

8/13/62

Memorandum No. 54(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Comprehensive Liability Statute)

Attached to this memorandum is a draft of a bill to present the Commission's recommendations in regard to the liability of public entities to the Legislature. This draft brings together all of the recommendations on liability. The staff contemplates that these matters will all be presented to the Legislature in one bill. Separate bills will be used to present the claims recommendation, defense of officers and employees, insurance, payment of judgments, etc. It seems desirable, though, to present all matters relating to liability in one bill. This will ease the problem of organization of the liability provisions and will ease the problem of adjusting existing statutes, many of which contain provisions relating to more than one matter that is being covered by the liability statute.

Note that the text of the proposed general liability statute is on green pages and that the sections to be amended or repealed are on yellow pages.

Article 1.

The definitions contained in this article have been approved, except for those contained in Sections 901.20 and 901.25. The definition of "injury" that has been approved in other recommendations merely includes "death, injury to person or damage to property." The definition has been

expanded in Section 901.20 because of a fear that the previously approved definition would not clearly cover actions for loss of property or for defamation, false imprisonment, emotional distress, etc., where recovery is sought, not so much for "injury to person" as for injury to intangible interests.

"Law" is defined in Section 901.25 so that the defined term may be used in such sections as 902.35 (immunity for carrying out law) and 902.40 (immunity for enforcing invalid or unconstitutional law).

Article 2.

In accordance with the Commission's instructions, the staff has gathered in this article the statements of liability and immunity that seem to apply in all functions of government. Some of these were taken from the Federal Tort Claims Act, others from the Canadian Uniform Proceedings Against the Crown Act, and others from the statutes which were gathered by Professor Van Alstyne in the early parts of the study and which are adjusted in the latter portions of this statute.

Subdivision (a) of 28 U.S.C.A. 2680 (the Federal Tort Claims Act) is contained in substance in Sections 902.30 and 902.35. The staff reviewed the rest of the immunities stated in the FTCA and has concluded that they either are not appropriate for inclusion in this statute or are covered by provisions of this statute or existing law. These are as follows:

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter. [The State does not transmit mail.]

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise

by any officer of customs or excise or any other law-enforcement officer. [The State does not collect customs duties. So far as assessment of taxes is concerned, it appears plainly discretionary. In the collection of taxes or the detention of goods, the officer involved would appear to be acting in the execution of law.]

(d) Any claim for which a remedy is provided by Sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States. [The cited sections relate to admiralty claims against the United States arising out of the operation of ships owned by the government.]

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of Sections 1-31 of Title 50, Appendix. [The reference here is to the Trading with the Enemy Act.]

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) [Repealed.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. [The Commission has previously decided that there should be no general exception for the intentional torts. See Minutes, December, 1961, pages 10-11.]

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war. [Mil. & Vet. Code § 392 provides: "Members of the militia in the active service of

the State shall not be liable civilly or criminally for any act or acts done by them in the performance of their duty." See discussion in Study, pages 204-206. The staff does not propose to amend or repeal this section at the present time.]

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

In contrast with this long list of immunities, the English and Canadian Crown Proceedings Acts contain but two. The Canadian Act provides (and the English Act is similar):

An enactment that negatives or limits the amount of the liability of an officer of the Crown in respect of any tort committed by that officer, in the case of proceedings against the Crown under this section in respect of a tort committed by that officer, applies in relation to the Crown as it would have applied in relation to that officer if the proceedings against the Crown had been proceedings against that officer.

* * *

No proceedings lie against the Crown under this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities that he has in connection with the execution of judicial process.

The first paragraph was not included in the draft statute because we have proposed sections limiting the liability of officers where no similar immunity is intended for the entity. The second paragraph is not included because the discretionary immunity seems to cover the problem.

Section 902.05 was approved at the July meeting.

Section 902.10 has not been approved. A substantially similar version was approved in the medical and hospital recommendation. That version has been modified slightly to incorporate some language from the Canadian Proceedings against the Crown Act which has been adopted in several provinces on the recommendation of the Canadian equivalent of the Uniform Law Commissioners.

The Canadian Act (which is patterned after the English Crown Proceedings Act) provides that the government

" . . . is subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject

(a) in respect of a tort committed by any of its officers or agents"

The Act then provides that "No proceedings lie against the Crown under [the clause just quoted] in respect of any act or omission of an officer or agent of the Crown unless the act or omission would, apart from this Act, have given rise to an action in tort against that officer or agent or his personal representative." (See Revised Statutes of Manitoba, (1954), Chapter 207, Section 5.)

The discretionary immunity that was assumed to be applicable in the previous draft of this statute has been placed in a later section, and several sections have been devoted to applying the discretionary immunity in particular instances.

Section 902.15. This section expresses a general principle that was previously approved insofar as it pertains to the maintenance of hospitals and jails. The Proceedings against the Crown Act also

provides that the Crown is subject to all liabilities in tort to which, "if it were a person of full age and capacity, it would be subject. . . under any statute, or under any regulation or by-law made or passed under the authority of any statute." The English Act qualifies this liability as follows:

Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity. [Crown Proceedings Act, 1947, Section 2 (2).]

The staff did not limit the liability under 902.15 to statutory duties "binding also upon persons other than" the government, for many statutory duties with which local governments must comply are binding only on the government--private parties do not engage in the activity. The Canadian Act does not contain this limitation.

Section 902.20 was approved in principle at the July meeting in its present form.

Section 902.25 was approved in principle at the July meeting in its present form. It was previously approved in the medical and hospital recommendation.

Section 902.30. This section codifies the discretionary immunity of public employees. The language is based on language of the California Supreme Court contained in the Muskopf case and others. For comparison, the Federal Tort Claims Act, 28 U.S.C.A. § 2680 (a), provides in pertinent part:

The provisions of this chapter and section 1346(b) of this title shall not apply to. . .any claim. . . based upon the exercise

or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion be abused.

As suggested by several Commissioners, Section 902.30 refers both to public entities and public employees. However, this causes some difficulties in the relationship of this statute to other statutes. The immunity of public entities as declared by this statute is qualified by several other statutes--as, for example, Section 902.65 which declares that public entities are liable for an act repeatedly held to be discretionary in nature insofar as employees are concerned. In addition, the dangerous condition statute is not subject to a discretionary exception insofar as the entity is concerned. The immunity for employees declared here is intended to be absolute. The staff believes that the statute would serve its purpose just as well if the reference to entities were deleted. Thus, as it appears from the face of the statute, the statute would declare an absolute rule of law. Because of Sections 902.05 and 902.10, then, public entities would also be immune unless a statute actually declared them to be liable. This drafting approach was approved in connection with the medical and hospital activity recommendation and it simplifies the drafting of the statutes to a considerable degree.

Section 902.35. This section is taken from the Federal Tort Claims Act, 28 U.S.C.A. § 2680 (a), which declares the government immune upon "any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid"

The reference to validity was omitted because Section 902.45 handles

the problem of invalid statutes.

Section 902.40. This section may be unnecessary in light of Section 902.35. But it has been included because we propose to repeal a great many statutes stating this rule in regard to particular entities. (See Study p. 121.) The statutory statement of the rule, we believe, will avoid application of the common law rule that an officer becomes a trespasser ab initio and liable for all damage resulting from such trespass if he abuses his authority while on the property, even though his entry was lawful. This statute declares he is not liable for any injury unless that injury is proximately caused by the wrongful act or omission.

Section 902.45. This has not been approved. It was taken from the law enforcement statute previously distributed to the Commission. The principle has been approved.

Sections 902.50 and 902.55. These sections list a series of immunities that were approved in principle by the Commission when it considered law enforcement torts. The qualification of the immunity expressed in Section 902.50 is necessary because of the mob and riot statute.

Section 902.60. This section is new. It expresses a rule that has been declared by the courts in New York. The exception is stated because of the dangerous conditions statute.

Section 902.65 was approved in principle when law enforcement activities were considered. The staff placed it here because the law enforcement article has been restricted to police and correctional activities. Attached on pink paper is a letter from Richard Dinkelspiel

relating to this matter. In a previous draft there was a statute requiring plaintiffs in malicious prosecution actions to post a bond and to pay attorneys' fees if the action failed. This was omitted because of the action taken in regard to attorneys' fees generally. Mr. Dinkelspiel would like the penalty restored in this situation.

Section 902.70. This states a common law rule that is expressed in a large number of statutes scattered throughout the codes. The staff proposes to repeal these and substitute this general statement of the rule. See Study pp. 149-177.

Section 902.75 is substantially the same as Government Code Section 1953.5.

Sections 902.80-902.95. The remainder of the article has been approved in principle for inclusion in this article.

Article 3. The dangerous conditions article has been submitted by another memorandum.

Article 4. Because of the broadening of the scope of the general liability article, this article is now limited to police and correctional activities. It contains provisions intended to carry out decisions of the Commission made at the April meeting.

Article 5. The mob and riot statute has been previously approved.

Article 6. This article contains provisions intended to carry out the decisions of the Commission relating to fire protection that were taken at the July meeting.

Article 7. The recommendation relating to medical and hospital activities has been approved. In this article, those provisions that were superseded by the general liability article have been omitted.

Park and Recreation Activities. No article has been included in this statute relating to park and recreation activities. Memorandum 25(1962), which was distributed for the June meeting, contains certain questions raised by the Study which the Commission has not yet considered. The memorandum states these questions as follows:

1. Absence of or Inadequate Supervision. Should compliance with State statutory and administrative standards for the maintenance and operation of the activity involved be a complete defense to liability? (See Study, pp. 698-710.) This is similar to the method already approved by the Commission for dealing with hospital and correctional facilities. If no applicable State standards of care and supervision exist, or if such standards fail to cover the particular recreational activity in the course of which the injury occurred, should the test be whether the entity acted "reasonably"?

2. Negligent Supervision. Should a distinction be made between "general" and "specific" supervision (as in New York) for the purpose of setting an appropriate standard of supervision? (See Study, pp. 710-13.) "Specific supervision" might be defined as continuous, direct and specific attention to the particular activity in the course of which the injury occurred. This type of supervision would not be required (though if provided and

negligently performed, there would be liability). Is this suggestion acceptable to the Commission?

3. Other Conduct. For negligent or other tortious conduct other than supervision, should liability be imposed the same as though a private person were acting? (See Study, pp. 713.)

4. Should the entity be financially responsible for the negligent or wrongful acts or omissions of its officers, agents and employees? (See Study, pp. 713-14.)

The staff suggests that the provisions contained in Article 2 meet these problems. For example, Section 902.15 imposes liability for failure to meet standards established by law or regulation for the supervision of pupils or for the supervision of recreational activity. Section 902.55 provides that there is no liability for failure to supervise generally, but there is liability where supervision is required by law or has been undertaken for failure to supervise with reasonable care. The general standard of liability provides that entities are liable for their employees torts and are required to save their employees harmless from any liability arising out of their employment unless malice, fraud or corruption is involved.

Amendments and Repeals. These sections involve routine adjustments of existing statutes. The amendment proposed to Code of Civil Procedure Section 1095, though, is substantive and was approved at the July meeting.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

August 13, 1962

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Tort Liability of Public Entities, Officers, Agents and Employees

BACKGROUND

On January 27, 1961, the California Supreme Court, in Muskopf v. Corning Hospital District,¹ decided that the doctrine of sovereign immunity would no longer protect public entities in California from civil liability for their torts. At the same time, the court decided Lipman v. Brisbane Elem. Sch. Dist.,² in which it stated that the doctrine of discretionary immunity, which protects public employees³ from liability for their discretionary acts, might not protect public entities from liability in all situations where the employees are immune.

In response to these decisions, the Legislature enacted Chapter 1404 of the Statutes of 1961. This legislation, in

1. 55 Cal.2d 211 (1961).

2. 55 Cal.2d 244 (1961).

3. As used in this tentative recommendation, "employee" includes an officer, agent or employee, and "employment" includes office, agency or employment.

effect, suspends the effect of the decisions until the ninety-first day after the adjournment of the 1963 Regular Session of the Legislature. At that time, unless legislative action is taken, the public entities of California will be liable for their torts under the conditions set forth in the Muskopf and Lipman cases. No precise standards for the determination of this liability have as yet been defined by the courts. Nor is the effect of the Muskopf and Lipman cases on existing statutes clear. Existing statutes that impose liability upon public entities in particular areas of activity may be construed either as limitations on liability or, in cases where a rule is declared that is different from the common law rule that would be applicable, as extensions of governmental liability. Hence, it is impossible to ascertain how large the potential additional liability will be. The suggestion in the Lipman case that public entities may be liable for ~~discretionary actions~~ of governmental officers has given rise to fears that governmental liability may be expanded to the extent that essential governmental functions will be impaired. The lack of defined liability standards may make liability insurance impossible to obtain or prohibitively expensive. Accordingly, the development of adequate legislation to govern the tort liability of public entities has become imperative.

Prior to the Muskopf and Lipman decisions, the Law Revision Commission was authorized to study the doctrine of

sovereign immunity and to report its recommendations to the Legislature. Since these decisions were rendered, the Commission has devoted virtually all of its time to this assignment. The subject is so vast, however, that a complete study of all facets of the problem could not be completed prior to the 1963 Session of the Legislature. Therefore, the Commission concentrated its attention on several large areas of governmental activity--the areas of activity where experience in other states and under the Federal Tort Claims Act has shown that claims of liability are most apt to arise.

As the Commission studied these areas of activity, it formulated certain tentative recommendations as to what the rules of liability should be in each particular area. These tentative recommendations were distributed widely to all persons and organizations who expressed an interest in the Commission's study. Comments and suggestions relating to these tentative recommendations were solicited from all such persons and organizations. All comments received were analyzed and considered.

From this study of particular areas of governmental activity, the Commission has concluded that certain problems recur and that the rule formulated to meet such a problem in one area may be readily applied in all areas of governmental activity. In several areas of activity, though, there are unique problems that cannot be met by rules of general application. Therefore, the Commission recommends the enactment of legislation containing sections of general application to all activities of all governmental entities and, in

addition, several sections stating special rules applicable to unique situations.

This legislative pattern will meet the most pressing problems in regard to liability that public entities will face upon the expiration of the statute suspending the effect of the Muskopf and Lipman decisions. The Commission recognizes that problems of detail will remain to be solved and intends to continue its study of sovereign immunity until recommendations have been submitted to subsequent legislative sessions on these problems.

RECOMMENDATIONS

General Provisions Relating to Liability

1. Public entities should not be liable for torts unless they are declared to be liable by statute. Unless such a general immunity is conferred upon public entities, there will always be an indeterminate area of potential liability not expressly covered by statute. Because government performs a large number of functions that private persons do not and cannot perform, and because the operations of government are so vast, this undefined potential liability would be an ever present threat to the financial stability of governmental entities. Spreading of the risk through insurance would either be impossible or ruinously expensive precisely because of the undefined limits of the risk.

It is not the purpose of this recommendation to grant public entities a comprehensive immunity from liability.

Rather, it is the purpose of this recommendation to permit the Legislature to establish the limits of governmental liability by statute. Many existing statutes impose liability upon governmental entities to the same extent that private persons are liable. The Commission is recommending the enactment of several statutes imposing liability upon public entities within limits that are carefully spelled out. These statutes are intended to state the limit of governmental liability, and this purpose would be frustrated if liability could be imposed beyond the area defined in the statutes.

2. Public entities should be liable for the acts of their employees within the scope of their employment to the extent that the employees are personally liable for such acts. This would impose upon public entities the same responsibility for the tortious acts of their employees as presently rests upon private employers.

For some entities, this recommendation would constitute a substantial expansion of their tort liability. For many others, however, this recommendation would constitute little or no extension of their existing liability. School districts and reclamation districts are now generally liable for the negligence of their personnel. Certain flood control districts are generally liable for the negligence of their trustees. Community services districts, county water districts, various water agencies and several other districts are required to pay any judgments recovered against their personnel for acts or omissions committed in the service of the district.

