

#52(L)

3/10/65

Memorandum 65-12

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

Attached (yellow and green pages) is a draft of proposed changes in the Governmental Liability Act that have been revised to reflect Commission action taken at the last meeting. We believe that the proposed legislation will be introduced today and we expect to provide you with copies of the two bills prior to the meeting.

Also attached are two copies of a draft of a tentative recommendation containing sectional comments to the proposed legislation. We do not plan to discuss these comments in detail at the meeting but would appreciate your marking suggested changes on a copy to be given to the staff.

The specific language of the proposed legislation has been approved except for revisions in Sections 911.6, 945.6, 946.6, and 950.2 (which were approved in principle only). The changes in these sections are discussed below.

Section 911.6

The only unapproved change made in this section was to substitute "the person required to file the claim" in place of "the claimant" in paragraphs (2), (3) and (4) of subdivision (b). There are two reasons for this change in language. First, it was pointed out at the last meeting that the reference to "claimant" in the proposed draft of Section 946.6 was in error and ought to be changed to more accurately describe the person referred to. This has been changed in Section 946.6 to the phrase quoted above. Since the persons referred to in Section 911.6 and 946.6 are the same, the same language has been used. Second, the original act was somewhat misleading in referring to "claimant" since a claim may be filed by a person acting on behalf of the person required to file the claim. See Section 910.

Section 945.6

In its original form, subdivision (a) purports to state an exclusive statute of limitations of six-months. However, new Section 946.4 (excusing compliance with the claims statute for failure of a public entity to comply with the requirements of the Roster of Public Agencies) and new Section 946.6 (providing a new procedure for judicial determination following rejection of an application for leave to present a late claim) properly are exceptions to the six-month period of limitations provided in Section 945.6. Accordingly, this has been explicitly stated in an except clause to subdivision (a) of this section.

Section 946.6

This section states the new procedure for a judicial determination following rejection of an application for leave to present a late claim. It is based on the draft suggested by the Department of Public Works and approved in principle by the Commission. Only one principal change has been made in this section (and Public Works agrees with the desirability of this change). Instead of a petition to "excuse compliance with the time limits specified in Section 911.2," the present draft is formulated on the basis of a petition seeking "relief from the provisions of Section 945.4." This change in reference is required because the relief sought is not excuse from time limits but, rather, is relief from the necessity of filing a claim as a prerequisite to suit. This is precisely what is required by Section 945.4: hence, the change of reference to this section.

Section 950.2

The references in this section to specific sections has been changed to a more general reference referring to an action that is barred because of any of the provisions of the late claims statute or because of any of the

provisions relating to actions against public entities. The purpose of this change is because the list of specific sectional references would be unduly extended in light of the changed rationale of the late claim procedure. Thus, Section 950.2 made sense under the former procedure where a claim had to be filed in all cases before an action could be brought against a public employee. However, since a claim need not necessarily be filed in order to preserve an action against a public entity (i.e., because Section 945.6 excuses compliance when the public entity fails to comply with the requirements of the Roster of Public Agencies and Section 946.6 excuses compliance where the new late claim procedure is applicable), a broader reference is now required in Section 950.2.

Other matters

The staff has reviewed the proposed legislation in its recast form and has only one other matter to raise for Commission consideration.

Subdivision (d) of Section 930.4 (relating to claims procedures established by agreement) and subdivision (e) of Section 935 (relating to claims procedures prescribed by charter, ordinance or resolution) make the late claims procedure applicable in any case where the procedure prescribed pursuant to these sections requires a claim to be presented within a period of less than one year after the accrual of the cause of action. In so doing, it also makes applicable to all such claims (i.e., late claims) the provisions of "Sections 946.4 and 946.6". Section 946.4 excuses compliance with the requirements of the claims statute if, during the 70 days immediately following the accrual of the cause of action, the public entity failed to comply with the requirements of the Roster of Public Agencies. While the reference as it now stands has the salutary effect of adding teeth to the

