

Date of Meeting: May 15-16, 1959
Date of Memo: May 4, 1959

Memorandum No. 1

Subject: A.B. 405 (Claims Statute bill)

At its meeting on Thursday, April 30 the subcommittee of the Assembly Judiciary Committee considered A.B. 405-410, the claims bills. Several amendments of A.B. 405 were decided upon in general terms, it being agreed that I would draft amendments which Clark Bradley would have made this week and that the bills will be set for hearing by the full committee on May 13.

This memorandum sets forth the amendments to A.B. 405 which I have drafted pursuant to this arrangement. (I enclose a copy of my instructions to Clark Bradley for amendment of A.B. 405 and a mimeographed copy of the bill as it was amended by the Commission at the April meeting.) These will be made and the bill hopefully will be given a "do-pass" recommendation by the Assembly Judiciary Committee prior to the Commission's May meeting. However, the amendments can be discussed at the meeting and if the Commission desires to make changes in any of them this can be done on the Senate side. The amendments are as follows:

- (1) The principal amendment decided upon by the subcommittee is to eliminate the provision that the claimant may not file suit until his claim has been rejected, either actually or by operation of law at the end of the 80-day period. The State Bar made this proposal, the committee was inclined to favor it, and when the chairman, at my suggestion, asked whether any

representative of local public entities present had any objection none was forthcoming. To give effect to this decision the following amendments have been made to the bill:

(a) "and has been rejected in whole or in part" is eliminated from Section 710. This is obvious.

(b) Section 718 is eliminated. This amendment seems quite obvious also inasmuch as the function of Section 718 is to indicate when the claimant may file suit. Since he can now file suit as soon as he has presented his claim, Section 718 is superfluous for this purpose. Section 718 would, however, have to be retained for purposes of the statute of limitations if no change were made in Section 720; this matter is discussed in (c) which follows immediately.

(c) Section 720 as it appears in A.B. 405 as amended by the Commission in April is eliminated and the following Section (renumbered 719 because of the elimination of Section 718) is substituted:

719. Any suit brought against a local public entity on a cause of action for which this chapter required a claim to be presented must be commenced within the period of time prescribed by the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity.

This change is not made absolutely necessary by the decision to permit a claimant to file suit as soon as he has presented

his claim. On the other hand, the only reason that we got into the matter of what statute of limitations should apply to public entities, as I understand it, was because the courts have held that the statute is tolled for any period of time during which a claimant is prevented from filing suit by a waiting period provision such as that found in Section 710 in the original bill. With the elimination of the waiting period there does not seem to be any particular reason for providing a different statute of limitations for suits against public entities than is applicable to suits against other defendants. Hence the amendment of Section 720. (If we were to keep a special statute of limitations provision it would be necessary to retain Section 718 to indicate when the statute would begin to run.)

(d) Delete from Section 715 "which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity." Since by our changes in Section 720 (now Section 719) we have made the ordinary statutes of limitations applicable to suits against public entities the deletion of the quoted words is necessary.

(2) At the request of representatives of local public entities who were present the subcommittee decided that the 100-day presentation period should be made applicable to causes of action for physical injury to

personal property as well as to causes of action for death and for physical injury to the person.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

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May 4, 1959

Honorable Clark L. Bradley
c/o Assembly Post Office
State Capitol
Sacramento, California

Dear Clark:

In accordance with the action taken by the subcommittee on April 29, A.B. 405 (as amended on April 24, 1959) should be further amended as follows:

1. Delete "and has been rejected in whole or in part" from Section 710.
2. Substitute for lines 48 and 49 on page 2, the following:

715. A claim relating to a cause of action for death or for physical injury to the person or to personal property shall be presented as provided in

3. Delete from Section 715 "which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity."
4. Delete Section 718 (lines 1-10 on page 3).
5. Renumber Sections as follows:

719 to 718
720 to 719
721 to 720

6. Rewrite Section 720 of the bill (to be renumbered 719) to read as follows:

719. Any suit brought against a local public entity on a cause of action for which this chapter requires a claim to be presented must be commenced within the period of time

prescribed by the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity.

