:

860. As used in this chapter, "tax" includes a tax, or assessment, and any fee or charge incidental or related to the imposition, enforcement or collection of a tax or assessment.

SEC. 28. Section 860.2 of the Government Code is amended to read:

860.2. Neither a public entity nor a public employee is liable for an injury caused by:

(a) Instituting or prosecuting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.

(b) An act or omission in the interpretation ~~ex-application~~ of any law relating to a tax.

(c) Any act or omission resulting from an exercise of discretion in the application, imposition, enforcement or collection of any tax.

SEC. 29. Section 860.4 of the Government Code is amended to read:

860.4. Nothing in this chapter affects any law ~~relating to~~
providing for refund, rebate, exemption, cancellation, amendment or
adjustment of taxes.

SEC. 30. Section 895.2 of the Government Code is amended to read:

895.2. Whenever any public entities enter into an agreement, they are jointly and severally liable upon any liability which is imposed by any-law the Constitution or by any statute other than this chapter upon any one of the entities or upon any entity created by the agreement for injury caused by a negligent or wrongful act or omission occurring in the performance of such agreement.

Notwithstanding any other law, if a judgment is recovered against a public entity for injury caused by an act or omission occurring in the performance of an agreement, the time within which a claim for such injury may be presented to, or in the event that a claim was previously presented to and acted on by the public entity the time within which ~~or~~ an action may be commenced against , any other public entity that is subject to the liability determined by the judgment under the provisions of this section begins to run when the judgment ~~is-rendered~~ becomes final.

SEC. 31. Section 40813 of the Government Code is amended to read:

40813. The city clerk may appoint deputies ~~for whose acts he and his bondsmen are responsible.~~ The deputies who shall hold office at the pleasure of the city clerk and receive such compensation as is provided by the legislative body.

SEC. 32. Section 41006 of the Government Code is amended to read:

41006. The city treasurer may appoint deputies ~~for-whose-acts he-and-his-bondsmen-are-responsible.~~

An act to amend Sections 910, 910.4, 910.6, 911.4, 911.6, 912.2, 912.4, 915, 930, 930.2, 935, 935.2, 935.4, 943, 945.4, 945.6, 945.8, 950.2, 950.4, 950.6, 53050, and 83051 of the Government Code, to repeal Sections 912, 945.5, and 960.2 of the Government Code, and to add Sections 930.4, 930.6, 946.4, 946.6, 960.2, 960.3, 960.4, and 960.8 to the Government Code, relating to the liability of public entities and public officers, servants, and employees.

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

SECTION 1. Section 910 of the Government Code is amended to read:

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 name or names of the public employee or employees causing the injury, damage, or loss, if known; and
- (f) The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

SEC. 2. Section 910.4 of the Government Code is amended to read:

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.~~ A claim presented on a form provided pursuant to this section shall be deemed to be in conformity with Sections 910 and 910.2 if the claim complies substantially with the requirements of the form or with the requirements of Sections 910 and 910.2.

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SEC. 3. Section 910.6 of the Government Code is amended to read:

910.6. (a) 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.~~ For all purposes, the claim as amended shall be considered the original claim as presented.

(b) A failure or refusal to amend a claim, whether or not notice of insufficiency is given under Section 910.8, 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.

SEC. 4. Section 911.4 of the Government Code is amended to read:

911.4. (a) When a claim that is required by Section 911.2 to be presented not later than the 100th 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.

(b) 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.

SEC. 5. Section 911.6 of the Government Code is amended to read:

911.6. (a) The board shall grant or deny the application within ~~35~~ 45 days after it is presented to the board. If the board does not act upon the application within ~~35~~ 45 days after the application is presented, the application shall be deemed to have been denied on the ~~35th~~ 45th 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 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 the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

SEC. 6. Section 912 of the Government Code is repealed.

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 if the court finds that 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 was denied or deemed denied pursuant to Section 911.6 and that:

(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 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 the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4)--The claimant died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(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 or deemed denied

and (2) the reason for the failure to present the claim. -- 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.

(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.

