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7/9/62

Memorandum No.36(1962)

Subject: Study No. 52(L) Sovereign Immunity--
Comprehensive Claims Legislation

Attached to this memorandum, on blue paper, is a tentative recommendation and proposed statute to carry out the decisions of the Commission made at the June meeting. The following matters should be especially noted:

In this draft, Section 620 has been amended to include the substance of the existing Sections 620, 621 and 641. This was done for several reasons. First, in later sections of the statute, reference is repeatedly made to claims required to be filed in accordance with Sections 621, 641 and 710 -- thus omitting Section 620, which is another important State claims section. Then, too, it seems illogical to leave Section 641 in an article entitled "Actions" when it ought to be in the article relating to the filing of claims with the State Board of Control. The amended Section 620 that appears in the draft is patterned after the Board of Control's own rules. Section 630 (Title 2 of the Calif. Adminis. Code) of the Board's rules provides:

630. Presentation of claims. There shall be presented to the Board of Control all claims:

(a) For which an appropriation has been made or for which a State fund is available and which have been rejected by the Controller.

(b) For which the appropriation made or fund designated is exhausted.

(c) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by law.

(d) For which settlement is not otherwise provided for by law.

(e) On express contract or for negligence.

(f) Claims arising out of the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution.

Subdivision (a) of Section 630 has no counterpart in the in the proposed Section 620 because that subdivision relates to claims that are originally presented to the Controller -- the entire procedure is spelled out in Sections 600-609 of the Government Code. This proposed amendment will not alter Board of Control procedures. Section 634 of the Board's rules provides the manner in which the Board acts upon claims. It provides:

634. Decisions. (a) If the board approves a claim for which an appropriation has been made or for which a State fund is available, the Controller shall reconsider his rejection thereof. If such claim is again rejected by the Controller, the claimant shall file a notice thereof with the board and the claim, together with a statement of the evidence taken by the board, shall be transmitted to the Legislature.

(b) If the board approves or recommends a claim in any other class, the claim, with the sanction of the Governor, shall be transmitted to the Legislature with a brief statement of the reasons for such approval or recommendation.

Subdivision (a), again, relates to claims filed originally with the Controller. Subdivision (b) relates to other claims whether filed under existing Section 620, 621 or 641.

Section 621 has been revised to incorporate the suggestion made at the June meeting that a section similar to Section 710 be made applicable to claims against the State.

The first five sections of the proposed statute have not been approved in their present form.

Section 760 has been revised to exclude from the claims presentation procedure claims under Vehicle Code Section 17001 and claims where the plaintiff did not know or have reason to know that a public entity was involved. These alterations were approved in substance. The language suggested has not been approved.

Section 763 has been amended to clarify the amendment of claims. The scheme proposed by the staff is this: a claim may be amended at any time before final action by the board (45 days after presentation); but amendment of a claim extends the time for the board's consideration by another 45 days. A sentence has been added to make explicit what seemed to be implicit that even though a board denies a claim, if the time for presentation has not expired, the matter may be presented again. These boards are not acting judicially and their decisions are not reviewed when the matter goes to court. Hence, their original decisions should not be regarded as res judicata. These provisions seem adequately to protect a claimant's right to amend a claim; yet they meet the objection raised to the previous version that amendments were permitted after the board had lost all right to act on

the amended claim. Section 764 has been amended slightly to accommodate the amendment procedure. The time for giving notice of insufficiency has been reduced to 20 days and the board is precluded from acting thereafter for 15 days. Neither Section 763 nor 764 has been approved.

In Sections 770 and 771, the time for the board to act has been shortened to 20 days. These sections have been amended to follow the Commission's direction that failure to act constitutes a denial of the application. These sections have not been approved.

Section 775 has been amended to include the new amendment procedure and to permit extension of the period within which the board may act. It has not been approved in its present form.

Section 776 is a new provision patterned after Business and Professions Code Section 25760. It has been included to carry out the Commission's directive that a general provision indicating the manner of service by mail be included in the statute. For purposes of comparison, Business and Professions Code Section 25760 is as follows:

25760. Notice of any act of the department required by this division to be given may be signed and given by the director or an authorized employee of the department and may be made personally or by mail. If made by mail, service shall be made in the manner prescribed by Section 1013 of the Code of Civil Procedure.. In case of service by mail, the service is complete at the time of deposit in the United States Post Office.

Section 780 is former Section 787 (in the former draft) and has been approved.

Section 781 has been revised so that its language is similar to Section 760, which prohibits suits unless the requirements of the claims statute are met. The section was approved in principle, but not in language, at the June meeting.

Section 782 was approved at the June meeting; however, there is an apparent inconsistency between it and Sections 760 and 781. Section 760 clearly prohibits suit unless a claim has been presented and "has been rejected or disallowed in whole or in part." Section 781's language now follows the language of 760. Yet 782 implies that a suit may be brought on an allowed claim if the claimant does not accept the amount allowed (subdivision (a)). Consistency would require the deletion of "and the claimant accepts the amount allowed." The staff does not know whether the Commission wishes to permit suit on allowed claims; hence, the inconsistency has not been resolved in this draft.

