Date of Meeting: October 8-9-10, 1958
Date of Memo: October 3, 1958

Memorandum No. 6

Subject: Study #37(L) - Claims Statute

Attached is additional material received from Professor Van Alstyne relating to this study. The following is quoted from his covering letter:

> When you look over this [the enclosed] material, you will observe that I have taken the bull by the horns in connection with the revision of the general County Claims Statute as set forth in Secs. 29700 et seq. of the Government Code. The solution which I recommend here is, in my opinion, the simplest and in many respects the best solution to the overall problem. I set forth the reasons which support my views in the Memorandum.
>
> If the recommendations which I am making at this time are approved by the Commission, I would feel fully justified in proceeding with such amendments as may be necessary to the other statutory claims provisions scattered throughout the statute law upon the basis of the same general policy determinations. I believe that these remaining revisions will, for the most part, consist simply of amending the other claims statutes to eliminate specific procedural requirements and substitute therefor a cross-reference to the new general claims statute.

I suggest that you bring with you in addition to this material the following material from your file on this study:

(1) Document entitled "Proposed General Claims Statute as of July 22, 1958," dated July 23, 1958.

(2) Memorandum from Professor Van Alstyne entitled "Progress Report on Drafting of Claims Statute," dated July 3, 1958 sent under cover of a letter from Professor Van Alstyne dated July 3, 1958.

(3) Document entitled "Partial Proposed Draft of General

Claims Statute with Explanatory Notes" prepared by Professor Van Alstyne, dated July 12, 1958.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

July 23, 1958

PROPOSED GENERAL CLAIMS STATUTE

AS OF

JULY 22, 1958

An act to add Division 3.5 to Title 1 of the Government Code and to add Title 1.1 to the Code of Civil Procedure relating to presentment of a claim as a prerequisite to a suit against a public entity or a public officer or employee.

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

SECTION 1. Division 3.5 is added to Title 1 of the Government Code, to read:

DIVISION 3.5

PRESENTMENT OF CLAIM AS PREREQUISITE TO SUIT AGAINST PUBLIC ENTITY OR PUBLIC OFFICER OR EMPLOYEE

CHAPTER 1.

PRESENTMENT OF CLAIM AS PREREQUISITE TO SUIT AGAINST PUBLIC ENTITY

600. This chapter applies to all claims for money or damages against public entities except:

a) Claims governed by the Revenue and Taxation Code.

b) Claims for refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

c) Claims in connection with which the filing of a notice of lien, statement of claim or stop notice is governed by --

Article 2 (commencing with Section 1190.1) of Chapter 2 of Title 4 of Part 3 of the Code of Civil Procedure,

Article 3 (commencing with Section 6570) of Chapter 2 of Part 5 of Division 8 of the Harbors and Navigation Code,

Article 5 (commencing with Section 5000) of Chapter 5 of Part 3 of Division 5 of the Health and Safety Code,

Chapter 12 (commencing with Section 5290) of Part 3 of Division 7 of the Streets and Highways Code,

Chapter 6 (commencing with Section 7210) of Part 3 of Division 8 of the Streets and Highways Code,

or any other provision of law relating to mechanics', laborers' or materialmen's liens.

d) Claims by public officers and employees for wages, salaries, fees, mileage or other expenses and allowances.

e) Claims for which the workmen's compensation authorized by Division 4 of the Labor Code is the exclusive remedy.

f) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

g) Applications or claims for money or benefits under any public retirement or pension system.

h) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

i) Claims, petitions, objections, estimates of damages or protests required by law to be presented in the course of proceedings relating to (1) the determination of benefits, damages or assessments in connection with any public improvement project, or (2) the establishment or change of grade or of boundary line of any road, street or highway.

j) Claims which, either in whole or in part, are payable (1) from the proceeds of or by offset against a special assessment constituting a specific lien against the property assessed, or (2) from the proceeds, or by delivery to the claimant, of any warrant or bonds representing such assessment.

k) Claims against a public entity by the State or a department or agency thereof or by another public entity.

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

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

602. 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, and Sections 608 and 609 of this chapter are applicable thereto.

603. The governing body of a public entity may authorize the inclusion in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, of provisions governing the presentation, consideration or payment of any or all claims arising out of or related to the agreement by or on behalf of any party thereto. A claims procedure established by agreement pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of any claim than the time provided in Section 607, and Sections 608 and 609 are applicable to all claims thereunder.

604. 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. 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.

605. A claim shall be presented by the claimant or by a person acting on his behalf and shall show the name of the claimant and the residence or business address of the claimant or the person presenting the claim 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.

606. If a claim as presented fails to comply with the requirements of Section 605 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 605. 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.

607. 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.

608. 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 if the public entity against which the claim is made will not be unduly prejudiced thereby. Application for such leave must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. Such petition shall be filed within a reasonable

time, not to exceed one year, after the time allowed for presentation. A copy of the petition and the proposed claim shall be served on the clerk or secretary or governing body of the public entity.

609. 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 officer, employee or agent of the entity, that a presentation of claim was unnecessary or that a claim had been presented in conformity with legal requirements.

610. The governing body may allow a claim in part and reject it in part and may require the claimant to accept the amount allowed in settlement of the entire claim. If no such requirement is made by the governing body in acting on the claim, the claimant may sue for the part of the claim rejected.

611. A suit on a cause of action for which a claim has been presented must be commenced within nine months from the date of presentation of the claim.

CHAPTER 2.

PRESENTMENT OF CLAIM AS PREREQUISITE TO SUIT AGAINST PUBLIC OFFICER OR EMPLOYEE

700. As used in this chapter:

(a) "Person" includes any pupil attending the public schools of any school or high school district.

(b) [Public property.] In addition to the definition of public property as contained in Section 1951, "public property" includes any vehicle, implement or machinery whether owned by the State, a school district, county, or municipality, or operated by or under the direction, authority or at the request of any public officer.

(c) "Officer" or "Officers" includes any deputy, assistant, agent or employee of the State, a school district, county or municipality acting within the scope of his office, agency or employment.

701. Whenever it is claimed that any person has been injured or any property damaged as a result of the negligence or carelessness of any public officer or employee occurring during the course of his service or employment or as a result of the dangerous or defective condition of any public property, alleged to be due to the negligence or carelessness of any officer or employee, within 90 days after the accident has occurred a verified claim for damages shall be presented in writing and filed with the officer or employee and the clerk

or secretary of the legislative body of the school district, county, or municipality, as the case may be. In the case of a State officer the claim shall be filed with the officer and the Governor.

702. The claim shall specify the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received.

703. A cause of action against an employee of a district, county, city, or city and county for damages resulting from any negligence upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing district, county, city, or city and county in the manner and within the period prescribed by law as a condition to maintaining an action thereof against such governmental entity.

SECTION 2. Title 1.1 is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 1.1

OF THE REQUIREMENT OF PRESENTMENT OF CLAIM AS PREREQUISITE TO SUIT AGAINST PUBLIC ENTITY OR PUBLIC OFFICER OR EMPLOYEE

§ 313. Presentment of claims against public entities is governed by Chapter 1 of Division 3.5 of Title 1 of the Government Code.

§ 314. Presentment to a public entity of a claim against an officer or employee thereof is governed by Chapter 2 of Division 3.5 of Title 1 of the Government Code.

"2nd Progress Report - Claims Statute Draft"

September 29, 1958

TO: California Law Revision Commission

FROM: Professor Arvo Van Alstyne

SECOND PROGRESS REPORT ON DRAFTING OF PROPOSED GENERAL CLAIMS STATUTE
PART ONE

1. No further changes are recommended for Sections 600 through 603 of the Proposed General Claims Statute, as set forth in the mimeographed draft entitled: "Proposed General Claims Statute As of July 22, 1958".

2. Section 604. A possible ambiguity arises in the second sentence of Section 604 which reads:

> "If the governing body of the public entity fails or refuses to allow or reject a claim within 80 days after it has been presented, the claim shall be deemed to have been rejected on the 80th day."

Section 610 of the proposed draft authorizes the governing body, in acting on a claim, to allow the claim in part and reject it in part. Where the governing body has taken such action under Section 610 but the claimant refuses to accept the amount allowed, it might be argued that there has been neither an allowance nor a rejection of the claim in its entirety, and that therefore the claim has neither been allowed nor rejected within the meaning of the quoted language of Section 604. This contention would lead to the conclusion that the rejection of the claim occurred as a matter of law on the 80th day rather

than the day upon which the partial rejection took place.

In order to avoid the suggested possibility, it is proposed that the second sentence of Section 604 be amended to read:

> "If the governing body of the public entity fails or refuses to ~~allow or reject~~ take final action upon a claim within 80 days after it has been presented, the claim shall be deemed to have been rejected on the 80th day."

Since Section 610 expressly refers to the governing body "acting on the claim", the proposed new wording of the second section of Section 604 would seem to be an appropriate internal reference to any form of final action which is authorized by Section 610 and therefore would be consistent with that section.

3. Section 605. This section as of July 22 reads as follows:

> "A claim shall be presented by the claimant or by a person acting on his behalf and shall show the name of the claimant and the residence or business address of the claimant or the person presenting the claim 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."

For reasons which will be set forth below, it is recommended that Section 605 be completely redrafted to read as follows:

"605. A claim shall be presented by the claimant or by a person acting on his behalf and shall show--

a. The name of the claimant.

b. The residence or business address of the person presenting the claim.

c. The circumstances, including the date and place of the occurrence which gave rise to the claim asserted.

d. The nature and extent of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

e. The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof."

The reasons for the foregoing changes may be summarized as follows:

First, it is deemed better draftsmanship to itemize all of the requisite information which should be in the claim so that no one reading the statute quickly would fail to include any of the information called for.