(e) -- The court shall make an independent determination upon the application. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

SEC. 7. Section 912.2 of the Government Code is amended
to read:

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.

SEC. 8. Section 912.4 of the Government Code is amended to read:

912.4. (a) 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.

(b) The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made:

(1) Before ~~ex-after~~ the expiration of such period; or

(2) After the expiration of such period if an action based on the claim has not been commenced and is not yet barred by the period of limitations provided in Section 945.6.

(c) 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 pursuant to this section, 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.

SEC. 9. Section 915 of the Government Code is amended to read:

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.

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(d) A claim, amendment or application shall be deemed to have been presented in compliance with this section to a public agency as defined in Section 53050 if it is delivered or mailed within the time prescribed for presentation thereof in reliance upon the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time the claim, amendment or application is delivered or mailed. As used in this subdivision, "statement in the Roster of Public Agencies" means the statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of a county in which such statement is on file.

SEC. 10. Section 930 of the Government Code is amended to read:

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 (a) the presentation, by or on behalf of any party thereto, of any or all claims which are required to be presented to the board arising out of or related to the agreement and (b) 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-Sections-911.4-to-912.2,-inclusive,-are-applicable-to-all-such-claims.~~ As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission or agency of the State claims against which are paid by warrants drawn by the Controller.

SEC. 11. Section 930.2 of the Government Code is amended to read:

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 pursuant to this section exclusively governs the claims to which it relates, except that Sections 911.4 to 912.2, inclusive, are applicable to all such claims.~~

SEC. 12. Section 930.4 is added to Chapter 5 (commencing with Section 930) of Part 3 of Division 3.6 of Title 1 of the Government Code, to read:

930.4. A claims procedure established by agreement made pursuant to Section 930 or Section 930.2 exclusively governs the claims to which it relates, except that:

(a) The procedure so prescribed may not require a shorter time for presentation of any claim than the 100th day after the accrual of the cause of action to which the claim relates.

(b) The procedure so prescribed may not provide a longer time for the board to take action upon any claim than the time provided in Section 912.4.

(c) The procedure so prescribed may not authorize the consideration, adjustment, settlement, allowance or payment of a claim by any claims board or commission or employee of a local public entity contrary to the provisions of Section 935.2 or 935.4 or by any state agency contrary to the provisions of Section 935.6.

(d) When a claim required by the procedure to be presented within a period of less than one year after the accrual of the cause of action is not presented within the required time, an application may be made to the public entity for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and 946.6 are applicable to all such claims, and the time specified in the agreement shall be deemed the "time specified in Section 911.2" within the meaning of Sections 911.6 and 946.6.

SEC. 13. Section 930.5 is added to Chapter 5 (commencing with Section 930) of Part 3 of Division 3.6 of Title 1 of the Government Code, to read:

930.6. A claims procedure established by agreement made pursuant to Section 930 or Section 930.2 may include a requirement that a claim be presented and acted upon as a prerequisite to suit thereon. If such requirement is included, any action brought against the public entity on the claim shall be subject to (a) the limitations of time for commencement of an action provided in Section 945.6 and (b) the limitations on scope of an action provided in Section 946.

SEC. 77. Section 935 of the Government Code is amended to read:

935. (a) 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.

(b) The procedure so prescribed may include a requirement that a claim be presented and acted upon as a prerequisite to suit thereon, ~~but~~. If such requirement is included, any action brought against the public entity on the claim shall be subject to (1) the limitations of time for commencement of an action provided in Section 945.6, and (2) the limitations on scope of an action provided in Section 946.

(c) The procedure so prescribed may not require a shorter time for presentation of any claim than the time provided in Section 911.2 nor .

(d) The procedure so prescribed may not provide a longer time for the board to take 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.

(e) When a claim required by the procedure to be presented within a period of less than one year after the accrual of the cause of action is not presented within the required time, an application may be made to the public entity for leave to present such claim.

Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and 946.6 are applicable to all such claims, and the time specified in the charter, ordinance or regulation shall be deemed the "time specified in Section 911.2" within the meaning of Sections 911.6 and 946.6.