Section 784 was not approved at the last meeting, consideration being deferred until the problem of amending claims had been worked out. Hence, it is included again in this draft. The section was eliminated from the 1959 legislation because the Commission believed that it could be used to justify suing on a cause of action so large in comparison with the claim that it could not be said that the claim had given a "general description of the indebtedness,

obligation, injury, damage or loss incurred."

Section 21, repealing Section 13920.1 of the Government Code, has been added to carry out the Commission's action on verification. This repealer has not been approved.

Attached as Exhibit I (on yellow paper) is a letter from the Department of Finance in regard to verification. The Department suggests the addition of a requirement that a claim be made under penalty of perjury. Because of Code of Civil Procedure Section 2015.5, a requirement of verification would be satisfied by a statement under penalty of perjury. Page 2 of the letter suggests that if a claimant mistakenly verifies his claim when such is not required, the Board might be compelled to reject it. The staff, though, does not believe that a claim could be rejected that fully complied with the requirements of the law merely because a statement appeared on it that was not required to be there. The surplusage would not prevent the remainder from being legally sufficient.

Section 342 has been added to the Code of Civil Procedure to indicate clearly that Section 781 of the Government Code prescribes the limitation on actions for which a claim is a condition precedent.

Respectfully submitted,

Joseph B. Harvey,
Assistant Executive Secretary

Memo. 36(1962)

EXHIBIT I

State of California

DEPARTMENT OF FINANCE

Sacramento 14

June 22, 1962

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford University, California

SUBJECT: Sovereign Immunity
(Comprehensive Claims Presentation Statute)

Memorandum 27 (1962)
Study 52 (L)

Dear Sir:

At the meeting of the California Law Revision Commission on 6/15/62 the subject Memorandum 27 was considered, and the Commission voted to delete Section 761(b) from your proposed draft statute so as to eliminate the verification of claims filed with the State Board of Control. The Commission indicated, however, that it had no objection to a requirement that such claims contain a declaration that they are made under penalty of perjury. I was accordingly invited to draft a suggested statute to the latter effect.

Section 621 of the Government Code requires that claims filed with the Board of Control be verified in the same manner as complaints in civil actions and Section 13920.1 authorizes the Board to require a certification under penalty of perjury in lieu of requiring verification. Although Section 631 of the Rules and Regulations of the Board of Control (Title 2, Cal. Admin. Code) provides that all claims be verified, in practice the Board has been accepting either verification or declarations under penalty of perjury. Section 2015.5 of the Code of Civil Procedure provides that whenever under a law or rule a matter is required to be supported by verification,

June 22, 1962

such matter may with like force and effect be supported by a declaration under penalty of perjury. In the chapter which added this section, Section 118 of the Penal Code was amended also to include in the definition of the crime of perjury a false declaration under penalty of perjury when permitted by law. Construing all these sections together, with due consideration being given to the fact that Section 2015.5 Code of Civil Procedure was the latest enactment, it is reasonable to conclude that the present statutory law affords a claimant the option to either verify his claim or declare it to be true under penalty of perjury and authorizes the Board to accept either. If all references to verifications were to be deleted from the claims statute, a claimant could not elect to verify his claim and if he mistakenly presented a verified claim, the Board might be compelled to reject it. It is therefore our position that the verification requirement as set forth in Section 761(b) of the draft statute should be retained but that the Board rules (and the claim form) should be amended to permit either verification or declaration under penalty of perjury. This would afford the claimant the option to select an affidavit or a certification under penalty of perjury and the Board would accept either.

However, if the Commission's decision is to eliminate the verification requirement from the law, which we feel is not advisable under our aforesaid suggestion, it is suggested that Section 761(b) of the draft statute be amended to read:

"(b) The claim shall contain a written declaration that it is made under penalty of perjury."

If the verification requirement is eliminated in the draft statute, the Commission may wish to consider amending Section 13920.1 of the Government Code to eliminate the reference to an affidavit by deleting the words "in lieu of requiring an affidavit on any claim or form." The remaining language of said section should be retained as authority for requiring a certification under penalty of perjury in connection with claim forms provided by the Board under Section 762 of the draft statute.

I trust that the foregoing will be helpful to you.

Very truly yours,

/s/ Louis J. Heinzer
Louis J. Heinzer
Administrative Adviser

MCN:wek

cc: Mr. Luevano
Mrs. Dittus
Mr. Fowler

July 9, 1962

TENTATIVE RECOMMENDATION

of the
CALIFORNIA LAW REVISION COMMISSION
relating to
CLAIMS AGAINST PUBLIC ENTITIES

Background

California statutes contain provisions that bar suit against public entities and public officers and employees unless a claim for damages is presented as prescribed by statute. The three general claims presentation procedures provided by California law (which are found in the Government Code) are: Sections 600 to 655 (claims against the State); Sections 700 to 730 (claims against local public entities); and Sections 800 to 803 (claims against public officers and employees). These provisions were enacted in 1959 upon recommendation of the California Law Revision Commission. The 1959 recommendation of the Commission resulted in the establishment of a uniform procedure governing presentation of claims against local public entities and in the repeal of at least 174 separate claims procedures that formerly applied to various local public entities. In its 1959 report to the Legislature the Commission also recommended, and the Legislature enacted, statutes that reenacted without significant substantive change the claims presentation procedures previously applicable to claims against the State and to claims against public officers and employees.