Irrigation districts and California water districts must pay judgments recovered against their officers. Thus, over 2,400 public entities in California are now financially responsible for the torts of some or all of their personnel. In addition, Vehicle Code Section 17001 subjects all public entities in the State to liability for the negligent operation of motor vehicles by their personnel; and under existing law cities, counties and school districts are liable for injuries caused by dangerous conditions of public property that have been negligently created or permitted to remain. The Commission's recommendation would extend the principle underlying these statutes to all public entities in the State, thus permitting the repeal of a vast number of statutes that are, without apparent reason, inconsistent both as to the manner in which the principle is applied and as to the personnel covered.

3. Public entities should be liable for the damages that result from their failure to comply with applicable standards of safety and performance that have been established by statute and regulation. Although decisions relating to the extent school pupils should be supervised and the facilities, personnel or equipment to be provided in various other public services involve discretion and public policy to a high degree, nonetheless, when minimum standards have been fixed by law and regulation, there should be no discretion to fail to meet those minimum standards.

4. Public entities should be declared by statute to be liable for nuisance. They are liable for nuisance under existing law, and this liability should be continued. Under existing law, a plaintiff must bring his case within the scope of Civil Code Section 3479 or some other statute defining nuisance in order to make out a case of nuisance.

Civil Code Section 3482 provides: "Nothing which is done or maintained under the express authority of statute can be deemed a nuisance." This section has been limited to a certain extent by decisions holding that a general statutory authority to engage in a particular activity (as distinguished from explicit authority to create the nuisance itself) would not be construed to authorize the creation of a nuisance. However, the existence of Section 3482 would appear to preclude liability from being imposed upon public entities under this recommendation for "governing" in one of its most fundamental senses--making laws.

5. Public entities should not be liable for punitive or exemplary damages. These damages are imposed to punish a defendant for oppression, fraud or malice. Generally, exemplary damages cannot be awarded against a principal for the act of his servant in the absence of a showing that the principal is also guilty of some conduct for which he should be punished--as, for example, his approval or ratification of his servant's fraudulent or malicious conduct.

Where a public entity is involved, the exemplary damages assessed against it would be charged against the taxpayers generally. It would be an inappropriate use of punitive or exemplary damages to impose them upon the taxpayers when the malice, fraud or oppression involved is not that of the taxpayers themselves but is that of an officer, agent or employee of the public entity.

6. Public entities should be immune from liability for acts done by their employees in the exercise of discretion. This recommendation would also make applicable to public entities the discretionary immunity doctrine now applicable only to public employees. Under this doctrine, public employees are not liable for their discretionary acts within the scope of their authority. Thus, judges are immune from liability for their judicial acts, prosecutors are immune from liability for instituting criminal prosecutions, administrative officials are immune from liability for suspending or revoking licenses, health officers are immune from liability for deciding not to quarantine, and city officers are not liable for awarding a franchise.

The Lipman case stated that public entities should be liable in some situations where public employees enjoy an immunity. Under the Commission's recommendations, such entity liability would only exist where a statute so states. Under these recommendations public entities will be vicariously liable for their employees' torts just as private employers are, but the discretion of public entities to determine and carry out public policy will not be curtailed by the fear that liability may be imposed by a trier-of-fact who disagrees with the policy adopted.

Although the existing case law has spelled out in some detail the extent of the discretionary immunity of public employees, there are certain instances where the law is not clear. Statutes should be enacted, therefore, to make clear whether or not the discretionary immunity is or is not applicable to these cases. Where the statutes are not explicit, the discretionary immunity developed or to be developed by the cases in regard to the liability of public personnel will be the standard of immunity for governmental entities.

The Commission recognizes that at times application of the discretionary immunity doctrine seems harsh and unfair--as, for example, when persons are denied all relief for injuries caused by deliberate and malicious abuses of governmental authority. The Commission, in its continuing study of sovereign immunity, will undertake a study of the discretionary immunity doctrine to determine whether or not it should be modified. The courts may modify the doctrine in view of the fact that the financial responsibility for the torts of public employees will no longer fall solely on the employees themselves. The Commission has already made some recommendations that impinge on the doctrine and that will result in entity liability where there is no corresponding employee liability. But, until the sovereign immunity study has been completed, this recommendation will provide a reasonable guide by which public entities may determine the extent to which they may be held liable.

7. The statutes should make clear that public entities and their employees are not liable for any act or omission in the execution of any law. The statutes should also make clear that public entities and their employees are not liable for inadequate enforcement of any law or

regulation or for failure to take steps to regulate conduct. This immunity should extend to the inspection of property to determine compliance with health and safety regulations, the granting and revoking of licenses and permits, and similar action that may be taken to enforce the law. The making and enforcement of laws is the basic activity of government. The extent and quality of governmental service is a basic governmental policy decision that public officials should be free to determine without fear of liability either for themselves or the governmental bodies that employ them. The remedy for officials who make bad law, who do not adequately enforce existing law, or who do not provide the people with services they desire is to replace them with other officials. But their discretionary decisions in these areas should not be subject to review in tort suits for damages.

At common law, public officers were immune from liability for trespasses necessarily committed in the execution of law. However, if the authority of the officer was abused, or if he committed some tortious injury, while upon the property, he was personally liable ab initio as a trespasser for the entry and all injuries resulting therefrom. A great many statutes have been enacted to modify this common law rule. In somewhat inconsistent terms, they generally limit the liability of the officer to the damages flowing from his negligent or wrongful act. But there are a vast number of additional statutes authorizing public officials to enter private land that contain no reference to the liabilities that may be incurred. The inconsistent policies expressed in these various statutes should be superseded by a statute applicable to all public entities limiting the liability of the entering officer and his employing public entity to the damages caused by his negligent or wrongful

act. The enactment of such a statute would permit the repeal of a large number of statutes declaring a similar rule.

Government Code Section 1955 now provides public employees with an immunity from liability for enforcing laws later held to be unconstitutional. This section, though, does not provide adequate protection. It does not clearly apply to State constitutional provisions, charter provisions, ordinances or administrative regulations. Moreover, it does not provide protection for an officer who in good faith enforces a law later held to be repealed by implication or inapplicable for any other reason. The protection afforded by this section should be broadened to provide an immunity whenever an employee, in good faith and without malice, enforces any constitutional provision, statute, charter provision, ordinance or regulation that is subsequently held to be invalid or inapplicable for any reason.

8. The immunity that public employees now enjoy in malicious prosecution actions should be continued. A review of the cases reaching the appellate courts reveals that a great many of these suits are totally groundless. Public officials should not be subject to harassment by "crank" suits. In some cases, though, public employees have acted maliciously in using their official powers, and in these cases the injured person should not be totally without remedy. The employing public entity should be liable for the damages caused by such abuse of public authority, and in those cases where it is actually found that the responsible public officer acted with actual malice, actual fraud or corruption, the public entity should have the right to seek indemnity

from the officer. Another recommendation of the Commission contains proposed legislation designed to discourage the bringing of totally groundless suits against public entities and employees.

9. Under the common law, certain public officers were at times held liable for the acts of subordinate employees even though the officers themselves were innocent of any negligence or other wrong. For most public officers, though, the courts held that respondeat superior was inapplicable and that they were not liable for the acts of their subordinates unless they participated in those acts or were negligent in appointing or failing to discharge or take other appropriate action against unfit subordinates.

A large number of statutes have been enacted limiting the liability of public officers for the acts of others. These statutes appear in a variety of inconsistent forms. These statutes should be replaced with a single statute declaring a uniform rule applicable to all public employees. It is, of course, unnecessary to state in the statute that public employees are liable for acts in which they participate, for in such a case the employee is not held liable for the acts of another but for his own act. But the statute should declare that all public employees are immune from liability for the acts of a subordinate employee unless they either appointed or failed to take reasonable action to remove the subordinate after notice of his unfitness or incompetence.

10. Government Code Section 1953.5 declares a rule similar to that just discussed. It provides that public officers are not liable for money stolen from their custody unless they failed to exercise due

care. This statute should be made applicable to all public employees and placed in the statute dealing generally with the liabilities and immunities of public employees.

11. Not only should public entities be directly liable for the torts of their personnel, but in cases where an action is brought against a public employee for tortious acts committed in the scope of his employment, the public entity should be required to pay the compensatory damages, excluding punitive damages, awarded in the judgment if the public entity has been given notice of the action and an opportunity to defend it. A number of statutes now require certain public entities to pay judgments against their employees, but none require the employee to give notice and an opportunity to defend to the entity. Yet it seems only fair that if governmental entities are to be bound by judgments, they should have the right to defend themselves by controlling the litigation.

12. Whenever a public entity is held liable for acts of an employee committed with actual fraud, corruption or actual malice, the public entity should have the right to indemnity from the employee. However, where the public entity has provided the employee's defense against the action, it should not have a right to seek indemnity from the employee unless the employee has agreed that it should. In conducting an employee's defense, the entity's interest might be adverse to the interest of the employee. For example, if both the employee and the entity were joined as defendants, the public entity's interest might be best served by showing malice on the part of the employee; for in such a case the public entity could cross-complain and recover indemnity from the employee for any amounts the entity was required to pay. But

such a showing would be contrary to the best interests of the employee, for he could be ultimately responsible for the damages awarded. Hence, the undertaking of an employee's defense should constitute a waiver of the public entity's right to indemnity unless, by agreement between the entity and the employee, the public entity's right of indemnity is reserved.

13. Section 1095 of the Code of Civil Procedure, which relates to mandate actions, should be amended to apply to all public entities and to include officers, agents and employees. As presently worded, it refers only to officers of the State, county, or municipal corporations, and requires damages assessed in mandate actions to be levied against the particular entity represented by the respondent officer. As these cases involve officers appearing in their official capacity the principle should be extended to all public entities and to all persons against whom a mandate action may be directed.

Dangerous Conditions of Public Property

[The material on this part of the recommendation will be filled in this space after the Commission has considered Memorandum No. 46(1962).]

Police and Correctional Activities

A major activity at all levels of government involves the detection, arrest and incarceration of violators of the law. This function of government has been regarded traditionally as an exclusively governmental, as distinguished from proprietary, activity. Hence, governmental bodies have been immune from liability for damages caused by governmental personnel engaged in law enforcement. Not only have governmental entities been held immune, but governmental employees have also been held immune from liability for many of their law enforcement activities. Judges have been held immune for damages caused by their judicial acts, prosecutors are immune for instituting prosecutions, and police officers are not liable for failing to arrest offenders, even though these actions may have been taken maliciously.

Although governmental law enforcement officers have enjoyed a great deal of immunity from liability for their discretionary acts, they are still subject to a large amount of liability. They may be held liable in damages for false arrest, false imprisonment or assault, even though they may have been acting in utmost good faith in carrying out their duties with diligence. Because the government has been immune from all liability in this area, public law enforcement officers have had to bear this liability alone. In some instances, governmental entities have provided their law enforcement officers with insurance, but the protection

offered them has neither been uniform nor complete.

The foregoing recommendations will provide adequate rules for determining liability in most cases that may arise out of police and correctional activities. In a few instances, though, experience in other jurisdictions that have waived sovereign immunity indicates the need for legislation stating rules applicable specifically to this area of activity. The Commission, therefore, recommends the enactment of legislation containing the following principles:

1. Public entities and employees should not be liable for failure to maintain adequate or sufficient equipment, personnel or facilities in jail or other detention facilities unless there has been a departure from an applicable statutory or regulatory standard. There are few statutes and regulations that now prescribe standards for local jails and detention facilities; but to the extent that they do impose mandatory standards, the local authorities should not have any discretionary immunity for departing from those standards. And where these standards have been met, a public entity should not be liable to one who claims that more should have been done.

2. Public entities and public employees should be made liable for the damages proximately resulting from their negligent or wrongful interference with the attempt of an inmate of a correctional institution to seek a judicial review of the legality of his confinement. The right of a person confined involuntarily to seek redress in the courts is a fundamental civil right that should receive the utmost legal protection.

3. As a general rule, public entities and public employees should not be liable for failing to provide medical care for prisoners. Again,

the standards of care to be provided prisoners involve basic governmental policy that should not be subject to review in tort suits for damages. However, if an employee charged with the care actually knows or has reason to know that a prisoner is in need of immediate medical attention, he and his employing public should be subject to liability if he fails to take reasonable action to see that such attention is provided.

4. Public entities and employees should not be liable for the damage caused by escaping prisoners. The nature of the precautions necessary to prevent the escape of prisoners and the freedom that must be accorded inmates of detention facilities for rehabilitative purposes are decisions that should be made by the proper public officials unfettered by any fear that their decisions may result in liability.

Damages from Mobs and Riots

Sections 50140 through 50145 of the Government Code impose absolute liability upon cities and counties for property damage caused by mobs or riots within their boundaries. Similar laws exist in many states. These laws are patterned after the English Riot Act of 1714 which, together with its successor statutes, has imposed liability on local police districts for mob and riot damage for almost 250 years.

The Commission has concluded that the general purpose underlying these statutes is sound. Local government is responsible for the maintenance of peace and order and should be liable in damages when it negligently fails in its responsibility. Imposition of liability for damages caused by mobs or riots provides local policing agencies with a strong incentive to prevent the deterioration of law enforcement to the point where mob violence is apt to occur. However, the California statute should be revised to eliminate several defects and anachronisms. Accordingly, the Commission recommends:

1. The theory upon which liability is presently based--absolute liability without fault--should be abandoned. There is no logical reason for imposing such a strict standard upon local government. Where a local public entity has done all that reasonably could be expected under the circumstances to prevent or quell a mob or riot, the imposition of

absolute liability for damages resulting from the disturbance serves no defensible purpose for it provides no greater incentive to act. In line with several other states which have changed the theory upon which liability for mob or riot damage is founded, California should impose liability only where the responsible local authority fails to exercise reasonable care or diligence to prevent or suppress the disturbance.

2. Liability for mob or riot damage should be imposed upon all local public entities that have the duty or have undertaken to maintain peace and order within their boundaries. The existing law applies only to cities and counties. Yet community services districts and police protection districts also may undertake to provide police protection service to maintain peace and order. Under the existing law, if mob or riot damage occurred in such a district, the county would be liable even though it had no opportunity to prevent or suppress the mob or riot.

3. Local policing agencies should be liable for death or personal injuries as well as for property damage caused by mobs or riots. The rationale that supports recovery for property damage applies with equal vigor to death or personal injuries resulting from civil disorders. Several states have extended their mob or riot damage statutes to provide compensation for personal injuries. Such statutes implement the public policy against lynching and mob intimidation of minority groups, for they encourage local policing agencies to be diligent in preventing such occurrences.

4. The terms "mob" and "riot" should be defined. Neither term is defined in the present statute imposing liability for mob or riot damage (Government Code Sections 50140 through 50145). Although there

is a definition of "riot" in Section 404 of the Penal Code, it is uncertain whether the Penal Code definition is applicable to Government Code Sections 50140 through 50145, or whether the "riot" referred to in Sections 50140 through 50145 is a common law riot. Under the Penal Code definition, a riot is any use of force or violence, disturbing the peace, by two or more persons acting together without authority of law. A common law riot is a tumultuous disturbance of the peace by three or more persons who, without lawful authority, seek to accomplish a common purpose, using force if necessary, in such a manner as to alarm and frighten.

The Penal Code definition is too broad for general use in the mob or riot damage statute, for this definition would classify virtually any violent crime committed by more than one person as a riot. On the other hand, the common law definition does not reach mob violence committed without great tumult.

The recommended legislation contains definitions of "mob" and "riot" that are similar to definitions that appear in the statutes of several other states. The definition of "mob" states the same number of participants (two) mentioned in the Penal Code section. This is appropriate because of the specific intent requirement in the substantive definition of mob, which embraces a rather narrow area of particularly reprehensible conduct somewhat akin to "vigilante" activity. On the other hand, the requisite number of participants to constitute a "riot" has been raised to ten. To permit imposition of liability for the activities of a fewer number--as, for example, where several persons in a single automobile tumultuously engage in a violent crime--would,

in effect, largely circumvent the general rule of immunity for failure to enforce the law.

