

Memorandum 79-34

Subject: Study D-320 - Enforcement of Claims and Judgments Against
Public Entities

Attached are two copies of a staff draft of a Tentative Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities. The staff recommends that a separate recommendation on this subject be submitted to the 1980 Legislature since the general recommendation on enforcement of judgments will be delayed until the 1981 session.

The attached tentative recommendation:

(1) Revises existing statutes to provide more assurance that approved claims and judgments against the state and local public entities will be paid (payment is enforced by writ of mandamus).

(2) Eliminates the use of execution and other remedies under the Code of Civil Procedure to enforce a money judgment against a public entity.

This general approach is consistent with the Commission's prior decisions (reflected in Section 702.120 of the Tentative Recommendation Relating to Enforcement of Judgments).

We recommend that the Commission approve the attached tentative recommendation for distribution for review and comment. We will send it to the Department of Finance, State Board of Control, Department of Transportation, the Regents of the University of California, representatives of various local public entities, and other interested persons and organizations. Please mark your suggested editorial changes on one of the attached copies and return that copy to the staff at the September meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

D-320

Staff Draft

TENTATIVE RECOMMENDATION

relating to

ENFORCEMENT OF CLAIMS AND JUDGMENTS AGAINST PUBLIC ENTITIES

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California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Staff Draft

TENTATIVE RECOMMENDATION

relating to

ENFORCEMENT OF CLAIMS AND JUDGMENTS AGAINST PUBLIC ENTITIES

INTRODUCTION

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code governs the presentation and payment of claims for money or damages against the state¹ and local public entities,² the payment of money judgments against the state,³ and the payment of judgments against local public entities founded on tort or inverse condemnation liability.⁴ Other statutory provisions require cities and counties,⁵ school districts,⁶ community college districts,⁷ and county water districts⁸ to pay all judgments, but there is no general requirement that other local public entities pay all judgments.⁹ The duty of a public entity

1. See generally Gov't Code §§ 900-930.6, 935.6-944, 945.4-948, 950-950.6, 965-965.4.
2. See generally Gov't Code §§ 900-915.4, 930-935.4, 940-940.4, 942, 945.4-947, 950-950.8. See also Gov't Code §§ 989.2-991.2 (insurance by local public entity against liability).
3. See, e.g., Gov't Code §§ 912.8, 920-920.8, 925-926.8, 935.6, 955.5, 965-965.4. See also Gov't Code § 11007.4 (insurance by state agency against liability).
4. Gov't Code §§ 970-971.2. See also Gov't Code §§ 975-978.8 (funding judgments with bonds).
5. Gov't Code §§ 50170-50175.
6. Educ. Code § 35201.
7. Educ. Code § 72501.
8. Water Code §§ 31091-31096.
9. But see Water Code Section 74505 which requires a water conservation district to "provide for the payment, from the proper fund, of all the debts and just claims against the district." See also Code Civ. Proc. § 1268.020 (eminent domain judgment enforceable by "execution as in a civil case").

to pay an allowed claim or a judgment as required by the applicable statutory provision is enforced by writ of mandate.¹⁰

The ordinary remedies of a judgment creditor under the Code of Civil Procedure are seldom resorted to and are not an effective means to collect a judgment against a public entity. Property of the state is exempt from execution¹¹ except in those rare instances where a statute expressly provides otherwise.¹² Whether property of a local public entity is subject to execution depends on the purpose for which the property is held: Property held or used for a public use is exempt from execution, but property not held or used for a public use is subject to execution.¹³ In addition, there are a number of statutory exemptions

10. See, e.g., Gov't Code §§ 942, 955.5, 970.2. See also A. Van Alstyne, California Government Tort Liability § 9.14, at 423 (Cal. Cont. Ed. Bar 1964). Mandamus may be used to compel payment of a judgment when sufficient funds exist from which to make the payment. *Emeric v. Gilman*, 10 Cal. 404 (1858) (county). When sufficient funds do not exist, mandamus may be used to compel a local public entity to levy taxes required to pay the judgment. *Title Guar. & Trust Co. v. City of Long Beach*, 4 Cal.2d 56, 47 P.2d 472 (1935); *Cook v. Board of Supervisors*, 99 Cal. App. 169, 277 P.2d 1064 (1929). However, with respect to the State of California, the passage of an appropriation law is a legislative act which a court may not command. *Meyer v. English*, 9 Cal. 341 (1858); *Veterans of Foreign Wars v. State*, 36 Cal. App.3d 688, 111 Cal. Rptr. 750 (1974); *California State Employees' Ass'n v. State*, 32 Cal. App.3d 103, 108 Cal. Rptr. 60 (1973).
11. *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 145 P. 1025 (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 286 P. 743 (1930). See also Gov't Code § 955.5.
12. E.g., Code Civ. Proc. § 1268.020 (eminent domain judgment enforceable by execution as in a civil case). See also *Maurice L. Bein, Inc. v. Housing Auth.*, 157 Cal. App.2d 670, 321 P.2d 753 (1958) (holding that the absence of a reference to the personal property of a housing authority in Section 34217 of the Health and Safety Code indicated a legislative intent to permit execution against the personal property of the Housing Authority of the City of Los Angeles, an "administrative arm" of the state).
13. *Marin Water & Power Co. v. Town of Sausalito*, 49 Cal. App. 78, 193 P. 294 (1920) (opinion of Supreme Court denying hearing and stating the governing rules); *C. J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 48 P.2d 181 (1935).

from execution for particular kinds of property owned by a public entity¹⁴ as well as blanket exemptions for property of certain public entities.¹⁵

As a part of its overall review of the law relating to creditors' remedies, the Commission has reviewed the remedies a creditor has against a public entity debtor. The Commission has concluded that the procedures for payment of claims and judgments against public entities should be revised to assure payment of approved claims and judgments and that it should be expressly provided by statute that execution and other remedies ordinarily used to enforce a judgment are not available to enforce a money judgment against a public entity.