In 1961 the Commission submitted a recommendation to the Legislature that all provisions requiring the presentation of claims as a prerequisite to suit against a public officer or employee be repealed. However, the legislation drafted to effectuate this recommendation was not adopted by the Legislature.

The Commission has concluded that the appropriate role for claims presentation procedures should be reconsidered in connection with the general problem of enlarged governmental tort liability. Despite widespread publicity and efforts directed toward dissemination of information about claims presentation requirements both before and after the adoption by the 1959 Legislature of the present local public entities claims statute, noncompliance with its requirements continues to provide a technical defense against determination of tort liability on the merits. To the extent that such technical defenses are not thoroughly justified by the objectives of the claims procedure, their continued existence in the future will tend to frustrate the purposes of whatever rules are ultimately adopted providing for governmental tort liability. On the other hand, to the extent that the existing claims statutes do not effectively implement the accepted objectives of the claims procedure, they may expose public entities to the dangers of unwarranted tort liability.

Recommendation

The Law Revision Commission makes the following recommendation concerning the claims presentation statutes:

Unified statutory treatment. In its 1959 recommendation, the Commission stated:

Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

The State claims presentation procedure, however, is not designed to provide the State with an opportunity to make a prompt investigation of the facts on which a claim is based, for a claim arising under Section 17001 of the Vehicle Code (negligent operation of motor vehicle by State personnel) may be presented within one year after the claim first arose or accrued and all other claims may be presented within two years after the claim first arose or accrued. Thus, the basic defect in the State claims procedure is that it fails to provide the State with prompt notice of the claim so that the State will have an opportunity to investigate the claim and correct the condition that gave rise to it. Since the Commission has tentatively recommended that the State be generally liable for dangerous conditions of State property, this defect becomes more serious for these are the cases where prompt notice of the claim is most often needed. The local public entities claims presentation statute, on the other hand, fails to provide the entity with an opportunity to settle just claims before suit is brought, for a person may file his complaint the same day he presents his claim to the public entity.

Moreover, another possible defect in the existence of the two different claims presentation procedures is that claimants, and possibly attorneys, may become confused as to which of the two claims provisions applies to a particular case. Thus, to the extent that this can be achieved, the procedure for presenting a claim to the State and to a

local public entity should be the same.

The Commission, therefore, recommends that the procedure applicable to the presentation of claims against the State and against local public entities be set forth in a single statutory enactment.

Requirement of prior rejection. The State claims presentation procedure provides the State with an opportunity to consider a claim before suit may be brought against the State on the claim. The Commission recommended in 1959 that this feature of the claims presentation procedure also be made applicable to claims against local public entities, but the statute as enacted permits the claimant to commence suit the same day he presents his claim to the local public entity. Commencement of an action on a claim before the public entity has had an opportunity to consider the claim defeats the basic policy of discouraging litigation. It may be true that the presentation of the claim gives adequate notice and opportunity for investigation but the existing law does not provide opportunity for negotiation and settlement prior to incurring the expense of litigation. Institution of a lawsuit not only obligates the claimant for attorney's fees and costs which will probably increase his minimum settlement figure, but frequently imposes a burden of needless annoyance and inconvenience on the public employees involved and on counsel for the local public entity in preparing and filing an answer within the relatively short time allowed. Much expense and inconvenience can be avoided with no great prejudice to the claimant when rejection of the claim is required before institution of an action against the public entity. A provision to this effect-- which would continue in effect this requirement of the State claims

presentation statute and change the local public entities claims statute to impose this requirement--is thus recommended.

Time for presentation of claim. It is recommended that a uniform filing time be prescribed for claims against the State and local public entities. Claims against local public entities for death or physical injury to persons, personal property or growing crops must now be presented within 100 days; but similar claims against the State are considered timely under the present law if presented within two years except for certain claims arising out of the operation of motor vehicles by State personnel which must be presented within one year. All other claims against local public entities must be presented within one year; but if against the State they may be presented within two years, except, again, for motor vehicle torts where the limit is one year.

Since the need for prompt investigation and opportunity to repair or correct the condition which gave rise to the claim would seem to be fully present in the case of the State--just as in the case of local public entities--the general claims presentation requirement should be designed to provide all public entities with prompt notice of the claim.

The Commission recommends, therefore, that the present filing times under the local public entities claims statute be made applicable to the State. One change should, however, be made in the present claims filing requirements: Claims arising out of the operation of motor vehicles by public personnel should not be subject to the requirements of the claims statute. It would seem that the purpose of the present 100-day limit in the local entities claims statute is to provide the public entity with prompt notice so that it may investigate

the claim and correct or repair the condition which gave rise to it. In the case of a claim arising out of the operation of a motor vehicle by a public officer or employee, the 100-day notice does not appear to be necessary since the public entity can institute administrative procedures pursuant to which officers and employees involved in motor vehicle accidents will promptly report the accidents to their employers. Moreover, the Commission is informed that most liability of public entities that may arise out of motor vehicle accidents is covered by insurance. It is the practice of the State--as authorized in Government Code Section 624--to deny automatically all claims covered by insurance. Other public entities follow the same practice. Hence, in motor vehicle cases the claims procedure does not serve its second purpose--affording the public entity an opportunity to consider and approve meritorious claims before commencement of litigation--for such claims are not considered, but are automatically denied. Thus, the claims presentation requirement serves no purpose so far as claims under Vehicle Code Section 17001 are concerned, and it should not be applicable thereto.