5. Anyone who aided, abetted or participated in a mob or riot should be denied compensation for damages resulting from the mob or riot. Compensation should be similarly denied to anyone guilty of contributory negligence. The existing law is too narrow, for in terms it bars recovery only where a person negligently aids or abets a mob or riot.

6. A public entity that is liable under the mob or riot damage statute should have a right of indemnity in the amount of such liability from any person who aided, abetted or participated in the mob or riot. In addition, the public entity should be indemnified in an amount to be fixed by the court for any necessary expenses incurred in defending against liability under the statute, including costs and reasonable attorneys' fees.

7. The special provisions found in the existing law governing venue and the time within which actions for mob or riot damage may be brought should not be retained. The general provisions relating to the venue of actions make the special venue provisions unnecessary. The claims statute applicable to all local public entities provides entities with adequate notice; hence, the special statute of limitations also is unnecessary.

8. Other provisions of the existing law requiring the issuance of warrants and the levy of taxes to pay judgments are unnecessary and

redundant in light of the Commission's recommendation regarding the payment of tort judgments.⁴

Fire Protection

Publicly administered programs of fire prevention and protection have long been regarded as a "governmental" function and, hence, a form of activity protected by the doctrine of sovereign immunity. Even in states where the doctrine of sovereign immunity has been waived, the courts have held public entities immune from liability for failing to maintain adequate water pressure for fire fighting purposes. In California, the Legislature has removed a substantial portion of this immunity by providing that public entities are liable for the negligent operation of emergency vehicles, including fire fighting equipment, when responding to emergency calls.

Yet, there are strong policy reasons for retaining a large measure of the immunity that now exists. The incentive to diligence in providing fire protection that might be provided by liability is already provided because fire insurance rates rise where the fire protection provided is inadequate. Moreover, the risk spreading function of tort liability is performed to a large extent by fire insurance. In emergency situations, it may be that it is more desirable for fire fighters to act diligently to combat a conflagration without thought of the possible liabilities that might be incurred than it is to spread the loss from the fire upon the taxpayers. Thus, in formulating rules of liability applicable to fire protection activities, it is necessary to strike a careful balance between the need for encouraging utmost diligence in combatting fires and

4. See Tentative Recommendation of the California Law Revision Commission relating to Payment of Tort Judgments by Local Public Entities (July 1, 1962).

providing compensation for injuries caused by the negligent or wrongful conduct of public personnel. To resolve these problems, the Commission recommends that legislation be enacted containing the following principles:

1. Public entities should not be liable for failure to provide fire protection. Nor should they be liable for failure to maintain adequate personnel, equipment or other fire protection facilities. Whether fire protection should be provided at all, and the extent to which fire protection should be provided, are political decisions best made by the policy making officials of government. To permit review of these decisions by judges and juries would remove the ultimate decision making authority from those politically responsible for making the decisions.

2. Public entities and public personnel should not be liable for ordinary negligence in maintaining fire protection equipment or in fighting fires. There are adequate incentives to careful maintenance of fire equipment without imposing tort liability; and firemen should not be deterred from any action they may desire to take in combatting fires by a fear that liability might be imposed if a jury believes such action to be unreasonable. The liability created by the Vehicle Code for negligent operation of emergency fire equipment should be retained, however, for such liability does not relate to the conduct of the actual fire fighting operation.

3. Liability should be imposed for personal injuries or death caused by gross negligence or wilful misconduct in the maintenance of fire equipment or in the fighting of fires. Liability for serious misconduct will not be a serious deterrent to diligence in providing

fire protection.. Although the risk of property loss from fire is spread through insurance, the risk of personal injury or death from fire is not. Hence, the policy considerations indicating that liability should not be imposed for ordinary negligence in fire fighting reach their limits when personal injuries resulting from wilful misconduct or gross negligence are involved.

4. Fire protection agencies often provide assistance in combatting fires beyond their own boundaries. In such cases, the determination of the entity responsible for a tortious injury may be extremely difficult. The policy considerations involved in allocating the ultimate responsibility are extremely complex. For example, the fire department providing aid may cause injury while still in its own territory on its way to the fire, after leaving its own territory but before reaching the fire, while actually fighting the fire, while returning but before reaching its own territory, or after reaching its own territory while returning from the fire. A small public entity may have a large outbreak of fire requiring the services of many fire departments and hundreds of men. To impose all risks of liability upon the agency calling for aid under such circumstances might expose it to risks of liability far beyond its capacity to bear.

The Commission recommends, therefore, that both the public entity calling for aid and the public entity responding to such a call should be liable for all tortious injuries occurring during the performance of the fire fighting service. Each public entity, however, should be fully responsible for the torts committed by its own personnel. Thus, if any public entity is held liable for the torts committed by the personnel of

another public entity, it should be able to recover full indemnity from the responsible entity. The public entities should, of course, have the right to allocate ultimate tort responsibility in some other way by agreement.

5. Existing statutes provide an immunity to fire fighting personnel for transporting persons injured by fire to obtain medical assistance. This immunity should be continued, for the fear of tort liability might provide an undesirable deterrence to the prompt and diligent furnishing of such assistance.

Medical, Hospital and Public Health Activities

Medical, hospital and public health activities of public entities have traditionally been regarded as "governmental" in nature even where the particular hospital involved was receiving paying patients and was otherwise operated like a private hospital. As a result, public entities have been immune from liability arising out of these activities. The effect of this immunity of governmental entities had been lessened, however, by legislation authorizing the purchase of malpractice insurance for the personnel employed in such hospitals and requiring the State to pay judgments in malpractice cases brought against State officers and employees.

The recommendations relating to the liability of public entities generally will resolve most of the problems of liability and immunity growing out of medical and hospital activities that have been revealed by the cases arising in other jurisdictions where sovereign immunity has been waived. Some of these problems, though, call for statutes of particular application in this area of activity:

1. Where damages result from inadequate facilities, personnel or equipment in hospitals and other medical institutions, public entities should be liable if the inadequacy stems from a failure to comply with applicable statutes or the regulations of the State Department of Public Health but not otherwise. Although decisions as to the facilities, personnel or equipment to be provided in public institutions involve discretion and public policy to a high degree, nonetheless, when minimum standards have been fixed by law and regulation, there should be no discretion to fail

to meet those minimum standards. On the other hand, when those standards are met in a public hospital, or other medical institution, it should not be liable to one who claims that more should have been done.

This recommendation will leave determinations of the standards to which public hospitals and other medical institutions must conform in the hands of the persons best qualified to make such determinations and will not leave those standards to the discretion of juries in damage actions. Hence, governmental entities will know what is expected of them and will continue to be able to make the basic decisions as to the standards and levels of care to be provided in public hospitals and other medical institutions within the range of discretion permitted by State law and regulations.

Although most public hospitals are licensed by the State Department of Public Health and are subject to its regulations, the University of California's hospitals are not. Yet, its hospitals should be required to maintain the same minimum standards that other comparable hospitals do. Hence, the Commission recommends that the State should be liable for damages resulting from inadequate facilities, personnel or equipment in University hospitals if they do not conform to the regulations applicable to other hospitals of the same character and class.

2. Public entities and public employees should be made liable for the damages proximately resulting from their negligent or wrongful interference with the attempt of an inmate of a public hospital to seek a judicial review of the legality of his confinement. The right of a person confined involuntarily to petition the courts is a fundamental civil right that should receive the utmost legal protection.

3. Public entities and employees should not be liable for refusing to admit a person to a public hospital when the employee is given discretion whether or not to do so. The decision whether or not to admit a patient to a public hospital often depends upon a weighing of many complex factors, such as the financial condition of the patient, the availability of other medical facilities, etc. Public entities and public employees should be free to weigh these factors without fear that a judge or jury may later disagree with the conclusion reached. On the other hand, if by statute, regulation or administrative rule an employee has a mandatory duty to admit a patient, he and the public entity should be liable if the employee negligently or wrongfully fails to do so.

4. Public employees and public entities should not be liable for negligence in diagnosing mental illness and prescribing treatment therefor. Most treatment of the mentally ill goes on in public mental hospitals. The field is relatively new and standards of diagnosis and treatment are not as well defined as they are where physical illness is involved. Moreover, State mental hospitals must take all patients committed to them; hence, there are frequently problems of supervision and treatment created by inadequate staff and excessive patient load that private mental hospitals do not have to meet. The statutes should make clear, though, that public entities and employees are liable for injuries caused by negligent or wrongful acts in administering prescribed treatment.

5. Public health officials should not be liable for acting or failing to act in imposing quarantine, disinfecting property, and otherwise taking action to prevent or control the spread of disease,

if they have been given the legal power to determine whether or not such action should be taken. Where the law gives a public employee discretion to determine a course of conduct, liability should not be based upon the exercise of that discretion in a particular manner; for this would permit the trier-of-fact to substitute its judgment as to how the discretion should have been exercised for the judgment of the person to whom such discretion was lawfully committed. But when a public official has a mandatory duty to act in a particular manner, he should be liable for his wrongful or negligent failure to perform the duty; and his employing public entity should be liable if such failure occurs in the scope of his employment.

AMENDMENTS AND REPEALS OF EXISTING STATUTES

A substantial number of codified and uncodified statutes relate to the liability of public entities and public officers and employees. Many of these statutes should be amended or repealed in view of the general liability statute proposed by the Commission. A list of the statutes that should be amended or repealed is set out below. (Refer to the legislation proposed by the Commission for the text of each amended or repealed section. The sections of the existing law are listed below in the order they are contained in the legislation proposed by the Commission.)

In many cases where it is hereafter stated that an existing statute is superseded by a provision in the legislation recommended by the Commission, the provision replacing the existing statute may be somewhat narrower or broader (in imposing liability or granting immunity) than the existing statute. In these cases, the Commission has concluded that the proposed provision is a better provision, although in a given case it is broader or narrower than the existing law.

Agricultural Code

Section 748. The deleted portion of this section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 1300.21. This section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 2185. This section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 2916. This section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 3407. This section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 5084. The deleted portion of this section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 5312. The deleted portion of this section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 5406. The deleted portion of this section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Section 5571. The deleted portion of this section is superseded by proposed Article 2 of Chapter 4. See research study at pages 175-77.

Business and Professions Code

Section 5312. The deleted portion of this section is superseded by proposed Sections 902.35 and 902.40. See research study at pages 121-34.

Section 6904.5. This section is superseded by proposed Article 2 of Chapter 4 (especially by proposed Sections 902.30, 902.35, 902.50 and 902.55).

Code of Civil Procedure

Section 340. The deleted portion of this section is unnecessary in view of the general claims presentation statute. See also, proposed Article 5 of Chapter 4 (relating to liability for injury caused by a mob or riot).

Section 1095. The amendment to this section will broaden the coverage of this provision so that it applies to officers of all public entities. See page 14 supra. See research study at pages 61-62, 65-66.

Section 1242. The deleted portion of this section is superseded by proposed Sections 902.35 and 902.40. See research study at pages 121-34.

Education Code

Section 903. This section is superseded by proposed Section 902.10 and by other provisions of the proposed general liability statute. See research study at pages 38-40, 180-82.

Section 1041. This section is superseded by various provisions of the proposed general liability statute. See research study at pages 180-82.

Section 1042. This section is superseded by proposed Section 902.70 and other provisions of the proposed general liability statute. See research study at pages 172-75.

Section 13551. This section is superseded by proposed Section 902.70 and by other provisions of the proposed general liability statute. See research study at pages 172-75.

Section 15512. This section is superseded by proposed Article 3 (relating to liability for dangerous conditions of public property) of Chapter 4. See research study at pages 145-48.

Section 15513. This section is superseded by proposed Article 3 (relating to liability for dangerous conditions of public property) of Chapter 4. See research study at pages 145-48.

Section 15514. This section is superseded by proposed Article 3 (relating to liability for dangerous conditions of public property) of Chapter 4. See research study at pages 145-48.

Section 15515. The repeal of Sections 15512, 15513 and 15514 makes this section unnecessary. See research study at pages 145-48.

Section 15516. This section is superseded by proposed Article 3 (relating to liability for dangerous conditions of public property) of Chapter 4. Section 15516 is also

superseded by proposed Article 2 of Chapter 4. See research study at pages 146-48.

Government Code

Article 1 (commencing with Section 1950) of Chapter 6 of Division 4 of Title 1. Article 1 (which consists of Sections 1950, 1951, 1952, 1953, 1953.5, 1953.6, 1954, 1955, 1956, 1956.5, 1957 and 1959) should be repealed for the reasons indicated below:

Sections 1950 and 1951 are definitional sections; they become unnecessary because the defined terms are used only in the repealed article.

Section 1952 becomes unnecessary when the article is repealed.

Section 1953 is superseded by proposed Article 3 of Chapter 4 (relating to liability for dangerous conditions of public property).

Section 1953.5 is superseded by proposed Section 902.75.

Section 1953.6 is superseded by proposed Section 902.70.

Section 1954 is superseded by proposed Section 902.70.

Section 1955 is superseded by proposed Sections 902.35 and 902.45.

Section 1956 is superseded by the Commission's general statute relating to insurance. (A double-joining clause may be necessary in this bill to take care of the situation in case the insurance bill is not enacted. The repeal of

Section 1956 is proposed here so that the entire article can be repealed with the result that the bill as introduced will not have to have each of the repealed sections set out at length.)

Section 1956.5 is superseded by the Commission's general insurance statute. See comment above under Section 1956.

Section 1957 is superseded by proposed Section 906.35.

Section 1959 is superseded by the Commission's general insurance statute. See comment under Section 1956 above.

Section 2002.5. This section is superseded by proposed Sections 902.80 to 902.95 and by the Commission's recommendations relating to defense of actions brought against public officers and employees.

Section 39586. This section is superseded by proposed Article 2 of Chapter 4, especially by proposed Section 902.10. See research study at pages 60-61.

Article 6 (commencing with Section 50140) of Chapter 1 of Part 1 of Division 1 of Title 5. Article 6 (which consists of Sections 50140, 50141, 50142, 50143, 50144 and 50145) should be repealed because it is superseded by proposed Article 5 of Chapter 4 (relating to damage by mobs or riots).

Article 3 (commencing with Section 53050) of Chapter 2 of Part 2 of Division 1 of Title 5. Article 6 (which consists of Sections 53050, 53051, 53052, 53054, 53055, 53056 and 53057) should be repealed because Sections 53050

and 53051 are superseded by proposed Article 3 of Chapter 4 (liability for dangerous conditions of property). Section 53057 is superseded by proposed Section 902.10. See research study at pages 657-58. Sections 53052, 53054, 53055 and 53056 are superseded by provisions in the recommendations of the Commission relating to insurance, presentation of claims, and defense of public officers and employees. (All the sections in Article 3 are repealed here so that they will not need to be set out at length in the bill introduced in the Legislature. A double-jointing clause may be necessary to cover the situation that would occur if the general insurance statute or the statute relating to defense of public officers and employees did not become law.)

Section 54002. This section is superseded by the proposed Article 3 of Chapter 4.

Section 61627. This section is superseded by proposed Section 902.70.

Section 61633. This section is superseded by proposed Sections 902.80 to 902.95.

Public Resources Code

Section 4006.6. The deleted language in this section is superseded by proposed Section 902.40.

Public Utilities Code

Section 21635. The deleted portion of this section is superseded by proposed Section 902.40.

Streets and Highways Code

Section 941. This is an adjusting amendment made to conform to proposed Article 3 of Chapter 4. See research study at pages 215-19.

Section 943. This is an adjusting amendment made to conform to proposed Article 3 of Chapter 4. See research study at pages 215-19.

Section 954. This is an adjusting amendment made to conform to proposed Article 3 of Chapter 4. See research study at pages 215-19.

Section 1806. This is an adjusting amendment made to conform to proposed Article 3 of Chapter 4. See research study at pages 215-19.

Chapter 23 (commencing with Section 5640) of Part 3 of Division 7. This chapter (which consists of Sections 5640 and 5641) is repealed because it is superseded by proposed Article 3 of Chapter 4. See research study at pages 141-45.

Vehicle Code

Section 17002. This section is repealed because it is inconsistent with proposed Sections 902.80 to 902.95.

