

*Vita*

2/2/61

Memorandum No. 8(1961)

Subject: Study No. 37(L) - Claims

Attached on yellow paper is a draft statute prescribing a procedure for presenting certain claims against public officers and employees. This statute would be used if the Commission's recommendation to eliminate the claims presentation requirement is rejected by the Legislature.

Section 804 is patterned after Government Code Section 710 with the principal exception that the word "maintained" is substituted for the word "brought." This matter was discussed at the January meeting, but the reason why "brought" is found in the General Claims Statute was not considered.

The general claims statute as introduced provided a mandatory waiting period between the presentation of a claim and the filing of suit, the theory being that a public entity should have a period of time in which to consider a claim during which it was not under the necessity of answering a complaint. Hence the statute provided that no suit could be brought until a claim was presented and rejected. During the course of the various amendments to the bill, the requirement that no suit could be brought until after the claim was rejected was deleted; but the prohibition against bringing an action until after presentation of the claim was left.

In the light of this change, the requirement of presentation of a claim before suit may be brought no longer serves any purpose. It merely imposes a technical requirement as to the order in which the claim and complaint must be filed. The staff does not believe that an action should be lost if the claimant visits the superior court clerk's office to file his complaint before he visits the auditor's office to present his claim. Therefore, the word "maintained" should be used instead of "brought."

Section 805 conforms to Government Code Section 711. Subdivision (c) is added, however, to require the claimant to either name or supply a description of the public employee; the other subdivisions have been retabulated accordingly.

Sections 806 and 807 are similar to Government Code Sections 712 and 713.

Section 812 substantially conforms to Section 715 of the Government Code, requiring that the claim be filed not later than one hundredth day after the accrual of the cause of action.

Sections 813 and 814 are based on Government Code Section 716 but, there are three significant differences. First, Section 716 provides that 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 time, whereas Section 813 provides that the superior court of any county in which the action could be brought shall consider and grant the request. Second,

paragraph (e) of Section 813 provides for an additional ground for leave to be granted to the claimant to present a claim after the expiration date upon a showing that the defendant would not be prejudiced by such delay. Third, Section 716 does not permit a late filing in any case unless it can be shown that "the entity against which the claim is made will not be unduly prejudiced thereby." No similar restriction is contained in Section 813.

Respectfully submitted,

John H. DeMouly

Executive Secretary

STAFF DRAFT

An act to repeal Chapter 3 (commencing with Section 800) of, and to add Chapter 3 (commencing with Section 800) to, Division 3.5 of Title 1 of the Government Code, relating to claims against public officers and employees.

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

SECTION 1. Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 3 (commencing with Section 800) is added to Division 3.5 of Title 1 of the Government Code, to read:

CHAPTER 3. CLAIMS AGAINST PUBLIC OFFICERS AND EMPLOYEES

800. As used in this chapter, unless the context requires otherwise:

(a) "Local public entity" includes any county or city and any district, local authority or other political subdivision of the State but does not include the State.

(b) "State" includes 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.

(c) "Public employee" includes any officer, deputy, assistant or employee of the State or of a local public entity.

(d) "Public property" means public street, highway, bridge, building, park, grounds, works or property.

801. Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the commencement of an action against a public employee to enforce his personal liability.

802. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity which requires the presentation of a claim as a prerequisite to the commencement of an action against a public employee to enforce his personal liability is invalid.

803. A claim against a public employee presented in substantial compliance with any other applicable claims procedure established by or pursuant to a charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of this chapter, if such compliance takes place before the repeal of such charter or ordinance or before July 1, 1964, whichever occurs first. Section 813 is applicable to claims governed by this section.

804. Unless a written claim has been presented in conformity with this chapter, no action for money or damages

may be maintained against a public employee on a cause of action for death or for injury to person or property where the death or injury resulted from the dangerous or defective condition of any public property and such condition was due to the negligence of such public employee occurring during the course of his service or employment.

805. 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 post office address to which the person presenting the claim desires notices to be sent;
- (c) The name or description of the public employee;
- (d) The date, place and other circumstances of the occurrence which gave rise to the claim asserted;
- (e) A general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of claim; and
- (f) 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 amendment shall be considered a part of the original claim for all purposes.

806. At any time within 50 days after the claim is presented, the public employee or the State or local public

entity may give written notice of the insufficiency of the claim, 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.

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 805.

807. Any defense based upon a defect or omission in a claim as presented is waived by failure to mail notice of insufficiency with respect to such defect or omission as provided in Section 806, 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.

808. A claim against a public employee of a local public entity shall be presented by:

(a) Delivering the claim to the clerk, secretary or auditor of the local public entity within the period prescribed in Section 812; or

(b) Mailing the claim to such clerk, secretary or auditor or to the governing body of the local public entity at its principal office not later than the last day of such period.

809. A claim against a public employee of the State shall be presented by:

(a) Delivering the claim to the office of the Governor within the period prescribed by Section 812; or

(b) Mailing the claim to the Governor not later than the last day of such period.

810. A claim against a public employee shall be deemed to have been presented in compliance with Section 808 or 809 even though it is not delivered or mailed as provided in such section if it is actually received within the time prescribed by the person to whom it is required to be presented.

811. The person to whom the claim is presented shall cause a copy of the claim to be delivered to each public employee named or described therein.

812. The claim shall be presented not later than the one hundredth day 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 accrued within the meaning of the applicable statute of limitations.



813. The superior court of any county in which the action could be brought shall grant leave to present a claim after the expiration of the time specified in this chapter 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; or
- (d) Claimant did not know or have reason to know within such time that the injury or damage was caused by the wrongful act or omission to act of a public employee acting within the course of his service or employment; or
- (e) The public employee against which the claim is made will not be unduly prejudiced by such delay.

814. Application for leave to present a claim after the expiration of the time specified in this chapter shall 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 for presentation 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 not less than 10 days before such hearing. Service shall be made on the public employee against whom the claim

is made and upon the person to whom the claim is required to be presented.

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.

SEC. 3. This act applies only to claims relating to causes of action which accrue on or after its effective date. Any claim relating to a cause of action which accrued prior to the effective date of this act shall be governed by any procedural provisions applicable thereto immediately prior to the effective date of this act, notwithstanding the subsequent repeal of such provisions. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that was barred prior to the effective date of this act.