Relief for persons who could not reasonably have been expected to present a claim. Under the local public entities claims presentation statute, the statutory time limits (one hundred days for some claims; one year for all others) are applicable without regard for extenuating circumstances and without regard to whether the delay has frustrated the underlying purposes of the requirement, except in the relatively rare instances where such claims are made by persons who are minors, under a disability or representatives of deceased claimants. In these three exceptional cases, a late claim may be presented after judicial authorization upon a finding that the local public entity will not be "unduly prejudiced" thereby, but a petition for authority to present a late claim must be filed within a reasonable time, not to exceed one year from the time otherwise prescribed for filing the claim.

Since permission to present a late claim is required to be predicated on a finding of lack of prejudice to the entity, which finding ordinarily presupposes substantial evidence that the entity in fact had received adequate and prompt notice of the injury which forms the basis for the claim or that more prompt notice would not have improved its ability to make its defenses against the claim, no good reason is apparent why the same rule should not be made applicable to all claims. Since by hypothesis the entity will not be unduly prejudiced by late presentation where permitted, the continuation of the inflexible time limits in most cases will serve only to provide, as the Commission's research consultant's report indicates, a trap for the unwary and ignorant claimant. It is, therefore, recommended that the claimant be permitted to file his claim within one year after the cause of action on which the claim is based accrued if the claimant failed to file his claim through mistake, surprise, inadvertence or excusable neglect unless the public entity establishes that it will be unduly prejudiced by the late filing of the claim. The showing required of the claimant under this recommendation is the same as that required under Code of Civil Procedure Section 473 for relieving a party from a default judgment.

In cases where the claimant failed to file his claim within the 100-day period because he was a minor, under a disability or died within the 100-day period, the statute should permit the claim to be presented within one year after the cause of action accrued even though the public entity may be prejudiced by the late filing of the claim. Although as a general principle the public entity should be entitled

to prompt notice in order to have an opportunity to investigate the claim and correct or remedy the condition that gave rise to it, the Commission has concluded that, in these rare cases where it ordinarily would not be reasonable to expect the claimant to file a claim, the interest in requiring prompt notice should not be permitted to deprive the claimant or his personal representative of the cause of action even though the entity might be prejudiced by the late filing.

The existing procedure under the local entities claims statute requires a court proceeding to obtain leave to present a claim after the time prescribed. In many cases this is an unnecessary requirement. The Commission recommends, therefore, that the claimant or his representative be authorized to make application to the public entity to present the late claim. The Commission anticipates that the public entity will grant this application in the great majority of cases where the claimant meets the statutory requirements for presenting a late claim. Only if the public entity denies the application should a court proceeding be required.

The effect of the suggested changes can be summarized as follows: In any case where a claim is required to be presented within 100 days, the claimant will be entitled to present the claim within one year from the date the cause of action accrued if he shows that he failed to present the claim through mistake, surprise, inadvertence or excusable neglect unless the public entity establishes that it would be unduly prejudiced by the late filing. No provision is made for extending the time for presenting claims that are required to be filed within one year from the date the cause of action accrued.

In a case where the claimant is under a disability, he may file a late claim within one year of the date the cause of action accrued even though the public entity may be prejudiced thereby. Thus, the maximum period in any case for filing a claim against a public entity will be one year. This should be **contrasted** with the present law. Claims against the State must be filed within two years except for vehicle tort claims which must be filed within one year. But, in case of disability, the time for filing a claim against the State is extended until two years after the disability ceases. In the case of local public entities, in the rare cases where a late claim is permitted, the time limit is extended by existing law for one year beyond the time when the claim should have been filed, thus providing in **some** cases a maximum period of two years within which to present the claim.

Formal requisites of claim. The provision of the local public entities statute which specifies the contents of a claim should be made applicable to claims against the State. This will permit the claimant to determine from an examination of the statute the information he needs to set out in his claim.

The State now provides claim forms which vary in form according to the type of claim involved. To permit this practice to continue, public entities should be authorized to provide claim forms that require such information as the public entity specifies. The claimant, however, should be authorized to determine whether he will present a claim containing the information required by the statute or will use the form provided by the public entity.

There should be no requirement that claims be verified. The State claims statute now contains a verification requirement, but the local public entities claims statute does not. Section 72 of the Penal Code provides ample protection against fraudulent claims, for it makes the presentation of a false or fraudulent claim to a public entity with intent to defraud a felony.

Time for official consideration and commencing action on claim.

In order to avoid troublesome problems as to the interrelationship between the statutes of limitation and the claims statute, a specific period should be allowed for official consideration of the claim--45 days-- and a claim should be deemed to be rejected as a matter of law at the end of that period in the absence of prior action by the public entity. The State claims statute does not provide any limitation on the period allowed for official consideration of the claim although it prohibits suit on the claim until it has been rejected or disallowed. This seems unfair to the claimant. The local public entities claims statute, on the other hand, does not provide any period of time for official consideration of the claim; the claimant is entitled to commence his action the same day he files his claim. As previously pointed out, this may result in unnecessary litigation.