Water Code

Section 8535. This section is superseded by proposed Article 3 of Chapter 4.

Article 4 (commencing with Section 22725) of Chapter 4 of Part 5 of Division 11. Article 4 (which consists of Sections 22725, 22726, 22727, 22730, 22731 and 22732) should be repealed. This article is superseded by proposed Article 2 of Chapter 4 and by the Commission's recommendations relating to insurance, presentation of claims, and defense of public officers and employees.

Section 31083. This section is superseded by proposed Section 902.70.

Section 31088. This section is superseded by the Commission's recommended statute relating to defense of public officers and employee. It is repealed here so that Section 31089 may be repealed.

Section 31089. This section is unnecessary since Sections 31083 and 31088 are repealed.

Section 31090. This section is superseded by proposed Sections 902.90 to 902.95.

Chapter 4 (commencing with Section 35750) of Part 5 of Division 13. This chapter (which consists of Sections

35750, 35751, 35752, 35755, 35756 and 35757) should be repealed. It is superseded by proposed Article 2 of Chapter 4 and by the Commission's recommendations on insurance, presentation of claims, and defense of public officers and employees.

Section 50150. This section is repealed because it is inconsistent with proposed Article 2 of Chapter 4.

Section 50151. This section is repealed because it is inconsistent with proposed Article 2 of Chapter 4.

Section 50152. This section is superseded by proposed Article 2 of Chapter 4.

Article 10 (consisting of Section 51480). This section is designed to implement Section 50152 which is repealed by the proposed legislation.

Chapter 5 (commencing with Section 60200). This chapter, which consists of Sections 60200, 60201 and 60202, should be repealed. It is superseded by proposed Article 2 of Chapter 4 and by the Commission's recommendation on defense of public officers and employees.

Welfare and Institutions Code

Section 6005. This section is superseded by Articles 2 and 7 of proposed Chapter 4.

Section 6610.3. This section is superseded by proposed Sections 902.30. The elimination of the deleted

language eliminates a conflict in the meaning of the section. The section as revised makes the test whether there appears to the health officer to be reasonable cause. . . whereas the deleted language makes the test an objective one.

Section 6610.9. This section is superseded by Articles 2 and 7 of proposed Chapter 4.

Uncodified Laws

Alameda County Flood Control and Water Conservation District Act, § 5(8). The deleted language is superseded by proposed Section 902.40.

Alpine County Water Agency Act, §§ 36, 37, 38.

Section 36 is superseded by proposed Section 902.70. Section 37 is made unnecessary by the repeal of Section 36. Section 38 is superseded by proposed Sections 902.80 to 902.95.

Amador County Water Agency Act, §§ 9.2, 9.3 and 9.4.

Section 9.2 is superseded by proposed Section 902.70. Section 9.3 is made unnecessary by the repeal of Section 9.2. Section 9.4 is superseded by proposed Sections 902.80 to 902.95.

Antelope Valley - East Kern County Water Agency Law, § 76. The first paragraph of this section is superseded by proposed Section 902.70; the second paragraph is superseded by the Commission's recommendation on defense of public

officers and employees; the third paragraph is superseded by proposed Sections 902.80 to 902.95.

Contra Costa County Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

Contra Costa County Storm Drainage District Act, § 5(6). The deleted language is superseded by proposed Section 902.40.

Contra Costa County Water Agency Act, §23. This section is superseded by proposed Sections 902.70, 902.85 to 902.95 and by the Commission's proposed recommendation relating to insurance.

Del Norte Flood Control District Act, §6(8). The deleted language is superseded by proposed Section 902.40.

Desert Water Agency Law, §24. The first paragraph of this section is superseded by proposed Section 902.70; the second paragraph by the Commission's recommendation relating to defense of public officers and employees; the last paragraph by proposed Sections 902.80 to 902.95.

El Dorado County Water Agency Act, §§35, 36 and 37. Section 35 is superseded by proposed Section 902.70; Section 36 becomes unnecessary because of the repeal of Section 35; Section 37 is superseded by proposed Sections 902.80 to 902.95.

Flood Control and Flood Water Conservation District Act, §10. This section is superseded by proposed Article 2 of Chapter 4 and by the Commission's recommendation

relating to insurance.

Humboldt County Flood Control District Act, §6.

The deleted language is superseded by proposed Section 902.40.

Kern County Water Agency Act, §§9.1, 9.2, 9.3. Section 9.1 is superseded by proposed Section 902.70; Section 9.2 becomes unnecessary because Section 9.1 is repealed; Section 9.3 is superseded by proposed Sections 902.80 to 902.95.

Kings River Conservation District Act, §§14, 16, 17.

Section 14 is superseded by proposed Section 902.70; Section 16 becomes unnecessary because Section 14 is repealed; Section 17 is superseded by proposed Sections 902.80 to 902.95.

Lake County Flood Control and Water Conservation District Act, §5(7). The deleted language is superseded by proposed Section 902.40.

Marin County Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

Mariposa County Water Agency Act, §§7.2, 7.3, and 7.4. Section 7.2 is superseded by proposed Section 902.70; Section 7.3 becomes unnecessary when Section 7.2 is repealed; Section 7.4 is superseded by proposed Sections 902.80 to 902.95.

Mojave Water Agency Law, §27. Section 27 is superseded by proposed Article 2 of Chapter 4 and by the Commission's recommendation relating to insurance.

Monterey County Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

Municipal Water District Act of 1911, §21. The first paragraph of Section 21 is superseded by proposed Section 902.70; the second paragraph is superseded by the Commission's recommendation relating to defense of public officers and employees; the last paragraph is superseded by proposed Sections 902.80 to 902.95.

Napa County Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

Nevada County Water Agency Act, §§36, 37 and 38. Section 36 is superseded by proposed Section 902.70; Section 37 becomes unnecessary when Section 36 is repealed; Section 38 is superseded by proposed Sections 902.80 to 902.95.

Orange County Water District Act, §49. The deleted language is superseded by proposed Article 2 of Chapter 4.

Placer County Water Agency Act, §§7.2, 7.3, and 7.4. Section 7.2 is superseded by proposed Section 902.70; Section 7.3 becomes unnecessary when Section 7.2 is repealed; Section 7.4 is superseded by proposed Sections 902.80 to 902.95.

San Benito County Water Conservation and Flood Control District Act, §6(8). The deleted language is superseded by proposed Section 902.40.

San Geronimo Pass Water Agency Law, 24. The first paragraph of this section is superseded by proposed Section 902.70; the second paragraph is superseded by the Commission's recommendation relating to defense of public officers and employees; the third paragraph is superseded by proposed Sections 902.80 to 902.95.

San Joaquin Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

San Luis Obispo County Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

Santa Barbara County Flood Control and Water Conservation District Act, §5(7). The deleted language is superseded by proposed Section 902.40.

Santa Clara County Flood Control and Water Conservation District Act, §5(8). The deleted language is superseded by proposed Section 902.40.

Sutter County Water Agency Act, §§ 7.2, 7.3, 7.4. Section 7.2 is superseded by proposed Section 902.70; Section 7.3 is unnecessary because Section 7.2 is repealed; Section 7.4 is superseded by proposed Sections 902.80 to 902.95.

Yuba-Bear River Basin Authority Act, §§ 35, 36, 37.

Section 35 is superseded by proposed Section 902.70; Section 36 is unnecessary because Section 35 is repealed; Section 37 is superseded by proposed Sections 902.80 to 902.95.

Yuba County Water Agency Act, §§ 7.2, 7.3, 7.4.

Section 7.2 is superseded by proposed Section 902.70;
Section 7.3 is unnecessary because Section 7.2 is repealed;
Section 7.4 is superseded by proposed Sections 902.80 to 902.95.

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

An act to add Chapter 4 (commencing with Section 901.05) to Division 3.5 of Title 1 of the Government Code, and to . . . , relating to liability of public entities and public officers, agents and employees.

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

SECTION 1. Chapter 4 (commencing with Section 901.05) is added to Division 3.5 of Title 1 of the Government Code, to read:

CHAPTER 4. LIABILITY OF PUBLIC ENTITIES AND PUBLIC OFFICERS AND EMPLOYEES

Article 1. Definitions

901.05. Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this chapter.

901.10. "Employee" includes an officer, agent or employee.

901.15. "Employment" includes office, agency or employment.

901.20. "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer in his person, character, feelings or estate that would be actionable if negligently or wrongfully inflicted by a private person.

901.25. "Law" means a constitutional provision, statute, charter provision, ordinance or regulation.

901.30. "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.

901.35. "Public entity" includes the State and any local public entity.

Article 2. General Provisions relating to Liability

902.05. Except as otherwise provided by statute, a public entity is not liable for any injury arising out of a negligent or wrongful act or omission of the entity or of any employee of the entity.

902.10. A public entity is liable for injury proximately caused by a negligent or wrongful act or omission of an employee of the entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

902.15. Where a public entity is bound by a duty imposed by law (as, for example, the duty of a school district to supervise pupils under Section 13557 of the Education Code and the rules of the State Board of Education, the duty to provide lifeguard service at public swimming pools under Section 24101.4 of the Health and Safety Code and the regulations of the State Department of Public Health, or the duty to meet applicable requirements established by law in the construction of improvements), the public entity is liable for its failure or the failure of its employees to discharge that duty with reasonable care and skill.

902.20. A public entity is liable for injury proximately caused by a nuisance.

902.25. A public entity is not liable for punitive or exemplary damages.

902.30. No public entity, and no employee of a public entity, is liable for any injury resulting from the discretionary act or omission

of such employee where such discretion was exercised within the scope of his authority.

902.35. No public entity, and no employee of a public entity, is liable for any act or omission of such employee, exercising due care, in the execution of any law.

902.40. No employee of a public entity is liable for any injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law unless such injury is proximately caused by his negligent or wrongful act or omission.

902.45. If any employee of a public entity acts in good faith and without malice under the apparent authority of any law which is held to be unconstitutional, invalid or inapplicable for any reason, neither the employee nor his employing public entity is civilly liable for any injury caused thereby except to the extent they would have been liable had the law not been held unconstitutional, invalid or inapplicable.

902.50. No public entity is liable, and no employee of a public entity is liable, for injury caused by:

- (a) The adoption of or failure to adopt any law.
- (b) The failure to enforce any law unless such liability is specifically imposed by statute.
- (c) The negligent or wrongful issuance, denial, suspension or revocation of any permit, license, certificate or similar authorization where such entity or employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked.

902.55. (a) Subject to Section 902.15 and subdivision (b) of this section, no public entity, and no employee of a public entity while acting within the scope of his employment, is liable for injury caused by the failure of the public entity or of such employee to take steps to regulate or control the actions or activities of any other person.

(b) A public employee is liable for any injury proximately caused by his failure to exercise reasonable care or skill in supervising or regulating the activities of any other person where he has actually undertaken to provide such supervision or regulation or where he is required by law or by the direction of a superior employee of the public entity to provide such supervision.

902.60. Except as otherwise provided by statute, no public entity, and no employee of a public entity while acting within the scope of his employment, is liable for injury caused by the negligent or wrongful performance of or failure to perform any inspection of any property for the purpose of determining whether such property complies with or violates any law or contains or constitutes a hazard to health or safety.

902.65. (a) No employee of a public entity is liable for maliciously and without probable cause instituting any judicial or administrative proceeding within the scope of his employment.

(b) A public entity is liable for the damages proximately caused by an employee of the entity, acting within the scope of his employment, if the employee, without probable cause, instituted a judicial or administrative proceeding out of personal animosity or ill will or corruption.

902.70. Except as otherwise provided by statute, no employee of a public entity is personally liable for any injury caused by a negligent or wrongful act of any other employee of the public entity appointed by or serving under him unless he failed to exercise due care in the selection, appointment or supervision of such subordinate employee or unreasonably retained such subordinate employee after knowledge or notice of his unfitness or incompetence.

902.75. Except as otherwise provided by statute, no public entity, and no employee of a public entity, is liable for moneys stolen from the custody of such employee unless the loss was sustained because such employee failed to exercise due care.

902.80. If an employee of a public entity requests the public entity to defend him against any claim or action against him arising out of his negligent or wrongful act or omission occurring within the scope of his employment, or if the public entity conducts the defense of an employee against any claim or action arising out of his negligent or wrongful act or omission, the public entity shall pay any compromise or settlement of the claim or action to which the public entity has agreed and shall pay any judgment based thereon. Nothing in this section authorizes a public entity to pay any claim or judgment for punitive or exemplary damages.

902.85. (a) Subject to subdivision (b), if an employee of a public entity pays any claim or judgment against him, or any portion thereof, that the public entity is required to pay under Section 902.80, the employee is entitled to recover the amount of such payment from the public entity.

(b) If the public entity did not conduct the employee's defense against the action or claim, or if the public entity conducted such defense pursuant to an agreement with the employee reserving the rights of the public entity against him, an employee of a public entity may recover from the public entity under subdivision (a) only if the employee establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment for the public entity and the public entity does not establish that the employee acted or failed to act because of actual fraud, corruption or actual malice.

902.90. Except as provided in Section 902.95, if a public entity pays any claim or judgment against itself or against an employee of the public entity, or any portion thereof, arising out of the negligent or wrongful act or omission of an employee of the public entity, the employee is not liable to indemnify the public entity.

902.95. (a) If a public entity pays any claim or judgment, or any portion thereof, either against itself or against an employee of the public entity, arising out of the negligent or wrongful act or omission of an employee of the public entity, the public entity may recover from the employee the amount of such payment if such employee acted or failed to act because of actual fraud, corruption or actual malice. Except as provided in subdivision (b), a public entity may not recover any payments made upon a judgment or claim against an employee if the public entity conducted the employee's defense against the action or claim.

(b) If a public entity pays any claim or judgment, or any portion thereof, against an employee of the public entity arising out of the

negligent or wrongful act or omission of the employee, and if the public entity conducted the defense of the employee against the claim or action pursuant to an agreement with the employee reserving the rights of the public entity against the employee, the public entity may recover the amount of such payment from the employee unless the employee establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment for the public entity and the public entity does not establish that the employee acted or failed to act because of actual fraud, corruption or actual malice.

Article 3. Dangerous Conditions of Public Property

Note: The tentative recommendation on this subject will be considered by the Commission at its August 1962 meeting. For that reason, this material is not duplicated here.

Article 4. Police and Correctional Activities

904.05. A public entity is liable for damages proximately resulting from its failure to maintain adequate or sufficient equipment, personnel or facilities in a jail or other detention facility only if such failure is caused by the failure of the public entity to comply with any statute or regulation governing equipment, personnel or facilities in such institutions.

904.10. A public employee is liable for any damages proximately caused by his negligent or wrongful interference with any attempt by an inmate of a jail or other detention facility to obtain judicial review of the legality of his confinement.

904.15. No public entity, and no employee of a public entity, is liable for damages proximately caused by the failure of such employee to furnish or obtain medical care for a prisoner in his custody unless he knows or has reason to know that such prisoner is in need of immediate medical care and he fails to take reasonable action to see that the prisoner receives such medical care.

904.20. No public entity, and no employee of a public entity, is liable for any injury caused by escaping prisoners.

Article 5. Damage by Mobs and Riots

905.05. As used in this article:

(a) "Local agency" means a city, county, police protection district or other local public entity that has the duty or has undertaken to maintain peace and order.

(b) "Mob" means any collection of individuals, two or more in number, assembled for the unlawful purpose of offering violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional or regulative powers over any person by violence and without lawful authority.

(c) "Riot" means a tumultuous assembly of ten or more persons engaged in disturbing the peace who injure or threaten to injure persons or property by force and violence or who use or threaten to use force and violence against anyone who opposes them in the execution of their purpose.

905.10. A local agency is liable for injury proximately caused by a mob or riot within its boundaries if the local agency fails to exercise reasonable care or diligence to prevent or suppress the mob or riot. A county within which a mob or riot occurs is not liable under this section where the mob or riot occurs within the boundaries of another local agency that has the duty or has undertaken to maintain peace and order unless the county fails to exercise reasonable care or diligence to prevent or suppress the mob or riot after the county has notice, express or implied, of the failure or inability of the other local agency to prevent or suppress it.

