

#52

3/18/69

Memorandum 69-60

Subject: Study 52 - Sovereign Immunity (SB 100 - Public Entity Claims Statute)

Senate Bill 100 was introduced to effectuate the Commission's recommendation that the public entity claims statute be amended to require a notice when a claim is rejected or is deemed to have been rejected and to provide that the statute of limitations is not tolled where the claimant is a minor or other person under disability. The bill has passed the Senate, but the members of the Senate Judiciary Committee who voted to report the bill "do pass" indicated (1) a concern that the Commission and the State Bar had been unable to reach agreement on the revisions needed in the claims statute and (2) a caution that the Senate Judiciary Committee might report out favorably the State Bar proposal (described below) and, in effect, thus eliminate the revision proposed by SB 100. In addition, Senator Grunsky and a representative of the insurance industry were concerned about the sanction to be applied in a case where the notice is not given.

You will recall that the State Bar proposal (Exhibit II attached) is that the statute of limitations be tolled as in the case of a private defendant. The Commission has previously considered its proposal to be a better solution in the case of a minor or other incompetent claimant than the State Bar proposal. Nothing that has been brought to the staff's attention causes us to question that the Commission's proposal is superior. (We would however modify the sanction as indicated in Exhibit I.) The State Bar proposal also is that the claims filing

period should be extended from 100 to 180 days. The Commission previously took the view that it has no position on this change. However, the staff believes that it would be an undesirable change although we believe that a change is needed in the claims filing period.

It is apparent that the Commission's proposal--SB 100--will run into serious trouble in the Assembly Judiciary Committee. In the opinion of the staff, it is unlikely that the Assembly Judiciary Committee will favorably report the bill until it has had an opportunity to consider the State Bar proposal and, even then, it is not unlikely that the State Bar proposal will gain the approval of the Committee. Accordingly, the staff believes that the Commission should consider what change should be made in the claims filing period and the staff suggests that the Commission adopt the suggestion of Assemblyman Moorhead.

Assemblyman Moorhead suggested in substance that the claimant should be permitted to file his claim within a reasonable time not to exceed one year (as in the case of other late claims) if the public entity had actual notice of the accident. On balance, it seems unjust to deprive a claimant of his cause of action in a case where, for example, he failed to file a claim within 100 days because he had no notice that he needed to file a claim and at the same time the public entity had actual notice of the accident and of the fact that injury, damage, or loss resulted from the accident. The staff recommends that the Commission amend SB 100 to make this change. The staff considers the change to be a better solution than the State Bar proposal that the claims filing period be extended from 100 to 180 days in all cases.

Where the public entity has no notice of the accident or that an injury resulted from the accident, one can hardly argue that 180 days (approximately six months) is prompt notice to enable the entity to investigate the accident and correct the condition that gave rise to it. On the other hand, if the public entity has actual notice of the accident and actual notice that injury, damage, or loss resulted from the accident, it does not seem that the public entity has any great need for a claim within the 100-day period. The only purpose the claim could serve would be to advise the governing body that a lawsuit might result from the accident. The actual notice of the accident and resulting injury--without any claim--should be sufficient notice to enable the public entity to investigate the accident and to correct the condition that gave rise to it. It seems unjust to deprive the unwary plaintiff of a cause of action because he fails to file a claim within 100 days under these circumstances, as for example where he has no knowledge that a claim is required or merely makes an oral report of the accident and injury. Yet, although most courts probably would do so, there is no assurance that a court would permit the filing of a late claim in such a case on the ground of "mistake, inadvertence, surprise or excusable neglect."

Attached as Exhibit I is a revised draft of Senate Bill 100 designed to carry out the staff suggestion. We suggest that SB 100 be amended as there set out even though the State Bar is unwilling to accept this alternative solution to the problem. The amendment would, the staff believes, put SB 100 in a shape where the Assembly Judiciary Committee could be convinced that SB 100 is in all respects superior to the State Bar proposal. Further, we feel that the amended bill would meet the

approval of the Senate when the Senate is asked to concur in the Assembly amendments. If the bill is not amended as suggested, the staff suggests that the Commission withdraw its recommendation that SB 100 be enacted so that the matter can be given further study. Neither the Senate Judiciary Committee nor the State Bar consider the bill to be a satisfactory solution to the claims statute problem. Moreover, enactment of the bill in its present form would, practically speaking, preclude any future effort to minimize the trap for unwary plaintiffs created by the 100-day filing requirement.