RECOMMENDATIONS

Payment of Claims and Judgments Against Local Public Entities

Payment of judgments. A local public entity is now required by statute to pay a tort or inverse condemnation judgment¹⁶ and may pay the judgment in not exceeding 10 annual installments where necessary to avoid unreasonable hardship.¹⁷ With respect to other judgments, the existing statutes do not always ensure that local public entities have the duty to pay judgments for which they are liable.¹⁸ As a result, the

14. Code Civ. Proc. § 690.22 (exemption for courthouses, jails, fire companies, public offices, public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and the like).
15. Code Civ. Proc. §§ 690.26 (property of the Reclamation Board and the Sacramento and San Joaquin Drainage District), 690.27 (real property of housing authority), 690.29 (property of redevelopment agency); Health & Safety Code §§ 33124 (property of redevelopment agency), 34217 (real property of housing authority).
16. Gov't Code §§ 970-971.2.
17. A judgment may be paid in installments only if the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments and the court in which the judgment is entered, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship. Gov't Code § 970.6.
18. There is no general statute requiring local public entities to pay judgments. Cities, counties, school districts, community college

plaintiff in some cases may have no means to enforce a money judgment against a local public entity.¹⁹

The Commission recommends that the statutory provisions relating to payment of tort and inverse condemnation judgments by local public entities be expanded to cover all money judgments.²⁰ This will permit the judgment creditor to obtain a writ of mandate to compel the public entity to pay the judgment and will permit installment payments in appropriate cases.²¹

The existing statute authorizing installment payments requires that each installment include an equal amount of the principal of the judgment, together with the accrued interest. This requirement tends to defeat the purpose of minimizing the disruptive effect of an unusually large judgment since the installment payments required during the first few years of the 10-year period will be substantially greater in amount than the payments required in the last few years. The statute should be amended to require that each installment payment (which will consist of a portion of the principal and the accrued interest) be equal in amount.

districts, and county water districts are required by statute to pay all judgments and to raise funds sufficient to make the payment. See statutes cited in notes 5-10 supra.

19. The use of execution against property of a local public entity is an ineffective means of collecting a judgment since all property of a local public entity used or held for public use is exempt from execution. See note 13 supra.
20. The expansion of the coverage of the existing statute will require revision of Government Code Section 971 (relating to applicability of limitations on amount of taxes, assessments or rates and charges, amount of appropriations and payments, and amount of liability or indebtedness) to continue the rule that such limits do not apply to tort and inverse condemnation judgments and to expand the rule to include other money judgments that result from a nondiscretionary act.
21. The existing statutes applicable to cities and counties (Gov't Code § 50173), school districts (Educ. Code § 35201), community college districts (Educ. Code § 72501), and county water districts (Water Code § 31094) permit the governing board to provide for installment payment of judgments without the need to obtain a court order authorizing installment payments. These existing provisions do not adequately protect the judgment creditor against possible abuse of the authority to pay the judgment in installments and will be superseded by the provision of the recommended comprehensive statute which continues the more recently enacted provision that requires a court order authorizing payment in installments.

Under this new requirement, the amount of the principal paid in each installment will increase with each payment since the amount of accrued interest required to be included in each payment will decrease as the amount of the unpaid principal of the judgment decreases.

The recommended comprehensive statute will supersede existing provisions applicable to some types of local public entities and those provisions should be repealed.²²

Payment of allowed claims. Existing law provides that a writ of mandate is an appropriate remedy to compel a local public entity to pay a claim when and to the extent that it has been allowed.²³ The manner in which the claim is to be paid is not specified in the statute. To supply this detail, the Commission recommends that a provision be added to the statute requiring that an approved claim be paid by the local public entity in the same manner as a judgment, but that installment payments be permitted only if the claimant has agreed to that method of payment. Use of an agreement permitting payment of an approved claim in installments will avoid unreasonable hardship to the local public entity and may in some cases facilitate settlement of a claim without the need for the claimant to prosecute the claim to judgment.

Payment of Claims and Judgments Against the State

The existing statute requires payment of an approved claim or judgment against the state if the Director of Finance has certified that a sufficient appropriation exists for payment.²⁴ No such certificate is required if the claim or judgment arises out of the activities of the

22. The enactment of the comprehensive statute would permit repeal of Sections 35201 and 72501 of the Education Code, Sections 50170-50175 of the Government Code, and Sections 31091-31096 of the Water Code.

