

3/20-21/58

Subject: Claims Statute

Attached are the following:

1. A copy of the proposed constitutional amendment on claims against public entities, as revised in accordance with action taken by the Commission at the January meeting.

2. A copy of the proposed bill to enact a uniform claims statute and related provisions. The bill has been revised in accordance with action taken by the Commission at the January meeting. In addition, the following changes have been made therein by the Staff:

1. The title has been amended by adding the material which is shown in capital letters and by deleting "agents" after "officers."

2. Minor changes, shown in strikeout and underline, have been made in proposed Sections 7008, 7009 and 7010 of the Government Code.

3. New sections 2 and 3 have been added to the bill. These reflect decisions previously taken as to the content of the bill; we believe they are self-explanatory.

4. Provisions to repeal law which would be superseded by the new claims statute are omitted from the bill on the theory that such repeals should be handled in a separate bill or bills.

Matters for discussion at the March meeting include the following:

1. Consideration of staff changes in the form of the proposed bill which are noted in (1), (2) and (4) above.

2. Consideration of location of statute in Government Code.

3. Consideration of substantive matter not heretofore discussed by the Commission. This includes:

a) Proposed Sections 7012 and 7013 of the Government Code.

b) Sections 2 and 3 of the proposed bill.

4. Consideration of any matter or questions which may be raised by members of the Commission.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

JRM:j

Revised: ~~12/16/57~~  
3/13/58

CONSTITUTIONAL AMENDMENT

Senate [Assembly] Constitutional Amendment No.                    - A resolution to  
propose to the people of the State of California an amendment to the  
Constitution of the State by adding Section 38 to Article IV thereof,  
relating to the power of the Legislature to enact legislation in respect  
of the presentation, consideration, and enforcement of claims against  
public bodies and officers, agents and employees thereof.

Resolved by the Senate [Assembly], the Assembly [Senate] concurring,  
That the Legislature of the State of California at its 1959 Regular Session  
commencing on the \_\_\_\_\_ day of January, 1959, two-thirds of the members elected  
to each of the two houses of the Legislature voting therefor, hereby proposes  
to the people of the State of California that the Constitution of the State be  
amended by adding Section 38 to Article IV thereof, to read:

Section 38. Notwithstanding any provision of this Constitution  
to the contrary, the Legislature shall have power to prescribe  
by law procedures governing the presentation, consideration and enforce-  
ment of claims against counties, cities and counties, cities, districts,  
authorities, and other political subdivisions of the State and against  
all officers, agents, and employees thereof.

CLAIMS STATUTE

An act to add Chapter 12 to Division 7 of Title 1 of the Government Code,  
TO AMEND SECTION 2003 OF SAID CODE. AND TO ADD TITLE 14 TO PART 2  
OF THE CODE OF CIVIL PROCEDURE, relating to the presentment of claims  
against public entities and TO GIVING NOTICE TO SUCH ENTITIES OF CLAIMS  
AGAINST officers and employees thereof.

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

Section 1. Chapter 12 is added to Division 7 of Title 1 of the Government Code, to read:

Chapter 12. Presentment of Claims Against Public Entities.

7000. This chapter applies to claims against public entities except claims of the following kinds:

- a) Claims for exemption, cancellation or refund of taxes, fees and assessments.
- b) Claims in connection with which stop notices may be filed under statutes relating to mechanics' and materialmen's liens.
- c) Claims for wages, salaries, fees and reimbursement for expenses of public employees.
- d) Claims arising under workmen's compensation laws.
- e) Claims for aid under public assistance programs.
- f) Claims arising under any retirement or pension system.
- g) Claims for principal or interest upon bonded indebtedness.
- h) Claims governed by specific provisions relating to street or other public improvements.

7001. This chapter shall be applicable only to causes of action which accrue subsequent to its effective date.

7002. As used in this chapter "public entity" includes any county, city, city and county, district, authority, or other political subdivision of the State but does not include the State.

7003. A claim presented on or before June 30, 1964, in substantial compliance with the requirements of any other applicable claims procedure established by or pursuant to statute, charter or ordinance in existence immediately prior to the effective date of this chapter shall be regarded as having been presented in compliance with the terms of this chapter.