Attached as Exhibit III is a report prepared for the Assembly Judiciary Committee. The report includes official comments for the sections proposed to be added to SB 100. Please mark your suggested editorial changes on the report and return the edited report to the staff at the April meeting so your suggestions can be considered when the report is revised after the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

AMENDED IN SENATE MARCH 8, 1969

SENATE BILL

No. 100

Introduced by Senator Song
(Coauthor: Assemblyman Moorhead)

January 16, 1969

REFERRED TO COMMITTEE ON JUDICIARY

911.6. *An act to amend Section 352 of the Code of Civil Procedure and to amend Sections 910.8, 911.8, 913, 945.6, and 950.5 of, and to add Section 913.4 to, the Government Code, relating to claims against public entities and public employees.* **946.6.**

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

- 1 SECTION 1. Section 352 of the Code of Civil Procedure is
- 2 amended to read:
- 3 352. (a) If a person entitled to bring an action, mentioned
- 4 in Chapter 3 of this title, be, at the time the cause of action
- 5 accrued, either:
- 6 1. Under the age of majority; or,
- 7 2. Insane; or,
- 8 3. Imprisoned on a criminal charge, or in execution under
- 9 the sentence of a criminal court for a term less than for life;
- 10 or,
- 11 4. A married woman, and her husband be a necessary party
- 12 with her in commencing such action; the time of such dis-
- 13 ability is not a part of the time limited for the commencement
- 14 of the action.

LEGISLATIVE COUNSEL'S DIGEST

SB 100, as amended, Song (Jud.). Government tort liability.
 Amends and adds various secs., C.C.P. and Gov.C.
 Requires public entities to give prescribed notice of special statute
 of limitations to certain claimants.
 Prohibits tolling of the statute of limitations on claims against a
 public entity of either a minor, an insane person, or a married woman
 whose husband is a necessary party with her in commencing such
 action.
 Vote—Majority; Appropriation—No; Sen. Fin.—Yes; W. & M.—
 Yes.

(b) This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) or Chapter 2 (commencing with Section 910), of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code.

Sec. 2. Section 910.8 of the Government Code is amended to read:

910.8. If in the opinion of the board or the person designated by it a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or such person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. Such notice shall be given in the manner prescribed by Section 915.4. The board may not take action on the claim for a period of 15 days after such notice is given.

Sec. 3. Section 911.6 of the Government Code is amended to read:

911.6. (a) The board,

shall grant or deny the application within 45 days after it is presented to the board. If the board does not act upon the application within 45 days after the application is presented, the application shall be deemed to have been denied on the 45th day.

(b) The board shall grant the application where:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the failure to present the claim within the time specified in Section 911.2; or

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim; ; or

(5) The public entity, before the expiration of the time specified in Section 911.2 for the presentation of the claim, had actual notice of the accident or other occurrence which gave rise to the injury, damage, or loss and had actual notice that injury, damage, or loss had resulted from such accident or other occurrence.

3-4.

Sec. 4. Section 911.8 of the Government Code is amended to read:

911.8. Written notice of the board's action upon the application shall be given in the manner prescribed by Section 915.4.

4-5.

Sec. 5. Section 913 of the Government Code is amended to read:

913. (a) Written notice of the action taken under Section 912.6 or 912.8 or the inaction which is deemed rejection under Section 912.4 shall be given in the manner prescribed by Section 915.4. Such notice may be in substantially the following form:

"Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$_____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law)."

(b) If the claim is rejected in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

"WARNING"

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

"You may seek the advice of an attorney of your choice in connection with this matter. Your attorney should be consulted immediately. If you desire to consult an attorney, you should do so immediately."

5-6.

Sec. 6. Section 915.4 is added to the Government Code, to read:

915.4 (a) The notices provided for in Sections 910.8, 911.8, and 913 shall be given by:

(1) Personally delivering the notice to the person presenting the claim or making the application; or

(2) Mailing the notice to the address, if any, stated in the claim or application as the address to which the person presenting the claim or making the application desires notices to be sent or, if no such address is stated in the claim or application, by mailing the notice to the address, if any, of the claimant as stated in the claim or application.

(b) No notice need be given where the claim or application fails to state either an address to which the person presenting the claim or making the application desires notices to be sent or an address of the claimant.

6-7.

SEC. 7. Section 945.6 of the Government Code is amended to read:

945.6. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced:

(1) If written notice is given in accordance with Section 918, not later than six months after the date such notice is personally delivered or deposited in the mail.

(2) If written notice is not given in accordance with Section 918, not later than one year after the date the claim is rejected or is deemed to have been rejected by the board. ~~within two years from the accrual of the cause of action. If the period within which the public entity is required to act is extended pursuant to subdivision (b) of Section 918.4, the period of such extension is not part of the time limited for the commencement of the action under this paragraph.~~

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division.