Second, it is deemed advisable to insist only that the address of the person presenting the claim be set forth therein. Since a claim may be presented on behalf of a claimant by some

other person, it would seem that the address of the latter individual is the one which would be of critical importance to the governing body in conducting an investigation. It may be expected that in most cases the claimant himself will present the claim; but if the claimant is an incompetent person or a minor, some other person will normally present it in his behalf. In the latter situation, the claimant's address may not be of any importance to the public entity. Of course, if the claimant presents the claim on his own behalf he would be required by the proposed language to give his own address. It thus appears that in either situation, the proposed language requires that the address given be that of the person who presumably will have the greatest amount of information with respect to the circumstances and nature of the claim.

Third, since one of the primary purposes to be served by the claims statute is to give reasonably prompt notice to the public entity of the existence of the claim so that immediate investigation may be made, it is deemed highly important that the date and place of the occurrence be set forth in the claim. The general requirement in the previous draft that "the circumstances giving rise to the claim asserted" be set forth therein, is not sufficiently specific in this regard. Although it is true that deficiencies of this type could be corrected by the notice and amendment procedure set forth in Section 606, the delays which might be attendant upon the 606 procedure might effectively frustrate the purpose of the claim statute in giving

prompt notice sufficient to apprise the entity of the details of the particular occurrence. A requirement that date and place be set forth is characteristic of the great majority of all claims statutes and it should be retained in this section.

Fourth, since the claims statute is intended to cover express and implied contract claims, tort claims, claims for the taking of property without payment of just compensation, and various statutory liabilities, it is believed that the words "injury or damage incurred" contained in the former draft of Section 605 may not be sufficiently broad. By inclusion of the words "indebtedness", "obligation" and "loss" it is believed that all types of claims are adequately included. These words are also believed better than the all-inclusive word "liability", for the latter might be construed to mean only the amount claimed, and hence would be a duplication of subsection e.

Fifth, it is believed desireable to provide expressly that the claim need only set forth the nature and extent of the injury, etc. "so far as it may be known at the time of presentation of the claim" and that the amount claimed be set forth only "as of the date of presentation of the claim".

In several cases (see Sullivan v. City and County of San Francisco, 95 Cal. App. 2d 745, 214 P. 2d 82 (1950) and Steed v. City of Long Beach, 153 Cal. App. 2d 488, 315 P. 2d 101 (1957)) the question has arisen whether at the time of trial a claimant was bound by the damages sought in his claim and therefore

could neither allege nor recover judgment for a greater sum. In both of the cited cases the courts permitted recovery of an amount in excess of that sought in the claim. In each case, however, the decision appears to be based on the view that the language of the claim, when reasonably interpreted, indicated the claimant had not intended to restrict the claim to the specific amount set forth therein but had intended to reserve the right to seek such additional damages as might be incurred or discovered thereafter. It is believed desireable to eliminate the necessity for the technical precision which might be required in the drafting of a claim in order to bring it within the doctrine of the two cited cases. It is thus proposed that the claims statute itself declare that the amount set forth in the claim is intended to cover only such damages as are known and claimed as of the date of presentation thereof.

4. Section 606. It is recommended that Section 606 be amended to read as follows:

"If a claim as presented fails to substantially comply with the requirements of Section 605 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 605. 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. The failure to present a corrected or amended claim after receipt of notice under this section shall not in itself constitute a sufficient ground for rejection of the claim."

The reasons for the proposed amendments to Section 606 are as follows:

First, it is believed desireable to insert the word "substantially" in the first line of Section 606 in order to make clear the legislative intent to have the statute construed in light of the "substantial compliance rule".

Second, for the reasons set forth above in connection with Section 605, it is recommended that the written notice of insufficiency under Section 606 be given to the person presenting the claim whether or not he is the claimant. The claimant, in some cases, may be a minor or insane person to whom such notice might be entirely meaningless.

Third, the proposed last sentence, which is entirely new, is deemed advisable since the section should specify the consequences of a failure by the person presenting the claim to supply the requested amendment on demand. Since the demand may be predicated upon a purely technical insufficiency, or at least a defect of debatable substantiality, it is believed

that refusal or failure to present a corrected claim should not prejudice the rights of a claimant. In the absence of some express provision to this effect, it is possible that a court might hold otherwise. Under the proposed language, where an amendment is not provided after notice, the original claim could still justifiably be rejected on the ground that it failed to substantially comply with the requirements of Section 605. Rejection on this ground, if upheld by a court, would seem to be entirely appropriate since such a claim would have failed to satisfy the basic notice function which is the underlying objective of the entire statute.

Section 607. It is proposed that Section 607 be amended to read as follows:

"607. 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. The date of accrual of a cause of action to which a claim relates, for the purpose of computing the time limit prescribed by this section 607, is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a public entity."

The proposed changes in Section 607 are for the most part matters of style. The previous draft speaks of the statute of limitations which would have been applicable if "the action" had been brought against a defendant other than a public entity. However during the period when the hundredth day limitation is relevant no action will have been brought against anybody, for the time limit in question relates only to the filing of the claim and not to the commencement of an action. In addition, the first clause of Section 607 appeared to be somewhat unwieldy since it incorporated both the hundredth day limitation and the definition of the word accrued. I believe it would be in the interest of clarity to append the reworded definition at the end of the section.

Section 608. This section is adapted almost verbatim from Section 50e of the New York General Municipal Law. For

reasons which are set forth below, it is believed advisable that the section be rewritten to read as follows:

"The Superior Court of the county in which the public entity has its principal office may grant leave to present a claim after the expiration of the time allowed, if the public entity against which the claim is made will not be unduly prejudiced thereby, where during the time allowed for presentation no claim was presented and -

a. claimant was less than eighteen years of age, or

b. claimant was an insane or incompetent person, or

c. claimant was physically incapacitated and by reason of such disability failed to present a claim with the time allowed, or

d. claimant died, or

e. claimant was civilly dead or his civil rights had been suspended by sentence of a criminal court, or

f. a claim was not presented because of mistake, inadvertence, surprise or excusable neglect.

Application for such leave must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within a

reasonable time not to exceed one year after the time allowed for presentation. A copy of the petition and the proposed claim shall be served on the clerk or secretary or governing body of the public entity."

The reasons for the proposed changes are as follows:

First, it is deemed advisable for the sake of clarity to set forth in tabular form those situations in which the discretionary relief may be granted.

Second, it is recommended that the categories of claimants for whom the discretionary relief is available be enlarged to include those persons who, under sentence of a criminal court, have had their civil rights suspended, or may be civilly dead, and for that reason may not have been competent to present a claim. There is authority for the proposition that a person whose civil rights have been suspended or who is civilly dead has no right to bring an action in the civil courts as a plaintiff. (See Comment, 26 Southern California Law Review 425, and cases cited.) By a parity of reasoning, it would seem that such a convict also would be under a disability to make an effective claim against a public entity. Under the New York statute, where the discretionary relief does not expressly cover this situation, inability to file a claim while serving criminal punishment is apparently not covered. (See: Bates v. Onandaga County, 207 Misc. 767, 141 N.Y.S. 2d 264 (1954).) In view of the fact that such an individual may have a valid and

justifiable claim, and in view of the possibility of a pardon, appellate reversal of the judgment of conviction, discharge on habeas corpus, or a restoration of civil rights through termination of the sentence or by action of the Adult Authority, it is believed only fair that a limited opportunity for discretionary relief be afforded in this situation equally with the others previously covered by the former draft.

Third, the former draft provided that the discretionary relief authorized by this section was available only when the failure to present a timely claim occurred "by reason of such disability". The quoted words are found in the New York statute (New York General Municipal Law, § 50e). They have given rise to a very substantial amount of litigation in that state, and the New York courts in general have adopted a rule of interpretation which requires a satisfactory showing by the claimant that the failure to file the claim was the proximate result of the disability in question. (See Newman v. City of Geneva, 2 Misc. 2d 646, 153 N.Y.S. 2d 677 (1956); Nunziato v. City of New York, 3 Misc. 2d 450, 149 N.Y.S. 2d 636, affirmed by 2 App. Div. 2d 670, 153 N.Y.S. 2d 550 (1956).)

In the case of adults who are under a mental or physical disability, the courts of New York have taken the position that the disability must be such that it actually prevented the claimant from preparing and filing a claim in his own behalf or from causing someone else to do so for him. (See Application of Ogden, 208 Misc. 518, 144 N.Y.S. 2d 45 (1955) and cases

cited therein.) Where the claimant is an adult and the disability in question is purely physical, this rule probably does not work unfairly in the average case. In the Ogden case, for example, relief from failure to file a claim was denied, where the claimant was in the hospital with his ankle in a cast; but as the court pointed out this injury surely didn't prevent him from consulting with counsel and friends or from preparing and filing a claim for his injuries. This view is not unfair to claimants and is thus recommended for retention in the present draft, subdivision c.

On the other hand, where the disability consists of mental illness or incompetency, it is believed the factual questions which would arise under the New York rule with respect to whether the disability made the claimant unable to understand or appreciate the necessity for presenting a claim or rendered him incapable of adequately preparing one, would seem to create extremely difficult and complex evidentiary problems requiring expert testimony to resolve. It would thus seem to be desireable in such situations to avoid litigation and to simplify the discretionary relief proceeding as much as possible by authorizing such relief in cases of mental disability without requiring proof of a causal connection between the disability and the failure to present the claim. (See subdivision b.)