A period of 45 days is recommended for official consideration of a claim. At the end of that period the claim should be deemed to have been rejected if it has not been acted upon by the public entity. The parties should have power, though, to extend this period by written agreement. Moreover, if a claimant amends his claim, the entity should have another 45 days to act upon the claim. These provisions will provide the parties

with a flexible time limit within which to negotiate or settle claims, yet the claimant will not be unduly delayed in the commencement of his action if litigation becomes necessary.

Since the Commission recommends adoption of a general prior rejection requirement, a special period of limitations applicable to actions based on rejected claims should also be provided. This period should commence to run only upon actual or constructive rejection of the claim. In order to promote uniformity and avoid undue delay in a suit against a public entity, a relatively short period should be allowed for commencing suit after rejection regardless of the nature of the claim. The six-month period now provided in the State claims statute is recommended. The general statutes of limitations would thus have no application to actions against public entities upon causes of action for which claims are required to be filed.

Reduction of technical difficulties and resultant expense in handling of claims. Express statutory provision should be made to confer discretionary authority upon public entities to administratively settle and compromise tort claims even when liability is doubtful or uncertain. Present statutory law appears to authorize such compromise settlements by local public entities only by implication, and only when litigation has commenced. The proposed provision would permit public entities to use the same techniques of negotiation and compromise in doubtful cases that are utilized extensively by insurance companies in an effort to avoid ultimate legal warfare in court.

Local public entities should also be authorized to delegate permissive authority to specified officers or employees to settle

administratively minor tort claims not exceeding \$1,000 or such lesser amount as the local public entity authorizes. This authorization would make available to the larger local public entities, at their option, administrative procedures comparable to those which have been employed successfully by the Federal Government. Studies which have been made of these federal administrative tort claims procedures by competent scholars have emphasized their speed, simplicity of operation, inexpensiveness and general fairness in results reached. One of the principal advantages of the administrative settlement of tort claims on the federal level is the very substantial reduction in litigation that has resulted therefrom.

In addition, local public entites should be authorized to create claims boards to exercise such functions of the governing body of the public entity relating to the consideration and determination of claims as the public entity authorizes. This would make available to the larger local public entities, at their option, administrative procedures comparable to those used on the State level where the State Board of Control performs the function of considering and determining claims against the State.

Consent to suit against local public entities. The report of the Commission's research consultant indicates that there is a possible doubt whether a tort action may be brought against certain local public entities. A general provision providing that suit may be brought against any public entity should be enacted to eliminate any doubt that might exist whether the rules of substantive liability that are ultimately enacted will be avoided on the technical ground that a particular local public entity is not subject to suit.

Actions against public officers and employees. The statutory provisions relating to presentation of a claim as a prerequisite to suit against a public officer or employee are the subject of a separate tentative recommendation. However, the provisions relating to actions against public officers and employees are an integral part of the general claims statutes and will be placed in the same general area of the Government Code.

The Commission's recommendation in regard to claims against public officers and employees provides that no claim need be presented where the plaintiff pleads and proves that he did not know or have reason to know that the injury was caused by a public employee. In order that the entire burden of liability may not fall on the public employee under these circumstances, it is necessary to provide that no claim need be presented against a public entity if such a showing is made.

Summary of significant time limitations and other conditions under existing law and under the recommended statute. The following indicates the present variance between significant time limits and other conditions for the presentation of claims against the State and local public entities as compared to the recommendation of the Commission.

	<u>Local public entities</u>	<u>State</u>	<u>Commission Recommendation</u>
Claims for death or for injury to persons or personal property	Must be filed within 100 days	Timely if filed within 2 years (except vehicle torts--one year)	Must be filed within 100 days (except vehicle torts--claim not required)
All other claims	Must be filed within 1 year	Timely if filed within 2 years (except vehicle torts--1 year)	Must be filed within 1 year
Claim by person under disability	With court permission, may extend filing time up to one year after normal expiration if entity not "unduly prejudiced"	Filing period extended up to 2 years after removal of disability [which could total many years] even though entity may be prejudiced	Filing period may be extended to 1 year from date of accrual of cause of action even though entity may be prejudiced. Court permission is required only if public entity objects to late claim within 20 days of presentation
No claim filed because of mistake, surprise, inadvertence or excusable neglect	No extension of filing period	No extension of filing period	Filing period may be extended to 1 year from date of accrual of cause of action unless entity would be unduly prejudiced. Court permission to present is required if public entity objects to late claim within 20 days of presentation
Prior rejection before suit	No such requirement	Required--no time limit on official consideration	Required--45 day time limit on official consideration (except where extended by act of the parties)

	<u>Local Public Entities</u>	<u>State</u>	<u>Commission Recommendation</u>
Verification of claim	Not required	Required	Not Required
Waiver of insufficiency of content of claim by failure to object	Provided--must object within 50 days from presentation of claim	Not provided	Provided--must object within 20 days from presentation of claim
Time to sue after rejection	Rejection not required--normal statute of limitations applies	Within six months from rejection in all cases (except vehicle cases-- six months or normal statute of limitations, whichever is later time)	Within six months from rejection in all cases