905.15. A local agency is not liable under this article for injury

to any person who aided, abetted or participated in the mob or riot that caused the injury. A local agency is not liable under this article if the plaintiff or his decedent was contributorily negligent.

905.20. Any person who participated in or who aided or abetted a mob or riot shall indemnify any local agency liable under this article in the amount of such liability together with an amount to be fixed by the court for all costs and expenses necessarily incurred by the local agency in defending the action under this article, including reasonable attorneys' fees.

905.25. Any action brought under this article for damage to the levees or other works of reclamation of any district shall be prosecuted by the Attorney General in the name of the people of the State of California, and the amount recovered shall be paid to the treasurer of the county, who shall credit it to the district.

Article 6. Fire Protection

906.05. No public entity, and no employee of a public entity, is liable for failure to establish a fire department or otherwise to provide fire protection service.

905.10. No public entity that has undertaken to provide fire protection service, and no employee of such a public entity, is liable for failure to provide or maintain adequate personnel, equipment or other fire protection facilities.

906.15. No public entity, and no employee of a public entity, is liable for any injury resulting from the negligent maintenance of fire protection or fire fighting equipment or facilities nor, except as provided in Section 17001 of the Vehicle Code, for any injury caused by negligence in fighting fires.

906.20. Notwithstanding Section 906.15, an employee of a public entity is liable, and a public entity is liable for the act or omission of such employee within the scope of his employment, for death or personal injuries proximately caused by the gross negligence or wilful misconduct of such employee in the maintenance of fire protection or fire fighting equipment or facilities or in the fighting of fires.

"Fire protection or fire fighting equipment or facilities" as used in this section includes fire hydrants but does not include water or any facilities or equipment for supplying water to the hydrant or for maintaining adequate water supplies or pressure at the hydrant.

906.25. Notwithstanding any other law, whenever a public entity is providing fire protection or fire fighting service outside of the area regularly served and protected by the entity pursuant to a call for assistance from another public entity, the public entity providing such service and the public entity calling for assistance are jointly and severally liable upon any liability which is imposed by any law other than this section upon either one of the entities for injury caused by a negligent or wrongful act or omission occurring in the performance of such fire protection or fire fighting service.

906.30. Unless otherwise provided by agreement entered into prior to the time of the call for assistance, if a public entity is held liable under Section 906.25 upon any judgment for damages caused by the negligent or wrongful act or omission of an employee of another public entity occurring in the course of fire protection or fire fighting service, such public entity may recover the amount paid on such judgment from the public entity whose employee committed the negligent or wrongful act or omission.

906.35. Any member of an organized fire department, fire protection district or other fire fighting unit of any public entity, or any employee of the Division of Forestry, may transport or arrange for the transportation of any person injured by a fire, or by a fire protection operation, to a physician and surgeon or hospital, if the injured person does not object to such transportation.

Neither the public entity nor the member or employee is liable for any medical, ambulance or hospital bills incurred by or in behalf of the

injured person, or for any other damages, unless such damages are proximately caused by the willful misconduct of such member or employee.

Article 7. Medical, Hospital and Public Health
Activities

907.05. A public entity is liable for injury proximately resulting from failure of the entity to provide adequate or sufficient equipment, personnel or facilities in any hospital, clinic, dispensary or similar institution licensed by the State Department of Public Health which is operated or maintained by the public entity if such failure is caused by the failure of the public entity to comply with any statute or regulation of the State Department of Public Health governing equipment, personnel or facilities.

If a public entity maintains a hospital, clinic, dispensary or similar institution that is not subject to regulation by statute or by the State Department of Public Health, such entity is liable for injury proximately resulting from its failure to provide equipment, personnel or facilities substantially equivalent to those required by statutes or regulations of the State Department of Public Health which are applicable to institutions of the same character and class.

907.10. A public employee is liable for any injury proximately caused by his negligent or wrongful interference with any attempt by an inmate of a public hospital or institution for human care or treatment to obtain judicial review of the legality of his confinement.

907.15. No public entity, and no employee of a public entity, is liable for failing to admit a person to a hospital operated by such public entity unless such employee negligently or wrongfully fails to admit a person when he is legally required to do so.

907.20. (a) No public entity, and no employee of a public entity while acting within the scope of his employment, is liable for negligence in diagnosing or prescribing for mental illness or in determining the terms and conditions of the confinement, parole or release of persons who are mentally ill.

(b) An employee of a public entity is liable for any injury proximately caused by his negligent or wrongful act or omission in administering or failing to administer any treatment prescribed for the mentally ill.

907.25. (a) No public entity, and no employee of a public entity, is liable for performing or failing to perform any act relating to the prevention and control of disease if he had the legal authority to decide whether or not such act should or should not be performed.

(b) An employee of a public entity is liable for the injury proximately caused by his negligent or wrongful act or omission in performing or failing to perform any act relating to the prevention and control of disease that he was required by law to perform.

SEC. 2. Section 748 of the Agricultural Code is amended to read:

748. [~~The members of the board duly appointed by the director, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for liability on any contract or agreement of the board, or for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, servant, or employee, except for their own individual acts of dishonesty or crime.--The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.~~] All salaries, expenses, costs, obligations and liabilities incurred by [said] the board shall be payable only from funds collected under the provisions of this chapter.

SEC. 3. Section 1300.21 of the Agricultural Code is repealed.

[~~1300.21.--The members of any such advisory board duly appointed by the director, including employees of such board shall not be held responsible individually in any way whatsoever to any producer, processor, distributor or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime.--No such person or employee shall be held responsible individually for any act or omission of any other member of any such board.--The liability of the members of such board shall be several and not joint and no member shall be liable for the default of any other member.~~]

SEC. 4. Section 2185 of the Agricultural Code is repealed.

[2185.---The members and alternate members of any program committee or grading committee duly appointed by the director, including employees of the program committee shall not be held responsible individually in any way whatsoever to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime.---No such person or employee shall be held responsible individually for any act or omission of any other member of the program committee.---The liability of the members of the program committee and grading committee shall be several and not joint and no member shall be liable for the default of any other member.]

SEC. 5. Section 2916 of the Agricultural Code is repealed.

[2916.---The members or employees of any administrative agency or any other board, committee, authority or body created pursuant to an agreement or order issued pursuant to this chapter shall not be held responsible individually in any way whatsoever to any handler or producer or any other person for error in judgment, mistake or other acts either of commission or omission as such member or employee except for their own individual acts of dishonesty, and no member or employee shall be held responsible individually for any act or omission of any other member of any such administrative agency, board, committee, authority or body.]

SEC. 6. Section 3407 of the Agricultural Code is repealed.

[3407.---The members or employees of any administrative agency or any other board, committee, authority or body created pursuant to an

C
agreement or order issued pursuant to this chapter shall not be held responsible individually in any way whatsoever to any handler or producer or any other person for error in judgment, mistake or other acts either of commission or omission as such member or employee except for their own individual acts of dishonesty, and no member or employee shall be held responsible individually for any act or omission of any other member of any such administrative agency, board, committee, authority or body.]

SEC. 7. Section 5084 of the Agricultural Code is amended to read:

C
5084. [~~The members of the council duly appointed by the director, including employees of such council, shall not be held responsible individually in any way whatsoever to any person for liability on any contract or agreement of the council, or for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, servant, or employee, except for their own individual acts of dishonesty or crime.--The liability of the members of the council shall be several and not joint and no member shall be liable for the default of any other member.~~] All salaries, expenses, costs, obligations and liabilities incurred by [~~such~~] the council shall be payable only from funds collected under the provisions of this chapter.

SEC. 8. Section 5312 of the Agricultural Code is amended to read:

C
5312. [~~The members of the council duly appointed by the director, including employees of such council, shall not be held responsible individually in any way whatsoever to any person for liability on any contract or agreement of the council, or for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, servant, or employee, except for their own individual acts of dishonesty~~

or crime.--The liability of the members of the council shall be several and not joint and no member shall be liable for the default of any other member.] All salaries, expenses, costs, obligations and liabilities incurred by [such] the council shall be payable only from funds collected under the provisions of this chapter.

SEC. 9. Section 5406 of the Agricultural Code is amended to read:

5406. [~~The members and alternate members of the board duly appointed by the director, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for liability on any contract or agreement of the board, or for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, servant, or employee, except for their own individual acts of dishonesty or crime.--The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.~~] All salaries, expenses, costs, obligations and liabilities incurred by [such] the board shall be payable only from funds collected under the provisions of this chapter.

An alternate member of the advisory board shall sit as a regular member of the board in case the member for whom he is an alternate fails for any reason to attend any meetings of the board. He shall be compensated and reimbursed in the same manner and to the same extent as a regular member when so serving and when so serving has all the powers, duties, liabilities and immunities of the member in whose place he is serving, except that the alternate to the chairman or vice chairman shall not succeed to the functions of these offices.

C
SEC. 10. Section 5571 of the Agricultural Code is amended to read:

5571. The State of California [shall] is not [be] liable for the acts of the commission or its contracts. Payment of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. [~~No member of the commission or any employee or agent thereof shall be personally liable on the contracts of the commission nor shall a commissioner or employees of such commission be responsible individually in any way to any producer or shipper or any other person for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent or employee, except for their own individual acts of dishonesty or crime. No commissioner shall be held responsible individually for any act or omission of any other member of such commission. The liability of the commissioners shall be several and not joint, and no commissioner shall be liable for the default of any other commissioner.~~]

C
SEC. 11. Section 5312 of the Business and Professions Code is amended to read:

5312. The director may revoke any license or permit for the failure to comply with the provisions of this chapter and may remove and destroy any advertising display placed

C
or maintained in violation of this chapter after 10 days' written notice posted on such structure or sign and a copy forwarded by mail to the display owner at his last known address.

Notwithstanding any other provision of this chapter the director or any authorized employee may summarily and without notice remove and destroy any advertising display placed in violation of this chapter which is temporary in nature because of the materials of which it is constructed or because of the nature of the copy thereon.

C
For the purpose of removing or destroying any advertising display placed in violation of the provisions of this chapter, the director or his authorized agent may enter upon private property [~~without incurring any liability therefor~~].

SEC. 12. Section 6904.5 of the Business and Professions Code is repealed:

[~~6904.5.---The conservator, the director, and the employees of the Collection Agency Licensing Bureau shall not be held personally liable in connection with the enforcement of this article.~~]

SEC. 13. Section 340 of the Code of Civil Procedure is amended to read:

340. Within one year:

C
1. An action upon a statute for a penalty or forfeiture,

C when the action is given to an individual, or to an individual and the State, except when the statute imposing it prescribes a different limitation;

2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this State;

C 3. An action for libel, slander, assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to or for the death of one cause by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a forged or unauthorized endorsement, or against any person who boards or feeds an animal or fowl or who engages in the practice of veterinary medicine as defined in Business and Professions Code Section 4826, for such person's neglect resulting in injury or death to an animal or fowl in the course of boarding or feeding such animal or fowl or in the course of the practice of veterinary medicine on such animal or fowl;

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process;

~~[5.--An-action-against-a-municipal-corporation-for damages-or-injuries-to-property-caused-by-a-mob-or-riot;]~~

C ~~[6.]~~ 5. An action against an officer to recover

C damages for the seizure of any property for a statutory forfeiture to the State, or for the detention of, or injury to property so seized, or for damages done to any person in making any such seizure.

SEC. 14. Section 1095 of the Code of Civil Procedure is amended to read:

C 1095. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay; provided, however, that in all cases where the respondent is [~~a-state,-county-or municipal~~] an officer of a public entity, all damages and costs, or either, which may be recovered or awarded, shall be recovered and awarded against the [~~state,-county-or-municipal-corporation~~] public entity represented by such officer and not against such officer so appearing in said proceeding, and the same shall be a proper claim against the [~~state,-or-county, or-municipal-corporation~~] public entity for which such officer shall have appeared, and shall be paid as other claims against the [~~state,-county-or-municipality~~] public entity are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in such proceeding in good faith. For the purpose of this section,

"public entity" includes the State, a county, city, district or other public agency or public corporation. For the purpose of this section, "officer" includes officer, agent or employee.

SEC. 14a. Section 1242 of the Code of Civil Procedure is amended to read:

1242. [~~Parties may make location. -- May enter to make surveys.~~]

In all cases where land is required for public use, the State, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of Section 1247. The State, or its agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof [~~, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness, or malice.~~]

SEC. 15. Section 903 of the Education Code is repealed.

~~[903.--The governing board of any school district is liable as such in the name of the district for any judgment against the district on account of injury to person or property arising because of the negligence of the district, or its officers or employees.]~~

SEC. 16. Section 1041 of the Education Code is repealed.

~~[1041.--No member of the governing board of any school district shall be held personally liable for accidents to children going to or returning from school, or on the playgrounds, or in connection with school work.]~~

SEC. 17. Section 1042 of the Education Code is repealed.

~~[1042.--No member of the governing board of any school district shall be held personally liable for the death of, or injury to, any pupil enrolled in any school of the district, resulting from his participation in any classroom or other activity to which he has been lawfully assigned as a pupil in the school unless negligence on the part of the member of the governing board is the proximate cause of the injury or death.]~~

SEC. 18. Section 13551 of the Education Code is repealed.

~~[13551.--No superintendent, principal, teacher, or other employee of a school district employed in a position requiring certification qualifications shall be held personally liable for the death of, or~~

C
injury to any pupil enrolled in any school of the district, resulting from the participation of the pupil in any classroom or other activity to which he has been lawfully assigned as a pupil in the school unless negligence on the part of the employee is the proximate cause of the injury or death.]

SEC. 19. Section 15512 of the Education Code is repealed.

[15512.--No member of the governing board shall be held personally liable for any damage or injury to person or property as a result of the use of tents or other temporary structures, except in case of his own personal negligence or misconduct.]

SEC. 20. Section 15513 of the Education Code is repealed.

C
[15513.--If, at the election, neither the issuance of bonds nor the increase of the tax rate is authorized, and the other proposition on the ballot does not receive a majority of the votes cast thereon in favor thereof, no member of the governing board of the district shall be held personally liable for any injury to person or damage to property as a result of the continued use of any building or buildings referred to in the resolution or notice calling the election.]

SEC. 21. Section 15514 of the Education Code is repealed.

~~[15514.--No member of the governing board of the district shall be held personally liable for injury to person or damage to property by reason of the use of any building.]~~

SEC. 22. Section 15515 of the Education Code is repealed.

~~[15515.--Nothing in Sections 15512, 15513, or 15514 shall be construed as relieving any school district of any liability for injury to person or damage to property imposed by law.]~~

SEC. 23. Section 15516 of the Education Code is repealed.

~~[15516.--No member of the governing board of any school district or employee of any school district shall be held personally liable for the death or injury of any pupil above the compulsory school age or for damage to the property of any such pupil resulting from his voluntary attendance upon classes on premises and not under the management and control of the governing board of the district, or resulting from his voluntary attendance in buildings not owned, rented or leased by the school district or upon field trips, if such death, injury, or damage is caused by the dangerous or defective condition of the premises or buildings in which such classes are maintained or which are entered on field trips.]~~

SEC. 24. Article 1 (commencing with Section 1950) of Chapter 6 of Division 4 of Title 1 of the Government Code is repealed.

Note: Article 1 consists of Sections 1950, 1951, 1952, 1953,

1953.5, 1953.6, 1954, 1955, 1956, 1956.5, 1957 and 1959. The text of these sections is set out below in strike-out type.