Sec. 8. Section 946.6 of the Government Code is amended to read:

946.6. (a) Where

an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from the provisions of Section 945.4. The proper court for filing the petition is a court which would be a competent court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of such action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court.

(b) The petition must show (1) that application was made to the board under Section 911.4 and was denied or deemed denied, (2) the reason for failure to present the claim within the time limit specified in Section 911.2 and (3) the information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the provisions of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after the accrual of the cause of action and was denied or deemed denied pursuant to Section 911.6 and that:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity establishes that it would be prejudiced if the court relieves the petitioner from the provisions of Section 945.4; or

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim; or

(5) The public entity, before the expiration of the time specified in Section 911.2 for presentation of the claim, had actual notice of the accident or other occurrence which gave rise to the injury, damage, or loss and had actual notice that injury, damage, or loss had resulted from such accident or other occurrence.

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served not less than 10 days before the hearing on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the State Board of Control or its secretary, if the respondent is the state.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from the provisions of Section 945.4, suit on the cause of action to which the claim relates must be filed in such court within 30 days thereafter.

8.9.

Sec. 9. Section 950.6 of the Government Code is amended to read:

950.6. When a written claim for money or damages for injury has been presented to the employing public entity:

(a) A cause of action for such injury may not be maintained against the public employee or former public employee whose act or omission caused such injury until the claim has been rejected, or has been deemed to have been rejected, in whole or in part by the public entity.

(b) A suit against the public employee or former public employee for such injury must be commenced within the time prescribed in Section 945.6 for bringing an action against the public entity.

(c) When a person is unable to commence the suit within the time prescribed in subdivision (b) because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public employee or former public employee establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (b).

SENATE BILL

No. 464

Introduced by Senator Lagomarsino

March 3, 1969

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 911.2 and 945.6 of the Government Code, relating to governmental torts.

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

- 1 SECTION 1. Section 911.2 of the Government Code is
 2 amended to read:
 3 911.2. A claim relating to a cause of action for death or
 4 for injury to person or to personal property or growing crops
 5 shall be presented as provided in Article 2 (commencing with
 6 Section 915) of this chapter not later than the 100th 180th
 7 day after the accrual of the cause of action. A claim relating
 8 to any other cause of action shall be presented as provided in
 9 Article 2 (commencing with Section 915) of this chapter not
 10 later than one year after the accrual of the cause of action.
 11 SEC. 2. Section 945.6 of the Government Code is amended
 12 to read:
 13 945.6. (a) Except as provided in Sections 946.4 and 946.6
 14 and subject to subdivision (b) of this section, any suit brought
 15 against a public entity on a cause of action for which a claim
 16 is required to be presented in accordance with Chapter 1 (com-
 17 mencing with Section 900) and Chapter 2 (commencing with
 18 Section 910) of Part 3 of this division must be commenced (1)

LEGISLATIVE COUNSEL'S DIGEST

SB 464, as introduced, Lagomarsino (Jud.). Governmental torts.

Amends Secs. 911.2, 945.6, Gov.C.

Extends time for presenting certain claims against public entities from 100 to 180 days.

Provides that suit against a public entity, for which a claim was required to be presented, must be commenced within six months after rejection of the claim, or within the period of the statute of limitations otherwise applicable if defendant were not a public entity, whichever is later, rather than within such six months or one year from accrual of cause of action, whichever is later.

Vote—Majority; Appropriation—No; Sen. Fin.—Yes; W. & M.—Yes.

1 within six months after the date the claim is acted upon by the
2 board, or is deemed to have been rejected by the board, in
3 accordance with Chapters 1 and 2 of Part 3 of this division,
4 or (2) within one year from the accrual of the cause of action
5 the time prescribed by the statute of limitations that would be
6 applicable if the action were brought against a defendant other
7 than a public entity, whichever period expires later.

8 (b) When a person is unable to commence a suit on a
9 cause of action described in subdivision (a) within the time
10 prescribed in that subdivision because he has been sentenced
11 to imprisonment in a state prison, the time limited for the
12 commencement of such suit is extended to six months after the
13 date that the civil right to commence such action is restored
14 to such person, except that the time shall not be extended if
15 the public entity establishes that the plaintiff failed to make
16 a reasonable effort to commence the suit, or to obtain a restora-
17 tion of his civil right to do so, before the expiration of the time
18 prescribed in subdivision (a).

19 (c) A person sentenced to imprisonment in a state prison
20 may not commence a suit on a cause of action described in
21 subdivision (a) unless he presented a claim in accordance with
22 Chapter 1 (commencing with Section 900) and Chapter 2
23 (commencing with Section 910) of Part 3 of this division.