23. See Gov't Code § 942.

24. Gov't Code §§ 965 (payment of claim allowed by State Board of Control), 965.2 (Controller's duty to draw warrant for payment of final judgment or settlement). See also Gov't Code §§ 935.6 (delegation of authority to state agency to adjust and pay claims), 948 (settlement, adjustment, or compromise of pending action), 955.5 (payment of tort liability claim, settlement, or judgment).

Department of Transportation, and it is unclear when payment of an approved claim or judgment arising out of the activities of the department can be required.²⁵ Payment of the approved claim or judgment may be compelled by writ of mandamus if there is a sufficient appropriation for its payment.²⁶ Where sufficient funds have not been appropriated to pay the claim or judgment, the State Board of Control makes a report to the Legislature containing the board's findings and recommendations concerning the claim or judgment.²⁷ This permits the Legislature to make provision for the payment of the claim or judgment.

The provisions outlined above provide a generally satisfactory procedure for enforcing payment of an approved claim or judgment against the state. However, the following technical revisions are recommended:

(1) Section 942 of the Government Code--which permits resort to a writ of mandate to compel payment of a claim "when and to the extent it has been allowed"--should be revised to add the requirement that the claim also be one that "is required by this division to be paid." This addition will make clear that a writ of mandate cannot be used to compel payment where there is no sufficient appropriation for the payment. Instead, the claim or judgment will be reported to the Legislature so that provision can be made for its payment.

(2) The existing provisions do not specify when a claim or judgment against the Department of Transportation must be paid. Various statutory provisions should be revised to require that a claim or judgment arising from activities of the Department of Transportation must be paid if the department's budget includes a sufficient amount budgeted for the payment. This will provide a standard governing when payment can be compelled by writ of mandate.

25. See provisions cited in note 24 supra.

26. See Gov't Code § 942. But see Gov't Code § 955.5.

27. See Gov't Code §§ 912.8, 965, 965.4.

Use of Execution to Enforce Judgment Against Public Entity

Execution and the other remedies provided a judgment creditor under the Code of Civil Procedure should be eliminated as a method of enforcing a money judgment against a public entity. The procedure recommended above for enforcing money judgments against public entities takes into account their special nature. Making clear that execution is not available to enforce a judgment against a public entity will protect against the possibility of seizure and sale of public property to satisfy a judgment. Litigation to determine the status of public property will be avoided. Yet the judgment creditor will not be significantly harmed because levy of execution on public property has not been an effective method of enforcing a judgment against a public entity.

The general provisions prescribing the period during which an ordinary judgment is enforceable²⁸ are designed to implement the procedure for execution against property of the judgment debtor. Since execution against public property will not be permitted, the period of enforceability of a money judgment against a public entity should be separately specified in the statute: A judgment for the payment of money against the state or a local public entity should be enforceable for 10 years after the time the judgment becomes final.²⁹ This 10-year period allows adequate time for the judgment creditor to compel payment by a writ of mandate if the public entity fails to pay the judgment as required by statute.

28. Code Civ. Proc. §§ 681, 685.

29. If the judgment is payable in installments, the time during which the installments are payable should be excluded in determining when the 10-year period expires.

PROPOSED LEGISLATION

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

An act to amend Section 1268.020 of the Code of Civil Procedure, to repeal Sections 35201 and 72501 of the Education Code, to amend Sections 912.6, 935.6, 942, 948, 965, 965.2, 970, 970.4, 970.6, 970.8, and 971 of, to add Sections 965.6, 965.7, 965.8, 965.9, 970.1, and 970.5 to, and to repeal Section 955.5 and Article 7 (commencing with Section 50170) of Chapter 1 of Part 1 of Division 1 of Title 5 of, the Government Code, and to repeal Sections 31091, 31092, 31093, 31094, 31095, and 31096 of the Water Code, relating to claims and judgments against public entities.

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

406/194

Code of Civil Procedure § 1268.020 (amended). Remedies if eminent domain judgment not paid

SECTION 1. Section 1268.020 of the Code of Civil Procedure is amended to read:

1268.020. (a) If the plaintiff fails to pay the full amount required by the judgment within the time specified in Section 1268.010, the defendant may have execution:

(1) If the plaintiff is a public entity, enforce the judgment as provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(2) If the plaintiff is not a public entity, enforce the judgment as in a civil case.

(b) Upon noticed motion of the defendant, the court shall enter judgment dismissing the eminent domain proceeding if all of the following are established:

(1) The plaintiff failed to pay the full amount required by the judgment within the time specified in Section 1268.010.

(2) The defendant has filed in court and served upon the plaintiff, by registered or certified mail, a written notice of the plaintiff's failure to pay the full amount required by the judgment within the time specified in Section 1268.010.

(3) The plaintiff has failed for 20 days after service of the notice under paragraph (2) to pay the full amount required by the judgment in the manner provided in subdivision (b) of Section 1268.010.

(c) The defendant may elect to exercise the remedy provided by subdivision (b) without attempting to use the remedy provided by subdivision (a).

Comment. Section 1268.020 is amended to make clear that the eminent domain judgment is enforced against a public entity under the Government Code provisions relating to payment of judgments against public entities. See Gov't Code §§ 965-965.9 (judgment against the state), 970-971.2 (judgment against local public entity). The judgment is not enforceable against a public entity by execution or other remedies provided a judgment creditor under the Code of Civil Procedure. See Gov't Code §§ 965.6(b) (state), 970.1(b) (local public entity). See also Gov't Code §§ 965.8, 965.9, 970.2 (writ of mandate to compel payment of money judgment).