~~[1950.--As used in this chapter, "board" means board of supervisors, board of city trustees, city council, board of education, board of school trustees or the legislative body of a county, city or school district, whatever the name by which it is known.]~~

~~[1951.--As used in this chapter, "public property" means public street, highway, bridge, building, park, grounds, works or property.]~~

~~[1952.--This article shall not be construed as enlarging the duty or liability of any public officer.]~~

~~[1953.--No officer of the State or of any district, county, or city is liable for any damage or injury to any person or property resulting from the defective or dangerous condition of any public property, unless all of the following first appear:]~~

~~[(a)--The injury sustained was the direct and proximate result of such defective or dangerous condition.]~~

~~[(b)--The officer had notice of such defective or dangerous condition or such defective or dangerous condition was directly attributable to work done by him, or under his direction, in a negligent, careless or unworkmanlike manner.]~~

~~[(c)--He had authority and it was his duty to remedy such condition at the expense of the State or of a political subdivision thereof and that funds for that purpose were immediately available to him.]~~

~~[(d)--Within a reasonable time after receiving such notice and being able to remedy such condition, he failed to do, or failed to take reasonable steps to give adequate warning of such condition.]~~

~~[(e)--The damage or injury was sustained while such public property was being carefully used, and due care was being exercised to avoid the danger due to such condition.]~~

~~[1953.5.--No officer of the State, or of any district, county, city and county, city, or judicial district, is liable for moneys stolen from his official custody unless the loss was sustained because the officer failed to exercise due care.]~~

~~[1953.6.--No officer of a county, city, or city and county, whose sole compensation by virtue of his~~

office-is-a-fixed-salary-established-by-the-Legislature,
the-local-governing-body,-or-the-board-of-supervisors,
shall-be-personally-liable-for-the-negligent-act-or
omission-of-any-deputy-or-employee-serving-under-him
and-performing-the-duties-of-his-office,-where-the
appointment-or-qualification-of-such-deputy-or-employee
is-required-to-be-and-has-been-approved-by-the-local
governing-body-or-the-board-of-supervisors,-or-by-the
civil-service-commission,-unless-the-officer-failed-to
exercise-due-care-in-the-selection,-appointment,-or
supervision-of-such-deputy-or-employee,-or-negligently
failed-to-suspend-or-secure-the-discharge-of-such
deputy-or-employee-after-knowledge-or-notice-of-his
inefficiency-or-incompetency.]

[Nothing-in-this-section-shall-be-interpreted-as
placing-any-liability-upon-the-principal-officer-for-the
act-of-a-deputy-or-employee-unless-such-liability-is
otherwise-imposed-upon-the-principal-officer-by-law,
nor-shall-this-section-be-construed-or-interpreted-as
releasing-or-relieving-any-such-county,-city,-or-city
and-county-of-any-liability-for-the-negligent-act-or
omission-of-any-such-deputy-or-employee-otherwise
imposed-by-law.]

[1954.--No-member-of-any-board-is-liable-for-the
negligent-act-or-omission-of-any-appointee-or-employee
appointed-or-employed-by-him-in-his-official-capacity,
whether-the-appointment-or-employment-was-made-singly
or-in-conjunction-with-other-members-of-the-board,
unless-the-member-or-members-of-the-board-making-the
appointment-or-employment-either:]

[(a)--Knew-or-had-notice-that-the-person-appointed-or
employed-was-inefficient-and-incompetent-to-perform-or
render-the-service-or-services-for-which-he-was-appointed
or-employed.]

[(b)--Retained-such-inefficient-or-incompetent
person-after-knowledge-or-notice-of-such-inefficiency
or-incompetency.]

[1955.--If-any-officer,-agent,-or-employee-of-the
State,-a-district,-county,-political-subdivision,-or
city-acts-in-good-faith-and-without-malice-under-the
apparent-authority-of-any-law-of-the-State,-whether-an
initiative-measure-or-an-act-enacted-by-the-Legislature
and-the-law-subsequently-is-judicially-declared-to-be
unconstitutional-as-in-conflict-with-the-Constitution
of-the-State-or-of-the-United-States,-he-is-not
civilly-liable-in-any-action-in-which-he-would-not-have
been-liable-if-the-law-had-not-been-declared-unconsti-
tutional,-nor-is-he-liable-to-any-greater-extent-than

he would have been if the law had not been declared unconstitutional.]

[1956. -- (a) -- The State, a county, city, district, or any other public agency or public corporation may insure its officers, deputies, assistants, agents, and employees against any liability, other than a liability which may be insured against under the provisions of Division 4 (commencing with Section 3201) of the Labor Code, for injuries or damages resulting from their negligence or carelessness during the course of their service or employment and for the injuries or damages resulting from the dangerous or defective condition of public property, including public property as defined in subdivision (b) of this section, and due to their alleged negligence or carelessness, and for injuries or damages resulting from false arrest or false imprisonment, either by self-insurance, or in any insurer authorized to transact such insurance in the State (except in the case of school district governing boards to the extent they are authorized to place insurance in nonadmitted insurers by Sections 1044 and 15802 of the Education Code). -- The premium for the insurance is a proper charge against the Treasury of the State, county, city, district, public agency or public corporation.]

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

[(c) -- "Officers" includes any deputy, assistant, agent or employee of the State, a county, city, district, or any other public agency or public corporation acting within the scope of his office, agency or employment.]

[1956.5 -- A county, city, district, or any other public agency or public corporation may insure itself against any liability, other than a liability which may be insured against pursuant to Division 4 of the Labor Code, either by self-insurance or in any insurer authorized to transact such insurance in the State. -- The premium for such insurance is a proper charge against such county, city, district or other public agency or public corporation.]

[1957. -- Any member of an organized fire department, fire protection district, or other fire fighting unit of either

~~the State or any political subdivision, or any employee of the Division of Forestry, may transport or arrange for the transportation of any person injured by a fire, or by an accident which occurs as a result of any fire fighting or fire protection operation, to a physician and surgeon or hospital, if the injured person does not object to such transportation.]~~

~~[Any member of an organized fire department, fire protection district, or other fire fighting unit of either the State or any political subdivision, or any employee of the Division of Forestry shall not be liable for any damages or for any medical, ambulance, or hospital bills incurred in behalf of the injured party.]~~

~~[1959.--Each county may insure the officers and attaches of its superior, municipal, and justice courts against any liability, other than a liability which may be insured against under the provisions of Division 4 of the Labor Code, for injuries or damages resulting from their negligence or carelessness during the course of their service or employment.--The premium for the insurance is a proper charge against the treasury of the county.]~~

SEC. 25. Section 2002.5 of the Government Code is repealed.

~~[2002.5.--Whenever a suit is filed against an employee or officer of the State of California licensed in one of the healing arts under Division 2 of the Business and Professions Code, for malpractice alleged to have arisen out of the performance of his duties as a state employee, a copy of the complaint shall also be served upon the Attorney General and the Attorney General upon the request of such employee shall defend said suit on behalf of such employee.--If there is a settlement or judgment in the suit the State shall pay the same; provided, that no settlement shall be effected without the consent of the head of the state agency concerned and the approval of the Attorney General. The settlement of such claims or judgments shall be limited to those arising from acts of such officers and employees of the State in the performance of their duties; or by reason of emergency aid given to inmates, state officials, employees, and to members of the public.]~~

SEC. 26. Section 39586 of the Government Code is repealed.

~~[39586.--If the legislative body finds that property damage was caused by the negligence of a city officer or employee in connection with the abatement of a nuisance pursuant to this article, a claim for such damages may be paid from the city general fund.--Claims therefor are governed by Chapter 2~~

~~(commencing with Section 700) of Division 3.5 of Title 1 of this code.]~~

SEC. 27. Article 6 (commencing with Section 50140) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

Note: Article 6 consists of Sections 50140 to 50145, inclusive. The text of the sections in the repealed article is set out below in strike-out type.

~~[50140.--A local agency is responsible for damage by mobs or riots to property within its boundaries.]~~

~~[50141.--Such actions shall be tried in the county where the property damaged is situated and shall be commenced within one year after the commission of the act complained of.]~~

~~[50142.--The plaintiff in any such action shall not recover if the damage was aided, sanctioned, or permitted by his negligence.]~~

~~[50143.--On the certificate of the presiding judge or clerk of the court rendering judgment against the local agency for damages by mobs or riots, the legislative body, by ordinance, shall cause a warrant to be issued on the general fund, which shall be paid in its regular order.]~~

~~[50144.--Within three years, at the proper times, the legislative body shall levy and cause to be collected a tax on the taxable property of the local agency for the payment of the warrant.]~~

~~[50145.--When the levees and other works of reclamation of a district are damaged or destroyed by mobs or riots and an action is brought for damages, it shall be prosecuted by the Attorney General in the name of the people of the State of California.--The amount recovered shall be paid to the treasurer of the county, who shall credit it to the district.]~~

SEC. 28. Article 3 (commencing with Section 53050) of

Chapter 2 of Part 2 of Division 1 of Title 5 of the Government Code is repealed.

Note: Article 3 consists of Sections 53050 to 53057, inclusive. The text of the repealed sections in this Article are set out below in strike-out type. They would not, however, be contained in the bill as introduced in the Legislature.

[53050. --As used in this article:

- (a) -- "Person" or "public" includes any pupil attending the public schools of any school or high school district.
- (b) -- "Public property" means public street, highway, building, park, grounds, works, or property.
- (c) -- "Local agency" means city, county, or school district.]

[53051. --A local agency is liable for injuries to persons and property resulting from the dangerous or defective condition of public property if the legislative body, board or person authorized to remedy the condition:]

[(a) --Had knowledge or notice of the defective or dangerous condition.]

[(b) --For a reasonable time after acquiring knowledge or receiving notice, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition.]

[53052. --When it is claimed that a person has been injured or property damaged as a result of the dangerous or defective condition of public property, a written claim for damages shall be presented in conformity with and shall be governed by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code.]

[53054. --When a damage suit is brought against a local agency for injuries to person or property allegedly received as a result of the dangerous or defective condition of public property, the attorney for the local agency shall be defense counsel unless other counsel is provided for. --The fees and expenses of defending the suit are lawful charges against the local agency.]

[53055. --When legal liability is admitted or disputed the local agency may pay a bona fide claim or compromise a disputed claim out of public funds, if the attorney for the local agency approves of the compromise.]

[53056---A local agency may insure against liability, except a liability which may be insured against pursuant to Division 4 of the Labor Code, for injuries or damages resulting from the dangerous or defective condition of public property by self-insurance, or insurance in an admitted insurer (except in the case of school district governing boards to the extent they are authorized to place insurance in nonadmitted insurers by Sections 1044 and 15802 of the Education Code).--The premium for the insurance is a charge against the local agency.]

[53057---A local agency which authorizes its employees to burn weeds and rubbish on vacant property shall be liable for injuries to persons and damage to other property caused by negligence of the employees in burning the weeds and rubbish. A written claim for such damages shall be presented in conformity with and shall be governed by Chapter 2 (commencing with Section 700) of Division 3, 5 of Title 1. The cost of insuring the liability imposed by this section may be added to any assessment authorized to be levied by a local agency to defray the costs of burning weeds and rubbish on vacant property.]

[For the purposes of this section, "local agency" shall include all other districts in addition to school districts.]

SEC. 29. Section 54002 of the Government Code is repealed.

[54002---The State, city, or county, is not liable for damages caused by accidents on the bridle trails.]

SEC. 30. Section 61627 of the Government Code is repealed.

[61627---No officer, agent, or employee shall be liable for any act or omission of any agent or employee appointed or employed by him unless he had actual notice that the person appointed or employed was inefficient or incompetent to perform the service for which he was appointed or employed or retains the inefficient or incompetent person after notice of the inefficiency or incompetency.]

SEC. 31. Section 61633 of the Government Code is repealed.

[61633---If an officer, agent, or employee of the district is held liable for any act or omission in his official capacity, except in case

~~of actual fraud or actual malice, and any judgment is rendered thereon, the district shall pay the judgment without obligation for repayment by the officer, agent or employee.]~~

SEC. 32. Section 4006.6 of the Public Resources Code is amended to read:

4006.6. Whenever it is shown that impaired, burned, and denuded watershed lands may impose an imminent threat of disaster to the public health, safety and welfare from flood and erosion, the Director of Natural Resources may order the execution of surveys, work and contracts to fulfill the purposes of Section 4006.5, and may request the assistance of other state, local and federal government agencies therefor.

The Director of Natural Resources or his delegated representatives ~~[shall not be liable to civil action for trespass committed in performing such work.]~~ may enter upon, perform required work upon and inspect lands for the purposes specified in this section.

SEC. 33. Section 21635 of the Public Utilities Code is amended to read:

21635. In the condemnation of property, the division shall proceed in the name of the State in the manner provided by the Code of Civil Procedure. For the purpose of making surveys and examinations relative to any condemnation proceedings, it is lawful to enter upon any land [~~,-doing no unnecessary damage~~]. The power of the division, by condemnation, to acquire or require the relocation of any railway, highway, main, pipe, conduit, wires, cables, poles, and all other facilities and equipment or other property held for or devoted to a public use shall be exercised

only after the court in which the condemnation proceedings are pending finds that the taking or relocation for the public use of the division is of greater public necessity than the public use for which the property is presently held or used. The court may fix the terms and conditions for the enjoyment of a right of common use, in lieu of taking or relocation, as it determines will best suit the public interest and necessity.

SEC. 34. Section 941 of the Streets and Highways Code is amended to read:

941. Boards of supervisors shall by proper order cause those highways which are necessary to public convenience to be established, recorded, constructed, and maintained in the manner provided in this division.

No public or private road shall become a county highway until and unless the board of supervisors, by appropriate resolution, has caused said road to be accepted into the county road system; nor shall any county be held liable for [~~failure-to-maintain~~] a dangerous condition of any road unless and until it has been accepted into the county road system by resolution of the board of supervisors.

SEC. 35. Section 943 of the Streets and Highways Code is amended to read:

943. Such board may:

(a) Acquire any real property or interest therein for the uses and purposes of county highways. When eminent domain proceedings are necessary, the board shall require the district attorney to institute

C such proceedings. The expense of and award in such proceedings may be paid from the road fund or the general fund of the county, or the road fund of any district benefitted.

(b) Lay out, construct, improve, and maintain county highways.

(c) Incur a bonded indebtedness for any of such purposes, subject to the provisions of Section 944.

(d) Construct and maintain stock trails approximately paralleling any county highway, retain and maintain for stock trails the right-of-way of any county highway which is superseded by relocation. ~~[The county shall not be liable in any way for any damages resulting from the use of such stock trail by any vehicle.]~~ Such stock trails shall not be included in the term "maintained mileage of county roads" as that term is used in Chapter 3 of Division 3 of this code.

C SEC. 36. Section 954 of the Streets and Highways Code is amended to read:

954. Except in the case of highways dedicated to the public by deed or by express dedication of the owner or acquired through eminent domain proceedings, all county highways which for a period of five consecutive years are impassable for vehicular travel, and on which during such period of time no public money is expended for maintenance, are unnecessary highways, subject to abandonment pursuant to Sections 955 and 956, or as herein provided. The board of supervisors of any county on its own motion or on the petition of any interested taxpayer of the county may abandon any such unnecessary highway or may designate such county highway a stock trail. The board of supervisors shall cause notices to be posted upon such stock trails, and also at the entrance of such stock trails, directing all persons to drive all untethered

stock thereon.

After a stock trail has been established or designated as provided in this chapter, the county ~~[shall]~~ is not ~~[be]~~ liable ~~[in-any-way for-any-damages-resulting-from-the-use-of-such-stock-trail-by-any-vehicle]~~ for death or injury to a vehicle owner or operator or passenger, or for damage to a vehicle or its contents, resulting from a dangerous condition of the stock trail.

Such stock trails shall not be included in the term "maintained mileage of county roads" as that term is used in Chapter 3 of Division 3 of this code.

SEC. 37. Section 1806 of the Streets and Highways Code is amended to read:

1806. No public or private street or road shall become a city street or road until and unless the governing body, by resolution, has caused said street or road to be accepted into the city street system; nor shall any city be held liable for ~~[failure-to-maintain]~~ a dangerous condition of any road unless and until it has been accepted into the city street system by resolution of the governing body.

SEC. 38. Chapter 23 (commencing with Section 5640) of Part 3 of Division 7 of the Streets and Highways Code is repealed.

Note: Chapter 23 consists of Sections 5640 and 5641. The text of the repealed chapter is set out below in strike-out type. The text of the repealed chapter would not, of course, be contained in the bill as introduced.