SEC. 15. Section 935.2 of the Government Code is amended to read:

935.2. A charter provision, or a local public entity by ordinance or resolution, may establish a claims board or commission 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 or commission, 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.

SEC. 16. Section 935.4 of the Government Code is amended to read:

935.4. A charter provision, or a local public entity by ordinance or resolution, may authorize an employee ~~or-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 ~~or-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 five thousand dollars (\$5,000), except that a charter provision may authorize a public employee ~~or-employee~~ to allow, compromise or settle a claim, even where the amount to be paid exceeds five thousand dollars (\$5,000). Upon the written order of such employee ~~or-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.

SEC. 17. Section 943 of the Government Code is amended to read:

943. This part does not apply to claims or actions against the Regents of the University of California or against an employee or former employee of the Regents of the University of California.

SEC. 18. Section 945.4 of the Government Code is amended to read:

945.4. Except as provided in Sections 946.4 and 946.6, 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.

SEC. 19. Section 945.5 of the Government Code is repealed.

~~945.5. Where provision is made by law or otherwise that no suit may be brought against any public agency as defined in Section 5350 unless and until a claim is presented to such agency, or an employee thereof, and such agency has failed to file with the Secretary of State and with the county clerk of each county in which there is located any portion of the territory of such public agency the information required to be filed under Section 53051, then and in such event the presentation of any such claim shall not be required.~~

SEC. 20. Section 945.6 of the Government Code is amended to read:

945.6. (a) Except as provided in subdivision (b), 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 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.

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, such suit must be commenced within the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence such a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division ~~within the time prescribed therein.~~

SEC. 21. Section 945.8 of the Government Code is amended to read:

945.8. Except where a different statute of limitations is specifically applicable to the public entity, and except as provided in Sections 930.6 and 935, any 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.

SEC. 22. Section 946.4 is added to the Government Code,
to read:

946.4. (a) Where provision is made by or pursuant to law that no suit may be brought against a public agency as defined in Section 53050 unless and until a claim is presented to the agency, the failure to present a claim or an application for leave to present a late claim does not constitute a bar or defense to the maintenance of a suit against such public agency if, during the 70 days immediately following the accrual of the cause of action:

(1) No statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of Secretary of State and of the county clerk of each county in which the public entity then maintains an office, as required by Section 53051; or

(2) A statement or amended statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of Secretary of State and of the county clerk of each county in which the public agency then maintains an office, but the information contained therein is inaccurate or incomplete or does not substantially conform to the requirements of Section 53051.

(b) On any question of fact arising within the scope of paragraphs (1) and (2) of subdivision (a), the burden of proof is upon the public agency.

SEC. 23. Section 946.6 is added to the Government Code, to read:

946.6. (a) Where an application for leave to present a claim after the expiration of the time specified in Section 911.2 is denied or deemed to be denied pursuant to Section 911.6, any suit brought on a cause of action for the injury for which such claim was required must be commenced within six months after the date the application for leave to present the claim was denied or deemed denied pursuant to Section 911.6.

(b) If the defendant pleads that the action is barred by the failure to present a claim within the time specified in Section 911.2, the court shall, on the motion of either party, proceed to the trial of such special defense before the trial of any other issue in the case. The court shall make an independent determination on the merits of the special defense. The determination shall be made on the basis of affidavits and any additional evidence received at the trial of the issue.

(c) The failure to present a claim within the time specified in Section 911.2 does not constitute a bar or defense to the maintenance of a suit if the court determines that an 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 was denied or deemed denied pursuant to Section 911.6 and that:

(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 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 the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) If the decision of the court upon the special defense under subdivision (c) is in favor of the defendant, judgment for such defendant shall thereupon be entered and no trial on the other issues in the action shall be had unless such judgment is reversed on appeal or otherwise set aside or vacated. If the decision of the court is in favor of the plaintiff, trial on the other issues shall thereafter be had upon motion of either party, and judgment shall be entered thereon in the same manner and with the same effect as if all the issues in the case had been tried at one time. In such event, the decision of the court upon the special defense shall be deemed excepted to and may be renewed upon motion for a new trial or upon appeal from such judgment.