406/162

Education Code § 35201 (repealed). Payment of judgment against school district

SEC. 2. Section 35201 of the Education Code is repealed.

35201. The governing board of any school district shall pay any judgment for debts, liabilities, or damages out of the school funds to the credit of the district, subject to the limitation on the use of the funds provided in the Constitution. If any judgment is not paid during the tax year in which it was recovered:

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

(b) And if, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding 10 annual installments with interest thereon up to the date of each payment, and shall include provision for the payment in each budget for not exceeding 10 consecutive tax years next ensuing. Each payment shall be of an equal portion

of the principal of the judgment, except that the board, in its discretion, may provide for the prepayment of any one or more installments or any part of an installment.

Comment. Former Section 35201 is superseded by the comprehensive statute relating to payment of money judgments against local public entities. See Gov't Code §§ 970-971.2.

406/163

Education Code § 72501 (repealed). Payment of judgment against community college district

SEC. 3. Section 72501 of the Education Code is repealed.

~~72501.~~ The governing board of any community college district shall pay any judgment for debts, liabilities, or damages out of the funds to the credit of the district, subject to the limitation on the use of the funds provided in the California Constitution. If any judgment is not paid during the tax year in which it was recovered:

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

(b) And if, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding 10 annual installments with interest thereon up to the date of each payment, and shall include provision for the payment in each budget for not exceeding 10 consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of the judgment, except that the board, in its discretion, may provide for the prepayment of any one or more installments or any part of an installment.

Comment. Former Section 72501 is superseded by the comprehensive statute relating to the payment of money judgments against local public entities. See Gov't Code 970-971.2.

Government Code § 912.6 (amended). Action on claims by local public entity; payment of approved claims

SEC. 4. Section 912.6 of the Government Code is amended to read:

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

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

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

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

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

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

(c) Subject to subdivision (b), the local public entity shall pay the amount allowed on the claim or in compromise of the claim in the same manner as if the claimant had obtained a final judgment against the local public entity for that amount, but the claim may be paid in not exceeding 10 equal annual installments as provided in Section 970.6 only if the claimant agrees in writing to that method of payment and in such case no court order authorizing installment payments is required.

Comment. Section 912.6 is amended to add subdivision (c) which provides a means of enforcing the payment of the amount allowed on a claim or in compromise of a claim. See Section 942 (writ of mandate to compel payment). See also Sections 970-971.2 (payment of money judgments against local public entities).

Government Code § 935.6 (amended). Delegation of authority to state agency to adjust and pay claims

SEC. 5. Section 935.6 of the Government Code is amended to read:

935.6. (a) The State Board of Control, by rule, may authorize any state agency to adjust and pay claims where the settlement does not exceed one thousand dollars (\$1,000) or such lesser amount as the board may determine and ~~; except for claims :~~

(1) The claims are ones arising from the activities of the Department of Public Works, Transportation and the department's budget includes a sufficient amount budgeted for the payment of claims.

(2) The state agency is one other than the Department of Transportation and the Director of Finance certifies that a sufficient appropriation for ~~such~~ the payment of such claims exists.

(b) Payments shall be made only upon approval of the settlement by the board.

(c) 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.

Comment. Section 935.6 is amended to clarify its application to claims arising from activities of the Department of Transportation.

Government Code § 942 (amended). Writ of mandate and other remedies

SEC. 6. Section 942 of the Government Code is amended to read:

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

Comment. Section 942 is amended to limit the application of the section to cases where a claim is required by this division to be paid. In the case of the state, a claim is required to be paid only where there is sufficient amount included in the budget for the payment of the claim (Department of Transportation) or where the Director of Finance

certifies that there is a sufficient appropriation for the payment of the claim (other state agencies). See, e.g., Sections 935.6, 965, 965.7. See also Section 965.9 (writ of mandate to compel Director of Finance to certify that sufficient appropriation exists). A writ of mandate is not available where no such sufficient budgeted amount or appropriation exists. See *Veterans of Foreign Wars v. State*, 36 Cal. App.3d 688, 111 Cal. Rptr. 750 (1974) ("judgment against the state, even when authorized by law, may be paid only out of appropriated funds"). Instead, the claim is reported to the Legislature. See Sections 912.8, 965, and 965.4. A writ of mandate is an appropriate remedy to compel a local public entity to pay an allowed claim. See Sections 912.6(c) and 970.2.

405/877

Government Code § 948 (amended). Settlement, adjustment or compromise of pending action by head of state agency

SEC. 7. Section 948 of the Government Code is amended to read:

948. (a) The head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust or compromise any pending action where ~~;~~ except for an :

(1) The action is one arising from the activities of the Department of Public Works, Transportation and the department's budget includes a sufficient amount budgeted for the payment.

(2) The action is one arising from the activities of a state agency other than the Department of Transportation and the Director of Finance certifies that a sufficient appropriation for the payment of claims exists.