~~[5640.--If,-because-any-graded-street-or-sidewalk-is-out of-repair-and-in-condition-to-endanger-persons-or-property-passing thereon,-any-person,-while-carefully-using-the-street-or-sidewalk and-exercising-ordinary-care-to-avoid-the-danger,-suffers-damage~~

to his person or property, through any such defect therein, no recourse for damages thus suffered shall be had against the city.]

[5641.--If the defect in the street or sidewalk has existed for a period of 24 hours or more after written notice thereof to the superintendent of streets, then the person on whom the law may have imposed the obligations to repair such defect in the street or sidewalk, and also the officer through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; provided, that the superintendent of streets has the authority to make the repairs, under the direction of the legislative body, at the expense of the city.]

SEC. 39. Section 17002 of the Vehicle Code is repealed.

[17002.--If there is recovery under this chapter against a public agency, it shall be subrogated to all the rights of the person injured against the officer, agent, or employee and may recover from the officer, agent, or employee the total amount of any judgment and costs recovered against the public agency, together with costs therein.]

SEC. 40. Section 8535 of the Water Code is repealed.

[8535.--The drainage district, the board and the members thereof are not responsible or liable for the operation or maintenance of levees, overflow channels, by-passes, weirs, cuts, canals, pumps, drainage ditches, swamps, bridges, basins, or other flood control works within or belonging to the drainage district.]

SEC. 41. Article 4 (commencing with Section 22725) of Chapter 4 of Part 5 of Division 11 of the Water Code is repealed.

Note: Article 4 consists of Section 22725 to 22732, inclusive. The text of the repealed chapter is set out below in strike-out type. The text of the repealed chapter would not, however, be set out at length in the bill as introduced.

[22725.--No officer shall be personally liable for any damage resulting

C
from the operation of the district or from the negligence or
misconduct of any of its officers or employees unless the damage
was proximately caused by the officer's own negligence, misconduct,
or wilful violation of official duty.]

[22726.--No officer or agent shall be liable for the
negligence of any agent or employee appointed or hired by
him unless he had actual notice that the person appointed
or hired was inefficient or incompetent to perform the service
for which he was appointed or hired or retains the inefficient
or incompetent person after actual notice of the inefficiency
or incompetency.]

[22727.--All claims for money or damages against the district
are governed by Chapter 2, (commencing with Section 700) of Division
3.5 of Title 1 of the Government Code as provided therein or by other
statutes or regulations expressly applicable thereto.]

[22730.--When an officer of a district is held liable
for any act or omission done or omitted in his official
capacity and any judgment is rendered thereon, the district
shall pay the judgment without obligation for repayment by
the officer.]

C
[22731.--Nothing in the preceding portion of this article
shall be construed as creating any liability except as provided
in Section 22730 unless it would have existed regardless of
this article.]

[22732.--Any district may carry and pay for insurance
to cover any liability of the district, its officers, employees,
or any of them.]

SEC. 42. Section 31083 of the Water Code is repealed.

[31083.--No officer, agent, or employee shall be liable for any
act or omission of any agent or employee appointed or employed by
him unless he had actual notice that the person appointed or employed
was inefficient or incompetent to perform the service for which
he was appointed or employed or retains the inefficient or incompetent

~~person after notice of the inefficiency or incompetency.]~~

SEC. 43. Section 31088 of the Water Code is repealed.

~~[31088.--The district may employ counsel to defend any action brought against it or any of its officers, agents, or employees on account of any injury, taking, damage, or destruction, and the fees and expenses involved therein shall be a lawful charge against the district.]~~

SEC. 44. Section 31089 of the Water Code is repealed.

~~[31089.--Nothing in Sections 31083 to 31088, inclusive, shall be construed as creating any liability unless it would have existed regardless of these sections, nor shall these sections amend, modify, or repeal Sections 1951, 1952, 1953, or 2991 of the Government Code.]~~

SEC. 45. Section 31090 of the Water Code is repealed.

~~[31090.--If an officer, agent, or employee of the district is held liable for any act or omission in his official capacity, except in case of actual fraud or actual malice, and any judgment is rendered thereon, the district shall pay the judgment without obligation for repayment by the officer, agent, or employee.]~~

SEC. 46. Chapter 4 (commencing with Section 35750) of Part 5 of Division 13 of the Water Code is repealed.

Note: Chapter 4 consists of Sections 35750 to 35757, inclusive. The text of the repealed article is set out below in strike-out type. The text of the repealed article would not, of course, be set out at length in the bill as introduced.

[35750.--No officer shall be personally liable for any damage resulting from the operation of the district or from the negligence or misconduct of any of its officers or employees unless the damage was proximately caused by the officer's own negligence, misconduct, or wilful violation of official duty.]

[35751.--No officer or agent shall be liable for the negligence of any agent or employee appointed or hired by him unless he had actual notice that the person appointed or hired was inefficient or incompetent to perform the service for which he was appointed or hired or retains the inefficient or incompetent person after actual notice of the inefficiency or incompetency.]

[35752.--All claims for money or damages against the district are governed by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.]

[35755.--When an officer of a district is held liable for any act or omission done or omitted in his official capacity and any judgment is rendered thereon, the district shall pay the judgment without obligation for repayment by the officer.]

[35756.--Nothing in this article shall be construed as creating any liability unless it would have existed regardless of this article.]

[35757.--Any district may carry and pay for insurance to cover any liability of the district, its officers, employees, or any of them.]

SEC. 47. Section 50150 of the Water Code is repealed.

[50150.--The board shall be named as party defendant and legally served before a judgment can be entered in an action instituted against any person by reason of his official connection with a district.]

SEC. 48. Section 50151 of the Water Code is repealed.

~~[50151.--An action against any person by reason of his official connection with a district, or against the board, or the district, shall be instituted and tried in the proper court in the principal county.--No court in any other county shall have jurisdiction over such action.]~~

SEC. 49. Section 50152 of the Water Code is repealed.

~~[50152.--The negligence of a trustee in his official capacity or any employee or servant of a district shall be imputed to the district to the same extent as if the district were a private corporation.]~~

SEC. 50. Article 10 (consisting of Section 51480) of Part 7 of Division 15 of the Water Code is repealed.

Note: This article consists only of Section 51480, the text of which is set out below in strike-out type. The text of Section 51480 would not be contained in the bill as printed.

~~[51480.--The district may levy assessments to pay any damage incurred through the negligent conduct of the trustees, employees or servants of the district which is imputed to the district under the provisions of Section 50152, and such damages are incidental expenses of the district.]~~

SEC. 51. Chapter 5 (commencing with Section 60200) of Part 3 of Division 18 of the Water Code is repealed.

Note: Chapter 5 consists of Sections 60200 to 60202, inclusive. The text of the repealed chapter is set out below in strike-out type. The text of the repealed chapter would not, however, be set out in the bill as introduced.

~~[60200.--No director or other officer, agent, or employee~~

~~of any district shall be liable for any act or omission of any officer, agent or employee appointed or employed by him unless he had actual notice that the person appointed or employed was inefficient or incompetent to perform the service for which such person was appointed or employed or unless he retains the inefficient or incompetent person after notice of the inefficiency or incompetency.]~~

~~[60201.--The district may employ counsel to defend any litigation brought against any director or other officer, agent or employee thereof, on account of his official action, and the fees and expenses involved therein shall be a lawful charge against the district.]~~

~~[60202.--If any director or other officer, agent, or employee of the district is held liable for any act or omission in his official capacity, and any judgment is rendered thereon, the district, except in case of his actual fraud or actual malice, shall pay the judgment without obligation for repayment by such director or other officer, agent or employee.]~~

SEC. 52. Section 6005 of the Welfare and Institutions Code is repealed.

~~[6005.--Any superintendent or person in charge of the county psychopathic hospital, and any public officer, public employee, or public physician who either admits, causes to be admitted, delivers, or assists in delivering, detains, cares for, or treats, or assists in detaining, caring for or treating, any person pursuant to this chapter shall not be rendered liable thereby either civilly or criminally.]~~

SEC. 53. Section 6610.3 of the Welfare and Institutions Code is amended to read:

6610.3. Any relative or friend of a person believed to be

mentally ill and in need of supervision, care, or treatment may report that fact to the local health officer, together with the name and place of residence of the person. The local health officer may make or cause to be made such investigations as he deems to be necessary to ascertain the facts. If it appears to the health officer that there is reasonable cause for believing that admission to a state hospital under this article will be for the best interest of the person he may make the application to a state hospital. Proceedings under this article shall be stopped whenever the person believed to be mentally ill or any relative or friend acting in his behalf protests against such proceedings to the investigating health officer or to the examining physicians.

~~[Any local health officer or his employee who makes or assists in making an application under this article shall not be rendered civilly or criminally liable thereby when there is reasonable cause for believing that such application will be for the best interest of the person.]~~

SEC. 54. Section 6610.9 of the Welfare and Institutions Code is repealed.

~~[6610.9.--Any public officer or employee who transports or delivers or assists in transporting or delivering or detains or assists in detaining any person pursuant to this article shall not be rendered civilly or criminally liable thereby unless it be shown that such officers or employee acted maliciously or in bad faith or that his negligence resulted in bodily injury to such person.]~~

SEC. 55. Section 5 of the Alameda County Flood Control and Water Conservation District Act (Statutes of 1949, Chapter 1275) is amended to read:

* * *

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: This section is five pages long; hence, only the pertinent portion is set out above. In the prepared bill, the entire text of the section will appear.

SEC. 56. Section 36 of the Alpine County Water Agency Act (Statutes of 1961, Chapter 1896) is repealed.

~~[Sec. 36. -- No director shall be liable for any act or omission of any appointee of such employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director,~~

~~officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]~~

SEC. 57. Section 37 of the Alpine County Water Agency Act (Statutes of 1961, Chapter 1896) is repealed.

~~[Sec. 37.---Nothing contained in Section 36 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6 (commencing with Section 1950) of Division 4 of Title 1 of the Government Code.]~~

SEC. 58. Section 38 of the Alpine County Water Agency Act (Statutes of 1961, Chapter 1896) is repealed.

~~[Sec. 38.---If a judgment is entered against a director, officer, agent, or employee of the agency for any act or omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]~~

SEC. 59. Section 9.2 of the Amador County Water Agency Act (Statutes of 1959, Chapter 2137) is repealed.

~~[Sec. 9.2.---No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly.~~

~~or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]~~

SEC. 60. Section 9.3 of the Amador County Water Agency Act (Statutes 1959, Chapter 2137) is repealed.

~~[Sec. 9.3.---Nothing contained in Section 9.2 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6 (commencing at Section 1950) of Division 4 of Title 1 of the Government Code.]~~

SEC. 61. Section 9.4 of the Amador County Water Agency Act (Statutes of 1959, Chapter 2137) is repealed.

~~[Sec. 9.4.---If a judgment is entered against a director, officer, agent, or employee of the agency for any act or omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]~~

SEC. 62. Section 76 of the Antelope Valley-East Kern County Water Agency Law (Statutes of 1959, Chapter 2146) is repealed.

[Sec. 76. -- No director or other officer, agent, or employee of the agency shall be liable for any act or omission of any officer, agent or employee appointed or employed by him unless he had actual notice that the person appointed or employed was inefficient or incompetent to perform the service for which such person was appointed or employed or unless he retains the inefficient or incompetent person after notice of the inefficiency or incompetency.]

The agency may employ counsel to defend any litigation brought against any director or other officer, agent, or employee thereof, on account of his official action, and the fees and expenses involved therein shall be a lawful charge against the agency.

If any director or other officer, agent, or employee of the agency is held liable for any act or omission in his official capacity, and any judgment is rendered thereon, the agency, except in case of his actual fraud or actual malice, shall pay the judgment without obligation for repayment by such director or other officer, agent, or employee.]

SEC. 63. Section 5 of the Contra Costa County Flood Control and Water Conservation District Act (Statutes of 1951, Chapter 1617) is amended to read:

* * *

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its

authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: This section is over four pages long; hence, only the pertinent portion is set out above. In the prepared bill, the entire text of the section will appear.

SEC. 64. Section 5 of the Contra Costa County Storm Drainage District Act (Statutes of 1953, Chapter 1532) is amended to read:

* * *

6. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to the installation or maintenance of storm drains, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to the installation or maintenance of storm drains within the district and may survey and locate the same; but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use, may enter upon such lands and make examinations, surveys, and maps thereof [~~, and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill prepared for the Legislature.

SEC. 65. Section 23 of the Contra Costa Water Agency Act (Statutes of 1957, Chapter 518) is repealed.

~~[Sec. 23.--No director, officer, employee or agent of the agency shall be personally liable for any damage resulting from the operations of the agency or from the negligence or misconduct of any of its directors, officers, employees or agents unless the damage was proximately caused by his own negligence, misconduct or wilful violation of duty.--When a director, officer, agent or employee is held liable for any act or omission done or omitted in his official capacity and any judgment is rendered thereon, the agency shall pay the judgment without obligation for repayment by the director, officer, agent or employee.--The agency may carry and pay for insurance to cover any liability of the agency, its directors, officers, employees or agents or any of them.]~~

SEC. 66. Section 6 of the Del Norte Flood Control District Act (Statutes of 1955, Chapter 166) is amended to read:

* * *

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses of streams flowing in or into said district, and in all cases where land may be required for public use

by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and may survey and locate the same; but such must be located in the manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill prepared for the Legislature.

SEC. 67. Section 24 of the Desert Water Agency Law (Statutes of 1961, Chapter 1069) is repealed.

~~[Sec. 24. No director or other officer, agent, or employee of the agency shall be liable for any act or omission of any officer, agent or employee appointed or employed by him unless he had actual notice that the person appointed or employed was inefficient or incompetent to perform the service for which such person was appointed or employed or unless he retains the inefficient or incompetent person after notice of the inefficiency or incompetency.]~~

~~The agency may employ counsel to defend any litigation brought against any director or other officer, agent, or employee thereof, on account of his official action, and the fees and expenses involved therein shall be a lawful charge against the agency.~~

~~If any director or other officer, agent, or employee of the agency is held liable for any act or omission in his official capacity, and any judgment is rendered thereon, the agency, except in case of his actual fraud or actual malice, shall pay the judgment without obligation for repayment by such director or other officer, agent or employee.]~~

SEC. 68. Section 35 of the El Dorado County Water Agency Act (Statutes of 1959, Chapter 2139) is repealed.

~~[Sec. 35. -- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]~~

SEC. 69. Section 36 of the El Dorado County Water Agency Act (Statutes of 1959, Chapter 2139) is repealed.

~~[Sec. 36. -- Nothing contained in Section 35 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of~~

Chapter 6, commencing at Section 1950, of Division 4 of Title 1 of the Government Code.]

SEC. 70. Section 37 of the El Dorado County Water Agency Act (Statutes of 1959, Chapter 2139) is repealed.

[Sec. 37. -- If a judgment is entered against a director, officer, agent or employee of the agency for any act or omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]

SEC. 71. Section 10 of Chapter 641 of the Statutes of 1931 [Flood Control and Flood Water Conservation District Act] is repealed.

[Sec. 10. -- The negligence of a trustee or trustees of a flood control and water conservation district shall be imputed to the district to the same extent as if the water conservation and flood control district were a private corporation, and such district shall have power and authority to levy assessments for the purpose of paying any damage so incurred as hereafter provided.]

SEC. 72. Section 6 of the Humboldt County Flood Control District Act (Statutes of 1955, Chapter 939) is amended to read:

* * *

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses of streams flowing in or into said district, and in all

C

cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and may survey and locate the same; but such must be located in the manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

C

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill prepared for the Legislature.

SEC.73. Section 9.1 of the Kern County Water Agency Act (Statutes of 1961, Chapter 1003) is repealed.

[~~Sec. 9.1. -- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.~~]

C
SEC. 74. Section 9.2 of the Kern County Water Agency Act
(Statutes of 1961, Chapter 1003) is repealed.

[Sec. 9.2. -- Nothing contained in Section 9.1 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6 (commencing at Section 1950) of Division 4 of Title 1 of the Government Code.]