7. On page 7, line 39, change "720" to "719"

Yours very truly,

John R. McDonough, Jr.
Executive Secretary

JRM:imh

UNIVERSITY OF CALIFORNIA

Office of the Dean
School of Law
Los Angeles 24, California

April 30, 1959

Professor John R. McDonough, Jr.
School of Law
Stanford University
Stanford, California

Dear John:

I appreciate your sending me the latest revisions of A.B. 405 as amended at the Law Revision Commission meeting in April.

I have carefully studied the changes. Although I am not in full sympathy with some of the policy reasons underlying all of the changes, I appreciate the reasons why they were made and think that no substantial harm has been done to the underlying program for making the claims procedures more uniform.

I think the several changes in draftsmanship have improved the bill considerably. The only possible suggestion I might make is a very minor one. Section 712 speaks of notice being "given" by mailing it, and requires for some purposes a computation of twenty days after such notice is given. I am wondering if it might be well to make more explicit when the twenty days actually begins. As you know, under C.C.P. 1013, where notice is served on an adverse party, the service is complete at the time of deposit in the mail but an extension of time is permitted where the adverse party must exercise any right, of one day together with one day additional for every 100 miles distance from the place of deposit. It may well be that some similar provision would be appropriate in the claims statute. It is possible, for example, that a claimant may be a non-resident, and that the notice of deficiency of his claim may not reach him for several days after it is actually mailed. Likewise his amendment may take several days to reach the governing body. To the extent that this is so, the twenty day period is, of course, substantially shortened in his case.

I also have some revisions as to the advisability of not placing any time limit upon the amendment of a claim. I agree that a court would not permit an amendment after the time to act upon a claim had expired knowing a claim had been granted. I am wondering, however, what a court would say if a claim were rejected and thereafter, prior to the expiration of the time within which the governing body may act, an amendment to the claim were filed setting forth additional facts which would clearly indicate that the claim was a legal charge against the entity. In addition, there is a slight possibility that the unlimited permission to amend might be used by unscrupulous claimants to the detriment of the public entity. Such claimants might originally present a claim which is confusing, misleading or inaccurate (presumably deliberately so) in its statement of facts, thereby

Professor John R. McDonough, Jr.

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April 30, 1959

sending the public entity on a wild goose chase in its investigation until the evidence had become quite "cold". At this stage, an amendment might be presented which, so far as the purpose of giving prompt notice is concerned, might be of little value to the entity. Perhaps I am indulging in too much imagination on this last point, but in view of the one year filing period permitted on many kinds of claims, including tort claims for property damage, it is perhaps something that should be considered.

I hope that the bill as now amended may have pretty smooth sailing through the Legislature. Thank you for keeping me informed.

Kindest personal regards.

Sincerely,

Arvo Van Alstyne

AVA:cz

4/20/59

Amendments Adopted by Law Revision
Commission at its April, 1959 Meeting
to A.B. 405 as amended in Assembly
March 24, 1959.

An act to Add Division 3.5 (commencing with Section 700) to Title 1 of the
Government Code, to repeal Section 342 of the Code of Civil
Procedure and to add Sections 313 and 342 to said code, relating
to claims against the State, local public entities and public
officers and employees.

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

SECTION 1. Division 3.5 (commencing with Section 700) is added
to Title 1 of the Government Code, to read:

DIVISION 3.5. CLAIMS AGAINST THE STATE, LOCAL
PUBLIC ENTITIES AND OFFICERS AND EMPLOYEES

CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

700. As used in this chapter, "local public entity" includes any
county or city and any district, local authority or other political sub-
division of the State but does not include the State or any office, officer,

department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

701. Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, chartered cities and counties and chartered cities and against officers, agents and employees thereof, this chapter shall not apply to causes of action founded on contract against a chartered county city and county or chartered city while it has a an applicable claims procedure prescribed by charter or pursuant thereto.