(b) Where no funds or insufficient funds for such payment exist, the head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust or compromise any pending action with the approval of the Department of Finance , and the State Board of Control shall report such settlement, adjustment or compromise to the Legislature in accordance with Section 912.8 .

(c) 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.

Comment. Section 948 is amended to make clear the authority to settle, adjust, or compromise pending actions arising from the activities of the Department of Transportation and to add a provision in subdivision (b) for reporting the settlement, adjustment, or compromise to the Legislature so that provision for payment may be made. See also Sections 965-965.4.

406/191

Government Code § 955.5 (repealed). Compelling payment of tort liability claim, settlement, or judgment

SEC. 8. Section 955.5 of the Government Code is repealed.

~~955.5. Notwithstanding any other provision of law, including Section 942 of this code, neither the state, nor any of its officers or employees, can be required by any court in any proceeding to pay or offset a tort liability claim, settlement or judgment for which the state is liable unless the Legislature has authorized the payment or offset of a specific tort liability claim, settlement or judgment, or the Director of Finance has certified that a sufficient appropriation for such payment or to provide for the offset exists. No money or property belonging to, in the custody of, or owing to the state or any state agency is subject to garnishment, execution, or attachment or any other proceeding for enforcing any such claim, settlement or judgment.~~

Comment. The first sentence of Section 955.5 is superseded by Section 965.7. The second sentence is superseded by subdivision (b) of Section 965.6.

406/119

Government Code § 965 (amended). Payment of claim; report to Legislature where no sufficient appropriation

SEC. 9. Section 965 of the Government Code is amended to read:

965. Upon the allowance by the State Board of Control of all or part of a claim ~~for which, except for a claim~~ arising from the activities of the Department of ~~Public Works, Transportation~~ for which the department's budget includes a sufficient amount budgeted for payment of the claim or of all or part of any other claim for which the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists, and the execution and presentation of such documents as the board may require which discharge the state of all liability under the claim, the board shall designate the fund from which the claim is to

be paid and the state agency concerned shall pay the claim from such fund. Where no sufficient appropriation for such payment is available, the board shall report to the Legislature in accordance with Section 912.8.

Comment. Section 965 is amended to make clear that the Department of Transportation has the duty to pay a claim allowed by the Board of Control when the department's budget includes a provision for payment of the claim and the other requirements of the section are satisfied. See Sections 965.8 and 965.9 (compelling performance by writ of mandate).

406/192

Government Code § 965.2 (amended). Drawing warrant for payment of final judgment or settlement

SEC. 10. Section 965.2 of the Government Code is amended to read:

965.2. (a) The Controller shall draw ~~his~~ a warrant for the payment of any final judgment or settlement against the state ~~whenever, except~~ where ~~the~~ :

(1) The judgment or settlement arose out of the activities of the Department of ~~Public Works~~, Transportation and the department's budget includes a sufficient amount budgeted for the payment of the judgment or settlement.

(2) The judgment or settlement is one arising from the activities of a state agency other than the Department of Transportation and the Director of Finance certifies that a sufficient appropriation for ~~such~~ the payment of such judgment or settlement exists.

(b) Claims upon ~~such~~ the judgments and settlements described in subdivision (a) are exempt from Section 925.6.

Comment. Section 965.2 is amended to make clear the duty of the Department of Transportation to pay a final judgment or settlement if the department's budget includes a provision for such payment. A writ of mandate is an appropriate remedy to compel the payment by the Department of Transportation or to compel the Director of Finance to certify that a sufficient appropriation exists for the payment in the case of other state agencies if such appropriation does exist. See Sections 965.8 and 965.9.

406/108

Government Code § 965.6 (added). Period of enforceability of judgment; limitation on means of enforcement

SEC. 11. Section 965.6 is added to the Government Code, to read:

965.6. (a) A judgment for the payment of money against the state or a state agency is enforceable for 10 years after the time the judgment becomes final. If the judgment is payable in installments, the period during which the installments are payable is excluded in determining when the 10-year period expires.

(b) A judgment for the payment of money against the state or a state agency is not enforceable under Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure but is enforceable under this chapter.

Comment. Section 965.6 is a new provision that prescribes the time within which a money judgment against the state or a state agency is enforceable and the method of enforcement.

The 10-year period provided in subdivision (a) is drawn from Code of Civil Procedure Section 681. Subdivision (a)—not Code of Civil Procedure Sections 681 and 685—prescribes the period of enforceability of a money judgment against the state or a state agency. Where the judgment is payable in installments, the 10-year period does not run during the period during which the installments are payable. Accordingly, the judgment creditor has 20 years within which to enforce the judgment if a court order is obtained under Section 970.6 permitting payment of the judgment in 10 annual installments.

Subdivision (b) is drawn from the second sentence of former Section 955.5 but subdivision (b) applies to all money judgments, whereas the provision of former Section 955.5 was limited to a tort liability claim, settlement, or judgment. See also Section 965.7. Subdivision (b) is consistent with the general rule under case law. See *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 145 P. 1025 (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 286 P. 743 (1930).

405/787

Government Code § 965.7 (added). Compelling payment of tort liability claim, settlement, or judgment

SEC. 12. Section 965.7 is added to the Government Code, to read:

965.7. Notwithstanding any other provision of law, neither the state, nor any of its officers or employees, can be required by any court in any proceeding to pay or offset a tort liability claim, settlement, or judgment for which the state is liable unless one of the following conditions exists:

(a) The Legislature has authorized the payment or offset of the specific tort liability claim, settlement, or judgment.