In dealing with the problem of causal connection between minority and failure to present a claim, the New York courts

have classified minors in three categories: (1) Those who are so immature (approximately ten years of age or less) that as a matter of law they are deemed incapable of understanding the necessity for presentation of a claim or of preparing and presenting one; (2) those minors who are relatively mature (minors in their late teens) and who therefore can reasonably be held to a substantial understanding and appreciation of the legal requirement for the filing of a claim as well as ability to prepare a reasonably informative and technically sufficient document; and (3) those minors who are in the intermediate years between the first two classes, in which case the courts allow or disallow the discretionary relief depending upon the factual showing made with respect to age and capacity. (See Marino v. City of New York, 3 Misc. 2d 210, 148 N.Y.S. 2d 834 (1956); Schnee v. City of New York, 285 App. Div. 1130, 141 N.Y.S. 2d 88 (1955) affirmed 1 N.Y. 2d 697, 150 N.Y.S. 2d 801 (1955).) This New York rule of interpretation has invited a large volume of litigation in that state and, it is believed, is undesireable. It would appear that litigation could be avoided by a specific dividing line between those minors who by reason of their youthful years should not be held to strict compliance with the claims statute, and those who can be regarded as sufficiently mature to be held to the same standards as an adult. In the proposal here advanced, the age of eighteen is indicated as the dividing line, and no requirement of any causal relationship between the status of minority and

failure to file a timely claim is required. (Subdivision a.) The Commission may determine to alter the age to some other figure than eighteen. However, this is the age at which, upon marriage, minors legally become adults in California at the present time (Civil Code § 25) and would thus seem to be an appropriate age level at which to hold the minor (married or not) to the same standard of responsibility with respect to a claims statute as an adult.

Fourth, a strong argument can be made by way of analogy to Section 473 of the Code of Civil Procedure that discretionary relief should be afforded where the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect. This language is broad enough to cover errors of computation of time, inadvertent delays in the postmarking of a timely mailed claim, or other fortuitous circumstances (such as an attorney's sudden illness, loss of secretarial assistance, etc.) which frequently are held by the courts to justify relief from other legal proceedings taken against litigants. (See 3 Witkin, California Procedure (1954) 2098-2109 for examples and citations under C.C.P. §437.) Since the moving party seeking discretionary relief under the language of the proposed subdivision f would be required to establish not only grounds analogous to those recognized under C.C.P. § 473, but also that the public entity would not be unduly prejudiced by a late filing of the claim, this proposal is believed consistent with the objective of preventing the claims statute from becoming a trap for the unwary.

Sections 609-611. It is believed that these sections in the draft of July 22 are adequately drafted and no recommendations are made with respect to them.

PART TWO

County Claims Statutes

Upon adoption of the proposed general claims statute, the present general County Claims Statute (Chapter 4, Division 3, Title 3 of the Government Code) will be largely superceded. The only claims to which the general County Claims Statute would thereafter apply would be claims which fall within the exclusions from the general claims statute as set forth in Section 600. Of the eleven categories of excluded claims, only three appear to designate claims which would remain subject to the general County Claims Statute. These three types of claims are:

a. Claims by public officers and employees for wages, salaries, fees, mileage or other expenses and allowances.

b. Some, but not all, claims for goods, services, provisions or other assistance rendered for or on behalf of recipients of public assistance.

c. Claims against counties by the state or a department or agency thereof or by other public entities.

With the general County Claims Statute restricted to these three types of claims, its practical significance will be greatly diminished. All tort claims will come within the scope of the general claims statute; and, as the basic study indicated, the great volume of litigation stemming from claims requirements has been in the field of torts. At the same time, with the concurrent existence of both a general claims statute and a County Claims Statute (limited, however, to only certain types of claims) there will always be a possibility that some unwary lay claimant may present a claim against a county in conformity with the wrong claims procedure, or in improper form, or at the wrong time, and thereby be precluded from recovering on a just claim. The concurrent existence of two claims statutes governing different types of claims against counties would tend to perpetuate the spectre of the "trap for the unwary".

Elimination of the problem just suggested could come about either through enlargement of the scope of the general claims statute to embrace <u>all</u> claims against counties, or by elimination of the second claim statute. To enlarge the scope of the general claims statute, however, would require narrowing or deleting with respect to counties, some of the exclusions presently written into Section 600. It is believed that those exclusions are based upon sound considerations of public policy and should not be altered unless other alternatives are even less palatable. Thus, attention should be directed to the feasibility of eliminating entirely any statutory provisions governing the three types of claims indicated above.

a. Claims For Wages, Etc.

Claims in this category were excluded from the general claims statute on the grounds that such matters, under existing administrative procedures, appeared to be processed without difficulty and such procedures therefore should not be unnecessarily disrupted. Since the filing of claims is usually only a prerequisite to suit thereon, and not to satisfaction of obligations admittedly owing, the payment of salaries and wages presumably is handled in most entities without requiring a formal claim from each employee, by procedures which are largely routine in nature.

Plenary jurisdiction to determine procedures governing the method for payment for salaries, wages, and expenses has been vested by law in the governing bodies of both charter cities (California Constitution, Article XI, Sec. 8) and general law cities (Government Code, Secs. 37201, 37202, 37206), and in many district governing boards (e.g. Educ. Code, §§ 13831 et seq., school districts; Educ. Code §§ 22653, 22658, 22638, library districts; Gov't. Code §§ 61244, 61616, 61619, 61622, 61733, community services districts; Harb. & Nav. Code §§ 6070, 6071, 6078, harbor districts; Harb. & Nav. Code §§ 6310, 6370, 6372, port districts; Water Code §§ 31001, 31004, 31302, 31308, county water districts). This basic policy of permitting a large degree of local autonomy in the matter of processing wages, salaries, mileage and other expenses appears also to be at least partially reflected in Section 29702 of the Government Code, which is part of the present general County Claims Statute.

This Section provides that "In order to meet the needs of the particular county" the Board of Supervisors thereof may adopt "a different form or forms for the submission and payment of claims, and . . . a different procedure for the allowance and payment of claims", subject only to certain minimum requirements set forth in the Section.

The existing legislative pattern suggests that there should be no fundamental policy objection to permitting counties, equally with all cities and most districts, to have complete local autonomy with respect to these claims. The administration of such matters is largely an internal fiscal and accounting process and from an institutional standpoint it seems evident that the need for a uniform state-wide statutory claims procedure is quite minimal. This conclusion is reinforced by consideration of the differences in administrative and accounting problems which would exist as between the several large, metropolitan counties at one extreme, and the small, sparsely populated, rural and mountain counties at the other.

Accordingly, it is recommended that the present general County Claims Statute be no longer continued as applicable to wage, salary, mileage and other expense claims, and that the Government Code be amended to expressly confer local legislative autonomy upon county Boards of Supervisors to provide such procedures as may be appropriate to the needs of the particular county with respect to the presentation and consideration of these claims.

b. Claims For Assistance Rendered To Recipients Of Public Assistance.

Claims in this category were excluded from the general claims statute for the reason that such claims are either already covered by express provisions of the Welfare and Institutions Code and by rules and regulations adopted by the State Board of Social Welfare, or where not so covered are so closely integrated into the administration of specialized public assistance programs that their presentation, allowance and payment should be specifically geared to the needs of the individual programs in question.

Not all public welfare claims are explicitly covered by special statutory procedures. It is true that practically all forms of applications by persons claiming to be eligible for public assistance are governed by sections of the Welfare and Institution Code or supplementary regulations (see, e.g., Welf. & Inst. Code, secs. 104.1, 1550, 2180, 2840, 3081, 3470, 4180); and that certain types of claims by "vendors" for assistance rendered at county request to recipients of public assistance are covered by State Board regulations. (See State Board of Social Welfare, Regulation MC-050 through MC-053, claims for cost of medical care; ibid, Fiscal Manual, Section F-360, governing procedures in connection with vendor order forms in cases where aid to needy children is given in kind in mismanagement cases.) However, most types of claims by persons who, pursuant to agreement with the county, have provided assistance in kind to indigents

(see Welfare and Institutions Code, Secs. 200, 202, 203, 206, 207) are not covered by express claims procedures either in Welfare and Institutions Code or in the state regulations. Such claims are in many respects different from ordinary contract claims stemming from purchase orders for supplies for county use or formal contracts for construction work. The agreements in question are usually of a continuing and routine nature and the administration of claims thereunder is, or should be, closely integrated with the administration of indigent aid by the county.

No compelling need appears to exist for prescribing a uniform statutory procedure for the presentation of these claims. They do not appear to give rise to litigation, for the procedures required to secure payment under such indigent aid agreements are either well known to the vendors or easily ascertainable by them, and presumably are or may be set forth in detail in the contractual documents themselves. In addition, because the indigent aid programs in the different counties vary considerably in the light of local social and economic conditions, as well as the wide differences in population between the several counties of the state, it is recommended that local autonomy to prescribe with respect to these claims procedures appropriate to the differing needs in the particular counties be substituted for any general county claims statute.

c. Claims Against Counties By Other Public Entities.

Claims against public entities by other public entities, or by the state, were excluded from the general claims statute for the reason that such claims seldom result in litigation and appear to be administered without undue difficulty under present law. Although such claims against counties are presently governed by the general County Claims Statute, it is believed that no compelling justification exists for continuing the requirement in existence. To the extent that claims statutes in general are regarded as a protection against fraudulent demands, such a statute would seem to be unnecessary where the claims in question lie between various governmental entities. To the extent that claims statutes provide a basis for early investigation and auditing of demands against the public treasury, it is believed that such functions can be adequately served by appropriate administrative machinery established by the various entities to govern dealings between themselves. Finally, since all public entities are in a sense subdivisions of the general state government, the utility of a claims procedure as a means of giving a measure of protection to the public treasury from demands of private individuals for private benefit would not exist where inter-entity claims are concerned. For these reasons, it is believed that the deletion from statute law of all general provisions relating to the presentation of claims by other public entities would be appropriate.

Conclusions.

The foregoing analysis, if accepted, points to the conclusion that the general County Claims Statute may be eliminated entirely and that in its place there be enacted authorization for County Boards of Supervisors to provide procedures for the presentation, allowance and payment of claims within the first two of the above three categories.

In the process of adjusting the present provisions of the general County Claims Statute to this policy recommendation, it is believed desirable to retain insofar as appropriate existing provisions relating to internal auditing procedures. Such procedures would continue to be applicable to such local claims procedures as may be established-a consequence consistent with previously determined legislative policy.