(e) The provisions of this section also apply to the trial of such special defense when pleaded in an answer to a cross-complaint, and if the decision of the court upon the special defense is in favor of the cross-defendant, no further trial shall be had upon the issues raised by the cross-complaint, but trial of the other issues in the action shall

thereafter be had upon the motion of either party, and after the trial thereof such judgment shall be entered in the action as shall be justified by the decision or verdict on such other issues, considered in connection with the decision upon the trial of such special defense raised in the answer to the cross-complaint.

SEC. 24. Section 950.2 of the Government Code is amended to read:

950.2. (a) Except as provided in Section 950.4, a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee 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 .~~

(b) Except as provided in Section 950.4, a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred unless:

(1) A timely and sufficient written claim was presented to the public entity in conformity with Sections 910 to 912.2, inclusive, or such other claims procedure as may be applicable; and

(2) The action is commenced within the time specified in Section 945.6.

(c) Subdivision (b) is applicable even though the public entity is immune from liability for the injury.

SEC. 25. Section 950.4 of the Government Code is amended to read:

950.4. A cause of action against a public employee or former public employee 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, as that period is prescribed by Section 911.2 or by such other claims procedure as may be applicable, that the injury was caused by an act or omission of the public entity or by an act or omission of an employee thereof of the public entity in the scope of his employment as a public employee.

SEC. 26. Section 950.6 of the Government Code is amended to read:

950.6. When a written claim for money or damages for injury has been presented to the employing public entity:

(a) A cause of action for such injury may not be maintained against the public employee or former public employee whose 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.

(b) A suit against the public employee or former public employee for such injury 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 Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division ~~ex, where~~ .

(c) When a person is unable to commence the suit within such the time prescribed in subdivision (b) because he has been sentenced to imprisonment in a state prison, such-suit-must-be-commenced-within the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public employee or former public employee establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (b).

SEC. 27. Section 960.2 of the Government Code is repealed.

~~960.2.---In any suit against a public agency, if the governing body of any public agency fails to comply with Section 53051, notwithstanding any provision of law to the contrary, or if the governing body cannot with due diligence be found at the last known official mailing address of the governing body of the public agency, and it is shown by affidavit to the satisfaction of the court or judge that personal service of process against a public agency cannot be made with the exercise of due diligence, the court or judge may make an order that the service be made upon the public agency by delivery by hand to the Secretary of State or to any person employed in his office in the capacity of an assistant or deputy, employed in his office in the capacity of an assistant or deputy, of two copies of the process for each defendant to be served, together with two copies of the order authorizing such service. Service in this manner constitutes personal service upon the public agency.~~

~~A fee of five dollars (\$5) shall be paid by the plaintiff to the Secretary of State for each public agency on which service is made in this manner.~~

SEC.28. Section 960.2 is added to the Government Code, to read:

960.2. Notwithstanding any provision of law to the contrary, service of process in an action or proceeding against a public agency may be made in the manner provided in Section 960.3 if, during the ten days immediately following the commencement of the action or proceeding:

(a) No statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of Secretary of State and of the county clerk of each county in which the public agency then maintains an office, as required by Section 53051; or

(b) A statement or amended statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of Secretary of State and of the county clerk of each county in which the public agency then maintains an office, but the information contained therein is inaccurate or incomplete or does not substantially conform to the requirements of Section 53051; or

(c) A statement or amended statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of Secretary of State and of the county clerk of each county in which the public agency then maintains an office, but neither the governing body nor any officer or agent of the public agency upon whom personal service of process constitutes service upon the public agency can thereafter, with due diligence, be found and served at the address or addresses set forth in the statement.

SEC. 29. Section 960.3 is added to the Government Code to read:

960.3. (a) If it is shown by affidavit to the satisfaction of the court or judge that the circumstances required by Section 960.2 exist, the court or judge may make an order that service of process be made upon the public agency as provided in this section.