(b) The claim, settlement, or judgment arises out of the activities of the Department of Transportation and the department's budget includes a sufficient amount budgeted for such payment or to provide for such offset.

(c) The claim, settlement, or judgment arises out of the activities of a state agency other than the Department of Transportation and the Director of Finance has certified that a sufficient appropriation for the payment of the claim, settlement, or judgment or to provide for such offset exists.

Comment. Subdivisions (a) and (b) of Section 965.7 continue the substance of the first sentence of former Section 955.5. Subdivision (b) is new.

406/193

Government Code § 965.8 (added). Compelling performance by writ of mandate

SEC. 13. Section 965.8 is added to the Government Code, to read:

965.8. (a) A writ of mandate is an appropriate remedy to compel the state, or an officer or employee of the state, to perform any act required by this chapter.

(b) Nothing in this division affects the discretion of the Legislature in determining whether or not to:

(1) Make an appropriation for the payment of a claim, compromise, settlement, or judgment or to provide an offset for a claim, compromise, settlement, or judgment.

(2) Authorize such a payment or offset.

Comment. Section 965.8 is a new provision that makes clear that the state, or an officer or employee, can be compelled to pay an approved claim, settlement, compromise, or judgment when required by this chapter or to perform other duties under this chapter. The traditional forms of enforcement of a money judgment (execution and other remedies under the Code of Civil Procedure) are not available to enforce a judgment against the state or a state agency. See Section 965.6(b). See also Sections 942 (writ of mandate to compel payment of allowed claim when payment is required to be made), 965.7 (necessity of authorization of payment of tort claims), 965.9 (writ of mandate to compel Director of Finance to certify that sufficient appropriation exists for payment).

Subdivision (b) is included to make clear that a writ of mandate may not be used to compel the Legislature to make an appropriation or to authorize a payment or offset. This codifies existing law. See *Meyers v. English*, 9 Cal. 341 (1858); *Veterans of Foreign Wars v. State*, 36 Cal. App.3d 688, 111 Cal. Rptr. 750 (1974); *California State Employees' Ass'n v. State*, 32 Cal. App.3d 103, 108 Cal. Rptr. 60 (1973).

406/173

Government Code § 965.9 (added). Writ of mandate to compel Director of Finance to certify that sufficient appropriation exists

SEC. 14. Section 965.9 is added to the Government Code, to read:

965.9. Where any provision of this division requires a certificate of the Director of Finance that a sufficient appropriation exists for the payment of a claim, settlement, compromise, or judgment or requires a certificate of the Director of Finance that a sufficient appropriation exists to provide for an offset, a writ of mandate is an appropriate remedy to compel the Director of Finance to so certify if a sufficient appropriation in fact exists for that purpose.

Comment. Section 965.9 is a new provision that makes clear that a writ of mandate is an appropriate remedy if the Director of Finance wrongfully fails or refuses to certify that a sufficient appropriation exists when one does in fact exist.

406/172

Government Code § 970 (amended). Definitions

SEC. 15. Section 970 of the Government Code is amended to read:

970. As used in this article:

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

(b) "Judgment" means a final judgment for the payment of money rendered against a local public entity ~~which is founded upon tort or inverse condemnation liability~~.

(c) "Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the Regents of the University of California and does not include the state or any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

Comment. Section 970 is amended to expand the definition of "judgment" to include all money judgments. This change makes this article a comprehensive statute that applies to money judgments generally without limitation. See Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities, 15 Cal. L. Revision Comm'n Reports (1981).

The expansion of the scope of this article permits the repeal of a number of special statutes applying to particular types of local public entities: Educ. Code §§ 35201 (duty of school district to pay "any judgment for debts, liabilities, or damages"), 72501 (duty of community

college district to pay "any judgment for debts, liabilities, or damages"); Gov't Code §§ 50170-50175 (duty of city or county to pay any "final judgment"); Water Code §§ 31091-31096 (duty of county water district to pay any "final judgment").

406/180

Government Code § 970.1 (added). Period of enforceability of judgment; limitation on means of enforcement

SEC. 16. Section 970.1 is added to the Government Code, to read:

970.1. (a) A judgment is enforceable for 10 years after the time the judgment becomes final. If the judgment is payable in installments, the period during which the installments are payable is excluded in determining when the 10-year period expires.

(b) A judgment is not enforceable under Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure but is enforceable under this article.

Comment. Section 970.1 is a new provision that prescribes the time within which a money judgment against a local public entity is enforceable and the method of enforcement. See also Section 970(b) (defining "judgment").

Subdivision (a) is drawn from former Government Code Section 50175 and former Water Code Section 31096 and from Code of Civil Procedure Section 681. Subdivision (a)--not Code of Civil Procedure Sections 681 and 685--prescribes the period of enforceability of a money judgment against a local public entity. As to the second sentence of subdivision (a), see the discussion in the Comment to Section 965.6.