7004. By written agreement, compliance with the provisions of this chapter may be waived by a public entity with respect to any or all claims arising out of an express contract between the parties to the waiver agreement.

7005. Except as provided in this chapter, no suit may be brought for money or damages against a public entity until a written claim therefor has been presented to the public entity in conformity with the provisions of this chapter and has been rejected in whole or in part.

7006. A claim shall be presented by the claimant or by a person acting on his behalf and shall show the name and residence or business address of the claimant and shall contain a general statement of the following:

- a) The circumstances giving rise to the claim asserted.
- b) The nature and extent of the injury or damage incurred.
- c) The amount claimed.

7007. If a claim as presented fails to comply with the requirements of Section 7006 the governing body of the public entity may give the claimant or the person presenting the claim written notice of its insufficiency, stating with particularity in what respect the claim fails

to comply with Section 7006. Within ten days after receipt of the notice, the claimant or the person presenting the claim may present a corrected or amended claim which shall be considered a part of the original claim for all purposes. Unless notice of insufficiency is given, any defect or omission in the claim is waived except when the claim fails to give the residence or business address of the claimant or the person presenting the claim.

7008. A claim may be presented to a public entity (1) by delivering the claim personally to the clerk or secretary thereof not later than the hundredth day after the cause of action to which the claim relates has accrued within the meaning of the statute of limitations which would have been applicable to such a cause of action if the action had been brought against a defendant other than a public entity or (2) by sending the claim to such clerk or secretary or to the governing body at its principal office by mail postmarked not later than such hundredth day. A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided herein if it is actually received by the clerk, secretary, or governing body within the time prescribed.

7009. Where the claimant is a minor or is mentally or physically incapacitated and by reason of such disability fails to present a claim within the time allowed, or where a person entitled to present a claim dies before the expiration of the time allowed for presentation, the superior court of the county in which the public entity has its principal office may grant leave to present the claim after the expiration of the time allowed where if the public entity against which the claim is made will not be unduly prejudiced thereby. Application for such leave must be

made by petition, accompanied by an affidavit showing the reason for the delay and a copy of the proposed claim, made Such petition must be filed within a reasonable time, not to exceed one year, after the expiration of the time allowed for presentation. A copy of the petition, and the affidavit and the proposed claim shall be served on the public entity.

7010. A public entity shall be estopped from asserting as a defense to an action the insufficiency of a claim as to form or contents or as to time, place or method of presentation of the claim if the claimant or person presenting the claim on his behalf has reasonably and in good faith relied on any representation, express or implied, made by any responsible officer, employee or agent of the entity, that a presentation of claim was unnecessary or that his a claim had been presented in conformity with legal requirements, made-by-any-responsible-officer,-employee-or-agent-of-the-entity.

7011. If the governing body of the public entity fails or refuses to allow or reject a claim within eighty days after it has been presented, the claim shall be deemed to have been rejected on the eightieth day. An action on such a claim must be commenced within six months after such eightieth day.

7012. If a claim is allowed in part and rejected in part, the claimant may accept the amount allowed and sue for the balance unless he has executed a release of the entire claim. An action upon a claim rejected in whole or in part must be commenced within six months after the claimant receives written notice of such rejection.

7013. Every person who wilfully misstates or causes to be misstated any material fact in a claim presented pursuant to this chapter is guilty of a misdemeanor.

Sec. 2. Section 2003 of the Government Code is revised to read as follows:

2003. A cause of action against an officer or employee of a district, county, city, or city and county public entity, as defined in Chapter 12 of Division 7 of this Title, for money or damages resulting from any act or omission negligence upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written notice thereof is claim for such damages has been presented to the public entity employing district, county, city, or city and county in the manner and within the time period prescribed by law as a condition to maintaining an action thereof against such governmental provided by Chapter 12 of Division 7 of this Title for the presentment of claims against such public entity.

Sec. 3. Chapter 9 is added to Title 14 of Part 2 of the Code of Civil Procedure to read:

Chapter 9. Presentment and notice of claims against public entities and officers and employees thereof.

Sec. 1062.5. Presentment of claims against public entities is governed by Chapter 12 of Division 7 of Title 1 of the Government Code.

Sec. 1062.6. Notice to a public entity of a claim against an officer or employee thereof is governed by Section 2003 of the Government Code.