702. This chapter applies only to claims relating to causes of action which accrue subsequent to its effective date.

703. Articles 1 and 2 of this chapter apply to all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the 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.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

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

mileage or other expenses and allowances.

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

(e) 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.

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

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

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or a department or agency thereof or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 of Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing at Section 1720).

704. A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of Articles 1 and 2 of this chapter, if such compliance takes place before the repeal of such statute, charter or ordinance or before July 1, 1964, whichever occurs first. Sections-715-and-720-are 716 is applicable to claims governed by this section.

705. The governing body of a local public entity may ~~authorize the inclusion~~ include 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, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. The written agreement may incorporate by reference claim provisions set forth in a specifically identified ordinance or resolution theretofore adopted by the governing body. A claims procedure established by an agreement made 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-claims than the time provided in Section 714 715, and that Sections-715-and 720-are 716 is applicable to all such claims.

Article 2. Presentation, Consideration and
Enforcement of Claims

710. No suit for money or damages may be brought against a local public entity on a cause of action for which this chapter requires a claim to be presented until a written claim therefor has been presented to the entity in conformity with the provisions of this article and has been rejected in whole or in part.

711. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

- (a) The name and post office address of the claimant;
- (b) The ~~residence-or-business~~ post office address ~~of~~ to which the person presenting the claim desires notices to be sent;
- (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and
- (e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

The claim shall be signed by the claimant or by some person on his behalf.

A claim may be amended at any time and the ~~within-eighty-(80)-days~~ ~~after-it-is-presented.--The~~ amendment shall be considered a part of the original claim for all purposes.

712. If in the opinion of the governing body of the local public entity a claim as presented fails to comply substantially with the requirements of Section 711 the governing body may, at any time within ~~sixty-(60)-~~fifty (50) days after the claim is presented, ~~mail-to-the-person-presenting the-claim-at-the-address-of-such-person-appearing-on-the-claim~~ give written notice of its insufficiency, stating with particularity the defects or omissions therein.

Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim.

The governing body may not take action on the claim for a period of ~~ten-(10)~~ twenty (20) days after such notice is given. A failure or refusal to amend the claim shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Section 711.

713. Any defense based upon a defect or omission in a claim as presented is waived by failure of the governing body to mail notice of insufficiency with respect to such defect or omission as provided in Section 712, except that no notice need be mailed and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant. ~~give-a-residence-or-business-address-of-the~~

~~person-presenting-it.~~

714. A claim may be presented to a local public entity (1) by delivering the claim personally to the clerk, secretary or auditor thereof ~~not later than the one hundredth day after the cause of action to which the claim relates has accrued~~ within the period of time prescribed by Section 715 or (2) by sending mailing the claim to such clerk, secretary or auditor or to the governing body at its principal office ~~by mail post~~ one hundredth marked not later than such / day the last day of such period. 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, auditor or governing body within the time prescribed.

~~For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates 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 local public entity.~~

715. A claim relating to a cause of action for physical injury to the person or death shall be presented as provided in Section 714 not later than the one hundredth day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Section 714 not later than one year after the accrual of the cause of action.

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates 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 local public entity.

715. 716. The superior court of the county in which the local public entity has its principal office shall grant leave to present a claim after the expiration of the time specified in Section 714 715 if the entity against which the claim is made will not be unduly prejudiced thereby, where no claim was presented during such time and where:

(a) Claimant was a minor during all of such time; or
(b) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

(c) Claimant died before the expiration of such time.

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 specified in Section 714 715 has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the clerk or secretary or governing body of the local public entity not less than 10 days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in

support of or in opposition thereto, and any additional evidence received at such hearing.