SEC. 75. Section 9.3 of the Kern County Water Agency Act (Statutes of 1961, Chapter 1003) is repealed.

C
[Sec. 9.3. -- If a judgment is entered against a director, officer, agent, or employee of the agency for any act or omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]

SEC. 76. Section 14 of the Kings River Conservation District Act (Statutes of 1951, Chapter 931) is repealed.

C
[Sec. 14. -- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board; and no officer, agent or employee of the district shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director or the officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was

~~inefficient or incompetent to perform or render the services for which he was appointed or employed, or shall retain such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]~~

SEC. 77. Section 16 of the Kings River Conservation District Act (Statutes of 1951, Chapter 931) is repealed.

~~[Sec. 16. Nothing contained in Sections 14 and 15 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said sections, nor shall the provisions of said sections or either or any of them be deemed to amend, modify or repeal the provisions of Chapter 6, Division 4, Title 1 of the Government Code.]~~

SEC. 78. Section 17 of the Kings River Conservation District Act (Statutes of 1951, Chapter 931) is repealed.

~~[Sec. 17. If a director, officer, agent, or employee of the district, shall be held liable for any act or omission in his official capacity, except in case of actual fraud or actual malice, and any judgment shall be rendered thereon, the district shall pay such judgment without obligation for repayment thereof by such director, officer, agent, or employee.]~~

SEC. 79. Section 5 of the Lake County Flood Control and Water Conservation District Act (Statutes of 1951, Chapter 1544) is amended to read:

* * *

7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and

inspections pertaining to the beneficial use of waters within or without the district, including domestic, irrigation, industrial and recreational uses and to the conservation of water and to the control of floods both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof [and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill prepared for the Legislature.

SEC. 80. Section 5 of the Marin County Flood Control and Water Conservation District Act (Statutes of 1953, Chapter 666) is amended to read:

* * *

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such

lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill prepared for the Legislature.

SEC. 81. Section 7.2 of the Mariposa County Water Agency Act (Statutes of 1959, Chapter 2036) is repealed.

[~~Sec. 7.2. No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.~~]

SEC. 82. Section 7.3 of the Mariposa County Water Agency Act (Statutes 1959, Chapter 2036) is repealed.

[~~Sec. 7.3. Nothing contained in Section 7.2 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6, commencing at Section 1950, of Division 4 of Title 1 of the~~

Government-Cede.]

SEC. 83. Section 7.4 of the Mariposa County Water Agency Act (Statutes of 1959, Chapter 2036) is repealed.

[Sec. 7.4. -- If a judgment is entered against a director, officer, agent, or employee of the agency for any act of omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]

SEC. 84. Section 27 of the Mojave Water Agency Law (Statutes of 1959, Chapter 2146) is repealed.

[Sec. 27. -- No director, officer, employee or agent of the agency shall be personally liable for any damage resulting from the operations of the agency or from the negligence or misconduct of any of its directors, officers, employees or agents unless the damage was proximately caused by his own negligence, misconduct or willful violation of duty. -- When a director, officer, agent or employee is held liable for any act or omission done or omitted in his official capacity and any judgment is rendered thereon, the agency shall pay the judgment without obligation for repayment by the director, officer, agent or employee. -- The agency may carry and pay for insurance to cover any liability of the agency, its directors, officers, employees or agents or any of them.]

SEC. 85. Section 5 of the Monterey County Flood Control and Water Conservation District Act (Statutes of 1947, Chapter 699) is amended to read:

* * *

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and may survey and locate the same; but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature

SEC. 86. Section 21 of the Municipal Water District Act of 1911 (Statutes of 1911, Chapter 671) is repealed.

[~~Sec. 21. No director or other officer, agent, or employee of any district shall be liable for any act or omission of any officer, agent or employee appointed or employed by him unless he had actual notice that the person appointed or employed was inefficient or incompetent to perform the service for which such person was appointed or employed~~]

~~or-unless-he-retains-the-inefficient-or-inecompetent-person-after-notice-
of-the-inefficiency-or-inecompetency.~~

~~The-district-may-employ-counsel-to-defend-any-litigation-brought
against-any-director-or-other-officer,-agent,-or-employee-thereof,
on-account-of-his-official-action,-and-the-fees-and-expenses-involved
therein-shall-be-a-lawful-charge-against-the-district.~~

~~If-any-director-or-other-officer,-agent,-or-employee-of-the-
district-is-held-liable-for-any-act-or-omission-in-his-official-capacity,
and-any-judgment-is-rendered-thereon,-the-district,-except-in-case
of-his-actual-fraud-or-actual-malice,-shall-pay-the-judgment-without
obligation-for-repayment-by-such-director--or-other-officer,-agent,
or-employee.]~~

SEC. 87. Section 5 of the Napa County Flood Control and Water
Conservation District Act (Statutes of 1951, Chapter 1449) is amended
to read:

* * *

8. To carry on technical and other necessary investigations,
make measurements, collect data, make analyses, studies, and inspections
pertaining to water supply, water rights, control of flood and storm
waters, and use of water both within and without said district relating
to watercourses or streams flowing in or into said district, and in
all cases where land may be required for public use by said district,
the district, or its agents in charge of such use, shall have the right
of access to all properties within the district and elsewhere relating
to watercourses and streams flowing in or into said district and may
survey and locate the same; but such must be located in a manner which

will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature.

SEC. 88. Section 36 of the Nevada County Water Agency Act (Statutes of 1959, Chapter 2122) is repealed.

~~[Sec. 36. -- No director shall be liable for any act or omission of any appointee of such employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]~~

SEC. 89. Section 37 of the Nevada County Water Agency Act (Statutes of 1959, Chapter 2122) is repealed.

~~[Sec. 37. -- Nothing contained in Section 36 shall be considered-~~

~~as-creating-any-liability-or-responsibility-unless-the-same-would--
have-existed-without-the-enactment-of-said-section,-nor-shall-the
provisions-of-said-section-be-deemed-to-amend,-modify-or-repeal-the
provisions-of-Chapter-6-(commencing-at-Section-1950)-of-Division-4
of-Title-1-of-the-Government-Code.]~~

SEC. 90. Section 38 of the Nevada County Water Agency Act (Statutes of 1959, Chapter 2122) is repealed.

~~[Sec. 38.--If-a-judgment-is-entered-against-a-director,-officer,
agent,-or-employee-of-the-agency-for-any-act-or-omission-in-his-official
capacity,-except-in-case-of-actual-fraud-or-malice,-the-agency-shall
pay-the-judgment-without-obligation-for-repayment-by-the-director,-officer,
agent,-or-employee.]~~

SEC. 91. Section 49 of the Orange County Water District Act (Statutes of 1933, Chapter 924) is amended to read:

Sec. 49. For any wilful violation of any express duty herein provided for, on the part of any officer herein named, he shall be liable upon his official bond, and be subject to removal from office, by proceedings brought in the superior court of Orange County by any assessment payer of the district [~~;-but-no-officer-of-said-district shall-be-personally-liable-for-any-damage-resulting-from-the-operations of-the-district-or-from-the-negligence-or-misconduct-of-any-of-its officers-or-employees-unless-the-damage-was-preximately-caused-by-the officer's-own-negligence-or-misconduct-or-by-his-wilful-violation-of-official-duty].~~

SEC. 92. Section 7.2 of the Placer County Water Agency Act (Statutes of 1957, Chapter 1234) is repealed.

[Sec. 7.2. -- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment -- knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]

SEC. 93. Section 7.3 of the Placer County Water Agency Act (Statutes of 1957, Chapter 1234) is repealed.

[Sec. 7.3. -- Nothing contained in Section 7.2 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6, commencing at Section 1950, of Division 4 of Title 1 of the Government Code.]

SEC. 94. Section 7.4 of the Placer County Water Agency Act (Statutes of 1957, Chapter 1234) is repealed.

[Sec. 7.4. -- If a judgment is entered against a director, officer, agent, or employee of the agency for any act or omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]

SEC. 95. Section 6 of the San Benito County Water Conservation and Flood Control District Act (Statutes of 1953, Chapter 1598) is amended to read:

* * *

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and may survey and locate the same; but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature.

SEC. 96. Section 24 of the San Geronio Pass Water Agency Law

(Statutes of 1961, Chapter 1435) is repealed.

~~[Sec. 24. -- No director or other officer, agent, or employee of the agency shall be liable for any act or omission of any officer, agent or employee appointed or employed by him unless he had actual notice that the person appointed or employed was inefficient or incompetent to perform the service for which such person was appointed or employed or unless he retains the inefficient or incompetent person after notice of the inefficiency or incompetency.~~

~~The agency may employ counsel to defend any litigation brought against any director or other officer, agent, or employee thereof, on account of his official action, and the fees and expenses involved therein shall be a lawful charge against the agency.~~

~~If any director or other officer, agent, or employee of the agency is held liable for any act or omission in his official capacity, and any judgment is rendered thereon, the agency, except in case of his actual fraud or actual malice, shall pay the judgment without obligation for repayment by such director or other officer, agent or employee.]~~

SEC. 97. Section 5 of the San Joaquin Flood Control and Water Conservation District Act (Statutes of 1956 (Ex. Sess.), Chapter 46) is amended to read:

* * *

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district,

and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof [and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice].

* * *

Note: The entire text of this section which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature.

SEC. 98. Section 5 of the San Luis Obispo County Flood Control and Water Conservation District Act (Statutes of 1945, Chapter 1294) is amended to read:

* * *

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses of streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and may survey and locate the same; but such must be located in the manner which will be most compatible with the greatest public good and the least private injury. The

district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature.

SEC. 99. Section 5 of the Santa Barbara County Flood Control and Water Conservation District Act (Statutes of 1955, Chapter 1057) is amended to read:

* * *

7. To carrying on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of storm waters and floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof [~~and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature.

C

SEC. 100. Section 5 of the Santa Clara County Flood Control and Water Conservation District Act (Statutes of 1951, Chapter 1405) is amended to read:

* * *

C

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and may survey and locate the same; but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof [~~, and such entry shall constitute no cause of action in favor of the owners of such land, except for injuries resulting from negligence, wantonness, or malice~~].

* * *

Note: The entire text of this section, which is too lengthy to be quoted here, will appear in the bill to be prepared for the Legislature.

C
SEC. 101. Section 7.2 of the Sutter County Water Agency Act (Statutes of 1959, Chapter 2088) is repealed.

[~~Sec. 7.2.-- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.~~]

C
SEC. 102. Section 7.3 of the Sutter County Water Agency Act (Statutes of 1959, Chapter 2088) is repealed.

[~~Sec. 7.3.-- Nothing contained in Section 7.2 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6 (commencing at Section 1950) of Division 4 of Title 1 of the Government Code.~~]

C
SEC. 103. Section 7.4 of the Sutter County Water Agency Act (Statutes of 1959, Chapter 2088) is repealed.

~~[Sec. 74. -- If a judgment is entered against a director, officer, agent, or employee of the agency for any act or omission in his official capacity, except in case of actual fraud or malice, the agency shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]~~

SEC. 104. Section 35 of the Yuba-Bear River Basin Authority Act (Statutes of 1959, Chapter 2131) is repealed.

~~[Sec. 35. -- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity; whether such employment or appointment was made singly or in conjunction with other members of the board; and no officer, agent or employee of the authority shall be liable for any act or omission of any agent or employee appointed or employed by him except when the officer, agent or employee making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]~~

SEC. 105. Section 36 of the Yuba-Bear River Basin Authority Act (Statutes of 1959, Chapter 2131) is repealed.

~~[Sec. 36. -- Nothing contained in Section 35 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6 (commencing at Section 1950) of Division 4 of Title 1 of the Government Code.]~~

SEC. 106. Section 37 of the Yuba-Bear River Basin Authority Act (Statutes of 1959, Chapter 2131) is repealed.

[Sec. 37. -- If a judgment is entered against a director, officer, agent or employee of the authority for any act or omission in his official capacity, except in case of actual fraud or malice the authority shall pay the judgment without obligation for repayment by the director, officer, agent, or employee.]

SEC. 107. Section 7.2 of the Yuba County Water Agency Act (Statutes of 1959, Chapter 788) is repealed.

[Sec. 7.2. -- No director shall be liable for any act or omission of any appointee or employee appointed or employed by him in his official capacity, whether such employment or appointment was made singly or in conjunction with other members of the board, and no officer, agent or employee of the agency shall be liable for any act or omission of any agent or employee appointed or employed by him except when the director, officer or agent making such appointment or employment knew or had actual notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.]

SEC. 108. Section 7.3 of the Yuba County Water Agency Act (Statutes of 1959, Chapter 788) is repealed.

[Sec. 7.3. -- Nothing contained in Section 7.2 shall be considered as creating any liability or responsibility unless the same would have existed without the enactment of said section, nor shall the provisions of said section be deemed to amend, modify or repeal the provisions of Chapter 6 (commencing at Section 1950) of Division 4 of Title 1 of the Government Code.]

C
SEC. 109. Section 7.4 of the Yuba County Water Agency Act
(Statutes of 1959, Chapter 788) is repealed.

[~~Sec. 7.4. -- If a judgment is entered against a director, officer,
agent, or employee of the agency for any act or omission in his
official capacity, except in case of actual fraud or malice, the agency
shall pay the judgment without obligation for repayment by the director,
officer, agent, or employee.~~]

EXHIBIT I

DINKELSPIEL & DINKELSPIEL
405 Montgomery Street
San Francisco 4

July 19, 1962

Mr. Joseph B. Harvey
Assistant Executive Secretary
California Law Revision Commission
School of Law
Stanford University, California

Re: Sovereign Immunity - Law Enforcement Torts

Dear Mr. Harvey:

This will refer to our telephone conversation of July 18 concerning the tentative recommendations of the Commission to be considered July 20 and July 21.

These recommendations were forwarded to the members of the Executive Committee of the Sheriffs' Association. The work of the Commission in the area of law enforcement torts was also discussed at great length during the recent convention of the Sheriffs' Association.

The response thus far received is extremely favorable, and should the tentative recommendations result in legislative proposals, I am certain you can count on the support of our Association.

However, I am concerned about the deletion of the provision for a bond to guarantee payment of counsel fees in unsuccessful malicious prosecution actions and do not feel that the new tentative recommendations relating to protection of public officers and employees against unfounded litigation provide adequate safeguards.

Conceding that there should be liability on the part of a public officer who is guilty of actual malice, fraud or oppression and that the public entity should not be required to respond for punitive damages, it seems obvious that some penalty must be placed on a plaintiff who alleges malice, fraud or oppression but is unable to prove such allegations. I would strongly urge that a bond guaranteeing payment of counsel fees be required in such cases.

It has been our experience in defending law enforcement torts that plaintiffs usually make general allegations to cover all possible causes of action, whether factually justified or not. Consequently, the law enforcement officer must defend the litigation until the case is either settled or tried. It seems certain that unless there is a

Mr. Joseph B. Harvey
July 19, 1962

Page 2

penalty involved for unfounded allegations that plaintiffs will as a matter of course add a cause of action based on fraud, malice and corruption in order to hold the law enforcement officer in the case along with the public entity.

This will have the effect of forcing the officer to defend and will also create confusion as to whether or not the public entity should provide such defense. In the face of such allegations, if the public entity does defend, there is the question of conflict of interest which has been discussed in your reports under the present Government Code section 2001.

Therefore, from a practical standpoint, the law enforcement officer in most cases will probably be required to provide his own defense and then later seek reimbursement from the public entity should no punitive damages be assessed and no fraud, malice or oppression be proved.

It would seem fair that in these cases in which a plaintiff alleges actual malice, fraud or oppression, he should be required to post a bond to guarantee payment of counsel fees if he is unsuccessful.

I trust that the foregoing comments will be conveyed to the members of the Commission when they meet on Friday and Saturday.

Kind regards.

Sincerely,

S/RICHARD C. DINKELSPIEL
per JF
Richard C. Dinkelspiel

RCD:jf

ccs: Hon. Michael N. Canlis
Hon. Matthew Carberry