The Commission's recommendations would be effectuated by the enactment of the following measure:

An act to repeal Sections 640, 641, 643, 644, 645, 646, 647, 701, 702, 704, 13920.1, 53055 and Article 2 (commencing with Section 710) of Chapter 2 of Division 3.5 of Title 1 of the Government Code, to amend Sections 620, 621, 622, 642, 705, and 730 of the Government Code, to add Article 2 (commencing with Section 710) to Chapter 2 of Division 3.5 of Title 1, Sections 731 and 732 to Article 3 of Chapter 2 of Division 3.5 of Title 1, Chapter 2.5 (commencing with Section 750) to Division 3.5 of Title 1, of the Government Code, and to add Section 342 to the Code of Civil Procedure, relating to claims against public entities.

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

SECTION 1. Section 620 of the Government Code is amended to read:

620. There shall be presented to the board [~~and it shall audit~~] all claims against the State [~~for which settlement is provided by law but for which~~]:

(a) For which no appropriation has been made [~~,-(b)~~] or no fund is available [~~,-or~~] but the settlement of which has been provided by law.

(b) For which the [~~(e)-An~~] appropriation made or fund designated [~~has been~~] is exhausted.

(c) For which settlement is not otherwise provided by law.

(d) For money or damages (1) on express contract, (2) for a negligent or wrongful act for which the State is otherwise made liable by statute or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution.

~~[Upon approval of such a claim by unanimous vote of the board, it shall with the consent of the Governor be transmitted to the Legislature with a brief statement of the reasons for approval.]~~

SEC. 2. Section 621 of the Government Code is amended to read:

621. ~~[Any person having a claim against the State, the settlement of which is not otherwise provided for by law, shall present it to the board at least four months before the meeting of the Legislature, accompanied by a statement showing the facts constituting the claim, and verified in the same manner as complaints in civil actions, -- Notice of the time and place of hearing shall be mailed to the claimant at least 15 days prior to the date set for final action by the board.]~~ Chapter 2.5 (commencing with Section 750) applies to all claims upon causes of action for which a claim is required to be presented to the board by Section 620.

SEC. 3. Section 622 of the Government Code is amended to read:

622. ~~[At the time designated]~~ The board shall examine and adjust such claims in accordance with such procedure as the board, by rule, may prescribe. It may hear evidence for and against them and, with the approval of the Governor, report to the Legislature such facts and recommendations concerning them as it deems proper. In making recommendations the board may state and use any official or personal knowledge which any member may have touching any claim.

SEC. 4. Section 640 of the Government Code is repealed.

~~[640.--This article is not applicable to actions on claims for the taking or damaging of private property for public use, within the~~

~~meaning of Section 14 of Article I of the Constitution, which were pending prior to September 13, 1941.]~~

SEC. 5. Section 641 of the Government Code is repealed.

~~[641.--Any person who has a claim against the State (1) on express contract, (2) for negligence, or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution, shall present the claim to the board in accordance with Section 621.--If the claim is rejected or disallowed by the board, the claimant may bring an action against the State on the claim and prosecute it to final judgment, subject to the conditions prescribed by this article.]~~

SEC. 6. Section 642 of the Government Code is amended to read:

642. Except as otherwise provided in this article and in Chapter 2.5 (commencing with Section 750) of this division, the rules of practice in civil actions apply to all actions brought under this article and Chapter 2.5 (commencing with Section 750) of this division.

SEC. 7. Section 643 of the Government Code is repealed.

~~[643.--A claim arising under Sections 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the board within one year after the claim first arose or accrued.--An action on such a claim shall be brought either within the time prescribed by the Code of Civil Procedure within which such an action may be brought or within six months after the claim is rejected or disallowed in whole or in part.]~~

SEC. 8. Section 644 of the Government Code is repealed.

[644.--A claim not arising under Sections 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the board within two years after the claim first arose or accrued.--An action on such a claim shall be brought within six months after the claim is rejected or disallowed in whole or in part.]

SEC. 9. Section 645 of the Government Code is repealed.

[645.--An action may not be maintained on a portion of a claim arising under Sections 17000 to 17003, inclusive, of the Vehicle Code, but if the amount allowed is not accepted in full settlement of the claim and an action is brought, it shall be brought on the entire claim and the allowance is ineffective.--If any other claim is rejected or is allowed only in part, an action may be maintained only on the portion of the claim rejected or disallowed.]

SEC. 10. Section 646 of the Government Code is repealed.

[646.--Claims of a minor or insane person, a person imprisoned on a criminal charge or undergoing execution of sentence of a criminal court, a married woman if her husband is a necessary party with her in commencing action thereon, or an incompetent person shall be presented to the board as prescribed by this article within two years after the disability ceases. An action on such a claim shall be brought within six months after the claim is rejected or disallowed in whole or in part by the board.]

SEC. 11. Section 647 of the Government Code is repealed.