~~716.~~ 717. ~~Within-eighty-(80)-days-after-a-claim-is-presented,-the-~~
The governing body shall act on the a claim in one of the following ways:

(a) If the governing body finds the claim is not a proper charge against the local public entity, it shall reject the claim.

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

(c) If the governing body finds the claim is a proper charge against the local public entity but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance. If the governing body allows the claim in part and rejects it in part it may require the claimant, if he accepts the amount allowed, to accept it in settlement of the entire claim.

Notice of any action taken under this section rejecting a claim in whole or in part shall be given in writing by the clerk, secretary or auditor of the local public entity to the person who presented the claim.

~~717.~~ 718. If the governing body of the local public entity fails or refuses to act on a claim relating to a cause of action for physical injury to the person or death in the manner provided in Section ~~716~~ 717 within eighty (80) days after the claim has been presented, the claim shall be deemed to have been rejected on the eightieth day. If the governing body of the local public entity fails or refuses to act on a

claim relating to any other cause of action in such manner within such period the claimant may, at his option, treat the failure or refusal to act as rejection of the claim on the eightieth day.

718. 719. Where this chapter requires that a claim be presented to the local public entity and a claim is presented and action thereon is taken by the governing body:

(a) If the claim is allowed in full and the claimant accepts the amount allowed ~~no suit may be maintained on any part of the~~ cause of action to which the claim relates.

(b) If the claim is ~~allowed~~ in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim.

(c) If the claim is allowed in part no suit may be maintained against such entity on any portion of the cause of action where, pursuant to a requirement of the governing body to such effect, the claimant has accepted the amount allowed in settlement of the entire claim.

Nothing in this article shall be construed to deprive a claimant of the right to resort to writ of mandamus or other proceeding against the local public entity or the governing body or any officer thereof to compel it or him to pay the claim when and to the extent that it has been allowed.

~~719.--When-suit-is-brought-against-a-local-public-entity-on-a cause-of-action-for-which-this-chapter-requires-a-claim-to-be-presented, neither-the-amount-set-forth-in-a-claim-relating-thereto-or-any-amendment of-such-claim-nor-any-action-taken-by-the-governing-body-of-the-entity-on such-claim-shall-constitute-a-limitation-upon-the-amount-which-may-be-~~

pleaded, proved or recovered.

~~720.--When suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, the entity shall be estopped from asserting as a defense to the action the insufficiency of the claim as to form or content or as to time, place or method of presentation of the claim if the claimant or person presenting the claim on his behalf reasonably and in good faith relied on any representation 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.--~~

721. 720. Any suit brought against a local public entity on a cause of action for physical injury to the person or death for which this chapter requires a claim to be presented must be commenced (a) within one year six months after the date of rejection of the claim or (b) within one year from the date on 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 local public entity, whichever is later.

Any suit brought against a local public entity on any other cause of action for which this chapter requires a claim to be presented must be commenced within one year after the date of rejection of the claim.

722. 721. Nothing in this chapter shall prohibit the governing body of a local public entity from compromising any suit based on a cause of action for which this chapter requires a claim to be presented.

Article 3. Claims Procedures Established
by Local Public Entities

730. Claims against a local public entity for money or damages which are excepted by Section 703 from Articles 1 and 2 of this chapter, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity. The procedure 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 ~~714~~ 715 of this code, and ~~Sections 715 and 720~~ Section 716 of this code shall be applicable to all claims governed thereby.

SEC. 2. Section 342 of the Code of Civil Procedure is hereby repealed.

SEC. 3. Section 342 is added to the Code of Civil Procedure, to read:

342. An action against a local public entity, as defined in Section 700 of the Government Code, upon a cause of action for which a claim is required to be presented by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code must be commenced within the time provided in Section ~~721~~ 720 of the Government Code.

SEC. 4. Section 313 is added to the Code of Civil Procedure, to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts,

local authorities, and other political subdivisions of the State, and against the officers and employees thereof, is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.