The following redraft of Chapter IV, Division 3, Title 3 of the Government Code represents a preliminary proposal to effectuate the policy here suggested.

PROPOSED REVISION

OF

GOVERNMENT CODE, DIVISION 3, TITLE 3

CHAPTER 4

CLAIMS

ARTICLE ONE

FILING AND APPROVAL

29700. All claims for money or damages against counties are governed by Chapter 1 (commencing at Section 600) of Division 3.5 of Title 1 of the Government Code, except as provided therein and in this chapter.

29701. The board may prescribe by ordinance procedures not inconsistent with state law for payment out of any public fund under the control of the board of (a) wages, salaries, fees, mileage or other expenses or allowances, and (b) costs of goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance. The procedures so prescribed may include a requirement that a claim be presented and rejected as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 607 of the Government Code, and Section 608 and 609 of the Government Code shall be applicable to all claims thereunder.

[Note: This Section carries out the basic policy recommendations indicated above, and uses substantially the same wording as

subdivisions d and f of Section 600, which lists the exclusions from the general claims statute. The last sentence is adapted from Section 603, which authorizes the governing bodies of public entities to provide an alternative claims procedure by contract.]

29702. The board shall not pass upon a claim, unless it is filed with the clerk or auditor not less than three days, or if prescribed by ordinance five days, prior to the time of the meeting of the board at which it is asked to be allowed.

[Note: This Section is merely present Section 29706 renumbered as 29702. Present Sections 29700 through 29705 would be repealed under the present proposal. Present Section 29706, however, appears to be chiefly an internal auditing procedure not inconsistent with the new general claims statute and hence is retained here.]

29703. A claim based upon an expenditure directed to be made by any officer shall be approved by such officer before it is considered by the board.

[Note: This Section is based upon present Section 29708, with some modifications of language to clarify meaning. It is recommended that present Section 29707, which prescribes the form of claims, be repealed, since its provisions are at least partly inconsistent

with the new general claims statute, and at best would seem to be logically applicable only to contract claims.]

29704. If the claim is allowed by the board, the clerk of the board shall file a memorandum thereof and shall endorse on the claim "allowed by the board of supervisors", together with the date of the allowance, the amount of the allowance, and from what fund, and in cases of partial allowance whether the board requires the claimant to accept the amount allowed in settlement of the entire claim. The clerk shall attest the claim with his signature and, when countersigned by the chairman, shall transmit it to the auditor.

[Note: This Section is based upon present Section 29709, with some modifications of language to reflect the repeal of Section 29707 and to make it consistent with the partial allowance provisions of Section 610 of the proposed general claims statute.]

29705. If the auditor approves the claim, he shall endorse upon it "approved", and in attestation thereof affix his signature to the claim and deliver it together with his warrant to the claimant.

[Note: This Section is based upon present Section 29710 of the Government Code with certain modifications of language to reflect the repeal of Section 29707.]

29706. When approved and signed by the auditor, the claim is the warrant on the treasury within the meaning of this chapter.

[Note: This Section is identical with present Section 29711.]

29707. In providing special claims procedures by contract pursuant to Section 603 of this Code or by ordinance pursuant to Section 29701 of this Code, the board may adopt forms for the submission and payment of claims, and may prescribe and adopt warrant forms separate from claim forms, to the end that the approved claims may be permanently retained in the auditor's office as vouchers supporting the warrants issued. The procedures so adopted shall provide:

(a) For the approval of the officer directing the expenditure. In counties having a system under which expenditures may be initiated by requisition, the approval may be omitted from claims initiated by requisition.

(b) For the approval of the purchasing agent or other officer issuing the purchase order under which the charge was incurred, or having charge of contracts or schedules of salaries under which the claim arose.

(c) For the approval of at least one member of the board. In lieu of the supervisor's approval on each claim there may be substituted duplicate lists of claims allowed, showing, as to each claim, the name of the claimant, the amount allowed, the date of allowance, and the fund on which allowed. The lists shall be certified to the board by the clerk of the board or other competent officer or employee designated by it for the purpose,

as being a true list of claims properly and regularly coming before the board. Upon allowance of claims, each of the lists, after amendment if necessary, shall be certified to as correct by one member of the board and by the clerk of the board and filed, one in the office of the clerk of the board and one in the office of the auditor. When filed, the lists constitute respectively "allowance book" and the "warrant book".

(d) For the certificate of the clerk of the board as to the date and amount of allowance of the claim by the board. If the duplicate lists of claims allowed are filed, the certificate may be omitted, but in its stead there shall appear on each claim a reference by date, number, or otherwise to the list on which the claim appears listed as allowed.

(e) For the certificate of the clerk of the board or of the auditor as to the correctness of the computations.

(f) For the auditor's approval.

[Note: This Section is based upon present Section 29712 of the Government Code, with certain modifications to relate its contents more accurately to the special claims procedures authorized to be established by contract under Section 603 or to the special ordinance procedures authorized by Section 29701, above. The requirements imposed by this Section appear to be entirely matters of internal administrative and auditing procedure.]

29708. Any claim or demand against the county presented by a member of the board for per diem and mileage or other service rendered by him shall be itemized and state that the service was actually rendered. Before allowance, any such claim or demand shall be presented to the District Attorney or County Counsel, who shall endorse upon it his written opinion as to its legality. If the District Attorney or County Counsel declares the claim or any part thereof illegal, he shall state specifically wherein it is illegal, and the claim or such part shall be rejected by the board.

[Note: This Section is based upon present Section 29717 of the Government Code with modifications of language to reflect the policy determination that claims under the new general claims statute need not be verified. In addition, since the formal requirement of a claim as the basis for recovery of per diem, mileage or other allowances depends upon whether such requirement is adopted by the Board of Supervisors under Section 29701 as proposed in the present draft, the words "or demand" are inserted after the word "claim" where it appears in this Section. It is believed that these words would include an informal demand made pursuant to such administrative procedures as might be locally developed, as distinguished

from a formal claim, where the formal claim requirement has not been adopted. It will be observed that present Sections 29713 through 29716 are recommended to be repealed as being either unnecessary or inconsistent with the new general claims statute.]

29709. Except for his own service, no county officer or employee shall present any claim for allowance against the county, or in any way, except in the discharge of his official duty advocate the relief asked in the claim made by any other person.

[Note: This Section is identical with present Section 29718 except that it is here enlarged to make it applicable to county employees as well as county officers. This enlargement would seem to be clearly consistent with the basic policy of the provision.]

29710. Any person may appear before the board and oppose the allowance of any claim made against the county.

[Note: This Section is identical with present Section 29719.]

29711. No fee or charge shall be made or collected by any officer for filing any claim against the county.

[Note: This Section is based upon present Section 29721, with the elimination of any reference to verification.]

ARTICLE TWO

APPROVAL OF AUDITOR

No recommendations for amendments to Article Two, which consists of present Sections 29740 through 29749 of the Government Code, are here made. It is believed that all of the existing provisions of Article Two relate solely to matters of internal auditing and fiscal procedures. A careful reading of the procedures so prescribed fails to reveal any inconsistency with the provisions of the proposed general claims statute.

PUBLIC LIABILITY ACT OF 1923

(GOVERNMENT CODES SECTIONS 53050-53056)

In addition to the foregoing changes which are recommended in the general County Claims Statute, the claims presentation provisions of the Public Liability Act of 1923 require amendment to bring them into conformity with the new general claims statute. These proposed amendments are included herein since the 1923 Act relates to claims against counties (as well as cities and school districts). The proposed amendments are as follows:

53052. When it is claimed that a person has been injured or property damaged as a result of the dangerous or defective condition of public property, a ~~verified~~ written claim for damages shall be ~~filed with the clerk or secretary of the legislative body of the local agency within ninety days after the accident occurred.~~ presented and considered as provided in Chapter 1 (commencing with Section 600) of Division 3.5 of

Title 1 of the Government Code.

53053. (This Section should be repealed.)

STATUTE OF LIMITATIONS

The special Statute of Limitations contained in Section 342 of the Code of Civil Procedure, which governs actions on claims against a county, should be revised to make it consistent with new Section 911 of the Government Code. It is proposed that the amended Section read as follows:

342. Actions on claims against a county~~, which have been rejected by the Board of Supervisors,~~ must be commenced within ~~six months after the first rejection thereof by such Board,~~ the time provided in Section 911 of the Government Code.

Van Alstyne - July 12, 1958

Partial Proposed Draft of General Claims Statute With Explanatory Notes

600. This chapter applies to all claims for money or damages against public entities except:

a) Claims governed by the Revenue and Taxation Code.

b) Claims for refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

c) Claims in connection with which the filing of a notice of lien, statement of claim or stop notice is governed by --

Article 2 (commencing with Section 1190.1) of Chapter 2 of Title 4 of Part 3 of the Code of Civil Procedure,

Article 3 (commencing with Section 6570) of Chapter 2 of Part 5 of Division 8 of the Harbors and Navigation Code,

Article 5 (commencing with Section 5000) of Chapter 5 of Part 3 of Division 5 of the Health and Safety Code,

Chapter 12 (commencing with Section 5290) of Part 3 of Division 7 of the Streets and Highways Code,

Chapter 6 (commencing with Section 7210) of Part 3 of Division 8 of the Streets and Highways Code,

or any other provision of law relating to mechanics', laborers' or materialmen's liens.

d) Claims by public officers and employees for wages, salaries, fees,

mileage or other expenses and allowances.

e) Claims for which the workmen's compensation authorized by Division 4 of the Labor Code is the exclusive remedy.

f) Applications for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

g) Applications or claims for money or benefits under any public retirement or pension system.

h) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

i) Claims, petitions, objections, estimates of damages or protests required by law to be presented in the course of proceedings relating to (1) the determination of benefits, damages or assessments in connection with any public improvement project, or (2) the establishment or change of grade or of boundary line of any road, street or highway.

j) Claims which, either in whole or in part, are payable (1) from the proceeds of or by offset against a special assessment constituting a specific lien against the property assessed, or (2) from the proceeds, or by delivery to the claimant, of any warrant or bonds representing such assessment.

k) Claims against a public entity by the State or a department or agency thereof or by another public entity.