EXHIBIT III

SUGGESTED DRAFT

of

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON SENATE BILL 100

In order to indicate more fully its intent with respect to Senate Bill 100, the Assembly Committee on Judiciary makes the following report.

Except for the revised and new Comments set out below, the Comment contained under the various sections of Senate Bill 100 as set out in the Recommendation of the California Law Revision Commission Relating to Sovereign Immunity: Number 9--Statute of Limitations in Actions Against Public Entities and Public Employees (September 1968), printed in the Annual Report of the Law Revision Commission (December 1968) at 49 reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Senate Bill 100.

The following new and revised comments to sections contained in Senate Bill 100 also reflect the intent of the Assembly Committee on Judiciary in approving Senate Bill 100.

Code of Civil Procedure Section 352 (amended)

Comment. Subdivision (b) has been added so that Section 352, which operates to toll the statute of limitations for minors, insane persons, and prisoners, will not apply to the causes of action against a public entity or public employee described in this subdivision. Such actions are governed by the period of limitations specified in subdivision (a) of Section 945.6 of the Government Code. To safeguard the minor or incompetent from an inadvertent reliance on the tolling provision of Section 352, notice of rejection of his claim in the form provided in Government Code Section 913 is required to be given by the public entity.

If notice is not given, the claimant has one year from the time his claim is rejected or deemed rejected in which to sue. See Government Code Section 945.6(a).

Special exceptions for prisoners exist in both subdivision (b) of Section 945.6 and subdivision (e) of Section 950.6 of the Government Code, which toll the statute of limitations during the period of their civil disability.

The other general provisions of the Code of Civil Procedure relating to the time within which actions must be commenced—Sections 350, 351, 353-363—are applicable to actions against public entities and public employees. See *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968). See also Government Code Sections 950.2 and 950.4.

Government Code Section 911.6 (amended)

Comment. Paragraph (5) has been added to subdivision (b) of Section 911.6 and to subdivision (c) of Section 946.6 to require the board to accept a late claim where the public entity has actual notice of the accident or other occurrence and that injury, damage, or loss resulted. In such a case, the claimant need only show that the public entity had actual notice and that he presented his application for leave to present a late claim "within a reasonable time not to exceed one year after the accrual of the cause of action" (Section 911.4); he need not show, for example, that he failed to present the claim "through mistake, inadvertence, surprise or excusable neglect" (Section 911.6(b)(1)). See *Martin v. City of Madera*, 265 Adv. Cal. App. 84, 70 Cal. Rptr. 908 (1968)(prior to addition of subdivision (5)), the mere fact that the claimant had no knowledge of the claims

filing requirement was not a sufficient reason for the trial court to find "excusable neglect").

Whether a public entity has "actual notice" of the accident and injury is determined under the ordinary agency rules of imputed knowledge that would be applicable to a private person. This is the same test as is used in Section 835.2 ("actual notice" of dangerous condition of property). For example, a public entity would not have "actual notice" of an injury resulting when the claimant stepped on hot coals from an abandoned fire on a public beach merely because the public employee in charge of the beach should have known through the exercise of reasonable care that an accident and injury had occurred. In order to charge the public entity with actual notice, the employee in charge of the beach would need to know of the accident and injury as where, for example, he took the claimant to a medical facility for treatment of a burned foot. The knowledge of a state police officer that an accident had occurred on a state highway resulting in personal injury or property damage would be sufficient to give the state "actual notice" of the accident and resulting injury or damage.

Government Code Section 945.6 (amended)

Comment. Subdivision (a) of Section 945.6 is amended to require that an action be commenced within six months after notice of rejection (by action or nonaction) is given pursuant to Section 913. If such notice is not given, the claimant has **one year from the date his claim was rejected or deemed rejected in which to file suit.**

The triggering date generally will be the date the notice is deposited in the mail or personally delivered to the claimant, at which time the claimant will receive a warning that he has a limited time within which to sue and a suggestion that he consult an attorney of his choice. See Government Code Section 913. No time limit is prescribed within which the public entity must give the notice, but the claimant is permitted six months from the date that the notice is given to file suit.

one-year

If notice is not given, the ~~period~~ period allows ample time within which the claimant may file a court action.

Section 945.6 does not, of course, preclude the claimant from filing an action at an earlier date after his claim is deemed to have been rejected pursuant to Sections 912.4 and 945.4.

Section 352 of the Code of Civil Procedure does not apply to actions described in Section 945.6. See Code of Civil Procedure Section 352(b). However, the other general provisions of the Code of Civil Procedure relating to the time within which actions must be commenced—Sections 350, 351, 353-363—are applicable. See *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968).

Government Code Section 946.6 (amended)

Comment. See the Comment to Section 911.6.