

Memorandum 83-25

Subject: Study G-100 - Late Claim Against Public Entity

Assembly Bill No. 30 was introduced to effectuate the Commission's recommendation that proposed that a notice be given to a person whose claim was denied by a public entity because the claim was not presented within the time prescribed by statute.

The staff has worked with representatives of the League of California Cities and the Board of Control, and we have drafted a new section that is acceptable to both groups. The new section is attached. It will replace the entire text of Assembly Bill No. 30.

The staff requests that the Commission approve the new section as a replacement for the text of Assembly Bill No. 30. The new section is consistent with the Commission's decision that the claimant should receive a notice of the proper procedure to follow when a claim is not acted upon because it is not filed timely.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

SECTION 1. Section 911.3 is added to the Government Code, to read:

911.3. (a) When a claim that is required by Section 911.2 to be presented not later than the 100th day after accrual of the cause of action is presented after such time without the application provided in Section 911.4, the board or other person designated by it may, at any time within 45 days after the claim is presented, give written notice to the person presenting the claim that the claim was not filed timely and that it is being returned without further action. The notice shall be in substantially the following form:

"Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) is being returned because it was not presented within the time allowed by law. If you wish to protect your right to file a court action on the claim, you should apply to the public entity without delay for leave to present a late claim. See Government Code Section 911.4.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

(b) Any defense as to the time limit for presenting a claim described in subdivision (a) is waived by failure to give the notice under subdivision (a) within 45 days after the claim is presented, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.