COMMENTS: Completely redrafted.

Introductory Sentence: It is recommended that the words "for money or damages" be added to the introductory language of the section. Since this section defines the general scope of the entire chapter, it seems advisable to make explicit the fact that the claims covered are only those which are against the public treasury of the entity concerned. It does not apply to claims for other forms of relief, such as performance or restraint against performance of a specific act other than the payment of money.

Subdivision (a): The Revenue And Taxation Code contains a number of provisions prescribing procedural requirements for filing of claims relating to taxes. The principal provisions relating to claims required to be filed with designated personnel of local governmental entities are:

R & T Code §§ 251-261 (claims for exemption from property taxes)
R & T Code §§ 5096 et seq. (claims for refund of erroneous property taxes)
R & T Code §§ 14361 et seq. (claims for refund of inheritance taxes)

(In addition the Revenue and Taxation Code contains a number of provisions governing claims for refund of state taxes, such as the insurance tax, motor vehicle fuel tax, personal income tax, and private car tax.)

It is believed that a blanket reference to the Revenue and Taxation Code is desirable for two reasons: First, in addition

to the provisions cited above, the Revenue and Taxation Code also contains provisions governing claims which might not be within the broad language of subdivision (b) (see below) of proposed section 500. For example, §§ 3720 et seq. govern claims of taxing agencies to a share of the delinquent tax sale trust fund; while §§ 3729 et seq. govern refunds of the purchase price of tax deeded land to the purchasers thereof if the sale is later found to be void or improper. Since claims governed by the last cited provisions, like those previously cited which relate to exemptions and refunds, are all geared to the special needs of administration of the tax laws, and have not given rise to the extensive litigation attending general claims in the fields of contracts and torts, their exclusion from the scope of the proposed act appears to be justified. Second, a blanket reference to the Revenue and Taxation Code will permit amendments to the claims procedures therein prescribed, as well as additions thereto, in the light of the specialized needs of tax administration, without the need for amendment of the general claims statute. Such amendment might otherwise be necessary if more explicit references to precise sections were to be made in the present subdivision.

Subdivision (b): The language of subdivision (b) has been drafted to cover as broadly as possible all forms of claims relating to all forms of governmental exactions. Although some of the kinds of claims thus referred to (e.g. claim for exemption from

taxes) might be held excluded in any event on the ground that it is not a claim for money or damages, it is believed advisable to make such exclusions explicit, thereby precluding unnecessary litigation. The basic purpose in excluding such claims from the scope of the general claims statute is substantially that expressed above in the discussion of subdivision (a). Since the timing and procedures for assessment, levy and collection of taxes and special assessments are strictly statutory, and in many cases sui generis, it is believed that procedures for attacking and securing relief from such taxes and assessments should be left to the specific statutory provisions governing them. The same rationale, it is believed, applies also to fees and charges (such as water charges by water districts, sewer connection fees by sanitation districts, charges for utility services by utility districts, etc.).

Where a particular tax, assessment or charge is delinquent, statutes frequently provide for the addition to the basic exaction of penalties, costs or charges. As a precaution, therefore, claims covering such additional penalties, costs or charges are also expressly included within the scope of the exception.

It should be noted that subdivision (b) and subdivision (a) do not completely overlap. As pointed out in the discussion of subdivision (a), supra, certain kinds of claims which are governed by the Revenue and Taxation Code are not covered by the broad language of subdivision (b). Similarly, many claims covered by the language

of subdivision (b) are not excluded by subdivision (a) since they are not governed by the Revenue and Taxation Code. For example, many forms of municipal license taxes and sales taxes, together with other forms of municipal fees and charges are governed by city charter or ordinance provisions, while some are governed by other codes. (See Govt. Code §§ 39584-39585, refund of weed abatement tax.) Some special district acts make explicit provision for the refund of excessive, erroneous or otherwise improper district taxes or assessments. (See Sts. & Hwys. Code § 3290, Street Opening Act of 1889; Sts. & Hwys. Code §§ 4440-4441, Street Opening Act of 1903; Sts. & Hwys. Code §§ 5561-5563, Improvement Act of 1911; Water Code §§ 26000-26002, irrigation districts; Water Code §§ 31965-31970, county water districts; Water Code § 51870, reclamation districts.) In addition, many special district statutes incorporate by reference the taxing procedures applicable to county taxes set forth in the Revenue and Taxation Code. (See e.g. Health and Safety Code §953, local health districts; Health and Safety Code § 2309, mosquito abatement districts; Health and Safety Code § 4127, garbage disposal districts; Health and Safety Code § 4811, county sanitation districts; Alameda County Flood Control and Water Conservation District Act, Stats. 1949 ch. 1275 p. 2240, as amended (Deering's General Laws, Act 205) § 18; Contra Costa County Water Agency Act, Stats. 1957, ch. 518, p. 1553 (Deering's General Laws, Act 1658) § 12; Orange County Water District Act, Stats. 1933, ch. 924 p. 2400 (Deering's General Laws, Act 5683)

§ 19.) Since these Revenue and Taxation Code provisions, as so incorporated, are regarded as part of the incorporating act (see Don v. Pfister, 172 Cal. 25, 155 Pac. 60 (1916)) they presumably would not be excluded from the general claims statute by subdivision (a) of Section 600, discussed above.

Subdivision (c): The wording of this subdivision has been expanded to make express cross-references to all statutory provisions which have been found containing express provisions for the filing of stop notices. Since these cross-referenced provisions may be amended by addition of new sections in the future, the cross-references are by Article, Chapter and Division, but with parenthetical reference to section numbers.

Attention is directed to the fact that none of the statutes use the common term "stop notice" in referring to the type of claim here involved. Accordingly, subdivision (c) uses the words "notice of lien" and "statement of claim", which are the usual statutory expressions, and couples them with the words "stop notice". In the light of the canon of noscitur a sociis, it is believed that this form of reference should preclude any possible litigation which might ensue from the mere use of the non-statutory nickname "stop notice".

The rationale for excluding "stop notices" from the general claims statute is self-evident. Such stop notices, and the procedures attendant upon them, are highly specialized and designed

to meet peculiar situations in connection with public construction contracts. The requirements of such statutes are to a very large extent unique and tailored to the peculiar problem with which they deal. They are regarded as entirely outside the scope and intent of the general claims statute.

Although the provisions to which cross-reference is made in subdivision (c) include all statutory provisions which have been found relating to stop notices, it is possible that additional provisions exist which have not been located in the codes and uncodified laws, or that some provisions relating thereto may exist in city charters or city ordinances adopted by home rule cities. The advisability of the "catch-all" clause at the end of the subdivision thus seems to be evident.

Subdivision (d): The exclusion from the general claims statute of claims by public officers and employees for wages, salaries and expenses is justified on the theory that such matters are normally handled by existing administrative procedures which appear to be operating without difficulty. Such claims are for the most part purely routine in nature and have not given rise to extensive litigation.

In addition to numerous ordinances and charter provisions, there are a substantial number of sections found in the Government Code which expressly authorize payment for meals, lodging, mileage, and other types of expenses which may be incurred by public per-

sonnel in the course of official duty. Some of these provisions are quite general in scope (e.g. Govt. Code § 25305, allowing "actual and necessary expenses" for county personnel travelling on county business; Govt. Code § 29610, convention expenses; Govt. Code § 29612, expenses of search and rescue; Govt. Code § 50080, expenses of attending training schools) while others are more specific (e.g. Govt. Code § 29404, expenses payable from district attorney's special fund; Govt. Code § 29436, expenses payable from sheriff's special fund). The special sections providing for compensation of public personnel in specific counties typically contain provisions governing reimbursable expenses, and some of these provisions include express procedures relating to the processing of claims to obtain reimbursement for such allowable expenses (e.g. Govt. Code § 28105, Contra Costa County; Govt. Code § 28109, Fresno County; Govt. Code § 28126, County of Butte; Govt. Code § 28127, County of Imperial; Govt. Code § 28150, County of Calaveras).

Except in the relatively few instances in which there are express statutory provisions regulating such procedure, it appears that the time, method and administrative handling of payment of salaries, wages, and reimbursable expenses is left by law to determination by the local governing board of the particular entity. (See Calif. Constitution, Article 11, §§ 7-1/2, 8, county and city charters; Govt. Code §§ 37201, 37202, 37206,

authorizing city councils of general law cities to prescribe procedure for handling demands and paying salaries and wages). Since the various local procedures adapted to the needs of different entities throughout the state seem to be functioning adequately with respect to claims of this type, no compelling justification appears to exist for including them within the present general claims statute.

In the wording of subdivision (d), it is deemed advisable to use the expression "officers and employees", in the light of the fact that many statutes and court decisions observe a distinction between the two classes of public personnel. Similarly it is deemed desirable to expand the coverage of the subdivision by adding to the general word "expenses" the words "mileage" and "allowances". Statutory provisions frequently distinguish between expenses and mileage, treating them as somewhat different in nature. In addition there are certain types of financial payments authorized to be made to public personnel which might not be considered as covered by the word "expenses", such as per diem living allowances, allowances for the cost of adequate insurance to employees operating their own automobiles on public business, etc. Accordingly, the word "allowances" is added for the sake of explicitness. Finally, it is deemed better to omit the use of the word "reimbursement" for the reason that with respect to most forms of expenses and allowances it is probably unnecessary, while for some types of

allowances it may be misleading since they may be payable in advance (e.g. allowance to pay insurance premiums on automobiles).