[647.--At the time of filing the complaint in any action against the State, except in an action based upon a claim arising under Sections

~~17000 to 17003, inclusive, of the Vehicle Code, the plaintiff shall file therewith an undertaking in such sum, but not less than two hundred fifty dollars (\$250), as a judge of the court shall fix, with two sufficient sureties, to be approved by a judge of the court. The undertaking shall be conditioned upon payment by the plaintiff of all costs incurred by the State in the suit, including a reasonable counsel fee to be fixed by the court, if plaintiff fails to recover judgment in the action. Where no such undertaking is filed at the time of the filing of the complaint the State may file and serve a demand therefor. Within twenty (20) days after service of a demand, the plaintiff shall file an undertaking as required herein or the action shall be dismissed.]~~

SEC. 12. Section 701 of the Government Code is repealed.

~~[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 city and county or chartered city while it has an applicable claims procedure prescribed by charter or pursuant thereto.]~~

SEC. 13. Section 702 of the Government Code is repealed.

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

SEC. 14. Section 704 of the Government Code is repealed.

~~[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. Section 716 is applicable to claims governed by this section.]~~

SEC. 15. Section 705 of the Government Code is amended to read:

705. The governing body of a local public entity may 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, 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 claims than the time provided in Section ~~[715]~~ 767, and that ~~[Section 716 is]~~ Sections 769 to 772, inclusive, are applicable to all such claims.

SEC. 16. Article 2 (commencing with Section 710) of Chapter 2 of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 17. Article 2 (commencing with Section 710) is added to Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

Article 2. Presentment, Consideration and Enforcement of Claims.

710. Except as provided in Section 703, Chapter 2.5 (commencing with Section 750) applies to all claims for money or damages against local public entities.

SEC. 18. Section 730 of the Government Code is amended to read:

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 as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section ~~[715-of-this-code]~~ 767, and ~~[Section-716-of-this-code-shall-be]~~ Sections 769 to 772, inclusive, are applicable to all claims governed thereby.

SEC. 19. Sections 731 and 732 are added to Article 3 of Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

731. A local public entity may establish a claims board to perform such functions of the governing body of the public entity under this chapter and Chapter 2.5 (commencing with Section 750) of this division as are prescribed by the local public entity. The local public entity may provide that, upon written order of the claims board, the auditor or other fiscal officer of the local public entity shall cause a warrant to be drawn upon the treasury of the local public entity in the amount for which a claim has been allowed or

compromised or settled.

732. A local public entity may authorize an officer, agent or employee of the local public entity to allow, compromise or settle claims against the local public entity for which the local public entity may be liable, in lieu of and with the same effect as an allowance, compromise or settlement by the governing body of the local public entity if the amount to be paid pursuant to such allowance, compromise or settlement does not exceed \$1,000 or such lesser amount as may be authorized by the local public entity. Upon the written order of such officer, agent or employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.

SEC. 20. Chapter 2.5 (commencing with Section 750) is added to Division 3.5 of Title 1 of the Government Code, to read:

CHAPTER 2.5 ACTIONS AGAINST THE STATE AND LOCAL PUBLIC ENTITIES

Article 1. Definitions

750. As used in this chapter, "public entity" includes the State and any local public entity.

751. As used in this chapter, "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 or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

752. As used in this chapter, "board" means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the State, the State Board of Control.

Article 2. Claim as Prerequisite to Suit

760. (a) No suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with this chapter until a written claim therefor has been presented to the public entity in conformity with the provisions of this article and has been rejected or disallowed in whole or in part.

(b) Notwithstanding Section 621 or 710, no claim is required to be presented to a public entity in accordance with this chapter (1) on a cause of action arising under Vehicle Code Section 17001, or (2) on any cause of action for death or for injury to person or property if the

plaintiff pleads and proves that he did not know or have reason to know, within the period prescribed for the presentation of a claim to the public entity, that the death or injury was caused by an act or omission of an employee of the public entity.

761. 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 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.

762. The board may provide forms specifying the information to be contained in claims against the public entity. If the board provides forms pursuant to this section, the person presenting a claim may, in his discretion, present his claim using the form provided by the board or may present his claim in conformity with Section 761.

763. A claim may be amended at any time before final action thereon is taken by the board if the amendment relates to the same transaction or occurrence which gave rise to the original claim, and the amendment shall be considered a part of the original claim for all

purposes. If final action is taken on a claim, nothing in this section shall be construed to prohibit the presentation of another claim relating to the same occurrence or transaction in accordance with this chapter.

764. (a) If in the opinion of the board a claim as presented fails to comply substantially with the requirements of Section 761 and fails to comply substantially with the requirements established pursuant to Section 762, the board may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein.

(b) 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.

(c) The board may not take action on the claim for a period of 15 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 761 or 762.

765. Any defense based upon a defect or omission in a claim as presented is waived by failure of the board to mail notice of insufficiency with respect to such defect or omission as provided in Section 764, 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.

766. (a) A claim may be presented to a local public entity by:

(1) Delivering the claim to the clerk, secretary or auditor thereof within the period of time prescribed by Section 767; or

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

(b) A claim may be presented to the State by:

(1) Delivering the claim to an office of the State Board of Control within the period of time prescribed by Section 767; or

(2) Mailing the claim to the State Board of Control at its principal office not later than the last day of such period.

(c) A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed.

767. (a) Except as provided in subdivision (b), a claim relating to a cause of action for death or for injury to persons or to personal property or growing crops shall be presented as provided in Section 766 not later than the one hundredth day after the accrual of the cause of action.