(b) Service of process shall be made by:

(1) Leaving two copies of the process for each public agency defendant to be served, together with two copies of the order authorizing such service, in the hands of the Secretary of State or in his office at Sacramento; or

(2) Mailing two copies of the process for each public agency defendant to be served, together with two copies of the order authorizing such service, to the office of the Secretary of State in Sacramento by certified or registered mail, addressee only, return receipt requested. Service shall be effective as of the day the return receipt is received from the office of the Secretary of State.

(c) Service in this manner constitutes personal service upon the public agency.

(d) A fee of five dollars (\$5) shall be paid by the plaintiff to the Secretary of State for each public agency on which service is made in this manner.

SEC. 30. Section 960.4 of the Government Code is amended to read:

960.4. Upon receipt of the copies of process pursuant to Section ~~960.2~~ 960.3, the Secretary of State shall give notice of the service of the process to the governing body of the public agency at its principal office in this State, by forwarding to such office, by registered mail with request for return receipt, a copy of the process. If the only address disclosed by the records of the Secretary of State of the principal office of the governing body of the public agency is the county in which it is situated, then the process shall be mailed to the county seat, addressed to the public agency in care of the county clerk, or it may be mailed to any address for the public agency specified in the court order. If the process is mailed in care of the county clerk, the county clerk shall promptly send it to the public agency at its address within the county, if known to him, and if unknown shall cause the process to be posted at the courthouse of the county for 30 days. If the records of the Secretary of State disclose no address for the public agency, then the Secretary of State shall mail a copy of the process to the county clerk of either (a) the county in which the transaction or occurrence took place, or (b) the county where real property of the agency is situated, and the county clerk shall promptly send the process to the public agency at its address within the county, if known to him, or if unknown shall cause the process to be posted at the courthouse of the county for 30 days.

Upon receipt of such copies of process, the Secretary of State shall immediately forward to the Attorney General a copy of all papers served upon him. The Attorney General, upon receipt of any such process, may locate the responsible officers of the public agency involved, and the governing body of such public agency may relieve the Attorney General of any further responsibility hereunder, and may designate any other attorneys to defend said action or take such other action as they may determine.

SEC. 31. Section 960.8 is added to Chapter 5 (commencing with Section 960) of Part 4 of Division 3.6 of Title 1 of the Government Code, to read:

960.8. Service of process in an action or proceeding against a public agency may be made in reliance upon the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time of such service. Service in this manner, if otherwise made in compliance with law, constitutes personal service upon the public agency.

As used in this section, "statement in the Roster of Public Agencies" means the statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of a county in which such statement is on file.

SEC. 32. Section 53050 of the Government Code is amended to read:

53050. The term "public agency," as used in this article, means any political subdivision of the State, district of any kind-or-class, public authority of-any-kind-or-class , public agency, and any public corporation in the State, other-than but does not include the State or a county, city and county, or city ,-or-town .

SEC. 33. Section 53051 of the Government Code is amended to read:

53051. (a) Within ninety (90) days after ~~the effective date of this article or~~ after the date of commencement of its legal existence, ~~whichever is later,~~ the governing body of each public agency shall file with the Secretary of State and also with the county clerk of each county in which ~~there is located any portion of the territory of~~ the public agency maintains an office, a statement of the following facts:

1. The full, legal name of the public agency.
2. The official mailing address of the governing body of the public agency.
3. The names and residence or business addresses of each member of the governing body of the public agency.
4. The name, title, and ~~if different from the information required in paragraph 3,~~ the residence or business address of the chairman, president, or other presiding officer, and clerk and or secretary of the governing body of such public agency.

(b) Within 10 days after any change in the facts required to be stated pursuant to subdivision (a), a an amended statement of containing the information required by subdivision (a) shall be filed as provided therein.

(c) It shall be the duty of the Secretary of State and of the county clerk of each county to establish and maintain an indexed "Roster of Public Agencies", to be so designated, which shall contain all information filed as required in subdivisions (a) and (b), which roster is hereby declared to be a public record.