Subdivision (e): This subdivision makes express cross-reference to Division 4 of the Labor Code, which is the California Workmen's Compensation Act. The subdivision conforms to the language of § 3601 of the Labor Code, which provides, that when the conditions of compensation exist the workmen's compensation remedy given by the division is "the exclusive remedy", except to the extent provided in section 3706. Section 3706 authorizes an injured employee to sue the employer for damages as if the Workmen's Compensation Law did not apply in any case in which the employer had failed to secure the payment of compensation. The language formerly used, "claims arising under Workmen"s Compensation Laws", might have created an ambiguity, in that claims which could be prosecuted by ordinary civil actions under § 3706 might also have been included. The present wording, it is believed, excludes this possibility.

Subdivision (f): Two types of claims are excluded by this subdivision. First are claims by or on behalf of persons claiming to be eligible for assistance under Public Welfare programs. Such programs are governed by the Welfare Institutions Code, together with certain provisions of federal statutes and rules and regulations adopted by the State Board of Social Welfare. Second are claims by or on behalf of private individuals who have provided

goods or services or other forms of assistance to welfare recipients.

The Welfare and Institutions Code contains a number of provisions governing the procedure by which a person claiming to be eligible may apply for public assistance. (See Welf. & Inst. Code §§ 1550, needy children; 2180, aged persons; 2506, 2550, 2556, general indigent aid; 2840, applications under the Relief Law of 1945; 3081, needy blind; 3470, partially self-supporting blind residents; 4180, needy disabled; 4600, medical services to public assistance recipients.) Many of the cited provisions contain specific requirements with respect to the form and contents of the claims and prescribe other procedural steps which are specially adapted to the particular public assistance program in question.

The Welfare and Institutions Code, in practically every instance, uses the word "application" rather than the word "claim". Accordingly, this terminology has been carried over into the present subdivision. It appears desirable to exclude claims of this type from the coverage of the general claims statute, since the existing procedures, as supplemented by the rules and regulations of the State Board of Social Welfare, appear to be specially adapted to the needs of the individual public assistance programs. In addition, the Code contains special procedural provisions for prosecution of an administrative appeal to the State Board of Social Welfare by applicants for aid who are refused relief at the county level. (Welf. & Inst. Code, § 1041.1.) Existing practice in these

matters should not be disturbed.

The Welfare and Institutions Code also contains express authority for the Board of Supervisors of each county to enter into contracts to provide assistance to indigents. (See Welf. & Inst. Code, §§ 200, 202, 203, 206, 207.) Such contracts typically cover matters like provision for hospital and medical care, the boarding out of dependent minor children, the honoring of meal tickets and requisitions for clothing and other commodities. In so far as claims arising under contracts of this type are presented to the various counties, they would appear to be appropriately governed by the general county claims statute (Govt. Code §§ 29700 et seq.). To the extent that such claims are required to be filed with the State Department of Social Welfare (see Welf. & Inst. Code §§ 1556.5, 1557), they will also be excluded by the provisions of subdivision (k) below. Since public assistance programs are administered only at the state and county levels, it follows that the claims which are thus excluded will be adequately covered by other claims provisions.

Subdivision (g): Applications and claims arising under public pension and retirement systems should be excluded from the scope of the general claims statute, since such matters are adequately covered by existing statute law or by rules and regulations of retirement boards made pursuant to statutory authority; and the form, contents, and other procedural requirements with respect to

such claims are closely related to the substantive and administrative provisions regulating such public retirement systems.

The wording of this subdivision is believed to adequately cover the types of applications and claims which should be excluded. The phrase "applications or claims" is believed to be preferable to the single word "claims". Most of the statute law which provides for retirement systems uses the word "application" rather than the word "claim". (See Govt. Code, §§ 31672, 31721, 31741, County Employees Retirement Law; Govt. Code §§ 20950-20954, State Employees Retirement System, Educ. Code § 14601, State Teachers Retirement System.) In other instances, claims for retirement benefits are described in statutory language as "requests" (Govt. Code § 50872, Police and Firemens Pension System Law), while in other instances the law merely requires evidence in the form of affidavits or other proof to be submitted showing eligibility for the particular benefit (Govt. Code §§ 14575, 14663-14665, 21370). In some cases, the statutes authorizing the creation of a retirement system do not make express provision for the procedure which must be followed to secure benefits, but instead authorize the governing board of the system to provide by rule or regulation for the terms and conditions upon which benefits will be payable (Govt. Code § 45309, City Employees Retirement System; Educ. Code §§ 14732 and 14781, School District Employees Retirement System). It is believed that the words "applications or claims" as used

in the present draft adequately cover all forms of documentary demands which may be found in the law governing any retirement system.

The present subdivision also uses the phrase "money or other benefits". To merely refer to claims for "benefits" would not be adequate, since many of the retirement statutes authorize the filing of claims for moneys payable which are probably not within the classification of "benefits". Benefits normally would be considered as pecuniary advantages flowing from the system to its members or members of their family or other designated beneficiaries. However, retirement laws frequently authorize a third party, such as a funeral director, to file a claim with the retirement board for payment of funeral expenses out of the moneys which otherwise would be payable as benefits to the beneficiaries (Govt. Code §§ 14665, 21370, 31783, 31793). On the other hand, to merely refer to claims for "money" as being the types of claims which are excepted from the general claims statute, might suggest that applications or claims for other benefits, which have a financial aspect to them but which are not direct claims for money, must comply with the general claims statute. For example, written applications frequently are required from beneficiaries who desire to make an election of optional modes of distribution of benefits available; members are frequently required to make written election to leave accumulated contributions in the retirement fund on

separation from service prior to retirement; written applications for reinstatement after retirement are often demanded; and written applications for retroactive coverage or allowance for prior service on payment of required sums proportionate thereto are typically found in such statutes. In order to avoid doubts as to whether these types of claims are excluded by the present subdivision (g), it is believed that the broader language here recommended should be used.

Subdivision (h): Only one Code provision has been found which expressly provides that principal and interest due upon bonded indebtedness is payable without presentation of a formal claim. (See Govt. Code § 50663, relating to city or county negotiable revenue or special fund bonds.) Such provision, however, appears to be only a statement of existing law in any event. All of the statutes authorizing the issuance of bonds of any type (either general obligation, special fund, or revenue bonds) seem to uniformly contemplate or expressly provide that payment of principal and interest shall be made in accordance with the method prescribed in the resolution authorizing the bonds or, in the case of revenue bonds, in the indenture agreement pursuant to which the bonds are issued. (See Govt. Code §§ 43617-43619, Municipal General Obligation Bonds; 50717-50719, Revenue Bonds; 54402 and 54512, Sanitation, Sewer and Water Revenue Bond Law of 1941; 61671, 61732, and 61737.05, Community Services District Bonds.)

No strong or compelling reason appears to exist for altering

the existing practices with respect to payment or principal and interest upon bonded indebtedness, by requiring such claims to be covered by the general claims statute. The same rationale would seem to justify also the exclusion of other somewhat similar documentary evidences of indebtedness, such as short term notes, tax anticipation notes, warrants, certificates of indebtedness, or any other similar documents. The use of the phrase "notes, warrants, or other evidences of indebtedness" is advisable in view of the fact that although long term indebtedness of public entities is almost invariably represented by bonds, short term indebtedness may take a number of different forms. Occasionally, short term indebtedness may be represented by notes (see Govt. Code §§ 53829-53830, tax anticipation notes; Water Code § 31304, short term negotiable notes of County Water Districts). In other circumstances, warrants may be used to represent short term borrowings. (See Govt. Code §§ 29870-29878, county warrants for indigent aid; Water Code § 31301, short term loans by County Water Districts; Water Code §§ 36400-36408, short term loans by California Water Districts; Water Code §§ 53040-53049, short term borrowings by reclamation districts.) Still other statutes authorize public entities to incur indebtedness without imposing any specific requirements with respect to the form which the evidence thereof must take. (See Water Code § 24251, authorizing incurrence of indebtedness for formation expenses of irrigation districts; Water Code § 31300, authorizing

county water districts to borrow and issue "bonds or other evidences of the indebtedness".) In addition, section 53822 of the Government Code authorizes several types of local agencies to borrow money "on notes, tax anticipation warrants or other evidences of indebtedness". It is believed that the reasons for excluding payments of principal and interest on bonded indebtedness are clearly applicable to these other forms of evidences of indebtedness.

Subdivision (i): The present subdivision is recommended in lieu of the language in the previous draft which would have excluded from the general claims statute "claims governed by specific provisions relating to street or other public improvements". The quoted language was unsatisfactory for two reasons.

First, it was so broadly worded that it might be construed to exclude claims which are not intended to be excluded. For example, a liberal interpretation of the quoted language might even suggest that claims based upon a dangerous or defective condition of public property (Govt. Code § 53051) were excluded, at least where the particular defective condition arose in the course of a public improvement project. In addition, the broad language previously employed would appear to exclude from the scope of the act a number of types of claims in contract or inverse condemnation, in view of the fact that there are many statutes making express provision for contract procedures and eminent domain proceedings in the context of public improvement projects.

Secondly, even if the previous language were to be given a narrow interpretation so that it applied only to express claims procedures in statutes relating to street and other public improvement proceedings, the blanket exclusion thereof would be unduly broad. Some statutes providing for such claims procedures make the presentation of a claim merely permissive, and not mandatory, imposing no sanction upon the failure to present a claim. (See e.g. Sts. & Hwys. Code § 6040, change of grade proceeding under Improvement Act of 1911). Such merely permissive claims proceedings would have been excluded by the previous wording of the subdivision, as well as claims proceedings which are mandatory and which might be an acceptable alternative to the general claims procedures to be established by the draft statute.