Subdivision (b) changes prior law to provide that execution and other remedies under the Code of Civil Procedure for enforcement of money judgments do not apply to enforcement of a money judgment against a local public entity. Such a judgment is payable under this article, and a writ of mandate is an appropriate remedy to compel payment. See Section 970.2. Under prior law, property of a local public entity was not subject to execution under the Code of Civil Procedure if the property was used or held for use for a public purpose. On the other hand, property held by a local public entity merely as a proprietor, devoted to no use of a public character, such as land acquired or held for other than public purposes and not held in trust for public use, was subject to execution unless some statutory or constitutional provision forbid it. See *Marin Water & Power Co. v. Town of Sausalito*, 49 Cal. App. 78, 193 P. 294 (1920) (opinion of Supreme Court denying hearing and stating the governing rules). See also *C. J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 48 P.2d 181 (1935) (no execution against property of city held for public purposes); *United Taxpayers Co. v. City and County of San Francisco*, 202 Cal. 264, 259 P. 1101 (1927) (property of local public entity retains its public character notwithstanding temporary disuse).

406/174

Government Code § 970.4 (amended). Payment of judgment in fiscal year in which it becomes final

SEC. 17. Section 970.4 of the Government Code is amended to read:

970.4. ~~The~~ Except as provided in Section 970.6, the governing body of a local public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any judgment, with interest thereon, out of any funds to the credit of the local public entity that are:

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

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

Comment. Section 970.4 is amended to add a reference to Section 970.6 (payment of judgment in installments). This addition makes clear that installment payments may be authorized under Section 970.6 as an alternative to paying the entire judgment in the fiscal year in which the judgment becomes final. A writ of mandate is an appropriate remedy to enforce the duty imposed by this section. See Section 970.2.

406/175

Government Code § 970.5 (added). Payment of judgment during ensuing fiscal year

SEC. 18. Section 970.5 is added to the Government Code, to read:

970.5. Except as provided in Section 970.6, if a local public entity does not pay a judgment, with interest thereon, during the fiscal year in which it becomes final, the governing body shall pay the judgment, with interest thereon, during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.

Comment. Section 970.5 continues a provision formerly found in Section 970.6. A writ of mandate is an appropriate remedy to enforce the duty imposed by this section. See Section 970.2. See also Section 970.8 (duty to include in budget a provision for payment).

406/176

Government Code § 970.6 (amended). Payment of judgment in installments

SEC. 19. Section 970.6 of the Government Code is amended to read:

970.6. (a) ~~Subject to subdivision (b), if a local public entity does not pay a judgment, with interest thereon, during the fiscal year in which it becomes final, the governing body shall pay the judgment, with interest thereon, during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.~~

~~(b)~~ The court which enters the judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.

~~(c)~~ (b) Each installment payment shall be of an equal amount, consisting of a portion of the principal of the judgment and the unpaid interest on the judgment to the date of the payment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

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

Comment. Subdivision (b) of Section 970.6 is amended to require that the installment payments be equal in amount. Accordingly, the amount of the principal paid in each installment will increase with each payment since the amount of accrued interest required to be included in each payment will decrease as the amount of the unpaid principal of the judgment decreases. Formerly this section required payment of an equal amount of the principal of the judgment each year, together with the accrued interest. This requirement tended to defeat the purpose of the section since the installment payments required during the first few years of the 10-year period were substantially greater in amount than the payments required in the last few years. A writ of mandate is an appropriate remedy to enforce the duty imposed by an order under this section. See Section 970.2. Former subdivision (a) is continued in Section 970.5. Former subdivision (d) has been omitted as unnecessary in view of the repeal of the other provisions of former law which permitted local public entities to pay judgments in installments. See the Comment to Section 970.

406/182

Government Code § 970.8 (amended). Budgeting for payment of judgments

SEC. 20. Section 970.8 of the Government Code is amended to read:

970.8. (a) Each local public entity ~~that derives revenue for its maintenance and operation from taxes or assessments or from rates and charges made for services or facilities provided by the local~~

public entity shall in each fiscal year ~~levy taxes or assessments~~
~~or make rates and charges or both, or otherwise~~ include in its budget a
provision to provide funds † in an amount sufficient to pay all judg-
ments in accordance with this article.

(b) If all or any portion of the revenue used for the maintenance and operation of a local public entity (other than an entity created by an agreement described in Section 895) liable for a judgment is derived from appropriations of another local public entity, such other local public entity shall in each fiscal year appropriate funds equal to its pro rata share of an amount sufficient to permit the local public entity liable for the judgment to pay the judgment in accordance with this article. Such amount shall be paid to the local public entity liable for the judgment and shall be used by such entity to satisfy the judgment. The pro rata share of such other local public entity for each judgment is an amount bearing the same proportion to the total amount of the judgment as the revenue derived from such other local public entity for maintenance and operation during the fiscal year in which the cause of action on such judgment accrued bears to the total revenues used for maintenance and operation during such fiscal year of the local public entity liable for the judgment. For this purpose, such other local public entity shall ~~levy taxes or assessments, make rates and charges,~~ ~~or otherwise~~ include in its budget a provision to provide funds † sufficient in amount to ~~raise the amount of~~ make the appropriation and payment required by this section.