Roster requirements, at the same time it may undermine the effectiveness of agreement procedures and procedures established by charter, ordinance or resolution. So far as procedures established by charter, ordinance or resolution are concerned (Section 935) the reference probably is correct and ought to be retained (since it would be proper to add teeth to the Roster requirements in these cases). As to procedures established by agreement pursuant to Section 930.4, however, the Commission should consider whether the Roster requirements should be made a part of the late claim procedure. This is because it seems quite possible that one of the substantial points of variance between the normal claims procedure applicable to a particular public entity and the claims procedure that might be made applicable to the public entity by agreement would be that a claim should be filed with a specified person (or office) who is a different person (or office) than the claim normally would be filed with. It is possible that the mere failure to comply with the Roster requirements should not excuse compliance with the claims procedure established by agreement. This, of course, suggests as well the possibility that Section 946.4 should contain an exception for claims procedures established by agreement. On the other hand, the exclusion of agreement procedures would create a definite loophole that might encourage the making of such agreements solely to escape the Roster requirements. Hence, the Commission should consider two questions in this connection. First, should the reference to Section 946.4 be retained in Section 930.4 (and/or in Section 935)? Second, should Section 946.4 contain an exception for claims procedures established by agreement?

The staff has no other specific matters to raise in connection with the proposed legislation.

Respectfully submitted

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An act to amend Sections 17000, 17001, and 17004 of, and to repeal  
Section 17002 of, and to add Section 17002 to the Vehicle Code,  
relating to liability arising out of ownership or operation of  
vehicles.

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

SEC. 1. 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. 2. 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. 3. 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. 4. Section 17002 is added to the Vehicle Code, to read:

17002. Subject to Article 3 (commencing with Section 825) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code, 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.

SEC. 5. 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 910, 910.4, 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, 960.4, 53050, and 53051 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, 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.

SEC. 3. 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. 4. 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~~ person required to file the claim was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The ~~claimant~~ person required to file the claim 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~~ person required to file the claim died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

SEC. 5. 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. 6. 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. 7. 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 ~~or~~ 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. 8. 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.

(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 conformity with 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 or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which such statement or amended statement is on file.

SEC. 9. 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. 10. 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. 1 . 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) If the procedure so prescribed requires a claim to be presented within a period of less than one year after the accrual of the cause of action and such claim 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. 12. Section 930.6 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 the provisions of Section 945.6 and Section 946.

SEC. 13. 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 the provisions of Section 945.6 and 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 ~~and~~ .

(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. 14. 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~~ charter, ordinance or resolution may provide that, upon the 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. 15. 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 commission~~ 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 only a charter provision may ~~not~~ authorize such employee ~~or commission~~ 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 commission to allow, compromise or settle a claim, even where the amount to be paid exceeds five thousand dollars (\$5,000).~~ The charter, ordinance or resolution may provide that, upon the written order of such employee ~~or commission~~ , 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. 16. 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. 17. Section 945.4 of the Government Code is amended to read:

945.4. Except as provided in Sections 946.4 and 945.6, 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. 18. 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 50071, then and in such event the presentation of any such claim shall not be required.~~

SEC. 19. Section 945.6 of the Government Code is amended to read:

945.6. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

(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. 20. 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. 21. 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

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 agency 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. 22. Section 946.6 is added to the Government Code, to read:

946.6. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from the provisions of Section 945.4. The proper court for filing the petition is a court of competent jurisdiction in which a suit on the cause of action to which the claim relates could be brought.

(b) The petition must show (1) that application was made to the board under Section 911.4 and was denied or deemed denied, (2) the reason for failure to present the claim within the time limit specified in Section 911.2 and (3) the information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the provisions of Section 945.4 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 establishes that it would be prejudiced if the court relieves the petitioner from the provisions of Section 945.4; or

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

(3) The person required to file the claim 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 person required to file the claim died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served not less than 10 days before the hearing on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the State Board of Control or its secretary, if the respondent is the State.

(e) The court shall make an independent determination upon the petition. 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.

(f) If the court makes an order relieving the petitioner from the provisions of Section 945.4, suit on the cause of action to which the claim relates must be filed in such court within 30 days thereafter.

SEC. 23. Section 950.2 of the Government Code is amended to read:

950.2. 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~~ Part 3 (commencing with Section 900) of this division or under Chapter 2 (commencing with Section 945) of Part 4 of this division . This section is applicable even though the public entity is immune from liability for the injury.

SEC. 24. 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. 25. 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 ~~or 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. 26. 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. 27. 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 personally served at the address or addresses set forth in the statement.

SEC. 28. 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. 29. 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. 30. 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 conformity with 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 or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which such statement or amended statement is on file.

SEC. 31. 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,~~ a district of-any-kind-or-class , public authority of-any-kind-or-class , public agency, and any other political subdivision or public corporation in the State , other-than but does not include the State or a county, city and county, or city ,-or-town .

SEC. 32. 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.