Justification for excluding claims of the types here discussed is found in the fact that numerous statutes make express provision for the presentation of such claims in the course of public improvement proceedings, and such explicitly required procedures normally are integrated into the general improvement proceeding in such a way as to justify special treatment. A search of the statutes reveals four general categories of such explicit claims procedures. The first are the statutory provisions relating to stop notices. These types of claims are already excluded by subdivision (c) of the present statute. The other three types are:

(1) Claims or estimates of damages which the claimant believes

will result from a proposed improvement, which claims or estimates are required to be presented in appraisal proceedings prior to the commencement of the work, and are usually waived unless presented. (See Sts. & Hwys. Code §§ 7174-7176, Street Improvement Act of 1913; Sts. & Hwys. Code §§ 3266-3267, Street Opening Act of 1889; Water Code § 56053, County Drainage Act; Drainage District Improvement Act of 1919, Stats. 1919 ch. 454, p. 731, as amended (Deering's General Laws, Act 2203) §§ 4.3-4.4; Formation of Levy Districts and Erection of Protection Works Act, Stats. 1905, ch. 310, p. 327, as amended (Deering's General Laws, Act 4284) § 4; Protection District Act of 1880, ch. 63, p. 55, as amended (Deering's General Laws, Act 6172) § 6; Protection District Act of 1895, Stats. 1895, ch. 201 p. 247 (Deering's General Laws, Act 6174) § 16; Storm Water District Act of 1909, Stats. 1909, ch. 222, p. 339 (Deering's General Laws, Act 6176 § 15).

(2) Protests and objections which are required to be filed by property owners in the course of proceedings after the completion of the public improvement project, which proceedings are for the purpose of spreading, equalizing and confirming the special assessments which are levied for the purpose of paying for the project. (See Sts. & Hwys. Code § 5366, Improvement Act of 1911; Sts. & Hwys. Code § 7236, Street Improvement Act of 1913; Sts. & Hwys. Code § 10310, Municipal Improvement Act

of 1913.)

(3) Claims for damages required to be presented in response to published notice of intention to establish or to change the grade of a street, road or highway, proceedings for which are sometimes part of a special assessment project (e.g. Sts. & Hwys. Code § 5152, Improvement Act of 1911) and sometimes are independent of any such project (see Sts. & Hwys. Code § 856, proposed change of grade by State Highway Commission; Sts. & Hwys. Code § 867, proposal of Dept. of Public Works to establish boundary line of state highway). In addition to the foregoing statutory procedures there are undoubtedly ordinances and possibly some municipal charter provisions establishing somewhat similar procedures within specific cities.

The present subdivision, it is believed, is drafted with sufficiently comprehensive language to exclude from the scope of the general claims statute all of the cited provisions in which the presentation of a claim or other form of objection in public improvement proceedings or a change of grade proceedings is mandatory (i.e. "required by law to be presented"). At the same time, the subdivision is drafted narrowly enough so that it is restricted to the types of claims covered by the cited statutes, and therefore does not exclude such claims, related to public improvement projects, as personal injury or property damage claims arising out of dangerous or defective

conditions of the property embraced by the project. Since the various statutes refer to the types of claims referred to in this subdivision by such varying designations as "petitions", "objections", "estimates of damages", and "protests", it is believed advisable that all of these forms of terminology be employed in the subdivision to avoid any doubts as to the scope of its coverage.

Subdivision (j): The financing of construction or maintenance of public improvements is frequently done by means of special assessments. Where the special assessments are in the form of ad valorem "special assessment taxes" (e.g. flood control district assessments, see Cedars of Lebanon Hospital v. County of Los Angeles, 35 Cal. 2d 729 (1950); Municipal Lighting District assessments, Sts. & Hwys. Code §§ 18730-18732; Highway Lighting District assessments, Sts. & Hwys. Code § 19181), no special problems arise with respect to the payment of claims from the proceeds of the assessment which would distinguish such claims, with respect to the procedure for presentation thereof, from any other claims payable out of general taxes. Under many statutes, however, the improvement or maintenance costs are payable out of special assessments which constitute a specific lien against the land assessed.

The payment of claims in proceedings of the latter type frequently requires a specialized procedure. For example, some of the statutes of this type authorize the payment of claims

only when "sufficient money" has been paid upon the assessments, or when in the discretion of the board conducting the proceedings "the time has come to make payments". (See Sts. & Hwys. Code §§ 3310-3312, Street Opening Act of 1889; § 4371, Street Opening Act of 1903; § 7294-7295, Street Improvement Act of 1913; §§ 22200-22201, Tree Planting Act of 1931.) Other statutes authorize payment of costs of construction by delivery to the contractor of a warrant which authorizes the contractor to collect the assessment (Sts. & Hwys. Code § 5374, Improvement Act of 1911); or authorize the delivery to the contractor or his assignee (Sts. & Hwys. Code § 6422, Improvement Act of 1911) or for the purposes of public sale (see Sts. & Hwys. Code §§ 8500-8851, Improvement Bond Act of 1915) of improvement bonds secured by the assessment lien. Finally, some of the statutes authorize an owner of property to offset the assessment against his property by the amount of damages to which he is entitled (e.g. Sts. & Hwys. Code §§ 4300-4302, Street Improvement Act of 1903). The need for integrating claims payments procedures with financing procedures under statutes of this kind clearly justify exclusion of such claims from the general claims statute.

The words "in whole or in part" are used in the subdivision in recognition of the fact that many of the special assessment statutes authorize part of the cost of the project to be paid directly out of the city treasury rather than from special

assessments.

Subdivision (k): This subdivision is substantially the same as subdivision (i) of the previous draft. It is believed unnecessary to include within the scope of the general claims statute claims against public entities by the state, or claims between public entities inter se. Such claims seldom result in litigation, and, by and large, appear to be administered without undue difficulty at the present time.

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

COMMENTS: This section is identical with section 601 of the previous draft, with the addition of the words "relating to causes of action". Strictly speaking, the chapter relates to the claims, and not to the causes of action.

The section has been renumbered as section 600.5. It is recommended that this provision be not codified as part of the general claims statute, for it is merely a temporary provision at best. The current practice of the Legislative Counsel is to place such provisions in a separate section of the legislative draft following the new code sections, but not to codify it. The publishers of the codes normally draw attention to such non-retroactivity provisions by means of notes appended to the new code sections. However, if the Commission feels it best to

leave the provision where it now stands, it seems desirable to number it as 600.5, so that several years from now, when it is repealed as no longer necessary, the repeal will not leave a gap in the section numbering.

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

COMMENTS: Same as section 602 of the previous draft, with the additiin of the word "agency". There are a number of local entities bearing the statutory designation of "agency" rather than "district" or "authority". See: Sacramento County Water Agency Act, Stats. 1st Ex. Sess. 1952, ch. 10, p. 315, Deering's Gen. Laws Act 6730a; Santa Barbara County Water Agency Act, Stats. 1945, ch. 1501, p. 2780, Deering's Gen. Laws Act 7303; Shasta County Water Agency Act, Stats. 1957, ch. 1512, p. 2844, Deering's Gen. Laws Act 7580.

602. 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, and sections (609) and (610) of this chapter are applicable thereto.

COMMENTS: Based on section 603 of the previous draft, with the addition of the underscored words. The section numbers

to be inserted in the blanks are to correspond with sections 609 and 610 of the former draft. Section 609 provides for extensions of time in cases of minority, disability or death. Section 610 codifies the doctrine of estoppel of the entity to rely on a defense of noncompliance with the claim statute. Thus, a minor or incompetent whose claim was filed too late but otherwise in substantial compliance with some other claims requirement (e.g. a city charter) could secure an extension of time under section 609, although late filing would completely bar relief if section 609 were not expressly made applicable thereto. For similar reasons, section 610 should also be made applicable to such claims.

603. The governing body of a public entity may authorize the inclusion in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, of provisions governing the presentation, consideration or payment of any or all claims arising out of or related to the agreement by or on behalf of any party thereto. A claims procedure established by agreement pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of any claim than the time provided in section (608), and sections (609) and (610) are applicable to all claims thereunder.

COMMENTS: This provision is entirely new, and is recommended to supplant former section 604, which authorized entities to

wa ve compliance with the chapter by written agreement.

It is believed desirable to express in some detail the scope of the provisions which may be agreed upon by contract to govern cl aims thereunder. Where the previous language merely authorized a waiver, the present draft affirmatively authorizes substitute procedural provisions to be inserted into written agreements. The present wording is thus more specific, and is more closely in accord with the authority already conferred upon governing boards to contract with respect to the method of payment. (See, e.g. Govt. Code sec. 25464, authorizing "method of payment...including progress payments" to be determined by board of supervisors; Govt. Code sec. 51701, joint construction of public buildings; Govt. Code 54807, contracts for sanitation or sewerage enterprises; Municipal Water District Act of 1911, Stats. 1911, ch. 671, p. 1290 as amended (Deering's Gen. Laws, Act 5243) sec. 13(7), general improvement contracts of municipal water districts.)

The wording here recommended is limited to claims "arising out of or related to" the agreement. It appears both desirable and appropriate that it should also be limited to claims by or on behalf of a party to the agreement. Thus, claims by third parties, such as persons injured by the performance of the work or the condition of the property, would not be within the scope of the exception.

In order to avoid confusion, the contractual claims procedure

is made exclusive. It is regarded as unlikely that this exclusivity will create a "trap" for any claimant, for it should be presumed that the parties to an agreement ordinarily look to its terms to ascertain their rights. The "traps for the unwary" which are sometimes created by the diversity of the claims statutes result chiefly from lack of notice of the statutory requirements. Where the claims procedure is incorporated in a contract, notice is clearly present, as far as the parties thereto are concerned.

For the sake of uniformity of principle, and to preclude the insertion into contracts of unduly restrictive claims provisions, the subdivision requires a filing period no shorter than that required by the general claims statute; and makes the provisions for an extension of time in cases of disability and for application of estoppel applicable to claims under the contractual provisions.

APPENDIX

Chapter 4

CLAIMS

Article 1

§ 29700.

The board of supervisors shall not consider or allow any claim in favor of any public officer or other person against the county or any county or district fund, unless it is itemized to show:

(a) Names, dates, and particular service rendered.

(b) Character of process and person served.

(c) Distance traveled.

(d) Time and place of travel.

(e) Character of work done.