Comment. Section 970.8 is revised to substitute a requirement that the budget include a provision to provide funds for the payment of all judgments in accordance with this article for the former requirement that the local public entity levy taxes or otherwise provide funds for such payment. This new requirement that the budget make provision for the payment of judgments is drawn from former Education Code Sections 35201 (school district) and 72501 (community college district). A writ of mandate is an appropriate remedy to enforce the duty imposed by this section that the local public entity budget for and pay all judgments in accordance with this article. See Section 970.2.

Government Code § 971 (amended). Applicability of limitations on amount of taxes, assessments or rates and charges, amount of appropriations and payments, and amount of liability or indebtedness; court mandated costs

SEC. 21. Section 971 of the Government Code is amended to read:

971. (a) As used in this section:

(1) "Judgment resulting from a discretionary act" means a judgment arising from a liability which the local public entity has discretion to incur or not to incur and includes a judgment rendered in an eminent domain proceeding and a judgment awarding damages for failure to perform a contractual obligation.

(2) "Judgment resulting from a nondiscretionary act" means a judgment other than one described in paragraph (1) and includes a judgment founded upon tort or inverse condemnation liability.

(b) Any limitation on the amount of taxes, assessments or rates and charges that may be levied or collected by a local public entity, and any limitation on the amount of appropriations and payments that may be made by a local public entity, and any limitation on the amount of liability or indebtedness that may be incurred by a local public entity, contained in any other statute or in any charter or ordinance, ~~is~~ inapplicable :

(1) Applies to the taxes, assessments, rates and charges or appropriations levied, collected or made to pay pursuant to this article a judgment resulting from a discretionary act .

(2) Does not apply to the taxes, assessments, rates and charges or appropriations levied, collected or made to pay pursuant to this article a judgment resulting from a nondiscretionary act.

(c) For the purposes of Section 2271 of the Revenue and Taxation Code, taxes levied to pay pursuant to this article a judgment resulting from a nondiscretionary act are levied to pay costs mandated by the courts.

Comment. Section 971 is revised to reflect the expansion of Sections 970-971.2 to cover all money judgments. Revision of Section 971 is necessary because this article formerly covered only tort and inverse condemnation judgments. Formerly, Section 971 made tax and similar limitations inapplicable with respect to the payment of tort and

inverse condemnation judgments; the revised section continues this rule for tort and inverse condemnation judgments and expands the rule to include other money judgments that result from a nondiscretionary act.

The standard used in subdivision (a)—which distinguishes between judgments that result from a discretionary act and those that do not—is drawn from cases interpreting constitutional limits on liabilities or indebtedness (see, e.g., *Martin v. Fisher*, 108 Cal. App. 3d, 40-41, 291 P. 276, ___ - ___ (1930)) and from Section 2205 of the Revenue and Taxation Code. Section 971, however, merely makes inapplicable limitations contained in a statute, charter, or ordinance; the section does not affect the applicability of any constitutional limits.

406/126

Government Code §§ 50170-50175 (repealed). Payment of judgments by cities and counties

SEC. 22. Article 7 (commencing with Section 50170) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

Comment. Sections 50170-50175 are superseded by the comprehensive statute relating to payment of money judgments against local public entities. See Sections 970-971.2.

406/165

Water Code §§ 31091-31096 (repealed). Payment of judgments by county water districts

SEC. 23. Section 31091 of the Water Code is repealed.

~~31091. At least 15 days before a tax levy is made the county clerk shall file a list of all existing final judgments against the district with an auditor and the board.~~

Comment. Former Sections 31091-31096 are superseded by the comprehensive statute relating to the payment of money judgments by local public entities. See Gov't Code §§ 970-971.2.

406/166

SEC. 24. Section 31092 of the Water Code is repealed.

~~31092. The auditor shall audit the judgments and certify the amount of the judgments to the board within five days after the list is filed with him. The board shall then include in the tax levy for the next fiscal year a rate sufficient to pay the judgments.~~

Comment. See the Comment to repealed Section 31091.

406/167

SEC. 25. Section 31093 of the Water Code is repealed.

~~31093. Failure to include the amount of any existing final judgment in the tax levy for the year does not invalidate the tax levy, but the amount shall be included in the next tax levy.~~

Comment. See the Comment to repealed Section 31091.

406/168

SEC. 26. Section 31094 of the Water Code is repealed.

~~31094. In lieu of levying a tax rate for the payment of all the judgments in the next fiscal year, the board may provide for their payment by including in the tax levy for the next fiscal year at least 10 percent of the total amount of the judgment. The same percentage shall be levied each successive year until the whole is paid.~~

Comment. See the Comment to repealed Section 31091.

406/170

SEC. 27. Section 31095 of the Water Code is repealed.

~~31095. The auditor of the district shall pay the judgment. If the board has provided for payment by percentages in successive years, he shall pay to each judgment creditor the percentage of the judgment fixed by the board.~~

Comment. See the Comment to repealed Section 31091.

406/171

SEC. 28. Section 31096 of the Water Code is repealed.

~~31096. When provision for the payment of any final judgment is made by percentages in successive years, an action upon such judgment may be commenced within five years after the first tax levy which fails to include the percentage of the amount fixed by the board. An action shall not be brought or prosecuted on the judgment so long as it is being paid on such annual percentages.~~

Comment. See the Comment to repealed Section 31091.