(b) A claim relating to any cause of action not included under subdivision (a) shall be presented as provided in Section 766 not later than one year after the accrual of the cause of action.

768. For the purpose of computing the time limits prescribed by Sections 767, 769 and 772, the date of the 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 public entity.

769. When a claim that is required by Section 767 to be presented not later than the one hundredth day after the accrual of the cause of action is not presented within such time, an application may be made to the public entity for leave to present such claim. The application must be made not later than one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim and shall be verified in the same manner as a complaint in a civil action. A copy of the proposed claim shall be attached to the application.

770. At any time within 20 days after the application for leave to present a claim after the expiration of the time specified in Section 767 is made, the board may grant or deny the application.

Written notice of the board's action shall be given personally or by mailing it to the address, if any, stated in the proposed claim as the address to which the person making the application desires notices to be sent. If no such address is stated in the claim, the notice shall be mailed to the address, if any, of the claimant as stated in the claim.

771. If the board does not act upon the application as provided in Section 770 within 20 days after the application for leave to present the claim is made, the application shall be deemed to have been denied on the 20th day.

772. (a) As used in this section "superior court" means:

(1) In the case of a claim against a local public entity, the superior court of the county in which the local public entity has its principal office.

(2) In the case of a claim against the State, the superior court of any county in which the Attorney General has an office.

(b) The superior court shall grant leave to present a claim after the expiration of the time specified in Section 767 where the application to the board under Section 769 was made within a reasonable time not to exceed one year after the accrual of the cause of action and:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity against which the claim is made establishes that it will be unduly prejudiced thereby; or

(2) The claimant was a minor during all of the time specified in Section 767 for the presentation of the claim; or

(3) The 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

(4) The claimant died before the expiration of such time.

(c) Application to the superior court for leave to present a claim under this section must be made by a petition verified in the same manner as a complaint in a civil action showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The

petition shall be filed within 20 days after the application to the board is denied or deemed denied pursuant to Sections 770 and 771. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served (1) on the clerk or secretary or board of the local public entity if the claim is against a local public entity, or (2) on the State Board of Control or its secretary if the claim is against the State, not less than 10 days before the 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.

773. In the case of a claim against a local public entity the board shall act on a claim in one of the following ways:

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

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

(c) If the board finds the claim is a proper charge against the 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 board 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.

(d) If legal liability of the public entity is disputed, the board may reject the claim or may compromise the claim. If the board compromises the claim, it may require the claimant, if he accepts the amount offered to settle the claim, to accept it in settlement of the

entire claim.

774. Written notice of any action taken under Section 773 or 622 rejecting a claim in whole or in part shall be given to the person who presented the claim. 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 notice 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.

775. The board shall act on a claim in the manner provided in Section 622 or 773 within 45 days after the claim has been presented. If a claim is amended, the board shall act on the amended claim within 45 days after the date the amended claim is presented. The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made prior to the expiration of such period. If the board fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been denied on the last day of the period within which the board was required to act upon the claim.

776. If the presentation of any claim or the giving of any notice is made by mail under this article, the claim or notice shall be served in the manner prescribed by Section 1013 of the Code of Civil Procedure. Proof of service by mail may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure.

Article 3. Actions Against Public Entities

780. A public entity may sue and be sued.

781. Any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with this chapter must be commenced within six months after the date the claim is rejected or disallowed in whole or in part.

782. Where Section 621 or 710 requires that a claim be presented to the public entity and a claim is presented and action thereon is taken by the board:

(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 public entity on any portion of the cause of action where, pursuant to a requirement of the board to such effect, the claimant has accepted the amount allowed in settlement of the entire claim.

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

784. Except as provided in Section 782, when suit is brought against a public entity on a cause of action for which Section 621 or

710 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 board on such claim shall constitute a limitation upon the amount which may be pleaded, proved or recovered.

785. Nothing in this chapter is intended to impose liability upon a public entity unless such liability otherwise exists.

SEC. 21. Section 13920.1 of the Government Code is repealed.

~~[13920.1.--In-adopting-such-rules-and-regulations,-the-board-may in-lieu-of-requiring-an-affidavit-on-any-claim-or-form-require-a certification-under-penalty-of-perjury-in-such-form-as-it-may-prescribe, and-any-individual-who-wilfully-makes-and-subscribes-such-certificate-to a-claim-or-form-which-he-knows-to-be-false-as-to-any-material-matter-shall be-guilty-of-a-felony-and-upon-conviction-thereof-shall-be-subject-to-the penalties-prescribed-for-perjury-by-the-Penal-Code-of-this-State]~~

SEC. 22. Section 342 is added to the Code of Civil Procedure, to read:

342. An action against a public entity upon a cause of action for which a claim is required to be presented in accordance with Chapter 2.5 (commencing with Section 750) of Division 3.5 of Title 1 of the Government Code must be commenced within the time provided in Section 781 of the Government Code.

SEC. 23. This act takes effect on July 1, 1964.

SEC. 24. This act applies only to causes of action that accrue

on or after its effective date. Causes of action that accrued prior to the effective date of this act are not affected by this act but shall continue to be governed by the law applicable thereto prior to the effective date of this act. 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.