(f) Number of days engaged.

(g) Supplies or materials furnished, to whom, and quantity and price paid therefor.

§29700.1.

In any claim filed by a vendor or supplier against a county or any county or district fund for groceries or household supplies furnished to a recipient of aid from any public bureau of public assistance or department of charities, the board of supervisors may accept, in lieu of the detailed itemization required by Section 29700, a general statement of the total selling price of such groceries and of such household supplies sold and delivered to the recipient named in such claim, which statement shall as to such groceries and household supplies be a sufficient itemization.

§29701.

The claim shall be verified by the signature of the claimant to be

correct, and the amount claimed justly due, and shall be filed with the clerk of the board or with the auditor, according to the procedure prescribed by the board.

§ 29702.

A claim shall be filed within a year after the last item accrued.

§ 29703.

If the board does not hear or consider any claim required to be itemized because it is not itemized, it shall cause notice to be given to the claimant or his attorney of that fact and allow time for the claim to be itemized and reverified by the signature of the claimant.

§ 29704.

Any claim against the county or any public officer in his official capacity payable out of any public fund under the control of the board, whether founded upon contract, express or implied, or upon any act or omission of the county or any county officer or employee, or of any district or public entity the funds of which are controlled by the board, or of any officer or employee of any such district or public entity, shall be presented to the board before any suit may be brought thereon. No suit shall be brought on any claim until it has been rejected in whole or in part.

§ 29705.

Any claim not founded upon contract shall be in writing signed by the claimant or someone authorized by him, stating:

(a) Full details as to the nature of the claim.

(b) The time and place it arose.

(c) The public property and public officers or employees alleged to be at fault.

(d) The nature, extent, and amount of the injury or damage claimed.

(e) All other details necessary to a full consideration of the merit and legality of the claim. In all other respects the claims shall be presented and acted upon in the same manner as claims founded upon contracts.

§ 29706.

The board shall not pass upon a claim, unless it is filed with the clerk or auditor not less than three days, or if prescribed by ordinance five days, prior to the time of the meeting of the board at which it is asked to be allowed.

§29707.

Claims shall be made in substantially the following form:

Clerk's memoranda, No. _____ fund.

Claim of _____, dated_____, in the sum of $_____ for _____.

Allowed by the board of supervisors, _____, 19___, in the sum of $_____.

Attest: _____
Clerk of the Board.

Claim of _____.

No. _____. Fund _____.

Claim on the treasury of the County of _____, State of California, for the sum of _____ dollars, being for _____

Dates	Items	Dollars	Cents
_____	_____	_____	_____

Dates	Items	Dollars	Cents
		$	

Expenditures authorized and approved by me.

_____

The undersigned, under the penalty of perjury states: That the above claim and the items as therein set out are true and correct; that no part thereof has been heretofore paid, and that the amount therein is justly due, and that the claim is presented within one year after the last item thereof has accrued.

_____

Allowed by the board of supervisors, _____, 19____, in the sum of $_____, payable out of _____ fund.

Attest:

_____

Clerk of board of supervisors.

Countersigned:

_____

Chairman board of supervisors.

Warrant No. _____.

Approved, _____, 19_____.

_____

County auditor.

No. _____ Registered _____, 19____.

_____

County treasurer.

§29708.

The claim shall be approved before filing by the officer who directed

the expenditure.

§ 29709.

If the claim is allowed by the board, the clerk of the board shall detach and file the memorandum and endorse on the claim "allowed by the board of supervisors," together with the date of the allowance, the amount of the allowance, and from what fund. The clerk shall attest the claim with his signature and, when countersigned by the chairman, shall transmit it to the auditor.

§ 29710.

If the auditor approves the claim, he shall endorse upon it "approved," date, and number of the warrant, and in attestation thereof affix his signature to the claim and deliver it to the claimant.

§ 29711.

When approved and signed by the auditor, the claim is the warrant on the treasury within the meaning of this chapter.

§ 29712.

In order to meet the needs of the particular county, the board may adopt a different form or forms for the submission and payment of claims, and may prescribe and adopt warrant forms separate from claim forms, to the end that the approved claims may be permanently retained in the auditor's office as vouchers supporting the warrants issued. It may prescribe a different procedure for the allowance and payment of claims but the form of claim so adopted shall provide:

(a) For the approval of the officer directing the expenditure. In counties having a system under which expenditures may be initiated by requisition, the approval may be omitted from claims initiated by requisition.

(b) For the approval of the purchasing agent or other officers issuing the purchase order under which the charge was incurred, or having charge of contracts or schedules of salaries under which the claim arose.

(c) For the approval of at least one member of the board. In lieu of the supervisor's approval on each claim there may be substituted duplicate lists of claims allowed, showing, as to each claim, the name of the claimant, the amount allowed, and the date of allowance. The lists shall be certified to the board by the clerk of the board or other competent officer or employee designated by it for the purpose, as being a true list of claims properly and regularly coming before the board. Upon allowance of claims each of the lists, after amendment if necessary, shall be certified to as having been allowed by the board, the date allowed, and that such lists are correct by one member of the board or by the clerk of the board and filed, one in the office of the clerk of the board and one in the office of the auditor. When filed the lists constitute respectively the "allowance book" and the "warrant book."

(d) For the certificate of the clerk of the board as to the date and amount of allowance of the claim by the board. If the duplicate lists of claims allowed are filed, the certificate may be omitted, but in its stead there shall appear on each claim a reference by date, number, or otherwise to the list on which the claim appears listed as allowed.

(e) For the certificate of the clerk of the board or of the auditor as to the correctness of the computations.

(f) For the auditor's approval.

§ 29713.

If the board finds any claim is not a proper county charge, it shall be rejected. The rejection shall be plainly endorsed on the claim. If it is a proper county charge, but greater in amount than is justly due, the board may allow the claim in part, and cause a warrant to be drawn for the portion allowed upon the claimant filing a receipt in full for his account. If the claimant is unwilling to receive the amount in full payment, the claim may again be considered only at any meeting of the board held within 90 days thereafter.

§29714.

If the board refuses or neglects to allow or reject a claim for 90 days after it is filed with the clerk, such refusal or neglect shall constitute final action and rejection on the ninetieth day. This section shall apply to causes of action existing when this section becomes effective. The time for commencement of existing causes of action which would be barred by this section within the first six months this section becomes effective shall be six months after the effective date of the amendments to this section enacted by the Legislature at the 1957 Regular Session.

§ 29715.

A claimant dissatisfied with the rejection of his claim or with the amount allowed him may sue the county on the claim at any time within six months after the final action of the board.

§ 29716.

If a judgment is recovered for an amount more than the board allowed, upon presentation of a certified copy of the judgment, it shall allow and pay the judgment and costs. If no more is recovered than the board allowed, it shall pay the claimant no more than was originally allowed.

§ 29717.

Any claim against the county presented by a member of the board for per diem and mileage or other service rendered by him shall be itemized, verified as other claims, and state that the service was actually rendered. Before allowance, any such claim shall be presented to the district attorney, who shall endorse upon it his written opinion as to its legality. If the district attorney declares the claim or any part thereof illegal, he shall state specifically wherein it is illegal, and the claim or such part shall be rejected by the board.

§ 29718.

Except for his own service, no county officer shall present any claim for allowance against the county, or in any way, except in the discharge of his official duty advocate the relief asked in the claim made by any other person.

§ 29719.

Any person may appear before the board and oppose the allowance of any claim made against the county.

§29720.

Any person who wilfully makes and subscribes to a claim which he does not

believe to be true and correct as to every material fact therein stated is guilty of a felony and subject to the penalties prescribed for perjury by the Penal Code.

§ 29721.

No fee or charge shall be made or collected by any officer for verifying or filing any claim against the county.

ARTICLE 2

APPROVAL OF AUDITOR

§ 29740. By resolution the board of supervisors may adopt the procedure for the approval of claims prescribed in this article.

§ 29741. The auditor shall audit and allow claims in lieu of, and with the same effect as, allowance by the board of supervisors in any of the following cases:

(a) The expenditures have been authorized by purchase orders issued by the purchasing agent or other officer authorized by the board.

(b) The expenditures have been authorized by contract, ordinance, resolution, or order of the board.

(c) Expenditures under the Welfare and Institutions Code have been ordered by the board.

§ 29742. The auditor shall issue his warrant on the county treasury for such an amount for each claim as he finds to be a correct and legal county charge. He shall not issue his warrant for any claim that has not been on file in his office for at least three days.

§ 29743. If the auditor finds that any claim presented is a proper county charge, but is greater in amount than is justly due, he may allow the claim in part and issue his warrant for the portion allowed.

§ 29744. If the claimant is unwilling to receive the amount tendered in full payment, he shall return the warrant to the auditor within 30 days after the tender together with his written refusal to accept the amount in full payment of the claim. The auditor shall immediately transmit the claim to the board, together with a statement of his action, his reasons therefor, and claimant's refusal. The board shall consider the claim within 10 days after its receipt, and may allow such an amount in payment thereof as is a proper county charge, not to exceed the amount originally claimed. The auditor shall issue his warrant therefor.

§ 29745. If the auditor finds that any claim is not a proper county charge, he shall reject it and endorse his rejection thereon.

§ 29746. At least once each week the auditor shall transmit to the board reports of all claims rejected by him and not previously reported, showing, as to each claim: Date, name of claimant, amount, and reason for rejection.

§ 29747. The auditor shall prepare duplicate lists of all claims he allows, showing as to each claim: date allowed, warrant number, name of claimant, and amount allowed. He shall certify that the lists are correct, file one copy in the office of the board and preserve the other or a photographic copy thereof in his own office. As to such claims the lists constitute, respectively, the allowance book and the warrant book.

§ 29748. The board shall prescribe, by resolution, the procedure for the filing, audit, and disposition of claims.

§ 29749. The auditor shall require the certificates of the requisitioning, inspection, or receiving officers that the articles and services have been received or furnished.